

JUSTICE 1 COMMITTEE

Tuesday 26 November 2002
(*Afternoon*)

Session 1

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JUSTICE 1 COMMITTEE

40th 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

Chris Hawkes (Association of Directors of Social Work)

Colin Mackenzie (Association of Directors of Social Work)

Morag McLaughlin (Crown Office and Procurator Fiscal Service)

Assistant Chief Constable John McLean (Strathclyde Police)

Inspector Liz McLean (Strathclyde Police)

Colin Quinn

Deputy Chief Constable Tom Wood (Lothian and Borders Police)

THE FOLLOWING ALSO ATTENDED:

Professor Neil Hutton (Adviser)

Ms Margo MacDonald (Lothians) (SNP)

CLERK TO THE COMMITTEE

Alison Taylor

SENIOR ASSISTANT CLERK

Claire Menzies Smith

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

The Hub

Scottish Parliament

Justice 1 Committee

Tuesday 26 November 2002

(Afternoon)

[THE CONVENER opened the meeting in private at 13:35]

13:47

Meeting continued in public.

Convener's Report

The Convener (Christine Grahame): We move into public session, so I ask members to turn off mobile phones and pagers. No apologies have been received, as we have a full house.

I refer members to the piece that appeared in *The Scotsman* on Monday, a copy of which has been provided for everybody. We are back where we were before, which is very depressing. Here we have an article on our unpublished report on our regulation of the legal profession inquiry. The article claims that a source "close to the committee" said:

"The committee will be recommending an approach which is much more centred on the needs of the public and which will provide a transparent and accountable system of regulation.

Solicitors' clients have felt they have been hard done by and that there is no proper redress to the decisions of the disciplinary committees."

The committee's report will be formally launched tomorrow by a cross-party team. This is difficult, but one must presume that someone on the committee has leaked the report, as the report seems to be quoted extremely closely. This has happened before, but it simply cannot go on, as such leaks undermine the integrity of the committee.

To be quite blunt, I am at the stage of telling clerks not to e-mail stuff to members for fear that things will be leaked. Perhaps when we are discussing something, we should do so one to one rather than send round an e-mail. What do committee members want to say?

Paul Martin (Glasgow Springburn) (Lab): I agree with you, convener. The leak seems to come from the same source—I understand that the previous report was also leaked to *The Scotsman*. It is very unfair, but I do not know how we can detect such leaks.

The Convener: Neither do I. It is very unfair, because we have been working on the press release for the report for two or three days. We did not know whether to have a press conference on the report, but I took the view that by not doing so we would be accused of backing off, especially because committee members who were lawyers or who are practising lawyers have unfairly come in for criticism—I include Lord James Douglas-Hamilton and myself in that.

In coming to a view on whether to have a press conference, I asked the clerks to sound out other members' feelings. I cannot use the language that I feel, but I am—this is an understatement—particularly put out that the leak has come when we were busy thinking about whether to have a press conference.

Michael Matheson (Central Scotland) (SNP): Further to what Paul Martin said, did the same journalist write the previous article?

The Convener: I have no idea.

Michael Matheson: Did the previous article appear in *Scotland on Sunday*?

The Convener: Yes.

Maureen Macmillan (Highlands and Islands) (Lab): I think that last time the journalist was Murdo MacLeod. The quotes in the *Scotland on Sunday* article were not accurate. In the end, we decided that that leak could have come from someone who had just been chatting rather than from the leaking of the document. However, the article in *The Scotsman* quotes the report so closely that I cannot believe that the report was not seen, as opposed to the details being given by word of mouth.

The Convener: The leak pre-empts the whole purpose of tomorrow's press conference. Despite the previous leak, our presentation on prisons was strong because it was a cross-party presentation given by four of us sitting together. The same thing will happen at tomorrow's press conference.

I do not know what to do about the leak. The security measure that the clerks and I will now take is that we will not conduct discussions by e-mail. That is a terrible indictment of the system, but we will just not do that.

Michael Matheson: As on the previous occasion, it is almost impossible to find out who the sources are. We referred the previous case to the Standards Committee, but it said that it could find no evidence.

The Convener: Whether we refer the matter to the Standards Committee is up to the committee, but I simply say that such leaks are unfair to other members who, to put it bluntly, keep their mouths shut.

I do not know what further security measures either the clerking team or I can take in handling reports. My one suggestion is that draft reports should be destroyed. We have busy desks and might be in the habit of leaving a draft report around. Security in the rooms is not good, so perhaps that is the root of the problem. I do not know whether the report was leaked by a committee member or by someone else who picked it up, but we will perhaps need to take the view that we securely dispose of any draft reports that come with our papers. That is the only thing that I can think of to tighten up security.

Paul Martin: It is also unfair to other journalists if one journalist has access to the report. We discussed this issue before, but can we perhaps consider ways in which the report could be released as soon as it becomes available? I do not know the logistics, but there is obviously a time gap between the printing of the completed document and its release. That is an issue.

The Convener: The report must first be completed. Sometimes, the report has been tweaked right up until a few days before it is released. Moreover, we always let the Scottish Executive have an embargoed copy of the report 24 hours in advance. In this instance, we also gave the professional bodies an embargoed copy 24 hours in advance, because the report deals with their disciplinary procedures.

Michael Matheson: When was the Law Society of Scotland given a copy of the report?

The Convener: Today. The report is embargoed. The Law Society, the Faculty of Advocates and the other professional bodies involved, together with the Scottish Executive, received a copy. We felt that they should be on notice, but the report has been embargoed. The newspaper article appeared before the copies went out.

Michael Matheson: All the copies?

The Convener: Absolutely. They all go out at exactly the same time. I took the view that it was appropriate for those bodies to see the report in advance. Those were the only copies that went out. Even I did not get the final copy faxed to my home. The report was still in draft the last time that I saw it—changes were still being made to it.

Michael Matheson: Have we been given final copies?

The Convener: Not yet.

Maureen Macmillan: No, but somebody could have seen a draft copy.

The Convener: I am trying to be generous to the committee. It may be that draft copies are lying around. We have had a couple of drafts lying

around. That is all that I can think of. That is being generous. However, there are quotes in the newspaper and that is the problem.

Donald Gorrie (Central Scotland) (LD): Unlike the previous incident, this is a real leak because the quoted text is reasonably accurate. The newspaper quotes a source “close to the committee”, which I understand means a member of the committee in journalist-speak. We must indicate our unhappiness by referring the issue to the Standards Committee, although there is nothing that that committee can do—it is part of the nature of life that one does not find out who leaks. Nonetheless, we must indicate that such incidents are not acceptable.

The Convener: As I say, I am especially annoyed because I was deciding whether to have a press conference. I am now glad that I decided that we should. If we were not going to have one tomorrow, this leak would have been all that was out in public. Whatever we do with the report, we are going to be attacked over it—there is no doubt about that—by certain discontented parties who are never going to be satisfied.

Maureen Macmillan: I second Donald Gorrie's idea to refer the matter to the Standards Committee. Even if that committee cannot do anything about it, that would show how displeased and concerned we are. I would like to know whether this happens in other committees.

The Convener: It does.

Maureen Macmillan: If it does, that is an issue for the whole Parliament, which should be addressed.

The Convener: It is important that the Standards Committee considers the obligations of committee members to other committee members, which should be stated somewhere in black and white. Anyone could leak a report. If we all did it, there could be five or six leaks from a committee.

When I saw the article, I was very unhappy. Apart from the fact that somebody had leaked the report, we had not even sorted out a press release at that stage, although we were discussing it. At that stage, we were still considering whether to hold a press conference, because the report has been a difficult one for the committee to produce.

Michael Matheson: Given what Maureen Macmillan has said, in referring the matter to the Standards Committee we should say that that committee should consider the wider issue, if it is a problem for other committees. This is the second—perhaps the third—time that this has happened in the committee. Perhaps there is a wider issue that the Standards Committee might want to address. We can flag that up in our letter to it.

The Convener: To be honest, I do not see what the point of such a leak could be. Whatever has come out was going to come out anyway and whoever has leaked the information does not have their name attached to it. I do not understand the advantage that that person sought to achieve or their motive for the leak. However, we will draft a letter to the Standards Committee. The matter must be discussed in future, perhaps on committee away days.

Lord James Douglas-Hamilton (Lothians) (Con): What has happened is extremely regrettable, but the press conference should go ahead so that people know that the report has been properly published and launched.

The Convener: I did not intend the committee to be reactive in respect of the report, which was why the decision was taken to be proactive and have a press conference. The strength of the press conference on the prison estates review was that committee members all sat together, having signed up to the report. The same will happen in this case. It is important that the public should know that reports are unanimous and that every member of the committee has signed up to them. That was how we were going to proceed. However, I think that we are going to try to change the venue, as it is unsuitable. I believe that Paul Martin and Donald Gorrie will be there.

14:00

Maureen Macmillan: I will be at a meeting of the Transport and the Environment Committee.

The Convener: We will proceed as suggested. We have wasted a lot of time on the matter, but there will have to be more security measures before proposals are put to the committee. I refer members to section 9.4 of the "Code of Conduct for Members of the Scottish Parliament", which is headed "Confidentiality Requirements". The section deals with draft reports and members should be aware of it.

The next committee meeting, which is on 3 December, will be preceded by two visits. On Monday 2 December, some members will visit Reliance Monitoring Services at East Kilbride. Unfortunately, I cannot go, but Maureen Macmillan and Donald Gorrie will go.

Maureen Macmillan: I can go if I can get a lift from Donald.

Donald Gorrie: I have sent a reply to say that I can give you a lift.

The Convener: Donald has given me a lift before and is a stunning driver. I hope that members will report back to those of us who cannot make the visit because of other commitments.

On the morning of 3 December, we will visit Cornton Vale prison. The visit is terribly important.

Donald Gorrie: What day did you say?

The Convener: The visit is on Tuesday 3 December between 10 am and 1 pm. Some members wish to go there. In the afternoon, we will take evidence from the former chief inspector of prisons for Scotland, Clive Fairweather, on his report. The morning's visit will give us some background to the report. I ask members to respond to the clerk by e-mail saying whether they will go. We will go unaccompanied, although it has been our habit in the past to go with the chief inspector.

Subordinate Legislation

The Convener: The next agenda item is subordinate legislation. We are running 15 minutes late. The three statutory instruments are subject to the negative procedure. I refer members to paper J1/02/40/10 by the clerk.

Civil Legal Aid (Scotland) Regulations 2002 (SSI 2002/494)

The Convener: Do members want to make any comments on the Civil Legal Aid (Scotland) Regulations 2002 or are we simply content to note them? I have some comments to make. I have been a civil legal aid practitioner for a long time and am pleased that the limit for the money preserved in matrimonial cases is going up at last. Recently, I lodged a parliamentary question on the matter. The sum disregarded has increased from £2,500 to £4,200. I think that the figure has been the same for more than 20 years and has had a considerable impact on matrimonial proceedings. Other elements in the regulations will help the public when they are following proceedings.

I refer members to the report from the Subordinate Legislation Committee, which mentions resources. Members will be interested to note the matter. Part III of the regulations deals with the assessment of resources for legal aid purposes and the financial test. Regulation 11(2) states:

"A man and a woman who are not married to each other and who are living together in the same household as husband and wife shall be treated for the purposes of section 42 of the Act as if they were spouses of each other."

In other words, their resources are added together. However, that is not the case for same-sex couples living together. Resources may be treated separately for the purposes of calculating whether they are entitled to legal aid. Our very alert Subordinate Legislation Committee, under the leadership of Ms Margo MacDonald, felt that that could breach article 14 of the European convention on human rights, which prohibits discrimination. If same-sex couples who live together are allowed to treat their resources separately for calculations, why are different-sex couples not allowed to do so? I raise that as a matter of interest.

Donald Gorrie: Do you wish us to pursue that issue, convener? It seems worth pursuing.

Michael Matheson: Are we going to do something about it?

The Convener: I think that that is a matter for the lead committee.

Michael Matheson: Are we the lead committee?

The Convener: No, we are the secondary committee.

I beg your pardon. The instruments were laid on 7 November 2002 and, under the Parliament's standing orders, are subject to annulment until 16 December 2002. The procedure is that, unless a motion for annulment is lodged, no further action by the committee is required. The committee may wish to consider whether a committee member should lodge a motion to annul the regulations. If so, we could debate such a motion at our next meeting on 10 December.

Ms Wendy Alexander (Paisley North) (Lab): Would it not be wise to write to the minister as a matter of urgency, saying that we need clarification before 10 December? If the clarification is satisfactory, we need not discuss the regulations further. The problem is that, by 10 December, we will have no choice about lodging a motion to annul. We would want to give the Executive the chance to withdraw the regulations and resubmit them.

The Convener: Wendy Alexander is quite right: any motion to annul would have to be considered at the meeting on 10 December and so would have to have been lodged before that. The suggestion that we write to the minister is prudent. We will request a response, which we can copy to the Subordinate Legislation Committee. I thank everyone for their guidance—I had thought that we were the subordinate, or secondary, committee. Other than that, does the committee agree to note the regulations?

Members indicated agreement.

Advice and Assistance (Scotland) Amendment Regulations 2002 (SSI 2002/495)

Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2002 (SSI 2002/496)

The Convener: I refer members to the other two sets of regulations: the Advice and Assistance (Scotland) Amendment Regulations 2002 and the Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2002. Do members have any comments? I do not think that there is anything contentious in the regulations. Is the committee content simply to note them?

Members indicated agreement.

Alternatives to Custody Inquiry

The Convener: We turn now to item 5. I do not seem to have received a copy of paper J1/02/40/2 by the adviser and the clerk, which is headed "Community Sanctions in Europe". Do other members have it?

Members: Yes.

The Convener: I do not appear to have it among my papers. This is the first that I have seen of it. I ask members to bear with me.

I welcome back to the committee Professor Neil Hutton, our adviser. He will be available to answer members' questions on the paper. I invite members' comments on the value of our undertaking a fact-finding visit to one of the countries mentioned—I think that that is where Michael Matheson comes in—to inform our inquiry into alternatives to custody. We could also obtain written evidence from those jurisdictions or hold a videoconference, as we did previously.

Lord James Douglas-Hamilton: Is there not a case for requesting written evidence in the first instance? We could consider following that up with a visit, if necessary.

The Convener: From which sources should we seek written evidence?

Lord James Douglas-Hamilton: From all the countries to which reference has been made.

The Convener: I ask our adviser to indicate which officials we should approach.

Professor Neil Hutton (Adviser): That varies from jurisdiction to jurisdiction. Some of the information that I have collected comes from published materials, whereas other information comes from officials. I have contacts with officials in Denmark and the Netherlands. It would be easy to find out who the appropriate officials are.

The Convener: I ask our adviser to provide us with a list of those officials, which we will e-mail to members. Members may indicate whether they are content with that.

Paul Martin: I recall that we held a videoconference with an academic from Canada. It may be possible to do the same with recognised academics in one of the countries that are mentioned in the paper.

The Convener: I ask our adviser to indicate on the list of contacts that he will supply to the committee which of them would be worth questioning via video link. In our previous videoconference, the exchanges were a bit stiff, because of the time lag between questions and answers.

Michael Matheson: It would be interesting for us to follow up the information that we have received about how the Netherlands is approaching this issue—especially the idea of short-term detention combined with intensive training in community services. I am not sure what that programme involves, but it would be interesting to obtain more background information on it.

The paper states that Denmark appears to be moving towards taking a more rehabilitative approach and that it is expecting increased use to be made of community sanctions. It would be helpful for the committee to have more information about how Denmark is going about that process. What changes is it making to deliver the new approach? We may want to obtain an answer to that question from officials.

The Convener: The paper states:

"There is considerable support in Denmark for rehabilitative measures".

It would be useful if those measures could be specified in more detail. We do not seek a book on alternatives to custody, but further specification would help.

Maureen Macmillan: The paper states that in Norway

"punishment is about penalty and not treatment".

What exactly happens in Norway? Are rehabilitation and other programmes run outwith prison, rather than in prison?

Professor Hutton: I have limited knowledge of jurisdictions such as Norway and Finland. The paper states:

"Finns have never had much faith in rehabilitation".

The enthusiasm for rehabilitation that jurisdictions such as the United States, England and Wales and Canada showed during the 1970s did not take root in the Scandinavian countries. Those countries have always taken a just-deserts approach to punishment. They believe that punishment should be proportionate to the seriousness of the offence and they have not placed a great deal of faith in programmes.

The evidence that I have gathered so far suggests that programmes are being introduced in the Scandinavian countries in a small way. Those programmes tend to be focused on particular types of offenders, such as—in Denmark—drunk drivers, drug abusers and sex offenders. In that respect the Scandinavian countries are following the UK, Canada and the United States, rather than blazing a new trail. They have picked up the issue of rehabilitation rather later than we have. Their criminal justice systems are more focused on punishing proportionately than on expecting punishment to reduce offending behaviour.

Maureen Macmillan: Do you have any statistics on how successful those countries have been? We do not seem to have any about how successful we are.

14:15

Professor Hutton: From the evidence that I have gathered, I have found data on prisoner recidivism rates in Denmark and Sweden but no systematic evaluation of community sanctions. In many jurisdictions—even in the Netherlands for example—a systematic evaluation of community sanctions has not been undertaken.

I know that the committee would love me to come up with a community sanction in one of those countries that has been shown to be terribly effective, as we could then find how to bring that programme to Scotland. Although I have looked hard, such programmes are hard to find. Indeed, they may exist already in Scotland. I am thinking of Freagarrach, which is an example that other jurisdictions look to as a model of an effective programme.

Maureen Macmillan: The problem is that we can look at as many programmes as we want, but we do not know whether they are proven to work.

Ms Alexander: I agree with Maureen Macmillan, but we are looking at countries where the recidivism rate is lower and fewer people per head of population are jailed. If countries are achieving that, the implication is that people are jailed for more serious crimes—they are the more hardened criminals. If those countries have a lower rate of recidivism than our rate of about 50 per cent, that is, to an extent, a proxy measure for success. One of our problems is that more than half of the people we put into prison will end up going back into prison.

The programmes in the Netherlands example involve short-term detention, combined with intensive training and community service. We have a dilemma as there is a large gap in our provision: we have alternatives to custody and we have custody, but without any after-care provision or sufficient information technology resources to let us know whether someone is getting training in literacy or whatever.

Although we could examine the Netherlands example, I share Paul Martin's view that we know so little about Denmark, Norway and Sweden that it is difficult to justify a visit. On the other hand, perhaps we could ask Neil Hutton if he could dig a wee bit further to find a way of getting more detail on some of those programmes, perhaps through a video link. That would mean that we could at least stimulate the Executive into considering the subject further at this or a subsequent stage.

The Convener: We need to consider the logistics. I share Wendy Alexander's view about finding out about video links and so forth to get more detail on programmes in Finland for example, about which we have a lot of information. If committee members want to undertake a visit, I suggest that that would have to be along the lines of a visit to the Netherlands to look at its short-term detention programme, which is combined with intensive training and community service programmes.

I need to have members' views on such a visit by next week. I am mindful of the fact that bids for travel have to be in by the end of December and we want to undertake the visit before the Parliament dissolves for the election campaign. There is also the possibility of setting up a video link and getting further information on paper. That would give us something to compare with the simple audit of provision in Scotland. I appreciate that that makes for a pretty superficial inquiry, but it will be a start for our successor committee. Given the time that is available to us, that is as much as we can do.

Do members agree to decide at the next meeting whether to undertake a visit to Holland? The adviser and clerks could develop a more detailed note on whom we could invite to give written evidence, with whom it would be invaluable for us to set up a video link—I am thinking of Finland—and on which other countries we might compile a mix of information. Are members content to do that?

Members indicated agreement.

The Convener: I thank Neil Hutton.

I welcome Chris Hawkes, who is a member of the criminal justice standing committee of the Association of Directors of Social Work, and Colin Mackenzie, who is the convener of that committee, from which we have heard before. I refer members to paper J1/02/40/3, which is the association's submission. I do not have that paper—is it additional? I must have missed the second batch of papers. I am mumbling to myself, but I will get there. I thank the gentlemen for attending.

The association's written evidence says that the committee's inquiry into alternatives to custody is

"a matter of significant importance and a crucial part of an effective Scottish criminal justice strategy."

Will you put that into the context of the needs of, and the demands that are placed on, the social work service? I am mindful of newspaper reports that drugs courts are straining to be successful because of difficulties finding enough social workers. Will you put the matter in perspective and give us numbers?

Chris Hawkes (Association of Directors of Social Work): Throughout our preparation for today's meeting and our submission, we have been concerned to address effectiveness. Fundamentally, we are concerned with providing evidence to the committee about what we regard as effective practice in work with offenders. By effectiveness, we mean effectiveness at reducing or stopping reoffending. That is the basis from which we start and on which we undertake to answer the questions that the committee asks.

The level of work that local authorities undertake with offenders shows that Scotland's courts ask us for almost 35,000 risk assessments on offenders each year. The purpose of those risk assessments is to determine the most suitable sentencing option. The options fall into two main camps: custodial sentences and non-custodial sentences. The figures that have been produced for 2000-01 reveal that the courts routinely use community disposals at a rate of 14,000 a year. Community disposals comprise community service—that is, voluntary, unpaid work in the community; supervised attendance orders that are imposed on fine defaulters; and probation orders, which are designed to address offending behaviour. The social work service also provides supervision.

The Convener: You referred to 14,000 community disposals a year. Can you split them up?

Chris Hawkes: Yes. In 2001-02, 6,500 community service orders were issued. The committee might be interested to know that 21 per cent of those orders were breached, and that the maximum length of an order is one year. In that year, 7,057 probation orders were issued.

The Convener: Was that in 2001-02?

Chris Hawkes: Yes. Probation orders run for a minimum of six months to a maximum of three years, and 27 per cent were breached. In the same time span, 2,610 supervised attendance orders were made, 18 per cent of which were breached.

The Convener: What is the duration of a supervised attendance order?

Chris Hawkes: They are for a number of hours, from 10 to a maximum of 100.

The Convener: Over what period do they run?

Chris Hawkes: The order must be completed within one year.

The Convener: Aside from the inquiries for risk assessments, do all the orders take up social work hours?

Chris Hawkes: Yes. All the programmes involve the use of qualified social worker time for assessments and for the delivery of the

programmes and supervisory time is required for community-based supervision of unpaid work. We also use the voluntary sector widely to provide components of the disposals.

The Convener: Do you or your colleagues have statistics for the preceding years? That would allow us to get an idea of whether there has been a substantial increase in demand.

Chris Hawkes: My research covered the period from 1991 to 2001. Without reference to individual years, I can say that over that period there was a general increase of between 14 and 16 per cent in the use of community disposals.

The Convener: Thank you. Your comments have been helpful and have given us some background on the work load.

Donald Gorrie: It would be useful to have a copy of the figures that Chris Hawkes gave.

The ADSW's written evidence seems to make two points about resources. The first is about resources overall and the second is about variation in resources from place to place. In answer to one of the convener's questions, Chris Hawkes seemed to imply that sometimes social workers are asked to do work that is not totally necessary. Is that correct, or did I pick up the wrong implication? Could the courts and the system do anything to make better use of your resources?

Chris Hawkes: The research to which our submission refers, which was based on a large study of 100,000 offenders throughout North America, found that disposals are most effective when they are targeted properly and that if programmes are targeted inappropriately, they can be ineffective. The research went further and stated that if low-risk offenders are given disposals that are more appropriate for high-risk offenders, the programmes are more likely to go wrong and the person involved is more likely to reoffend. Conversely, intensive programmes are more likely to be successful if they are targeted at high-risk offenders.

The question is appropriate. We regard unfocused or untargeted involvement of the criminal justice agencies as inappropriate for low-risk offenders.

Donald Gorrie: Who makes the judgment about whether a disposal is appropriate? If we persuade the Executive to give you more and better-targeted money, could you produce a better system and cope with the demand?

Colin Mackenzie (Association of Directors of Social Work): The person who makes the decision is the sheriff—or another representative of the judiciary—who has the offender before them. They are informed by the social inquiry

report, which contains the risk assessment and the recommendation about what form of community disposal might be appropriate.

On the resources that are available, the committee has already received evidence to indicate that a gradual development of services is taking place across Scotland and that the roll-out is continuing at pace. That development and the appearance of a more uniform pattern across Scotland are helpful, as they allow the targeting that Chris Hawkes mentioned to happen in a much more realistic way.

Additional resources would be welcome. In particular, they would allow for the targeting of the higher-risk offenders that Chris Hawkes referred to, which is where specific programmes become helpful. We have been developing them over only a comparatively short period and we will have a quality control mechanism for their accreditation. Although they are resource-intensive, not all of them require to be delivered by qualified social workers. Other forms of training can assist folk to develop such programmes. The sector skills councils are examining the development of different ways of training and educating staff. We do not need to focus on the current shortage of qualified social workers, because there are other ways of delivering the programmes.

14:30

Michael Matheson: Which offences are classed as low-risk offences and which are classed as high-risk offences?

Chris Hawkes: A significant amount of work on that issue has been done over about 10 years. Rifkind's important work was followed by subsequent Parliaments' recognition of the need for the development of a twin-track policy in Scotland. Such a policy recognised that high-risk offenders—by which we mean offenders who present a risk of reoffending and of causing harm to the community—need to be in custody. There was no equivocation about that—high-risk offenders have to be in custody for the protection of the community. The other side of the twin-track policy stated that low-risk offenders are dealt with more effectively in the community.

Earlier research shows that if one targets low-risk offenders inappropriately, one gets a poor outcome. If one puts a low-risk offender into custody, their behaviour change is for the worse, not for the better. In our targeting of risk, we are beginning to acknowledge that those who are sentenced to four years and more certainly require custodial sentences, because of the risk that they pose to the community. On the other hand, one achieves a better outcome with those who serve sentences of less than six months—of whom there

were 13,000 in 2001-02—by dealing with them in the community rather than by giving them custodial sentences.

If the low-risk threshold is six months and the high-risk threshold is four years, prisoners who fall into the intervening category can be described as medium-risk offenders. We are in constant dialogue with sheriffs about whether individuals who are regarded as being of medium risk should be dealt with in the community or whether they should receive custodial sentences.

The Convener: Let me clarify what you said. In relation to low-risk offenders, you were referring to people who are sentenced to six months or less rather than to those who serve six months or less.

Chris Hawkes: I was referring to those who are sentenced to six months or less.

The Convener: They probably serve half of that.

Chris Hawkes: That is correct.

Maureen Macmillan: You mentioned your relationship with the sheriffs. I would like to know how that works. You present the social inquiry report, which recommends a disposal, and then you have a dialogue with the sheriff. There must be cases when the sheriff does not agree with you. How often does that happen?

Chris Hawkes: Of the 34,670 social inquiry reports that were requested, the number that attracted community-based disposals was 14,000. You can therefore see the relationship between the recommendation and the outcome. Sheriffs prefer us to use the language of options rather than that of recommendations.

Maureen Macmillan: Thank you. That is useful.

The Convener: I hear what you say. I do not want to put words in your mouth, but you seem to wish to put on record that it is for the sheriff to make the decision and not for any of the professionals from whom the sheriff seeks advice, whether they be social workers, psychiatrists or whatever.

Chris Hawkes: We suggest sentencing options; we do not recommend.

The Convener: I just wanted you to make that clear because I suspect that the sheriffs would be jumping about if they read the *Official Report* and it is not made clear that the decision is ultimately at the discretion of the judiciary.

Colin Mackenzie: I want to pick up on the second point of the question about the dialogue that goes on between the report writer—

The Convener: Could you clarify that?

Colin Mackenzie: Sometimes there is dialogue in that situation and sometimes there is no

clarification of what the report actually says. The committee might be interested in the wider dialogue that consists of the formal meetings between local authorities and sheriffs or sheriffs principal that take place regularly across Scotland. Those meetings discuss annually how the criminal justice social work services are delivered.

On top of that, the practice is developing where some sheriffs or sheriffs principal become members of the groupings or partnership arrangements across Scotland that you have already heard about. That is another avenue where there is open and honest dialogue between members of the judiciary. Sheriffs have an input into what services are developed and what shortfalls there are.

Lord James Douglas-Hamilton: The committee has heard on numerous occasions that little or no research is being undertaken in Scotland that would seek to provide a comprehensive evaluation or assessment of the effectiveness of alternatives to custody. Given that there seems to be widespread support for alternatives, why do you think that this situation has persisted?

Chris Hawkes: That is an accurate reflection. The research to which I referred earlier is North American research and it has not been validated in Scotland. We regard that as a significant weakness. We understand that that is because there is no established mechanism for accessing the criminal records organisation in order to track cohorts of offenders who undertake programmes. Although one might do a complete offending population survey—as was undertaken in 1995—that information is not routinely available for tracking specific cohorts of offenders.

Lord James Douglas-Hamilton: What changes would be required in order to make research results more readily available?

Chris Hawkes: We would require cohorts of offenders who undertake intensive programmes of probation and community services to be tracked during the period of supervision—

The Convener: I might be terribly dim, but what is a cohort?

Chris Hawkes: It is a group of individual offenders at any one time—a collection or a number of offenders.

The Convener: Is it a statistical term?

Chris Hawkes: It can be used statistically.

The Convener: All the members are helping me now. I wish I had not declared my ignorance in public.

Lord James Douglas-Hamilton: Can I take it then that you would support research along those

lines if it would gather that information and allow proper analysis to be made with appropriate conclusions?

Chris Hawkes: I apologise for the use of the word. Just to repeat the point, we need to be able to access the criminal records of those offenders in Scotland who undertake intensive programmes of intervention. We could then consider the period of the intervention, and two years after the intervention, and see whether the offenders reappear in either the Scottish courts or other courts within the wider jurisdiction.

Lord James Douglas-Hamilton: I think that you have probably answered at least part of my next question, but it would be helpful if you could clarify exactly what your position is.

In your written evidence, you state that research has shown that the best programmes are those that target various problems that offenders might have—such as substance abuse or a lack of self-control—and values and attitudes. Given that a great many offenders require support in those areas, are the programmes that are managed by the social work services able to deal with all those issues?

Colin Mackenzie: I should make it clear that we do not provide all the programmes ourselves. We also commission and are involved in arrangements with the voluntary sector. That allows a much wider range of programmes to be offered.

The Convener: Can you give an example of that?

Colin Mackenzie: We work with Safeguarding Communities Reducing Offending—SACRO—on programmes that address offending behaviour and promote effective practice. In some groupings, SACRO provides services rather than the local authority.

The Convener: What services do you provide?

Colin Mackenzie: Local authorities can provide services such as programme work with sex offenders in the community. We work with people who have addiction problems and help them access services. There are a range of programmes specifically targeting the various problems that offenders might have, such as alcohol or drug addiction, sex offending, anger management and so on.

Lord James Douglas-Hamilton: Would the sex offenders that you are talking about be people who had been given long or short sentences?

Colin Mackenzie: It could be both. If the person had been given a longer sentence, they would just be coming out of prison, so you would hope that the work that was done with them at that point

would dovetail with the work that had been done in prison. Our programme in Aberdeenshire fits onto the back of Peterhead's STOP programme. It is designed to be modular, so that there is coherence between the two programmes. In the main, the programmes that we work on deal with people who have been convicted of lighter offences.

Lord James Douglas-Hamilton: Have you ever had any difficulty finding a place in a community for someone who has left prison?

Colin Mackenzie: There have been a number of high-profile cases involving difficulties in placing people who have come out of prison after serving a sentence for sex offences. However, the vast majority of people are resettled.

Lord James Douglas-Hamilton: Have you found the problems insoluble?

Chris Hawkes: We have found the Sex Offenders Act 1997 to be particularly helpful in that regard, as there is now a requirement for sex offenders to be subject to registration. That allows the police and the local authority to risk-assess the person who is coming out of prison or who has arrived in an area. It is for those two organisations to manage the risk. One of the large components that we find in relation to managing risk is accommodation. In locating an offender of that kind in the community, we have to ensure that they are not in the immediate vicinity of schools, playgroups or other places where children go.

Lord James Douglas-Hamilton: Your written submission quotes from research evidence from Canada, which suggests that high programme intervention in high-risk cases reduces recidivism. Can you elaborate on that and indicate how you think that that concept can usefully be applied in Scotland?

14:45

Chris Hawkes: We have tried to adopt the work described in the submission, which is based on several principles. First, offenders must be assessed in terms of risk, and you must target whom you work with. Secondly, you must be sure that the right programmes and materials are used when working with offenders. That is known as the responsivity principle. It must also be ensured that the wide range of other needs that an offender has are being met. Therefore, it is not just about addressing the person's offending behaviour; it is about taking account of learning needs and other factors that may be a feature in the offender's life, such as unemployment, addiction, homelessness or poor relationships. Those principles combine to describe what is known as the effective practice agenda, which is covered within that research. When those programmes and components are put

together, it results in the successful outcomes that have been claimed from North America.

Colin Mackenzie: Lord James Douglas-Hamilton asked for a specific example. One example is the original STOP programme at Peterhead prison, which was developed from a Canadian model.

The Convener: We are well aware of the STOP programme.

Paul Martin: I have a brief point on the effectiveness of the programmes. You mentioned the research issue and I want to crystallise some of the points that Lord James Douglas-Hamilton raised. There is no conclusive evidence that alternatives to custody are, in fact, a massive success. You cannot tell me that you have conclusive evidence that cannot be contradicted in any way. The important question is whether you think that we will ever achieve the goal of obtaining research that will undoubtedly conclude that alternatives to custody are a massive success.

Chris Hawkes: First, the programmes that have been described have not been validated in Scotland. We are at the very early stages of delivering the American style of intervention with Scottish offenders.

Secondly, you need to be clear about what effectiveness is. Recidivism rates from custody can vary between 60 and 80 per cent. Those rates are normally governed by the age of the offender. We do not have that level of recidivism amongst those offenders who are dealt with in the community. We can be clear about what we know to have worked so far.

Paul Martin's question was about the goal. Our ultimate goal is to get to a point where we are able to deliver programmes while understanding absolutely what the effectiveness of each of those programmes will be.

Paul Martin: I will make the point in terms of the resources that you will ask the Executive to continue directing to alternatives to custody. Effectively, you do not have a business plan—which is the analogy that I use—to show how effective the programmes are. If you were starting a new business and told a bank manager that you were developing a really effective business, you would need to prove that in the form of a business case. My point is that you do not have a business case that actually proves that alternatives to custody work. I am not saying that I think that alternatives to custody are not successful; the issue is proving that they are successful.

Colin Mackenzie: That is an interesting concept. I suppose that in that situation our business plan would be about margins. In terms of

the evidence that exists, the community disposals—alternatives to custody—are at least as effective as imprisonment. They are certainly cheaper. The perception of the judiciary, people who have successfully completed them and the professionals involved is that they are a success. There is evidence—it may not be the conclusive research evidence that Paul Martin asked about—to back up the assertions that we have made. The community disposals are at least as effective and they are cheaper.

Ms Alexander: In your submission you state:

“Research Findings No 54. (Scottish Executive) states that 85% of Supervised Attendance Orders are completed and those offenders on such orders were less likely to be re-convicted within a year of the order.”

I accept that this is not your responsibility but I want to put the point on the record. The frustrating thing from the committee's point of view is that if the Scottish Executive can carry out research on the effectiveness of supervised attendance orders, why can it not carry it out on the other disposals available—community service orders and probation orders?

The Convener: That is not really a question for the witnesses, but it is a point to put on the record.

Ms Alexander: Exactly.

The other point, which is for the witnesses, is the ease with which it is possible to identify whether a case is low risk or high risk. To what extent is there agreement among those operating in the field about the ease with which offenders can be classified?

Chris Hawkes: We use two mechanisms in Scotland that have been developed and validated in another jurisdiction. They are very reliable in determining whether offenders are low, medium or high risk, in the categories of both re-offending and the potential to cause harm. Those programmes have been rolled out across Scotland, so there is consistent use of risk assessment tools throughout Scotland.

The Convener: Does that answer the question?

Ms Alexander: It is good to know that the tools are there. Having a process is one thing, but if two people carried out the risk assessment exercise would they be likely to reach the same conclusion? I am trying to get a view of how disputed the status of offenders would be. If we were to say that 20 per cent of offenders are high risk and 80 per cent are low risk, would the disputed cases be in the region of 20 per cent? How easy is it to establish their status? To what extent does the profession have a common view on the matter?

Chris Hawkes: I am not sure that I can answer that technical question specifically. I can say that

the models of risk assessment that we use have been validated and are widely used in other jurisdictions.

The Convener: Where?

Chris Hawkes: They are used across England and in North America.

The Convener: That is very useful.

Michael Matheson: The final paragraph on page 3 of your submission states:

“There is also a wide concern that Community Service is not being used as intended as an alternative to custody, rather, it is being used as a sentence in its own right.”

Will you elaborate on what you mean by that?

Chris Hawkes: Community service was intended, from the original community service legislation, to be a direct alternative to custody. When the sentencing court is considering a sentence of imprisonment, it has the freedom to consider a community-based option. That is the community punishment aspect of the community service order.

Our concern is that, over the years, community service has not always been used as a direct alternative to custody. You will rightly ask where we get the evidence for that. When an offender breaches a community service order and is taken back to court, as they routinely are, we find that the courts do not necessarily impose a custodial sentence as a punishment for breaching the order and for being in breach of the original sentence. One could conclude that if community service were being used as an alternative to custody, the custodial sentence would be imposed on default. That is where the suspicion comes from.

Michael Matheson: Why do you think that people who breach a community service order are not getting custodial sentences?

Chris Hawkes: I am afraid that that question would have to be directed to the sentencers.

The Convener: But what you are saying is that the disposal is being used like a deferred sentence.

Chris Hawkes: With the addition of unpaid work.

Colin Mackenzie: It is being used virtually as a way of getting unpaid work in the community. It is being used as a reparations disposal, as opposed to an alternative to custody. What lies behind the issue is perhaps the fact that the sheriff wants to bring into being a reparations disposal and, for whatever reason, he or she ignores the fact that a community service order is an alternative to custody. Sheriffs are seeking to do something that is about reparations.

The Convener: Do you want to develop that, Michael?

Michael Matheson: Yes. If a person does not get a custodial sentence when they break their community service order, what do they get instead?

Chris Hawkes: More often than not, a request is made for the order to be continued, so the offender has a second bite at the cherry. They are required on a second occasion to undertake a community service order or to continue the original community service order.

Michael Matheson: So in effect there is no real penalty for breaching the order.

Chris Hawkes: We are not seeing custody being used consistently for the breach of community service orders, in contrast to what one would expect if such an order was regarded as an alternative to custody.

The Convener: I could argue the contrary view. From the point of view of alternatives to custody, are you suggesting one strike and you are out, so that if an order is breached, down comes the sword of Damocles and you are in prison?

Colin Mackenzie: No, we are not advocating that the person should then go immediately to prison—one strike and you are out. All that we are saying is that if a community service order is an alternative to custody, then at a high level one strike would probably operate. We are actually pleased that the person does get another chance and that other alternatives are looked at, because the business is one of making sure that it is not just a case of trying one community disposal and if it does not work they go to prison. That would be the wrong approach. We would not support that.

The Convener: So you support the view that if somebody breaches an order—and I am not condoning that—for various reasons, because they have an unstructured life, they should get other opportunities.

Colin Mackenzie: Absolutely.

Maureen Macmillan: I want to be sure what a community service order would involve. The witnesses said that it was just a way of obtaining free work, for example painting fences. Is there nothing else?

Chris Hawkes: The requirement for community service is that the person complies with the conditions of the order. The order of the court requires them first to inform the local authority of their address. They are not allowed to move address without the consent of the local authority. Secondly, they are required to undertake unpaid work within the community, up to a maximum of 300 hours, which has to be undertaken within one

year. That work is significant to many local authorities. In my authority area, which is Scottish Borders Council, something in the region of 19,000 hours of unpaid work is carried out in the community each year. That work builds footpaths and bridle-ways and public amenities in forests. Where appropriate, work is also done with individuals who are in need, such as the elderly or those who have special needs.

Maureen Macmillan: Should that not be combined with programmes to address their offending behaviour?

Colin Mackenzie: It can be. A probation order can be part of a community service order, but it need not be. The two can stand alone. What we do know is that community service is most effective where the work that is undertaken is undertaken with people, not things. It is much more helpful when someone who is sentenced to a community service order is working alongside people and seeing the benefit of that and interacting with people, than if they are simply clearing a ditch, for example. The issue is how people are helped in a socially inclusive way.

The Convener: It might be useful to see how specific the wording of community service orders is once information that is subject to data protection legislation is removed.

Maureen, I think that you poached Michael Matheson's question. However, he is an honourable gentleman; he did not pull any faces.

Michael Matheson: I had finished.

The Convener: If you wished, you could reciprocate and ask one of Maureen Macmillan's questions.

Michael Matheson: I would not do that.

Maureen Macmillan: Which question did I pinch?

The Convener: Number 8.

Maureen Macmillan: Oh, right.

The Convener: I have distracted you from your thoughts.

15:00

Maureen Macmillan: Yes, you have.

We have already mentioned low-risk offenders. Such people might be such an absolute nuisance in their communities, so that people want shot of them. Indeed, many still see the imposition of the community penalty as a soft option. What is your view on that?

Colin Mackenzie: That is often the response in some of the press. However, the people who are subject to community disposals do not think that

they are a soft option. They think that the orders are much harder than simply being sent to prison for a comparatively short time. After all, the initial shock of prison wears off for people after their first time.

Furthermore, the research that the committee carried out in Glasgow showed that once one starts to talk to communities about what is effective and what changes behaviour, they begin to see that community disposals are much more effective. In the longer term, they would rather have such a system instead of one in which someone is simply removed for six or eight weeks and then comes back to resume the same cycle of behaviour.

Maureen Macmillan: Are we winning the battle then? Do you think that the public can come to realise that a community service order is an appropriate punishment and is not a soft option?

Colin Mackenzie: We are further down that line than we were. Now that disposals are rolling out across the community, people are finding them more effective. However, it will be a continuing battle and we need to ensure that the disposals are tough and that people are required to comply with them. People will see and accept that.

The Convener: Do you want to move on, Maureen?

Maureen Macmillan: Well, I hope that I am not about to pinch someone else's question.

The Convener: I think that Michael Matheson is about to take his revenge.

Maureen Macmillan: We have mentioned restorative justice and so on. I just wanted to know what kind of community service orders would be most appropriate. What mechanism will most convince the public that orders are appropriate? You said that it helps if offenders work with people. However, how can communities feel that they have an input?

Chris Hawkes: Ultimately, people will be satisfied with the disposals that courts have available only when they see a reduction in offending in their community. Further to my point about the evidence base, we also know that the services provided by local authorities are more effective than prisons at reducing recidivism. Our task is to convince the public that they should invest more in the service's provision. Actually, the service is still very cheap, given the number of offenders that are covered in any 12-month period.

The Convener: You said that the service is cheap. Do you have any costs for it? We eventually found out the cost of a prisoner place.

Chris Hawkes: For the current year, the cost of the criminal justice social work service in Scotland

is £61 million. Some of that money has been retained, and we are aware that an allocation of £51.5 million is spread across the 32 authorities in Scotland. That compares with £221 million for the prison estate.

The Convener: You are telling us that community disposals are considerably cheaper than prison. I know that this is a blunt measure, but what is the cost to the public purse of six months of a community service order, as compared with the cost of keeping someone in prison for that time?

Chris Hawkes: The cost of a community service order, which runs for 12 months, is £1,300.

The Convener: Is that the total cost?

Chris Hawkes: Yes.

The Convener: Does it include staff and supervision costs?

Chris Hawkes: Yes.

Colin Mackenzie: The figure of £1,300 is the average cost of a community service order across Scotland. The figure varies from place to place. It is more expensive to provide orders in rural areas than in urban areas.

The Convener: It would be useful if you could provide us with broken-down figures.

Michael Matheson: Perception plays an important part in overcoming public concern about the use of community disposals, which—as has already been mentioned—are often seen as a soft option. People perceive crime as being on the up, but the statistics suggest that it is not. The police are trying to tackle that by increasing their visible presence—by making themselves better known and by being seen around the community.

One reason why people think of community service orders as a soft option is that they never see any of the results. You mentioned all the tasks that are undertaken by people on community services. I do not want to be accused of advocating the introduction of chain gangs or of agreeing with the suggestion of a former Secretary of State for Scotland that offenders serving community service orders should wear big overalls with signs that state "I am subject to a community service order". You recognise that there is a problem of perception. You can argue your case, but what else can we do to overcome the public perception that community service orders are a soft option—people never see anyone serving them—and that they are of no net benefit to the community? The vast majority of people on the street would say that they did not know that offenders undertake the tasks you have described and that they had not seen offenders engaged in that work. Providing such information may help us

to overcome the perception that community service orders are a soft option.

Chris Hawkes: The member's point is well made. We do not advertise sufficiently the work that is done under community service. I can speak only for the authority for which I work. The criminal justice page on the Scottish Borders Council's website includes photographs of the work that our community service teams do. I accept that the website is not accessible to the mass of the community and that we need to do more to advertise a significant amount of voluntary, unpaid work that is done in communities every year. People should be aware of that work—it is our fault that they are not.

The Convener: Publicising community service is a double-edged sword, because people may say that offenders are keeping folk out of jobs. I take the point that you make, but if community service is a substitute for jobs that other people might have done, the public may not react in the way that you expect.

Colin Mackenzie: Local authorities have always made it clear that community service should consist of work that would not be done by people in paid employment. A range of approaches has been developed to ensure that we do not expose ourselves to the real criticism that the convener has identified.

Michael Matheson: I am glad that you recognise the need to publicise more the work that individuals subject to community service orders do, but I am not sure how that should be done. Do you have ideas for tackling the problem?

Colin Mackenzie: Traditionally, we have reported to council committees, so that the information is made available in a local government setting. I blame Billy Connolly for saying that probation is a soft option—folk still have that idea in their mind. We need someone high profile to be up front about what is happening. We need people such as this committee to stand up and support community disposals and recognise that they are a tough option. The more that that message gets across, the better it will be, but I do not think that there is a simple answer.

The Convener: I do not know whether we are at that stage yet. We are just looking at all the options at the moment. I will make Donald Gorrie the last to ask a question as we are running behind schedule and should move on.

Donald Gorrie: On the background, the wee chart in your written evidence mentions high and low-risk cases and their results after minimal and intensive treatment. By intensive treatment, do you mean only sending the person to jail, or do you also mean intensive courses such as the Freagarrach project or the airborne initiative to try to turn the person around outside jail?

Chris Hawkes: It is intensive treatment that is designed to address the person's offending behaviour as well as recognising the other problems that exist within an offender's life, such as drugs, alcohol, unemployment and a lack of accommodation. The intensity comes from delivering a programme intensively. The change programme, which is being used in some parts of Scotland, requires the offender to have 130 hours of programmed work. They come to a group-work environment and receive 130 hours that focus on addressing their offending behaviour and the other areas of dysfunction in their lives.

Donald Gorrie: I am still not clear. Is that intensive treatment outwith jail?

Chris Hawkes: It is outwith jail.

Donald Gorrie: So there would be a separate column to say whether jail is effective or not.

Chris Hawkes: Yes. We have seen from the American research that incarceration produces an increase in reoffending of between 3 and 7 per cent above the norm of what we would expect for reoffending. Prison had a worse outcome than normal, while intensive community-based programmes showed a 33 per cent improvement against the norm.

Donald Gorrie: What I found most surprising about your evidence is that if the low-risk cases are hit by the proverbial ton of bricks, it does them more harm than if the case is dealt with more gently. Is that what you are saying?

Chris Hawkes: That is what the research states.

The Convener: Lord James Douglas-Hamilton is looking at me quizzically. I said that that would be the last question, but who am I to deny Lord James? He is so charming.

Lord James Douglas-Hamilton: I want to come in with a brief question on social inquiry reports.

The Convener: I think that we felt that the social inquiry reports had been dealt with in earlier evidence.

Lord James Douglas-Hamilton: I just have one brief question. When the judge calls for a social inquiry report, is there any problem in social workers being able to provide those reports in time for when the court considers the case? Do you find circumstances in which social workers are so overworked that they cannot deliver what the court requires? Secondly, are social workers cross-examined in open court or are they sometimes asked questions in private in the judge's chambers? Do you have any comments to make about whether you consider the present system to be satisfactory?

Chris Hawkes: On the second part—whether we are required to give evidence on oath and whether evidence is given in the privacy of the sheriff's chambers—the facility exists for us to give evidence on oath if any of the information in social inquiry reports is contested. However, that is not normal practice. Social inquiry reports are submitted as written documents to the court, and only occasionally would we be required to substantiate a point within one.

Colin Mackenzie: It would be highly irregular for anything to happen in chambers outwith the hearing of the defence.

Lord James Douglas-Hamilton: I asked that question because I know that that happened a long time ago. From what you said, can I take it that it does not happen now?

Colin Mackenzie: It should not happen now.

The first part of the question was about how successful we are in producing our reports on time. The success rate is above 90 per cent for getting the reports to courts by the due date, which is usually in about two weeks. There are circumstances in which an extension may be granted, depending on the circumstances of the offender, but it is normally two weeks.

Lord James Douglas-Hamilton: Is it the case that the judge will not give his disposal until he has received a report?

Chris Hawkes: If a judge has asked for a report, and there are certain statutory requirements, he or she cannot pass sentence without having seen it.

15:15

Lord James Douglas-Hamilton: If the social worker is late in giving his report, it is a nuisance for the court, but it will not materially damage the outcome of the case.

Chris Hawkes: It does not disadvantage the offender. As regards the timescale required, the court will routinely use three weeks for a person who is at liberty and two weeks where they are remanded in custody. However, in some of the busier courts, I believe that the practice is now four weeks for those in the community.

The Convener: I know that members want to ask further questions, but we are now running some 25 minutes behind time. I suggest that members send their questions to the clerks. The answers will then be published in a public document.

Other members wish to ask questions about remand. Michael Matheson also has a question. I have a question about the 90 per cent delivery figure, at which I am astonished. I do not dispute that but, anecdotally, one is always hearing of

cases that are continued because the social inquiry report is not ready. Other questions on practical issues arise from that figure. Members can pass their supplementary questions for written answers; otherwise we will be here into the wee small hours.

Gentlemen, thank you for your presentation.

In anticipation, I apologise to other witnesses who are waiting. We will try to gather some time. Members, our short coffee break will be even shorter than usual.

I now call Colin Quinn, who has been involved in community programmes operated by the Apex Trust Scotland, both before and after release from prison. Mr Quinn, thank you for your patience.

Mr Quinn has said that it is appropriate that I ask about the offence for which he was in prison. I make it clear that that is not for the sake of pure curiosity, but to set his experience in a context. Mr Quinn, are you content with that?

Colin Quinn: Yes, that is fine.

The Convener: Can you tell us about your background and why you were in prison? I will then ask a supplementary question to set it in context.

Colin Quinn: It was under the Misuse of Drugs Act 1977. I was charged with being in possession with intent to supply. I was sentenced to 18 months.

The Convener: How long did you serve?

Colin Quinn: I served a total of nine months—half the sentence.

The Convener: The committee is aware that prison can have a damaging effect on a person's life. Was that the first time you were in prison?

Colin Quinn: Yes, it was.

The Convener: First and last?

Colin Quinn: Yes, first and last.

The Convener: Can you tell us about your experience and the impact that prison had on you?

Colin Quinn: At the time I was sentenced, I had been on bail for a year. In that year, I turned my entire life around. When I was charged, I realised that much of my life had been falling apart. I had split up with a partner. I had been trying to deal with things from my childhood, which I will not really go into. There had been a few things. I lost my job due to a back injury. I went back to college to retrain and got myself involved in a lot of things that I probably should not have.

Once I was sentenced, I got myself right away from it all. I went back to college. The year that I was on bail, I sat a higher national certificate in

computing. I got lots of help with counselling and whatnot to get my life back on track. I felt that I had managed to do all that. I passed my HNC in computing and had been accepted in an intake for the very next year to do a higher national diploma in computing. Unfortunately, I was sentenced during that summer.

The social workers who gave evidence earlier mentioned background reports. I had everything like that done at the time, which showed that I had turned things around and rehabilitated myself in many ways. I had taken it upon myself to get help from an organisation called Apex. As I said, I made sure that I was continuing with college, so being sentenced knocked me backwards.

The Convener: In a way, it must have been worse when you were incarcerated after having, as you think, redeemed yourself. How did you react to being put in prison?

Colin Quinn: I found it very difficult at first, but my family and friends found it more difficult than I did. I accepted that I had made mistakes and that I would be punished for them. My friends and family were disconsolate and upset because they felt that I had done everything possible to prove that I would not reoffend. They felt that I had dealt with the problems that had placed me in the situations that caused me to offend. I had removed myself from those circles and tried to better myself. I also have two children but, when I went to court, none of those factors was taken into account.

The Convener: May I play the hard man? Some people might suggest that you did those things only to prevent yourself from being sent to prison. I am sure that that was said to you at the time. Therefore, were you resentful when you were sent to prison?

Colin Quinn: At the beginning, I was not resentful. I felt slightly resentful after a while because although I tried to continue my education while in prison, that was not possible. Even though I had been accepted on an HND course, when I made the right moves to be placed in education in the prison system, it was not available. The prison did not have the hardware or the software to allow me to continue to study. I lost the ability to continue with my HND because the year in prison knocked me so far back that everything that I had learned in my HNC was no longer useful.

The Convener: You are not obliged to answer this question. Were you a drug user?

Colin Quinn: Yes.

The Convener: Therefore, that problem had to be dealt with in the prison system also.

Colin Quinn: That problem had been dealt with before I entered the prison system.

Donald Gorrie: Were any aspects of your time in prison positive? Did it do you any good?

Colin Quinn: No.

Paul Martin: Are you employed now?

Colin Quinn: I had a few difficulties when I was released in April. I already had a curriculum vitae but, so that I would know where I stood when applying for jobs, I went back to Apex and was given a lot of advice on issues such as disclosure. I continued to apply for jobs and eventually got one, but after five weeks my employment was terminated because of my criminal record. I applied and was invited to attend an interview for a job in the new infirmary. I took my disclosure letter with me, but it did not become an issue at the interview. It turned out that an engineer, a manageress and I all had things in our past that became a difficulty once the hospital trust vetted us. I had worked for four to five weeks when my record became an issue. Once it became an issue, I gave my employer a copy of my record and a copy of my disclosure letter. Two days later, they came back to me, terminated my contract and demanded that I be escorted off the premises.

The Convener: What is a disclosure letter?

Colin Quinn: It discloses the nature of a person's offences, the amount of time served in prison, and what the person has done to rehabilitate him or herself. How much information there is in a disclosure letter will depend on the person.

The Convener: Is it a legal requirement for you to produce a disclosure letter for employers?

Colin Quinn: I think that it is. Many application forms ask about previous convictions. I was told that rather than put down the convictions, it was best to state in the application form that a confidential letter was attached—which is the disclosure letter.

Lord James Douglas-Hamilton: How did you become involved with the Apex project? Was Apex helpful?

Colin Quinn: I found it very helpful and still do. I continue to do a lot of work with Apex. I am in full employment—as a self-employed person—but I still do bits and pieces for Apex and keep in regular contact with it.

The Convener: Can you specify how you got in touch with Apex and what it did—just to put some flesh on that?

Colin Quinn: I was treated as unemployed when I left college. I began to apply for jobs, but I knew that I was likely to get a prison sentence and that that would be an issue for me. Therefore, I started early to delve for information on how I would deal with that and what would happen when

I later applied for jobs. In the year that I was out on bail I did a lot of work to find out how things would affect me. I felt that I knew what I had done wrong. Obviously, I still had to deal with the repercussions of that. However, I wanted to go into that with an open mind because I was trying to change my life round. I wanted to get as much information as I could to better my life and get back into work.

Michael Matheson: My understanding is that Apex tries to help ex-offenders to gain employment. You mentioned that Apex gave you assistance with a disclosure letter. Was it able to give you any other directions or information, or recommend other projects in which you could participate to help you to obtain employment?

Colin Quinn: Apex is very helpful with information, but particularly with advice about whether the kind of work that people want to do is a good idea. Obviously, people who have committed particular offences will not be able to get certain jobs or take on certain roles. Apex gives lots of information on that, but it also tries to bring people out of themselves, lift their confidence and let them see that there are jobs available to them, which they would be capable of doing if they put their mind to it.

Apex gives a lot of support. Before I had a conviction, I always found it relatively easy applying for jobs because I am a confident person. However, when I applied for jobs after I had a conviction and a disclosure letter, I started to get rather a large pile of "Dear John" letters. However, Apex kept up its support for me. People in Apex kept pushing at me and telling me to keep trying because somebody would give me a chance eventually. That is all very helpful.

Michael Matheson: How long does Apex continue to give people such support?

Colin Quinn: I do not think that it has a time limit. My official relationship with Apex was through a 13-week course, but afterwards it was open for Apex to contact me regularly to see how I was doing. That is done on a friendly, open basis. I have continued with that because I get on well with the staff and like the support that they give me. I like a lot of the work that they do and would like to get involved with some of it. That is probably why I keep myself more involved with Apex than other people might do.

Michael Matheson: What was involved in the 13-week course?

Colin Quinn: It had a lot to do with building up a curriculum vitae and working on what to put into the disclosure letter, which obviously included the basic facts of what I had been charged with and what I felt had led up to that. It was very difficult for some of the lads on the course to deal with that and work through all those things.

Ms Alexander: There are obviously many young offenders in total in Scotland, particularly in the 18-to-24 age group. The committee has a dilemma. Organisations such as Apex probably provide a higher quality of service because they are distant or separate from the prison regime: offenders have a bit of independence, and they are relatively comfortable. On the other hand, there is a desire for throughcare to be provided for everybody, and there is an expectation for us to aspire to something that is part of core service provision, whereby anybody—particularly any young person—has opportunities, particularly at the end of their prison experience. Do you have any thoughts to guide us on this? How do we give the best experience that we can to any young offender caught in the system, both during and after prison?

15:30

Colin Quinn: It probably involves having a lot more involvement with throughcare staff, with Apex or with SACRO. I found their involvement to be of great benefit. However, the environment within the jail system does not suggest that they are working together; it is as if they are continually working against each other. I found that very difficult. We might be told in writing that support and help was there for us, but when we went to try and get that help or support, it was made very difficult.

Maureen Macmillan: That is a bit worrying.

We have been talking about how Apex helped you with employment. There must have been other things—perhaps housing issues or family contacts—that concerned you. Did Apex help with such matters, or did you use another agency? Did Apex direct you to another agency?

Colin Quinn: I did a lot of work with throughcare staff when I was in prison. Before I was imprisoned, I had a council house. After I was imprisoned, I was approached by a couple who told me that they would be buying a new house within a couple of weeks of my getting out of prison. As the rent for the rented apartment where they were living at the time was a lot dearer than mine was, they said that they would live in my house and pay full rent when I was in prison. That would mean that, once I came out of prison, I would still have somewhere to live, where I could get settled with my children again. I thought that that was a great idea. I approached the throughcare staff and at first was told that they had no problem with that arrangement. If full rent was going to be paid, they would be quite happy.

Once I had been inside for a month and a half, they came back to me and told me that they had changed their minds. They said that either I would

have to be evicted properly by them, or I would be taken to court while I was in prison and get evicted from the house in that way. I thought that that was a bit unfair; given that I was in prison, it would be very hard for me to go and empty all my goods and possessions out of the house.

Fortunately, I have a good family network. They managed to get things sorted out and emptied the house. I was also told that, if I gave up the house without being taken to court, I would get points, which would guarantee my being rehoused in a decent area on getting out of prison. To avoid reoffending, I did not want to move back into the old circles where I had been involved for a while. I stayed very much away from that. I got a lot of social work reports backing up that suggestion; the social workers felt strongly that as I had managed to rehabilitate myself and keep away from those circles, I should not be put on a backwards course.

That is not how it happened when I left prison, however. I was moved into an area where crime was predominantly the way of life. That was visible on a daily basis, with cars being stolen, people not working and so on. That is where I was housed on a waiting list, for seven months, after which I eventually got somewhere decent.

Maureen Macmillan: There is obviously work to be done in that area. When we spoke to people in prison, one of their biggest concerns was housing when they left prison. It is extremely important to deal with that.

Colin Quinn: As I said, I was very lucky. I have a very supportive network of family and friends. However, I feel really hurt and saddened for some of the other lads. They had nothing and they were coming out to nothing. No wonder people get back into the swing of reoffending and go back in through the revolving door.

Maureen Macmillan: What happened with your children?

Colin Quinn: There was a large effect on them. While I was in prison, it was very difficult for me to have access to them as I had always had before. Luckily, through support from family and friends, the children managed to get to me. Because I kept myself totally drug free the whole time I was in prison, I was eventually moved to an open prison, which meant that I had much better contact with the children. Because of SACRO, monetary help was made available for the children to travel from Edinburgh to Dundee to visit me.

Maureen Macmillan: As regards housing and family issues, do you feel that you more or less had to do things for yourself, or was there a good input from organisations such as SACRO?

Colin Quinn: I did get input and advice. It was really only because I pushed to get that input and

advice that I got it but, even with that, it is still left very much to people's own devices as to how they sort things out.

The Convener: We have no further questions. Thank you very much, Colin.

I am conscious of the time. Does the committee want to press on or have a short break?

Maureen Macmillan: Let us have a very short break.

Donald Gorrie: Is there coffee?

The Convener: I am told that some new stuff is being brought in, but I am not sure how long that will take. In any case, we will have a 10-minute suspension. The witnesses who are waiting—they have been very patient—are welcome to have some coffee, when it turns up, to keep them going. We will have a leg-stretch for 10 minutes—I am sorry, but it has to be for just 10 minutes.

15:35

Meeting suspended.

15:49

On resuming—

Prostitution Tolerance Zones (Scotland) Bill: Stage 1

The Convener: To give evidence on the policing issues that the Prostitution Tolerance Zones (Scotland) Bill raises I introduce Inspector Elizabeth McLean and Assistant Chief Constable John McLean—no relation—from Strathclyde police. There are a lot of McLeans over there. I also introduce Deputy Chief Constable Tom Wood of Lothian and Borders police.

I refer members to papers J1/02/40/6, J1/02/40/8 and J1/02/40/9 and to a paper from Deputy Chief Constable Wood called “The Leith Prostitution (Non-harassment) Zone c1985-2001: ‘A Brief Description’”, which presents a personal view. I am grateful to him for providing us with it. I intend it to be put in the public domain as a late paper, if that is an appropriate procedure, so that the public have a chance to see it.

Because of the time, I will proceed to questions rather than having opening statements. I ask the panel to indicate who wants to respond.

Section 4 provides that nothing

“done in a public place which is ... within a prostitution tolerance zone ... during such times as that zone is in operation”

will lead to an offence being committed under section 46 of the Civic Government (Scotland) Act 1982. However, it seems that the offences that are set out in section 46 are not the only offences that might be relevant to the activities of prostitutes and their clients. Will you comment on the possible relevance of other offences to the activities that are involved in street prostitution, including the activities of kerb-crawlers and of those who live on prostitutes’ earnings? Do you agree with the bill’s approach of focusing on the offences in section 46 of the 1982 act?

Assistant Chief Constable John McLean (Strathclyde Police): It is worth noting that no offence of kerb-crawling exists in Scotland. The offence that a male who solicits a prostitute commits might amount to a breach of the peace, but no specific offence exists, unlike in England. Other offences might be committed in connection with a prostitution tolerance zone. For the record, I do not think that a tolerance zone would work in Glasgow.

It is worth noting that clients would pick up prostitutes in a tolerance zone. Any sexual acts in which they might engage would be unlikely to take

place in the tolerance zone and would take place elsewhere. I appreciate that that might not be directly in point, as that does not involve committing an offence, but it is worth noting.

Deputy Chief Constable Tom Wood (Lothian and Borders Police): Of course, a wide variety of offences are associated with prostitution, including drug offences in particular and other serious criminal offences. The bill sets out to consider the main aspects of prostitution as defined at the moment, so it was probably right to concentrate on section 46 of the 1982 act. For law enforcement, it would be important that the creation of a tolerance zone did not act as a green light to those who work in the tolerance zone to commit other offences, such as drug offences. It is important to highlight that.

The Convener: I am trying to get at what relevance the bill would have. Are you saying that under the cloak of a prostitute-tolerant zone, other criminals would be able to move in and commit offences that the police might find difficult to discover?

Deputy Chief Constable Wood: Any subsequent act would have to make it clear that that was not the case. We would have to make sure that no safe haven—as it were—was created for other criminal activity.

My experience of the non-harassment zone that operated in Leith for almost 20 years was that it gave the police increased access and intelligence and more ability to intervene in any offences. The non-harassment zone assisted the police in preventing serious criminal activity.

Assistant Chief Constable John McLean: It is worth noting that the majority of street prostitutes in Glasgow are intravenous drugs users. They are mainly addicted to heroin. A lot of drug dealing, using and trafficking is associated with the prostitution scene in Glasgow.

The Convener: I appreciate that distinct views are being expressed here.

I welcome Margo MacDonald to the committee. If she wants to ask supplementary questions at any point she is welcome to do so, especially as the bill is hers.

I want to make it plain to members that under section 46(1) of the Civic Government (Scotland) Act 1982, loitering, soliciting or importuning in a public place for the purposes of prostitution is an offence. The definition of activities that would no longer be offences if they took place within a so-called tolerance zone is very specific. The offences are named. I mention that for reference.

The approach to dealing with street prostitution in Aberdeen includes a non-statutory prostitution tolerance zone, introduced in July 2001. Although

prostitutes will not be prosecuted for the offence of loitering, on the basis of activities within the zone, Grampian police states that they might still face a charge of soliciting in certain circumstances. Would you prefer to see the bill amended to allow for the prosecution of prostitutes for soliciting within a tolerance zone? If so, when might the use of such a charge be appropriate? I take it that one act is neutral whereas the other is positive. Would you prefer the option to prosecute for soliciting?

Deputy Chief Constable Wood: There would have to be a fall-back and the scheme would have to operate under a set of rules that are clear to all parties. If that includes drawing a line around which activities are permissible, and that line is drawn around soliciting as opposed to loitering, that would be fair enough.

It is more important that the rules are clear to all concerned. In the Leith model, there were clear rules about what was allowed and what was not. Incursions of drugs, pimps or any other criminal activities were not allowed, nor was any disorderly behaviour. There was a clear understanding. I suspect that that is what underlies the Aberdeen policy, too.

The Convener: So the bill might not need to be amended but the definition should be clear. Is that correct? The bill does not define anything.

Ms Margo MacDonald (Lothians) (SNP): For the committee's information, the bill seeks to replace the relevant section in the Civic Government (Scotland) Act 1982, which mentions loitering, soliciting and importuning for the purposes of prostitution. Therefore, any illegal behaviour would be derogated inside a designated zone.

The Convener: So soliciting would be permitted.

Ms MacDonald: Yes, it would be.

What Tom Wood said is absolutely essential. It is stated right at the start of the policy memorandum and in the consultation paper, that it is necessary

"to minimize the opportunities for associated criminal behaviour".

Only one thing would be legal inside a designated area and that is soliciting. The rules for the zone would be drawn up in consultation with the relevant partners, including voluntary agencies, the police, the health board, the local authority and the women themselves.

The Convener: Is Mr Wood saying that he would not seek to have the bill amended, and that guidelines based on the Civic Government (Scotland) Act 1982 would be negotiated by all parties?

16:00

Deputy Chief Constable Wood: Yes, as long as those guidelines were clear. The bottom line is that they must be clear to all parties.

The Convener: Does Mr McLean have a different view?

Assistant Chief Constable John McLean: Our view is that the proposals are perfectly adequate, if tolerance zones are created. However, I do not think that a tolerance zone is appropriate or workable in the context of the west of Scotland and Glasgow.

The Convener: That is another question. Is it satisfactory to import the guidelines and so on from the Civic Government (Scotland) Act 1982?

Assistant Chief Constable John McLean: Yes, that would be satisfactory. The challenge relates to operating the system to ensure that no associated criminality occurs in the zone. That would be difficult.

The Convener: Is your view the same, Inspector McLean?

Inspector Liz McLean (Strathclyde Police): Yes.

Lord James Douglas-Hamilton: It was mentioned that kerb-crawling is dealt with as a breach of the peace in Scotland although it is a specific offence south of the border. Do the witnesses agree that there is a parallel with stalking? Previously, it was dealt with as a breach of the peace, but now there is a separate offence relating to the stalking of women. Would there be an advantage in having a separate offence of kerb-crawling?

Assistant Chief Constable John McLean: The creation of a separate offence is worthy of consideration. It seems inequitable to criminalise a female but not a male when both have been involved in the same act. The difficulty is in finding evidence relating to those matters. As the Parliament or the Executive would discover if they investigated the issue, there are questions about whether the creation of a separate offence might create more problems than it would be worth, but as a general principle, the idea seems reasonable.

Paul Martin: If we put in place a tolerance zone, would there be difficulties for females who are not prostitutes who pass through the area? Would their civil liberties be affected? Surely we would be saying that any woman in the area was a prostitute because the area would be zoned for the purpose of prostitution. What if a woman entered the area without knowing that it was a tolerance zone?

The Convener: Will you deal only with the policing issues, as the matter of the designation of

the zone is a matter for the Local Government Committee. Would there be policing problems?

Assistant Chief Constable John McLean: Yes, I believe that there would be problems relating to the issues of associated criminality that I talked about.

Paul Martin made a good point: how do you separate innocent members of the public going about their business from prostitutes? In Glasgow, there are two areas that are well known as being places that prostitutes frequent. It is not uncommon, particularly in the east end of the city, for innocent people to be approached by people looking to consort with prostitutes.

I do not know whether the committee would find it valuable if I described the current approach to dealing with prostitution in Glasgow.

The Convener: I am trying to contain the discussion to the policing of a tolerance zone—if such a zone were set up—and the problems that might arise. I do not think that we should discuss the current approach, which would be different from what the bill proposes.

Assistant Chief Constable John McLean: I am simply trying to be helpful, as the approach to dealing with prostitution in Glasgow may offer an alternative to what has been proposed.

The Convener: I do not want to go down that route, but it might be helpful if you describe what happens in areas that are well known for prostitution where there is not an informal zone such as the one that Edinburgh operated. You must know how such areas are policed and it would be helpful if you could explain. What would happen if an innocent foreign woman wandered into a prostitution zone and did not know that it was one?

Assistant Chief Constable John McLean: The area in question, in the city centre, has mainly office blocks, and prostitution activity is often confined to late evenings and the early hours of the morning, so innocent members of the public who are going about their business do not present a great problem. Street liaison teams are in place that make it their business to be in the area, to know who the prostitutes and customers are and to link in with social work agencies such as Base 75. There are also strong links with the Routes Out of Prostitution social inclusion partnership.

There are many priorities in Glasgow city centre and policing resources dictate that prostitution does not always have a high priority, albeit that the safety of prostitutes always does. We provide them with advice and talks on personal safety. In the past, we have provided them with personal attack alarms.

In the east end of the city, the area in question is much more residential. As a result of complaints

from members of the public—from people trying to enter and leave their houses and go about their daily business—and due to the nature of the area, the policing is much more robust. Addressing the concerns of the public by arresting street prostitutes remains a high policing priority.

The Convener: That matter is different from the one that we are discussing. We are discussing how you police a zone that is known to be for prostitution. If the bill is enacted, prostitutes would legitimately be entitled to pursue certain activities in a zone. I want to keep to the policing issues that would arise from that situation.

Ms MacDonald: May I ask a question?

The Convener: Yes, but I would like to ask Tom Wood a question first. Will he tell the committee about his experience of policing issues in informal containment areas?

Deputy Chief Constable Wood: Of course there have been policing difficulties. There must be a robust policing plan and a planned patrol profile. There should not be too high a patrol profile, but a reassuring presence should be maintained.

What Mr McLean has described as happening in Glasgow city centre is interesting—the approach is similar to the policing plan that we had in place for the non-harassment zone when it operated in Leith. Of course, there are difficulties, but the choice is whether there should be an element of control and the ability to intervene. Some difficulties, trials and tribulations with the policing plan must be accepted on the basis that that is better than having no ability to intervene at all.

Ms MacDonald: I was going to ask John McLean what difference it would make to his policing of the area to which I think he now refers as a safer zone—

Assistant Chief Constable John McLean: Do you mean the city centre?

Ms MacDonald: Yes—I mean Waterloo Street and the area around it. The question is peculiar, because the legislation would only be enabling legislation, and if Glasgow's police, the council and the health authorities decided that the proposals did not suit them—as you have said that they would not—they would not need to implement them.

It sounds as if you do the same thing as was done in Edinburgh; you accept that the area is generally known as a place in which prostitutes may be found. It would appear that your authority finds it more acceptable to have prostitutes in the city centre than to have them in Glasgow Green at the east end of the city, where there is a lot of housing in which young families live.

What difference would a tolerance zone such as the zone that was set up in Edinburgh make to your policing of the city centre?

Assistant Chief Constable John McLean: The difference is that, so far this year, 325 prostitutes—I think that that is the figure—could tell the committee that they were arrested for soliciting in the city centre of Glasgow whereas the figure for the east end of Glasgow so far this year is 577. It is a question of priorities. The policing of prostitution is a priority, but, because of the nature of the area, it is a much higher priority in the east end of Glasgow.

It is interesting to note that, in the city centre, where prostitutes often hang out looking for business, a number of office blocks have been converted to private dwelling-houses that cost a lot of money.

Ms MacDonald: People are beginning to complain.

Assistant Chief Constable John McLean: I cannot see that they will be happy for long.

I hope that our dual approach does not seem contradictory. The first deals with prostitution as a crime, which it still is, and enforcing the law in relation to that criminality. The other sees us working with Routes Out of Prostitution, which views prostitution as violence towards women that should not be tolerated under any circumstances.

Closed-circuit television cameras cover the area in which the prostitutes operate. We do a lot of work on our own and with other agencies to look after the personal safety of prostitutes.

Ms MacDonald: Who pays for the CCTV?

Assistant Chief Constable John McLean: The CCTV system is owned by Streetwatch Glasgow, which is an independent charity of which I am a director. The police and Glasgow City Council, among others, contribute to paying for the CCTV.

The Convener: I am conscious that some of our questions are overlapping. Donald Gorrie will have to forgive me if that is the case.

Donald Gorrie: To some extent, the issues that I wanted to explore have been covered, but I would be interested to hear about the different experiences in Edinburgh and Glasgow. How does the policing of prostitution in tolerance zones work in practice compared with the policing of areas that are not so designated? Deputy Chief Constable Wood's paper, which I read at great speed, sets out very well the background and history of the Leith zone and indicates the key areas that the zone improved for a while.

How did the tolerance zone in Edinburgh work in practice? The paper mentions a drop-in centre, liaison officers and so forth.

Deputy Chief Constable Wood: I should make it clear that the zone was by no means a perfect solution. Constant difficulties resulted from the fact that the zone was balanced on a tightrope of legality. We were never under the illusion that, just because the zone worked in Leith, the approach was a one-size-fits-all remedy that would work elsewhere. Many people who came to see the Leith project when it was in operation carried ideas away and implemented them. Some have been successful and others have not. I agree with my colleague that what worked in Leith would not necessarily work in Glasgow.

The project arose from the desperate situation in the early 1980s. Following the first heroin explosion in Edinburgh, huge numbers of young, drug-dependent prostitutes were on the streets of Leith, operating in a chaotic and completely haphazard way. After a couple of murders of prostitutes it became clear that our control systems had completely broken down. We realised that we had to think again. When we took stock of the situation, we realised that we had to take a step beyond law enforcement and consider public safety and public health. We realised that there was a significant threat to the wider community of HIV and AIDS.

I feel a bit of a fraud talking about the Leith policy as if Lothian and Borders police were responsible for it. In fact, the policy was a joint approach, started by a group—all credit to it—called the centenary project, which, interestingly enough, was supported by the Church of Scotland. It was about risk reduction and harm reduction, and a pragmatic acceptance that the sex industry would always exist, so what we had to do was try to make it as safe as possible and—above all—encourage the women involved in it to leave the industry. Nothing that the police service in Scotland did could ever be seen to encourage women to enter or remain in the sex industry. That is important to us, as it is about the code of what we do.

16:15

We tried to reduce risk and create an environment that was safer than it had been—not safe, because it can never be safe—for the women who worked in the sex industry and the customers who used it. We tried to create an environment in which the women who were involved in the sex industry could communicate with the police so that we could build our intelligence picture to ensure that the worst kinds of criminal activity—such as drug dealing, pimping, extortion, blackmail and crimes of violence—did not encroach on it. Those types of crime exist hand in glove with prostitution.

Because it was a controlled environment and safer than it had been, the women who worked in

the sex industry could use the drop-in centre and the medical facilities that were supplied by the Scottish prostitutes education project—SCOTPEP—and Shiva, which existed before it. The environment was not safe—it never will be—but it was safer and it was controlled. It allowed us to recognise what was going on, to control it and to intervene. The work involved two of our officers, two members of the social work department in Edinburgh and two of the health authorities. All of us were equal partners.

Donald Gorrie: In your view, is it possible to have the sort of liaison and co-operation that is desirable without having a designated area?

Deputy Chief Constable Wood: We are working on that just now. As you may know, in 2001 our non-harassment zone disintegrated because the nature of the area changed in the same way as we just heard is happening in the city centre of Glasgow. High-amenity housing was built and local protest drove the zone to extinction. Since 2001, we have tried to keep our systems of communication together in what is now a fragmented scene. It is extremely difficult and not wholly successful—certainly not as successful as it was before.

Donald Gorrie: I have one more question about Edinburgh. Is the system of licensed saunas an alternative to street prostitution, or is it just another way of doing things?

Deputy Chief Constable Wood: No, it is not really an alternative. Regardless of what is going on in the saunas and massage parlours, there will always be a street prostitution scene. There will always be a demand for the services of street prostitutes; therefore, there will be a supply. Even if we did all we could to encourage an indoor sex industry, there would always be an outdoor sex industry. That is not just my view; it is the conclusion of many law enforcement agencies across the world.

Donald Gorrie: Mr McLean has already covered well the nature of the things that he has done and does. I wonder whether he has anything to add about how he runs his arrangements, which he has not yet told us.

Assistant Chief Constable John McLean: I agree with much of what Tom Wood has said. In the Glasgow area, we have tried to achieve without establishing a toleration zone the same benefits that he achieved through a toleration zone. There is much multi-agency working between the police service, the social work department and the health board, although we are still enforcing the law on the street, as that is what the public demand of us.

The work is successful in as much as the Routes Out of Prostitution social inclusion

partnership—Liz McLean sits on its board—has had 147 referrals, is currently working with 43 open cases and has encouraged 34 women to exit prostitution. In addition, eight women have reduced their amount of prostitution and one woman has gone to university to study law.

Our information shows that prostitutes in Glasgow do not want to be in the business. The vast majority of prostitutes are in such a position because they have chaotic lifestyles. I think that 93 per cent of them are intravenous drug users. Most of the time, they would not know which day of the week it was or whether they were on the Planet Zog, never mind whether they were in a toleration zone.

I echo what Tom Wood said about the sauna parlour business. Some serious criminals are involved in running sauna parlours and even they would not entertain employing such women because they have chaotic lifestyles and are too unreliable.

The Convener: Do you accept the statement by your colleague Mr Wood that street prostitution will always be with us?

Assistant Chief Constable John McLean: I would hope that it would not always be with us.

The Convener: We would all agree that prostitution is violence against women and that we would want women out of prostitution. However, that is not the issue. The issue is whether we accept that street prostitution, which has been around for centuries, will continue. If so, how should we deal with it in the best interests of society, the prostitutes and their clients? That is why I asked the question.

Assistant Chief Constable John McLean: The other issue is that prostitution is violence against women. Should that be condoned?

The Convener: We accept that prostitution is violence against women. I do not think that condoning prostitution is what is at issue. I am asking whether you accept that, in practical terms, street prostitution will continue to exist for the duration of this generation's lifetime and for that of the next generation, in spite of all the efforts that are being made.

Assistant Chief Constable John McLean: In practical terms, it is very likely that street prostitution will continue. However, it is important that we work with the other agencies to reduce it as much as we can.

The Convener: Absolutely. I do not think that those contentions are contradictory.

Paul Martin: We say that street prostitution will continue. The public perception might be that there will always be people who drink and drive.

However, does that mean that we should consider a way of tolerating drink driving? There might always be people who are stupid enough to drive their car while under the influence of alcohol. Does that mean that we should consider ways of tolerating those people, because sometimes there are reasons why they drink and drive? Although that is probably not the most appropriate analogy to use, my point is that there will always be people who are stupid enough to carry out a number of offences. If we acknowledge that such women will always be victims, is that the same as saying that, because there will always be people who are addicted to drugs, we should just look at ways of tolerating the situation? Are we saying that we must tolerate street prostitution?

Assistant Chief Constable John McLean: I do not agree that we must tolerate it. I was not asked about that. The dual-track approach is important. If prostitution is unlawful and the Parliament decides that it is unlawful, we will enforce that law. We must also look at prostitutes as victims and must look after their personal safety.

The Convener: I think that we have explored that line, unless you have a question, Margo.

Ms MacDonald: John McLean said that he felt that the fact that such a high percentage of Glasgow prostitutes were on drugs meant that they would not know whether they were on the Planet Zog. The clear implication was that a strictly designated tolerance zone would not work because the prostitutes would not know whether or not they were inside it. Why would Glasgow be different from Aberdeen, where roughly the same percentage of women who work the streets take drugs? I have seen the tolerance zone in Aberdeen in action. The women know on exactly which streets soliciting is tolerated or understood and on which streets it is not. There are even time limits for streets, which mean that the women can start working different streets at different times. Why do you think that Glasgow would be different from Aberdeen, for example?

Assistant Chief Constable John McLean: I will pass you over to my colleague, who is much more learned in such matters and who deals with the street prostitutes. I do not have any experience of the Aberdeen situation.

Ms MacDonald: I asked because the percentage of the prostitutes who are intravenous drug users is about the same in Aberdeen as it is in Glasgow.

Inspector Liz McLean: In Glasgow, we have two recognised areas, which have been there since time immemorial. Neither of those areas would be suitable to be designated as a tolerance zone. Therefore, we would have to direct the women away from their familiar areas. I believe

that the area in which the street girls in Aberdeen work has been the recognised area for years.

Ms MacDonald: I would like to put a point of information on the record. The reason for the Aberdeen location was that business owners in the area of Aberdeen that has many hotels complained that women were soliciting near the hotels. It was therefore agreed that the tolerance zone would move back down to the traditional area. That was how the Aberdeen zone came to be where it is.

The Convener: Let us move on. We have tried to restrict our discussion to policing, although it is relevant to consider police practice and where the two police forces are coming from philosophically. Maureen, will you concentrate your comments on particular crimes?

Maureen Macmillan: Yes. Although our bottom line is that we want women to feel as safe as possible, I am aware that the committee's remit is to examine policing. I want to know how the police would deal with a situation in which some of the activities associated with street prostitution might take place in the tolerance zone but others do not. What happens when the prostitute and client make contact within the zone, but the prostitute is dropped off from the client's car just outside the zone and perhaps carries on her trade just 100yd too far to the left?

The Convener: We will take the first instance, from when the prostitute is dropped off, before an offence has been committed outside the zone.

Assistant Chief Constable John McLean: If a prostitute is dropped off, she is not committing an offence. The offence is soliciting. If that occurs within the tolerance zone, that is the end of the matter. There is no offence of being with a prostitute or a prostitute being with a client. Where a tolerance zone is created, it is fine for the prostitute to be picked up there. Prostitutes are rarely attacked, assaulted and murdered—as, sadly, happens in Glasgow—in the tolerance zone. Such offences against prostitutes happen in the darkened alley, car park or remote area where they go with clients. The point is that tolerance zones do not significantly increase the safety of prostitutes.

Deputy Chief Constable Wood: The point about the impact on areas around any designated tolerance zones is important and would have to be carefully considered before any zone was designated. The reality is that women are picked up in the zone but then go outwith it, which can have a serious impact on people who live and have businesses in the peripheral areas. That is where the practical issues of identifying the zone are incredibly difficult. As my colleague John McLean said, the practical issues are the ones about which we are really concerned.

The Convener: What about the supplementary question, to which John McLean said that tolerance zones do not make things safer for prostitutes because the assaults occur outside them?

Deputy Chief Constable Wood: My experience does not concur with that. In the early 1980s, before there was a non-harassment zone in Leith, we had considerable difficulty with serious crime against prostitutes and the customers who use them. The non-harassment zone allowed much safer practice. It also allowed us to build up an intelligence picture and gave women the advantage of being able to assess what customers they went with—for instance, how many people were in a car or the demeanour of the occupant of the car.

During the 20 years of our non-harassment zone, a few very serious offences, including murder, were committed against prostitutes. However, those crimes were quickly solved because some of the prostitutes' colleagues had noted the details of the cars and could give us a valuable lead. This is difficult to prove statistically, but I am under no doubt that during the time of our non-harassment zone we were able to have a much more controlling influence and better in-roads into intelligence about the sex trade.

Maureen Macmillan: Are you saying that because the women did not feel that they had to do things quickly—to jump into cars before policemen arrested them—they were able to take the time to assess dangers? Are you saying that, because they had good relations with the police, they were willing to give the police information about other crimes and criminals?

Deputy Chief Constable Wood: Yes. If a regular client was causing concern or behaving aggressively or violently, that information could be made available to us through the organisation SCOTPEP. That enabled us to take proactive measures to ensure that no serious offences were committed. There was a line of communication and an element of trust. As far back as the early 1990s—about 1993—we appointed a prostitute liaison officer. That person was charged with establishing the line of communication and trust to which I have referred, so that we could make the situation safer, if not safe.

16:30

Assistant Chief Constable John McLean: Although there is no tolerance zone in Glasgow, we have similar structures in place. There are street liaison teams in both the east end and the centre of Glasgow, which build relationships with prostitutes in those areas and with the social workers who work with them. We have a steady

feed of intelligence directly from the prostitutes and from the people who are working with them at Base 75. Tom Wood is arguing that in Edinburgh such provision was linked to the tolerance zone. I am saying that it can exist without a zone.

Ms MacDonald: I would like to ask a quick question.

The Convener: You must make it very quick, as many other members would like to ask questions.

Ms MacDonald: My question is about the cautioning or charging of women. Are there streets in Glasgow where women know they are less likely to be cautioned or charged?

Assistant Chief Constable John McLean: Not to my knowledge.

Inspector Liz McLean: Not to my knowledge.

Assistant Chief Constable John McLean: That takes me back to the point that I made earlier. In the east end of Glasgow, we enforce the law vigorously and rigorously. If in the centre of Glasgow we have to deal with a massive procession or a couple of thousand youngsters leaving a nightclub, prostitutes will not be a priority. However, the figures that I have shown the committee indicate that we take prostitution seriously in all areas.

Ms MacDonald: How many prostitutes are cautioned in Cadogan Street, as compared with St Vincent Street?

Assistant Chief Constable John McLean: I think that there are more prostitutes in Cadogan Street than in St Vincent Street.

Ms MacDonald: I think so, too.

The Convener: We defer to the expert knowledge that both of you have on the issue. For some of us, this is a journey of discovery.

Paul Martin: Two of the three questions that I wanted to ask have been answered. My remaining question relates to resources. Both Tom Wood and John McLean would require significant resources to implement the bill. Continual back-up would be required to ensure that zoning was a success. As John McLean knows, people in my constituency and other parts of the Strathclyde police area regularly say that they want to see police in their local community, but there is no continuity of provision. People may ask the police to deal with youth disorder, murders and attacks in their area. How can you resource tolerance zones when there are so many other demands on your resources?

Assistant Chief Constable John McLean: That is a real challenge. How would we police prostitution tolerance zones? By creating such zones, would we be guaranteeing prostitutes'

safety? Would we be guaranteeing to the public that prostitutes would not operate outwith those areas? The resource implications of creating tolerance zones could be significant. How would we deliver and how would we be held to account if we failed to deliver?

Deputy Chief Constable Wood: The policing of a zone would have significant costs. There would also be significant local authority costs, because there would have to be effective lighting, CCTV, litter collection and so on. That all comes at a cost. On policing costs, if you start from the supposition, as I do, that street prostitution and the sex industry will exist—and we have known for generations that serious criminal activity always comes with prostitution—you must ask whether it is worth the investment to try to minimise the risk and harm and to cut off the worst excesses of criminal activity before it becomes established. In my experience of what happened in Leith over a long number of years, the policy was worth the investment.

Paul Martin: The public will ask why police officers should be directed from the streets of Springburn, for example, to go into the city centre to create a safe haven for criminal activity. The people of Springburn feel that they never see a police officer in their area. I appreciate that we have to ensure that women are protected, but that applies equally to women who are going about their daily business in Springburn. Can you ensure that the resources will be provided consistently? The point that is raised with our communities is that they cannot be given a constant stream of additional officers.

The Convener: We are asking whether we will require additional police officers or whether we can use the resources that we already have.

Paul Martin: Communities are regularly advised that back-up police officers cannot be provided and that police officers must be delegated to where they are required. The point is that you will have to get additional police officers on the beat to deal with a specific issue.

Deputy Chief Constable Wood: You are right. That is a dilemma. The same dilemma arises when people ask why beat officers are not on the streets of their housing scheme when the officers are policing a football match, a large public demonstration or, in the case of Edinburgh, the hogmanay street party. The business that Mr McLean and I are in is similar to being a juggler. We try to juggle scarce resources to satisfy as many demands as possible. We must set priorities. Paul Martin is right.

The Convener: The question was whether, apart from juggling resources, increased resources would be required. The financial

memorandum to the bill states:

"In general, however, the Bill is unlikely to lead to significant expenditure for local authorities, Health Boards or the police. Grampian and Lothian and Borders police incurred no additional costs in managing the informal tolerance zones in Aberdeen and Edinburgh."

Could you comment on that? Police resources are scarce and we are asking whether they will get scarcer.

Assistant Chief Constable John McLean: I know Mr Martin's views on community policing. I share his concern about the need for more police officers out on the street to reassure the public when they are going about their business rather than to police what is otherwise a criminal activity. However, as for finances, it could be argued that a tolerance zone would mean that police officers were not tied up arresting people for prostitution and cases were not going through the courts. There could be a saving in that respect. Set against that are the resources that would be required to police a tolerance zone. We have not endeavoured to quantify what resources would be required, because that is currently in the too-hard-to-do box.

Deputy Chief Constable Wood: I can tell you from my own experience that it is more resource intensive to police a street prostitution scene without a designated area than it is to police one with a designated area. Since our non-harassment zone failed in 2001, the street problem has spread, which has attracted complaints from numerous residents and has led to public demonstrations. The problem is taking up many more resources than it did in 2001.

The Convener: So it is not the case that, as the memorandum says,

"Lothian and Borders police incurred no additional costs in managing"

the zone. In fact, you made savings.

Deputy Chief Constable Wood: No. We did not make savings. I am saying that we handled the problem with fewer resources when we had the non-harassment zone than we do now.

Paul Martin: You said that local authorities would have to bring forward additional lighting proposals, for example, and that investment would be required. Are you saying that the police do not require additional resources, but the local authorities do?

Deputy Chief Constable Wood: That depends. We are in great danger of assuming that one size fits all. The problems are different. Street prostitution in Edinburgh is different from that in Glasgow and I have no doubt that it is different from what happens in Aberdeen, Dundee and everywhere else. It is impossible for me to

comment on what you suggest and it would be improper for me to do so. What I can say is that, if you were to create a non-harassment zone, local authorities would necessarily incur expenses.

The Convener: That is a question for local authorities. All that we are concerned with in talking to you are police resources. I am trying to understand. You are saying that, from your experience, once a tolerance zone is up and running, you use fewer resources to manage it.

Deputy Chief Constable Wood: I am going to be very clear about what I am saying. I am saying that, here and now, more resources are needed to police a disparate street prostitution scene than were required with the non-harassment zone. The disparate scene attracts a higher level of complaint and public demonstration, because the street prostitutes, who no longer have a zone, are moving into new areas where the residents, naturally, resist and complain about their presence. That means that we have higher policing activity.

The Convener: That clarifies the situation. It is not fair to ask you such questions, because we do not know what the implications would be for you.

Assistant Chief Constable John McLean: For what it is worth, I understand that in Edinburgh there may be 20 prostitutes in the area in a night. There are 1,600 known prostitutes in Glasgow. On the average night in the city centre, about 80 report to Base 75, which is the social work drop-in centre. That is probably only a fraction of the number of those who are out on the street. We are talking about a significantly large area.

The Convener: Margo, do you want to come in on that or are you content?

Ms MacDonald: I think that Tom Woods has cleared the matter up. It is costing more now without the tolerance zone than it did before in terms of police resource. The Grampian force has assured me that it has incurred no additional expense in policing its tolerance zone.

The Convener: We may need to ask the force about that—you are not giving evidence to us, Margo.

Ms MacDonald: No, I say that for your information.

The Convener: Thank you for that. I appreciate that the question is difficult for Strathclyde, given that there are no comparators. I wanted to check whether the financial memorandum is right.

Michael Matheson: Section 6 of the bill would allow the police to apply to the local authority to modify or suspend a tolerance zone. I notice from its evidence that the Association of Chief Police Officers in Scotland has expressed some

concerns about that provision and its interpretation, in that the police could become the focus, as opposed to the local authority, which technically would still have the responsibility to designate a zone. If a tolerance zone had been established, what circumstances would have to arise for you to seek to modify or suspend it?

Assistant Chief Constable John McLean: That is one of those if-if questions. If a tolerance zone was created, there would be two significant circumstances in which we would raise some sort of objection. The first would be if it became clear that serious criminality was on-going in the area—for instance, if organised gangs started to run prostitutes in the area or significant drug dealing was taking place, which, as I said, is often associated with prostitution. One reason for raising an objection, therefore, would be if the tolerance zone gave rise to concerns about criminality. The other reason, which is more likely, would be if concerns were raised by people who worked or lived in or around the area.

Deputy Chief Constable Wood: I agree entirely. I saw the provision as being like the emergency cord on a train, which the chief constable must always have in the interests of public safety. If something is going disastrously wrong—such as the things that John McLean has described or that have been experienced in some cities in the north of England—and there is considerable public demonstration and disorder, the chief of police in the area would have to have the provision to pull that emergency cord and stop the process. That is wise.

Michael Matheson: I am not too sure if the provision is an emergency cord, because the chief constable has to apply to the local authority and it is the local authority that decides whether to modify or suspend the zone. Are you saying that you would prefer the chief constable to have the authority to suspend or modify a zone without having recourse to the local authority?

Deputy Chief Constable Wood: No. I see the situation as being very much like what happens with the Public Order Act 1994. For example, where something is apt to go seriously wrong with a march or demonstration and the chief constable takes the view that public safety would be jeopardised, the chief officer of police has the right to say, "For public safety reasons, no." I do not see a difficulty with going through the local authority for that.

16:45

Ms Alexander: The bill does not specify the circumstances that could lead to requesting suspension or modification. Hypothetically, should the bill offer guidance on that point or should that be left to the discretion of the force involved?

Deputy Chief Constable Wood: I believe that, if the bill tried to prescribe all the circumstances that could lead to suspension or modification, as soon as the bill became law, a force would face a situation that fell outside that prescription. Therefore, I would not want the bill to be too prescriptive.

Assistant Chief Constable John McLean: The difficulty is that, if the bill lists issues that give reason for police objection, those must be proven to a certain standard. If it is accepted that the police can object, that would be a simpler way of dealing with the situation.

The Convener: Section 6 provides for the chief officer of police to make an application, on receipt of which the local authority may do certain things. There is no time scale within which the local authority must act. Should there be a time scale?

Deputy Chief Constable Wood: The measure would apply only in emergency circumstances, in which the response would have to be to a short time scale.

The Convener: Should such a provision be included in the bill? Section 6(2)(a) merely states that the authority may "suspend the operation". It does not give a time scale between the application, the local authority's decision and the implementation of that decision. Should the bill include the words "within a reasonable time" or "within 14 days"? Is that the time scale that the police force envisages when senior officers make an application?

Deputy Chief Constable Wood: The time scale should be fairly short.

The Convener: That is interesting.

Deputy Chief Constable Wood: If the chief officer of police had to take such steps, that would be because he was dealing with a matter of urgency.

The Convener: I am reading into that that there should perhaps be guidelines about time scales in the bill. That has just occurred to me, but the member in charge of the bill might wish to consider it.

Lord James Douglas-Hamilton: This question has been answered in part. What impact would a prostitution tolerance zone have on levels of criminal activity, which although not necessarily part of street prostitution may sometimes be associated with it? An example is the supply of drugs. The question has been answered more or less; the deputy chief constable said that he received more intelligence when the tolerance zones were established.

Assistant Chief Constable John McLean: It is interesting that, in areas where prostitutes operate

in the centre of Glasgow, there is a low level of criminality because the police are present and active. However, in a tolerance zone, do we tolerate the activity or do we police it? Is there a difference? Does policing the area scare away customers who would come to use the prostitutes? There are many what-if questions.

The Convener: From your experience, is tolerating the zone the same as policing the zone?

Deputy Chief Constable Wood: Yes. We have to have a robust policing plan that is finely balanced between being not too heavy handed, but firm enough to prevent the incursion of drug dealing, pimping and other serious criminal activity. If we do not have such a plan in place, we lose the main advantage of the zone. When we started out on this road a long time ago, we had fears about the zone acting as a vacuum into which all kinds of criminal activity would be drawn. In fact, that did not happen, and we were in a better position to intervene than we had been before or, indeed, are now.

Lord James Douglas-Hamilton: In the last page of your document, you say:

"The Leith policy came under pressure and failed when the traditional zone was re-developed for high amenity houses and the new residents began a campaign of complaints. An attempt to move the zone to a nearby, commercial area also failed because of public pressure and the attention of the local press. Since the zone had always been informal, the City of Edinburgh Council and its locally elected members could not support its continuance."

Did the change of policy result from the major regeneration of Leith and a different composition of persons, or at least enough people who were ready to make a steady stream of complaints, moving into the area? Has the City of Edinburgh Council indicated that it might change its policy now that it has withdrawn its support for the tolerance scheme? Once a tolerance zone has been removed, is it not extremely difficult in practice to re-establish it without causing major offence to a considerable section of the population?

Deputy Chief Constable Wood: On your first question on whether the change was due to the redevelopment of Leith, the answer is yes. The previous non-harassment zone was in an area of old bonded warehouses, which were redeveloped into high-amenity flats. On your second question, from my memory, the council's response to the questionnaire issued with the bill was that it would have to have a firm legal basis for considering the re-establishment of any zone—it would have to be sure that it would be legally protected. On your third question, the answer is that it is incredibly difficult to transplant a zone to another locality, which is a practical issue faced by the bill. Where is an ideal zone? Where will nobody complain?

Where is a zone that is in nobody's backyard. It will be incredibly difficult to answer those questions.

Lord James Douglas-Hamilton: For 20 years, Edinburgh had a tolerance zone, which was removed largely as a result of complaints. If it were decided several years later to re-establish a zone, would there not be major opposition from a considerable section of the population who had since moved in to the area?

Deputy Chief Constable Wood: Yes, I am sure that there would be.

Ms MacDonald: The bill proposes that considerable consultation should take place before an area is designated. If such consultation had taken place when the new area in Salamander Street was designated, and if the City of Edinburgh Council had felt legally secure enough to institute a system of night cleansing and had given the permission necessary for a tow-away van and the installation of temporary toilets at night for example, would there have been the same level of opposition from the residents? I am not trying to whitewash the situation; I am asking about the level of opposition that there would have been if there had been time for the consultation process and other elements of the policy to be put in place.

Deputy Chief Constable Wood: There might have been the same level of opposition. Some consultation took place, but we were under extreme pressure to move the zone from its previous location. The council, understandably, had no legal basis on which to operate and, as we know, we live in a litigious world. Therefore, I cannot answer yes or no to Ms MacDonald's question. The zone could have had a better chance of survival, but the right elements were not present. Members might recall that we were faced with legal threats of huge bills for compensation for the reduction in the value of property, for example.

The Convener: I thank you both for your interesting evidence, which the committee will consider. We are the secondary committee for the bill, so we will simply report on the policing and prosecution issues that have been raised. We tried to keep to that narrow remit, but we went into other issues because it is almost impossible not to do so.

Darkness descends, but the committee should not fear—an end to the meeting is in sight. Some members are leaving, but I will be a happy woman as long as we remain quorate. Our next witness has been patiently waiting to give evidence. I welcome Morag McLaughlin, head of policy at the Crown Office and Procurator Fiscal Service. You have had a long wait—I hope that you took coffee while you were waiting.

To get through the session more quickly, I will move straight to questions. Perhaps in your answers you could comment on aspects of the police evidence. Section 4 refers to offences that are set out in section 46 of the 1982 act. However, it seems that those are not the only offences that might be relevant to the activities of prostitutes and their clients. Can you comment on the possible relevance of other offences to activities involved in street prostitution, including the activities of those who live off the earnings of prostitutes and the activity of kerb-crawling—although we know now that in Scotland there is no such criminal offence as kerb-crawling?

Morag McLaughlin (Crown Office and Procurator Fiscal Service): It is clear from the bill's terms that it would strike at soliciting by prostitutes. However, it might also be worth clarifying that prostitution is not a criminal offence in Scotland. The crimes that are associated with prostitution involve public order and the exploitation that surrounds prostitution. Therefore, soliciting and importuning, which is an offence under section 46 of the 1982 act, is a public order offence that is committed by prostitutes when they solicit in the street.

Several statutory offences in the Criminal Law (Consolidation) (Scotland) Act 1995 relate to children and prostitution and living off the earnings of prostitution—or pimping offences, as someone referred to them. An offence in section 11(1)(b) of the 1995 act might cover the activity of kerb-crawling. Section 11(1)(b) states:

"Every male person who ... in any public place persistently solicits or importunes for immoral purposes, shall be liable on conviction".

That could be interpreted as relating to kerb-crawling but, in practice, I understand that that activity tends to be prosecuted as a breach of the peace.

The Convener: It is late in the day but let me get this clear. If someone kerb-crawls within a prostitution tolerance zone, are they committing an offence?

Morag McLaughlin: No, not under the bill. The bill would make it an offence only for the prostitute to solicit. Obviously, there are issues there—

The Convener: Not within the tolerance zone, though.

Morag McLaughlin: I beg your pardon?

The Convener: It will not be an offence if the prostitute solicits within the tolerance zone.

Morag McLaughlin: Sorry. Did I mix it up?

The Convener: Yes.

Morag McLaughlin: I meant to say that the bill would excuse the soliciting offence only when the tolerance zone is in operation. The bill would decriminalise that activity of the prostitute.

The Convener: Let me get this clear. A client cannot kerb-crawl within a tolerance zone, because they are just looking for a prostitute within an area where it is permitted. Is that correct?

Morag McLaughlin: Sorry. I do not think that I have followed your question.

The Convener: If a man is cruising up and down within a prostitution tolerance zone, he cannot be charged with what we might call in common parlance kerb-crawling.

Morag McLaughlin: Technically, he could be charged in a toleration zone.

The Convener: He could?

Morag McLaughlin: Yes.

The Convener: That is what I am getting at.

Morag McLaughlin: Sorry.

The Convener: I did not quite understand that.

Morag McLaughlin: Sorry. I am—

The Convener: I thought that he was entitled to kerb-crawl in a tolerance zone.

Maureen Macmillan: No. The entitlement applies only to soliciting.

Morag McLaughlin: That is correct.

The Convener: Therefore, the entitlement is just from the prostitute's point of view and not from the client's point of view. That is helpful because I was not clear about that.

Michael Matheson: On prosecutions that take place under section 46 of the Civic Government (Scotland) Act 1982, there is some suggestion that there might be variations throughout the country as to how that legislation is applied. Will you comment on that?

Morag McLaughlin: I do not have with me statistics on the prosecution of such offences throughout the country, but I can obtain them if the committee thinks that that will be useful.

Procurators fiscal take action based on reports that they receive from the police. Anecdotal information suggests that the police in some areas report more offences under the 1982 act—notably Glasgow, where such offences are routinely reported—than in others.

17:00

Michael Matheson: You mentioned offences regarding activities other than soliciting relating to prostitution that people could be charged with.

Would such offences be affected by tolerance zones? Can you comment on prosecutions that take place in relation to those types of offences?

Morag McLaughlin: I do not have with me any relevant statistics on such offences. There are a number of statutory offences in the Criminal Law (Consolidation) (Scotland) Act 1995. I can give copies of a list of those offences to the committee after the meeting. Some of the offences are rather technical, which is why I thought that it might be easier to provide copies, rather than read them out.

A number of common law offences might also be relevant. As I said, the only offence that is relevant for the purposes of Margo MacDonald's bill is the criminal offence of soliciting, which is committed by prostitutes under section 46 of the 1982 act. Nothing else would be decriminalised in a tolerance zone. The procurators fiscal would deal with reports of offences—either statutory or common law—as they always do: by considering the facts and circumstances before making a decision. Common law offences, such as rape, assault, shameless indecency and breach of the peace would not be decriminalised by the bill.

Michael Matheson: Do you agree with the approach in the bill, which is to focus on the cases that are created in section 46 of the 1982 act?

Morag McLaughlin: It would be inappropriate for me to comment on that because it is a policy matter.

Maureen Macmillan: What factors do you take into account when deciding whether a prostitute, client or some other person associated with the prostitute should be prosecuted for offences under section 46 or for other offences? You said that soliciting was routinely reported in Glasgow, so I assume that the fiscals in Glasgow must then routinely decide whether to prosecute. Does practice vary throughout the country?

Morag McLaughlin: The criteria—sufficiency of credible and reliable evidence and the public interest—that are applied to those offences and to any other offences in connection with prostitution are the same as those that would be applied to any criminal offence that was reported to the procurator fiscal. I know that offences relating to soliciting are routinely prosecuted in Glasgow and I will confirm that by getting some statistics, but I think that soliciting is much more likely to be reported in Glasgow than it is elsewhere.

Maureen Macmillan: Does the number of prosecutions in Glasgow reflect the number of reports that come from the police?

Morag McLaughlin: Yes.

Maureen Macmillan: You said that a non-statutory prostitution tolerance zone would not

make any difference to the number of prosecutions. Can you expand on that? What happens if someone is found to be soliciting in a non-statutory tolerance zone?

Morag McLaughlin: As I said, the procurator fiscal will take action on reports that are submitted. Whether there is a statutory or a non-statutory policing zone, the procurator fiscal's actions will depend on how the police are policing it. The police will generate or not generate reports depending on how they police the zones. We can see from reading the material that accompanies the bill that there are differing approaches throughout the country.

Maureen Macmillan: Obviously, if there were a statutory toleration zone, there would be no prosecutions for soliciting but there would be prosecutions for any other crimes that were committed.

Morag McLaughlin: If there were a statutory toleration zone, in considering any report the fiscal would need to be careful to ensure that the offence that was reported did not come within the terms of the toleration zone.

Maureen Macmillan: If an offence were to happen, perhaps inadvertently, just outside the toleration zone, would that cause difficulties?

Morag McLaughlin: Such a factor might well be taken into account in considering a report. It is perhaps unhelpful to generalise but, as with all such things, one would need to consider all the facts and circumstances that surround a case before taking a decision.

The Convener: What I infer from that is that the policy seems to allow the public interest to weigh more heavily in Glasgow than in Edinburgh.

Morag McLaughlin: I do not know that one could necessarily infer that from what I said.

The Convener: You said that the percentage of incidents that are reported and charged in Glasgow is greater.

Morag McLaughlin: That is my understanding from anecdotal evidence, but the statistics—

The Convener: I do not mean to catch you out, but it seems to me that a statutory tolerance zone would, within reason, provide uniformity about what is or is not prosecuted. At the moment, whether people get charged for working on the streets depends to an extent on which part of the country they are in. Is that one way of putting it?

Morag McLaughlin: Yes, that might be right.

The Convener: The bill could provide certainty. Maureen Macmillan raised the issue of somebody who had inadvertently gone five, 10 or 15yd outside the zone—on balance it might not be in

the public interest to prosecute such a case. That would be a matter for discretion, but the discretionary element would be removed for crimes that are exempted within the zone.

Morag McLaughlin: The discretionary element would be removed in the sense that it would not be possible to prosecute the crime in those areas. Then again, whether there is a toleration zone would depend on whether the local authority determined that that was appropriate.

The Convener: Of course, but that is not the question. I am interested in what you said about the fact that whether the crime is prosecuted depends not only on the evidence, but on the public interest. Different fiscals from different areas take different views on what offences it is in the public interest to take to court.

Morag McLaughlin: That is right.

Lord James Douglas-Hamilton: What impact might a prostitution tolerance zone have on levels of criminal activities that—although not necessarily a part of street prostitution—are sometimes associated with it? For example, what impact might such a zone have on the supply of controlled drugs?

Morag McLaughlin: I am not really in a position to comment on that question. The police have been able to give some information about those activities.

Lord James Douglas-Hamilton: I will ask a question that I have also put to the police. Is there a parallel between kerb-crawling and stalking of women, in that both activities were previously prosecuted as breaches of the peace? A specific offence was introduced for stalking, so would it be helpful if there were a specific offence of kerb-crawling, as exists south of the border but not in Scotland?

Morag McLaughlin: My understanding is that an offence of stalking was not introduced north of the border, although the Criminal Law (Consolidation) (Scotland) Act 1995 contains criminal offences that are associated with breaches of non-harassment orders. It is probably not appropriate for me to comment on whether there should be a specific legislative provision on kerb-crawling. However, I can say that such activity is struck at by the common law offence of breach of the peace.

Lord James Douglas-Hamilton: Have you no strong view either way on whether there would be a public benefit in having a specific offence of kerb-crawling?

Morag McLaughlin: The matter is one of policy on which it is not appropriate for me to comment at this stage.

Ms MacDonald: I thank Morag McLaughlin for staying throughout the meeting.

The Convener: I do not know what happens in the Subordinate Legislation Committee, but our meeting today is pretty much par for the course.

Ms MacDonald: We speak quickly in the Subordinate Legislation Committee or, rather, we do all the work before the meeting starts.

When Morag McLaughlin is digging out the stats, could she please find out for the committee's information how many court appearances have arisen from charges in Edinburgh this year—that is, during the period when there has been no tolerance zone—as opposed to any of the previous 19 years? Could she also find out the figures for Glasgow and, if it is not too much work, for Aberdeen so that we can see how many women ended up in Cornton Vale through non-payment of an accumulation of fines? As Morag McLaughlin will know, that is one of the criticisms of the current system.

Morag McLaughlin: We do not hold in our database information on non-payment of fines.

Ms MacDonald: Who would be able to give us that information?

Morag McLaughlin: I imagine that you could get it from the Scottish Court Service.

Ms MacDonald: In judging the efficacy of the policy, it would be important to know that sort of information.

The Convener: I think that we can get a breakdown of the figures from the chief executive of the Scottish Prison Service. I am looking round the table at members because at some point we have been told the percentage of women who are in prison for the non-payment of fines.

Ms MacDonald: We know anecdotally.

Michael Matheson: We were given the breakdown of figures for soliciting.

Ms Alexander: So, there are two different issues and two pieces of information to find out that would be helpful to the committee. First, are there any comparative data on the number of prosecutions in Edinburgh before and after the existence of a tolerance zone? I presume that the Crown Office and Procurator Fiscal Service could help with that. Secondly, via the clerks, we could ask the Prison Service directly for the number of women who are in Cornton Vale as a result of non-payment of fines associated with prosecutions under section 46 of the Civic Government (Scotland) Act 1982.

Ms MacDonald: I know that information anecdotally, but that is no good for the committee. You must find out where the record is. I am happy for the record to be known.

The Convener: I would be obliged if you could point us in the appropriate direction to find the figure.

Ms MacDonald: I will see you after the meeting, convener.

The Convener: We are not proud. Let us move on.

Ms Alexander: I have a couple of final questions on the general theme of how the Crown Office and Procurator Fiscal Service will respond to the bill. Will it have any difficulties with the approach that is set out in the bill in respect of street prostitution?

Morag McLaughlin: If you are asking about the difficulties from a policy perspective, I cannot answer that question at present. From a practical perspective, the existence of a toleration zone would mean that we would not receive reports of street prostitution in that zone during the time in which it operates. The bill's effect would be neutral, from that point of view.

Ms Alexander: I have two technical questions. First, are there any technical changes that you would like to be made to the bill? Secondly, what would the cost implications be for the Crown Office and Procurator Fiscal Service of the establishment of the toleration zones that are envisaged in the bill?

Morag McLaughlin: I shall answer your second question first. I do not imagine that the bill would have a significant resource implication for us, because we would receive fewer reports from areas that had become toleration zones—unless what the police have suggested in relation to increases in other crimes was borne out. We could not quantify it, but on paper I do not foresee a specific resource issue for us arising from the bill.

On your first question—

Ms Alexander: I am not asking you to comment on the policy of the bill, but on whether you want any technical changes.

Morag McLaughlin: No, there are no such changes.

The Convener: That is fine. Thank you very much for your answers and for sitting with us in the twilight.

I remind committee members that the next meeting will be on 3 December in committee room 3. It will have to start at 3.30 pm, because we are going to Cornton Vale in the morning of that day, but we hope that the meeting will last only about an hour.

I thank members for another long meeting of the Justice 1 Committee, which I hope they found fruitful.

Meeting closed at 17:13.

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