

JUSTICE 1 COMMITTEE

Tuesday 4 February 2003
(*Afternoon*)

Session 1

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JUSTICE 1 COMMITTEE

3rd Meeting 2003, 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

Douglas Keil (Scottish Police Federation)

Chief Superintendent Allan Shanks (Association of Scottish Police Superintendents)

Chief Constable David Strang (Association of Chief Police Officers in Scotland)

CLERK TO THE COMMITTEE

Alison Taylor

SENIOR ASSISTANT CLERK

Claire Menzies Smith

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 1

Scottish Parliament

Justice 1 Committee

Tuesday 4 February 2003

(Afternoon)

[THE CONVENER *opened the meeting in private at 13:32*]

13:36

Meeting continued in public.

The Convener (Christine Grahame): I welcome everyone to the third meeting in 2003 of the Justice 1 Committee. I draw to members' attention this thing on my desk, which is supposed to remind us what we are here for—justice. It is a set of brass scales that were given to the committee by clerks from the Parliament of the Federation of Bosnia and Herzegovina.

I remind everyone to turn off their mobile phones and pagers. No apologies have been received.

Item in Private

The Convener: I propose that we discuss item 6, the committee's draft legacy paper, in private. That will enable us to consider in detail our approach to the paper. I make it clear that any paper that we finalise will be made available to the public. Is that agreed?

Members *indicated agreement.*

Alternatives to Custody Inquiry

The Convener: Item 2 is the consideration of evidence in our alternatives to custody inquiry. We are already ahead of time, which is excellent. I refer members to paper J1/03/3/2. There is a second paper with the same number—I do not know what that means. They are written submissions from the Scottish Police Federation, the Association of Scottish Police Superintendents and the Association of Chief Police Officers in Scotland.

I welcome to the committee David Strang, the chair of the general policing standing committee of ACPOS; Douglas Keil, the general secretary of the Scottish Police Federation; and Allan Shanks, the president of the Association of Scottish Police Superintendents. Thank you all for your written submissions, on which we will base some of our questions. I am aware that David Strang is due to give evidence to the Audit Committee—it is a happy day for him—from 3 o'clock onwards. However, at the rate at which we are going, he will be in time. If I forget, the clerks will remind me. *[Interruption.]* I am reminded that—I should have said this—the committee wishes to express its sympathy following the untimely death of Chief Superintendent Urquhart. The committee offers its condolences to his family and friends.

Let us move on to the evidence. As you rightly say in one of your submissions, the police are the party that is probably most actively involved from start to finish in any matter when a crime has been committed. You are involved from the moment that the crime is reported through to dealing with someone who is out on parole, for example. That is interesting to us. In its written evidence, the ASPS states:

"there is a limited range of penalties available when dealing with offenders."

Do you think that the range of community disposals should be extended?

Chief Constable David Strang (Association of Chief Police Officers in Scotland): We welcome the wide range of disposals that are available. It seems sensible that there should be more alternatives to imprisonment and fining, which are the main disposals. One of our written comments relates to what we see as the patchy availability of alternatives to custody across the country. When there is evidence that alternatives work, they should be made available equally throughout the country.

You commented on our involvement in the process from start to finish. The committee is considering alternatives to custody as a disposal at the end of a process perhaps involving a fine.

We would also want the whole decision to prosecute to be looked at. We would like not only alternative disposals, but alternatives to prosecution.

The Convener: Technically, you are correct. However, in taking evidence, we have ventured into areas of diversions from prosecution and areas of restorative justice. We have expanded our inquiry beyond our remit, as we are aware that one alternative to custody would be not to start down the prosecution trail. We are considering that.

Chief Constable Strang: What is needed is an individual approach to individual cases. One of the difficulties is having just one solution for an offence. At the heart of alternatives to custody, in general terms, is the need to consider the most appropriate disposal for the offence and the offender. The police's aims are to ensure community safety, to reassure the public, to deal with offenders and to reduce the incidence of reoffending. What might work for one person might not be appropriate for somebody else.

The Convener: From the various programmes that we have seen, we know that one size does not fit all. We would like you to talk about the fact that the range of disposals is limited. Are you saying that the programmes that exist should be extended elsewhere or that new ones should be in the pot as well?

Chief Constable Strang: The first part of your question is a good starting point. There are good schemes, but they are not available universally.

The Convener: Can you tell us of a couple of schemes that you would call good?

Chief Constable Strang: I am thinking of work with young people in various places. In Dumfries and Galloway, we have restorative justice and cautioning, which will be rolled out across the country. In some places, Safeguarding Communities Reducing Offending schemes are available, but in others they are not. We need to look at the research evidence to see what works in reducing reoffending and then roll that out across the country.

Douglas Keil (Scottish Police Federation): I do not think that we have ever said that the range of disposals is limited. The Scottish Police Federation is satisfied with the diversity of penalties that exist. Professor Hutton's research sums up the situation. He believes that few people understand the range of penalties that are available. To a large extent, most police officers do not understand the full range of penalties. Unless there are restorative justice schemes or electronic tagging schemes in their areas, police officers will not necessarily know about them, how effective they are or what people think of them.

Police officers could be seen to be in the same situation as the general public—unless the schemes are available on their doorstep, they will have a pretty limited knowledge of them. I do not have any suggestions about how the range of penalties could be extended.

The Convener: Are you saying that there is a lack of education among police officers, through your various organisations, about the availability of alternatives to custody?

Douglas Keil: Police officers obviously take an interest in what a court does by way of sentencing, but some of the schemes are not available across the board in every area. Unless someone has had personal experience of the schemes, they remain unaware of them. That is certainly what I picked up from Professor Hutton's research about public attitudes—the people whom I represent fall into the same category.

13:45

Chief Superintendent Allan Shanks (Association of Scottish Police Superintendents): The background to the comment in the submission about the limited range of penalties is the patchwork nature of the provision of penalties. It is quite apparent to my membership across Scotland that what is applied and works effectively in one area is not necessarily available elsewhere. We would like provision to be extended. One issue is the visibility of alternatives to custody. We feel that the focus should be on victims' issues, but provision should also be geared specifically towards the needs of the offender.

We must question the fundamental rationale for sending someone to prison in the first place. Is it to punish them, to rehabilitate them or to provide respite to the local community? As my colleagues have said, members of the community might question a punishment, because it is not visible to them. People report issues and complain about the crimes that have been committed against them, but they do not see any public action being taken. We feel that much greater use could be made of schemes such as restorative justice, whereby those who are involved in an alternative to custody sentence are visible in the community.

The Convener: What kind of crimes and restorative measures do you mean?

Chief Superintendent Shanks: I am thinking of minor crimes. In that context, there have been experiments in which people are involved in face-to-face meetings with their victims or in which they make some reparation towards vandalism or criminal damage. Such measures make the community aware that some form of public restorative justice is taking place.

Maureen Macmillan (Highlands and Islands)

(Lab): I am interested in restorative justice and know of two schemes in my neck of the woods. How do the restorative justice projects that you are aware of work? Are they successful?

Chief Constable Strang: I can give examples from Dumfries and Galloway, where we have been using restorative justice cautioning and warning systems, primarily with young offenders rather than with adults. Restorative justice is about getting an offender and their family together with either the direct victim or representatives of the community. The power of restorative justice is in its impact on both the victim and the offender; it makes the offender realise what they have done to the victim.

In one example, the process had a profound effect on the young person, who had not realised that a minor assault or damage caused to property had such an impact—not only on their family, but on the wider community, the victim and the victim's family.

At this stage, it is difficult to evaluate exactly how successful the scheme has been, but some people who have been involved in that process have not reoffended.

Maureen Macmillan: Is it the case that the schemes have not been running long enough for a proper evaluation to take place?

Chief Constable Strang: The lack of evaluation is partly to do with the length of time that the schemes have been running, but it is also because of low participation.

Maureen Macmillan: I know that there must be consensus between the victim and the offender. Does the low participation stem from unwillingness on the part of the victim or the offender?

Chief Constable Strang: That can sometimes be a reason. However, the victim does not necessarily take part. Sometimes, the victim can be represented by a friend or family member who can speak of the impact of the offence, or by someone representative of the wider community.

Certainly, as you have said, the offender must agree to take part. The other reason why the scheme has not had a huge number of participants is that it is not appropriate in every case. Where there has been a minor offence, a police warning or a fiscal warning is sufficient and the full impact of a restorative justice conference is not necessary. With more serious offences, the scheme would not be appropriate in any event. There is a fairly narrow band of cases for which it is appropriate.

Maureen Macmillan: You said that mainly young offenders were involved. Do you know of any restorative justice schemes for adult offenders?

Chief Constable Strang: In Glasgow, there are reparation and mediation schemes that include adult offenders.

Maureen Macmillan: Have they been successful?

Chief Constable Strang: It is difficult to answer that. They are successful in individual cases, but, as you would expect, in such cases—

The Convener: I appreciate that you might not know the details at the moment, Mr Strang, but you refer to certain projects in your paper. It would be helpful if you could get back to us in writing with information such as when those projects started and what tracking is used. You mention Grampian police's work with Barnardo's on the new directions project and the Prince's Trust's youth opportunities for young offenders project, for example. You might not know whether tracking is in progress, but, if you do, it would be nice to know, as the problem with many such projects is that people would use them if they knew that they worked.

Chief Constable Strang: You are right. The projects are new, but they will have produced reports and evaluations, which I will try to get hold of for you.

Lord James Douglas-Hamilton (Lothians) (Con): The Scottish Police Federation has stated that it supports the availability of non-custodial sentences, but only if a proper risk assessment has been made available to the court. Do you believe that adequate assessment of risk is currently carried out before community disposals are imposed on offenders?

I understand that there has been a considerable increase—about 17 per cent—in breaches of probation orders and a 10 per cent increase in breaches of supervised attendance orders. Are you satisfied that the breaches are adequately dealt with? Do you think that community sentences adequately protect the public and offer sufficient deterrent clout?

Douglas Keil: If the risk assessment is done properly, the public should be properly protected. I am aware of some studies that have been done. I believe that the Scottish Executive publishes figures annually on breaches of community service orders, probation and other forms of alternative sentence. A breach can have a negative impact on public perception. If the breach is not seen to be dealt with seriously, the system falls into disrepute from the perspective of the public, the police and the offenders.

As you point out, we support the availability of community sentences. If they were rolled out across the country, people would be more aware of them and, following proper evaluation, we could

assess whether they help with recidivism rates, for example.

Lord James Douglas-Hamilton: Does your call for proper risk assessment require legislation?

Douglas Keil: I would not think so. I am not an expert on court procedure but I believe that, before a magistrate decides on a punishment, they will ask for reports from social workers and others. I would have thought that any form of community sentence should have an in-built system by which a proper risk assessment can be made. That would be in the interests of the public and the offender, depending on the kind of service that the offender will be required to do under part of the community service order.

Michael Matheson (Central Scotland) (SNP): Could you expand on the idea of the risk assessment? I am not sure where it would fit in with the other reports that the sheriff would see before he issued his disposal. Any concerns about an offender going out and committing an offence right away if they were under a community service order should perhaps be highlighted in the safety evaluation report that the sheriff sees. Would a risk assessment be in addition to such reports or would it replace them?

Douglas Keil: I do not see the risk assessment replacing those reports. You are probably right when you say that an element of the reports will currently include different types of risk assessment. Clearly, we are talking about alternatives to custody, but we are also talking about a person who is viewed by the court as a candidate for custody. If the court takes the decision not to lock up that person, but to give them a sentence that is to be served in the community, part of the risk assessment has to be based on the question whether that course of action is safe for that person and the community. Every public body has to carry out risk assessments when they consider any function or occupation in an organisation. Risk assessment is an important element in the consideration of alternatives to custody.

Chief Constable Strang: In the main, we are talking about minor offences, so all the people involved would be back in the community in six or nine months' time. If someone is in prison, they are not committing offences in the community and the community gets some respite from them.

If a slightly longer-term view is taken—over a year or two—the question arises of which route is likely to lead to reduced reoffending. The evidence seems to demonstrate that community-based disposals are likely to have a greater impact on reduced reoffending than sending people into custody for short sentences.

Michael Matheson: That is where the whole issue of risk assessment becomes particularly

interesting. If an individual is sentenced for six months, the likelihood is that they will be out after three months. If they are given a community disposal, that disposal might last for a year. It could be argued that, for the three months during which the individual is in prison, at least there is no risk of that person committing another offence in the community. However, the fact that they will be out in three months means that it is likely that they will end up reoffending, because the prison service cannot address the offending behaviour in that short time scale. Therefore, it could be argued that a disposal in the community for a year gives the community greater protection.

The question is whether we are prepared to try that route. We are talking about risk assessment, but part of the assessment has to be about the best way of addressing offending behaviour. We need to strike a balance. What are your views on the subject?

Chief Constable Strang: My point was that, if we were to take a longer-term view, we might see benefits from alternatives to custody. If those alternative sentences reduce reoffending in the longer term, as the evidence seems to suggest, they are a route worth taking. If someone is a prolific offender, however, the three-month respite for the community is also worth pursuing. I return to the point that I made earlier—it is difficult to generalise when each case needs considering on its merits.

Michael Matheson: Will you expand on the police involvement in community disposal programmes. I know of various programmes in different parts of the country. Are the police involved in any of those programmes?

Chief Constable Strang: Not post-sentence—it is rare for that to happen. The police are involved in some of the alternatives to prosecution, such as those that involve police warnings and cautions. The police are also involved in what could be called the sentencing aspect of some schemes.

The Convener: I am concerned about something in the SPF paper. You state:

"The high number of cases marked 'no proceedings' and the proliferation of 'plea-bargaining' often without reference to the victim, makes it easy to conclude that financial considerations are sometimes placed ahead of the overall public interest."

What are you saying in that statement?

Douglas Keil: In the case of police officers—

The Convener: No. I know that you also talk about police officers, but I want to deal with the generalities. Are you saying that people should be in custody but that, because of financial considerations, that is not happening?

Douglas Keil: In the sentence from our submission that you highlight, we are saying that a large number of cases that are reported to the courts are, for whatever reason, marked “no proceedings”. Because the Crown Office takes those decisions entirely independently, we do not always get to hear the reasons for those decisions. As far as we are concerned, the Crown Office is unaccountable in that respect.

The second part of the sentence is about plea bargaining in cases in which some charges are negotiated away to achieve a guilty plea. That is often done without referring back to the victim, whether they are a police officer or a member of the public. We can only conclude that it is in the court’s interest to dispose of a case quickly, albeit on a greatly reduced number of charges. My interest is in the welfare and protection of police officers and I identify in my paper a concern about plea bargaining in cases of assault against the police.

14:00

The Convener: Were you concerned that financial considerations rather than justice determined what happened in a case?

Douglas Keil: Yes.

The Convener: Is that linked to alternatives to custody if one is making decisions on resources? Do money considerations prevail in the justice system?

Douglas Keil: That is often our perception, particularly in relation to no proceedings and plea bargaining. In those instances the case does not go to court at all or, when it does, it is dealt with on a reduced number of charges—the others have been plea bargained away. The only reason that we can see for that is that it gets the whole case through the court more quickly. It would achieve a guilty plea, whereas, if the other charges were left to stand, there would be a not guilty plea and a trial would follow. It is obvious that money comes into that.

The Convener: Do your colleagues feel the same?

Chief Constable Strang: Mr Keil rightly articulates people’s perceptions. I am slightly more confident that decisions are made on the merits of individual cases. In many circumstances, there are good reasons why the fiscal will not necessarily proceed with a case or review the charges. That is the independent prosecutor’s role. I do not necessarily see the financial link as strongly as Mr Keil does.

Chief Superintendent Shanks: I have been in contact with several procurators fiscal and I understand why they make some decisions

without consultation. However, victims of crime perceive that justice is not being done and they want to see it being done. The public question the efficacy of the criminal justice system when there are plea bargains and no proceedings, even though there might be good reasons for making those decisions, such as resourcing pressures, which were articulated in the review of the Crown Office and Procurator Fiscal Service.

The Convener: Although that point is slightly off our track, I raised it because it is in the public domain. It stands out and it is only appropriate that members should comment on it.

Lord James Douglas-Hamilton: Could a pressured procurator fiscal with an immense logjam of cases be strongly tempted to plea bargain and to make an offer to the accused that would result in a more lenient disposal? If so, what is the best way of dealing with that situation? Should the Crown Office lay down guidelines for fiscals?

Douglas Keil: The Lord Advocate recently issued guidelines to the Crown Office saying that in no circumstances should a charge with a race element be plea bargained away. When I heard about that, I suggested that similar guidelines should be issued in relation to the police, so that, when someone is charged with assaulting a police officer, in no circumstances should that charge be plea bargained away.

Lord James Douglas-Hamilton: We could follow that up with the law officers, because they are in the position to take action.

The Convener: Paul Martin will ask a question before we consider how resources, in the widest meaning of the word, have an impact on alternatives to custody.

Paul Martin (Glasgow Springburn) (Lab): My question is for Mr Shanks. The submission from the Association of Scottish Police Superintendents says that

“trends can be politically influenced to keep ... people out of prison.”

What is the background to that comment?

Chief Superintendent Shanks: Our response is a compilation of comments from members throughout the country. That comment was a reflection of media concern about the rising prison population and the need to reduce it. Behind that is the recognition that many people who are in prison should perhaps not be there, particularly those who are in prison for not paying fines. If the non-payment of fines issue were dealt with and more space were made available in prisons, perhaps those pressures might not be as apparent as the media said they were. That was the origin of the comment.

The Convener: We will move on to that subject later. I ask Paul Martin to keep the flow going.

Paul Martin: The ASPS said in its submission that it was concerned about the extent to which community service orders are breached. What is your specific concern?

Chief Superintendent Shanks: The difficulty is that we have little means of quantifying how often the orders are breached and what further sanctions are imposed on those who breach them. Our submission talked about how to monitor effectiveness, because people who have criminal convictions are one side of the issue. We found the arrestee drug abuse monitoring programme in Fife and Strathclyde interesting. The programme involved questioning people about their wider criminal activity, which might not have been sufficient for prosecution. More qualitative data could arise from such projects about the effectiveness of sentences and the number of times that orders have been breached.

Paul Martin: How would you gather such data? Organisations have advised the committee about the effectiveness of community service orders and we want to evaluate that information. What would be the best way for us to undertake that process?

Chief Superintendent Shanks: A long-term evaluation of different sentences is needed. First, the menu of alternatives to custody must be made available across the board, so that a meaningful and wide sample can be taken. As Mr Strang said, some youth projects are showing signs of benefit, but they are small in number. We need a much bigger sample size for evaluation.

An option that is being explored under the integration of Scottish criminal justice information systems project, which will link all computer systems, is the use of the Scottish Criminal Record Office computer system, which records the disposal of cases. Perhaps that could form the basis of long-term analysis and qualitative data that would allow examination of recidivist criminals, their histories and the success or otherwise of different sentences. That is a long-term project.

Paul Martin: Could the police play a more prominent role in sharing information and working with other agencies to deliver such an evaluation? I expect that other agencies would say that they would like to deliver such an evaluation, but that sometimes the police are involved in the process, have been out on the street and are not necessarily dealing with prevention at the same time. On reflection, should you improve some of your operations?

Chief Superintendent Shanks: I can reflect only on experiences with young people. We have seen the effective benefits of case conferencing, which involves sitting down with offenders, victims

and criminal justice partners as a multi-agency group to focus on the crime that was committed and the offender's needs, to try to get the best from the offender. However, case conferencing is resource intensive, not only for the police but for criminal justice partners.

The Convener: Are police on the front line told about someone in their patch who is under a community service order?

Chief Superintendent Shanks: Invariably not.

The Convener: Should they be?

Chief Superintendent Shanks: The people to whom it is important to provide feedback are the victims of the crime, as that ensures that they know that something has been done.

The Convener: Are victims not informed either?

Chief Superintendent Shanks: I think that the prosecution service is moving towards keeping victims more informed. However, as has been said, when cases go to court, the plea is often changed and the charge might be reduced, yet no explanation is fed back to the victim on the rationale behind those decisions.

The Convener: But that is different from simply intimating the existence of a community service order; it is an explanation of why a decision has been made. We have been aware for a long time that people have difficulties in understanding what is going on in the well of the court. Indeed, they cannot even hear the proceedings.

When we asked whether the police were made aware that someone in their area was under a community service order, Chief Superintendent Shanks said that, invariably, they were not. Should you be made aware of that and, if so, why?

Douglas Keil: That brings us back to our earlier discussion about risk assessment. In any appropriate risk assessment in which it was considered proper to advise the police, that is precisely what should be done.

The Convener: But it is not done at the moment.

Douglas Keil: Not to my knowledge. I am sure that it is done when the police have to deal with a particular type of offender and it is felt that they need to be made aware that such people are to remain in the community. However, it is not done as a matter of course.

Chief Constable Strang: I should also point out that it is not done for the purposes of supervising the community service order. We would not want to take on that additional burden.

The Convener: No. I was simply asking whether you know about people who are subject to such orders.

You said that the data on the breach of community service orders were anecdotal. Would we be able to obtain those data from the Crown Office?

Douglas Keil: When Mr Martin was speaking earlier, I was trying to remember who publishes the annual statistics. The data are certainly available and are quite detailed. For example, they tell us the percentage of breaches on different orders and the sanctions that are taken over such breaches.

The Convener: Perhaps we should follow up the matter with the Executive's central statistics unit.

Douglas Keil: I am sure that you would be right to do so. However, I could quite easily lay my hands on the information tomorrow and ensure that the committee clerk gets it.

The Convener: That would be good. Please forward any information that you find to the clerk. We are finding that, although the information is out there, it is all in bits and pieces. It is a bit like a treasure hunt.

Maureen Macmillan: I want to pursue the issue of communication a little further. What is the state of play concerning information technology links between the courts and the police? I know that in the past it has not been easy to pass information to the police about, for example, interdicts with powers of arrest. I was under the impression that the matter was being addressed—although I am not sure whether that was happening all over the country—and that it would become much easier for the courts to flag up to the police what had happened. Presumably the same could happen with other sentences in the community. Is the physical means of communicating such information up to scratch?

Douglas Keil: Experiments are being done in Aberdeen and Glasgow on IT links between the police and the fiscal service, but they are focusing on the way in which the police report cases to the fiscal. I do not know whether information comes back out via the same route. However, there is scope for development. As I understand it, we are still fairly much at the trial stage of such a system, and it certainly has not been rolled out across the country.

Maureen Macmillan: If IT were to be rolled out across the country, would it be a quick way of informing the police about what was happening in the courts?

Chief Superintendent Shanks: The link to that is the Scottish Criminal Record Office computer. At the moment, any community service order that is made automatically goes on to the SCRO computer. Such an approach is more desirable

than sending an e-mail to the police, who would then be responsible for updating the computer. The more automated that we can make the sheriff clerk's disposal function and the way in which they update criminal histories, the better.

Let me suggest an operational scenario. A police officer might stop someone on the street at 3 o'clock in the morning and have reason to check them on the police computer. The fact that that person was subject to a community service order with certain conditions attached to it would be made available to the officer, and might prove useful. As a result, information could be fed back to the court about an individual's actions.

Maureen Macmillan: That takes me on to restriction of liberty orders. I understand that, if such an order is breached, the court is informed instead of the police. I do not know whether you have any views on the issues that that raises. For example, you might not realise that someone wandering the streets at 3 o'clock in the morning has been tagged and should be at home. After all, the people who monitor the matter would report such a breach to the sheriff instead of to the police. In some areas, there is a public perception that the police should be involved.

Chief Constable Strang: It might depend on different localities. Certainly, in my area, local officers know about people who are subject to restriction of liberty orders, the times of their curfew and so on. As a result, they would hear about and deal with any breach. Perhaps that is because breaches are few and far between at the moment.

My understanding is that, as well as informing the court, the company that monitors the offender will inform the police if there is a breach so that the police can act on it.

Maureen Macmillan: That is not the information that I had, but your information is possibly more up to date than mine.

14:15

Lord James Douglas-Hamilton: Is there sufficient funding and co-ordination of the agencies that are involved in delivering the available community disposals? It has been suggested that extension of the use of community disposals could result in extra burdens on the police service. What are your views on that? What areas might suffer or be affected one way or another as a result?

Chief Constable Strang: One of the issues is that the funding streams lie in different places. Many alternatives to custody are funded through the local authority social work departments. When I speak to procurators fiscal, I find that the use of

alternatives to custody is driven not by the need to divert offenders into them, but by what is available. I have spoken to fiscals in Edinburgh who have said that a certain number of offenders can be diverted because that is the number for which provision exists. Provision should be available throughout the country, but that would clearly require funding where it is not available at the moment.

Douglas Keil: I agree. Those who are involved in the provision and supervision of non-custodial sentences regularly state that, if only they had more funding, they would be able to provide more and better such sentences and to supervise them better. I do not know about the communication between agencies.

The possibility of extra work being placed on the police is an important point. My information is that, as Mr Strang said, when a restriction of liberty order is breached, the police are advised and often have to attend to find out why the RLO has been breached. Each such event is a call on our resources. The financial implications of any extension of alternatives to custody—not only the implications for other agencies' provision and supervision, but the impact on the police service—need to be considered.

The Convener: So, going down the road of alternatives to custody would have budget implications for police forces throughout Scotland. Provision for that would have to form part of the additional resources that the Executive would provide.

Douglas Keil: That is certainly correct for the alternatives for which there is considered to be a police role.

The Convener: You talked about not being told about community service orders. I take it that the courts do not tell you about them—no formal notice is given to you. The ACPOS submission states:

"Securing and sustaining the co-operation of the voluntary and business communities would be a great help to the operation of many community disposals".

To what extent do you liaise with those communities? If you are not told formally about a community disposal, how does the network operate so that you know about it?

Chief Constable Strang: Community service links in a little bit with restorative justice, as it is about an offender paying back to the community and making a contribution after their offending behaviour. Our point is that, if that contribution is connected to the voluntary community or business community, it will have a more positive impact.

Those who supervise and run community service orders communicate with those with whom

they need to communicate. The police do not necessarily need to be involved in the loop for the work that is done under a community service order.

The Convener: To what extent does that happen just now? We know that good work is being done. We went to Freagarrach and saw that all the agencies are involved in that project—the police, the social work department, the housing department and others. How much are the police involved in other community disposals? You have told me that you are not formally advised of them, but does it depend on those who operate the disposal? Is there any system of communication between the agencies and the police throughout Scotland that lets you know what is going on?

Chief Constable Strang: There is no formal involvement of police officers in many community disposals. On the outcome from the court, about which we talked earlier, the police would have access to the disposals through the integration of Scottish criminal justice information systems. As the disposal is recorded on the computer system, that information will be available to the police. However, in community policing terms, we would not be involved in supervising the order.

Maureen Macmillan: Are you saying that there are not enough outlets—not enough people wanting gardening done or fences built—so that if kids are on a community service order, they are looking for somewhere to work? Is it the case that not enough businesses or voluntary organisations are involved?

Chief Constable Strang: I would not say that there are not enough partners involved; that is not an area for the police. My general comment was that if community service orders and alternatives are to be effective, they should involve the whole community. They should not be seen as criminal justice activity.

Maureen Macmillan: The gist being that community disposal is dependent on the community engaging with it.

Chief Constable Strang: That is helpful, yes.

The Convener: The submission from ACPOS notes:

"Securing and sustaining the co-operation of the voluntary and business communities would be a great help to the operation of many community disposals"—

that is a fact—

"such as ensuring continuity of placements".

The problem is that you are saying that that is a general observation and does not come from police experience.

Chief Constable Strang: No. It is our view that if such a measure is going to be effective, it should

involve the whole community. It should not have a narrow focus.

The Convener: What is the police role in this? Is there a role for the front-line police?

Douglas Keil: You gave an example of a community service order that you had seen in action, with police involvement. I have never had any personal experience of that, but clearly it happens.

I do not know how a community service order starts off; who decides that it will be an appropriate sentence; who runs or supervises it—and I do not think that, as a matter of course, the police are involved in it. However, I agree with the point that was made by ACPOS. To refer again to Professor Hutton's research, the public would give a fairly large measure of support to community service orders if they were seen to have a beneficial effect on the community.

The Convener: Would it not also have the confidence of the police? You are in the loop, and dealing with this from the front line. Even from a psychological point of view, should not the police feel a measure of security with the scheme? What I am getting at is that, if you are not sold on it, resistance will rightly result from that.

Douglas Keil: There are benefits in the system for the confidence of police officers. However, I am not sure that the police have a huge role in the delivery of justice; our part in it stops some way before that.

The Convener: That is not what I was getting at. My point is that, just as sheriffs and the public must have confidence in alternatives to custody, so must the police. That is why I am asking about your involvement; it is part of the package. All the agencies must feel that this is a sensible way to proceed. Certainly, that appeared to be extremely important in the Freagarrach project.

Lord James Douglas-Hamilton: Presumably you keep in close touch with the social work department. Is it not your primary concern to see the laws maintained? Provided that the law is maintained, yours is not the lead role—community service is more the social workers' department.

Chief Constable Strang: Yes, that is the case. We also safeguard the broader interests of community safety, building community confidence and reducing crime. You are absolutely right that our views on this topic are general rather than specific, because we are not specifically involved.

Paul Martin: One of the issues that was raised in connection with the evaluation of alternatives to custody was the fact that a proportion of offenders, particularly those who are drug addicts, found that imprisonment assisted them in dealing with their condition and therefore prevented them from

reoffending. Do you accept that sometimes imprisonment is the way forward?

Douglas Keil: If I understood the question properly, I am aware of some American research that says that, first and foremost, people need to be dealt with as individuals, that their individual difficulties need to be addressed and that that can best be done in a custodial setting. An organisation that deals with drug addicts and drug offenders in London—the name of the organisation escapes me—recently agreed with that view. It, too, said that that could best be addressed in a custodial setting.

That is a perfect illustration of the fact that we do not yet know enough about alternatives to custody. The drug treatment and testing orders are a fairly recent innovation and I understand that they are not widely available. It will take some time for them to be properly evaluated.

Chief Constable Strang: I understand from the Scottish Prison Service that its ability to treat prisoners who are serving short sentences, which is what we are considering, is very limited. The Prison Service has more success with longer-term programmes for offenders who have received longer sentences.

Chief Superintendent Shanks: I support the supportive aspect. We can never get rid of prison sentences, because we need them to be available as a sanction if any of the alternatives to custody are breached. As Mr Strang said, a short sentence does not provide an opportunity for rehabilitation. There is clear evidence that supportive treatment that is targeted at the offender in the community and that gives the offender appropriate levels of assistance is effective in individual cases. It is a question of targeting the right sort of support and the right sort of sentence at the individual's needs.

Michael Matheson: I return to the issue of resources. The ACPOS submission suggests that the police might require extra resources if there were an extension of the use of alternatives to custody. From what you have said so far about the role that you play in community disposals, it seems that additional resources would be required only to deal with those who breach a community disposal. In other words, you appear to be arguing that additional resources would be needed only to enable you to bring such people into custody, so that they could be brought before the court. Is that what you are saying?

Chief Constable Strang: That is part of what I am saying. I am also saying that the issue in its totality includes diversion from prosecution. I have mentioned restorative justice and the cautioning and warning system. That requires a greater investment of police time and effort than is involved in simply writing a report and sending it off to the fiscal.

It depends on the time scale that is involved. The rationale for going down the road of alternatives to custody is that, as it will reduce offending in the longer term, it should result in fewer demands on police resources.

You were right to mention the aspect of dealing with people who are guilty of a breach of an order. Some of the schemes will also involve police activity in the first instance, which will have an impact on police resources.

Michael Matheson: Can you give an example of the type of involvement that the police would have?

Chief Constable Strang: Conducting a restorative justice warning would involve the police officer in speaking to the victim and the offender and taking part in a restorative justice conference. Although that all takes up time and effort, we believe that the investment is worth it because of the positive outcome that we will obtain.

Michael Matheson: If we were to extend the range of alternatives to custody that were available, would the only additional resources that would be necessary relate to breaches?

Chief Constable Strang: That is right. I would not anticipate that the police would be involved in delivering or supervising those alternatives. You are right that our involvement might relate to breaches.

Michael Matheson: I want to clarify that point. It could be suggested that if we were to introduce further alternatives to custody, that would in some way necessitate a considerable increase in police financing. That argument could act as an inhibitor to the provision of more alternatives to custody. A great deal of research suggests that such alternatives are much more effective than custodial sentences in dealing with offending behaviour. Any resource implication would be associated primarily with breaches and diversion programmes in which the police might have a direct involvement.

Chief Constable Strang: The vision in the long run is to move resources from prisons into alternatives. I do not see that necessarily having a big impact on police budgets.

The Convener: Does anyone else on the panel want to comment on that point before I bring in other members?

Douglas Keil: I am not sure that I understand what Mr Matheson means by additional alternative sentences. Clearly, if they were to take the form of a wider range of police warnings, that would involve greater time and effort on the part of the police and, consequently, would have an impact on resources. However, we need to hear an example, because without knowing how the police

would be involved, we cannot say that breaches are the only thing that would concern us.

14:30

Michael Matheson: For clarification, there are post and pre-sentencing options. Courts may pass a sentence and choose to pursue a community disposal. There may also be a stage in the process when a person is diverted from the court process to some type of restorative justice scheme. That may kick in when the police are involved or at a later stage once the Procurator Fiscal Service has received the police report, so the case never reaches court. I want to be clear where exactly you think additional resources will be required from the police, because I have not been persuaded that there would necessarily be a significant demand on police resources. You have been unable to quantify any demand.

Douglas Keil: If we were greatly to expand the electronic tagging scheme, for instance, the likelihood is that the police would be involved in breaches. There would therefore be an impact on resources. If we are talking about new alternatives to custody that involve the police in some way—the police might have to supervise, for example—there will clearly be an impact on resources. However, until we know the shape and size of the alternatives, we could not make estimates.

The Convener: That is fair. You have identified areas on which there would be an impact; those will later have to be quantified.

Chief Superintendent Shanks: If alternatives to custody that are truly effective in reducing offending are implemented, that might reduce the impact on police officers at the reporting stage, to allow them to divert their activities into other parts of the community.

The Convener: So there are swings and roundabouts.

Maureen Macmillan: I should like to ask about police involvement in breaches of community services orders or restriction of liberty orders. The police do not immediately arrest somebody who does not turn up for their community service, or who has been out for an hour or two when they ought to have been in and linked up to the tagging machine. Presumably, the court is informed about that first. Is the person then summonsed to court, or are the police told to go and look for them? How much are the police involved in breaches?

Douglas Keil: I could not quantify that. If somebody is in breach of a community service order, it is perfectly feasible—I am sure that this happens—that a warrant is issued for that person's arrest, and that is when the police would become involved.

Maureen Macmillan: The police would only be involved when a warrant is issued for arrest. Is it the same for RLOs?

Chief Constable Strang: Yes. We are not routinely involved in supervision and arresting people. Information would be reported back to the court, which would then decide what would happen, and we would act on the court's instruction.

Maureen Macmillan: That is the point that I was making. It might not be all that often that the police are involved in breaches.

Chief Constable Strang: I do not have the numbers.

Maureen Macmillan: It was just a shot in the dark.

Lord James Douglas-Hamilton: What are your feelings on alternatives to custody and community disposals that are currently available to children's hearings?

Douglas Keil: I would need a list of those. I cannot think of alternatives to custody available to children's hearings off the top of my head.

Chief Superintendent Shanks: Most of the disposals for children's hearings are non-custodial. One of the concerns that my association has expressed relates to the fragmented nature of the provision of alternatives. The facilities and alternatives that are available very much depend on the area in which the reporter is operating. We would like to see a much longer menu of options available to the reporter to allow a proper disposal geared towards the offender.

Lord James Douglas-Hamilton: Would that be in relation to the availability of secure accommodation for the small minority who commit offences on a persistent and repeated basis?

Chief Superintendent Shanks: Only a very small minority of young people require secure accommodation. The majority of young people respond well to the alternatives to that. We support the supportive and restorative benefits to the young people and their families of those alternatives, which aim to help them to change their offending behaviour.

The Convener: Secure accommodation for young people is a hot topic at the moment. Does Mr Keil share the view that the number of young people concerned is very small and that secure accommodation is perhaps not the best option for them?

Douglas Keil: The number involved is very small. I apologise for not bringing the details of the research with me, but much of it has been publicised recently. There were very recently about 90 secure places in Scotland, and many

people who were more deeply involved in the subject than I was estimated that 200 places were required. That seemed to match the number of young people who were problem offenders. We certainly think that a greater number of secure places needs to be made available.

Chief Constable Strang: The offending behaviour is only one aspect of the behaviour that brings the young people concerned before children's hearings. They will often have other problems, such as substance misuse and family difficulties. We should be addressing these issues much earlier. If someone who has reached 14 or 15 years needs to be put in secure accommodation, we have failed and it is too late. We should look to intervene much earlier, identify the problems and put in place support mechanisms to prevent the young people becoming offenders.

The Convener: We were made aware of those issues when we visited the Freagarach project.

You mentioned written warnings. I recently asked, through a parliamentary question, whether those warnings are standardised throughout Scotland. Is there a standard system? There are various degrees of written warning. Could you tell us what they are and whether they are standard among all constabularies?

Chief Constable Strang: They are not standard. In fact, I will be speaking to the Audit Committee on this subject later this afternoon, when I will be addressing the Audit Scotland report on young people who offend.

The Convener: I have read it.

Chief Constable Strang: Part of the action plan resulting from that is to standardise the system, including procedures and monitoring processes. At the moment, different systems operate among different police forces.

The Convener: You are telling me that if a young person commits a certain type of crime in one part of Scotland, they will get a formal written warning, whereas that might not be the case in a different area, where some other proceedings will be taken.

Chief Constable Strang: That is possible. I know that warnings are administered by a superintendent in Strathclyde; in other places that is done at a different level, so—

The Convener: I am not talking about different levels. I am talking about the decisions on what to do—for example, the decision not to make a report to the procurator fiscal. I take it that the issuing of a formal written warning is the end to the matter at that stage. Is that correct?

Chief Constable Strang: There are variations across the country in the arrangements between

the force and the local children's reporter. Sometimes, reports will be sent to the reporter for every single case; in other areas, the police will be more selective. That is why there is a need for standardisation. If that can be achieved, we will get a clearer picture of what is happening.

The Convener: What happens when someone is given a formal written warning? Do the police keep a copy of it as a quasi-formal record to be referred to in the event that the person offends again? Will it be incorporated into the collection of information about them? Is it kept as data at all?

Chief Constable Strang: It does not count as a criminal record, but—

The Convener: I know it does not.

Chief Constable Strang: It is a piece of information about the individual and the family. I would hope that that information would be kept, and would be available to—

The Convener: Aside from the questions of who delivers the written warning, when they deliver it and whether it is decided to end the matter there or to take it up with the PF, are the level and manner of recording the same throughout Scotland?

Chief Constable Strang: Audit Scotland found a number of variations. It depends on the history of the system and on how things have developed locally. That is why we are going to examine the system at a national level.

The Convener: It is not really satisfactory to have a system under which the outcomes are different for different youngsters in different parts of Scotland doing exactly the same thing.

Chief Constable Strang: That raises questions of whether decisions should be exactly the same across Scotland and of the extent to which there can be local variation, so that problems in particular areas may be dealt with in particular ways.

The Convener: I appreciate that the facts and circumstances of a case affect the disposal, but I asked, as an academic exercise, about identical circumstances, if there are such things. In one part of Scotland a person might get a formal written warning, but in another part and in the same circumstances, the person might be reported to the procurator fiscal or the children's panel and proceedings would take a different route. That cannot be right.

Chief Constable Strang: That will happen within the exercise of discretion.

The Convener: Yes, but as an academic exercise, if we assume that the facts and circumstances of two cases were exactly the same, but the practices of those who hand out the

disposals in different parts of Scotland were different, the outcomes would be different.

Douglas Keil: I agree, which is one reason why I support the roll-out throughout the country of the available alternatives to sentencing. If a person commits an offence in Aberdeen, they might go to jail, but if the crime is committed in an area where an alternative to sentencing is available, the person will not go to jail.

I am sure that Mr Strang will deal with this point later this afternoon in the Audit Committee, but my understanding is that, in September 1999, a system was set up for formal and informal warnings for juveniles throughout the country. To return to Mr Matheson's point about police resources, one concern that I expressed when the system was set up was that it would involve the police service in the administration of justice, which would have time and training implications. I do not want to keep coming back to that point, but I want to explain the potential for increased costs.

The Convener: What are formal and informal written warnings in your constabulary? I assume that those things might be different in other constabularies.

Douglas Keil: I cannot speak on behalf of a force, but the Scottish Children's Reporter Administration and ACPOS agreed that a system of informal warnings by the reporting officer—the officer who deals with the offence—and formal warnings by a supervisor or other more senior police officer was to take effect Scotland-wide from 1 September 1999. A number of conditions were laid down at that time: the crime or offence had to be minor; the child had to have no previous offending; the child could not be co-accused with an adult defender; the child had to admit the offence; and the parents had to accept the child's admission and consent to the formal juvenile warning. When the process was introduced, I described it as complicated and said that it would not reduce the burden on the police—indeed, I thought that it might increase the burden. I also said that the delivery of the process and the training for it would have resource implications for the police.

The system was introduced at a time when, if I may say so, announcements about youth crime seemed to come daily. I do not know where the system now sits in the greater scheme of things, but I was sufficiently interested in it at the time to keep a note about it.

Chief Constable Strang: I do not defend the differences that the convener mentioned. There is a recommendation on the issue in Audit Scotland's report "Dealing with offending by young people" and we are addressing it.

Lord James Douglas-Hamilton: Is it not the case that, without written warnings, many more young people would be dealt with more severely? The point of issuing a written warning is to keep young people off the conveyor belt of crime.

Is it the case that you want those who dispose of cases throughout Scotland to have a consistent approach and that you do not want an unjust system in which harsh sentences are given in one area and lenient sentences are given in another for exactly the same offence?

Douglas Keil: Yes. As I said, the system of warnings was proposed for minor crimes and offences, but if the system did not exist, those crimes would be dealt with further along the route. Consistency is important.

Chief Superintendent Shanks: A warning is at the bottom rung of the ladder. What is missing is the full range of rungs throughout the country. If somebody is not given a formal warning, the next option might well be to take no further proceedings. It is important that there is a scale of intervention.

The Convener: Do constabularies keep a record of the success of written warnings in diverting children and young people from crime? Success might be that the person never appears before the police again.

Chief Constable Strang: I do not have the figures with me, but the rate of non-reoffending is high. The vast majority of young people who are dealt with through a warning never come to the police's attention again.

The Convener: That is interesting.

Ms Wendy Alexander (Paisley North) (Lab): I want to return to the issue of evaluating alternatives to custody, which we have already touched on. In its written evidence, ACPOS explained that the lack of research on the effectiveness of community disposals

"remains a salient point for the police, as our main responsibility is the safety and well being of the communities we serve."

Perhaps David Strang would like to expand on that for the *Official Report* and then invite his colleagues to say whether they share that view about the lack of research. They might also want to say where we should go in that area.

14:45

Chief Constable Strang: We have already touched on the matter of public confidence in the criminal justice system. It would be much easier to sell community disposals as credible alternatives if evidence clearly showed that sending offenders to prison results in a given outcome and putting them through alternative disposals reduces

reoffending—we would then have much more confidence in outcomes. At the moment, the research evidence is limited. We would like to see more research evidence that backs up the effectiveness or otherwise of such schemes.

Douglas Keil: I agree with that—there is no point in my adding anything to what David Strang has said.

Chief Superintendent Shanks: I concur with David Strang. Earlier, I said that perhaps the Scottish Criminal Record Office could have an integral role in providing the core data for proper evaluation. Such data are missing and police officers would welcome such information. I am sure that the public would also welcome more information in order to find out whether something is effective.

Ms Alexander: In general, there is a sense that the improvement in information technology systems on the sentencing side and in the Scottish Prison Service might finally let us bottom-out in the next few years some of the issues that we have discussed. However, I think that the committee was persuaded by the case that has been made for the effectiveness of community disposals for prisoners with short-term sentences. There are broadly comparable outcomes or slightly preferable outcomes. There is no point in recounting the case now, but it will appear in our evidence.

Perhaps what I am saying leads to the next question, which I will leave to another member. The critical issue for public safety is to lodge the notion in the public mind that a six-month sentence—perhaps for fine default—that is reduced to three months takes a person out of the community for only three months. Young men in particular then return to the community and are likely to reoffend. That should be compared to an intensive three-year probation order during which there will be such intensive work with that person that they will not reoffend. That represents a much higher net gain to the community and the police. The person will potentially be out of the criminal justice system for three years, rather than for only three months, which a custodial sentence might mean. An argument relating to public perception and reality needs to be won—we hope that our report will advance that argument.

The Convener: That echoes what Michael Matheson said about a community service order as opposed to a three-month sentence, which we know does not have much effect.

Paul Martin: I want to return to what Mr Strang said about warning letters being successful in preventing crime reoccurrence. How are things recorded? We have had evidence sessions with Apex Scotland and others and have been advised

about the difficulties of tracking young offenders. For example, I could write to a superintendent in A division, which operates in my constituency, and ask him how many warning letters have been recorded. He could then advise me how he tracks the young people in question to ensure that they do not come back into the system. Is there a system that is as sophisticated as that? It was said that warning letters are successful. In other evidence sessions, the difficulty that we have experienced is that no one can show us how things are recorded. How can you say that warning letters are successful?

Chief Constable Strang: There is no national recording system. If a person receives a written warning, information is not recorded on a national computer. I suppose that that is because the information is about local disposals, which vary from place to place. In some places, there might be home visits; in other places, warning letters might be sent to parents to say that their children had come to the police's notice in certain circumstances. Disposals vary and have been local until now. I think that the local results show that most offenders are dealt with once, but you are right to point out that there is currently no national system.

Paul Martin: How do you know that warning letters are a success, given the anecdotal evidence that you have gathered? I am trying to find out what is the magic equation that says, "Here is something that works and we can prove it."

Chief Constable Strang: I am not putting it as strongly as that. If you speak to your local divisional commander he or she will say that we deal only once with the vast majority of the young people with whom we deal. That is our experience. There is a hard core of repeat offenders with whom we are dealing repeatedly.

The Convener: I am conscious of time.

One of the difficulties that you address quite rightly is that there is a job of educating the public and the police that alternatives to custody are not a soft option and that they might indeed be a harder option, as Wendy Alexander and Michael Matheson said. On our visit to the drugs court I heard one of the parties saying, "I want to go to prison; this is too tough." I never thought that I would hear that and I do not think that you ever thought that you would hear it. Do the police see alternatives to custody as a soft option? Do we have an education job with the police as well as with the rest of the public, if we decide to go down the road of considering and strengthening alternatives to custody?

Chief Superintendent Shanks: I certainly do not see alternatives to custody as a soft option.

We discussed them at our most recent executive meeting and we welcome them, because they have a positive impact on the communities of which we are in charge. We have to keep focusing on the impact that they have on the local community. The success of the alternatives to custody will depend on whether they can be demonstrated to be beneficial to the community and the police officers who police it. If the confidence of the police and the public is to be maintained, breaches of alternatives to custody have to be dealt with properly and have to be seen to be dealt with, rather than our bringing offenders back before the court, giving them a slap on the wrist and returning them to the community service order.

The Convener: Are you talking about "one strike and you're out"? What do you mean when you say that breaches have to be "dealt with properly"?

Chief Superintendent Shanks: This goes back to a point that Mr Keil made earlier. The offenders for whom we are considering alternatives are people whom we might have considered sending to prison. The point that you made about the drug rehabilitation order is right; it is a hard regime and the individual has to appreciate that it involves making reparation to the community, so they have to work at it. The community would expect that if someone who should have gone to prison in the first place breaches the order, perhaps they should go to prison after all. There are scales and variations depending on the crime that we are talking about.

The Convener: When we visited the drugs court, we saw that although a sheriff in one case seriously considered imposing a custodial sentence for a breach of the order, he did not do so because he saw that the individual concerned had come so far. I am not excusing what they did but, as you say, it is very difficult to keep off drugs. We heard an explanation from one individual that a dealer had come and offered him a freebie. In those circumstances, one had some sympathy for the man who was trying to stay off drugs, but who was given them to get him hooked again. Are you saying that you would support the kind of discretion that the sheriff showed? It is not a case of saying to an individual, "You have been on this order and you have breached it so, hey, you are now in custody."

Chief Superintendent Shanks: It would be far too arbitrary to say, "One, two, three strikes and you're out." Each case must be dealt with individually. There is a sales exercise to publicise how effective the alternatives to custody are. The effectiveness can be demonstrated only in the long term by examining historical information to say that they have reduced reoffending. Local

communities have to be able to say that alternatives have worked in their area and that they have a better quality of life because of what is happening.

Lord James Douglas-Hamilton: I have a question for Mr Keil. Is it not basically a question of getting the right balance and, depending on the circumstances of each case, getting the disposal that suits the circumstances of the individual in question best, in the hope not just of protecting the public but of providing rehabilitation and a deterrent?

Douglas Keil: Absolutely. There are a number of good reasons for looking for alternatives to custody, but there are still categories of offender who, in my view, can be appropriately punished only by being sent to prison. That is only the start of the debate.

The Convener: The point that we have gleaned from this inquiry is that in looking at alternatives to custody we are considering the longer-term benefits to society and whether everybody, including the force, is persuaded that the alternatives are working, and that the public and property are still protected. That would be a fair assessment.

Convener's Report

The Convener: Item 4 will be brief. I have asked for commentaries on fact-finding visits. The first will be a brief report by Maureen Macmillan on a visit to Reliance Monitoring Services.

Maureen Macmillan: The visit was interesting and informative. We saw the equipment and the computer screens where all the information is stored on people who are subject to restriction of liberty orders, and we got an overview of how the system works. The equipment is not terribly obtrusive, so it is not a great embarrassment to the person who uses it. The box with the receiver that receives the signal from the tag looks just like a piece of electronic equipment, such as a digital versatile disk player. People do not have to have a huge machine in their house.

It is interesting that the machine can not only restrict someone from leaving their house, but can keep them away from places they should not go under an interdict.

The Convener: Interesting.

Maureen Macmillan: Yes, it is interesting. It can keep them away from a shopping centre where they have been shoplifting, for example.

Michael Matheson: How does it do that?

The Convener: This is not a question-and-answer session.

Maureen Macmillan: I could attempt to explain it.

The Convener: I refer Michael Matheson to the peach-coloured paper—J1/03/3/7.

Maureen Macmillan: The monitoring equipment was capable of doing that. The equipment might not have been the same, but it was similar. It could also be used to monitor where sex offenders are.

Of course, breaches are carefully monitored. The minutes of breach are counted up, and when it reaches a certain level—I think it is an hour, but I cannot remember—it is reported. Sometimes people breach for 2 minutes, because they run out to get cigarettes from the ice-cream van. All those breaches are noted and challenged, so that people do not feel that they can get away with being sloppy.

The Convener: Does the equipment say that the person has been out to the ice-cream van, or does it not say where they have been?

Maureen Macmillan: It does not say where they have been, but it notes that they have breached for two minutes or five minutes or whatever. At first people probably thought that they could get away with that, but all the little breaches are checked up

on. A breach is not passed to court if it is between one and four minutes, but if the offender breaches for longer, or if the breaches start to pile up, they are referred to the court and then, as we heard in evidence from the police, a warrant might be issued for the person to come back to court.

Reliance Monitoring Services employs people to service the system throughout the country, even in some quite remote islands.

The people who go round to talk to offenders about how the system works are usually not police or social workers but just ordinary people in the community who might also work as a nurse or a builder or something like that. They answer any questions and, assuming that everything is going all right, they go round once a month to ensure that everything is okay and to chat to the offender about how things are going.

Obviously, the people from Reliance would turn up on the dot if there was a problem, such as if there was a breach or if the machine stopped working. Also, offenders have sometimes tried to remove the tag and pretend that the dog bit it off or something like that. We heard some interesting stories about people who had tried to pretend that some strange accident had happened that meant that the tag became detached.

15:00

A risk assessment is done before the Reliance workers go into people's homes. As the police told us, they and social workers draw up a risk profile to ensure that employees are not put at undue risk. There are also on-screen notes to warn that a person has a Rottweiler or that a woman should not attend this person or whatever. I felt that safety was being addressed.

I was also interested in the effect on family relationships. If a young man who is used to going out drinking every night is forced to stay at home, I thought that that might create a lot of tension in the family. I thought that other family members might not always be terribly keen to have him there seven nights a week, but in fact parents—particularly those of younger offenders—say that the tagging has made a tremendous difference to their lives. They feel that they have found their son—or, presumably, daughter—again, because he is now at home being sensible, instead of being out drinking.

I think that there could be issues with people being kept in their home if social work do not understand the existing relationships. Reliance pointed to an instance of a young man who was living with his girlfriend being thrown out. That caused great problems because offenders cannot be tagged if they do not have an address. In that instance, Reliance had to spend quite a lot of time

getting the person into alternative accommodation. The procedure is not simple and lots of problems often become associated with it.

Nevertheless, Reliance thought that there was great room for development of RLOs, particularly alongside things such as intensive probation. Such orders can keep people in a place where they do not get into trouble and where they can be given intensive programmes that try to change their offending behaviour. The visit was very interesting indeed.

The last point is that some areas in Scotland have not yet used RLOs, despite the fact that they are available throughout the country. It seems that one or two sheriffdoms have decided that RLOs are not the best way forward. The people at Reliance Monitoring Services were confident that, as they went out to talk to the judiciary about the programme, more and more sheriffs would take up the option.

The Convener: Thank you. Will Lord James Douglas-Hamilton say a brief word about his visit to HMP and YOI Cornton Vale?

Lord James Douglas-Hamilton: The visit was extremely interesting. One point that may be of relevance to the committee is that I believe that the governor, who was asked to send in her views on alternatives to custody, has not done so because she may have been prevailed on by the other governors. She indicated to us that the governors were rather awe-struck—if I may put it diplomatically—by the committee.

The Convener: What was your reaction to hearing that the governors were awe-struck by our committee?

Lord James Douglas-Hamilton: I was given to understand that the governors regarded the committee as having been a good deal more effective than they had anticipated.

The Convener: I take it that that is no bad thing.

Lord James Douglas-Hamilton: It was interesting to see how prisoners are treated at Cornton Vale. Uppermost in people's minds was whether the best disposal had been made in every case.

For me, it was particularly interesting to find out how Cornton Vale treats pregnant women and women who had their babies in prison. It seems to have worked that out with the social work department as effectively as possible. The medical facilities seem to be in very good order. The troubles that Cornton Vale had in the past seem to be behind it to a large extent.

The Convener: I will say a little bit about the drugs court before I let Michael Matheson or Wendy Alexander talk about Freagarraich.

I was neutral about drugs courts when I first heard about them, but I must say that I was impressed by what I saw. It takes a special kind of sheriff to go through the training and be committed to the process. Drugs courts are not a soft option. As I said when we were questioning the witnesses from the police, one man actually said, "Please send me to prison."

The sheriff remarked on one man's appearance. He was extremely smart—he was in a suit and looked really nice. We had not seen the before; we saw only the after. I understand that, before, he had been beaten up, was all marked and his clothing was dirty and in disarray because of alcohol problems. When we saw him, he was smartened. Those who appear before the drugs court are not the kind of people who have somebody smartening them up to appear before the sheriff, because by that stage they are often out on their tod. Drug testing and treatment orders are open only to persistent offenders who have reached rock bottom. They have to sign up to them.

I surprise myself by saying that the drugs court impressed me. I would like the system to be extended to those with severe alcohol problems—that is a personal view—and to the rest of Scotland. The drugs court is very worth while.

Michael Matheson: Our visit to Freagarrach was also useful. What struck me most about the project was the intensity of the work that is done with the offenders. From the views that I received from individuals who were going through the programme, it was clear that they found it beneficial. It probably gave one of the chaps I spoke to some direction in what he wanted to do with his life. He had been caught up in car crime for an extensive period.

The evidence from the staff at Freagarrach is that they feel that the project has proven to be valuable. From personal experience, I know that the relationships that the Freagarrach staff have with other agencies, including the police, the children's reporter and criminal justice social work, are good. They are based on mutual respect and recognition that the project is effective. As a result of that, a considerable level of trust in the programme's effectiveness has been built up.

I was a little unsure of the number of young people with whom the project could deal, as there were two offenders to one member of staff. That is an extremely high ratio. If such a programme was to be rolled out in other areas, a number of projects might have to be opened, as opposed to one big project, to try to cover the same number of individuals as Freagarrach covers in the Falkirk area.

Ms Alexander: On Freagarrach's evaluation, 48 of the 50 young people in the programme had drug and alcohol abuse problems. However we

conclude our report on alternatives to custody, we must find a way to highlight the frequency and the overwhelming presence of those problems and how they are dealt with effectively. My impression is that the drug action teams are only beginning to struggle towards solutions. We must flag that up.

My second point is how important the Freagarrach staff thought that the surrogate parenting role was. Most of the kids who are into a cycle of persistent offending are extremely young and, almost without exception, have not had what the rest of us would regard as normal parenting. Therefore, simple aspects of parenting, such as the need to listen and to expose the children to leisure opportunities, were important in the project.

The essence of the project is a one-to-one relationship with a personal counsellor. Somehow, its success is the fact that it has insulated itself from the need for the professional staff to spend their entire time going to meetings or reporting to other people. They are simply left to get on with the work. Within the official system, which ostensibly achieves the same objectives, the requirement on social workers to spend time at meetings or recording what they do takes away the opportunity for one-to-one counselling.

Freagarrach has implications for the proposal for a youth court system, which I see mentioned in our papers. The attractive aspect of the proposed youth court system is the fast-tracking element—although it seems to me that we can fast-track in the children's panel system should we wish to do so—but I am not sure that the replication of the penalties available in a summary court gets to the heart of some of the lessons from Freagarrach about surrogate parenting and socialising the individuals.

I was struck by the frustration among Freagarrach staff about moving young people on to employment. They saw their task very much as one of surrogate parenting, socialising and leisure, but they all felt that they did not have the support from the new futures fund, for example, which is ostensibly designed to provide one-to-one counselling into employability and employment. For whatever reason, it was not providing that link. That is another issue that we might want to flag up in the report so that young people do not fall through the cracks when they come off the programme.

The Convener: Thank you very much. Those reports were comprehensive. As we are on schedule, we will have an interlude of at least 10 minutes—unless members want it to be shortened—before we move on to the item on petitions and the rest of our agenda.

15:11

Meeting suspended.

15:21

On resuming—

Petitions

Carbeth Hutters (PE14)

The Convener: I reconvene the meeting—if that is the right phrase. Let us turn to item 5, on petitions, and try to keep within our schedule. I refer members to paper J1/03/3/12, which gives the background to the petition from the hutters. Some of us visited the issue almost four years ago. Members are asked to consider the options that are outlined in the paper or to come up with others of their own.

We have received responses from the Executive and the minister. It is a bit rich of the minister to say:

“there was very little contribution from respondents as to the content of the legislation.”

That is not what ordinary people are supposed to come up with.

Michael Matheson: I was surprised to find that the issue is still being considered. I thought that it had been resolved. I am sure that it was the subject of one of the first members’ business debates that we had in the Parliament. The issue has now been going on for almost four years. Apart from the fact that local negotiations have taken place, we do not seem to be any further forward.

The Convener: I think—I hope that I am not incorrect—that the minister advised us that the matter might be addressed in the land reform legislation, but that has come to nothing.

Members have the minister’s response and some options for consideration. Can I take the views of the committee?

I appreciate the fact that

“legislation to protect hutters would be contrary to the fundamental principles of Scots law”.

In Scots law, when land is owned by someone, whatever is built on it belongs to the owner of the land. Nonetheless, in its initial report, the former Justice and Home Affairs Committee took the view that, back in the 1930s, the number of huts was restricted and it was clear which properties would come under the definition of huts. We decided that it was not beyond the wit of anyone to come up with legislation to protect those very special things.

Ms Alexander: Let me float something. If we write to the Executive, it will perhaps eat a wee bit of humble pie, but it is still a stand-off at the end of

the day. I recall trying to deal with the matter when I was the minister with responsibility for housing, but it was batted backwards and forwards between the committee and the Executive. Of course, for reasons of natural justice, I thought that it was a disgrace that people were being thrown off their land. Members can imagine me throwing my weight around, trying to do something about it. The response that I received was that there were going to be four major bills on land and housing, whereas the petition concerned an anomaly that affected one community, and that I should remember that this is a Parliament.

If we were Westminster—I say this with respect—how would we handle the matter so as to have it resolved in the next session? Could we explore the possibility of a member’s bill for which we could seek the Executive’s support?

The Convener: I was going to suggest that the committee might consider introducing a committee bill on the subject. The committee report fully supports the introduction of legislation for the hutters, and the former Justice and Home Affairs Committee’s bill on domestic abuse, which became the Protection from Abuse (Scotland) Act 2001, has set a precedent. We may want to put that suggestion in our legacy paper.

Ms Alexander: I agree completely with that. Irrespective of the individual case, as a national Parliament, legislating for the nation—not a souped-up regional council—we should start setting the terms of what is appropriate for members’ bills and committee bills and what is appropriate for the Executive. Our legacy paper might make reference to that.

The Convener: We would have access to the non-Executive bills unit to draft a committee bill, whereas a member’s bill might struggle.

Michael Matheson: It might help a future Justice 1 Committee to consider the matter if it had a response from the Executive on the specific problems that exist. Therefore, we should write to the Executive and put in the legacy paper what Wendy Alexander has suggested.

The Convener: Are we agreed that we will not bother going into all the issues, as we have been at this for such a long time, but will ask the Executive what principles make legislation for the hutters impossible and what legislative solutions it can suggest? We can then recommend a committee bill on the subject, given that the former Justice and Home Affairs Committee was unanimous in its initial report.

Members indicated agreement.

Lord James Douglas-Hamilton: I declare an interest that is contained in the parliamentary register of members’ interests.

The Convener: You are not a hutter, James, are you?

Lord James Douglas-Hamilton: No. I have no direct interest in the Carbeth hutters. However, the small company of which I am an unpaid director has a property that has a ground rent.

The Convener: I was being mischievous. Of course there are other hutters besides the Carbeth hutters. We have a paper on the subject and we know our way round it. Let us go for the suggested option.

Road Traffic Deaths (PE29)

Dangerous Driving Deaths (PE55, PE299, PE331)

The Convener: Petition PE29 is from Mrs and Mrs Dekker. Petitions PE55, PE299 and PE331 are from Ms Donegan and Mr Frank Harvey. I refer members to committee paper J1/03/3/13, which sets out the background to the petitions and related correspondence. Dangerous driving and the law is another issue that has been around for quite a while. The most recent letter from the Lord Advocate is dated 31 January. We seem to have made a little progress. I give members a moment to read the paper and to consider the proposals that it contains.

The last paragraph on the first page of the letter from Colin Boyd QC explains:

"SCID have argued that all cases of causing death by dangerous driving should be heard in the High Court of the Justiciary. Having regard to the range of sentences currently being imposed by courts in Scotland for such offences, the Home Office's proposals to increase the maximum penalty from 10 years to 14 years imprisonment, and the public concern about such cases, I have decided that there should now be a presumption that offences under Sections 1 and 3A of the Road Traffic Act 1988 will be prosecuted in the High Court. Prosecutions in the Sheriff Court will take place only where there are particular circumstances which appear to mitigate the offence."

The petitioners have pushed one little door open at least. There is now a presumption, which must be rebutted, that serious cases will go to the High Court.

Maureen Macmillan: That will take place from 13 January 2003.

The Convener: Yes.

Let us consider what the committee wants to do further on this.

Michael Matheson: I am in favour of the options that are set out in paragraph 16 of paper J1/03/3/13. I would also like us to include the suggestion from Scotland's Campaign Against Irresponsible Drivers, which is set out in paragraph 9 of the paper, that there should also be a new offence of

"causing death by gross carelessness".

I note from the minister's response that he has asked the steering group to consider the possibility of separating major and minor offences. We may want to forward SCID's suggestion to the minister, asking him to feed it into the working group for its consideration.

15:30

The Convener: Do members agree with the suggestion?

Maureen Macmillan: I do not necessarily agree with the use of the term "gross carelessness", but Michael Matheson rightly says that, if the Executive is considering a redefinition of the categories of offence, we ought to ensure that each side knows what the other is proposing. I agree that we should pursue the options that are set out in paragraph 16 of the paper. I am not sure that SCID has been sent all of the correspondence that we have received. If not, I suggest that we copy all of it to SCID and the petitioners as a matter of course.

The Convener: I think that SCID has everything, including the last letter that we received from the Lord Advocate. I delivered a copy of that letter into the hands of one of the petitioners today—it arrived just a short while ago. I ask the committee for a summary of what we should do in respect of the petitions on dangerous driving.

Lord James Douglas-Hamilton: We should pursue the options that are set out in paragraph 16 of the paper. Although some of the subject matter involved is reserved, its practical applications are devolved. We should be seen to be taking a direct interest.

The Convener: We will want to include something about the petitions in the legacy paper. It has been a hard-fought battle for the petitioners to drive change in the policing of and policy on dangerous driving.

Which options do we want to pursue?

Lord James Douglas-Hamilton: All three.

The Convener: Thank you. We will include in our legacy paper our wish that the matter be pursued.

Clydesdale Horses (Couping) (PE347)

The Convener: Petition PE347 is on the couping of Clydesdale horses. Members will note the options that are set out in paper J1/03/3/14.

Does the committee agree that existing guidelines are sufficient? Are members content with the responses that we have received so far? If not, should we write to the minister asking him to introduce legislation to order the banning of the

practice of coupling? The alternative is for us to ask the Scottish Executive to extend the Farriers (Registration) Act 1975 to include the Highlands and Skye, as requested by the Farriers Registration Council, which wants all farriers in Scotland to be registered. I ask the committee for its views.

Michael Matheson: Submissions to the committee included evidence from veterinary experts that suggested that coupling was harmful to Clydesdale horses. Although I was persuaded by the evidence, I do not feel that I have been able to go into the issue in sufficient detail.

I do not feel that the responses that we received from the farriers and the Clydesdale Horse Society were very helpful. There is a need for us to examine the matter in greater detail. If anything, I am inclined to suggest that, before we recommend the need to introduce legislation, this or another committee should consider the matter in greater detail.

The Convener: I am of the same mind. We have not taken oral evidence on a subject that is niggling away at us. There seems to be truth in the petition's request, but we have not yet tested the evidence.

Paul Martin: I raised the wider issue of animal neglect. I appreciate the fact that the petitioners feel strongly about coupling—I share their concerns—but if we are to examine the specifics of coupling, other aspects of the showing of animals need to be raised.

Perhaps we should say to the Executive that a wider range of consultations is required on the practices that are involved in the exhibiting of animals. Substantial legislation could be required. If we were to include elements other than coupling, that would leave the door open to deal with other practices. We definitely cannot deal with the matter in isolation. The Executive will have to consider a wide range of issues concerning the showing of animals.

Ms Alexander: I share some of Paul Martin and Michael Matheson's concerns. My concern is that there are a million good causes out there. A Parliament should not be measured by when we say no and when we say yes. The fact that something is a good cause does not necessarily make it right for us to deal with it on the time scale or in the way that petitioners demand. I agree with Paul Martin that we should write to the relevant parliamentary committee or to the Executive to say that, the next time they are considering animal welfare issues, they might want to consider this issue.

For every piece of business that we offload on to another committee, there is something else that it cannot do. This is an animal welfare issue. It

should be addressed the next time animal welfare is considered. We should not put an obligation on another committee or on the Executive to deal with the matter in isolation. It should be discussed in the wider context of animal welfare.

Lord James Douglas-Hamilton: All the elements must be assessed objectively. We do not have time to do that through oral evidence between now and 1 May. The issue should be discussed in the next parliamentary session in the context of animal welfare legislation.

The Convener: I am mindful of what you say about animal welfare. It is right to write to the Executive to ask whether it will consider the issue and others that Paul Martin and Lord James have raised, particularly on the showing or breeding of animals involving alleged cruelty. However, it might consult on the matter for four years. We might want to give it a fillip. Michael Matheson said that a member who reads the *Official Report* of the meeting might consider introducing a member's bill to put a foot on the accelerator pedal for the Executive.

Paul Martin: There is an opportunity for the committee, or the new committee after the election, to consider animal exhibition. The petition relates to many other matters. The petitioner raises an important principle. It will not help other animals if we consider it in isolation. We tend to find that when people are prohibited from a particular practice, it creates a loophole elsewhere. I am not saying that that is the case here, but when you legislate for one case, you often leave something open in another area. Exhibition is an important issue, and the petitioners have rightly raised it. This could be the start of the process of dealing with the issue.

The Convener: Are you saying that our letter to the Executive should be constrained to practices involved in the breeding and showing of animals? Perhaps we should do that, as animal welfare is an enormous issue. The petitioners might want to note that it would be possible for them to find a friendly MSP to introduce a member's bill and accelerate progress on the wider issue—not only Clydesdale horses. I agree that we have not had the chance to take proper evidence and, as Paul Martin says, one approach might open the matter up.

Those are two ways of dealing with the matter. Are we content with that? We will write a letter to the Executive and also perhaps write to the petitioners—someone else has picked up the petition on behalf of the original petitioner, who is deceased. They might want to find an MSP to introduce a member's bill—it might even be Sylvia Jackson.

Maureen Macmillan: I hear what you say, but I am concerned that that will take a long time. Is there nothing we can do in the interim? For example, paragraph 16 of the note from the clerk states that we could

"ask the Scottish Executive to extend the applicability of the Farriers (Registration) Act 1975 to include the Highlands".

We could take steps in the interim. I do not want us to do nothing and think that, four years down the line, a member's bill might address the matter.

Michael Matheson: The suggestion in paragraph 16 is one of the things that could be done in the short term.

The Convener: Yes. Do members also want to put the matter in the legacy paper, as unfinished business? We could note that the matter was on the agenda and note our recommendation. The point that I was making is that Sylvia Jackson, who has worked on the matter and has followed it through, might take the matter forward.

Maureen Macmillan: Yes, as a member's bill. However, I still think that we should write to the Executive to see whether anything can be done in the short term.

Michael Matheson: So the legacy paper will suggest to the new committee that it should get the Executive's response to a suggestion in paragraph 16.

The Convener: Absolutely.

Michael Matheson: Is that all? Will we not consider the petition further? I do not think that we should hand the petition over to the next committee except to say that we have considered it and believe that the best way to deal with coupling is through a member's bill, and to say that we have asked the Executive to extend the Farriers (Registration) Act 1975 to the Highlands and Islands and Skye.

The Convener: We will ask the Executive to consider consulting on the practices of breeding and showing animals that might be cruel.

Michael Matheson: Is that within the committee's remit? I do not think that we should be saying that.

The Convener: Unfortunately, the petition has come to the committee because it seeks to create criminal offences. It was referred to us by the Scottish Executive justice department because it is responsible for criminal sanctions behind the protection of domestic and captive wild animals. The petition came to us because the committee shadows the minister. I originally thought of the Rural Development Committee—

Michael Matheson: You were talking about the wider issue of animal welfare.

The Convener: No, I was talking about criminal sanctions.

Michael Matheson: No. Earlier on you were talking about asking the Executive to consider the general issue of animal welfare.

The Convener: You must have misunderstood. I narrowed it down and said that we cannot just open up consideration because the issue of animal welfare is so large. Any involvement would be related to the breeding and showing of animals and whether cruel practices are being used—whether docking tails, coupling or whatever. I narrowed it down to that. I was not talking about the whole issue of animal welfare because that would involve issues such as animal transportation.

We can do that because the remit of the justice department includes responsibility for criminal sanctions behind the protection of domestic and captive wild animals, so that covers domestic animals.

Michael Matheson: But all that the committee has considered is the coupling of Clydesdale horses.

The Convener: I am sorry. I am lost.

Michael Matheson: I do not understand where you are coming from. I am talking about what we are putting in the legacy paper. All we have to say is that we have asked the minister to consider the option given in paragraph 16 of the committee's paper, and that if coupling is to be considered further, it would be best if that were done through a member's bill.

The Convener: Yes, but the other point I thought we had agreed is that we would ask the Executive to consult and hold its own inquiry into the treatment of domestic animals for show purposes. It does not mean that we will do anything with it. We are not asking for anything to be done about the huge general issue of animal welfare, because it is enormous.

Michael Matheson: Exactly. I would not want to give the new committee the impression that that is what we want to happen.

The Convener: No.

Michael Matheson: It certainly came across that way from what you were saying.

The Convener: We will have to agree to differ because I thought that I had made it clear that we were talking about the breeding of animals for show purposes, which Paul Martin and Wendy Alexander raised. The bigger issue of animal welfare would be something for the Rural Development Committee to deal with.

Michael Matheson: Exactly.

The Convener: Okay. Perhaps you missed that.

After that little debate, are we agreed that we should note in the legacy paper that we have written to the Executive and that we expect a specific response about the Farriers (Registration) Act 1975? Sylvia Jackson will note that we have recommended that the issue might be a matter for a member's bill, just to keep the foot on the accelerator pedal.

Members *indicated agreement.*

The Convener: We have already agreed to take the next agenda item on the draft legacy paper in private.

15:43

Meeting continued in private until 16:15.

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