JUSTICE 1 COMMITTEE

Tuesday 18 February 2003
(*Afternoon*)

Session 1

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JUSTICE 1 COMMITTEE
4th 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

THE FOLLOWING ALSO ATTENDED

Hugh Henry (Deputy Minister for Justice)
David McLetchie (Lothians) (Con)

WITNESSES

Sheriff Brian A Lockhart (Sheriffs Association)
Sheriff Hugh Matthews QC (Sheriffs Association)
Sheriff Richard Scott (Sheriffs Association)

CLERK TO THE COMMITTEE

Alison Taylor

SENIOR ASSISTANT CLERK

Claire Menzies Smith

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 2

Scottish Parliament

Justice 1 Committee

Tuesday 18 February 2003

(*Afternoon*)

[THE CONVENER *opened the meeting in private at 13:50*]

13:56

Meeting continued in public.

The Convener (Christine Grahame): I remind members to turn off mobile phones and pagers—I ought to do that myself. No apologies have been received, but Lord James Douglas-Hamilton may be slightly late.

Items in Private

The Convener: I ask members to look at item 7 on the agenda, which is the consideration in private of the draft legacy paper. The paper will provide guidance to the committee's successor committee or committees on on-going Justice 1 Committee business and issues from the first parliamentary session. Item 7 enables the committee to consider its detailed approach to the legacy paper, the final version of which will be publicly available. Do members agree to that?

Members *indicated agreement*.

The Convener: I propose also that at future meetings we discuss lines of questioning for witnesses for the committee's inquiry into legal aid in private. That is to enable the committee to consider its detailed approach to questioning. Are we agreed?

Members *indicated agreement*.

David McLetchie (Lothians) (Con): May I make a point?

The Convener: I shall briefly go through the agenda first, Mr McLetchie.

Convener's Report

The Convener: Item 3 is my report. I remind members that the excitement of the Title Conditions (Scotland) Bill at stage 3 will be on Wednesday 26 February from 11 am until lunch time, and then again from 2.30 pm. The deadline for lodging stage 3 amendments is 4.30 pm on Friday 21 February 2003. I advise members to lodge amendments in good time before the beginning of stage 3, and as early as possible in the day.

Correspondence has been received from the Deputy First Minister and Minister for Justice regarding stage 3 amendments, and that is document J1/03/4/14. I also refer members to the correspondence from the Deputy First Minister—document J1/03/4/7—regarding disturbances at Her Majesty's Prison Shotts, which states that it is possible that the unrest at the prison followed greater success in restricting the availability of drugs. The incidents are the subject of on-going police investigations and criminal charges have already been brought. Are members content with that response from the minister?

Members *indicated agreement*.

14:00

The Convener: I will mention in passing my trip to Maryland, from which I am still suffering jet lag. I will do a full report for the committee on mediation processes, which cover not only justice issues but policing issues, community issues and so on. It has the imprimatur of, rather than being pioneered by, the senior appeal court judge in Maryland. Without that, it would not have taken the grip that it has. Although mediation is not suitable in all circumstances, it seems a fruitful source of investigation for our successor committee and it would link to alternatives to custody. Those of us who were there included the Lord Justice Clerk, the chairman of the Law Society of Scotland, Sheriff Nigel Morrison and senior members of the Scottish Legal Aid Board. It was a good cross-section of people. Without putting words into their mouths, I think that we were all quite impressed with what is going on in Maryland. I see that the Deputy Minister for Justice is here, so he, too, has now heard about it. That is as much as I will say about the matter now.

Council of the Law Society of Scotland Bill: Stage 2

The Convener: Item 4 on the agenda is stage 2 of the Council of the Law Society of Scotland Bill.

I welcome David McLetchie and Michael Clancy. I understand that only David McLetchie will address the committee.

David McLetchie: Yes.

The Convener: I also welcome the Deputy Minister for Justice, Hugh Henry.

Section 1—Discharge of functions of the Council of the Law Society of Scotland

The Convener: Amendment 1 is grouped with amendment 3.

David McLetchie: I thank the convener for her welcome today. I declare my interest as a solicitor and accordingly as a member of the Law Society of Scotland. I draw members' attention, as I have done previously, to my entry in the register of members' interests.

The Convener: That has reminded me that I should have declared an interest as a member of the Law Society and a non-practising solicitor.

Lord James Douglas-Hamilton (Lothians) (Con): I should also declare an interest as a non-practising Queen's counsel.

David McLetchie: That is the full set.

Amendment 1 relates to the limits of delegation. Before I address the amendment directly, I refer back to the committee's evidence-taking session and the debate in Parliament at stage 1, at which point I indicated to the committee and the Parliament that the council of the Law Society would produce a scheme of delegation to implement the powers that will be conferred on it if the bill is passed by Parliament. The committee asked whether the principles of the scheme could be made available for consideration by members before we got to stage 2. I understand that a paper outlining the principles of the scheme has been circulated to committee members with the papers for the meeting.

The Convener: That is helpful.

David McLetchie: I draw members' attention to page 4 of the statement of principles. It deals with the specific proposals on complaints handling, which was the primary focus of the committee's stage 1 report and was a focus of the committee's wider inquiry into the regulation of the legal profession.

Members will see from the statement of principles that, as recommended by the committee, the principle of 50 per cent lay representation on complaints or client relations committees is to be established under the new scheme. The principle of paying an honorarium to such members is to be introduced; that is also as recommended by the Justice 2 Committee. The power to determine the outcome of all complaints is to be delegated to committees of the Law Society; that is again in line with recommendations of the committee. There is to be an oversight committee—that function is currently performed by the Law Society's client care committee—to help to ensure that there is consistency in all aspects of dealing with complaints by the various complaints committees of the Law Society. I make those points on the record simply to draw members' attention to the fact that the points that were raised at stage 1 in the committee and the chamber have been followed up by the Law Society.

The Convener: The paper is also now public so, if any other parties are interested, it is on the website with the rest of the documents and papers for today's meeting.

David McLetchie: Absolutely. Before we get to stage 3, the Law Society intends to make available to committee members the detailed scheme that will put more flesh on the bones of the statement of principles on the complaints function, which has already been circulated.

Having dealt with the introduction, I will now consider amendment 1 specifically. The amendment is about placing a limitation on the power of delegation and, in particular, on the ability to delegate functions to individuals. The amendment is a result of a concern expressed during the consultative period by the Scottish Consumer Council about the delegation of functions to individuals and how that would be addressed.

The Law Society was also concerned that the preliminary and investigatory work of sifting the complaints that come to the society should continue to be done by society officials. Amendment 1 seeks to get the appropriate balance between the functions of committees that could not be delegated, and the functions of individuals. The amendment seeks to do that by making it clear that the decision on whether a complaint is valid and should be upheld, and on what action should be taken, can be made only by a committee and not by an individual. That would not preclude an individual employee of the society from doing the preliminary work or the reporter appointed by the society's committee from doing the preliminary investigation of the complaint. On the basis of that investigation, the committee would judge the complaint and thereafter determine an appropriate sanction.

The second part of amendment 1 takes cognisance of the fact that since stage 1, Parliament passed the Public Appointments and Public Bodies etc (Scotland) Bill. It was passed on 5 February and is awaiting royal assent. That bill transfers to the Law Society functions that were previously exercised by the Scottish Conveyancing and Executry Services Board. Following the transfer, the Law Society will deal with complaints in relation to practitioners who were licensed for that purpose by the SCESB under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

Amendment 1 seeks to make clear that the limitations on delegations to individuals in handling complaints about conveyancing and executry services practitioners are the same as those that will apply to complaints about solicitors. It will put the whole process on all fours.

Amendment 3 has been lodged as a result of the passage of the Public Appointments and Public Bodies etc (Scotland) Bill. It is designed to incorporate transitional provision to reflect the fact that the Public Appointments and Public Bodies etc (Scotland) Bill will come into force only when a commencement order is moved, whereas the bill that we are considering today will come into effect once it has received royal assent. Therefore a transition period is necessary until both bills are fully in effect. That is the purpose of amendment 3.

I move amendment 1.

The Deputy Minister for Justice (Hugh Henry): I am pleased to confirm that the Executive supports the amendments. They are necessary to anticipate the new regulatory responsibilities for conveyancing and executry practitioners that the Law Society of Scotland will acquire. David McLetchie referred to the transfer of responsibilities from the board to the council of the Law Society of Scotland on the board's abolition. The Executive is grateful to the Law Society for its willingness to take over those responsibilities.

The amendments will ensure that the council of the Law Society takes appropriate account of its new responsibilities. The council will also ensure the commencement of provisions that will coincide with the commencement of the relevant provisions in the Public Appointments and Public Bodies etc (Scotland) Bill.

Amendment 1 agreed to.

The Convener: Amendment 2 is in a group of its own.

David McLetchie: This amendment also reflects the passage of the Public Appointments and Public Bodies etc (Scotland) Bill. In this instance, it is intended to align the aspects of that bill that are related to what are described in this bill as the excepted functions of the council. Those are in effect the council's rule-making functions, which cannot be delegated and remain the primary responsibility of the council.

The Law Society is taking over the rule-making function that the Scottish Conveyancing and Executry Services Board previously discharged. It is therefore necessary for consistency in relation to practitioners' licences, which were licensed by the Scottish Conveyancing and Executry Services Board, that that rule-making function again be an excepted function for the purposes of this bill. It is necessary to have consistency of treatment between the two professions. Those are first, the solicitor branch, for which the council of the Law Society is responsible, and secondly, the conveyancing and executry services practitioners for which the council will shortly be responsible when the Pubic Appointments and Public Bodies etc (Scotland) Bill comes into effect.

I move amendment 2.

Amendment 2 agreed to.

Amendment 3 moved—[David McLetchie]—and agreed to.

Section 1, as amended, agreed to.

Sections 2 and 3 agreed to.

Long title agreed to.

Petition

Children (Scotland) Act 1995 (PE124)

The Convener: The committee has seen this petition a few times. I refer members to the paper J1/03/4/9, which sets out the background to the petition and related correspondence on the rights of grandparents. As members are no doubt aware, there will not be time in this session to consider the petition again. Any decisions that we make will have to be passed on to our successor committee or committees via our legacy paper.

A few options are open to us. We could write to the Scottish Child Law Centre and the Scottish Children's Reporters Administration to ask for further information on recent cases in the European Court of Human Rights involving grandparents and the right to privacy in family life as highlighted by the British Association of Social Workers and pass any information received on to our successor committee. Alternatively—or also—we could suggest via our legacy paper that our successor committee might wish to monitor the minister's investigation of family mediation for grandparents and the wider family. We could also choose to write to the petitioners and forward all recent correspondence regarding the petition explaining that the committee has examined the petition thoroughly and that all organisations and individuals involved with the issues of grandparents' rights to children are content that current legislation is sufficient.

14:15

Lord James Douglas-Hamilton: There is a lot to be said for the first two options. The situations that the petition is concerned with can be desperately difficult and sensitive. In some situations, grandparents may be being treated unreasonably while in others they may be acting unreasonably. It is difficult to bind a court because a court needs to know all the facts and circumstances. It would be enormously valuable if we were able to give moral support to any mediation processes, which have been steadily developed over the years.

Michael Matheson (Central Scotland) (SNP): I support what Lord James has said. If we take the steps that are outlined in the first two options, it would provide some information for our successor committee, which would probably save time when the petition is considered at a later date.

Donald Gorrie (Central Scotland) (LD): We should continue to pursue this petition or encourage other people to do so. The essay that was sent by a social worker along with a report was helpful. The BASW submission talked about the need to be flexible and to encourage the kind of work that it talks about. If we can encourage all those involved to take more account of the issues and can also get more information on the European Court of Human Rights aspect, that would help our successor committee to push the matter further forward.

Maureen Macmillan (Highlands and Islands) (Lab): I agree with what the other members have said, but I also think that we should state our view that, in such matters, the welfare of the child is paramount. We should not think of the rights of the extended family if they conflict with the welfare of the child.

Paul Martin (Glasgow Springburn) (Lab): I support the first two options and Maureen Macmillan's point that we must consider the welfare and the views of the child.

It would be helpful if we could find out whether any studies have been done on the impact on children of not having access to their grandparents. I do not think that we have seen any detailed evidence in that regard. It might be said that that impact would speak for itself, but we need to clarify the situation if we are to decide what action should be taken in relation to the arrangements that exist or legal steps that might be taken. That will be an issue for the new committee, of course.

The Convener: I concur with the first two options that are before us. In my experience as a former matrimonial and family law practitioner, the child's welfare was always at the centre. Where somebody may on paper have had some right of access, it was never given if it was not in the child's interest.

However, the petition may have highlighted the fact that grandparents were sometimes not on the agenda, although, like Lord James Douglas-Hamilton, I have known cases in which the grandparents were a hindrance to resolving matters. On the other hand, there were cases in which grandparents were helpful. One size does not fit all.

The petition has been valuable in reminding those who deal in such matters that grandparents have an important role, particularly in today's society, in which grandparents often look after children while their parents are out working. That role may require further investigation.

Is the committee content that the first two issues should be dealt with, subject to Paul Martin's additional suggestion that we also consider any available academic studies of how grandparents' involvement has affected children?

Members *indicated agreement*.

The Convener: That will go into our legacy paper for the new committee. If I recall correctly, the minister—if he continues to be the minister after the election—was going to proceed with a family law bill. However, we will have a new Administration and will have to see what its agenda is. [*Interruption.*]

I am told that our next witnesses are here. I suspend the meeting for five minutes so that we have an opportunity to study the papers before I call the next witnesses.

14:20

Meeting suspended.

14:28

On resuming—

Alternatives to Custody

The Convener: I welcome Sheriff Richard Scott, president of the Sheriffs Association, Sheriff Brian Lockhart, vice-president, and Sheriff Hugh Matthews, honorary secretary. Thank you for coming. We are in the interesting position of already having your answers to our questions. We appreciate that there is no statutory requirement for you to come before us; we also appreciate your attendance. We know that we are all treading on interesting ice, if that is not a mixed metaphor, but we will do our best. We understand the remit.

How are sheriffs informed of the availability of alternatives to custody?

Sheriff Hugh Matthews (Sheriffs Association): Sheriffs are generally aware of the sentences that the law permits them to impose and of the existence of a range of non-custodial disposals that are available generally or locally. In individual cases, the sheriff is informed mainly through the social inquiry report of the availability of non-custodial disposals and the offender's suitability for them. A social inquiry report is not always necessary. A sheriff may dispose of a case by way of absolute discharge, admonition, deferred sentence, fine or custody without further inquiry into the case. However, in many cases, the law requires the sheriff to obtain a report.

For example, if an offender is already under supervision, a report is necessary whether or not the sheriff is considering a custodial sentence. If the sheriff is considering a custodial sentence, he or she must obtain a report if the offender is under 21 or has not been in custody before. The sheriff needs to know the available alternatives to custody and whether the offender is suitable for them.

In many other cases, a sheriff does not have to order a social inquiry report but does so to assist him or her to identify the most appropriate disposal. The sheriff might decide that an appropriate disposal was a community service order or a restriction of liberty order, but in those and other cases, he or she must obtain a report on the offender's suitability for the order. In many cases by law—and in all cases in practice—the sheriff does not impose a custodial sentence unless no other appropriate way to dispose of the case is available. However, he or she might decide that custody is the only appropriate way of disposing of the case and, in so doing, he or she will have regard to the interests of the victim, the offender and the public.

14:30

The Convener: I am having passed to you a letter dated 4 February from Colin Mackenzie, who is the convener of the Association of Directors of Social Work's standing committee on criminal justice. In numbered paragraph 1, he says in relation to the demand for social inquiry reports that

"Local experience reflects that in some courts during the subsequent year 2001-02 the increase in reports requested has been between 20 - 50%."

Are you finding that you must ask for far more social inquiry reports? Would your figures be similar?

Sheriff Richard Scott (Sheriffs Association): We are certainly aware of the fact that the proportion of cases in which reports are called for has increased. That is attributable partly to the fact that some of the newer disposals require reports on and assessments of suitability. More generally, it implies a readiness on the part of the courts to entertain the possibility of non-custodial alternatives in virtually every case, certainly at our level.

The Convener: Numbered paragraph 2 of the letter is about whether social work departments are finding it increasingly difficult to meet the time scales for social inquiry reports that the courts have set. I am sorry that you did not see the letter before the meeting, but it is part of our meeting papers, which are in the public domain. The letter refers to

"A significant increase in workload from many courts without an increase in the funding available".

You probably cannot comment on that, but the letter also refers to

"Pressures caused by public holidays"

and

"Many reports … of increasing complexity."

It says that the diaries of visiting sheriffs determine the time that is allowed and that

"Larger urban courts recorded a lack of accurate information from the court as causing considerable delay".

Will you respond to any of those comments?

Sheriff Brian Lockhart (Sheriffs Association): In Glasgow, the social work department is under increasing pressure to make the appropriate reports available. I echo what Sheriff Scott said about a desire on the part of the bench to entertain all possible alternatives before passing sentence. Of necessity, that means that more reports are called for.

Without a corresponding increase in the resources that are available to social work departments, difficulties will exist, because one must bear it in mind that the people who prepare the reports also supervise people who are on probation and undertake many other tasks that are unconnected with a report's preparation. It is clear to me on the Glasgow bench that the local social work department is under severe pressure because of the present climate.

The Convener: How is that impacting on sheriffs' work? Is it causing cases to be continued?

Sheriff Lockhart: That is right. Because reports are not available, cases require to be continued for, say, another two weeks, which is in no one's interests.

The Convener: Would any sheriffs from other parts of Scotland care to comment?

Sheriff Scott: Each of the bullet points in the ADSW's letter contains information with which we would not disagree. Another factor that should be borne in mind is that we, like many people outside the courts, are concerned that delays should be kept to a minimum: people should not be kept waiting to find out what is to happen to their case. When I say "their case", I refer to the victims, the accused and anyone who has an interest in the case. There are strict statutory time limits. Social workers are saying that they are finding it increasingly difficult to keep up with the time limits that are laid down by statute and that are endorsed by us in the interests of getting through cases quickly.

The Criminal Procedure (Scotland) Act 1995 relaxed the time limits slightly and now the relaxation has become the norm, so that a report takes four weeks instead of three weeks. Over Christmas, new year and early January, when I was sitting in Edinburgh sheriff court, we got about half the reports that we asked for; the other half had to be made on another day.

The Convener: Of what number of reports were half not available?

Sheriff Scott: Probably 20 or 25—I am speaking about half of the reports that I had to deal with on those days.

The Convener: Does Sheriff Matthews wish to comment?

Sheriff Matthews: I am based in Glasgow as well, so my experience is the same as Sheriff Lockhart's.

The Convener: I think that you say in your written evidence that sheriffs are discouraged from selecting alternatives if there is a problem with the way in which the alternatives are being run. Will you give examples of the type of problems experienced? How do sheriffs become aware of such problems?

Sheriff Matthews: Sheriffs in some areas might be discouraged from selecting particular alternatives if there is a perceived problem with the way in which those alternatives are being run. Historically, there has been a problem with a shortage of places on community service schemes. In Edinburgh, recent social inquiry reports have stated that although the offender is suitable for community service, a placement cannot be offered for, say, three months. Sometimes, breach proceedings come before a sheriff long after the breach has taken place. There have been difficulties in some areas in bringing in drug testing and treatment orders because of a lack of necessary specialist staff.

Sheriffs become aware of problems with non-custodial sentences when the original assessment is called for, when breach proceedings come before the court and when an offender commits a subsequent offence and information comes to hand that the offender has not commenced their community service order or has not been allocated a supervising officer in respect of their probation order. Problems might also be brought to sheriffs' attention by service providers and can often be discussed with court social workers or at meetings between sheriffs and their local social work departments.

We would not say that there is an overall problem, but there are problems from time to time in different parts of the country. As we said in our written evidence, the problems are more acute at some times than they are at others.

The Convener: You said that the problems are more acute from time to time in different parts of the country. Which parts of the country—where it is difficult to have alternatives to custody because nothing secure is in place—would you say are top of the league?

Sheriff Scott: We try to keep informed about what is happening in other parts of the country through what our colleagues tell us, but we do not have as detailed a knowledge of what is happening in their courts as we do of what is happening in our courts. It might be hazardous to identify particular areas as being particularly bad. Reference has been made to Edinburgh, where I sit, in connection with community service. We have an excellent domestic violence project, whereby people who have been convicted of domestic violence offences may be put on probation on condition that they attend the project. It came to my attention just last week that the project is now full up and cannot take more referrals. Such difficulties constantly crop up everywhere. When there is an improvement in one area, things begin to sag in another.

Sheriff Lockhart: The problems that social work departments have in providing social inquiry reports over the new year and Christmas period are a reflection of the time that people who are preparing the reports have to supervise probationers. The people who do not have time to produce reports have to make time to supervise probationers. The issues are connected.

The Convener: The two tasks are too much for one person.

Sheriff Lockhart: Yes.

Sheriff Matthews: Recently, we have been informed that in Aberdeen there have been difficulties in securing community service placements, and I am aware that in Greenock there has been a difficulty in starting drug treatment and testing orders. The local press indicated that those orders were available before the courts knew about them. Because there are insufficient social workers to implement the orders, they have not yet been able to come into force.

The Convener: I compliment you on the drugs court, which we visited. We were very impressed by it and its work.

Donald Gorrie: You have made helpful remarks about occasions when the schemes for alternatives to custody are full up and people are required to wait for a long time. Without naming names, can you say whether there are occasions when sheriffs are dissatisfied with the quality of schemes on offer, even if places are available, and do not place people on schemes because they do not regard them as good enough? In such cases, would sheriffs tell the people who were operating the scheme what they thought?

Sheriff Lockhart: In Glasgow, there is an excellent relationship between sheriffs and social workers, and they meet on a monthly basis. When a probation order is complete, we receive a report on what has been done. From time to time, we point out that there does not appear to have been much supervision and suggest how matters may be administered better in the future.

Throughout the country, there is increasing liaison between sheriffs and social work departments. In that way, we are seeking to highlight local problems and to improve the management of schemes. I am talking about straightforward probation, which involves social work departments. There is not the same dialogue about more sophisticated schemes, which we may discuss later.

Michael Matheson: In your notes, your answer to question 2 is:

"Recently, in Edinburgh, for example, social enquiry reports have stated that, while the offender is suitable for community service, a placement cannot be offered for say 3 months."

Is that problem peculiar to Edinburgh? How often is there a lengthy delay in your receiving a social inquiry report, even though some kind of community service order has been recommended?

Sheriff Scott: The problem tends to come and go. In the past few months, we have had difficulty securing community service placements in Edinburgh. Since we prepared our notes for the committee, the position has improved. The problem crops up in different places at different times. The more recent example that I gave, concerning domestic violence, is hot off the press. I am sure that that problem can be turned around in due course. However, stresses and strains may be transmitted to other parts of the system.

We do not want anyone to get the idea that we are hostile to or dissatisfied with the support that social workers endeavour to give us. We get excellent support from local social work departments and have excellent relations with them. From time to time, we meet them to share our difficulties. We say what is troubling us and they say what is troubling them.

Social work departments have told us that there is a national shortage of social workers, both in criminal justice and in other fields. It would appear that the number of people qualifying in social work in Scotland has almost halved in the past decade. We were also told of a qualification in social work for criminal justice workers that is available in England but does not translate for work in Scotland. In other words, social workers who are qualified to deal with probation and the like in England come up here and find that they are ineligible because they do not have the full social work qualification other than that specific to criminal justice work. In addition to the shortage is a difficulty in filling the gaps.

14:45

Lord James Douglas-Hamilton: Am I correct in thinking that the sheriffs' strong preference is for consistency of provision the length and breadth of Scotland and availability of the disposals that they wish to apply?

Sheriff Lockhart: Very much so.

Lord James Douglas-Hamilton: If there is a shortage and a community service placement cannot be offered for three months, for example, is it practically impossible to send the young person concerned further afield? Would you rule that out on the ground of practicality? Would you ever consider such an option?

Sheriff Scott: That option is certainly not open to us, and I do not think that it would be an option for social workers. Local authorities must provide services to residents in their area. If the individual were to move to another area, the order could be transferred. However, there is no provision for us to send them off to do community service elsewhere.

Lord James Douglas-Hamilton: Am I correct in thinking that there have been cases of persistent young offenders being sent to secure accommodation south of the border?

Sheriff Lockhart: Yes.

Lord James Douglas-Hamilton: Whose decision would that have been?

Sheriff Scott: We do not have much to do with under-16s, but it affects us if a youngster appears from custody and the Crown opposes bail. The question then arises as to what will happen to that person. We are obviously reluctant to remand someone to prison if they are under 16. We ask if anywhere else is available, in which case the court social worker gets in touch with several people to see whether a place can be found. We cannot do anything about that; it is done through the social worker.

Sheriff Lockhart: Community and probation services work with the address at which the offender is residing at the time the order is made. If he were to move from Edinburgh to Linlithgow, the order would be transferred to the new jurisdiction. As the current law applies, however, there is no provision for a person who lives in Edinburgh to perform work in Linlithgow.

Lord James Douglas-Hamilton: In other words, there is no transfer of cases on the ground of greater resources elsewhere. Thank you.

The Convener: It is my supposition that if you were to do that, the invoice for it would transfer to the other local authority, which would not be too happy about it.

Sheriff Lockhart: I cannot imagine other authorities taking on the upkeep of someone from Edinburgh.

Maureen Macmillan: Do you have any views on the adequacy of the information received by sheriffs before sentencing? Would you welcome a closer relationship with alternative to custody programmes, perhaps reviewing progress as happens in the drug courts?

Sheriff Matthews: In general, we are satisfied with the information provided in social inquiry reports, which give details of the non-custodial options available. However, there is a feeling that certain initiatives—in particular, courses that are designed to address offending behaviour and addiction problems—are not brought to the attention of the court.

Some years ago, the Scottish Executive justice department did some work on the possibility of producing a directory for each sheriff court area, giving the full specification of rehabilitation schemes, courses designed to address offending behaviour and addiction counselling available in the area. It was anticipated that those directories would be available both to the social workers who prepare social inquiry reports and to the local bench.

Some writers of social inquiry reports might not be aware of the available options, even within their area. Some programmes have had to put in a lot of work to remind report writers of what they offer. A directory would be of assistance, provided that it was kept up to date and had information on the evaluation and assessment of programmes and courses.

In the drugs courts, there is a closer relationship between sheriffs and the alternatives to custody programmes because offenders return regularly. That is also the case with drug treatment and testing orders and we understand that there might be similar proposals in the youth court pilot that is under discussion. Offenders who are on drug treatment and testing orders return to court each month. A written progress report is available to the sheriff and the supervising officer attends the court. Such initiatives are helpful in emphasising to the offender the need to obtemper court orders. On the other hand, if every person who was on probation or community service had to report to the court regularly, that would create significant resource implications for judicial time and for the time taken by supervising officers to prepare reports for and to attend court.

We feel that the matter should be left up to the discretion of the sheriff in each case. In general, the supervising officer should be entrusted with the authority to supervise the offender and should have the sanction of reporting rapidly to the court in the event of a breach. When the sheriff makes an order, he or she can ask for reports on the offender's progress to be submitted, perhaps at set intervals, and, if necessary, can fix a hearing.

From time to time, arrangements are made for sheriffs to meet the people who run programmes, so that they can exchange views and keep one another informed. In our view, making good use of such opportunities would be a more practicable and efficient way of proceeding, rather than generalising the formal review procedure that is a feature of the drugs courts. In many ways, that procedure is a special case; in normal cases, the emphasis should be on good and prompt reporting by the people who run the schemes rather than on routine formal hearings in court.

Maureen Macmillan: I am interested in what you say about the Scottish Executive's proposal to produce a directory for each sheriff court area that gives a full list of available schemes. Have you heard any word about that proposal?

Sheriff Lockhart: I was the secretary of the Sheriffs Association when the list was proposed, at which point Niall Campbell was the head of the Scottish Executive justice department. The plan was to produce a full directory of the available facilities in each area. We are all sure that various available counselling schemes are not brought to the attention of those who write social inquiry reports, which means that the bench is not alerted to what is available.

We make a plea for such a scheme to be resurrected. Work could be undertaken to make available to those who prepare social inquiry reports and to sheriffs a bench book with all the relevant schemes in the area. Such a book would be of great use and would allow us to consider all the options before passing sentence.

Maureen Macmillan: I do not imagine that creating such a directory would be terribly difficult. Highland Council has a directory of programmes that are available for young offenders. It would not be difficult to produce an area-by-area directory of the available alternatives to custody for adult offenders.

When we visited the firm that administers restriction of liberty orders, we found that it is up to that firm to show the various sheriffdoms what it does, which seems a bit bizarre. Restriction of liberty orders are used in some sheriffdoms but not in others because the firm has not organised seminars in those areas. That is a topsy-turvy way in which to administer justice. If the Executive is not making progress on that issue, might action be taken more locally? Perhaps a directory could be produced for each sheriffdom.

The Convener: With respect, I do not think that the matter is up to the sheriffs.

Sheriff Lockhart: To be fair, I do not think that the sheriffs could take the initiative on that.

Maureen Macmillan: I do not expect them to do so, but do you have any idea who might take the initiative at a local level?

Sheriff Scott: No. We cannot suggest who might do that or how they might do it. You say that the scheme should not be too difficult—it sounds as if it should not be—but I think that it would be difficult.

A long time ago, when I was the chairman of the Scottish Association for the Study of Delinquency, I had what I thought was the bright idea of producing such a directory. I took some steps to see how one would collect the data. I hoped that the association might do it, but it became obvious that the task was far too difficult, because it

involved the co-operation of a large number of people. Something similar exists in England, where a book is produced by what used to be called the Institute for the Study and Treatment of Delinquency in London, or another unit or department of King's College London. The book, which I have seen, lists the options that are available to sentencers in different courts. Obtaining the data and keeping the information up to date is difficult—it is not as easy as it sounds.

Maureen Macmillan: I would imagine that in these days of electronic communications it would be easy to have a database.

Sheriff Scott: I do not know.

Sheriff Lockhart: Of course, some schemes are run by local authorities, whereas others are private.

Maureen Macmillan: And others are run by voluntary organisations.

Sheriff Lockhart: Yes. A lot of work would probably be necessary. It seemed that the work had been started, but for some reason it was not seen through. Anything that your committee could do would be of assistance.

Maureen Macmillan: It just struck me that because local authorities do something along the same lines for young people, perhaps people in local authority social work departments would have a handle on what was available, although I notice that in your evidence you say that social workers themselves are often not aware of what is available.

Sheriff Scott: That is true. To be fair to them, social work departments try to ensure that their local bench is well aware of what is on offer. They produce leaflets, some of which are specifically designed for members of the bench to help them with the ins and outs of the various facilities. What we are talking about—and what was talked about in the Scottish Executive justice department—is an all-Scotland compendium of information that is kept up to date, which is a particularly important point. In many areas, the bench is not a local bench but consists of part-time sheriffs, floating sheriffs or people who are flown in, who do not have the same feel for what is happening on the ground that perhaps those of us in the major centres have.

Sheriff Lockhart: Although the book was a national one, it was adapted locally, with chapters on what was available locally; other parts listed what was available nationally.

Maureen Macmillan: I am aware of the problems. I know that some voluntary organisations feel that social work departments do not know what they do and do not use them sufficiently.

The Convener: I have a couple of questions. When was the group that was going to examine a compendium or directory set up?

Sheriff Lockhart: Three or four years ago.

The Convener: Right at the beginning of this Parliament.

Sheriff Lockhart: Yes.

The Convener: Who was on it?

Sheriff Lockhart: Jeanne Freeman, Niall Campbell and Elizabeth Carmichael. It just—

The Convener: Fizzled out?

Sheriff Lockhart: It did not come to a conclusion. They came through to Glasgow to have a meeting with the sheriffs there about whether we thought that it was a good idea. We said that we thought that it was a good idea.

The Convener: And what happened after that?

Sheriff Lockhart: That was it.

The Convener: Perhaps we should follow that up. I would like to know what happened.

Secondly, we have received evidence that when parties apply for financial assistance from the justice department, they have to provide a lot of accredited data, which could be a source of information on creditable alternatives to custody and diversions from prosecution. Is that correct? We asked the minister that question. Do you know anything about that? That is a seam of data that is not being transferred to other branches of the justice department.

Sheriff Lockhart: I do not have any information about that, but it does seem sensible.

The Convener: I tell you that because we gleaned that information. We were taken aback because there is good stuff out there, which sheriffs and social workers need to know, but things are happening on an ad hoc basis. That is of concern. Things are also happening on a postcode basis, which is also of concern. Somewhere out there, information is available. Prior to this inquiry, we did not know that a committee had examined the issue nearly four years ago. Apparently, here we are, four years later, reinventing the wheel. That is of interest.

15:00

Maureen Macmillan: Are sheriffs provided with information about sentencing practice and the use of community sanctions throughout Scotland? If not, would such information be useful?

Sheriff Matthews: The Scottish Executive issues bulletins that contain a mass of statistical information on criminal proceedings in the Scottish

courts, sentencing and the Scottish criminal justice system and social work statistics and costs. The publication that deals with sentencing contains tables that show, among other things, the percentage of cases that are disposed of in various ways in individual sheriff courts. The publication that contains criminal justice social work statistics includes tables that show, for example, how many probation orders are breached. Those papers are sent to sheriff courts. In addition, some social work departments supply such information to sheriffs locally. Such data might be of interest to sheriffs, but in the absence of details of the facts of cases for which sentences were imposed, they are perhaps of limited assistance.

Sheriffs also have Sheriff Morrison's book "Sentencing Practice", which deals with sentencing practice in Scotland and is published by W Green. It is updated regularly. There are reports of decisions in sentence appeals in *Greens Weekly Digest* and the standard law reports. The University of Strathclyde has developed a sentencing information system for High Court sentences. Perhaps extending the system to include sheriff court sentences, and appeals against sheriff court sentences in particular, could be considered. However, to be of value, the information requires to record not only the sentence, but all the circumstances in which the sentence was imposed.

Sheriffs discuss sentencing informally on a day-to-day basis and more formally at events such as their biennial conference, at induction, refresher and judicial skills courses that are run by the Judicial Studies Committee and at conferences that are organised on a sheriffdom basis. On 4 October 2002, Glasgow sheriffs had a day conference that was entirely devoted to sentencing. Specialist speakers are often brought in to assist with such courses. Many sheriffs maintain useful contacts with people who run programmes in support of non-custodial sentences.

Maureen Macmillan: How does the sentencing information system that has been developed by the University of Strathclyde work?

Sheriff Lockhart: I think that Professor Hutton organises it—perhaps he could answer your question more accurately than I could. I understand that all the relevant factors that are taken into account in sentencing in High Court cases are conveyed to Professor Hutton, with the sentence, and details appear on the web.

We think that it would be a good idea to extend the system to sheriff court cases, if sheriffs thought it fit that that should be done. That means that there would be a reference to sentences that were dealt with at first instance and on appeal in given circumstances. Simply to say that there were X probation orders and Y community service orders is not terribly helpful. All the facts are needed. The idea behind the system was that all the facts of a case would be available rather than just some information under a general word such as "housebreaking", which could mean many things. Extending the system would be resource intensive, but we think that it would be good to do it. We commend doing so to the committee.

Maureen Macmillan: If Professor Hutton has any spare time, perhaps we could ask him about the system.

The Convener: I am curious about the proposal. Is Sheriff Lockhart suggesting that the proposal could be carried out by the justice department? The issue is simply about collecting data.

Sheriff Lockhart: The data would be available from appeal court decisions, which would have been issued, and from reports written by sheriffs to the High Court in cases where there was an appeal. You will appreciate that not all those cases go ahead, but a large number of sheriffs' reports with the details that are submitted to the High Court would be part of the process in the High Court case and could be transmitted. People would then know that, in a given set of circumstances, a certain sentence was imposed. We think that that would be useful to sheriffs and practitioners.

The Convener: Have you raised the issue before?

Sheriff Lockhart: Not formally.

The Convener: Has it been raised informally?

Sheriff Lockhart: I have raised it informally with Professor Hutton. We think that there is merit in the proposal.

The Convener: Your comments will go into the *Official Report*. We hope that that will help.

Maureen Macmillan: Sheriff Matthews mentioned induction, refresher and judicial skills courses that are run by the Judicial Studies Committee. How often do such courses take place? Are they optional or are sheriffs obliged to attend them? Is continuous professional development compulsory for sheriffs, or can they opt in or out of it?

Sheriff Scott: You will appreciate that such courses do not happen every day of the week; however, they come round with great regularity. As an aspect of my on-going, in-service training—if you care to call it that—I have been to many sentencing exercises in one forum or another. The Judicial Studies Committee is comparatively recent, although I cannot remember how many years it has been on the go for. I think that there is

a perception out there that before the Judicial Studies Committee came into existence, there was no such thing as a judicial education, which is nonsense. When I started my judicial career in 1977, I went on a five-day intensive induction course that was organised by the Sheriffs Association. It had been going for years and sentencing loomed large in it. Such courses have been around for a long time and are fairly comprehensive.

Some courses are voluntary, and nobody has to go to the sheriffs' conference, although most sheriffs go to it every couple of years. Judicial Studies Committee refresher courses are planned to ensure that all sheriffs can go on them at certain intervals, although that depends on the type of course. Over three years, all sheriffs might attend a course on new legislation pertaining to debt, and could go on another rolling programme of judicial skills training. If there were a sentencing input to the courses, all sheriffs could be covered over the period.

The fact that we try to ensure that everyone goes on such courses, and that courses take place during what some people might call the working week, probably coincides with the emergence of the Judicial Studies Committee. Historically, sheriffs were expected to receive their judicial education in their spare time, and they still do so to a considerable extent. However, to get everyone to attend, courses must be offered during hours when people would otherwise be on the bench.

Maureen Macmillan: Do you think that everyone attends the courses?

Sheriff Lockhart: I think that the target is that every sheriff should attend a full Judicial Studies Committee refresher course every three years.

Sheriff Scott: Sheriffs in general, and not just members of our association, are keen on the courses. They want to learn and to get things right. They enjoy the courses because it means that they can bounce ideas off one another, whereas usually they tend to be isolated, working on their own. We are all in favour of the idea.

There are difficulties. Getting a course up and running and taking sheriffs out of their daily work, while keeping the business of the court going, is a tricky business. There have been what we would regard as unfortunate episodes when people have had to be pulled out of courses at the last minute because they are too tied up in their courts. There are not enough part-time sheriffs to provide the locum cover. It is not all plain sailing, but we get a lot of printed material, especially online, to introduce us to changes and to keep us up to date.

Maureen Macmillan: I appreciate that 99.99 per cent of people will welcome the idea of going on courses. Are there any sanctions for the 0.01 per cent that perhaps would like to duck out of them? I am not saying that that happens, but what would happen if it did?

Sheriff Scott: Whatever we call it—judicial education, training or whatever—it is not part of our job description. We are appointed to the office of sheriff, and we do not have conditions of employment, or anything similar, that oblige us to attend courses.

Maureen Macmillan: Is there any peer pressure to attend courses?

Sheriff Scott: Yes.

The Convener: Should sheriffs have mandatory training programmes?

Sheriff Scott: We do in a de facto sense. The point is hypothetical, because everybody goes on the courses.

Sheriff Lockhart: But people who go have to be prepared to learn. If the courses were mandatory, people could be bloody-minded about not going. Saying that people have to go would not help; people must go wanting to learn about the job. In my experience, that is my colleagues' approach.

The Convener: Is there any appraisal of sheriffs' competence after such courses? Am I getting into other territory? I am. I could see that by the shrieval looks that I was getting.

Maureen Macmillan: The witnesses talked about maintaining useful contacts with people who are on programmes in support of non-custodial sentences. In conversation, the convener and I wondered how many sheriffs visit prisons to find out what sorts of programmes are available during custodial sentences.

Sheriff Scott: We have not done a census on that, so we cannot give you figures, but it is usual for sheriffs, when they are new to an area, to go to see institutions and to meet social workers. They do the rounds to ensure that they meet all the key players. Many of them keep that up regularly as time goes on.

Visiting a variety of penal institutions is also part of the induction course. The Scottish Prison Service encourages us to go, and visits take place continually. All the time that I have been a sheriff, it has been recognised that, if a sheriff wants to visit a prison, arrangements will be made for their work to be covered by somebody else while they go.

Sheriff Matthews: Very many of us will have been to prisons before we became sheriffs in one capacity or another.

The Convener: We will not go into that, Mr Matthews.

Donald Gorrie: I have a couple of questions about the availability of alternatives to custody. Which community penalties are available to the courts in Scotland and what are the restrictions on their use?

Sheriff Matthews: The Scottish Executive statistical bulletin CJ/2002/9 lists at pages 52 to 53 the measures that were available to the Scottish courts in 2001. They include probation, community service, restriction of liberty orders, drug testing and treatment orders and supervised attendance orders. Probation may be combined with a variety of special conditions, including rehabilitation courses, offending behaviour courses and addiction courses. Courts often defer sentence to allow an offender to take part in a particular project or to participate in a particular programme.

The adult reparation and mediation schemes that Safeguarding Communities Reducing Offending runs are limited to three areas at present. Offenders are referred to that facility as a diversion from prosecution. There is no power at present for courts to refer cases to those schemes.

In general, sheriffs welcome any credible and viable extension of the sentencing options that are available to them. Such an extension might help them to avoid the conclusion that there is no other disposal but a custodial sentence.

The committee will appreciate that the use of all penalties is governed by a vast number of statutory decisions and relevant decisions of the High Court. Practical restrictions on the use of community penalties include whether they are available in certain areas and whether the necessary staff are in place to run and monitor the order adequately.

A community penalty must also be considered to be relevant to the particular offence, the victim's position and the offender's circumstances before it can be considered to be appropriate. An offender might be suitable for a programme, but the circumstances of his case might be such that no sentence other than imprisonment is appropriate.

Donald Gorrie: Would it be helpful if the schemes that are available as a diversion from prosecution, which SACRO and others run, were also available to sheriffs as penalties?

Sheriff Lockhart: That would obviously involve a change in the law. As I understand it, SACRO has a scheme that involves mediation and reparation. I think that it runs in three areas at the moment. Sue Matheson of SACRO has addressed us on the scheme, but you will appreciate that we have no input at all at the moment, because the diversion comes from the procurator fiscal, not sheriffs.

We have no experience of how the scheme might work in practice. The theory of the scheme appears to have substantial merit for a case that is assessed as suitable for it.

It would appear to be worth investigating whether what we have heard in the presentations that Sue Matheson has given should be available to sheriffs as an alternative sentence. If it became an alternative sentence, sheriffs would consider it on its merits and decide whether it was appropriate for them to impose it instead of other non-custodial options. It is too early to say whether we would impose such a sentence, but if it were available, sheriffs would consider closely whether it was viable and credible in a given case.

Donald Gorrie: We should pursue that issue.

15:15

The Convener: You say that these sentences are available in three areas. What are those areas?

Sheriff Lockhart: One is Edinburgh. I am not sure about the other two, but they are also in the east. The scheme has not yet filtered through to the west.

Sheriff Scott: I heard Mr Gorrie say that he would welcome thought being given to reparation and mediation schemes. I have learned that very few such schemes are in operation in the places where you would expect them to exist—England, Australia, Canada, Scotland and so on. Research into their effectiveness and how they work, abstracts of which I have seen, is patchy, because the schemes are all different. As we have explained, ours is a diversion-from-prosecution scheme, usually for young people who have committed fairly minor offences that would not involve custody. It is a bright idea and we hear much about it, but there is no model for it. We would have to invent a model and wait to see whether it worked.

The Convener: I have just returned from Maryland with a member of the bench, Nigel Morrison. I will submit a paper to the committee on the mediation scheme that has been implemented there. Our successor committee might want to consider that model.

Sheriff Scott: Nigel Morrison told me about your visit.

The Convener: I do not want to go into it now, although it had its moments. I ought to expand on that, but thankfully we do not have time.

We appear to be talking about geographical areas, rather than areas in which mediation might be applied. I misunderstood what was meant by the term "areas".

Sheriff Lockhart: It would be worth pursuing the issue.

Donald Gorrie: In your written evidence, you say that you are concerned that over-enthusiastic use of pilot schemes might lead to postcode justice. Will you expand on those concerns?

Sheriff Matthews: Pilot schemes involve certain non-custodial sentences being available in one part of the country and not in others. Offenders who are not in the pilot scheme area are disadvantaged, as a possible alternative to custody is not available to them. If they lived in an area in which a pilot was taking place, they might escape custody. The imbalance in the disposals that are available in different parts of the country is a cause for concern.

An additional cause for concern would be the introduction of a youth court pilot under which support for the judiciary was available not to all sheriffs, or even to all sheriffs in the pilot court, but only to youth court sheriffs. It is likely that a significant shift in resources to youth court social workers and other staff would result in a diminution of resources for those dealing with non-youth court cases.

Donald Gorrie: I understand that you would like the situation to be fair throughout the country, but we might want to promote more imaginative ways of dealing with a problem. Often it is a good idea to try those out in a particular area before imposing them on the whole of Scotland. How do we make progress without arousing the concern that you have expressed about the erratic effect of having different disposals in different areas?

Sheriff Scott: That is a difficult dilemma. On the one hand, if you carry out a trial, you have the opportunity to find out whether something works or is a complete non-starter. On the other hand, if you do that with criminal justice, you must ask whether you are being fair to people. In medical terms, for example, would it be fair if one group of patients could get access to a wonder drug but another group could not? In my enthusiasm for drug treatment and testing orders, I asked for an assessment in one man's case and got a letter back saying, "You haven't noticed, you silly sheriff, that this chap lives in Dalkeith and is therefore not eligible for a drug treatment and testing order." That is what I mean when I talk about postcode justice. Because we are bred to fairness, there is something that sticks in our gullet about that sort of thing.

Policy makers must decide whether the suck-it-and-see approach is the correct approach to criminal justice or whether they should determine whether a system is a good way of dealing with offenders before introducing it. That is the way it used to be, but now there is a tendency to use human guinea pigs.

Sheriff Matthews: I would go slightly further than that. I agree with what the president said, but I am concerned about what happens once a pilot scheme has run its course. If a decision is made to roll out the disposal, it should be rolled out throughout the country. As we mentioned, that is not happening with drug treatment and testing orders. That leads to unfairness.

Sheriff Lockhart: We appreciate the necessity of testing a disposal, but, if it is decided to have it throughout the country, it must be available everywhere in the country or there will be clear unfairness.

The Convener: An interesting seam has obviously been opened up.

Michael Matheson: It has been suggested to the committee in previous evidence that we should have a minimum number of alternatives to custody available for each sheriffdom. For example, a visiting sheriff could open up a directory and see that five alternatives are available in that area although only three were available in the sheriffdom that he was in previously. Should we have a minimum threshold to which disposals could be added following a pilot project?

Sheriff Scott: That becomes a political question, because one would have to say who would provide the minimum level. For instance, in a small court, everything is different from in a large court in Edinburgh. One difference is that there is no intensive probation scheme. Another is that there is no domestic violence scheme. Because of the volume of people in a city or a large area, it is possible to have specialised provision, but that is not possible in smaller areas. That is not postcode justice; it is a simple fact of life. In small areas, you must have a generic criminal justice social worker who, with the help of others, can attempt to mount equivalent provision. Because of the way in which our population is distributed, it might not be helpful to declare that there has to be a minimum level of provision or a series of tiers.

Sheriff Lockhart: The issue is more to do with the quality of the disposals than with their number. Rightly, community service is available throughout Scotland, as is probation, but the availability of drug testing and treatment orders is patchy. That is unfair, as it is clearly an excellent disposal that is much used. To not make drug treatment and testing orders available in Peterhead would be unfair to people in Peterhead, regardless of whether a threshold number of alternative disposals had been met.

Sheriff Matthews: Minimum standards are superficially attractive, but I cannot get rid of the notion—perhaps it is the cynic in me speaking—that some people would make the minimum their target. Once they reached the minimum, they

might be satisfied with that and not strive to keep improving. Without a minimum, they would get on with the job anyway.

Lord James Douglas-Hamilton: What has been said shows that inconsistent provision is a major problem. Where is the greatest need or problem? Sheriff Lockhart mentioned drug testing and treatment orders, but he said that community service orders and probation orders are available throughout Scotland. I assume and hope that, by now, supervised attendance orders are also available throughout Scotland. Apart from drug testing and treatment orders, what other forms of provision are greatly lacking?

Sheriff Scott: The problem will be exacerbated if and when—it rather looks like when—a so-called youth court is established. The youth court will be designed to deal with persistent young offenders—"persistent" means that they have committed a handful of offences, so it will include quite a lot of people. On the one hand, it will include a significant proportion of the people who appear before the court, because young men tend to commit crimes that bring them before court. They are a difficult lot of people to deal with, because we do not want to be over-punitive with people who are at a formative stage of their lives, when time can be a healer and they might grow out of criminal activity after a while. On the other hand, as members know, the public are concerned about the damage that such people cause. We must balance all those factors.

If a youth court is established as a local suck-it-and-see experiment and pulls in a lot of resources that might otherwise be devoted to the system generally, and if special, wonderful programmes are made available to quite a lot of people in one area, that will be the next anomalous and unsatisfactory situation to crop up.

Sheriff Lockhart: That example is good. I echo what Sheriff Scott said. If a youth court is established in Hamilton, as it probably will be, Hamilton will have a vast input of resources. All the programmes will be available, so youths there will be seriously advantaged compared with youths in other areas, to whom such a facility will not be available. That is our concern.

Sheriff Matthews: I would like resources for bail supervision schemes to be increased. Such schemes are an alternative to custody not post-conviction but pre-conviction. Some people on remand could benefit from bail supervision.

Lord James Douglas-Hamilton: Resources are at the root of the problem.

Sheriff Matthews: Yes.

Paul Martin: Is there a flip-side? If the Executive rolled out a programme without a pilot study, and it went terribly wrong, the Executive could be accused of not having tested the programme. The Executive might be expected to say that it had been asked not to undertake a pilot because of legitimate concerns about postcode provision, but how would we deal with testing? The Executive is always being accused—sometimes rightly—of rolling out what it perceives to be a great programme, with which several problems are later discovered to be the result of not testing the programme properly. How do we avoid that?

Sheriff Lockhart: We acknowledge that the balance is difficult.

Paul Martin: Are there issues about how we identify where pilot studies should be undertaken? For example, the youth court pilot is to be launched in Glasgow because of the high number of cases there.

Sheriff Scott: I will answer the second question because it is easier. Thought is given to where pilots should be held. I am involved in a steering group on victim statements, which are not yet on the statute book. If they are going to be on the statute book, they will have to be piloted. The question is, where?

Various criteria come into making that decision, but there are two main ones. One is that the area should provide a good test of whatever is to be trialled. The other is who else has undergone a trial. There is a sense of, "It's muggins's turn," so the pilots are spread around in that way, and I suppose that that is fair enough.

To answer your first point, of course there is a flip-side, which I acknowledged when I answered an earlier question. If innovative measures are not trialled and experiments are not done, we will not know whether measures are going to work. The answer to that is to make jolly sure that what is proposed is well thought out and will be a sure-fire success before it is introduced.

15:30

The Convener: You are being so helpful to us and the information is intriguing so, if the committee agrees, I would like to continue until 4 o'clock. We have many questions to get through and the subject is extremely interesting.

Michael Matheson: The witnesses' submission says:

"if alternatives are to be regarded as appropriate they must be 'credible'".

What constitutes a credible alternative to custody?

Sheriff Matthews: As we explained in the written evidence, the court must be confident that a community service order will commence, that a probationer will be supervised and that the

offender will attend the rehabilitation course or do whatever else is required of him or her. If alternatives are not adequately supervised, monitored and breached at the appropriate time, they will lose credibility. In addition, the nature of the alternative sentence must be such that it is capable of being seen by the victim and the public as an appropriate disposal in all the circumstances.

Michael Matheson: You appear to be saying that there is a need for the offender to be willing to address their offending behaviour through the alternative-to-custody programme that they are put on. The quality of the programme that they are put on is another issue.

When does it become obvious to members of the bench that a programme is not working effectively? How do we retain the credibility of alternatives to custody if we do not flag up early enough problems with the quality of the programmes? Is there a way for the bench to help us to identify that?

Sheriff Lockhart: I think that we might have answered that when we talked about when someone commits another offence and a social inquiry report is done while they are on a scheme. The report would say that the offender was not obtempering properly to what was required of him under the scheme.

Without having an overarching social work guru who goes round the various schemes while they are in operation, the only way we could get that information would be when further offences are committed and we get a report on the offender and what he is doing at the time. We would then get background information about his co-operation or otherwise with the scheme that he is on.

You have raised a good point about the idea of the scheme itself breaking down. An offender's non-co-operation with the scheme would come to our attention, but it would be difficult for us to get information that a scheme was not being properly administered.

Sheriff Scott: I can give an example. It is an historic example so members need not concern themselves about it.

When community service first came in, it was meant to be for fit, able-bodied people who could do it. Anyone with problems with drink, drugs or the like was not considered to be suitable for community service. That was lost sight of and is now discontinued, because a lot of people with problems can do community service.

Things reached a pass in our court when, for a while, we found that lots of community service orders were breaking down. We were told that the reasons for that were addiction to drugs or a chaotic lifestyle, so that people could not organise themselves. We were asked, "How could you expect him to do community service? Can you change it to probation or something else, but not prison?" We discussed the matter with the social workers and said, "If you are going to say that somebody is suitable for community service, it means that he is suitable, not that he would be suitable if he were not what he is." The problem was addressed, and it is now historical.

Sheriff Lockhart: A recently welcomed appointment is that of part-time Sheriff Finlayson, who, as members are probably aware, has just been appointed as head of the accreditation panel. As I understand it, the panel will assess offender programmes. Sheriff Finlayson was in Glasgow recently, and was enthusiastic about the role that he and his committee will have in assessing whether offender programmes are suitable to be put into practice. Whether the panel will monitor schemes once they are up and running is a matter for consideration.

That would address Mr Matheson's point about people going to the various centres in which the schemes operate to ascertain what is going on. They would go not only when the schemes started, but would visit from time to time to see that all is well. I think that that was Mr Matheson's point—that we should see whether the schemes are being run properly throughout, which is important.

Michael Matheson: Yes. I confess that I was unaware that such a committee had been established.

Would sheriffs find it helpful if they received the reports of that committee after it has evaluated some of the alternatives to custody within their sheriffdom?

Sheriff Scott: It has only just started.

Michael Matheson: I am conscious of that, but after the committee has evaluated a particular programme in a sheriffdom, would it be helpful if sheriffs in that area received copies of the report?

Sheriff Scott: I am sure that that will happen.

Sheriff Matthews: We may touch on the point about getting information and evaluations later.

The Convener: Can we do that? I think that we are taken aback; I was unaware of the committee, too.

Michael Matheson: The submission says:

"There is inevitably some judicial scepticism about an alternative to imprisonment."

Will the witnesses explain the reasons for that?

Sheriff Matthews: The words must be taken in the context in which they were used in our written

evidence. We noted that scepticism about imposing a further alternative to imprisonment is often

"based on the previous history of the offender. If all available alternatives have been tried and the offender has not co-operated and has continued to offend, then a prison sentence becomes inevitable."

All the circumstances, including the offender's record and the nature of previous disposals accorded to a particular individual, must be taken into account.

Michael Matheson: I am aware that it is difficult not to generalise, but I get the impression that after someone has been given one chance, by being put on an alternative-to-custody programme, often they will be sent to prison if they find themselves back in court. Whether that is a true reflection of what happens is another matter. How many alternatives to custody will someone go through before a sheriff decides that he has to impose imprisonment?

Sheriff Matthews: That depends on the case. In my experience, sometimes people have pages of previous convictions with no custodial disposals. They are given various attempts at probation, community service, deferred sentences and fines and all sorts of things before they ultimately receive a prison sentence. In some cases, people are eventually given a prison sentence and someone then decides, "Let's have another go." Prison sentences are not the end of it; often people will go to jail, but when it is discovered that that has not stopped the offending, another attempt will be made at non-custodial alternatives. It is not true to say that once someone goes to jail, they will always go to jail.

Michael Matheson: Would it be helpful if a mandatory prison sentence were applied after there have been two or three shots at alternatives to custody? That has been suggested

Sheriff Lockhart: No. A couple of weeks ago I had to deal with a situation in which an offender disputed that he was in breach of a probation order. The supervising officer gave evidence for about two hours and was harangued at great length. I took the view that the offender had not co-operated at all with the lady. The breach was so flagrant that it was appropriate that he be sent to prison, because he had absolute disrespect for the order of the court and for the lady who was supervising him. In that case, a custodial sentence was immediately appropriate.

In other cases, one might make several different attempts at non-custodial options, but in the case I mentioned, the individual seemed to be so lacking in any respect for the court or for the supervising officer that it was appropriate that he be visited with a custodial sentence. As in that case, the specific circumstances must be the yardstick by which we operate.

Sheriff Matthews: Historically, there might not have been programmes available to address an offender's problem. If he had been given probation in 1992, for example, that might not have worked, but there may now be a suitable programme. We must take that into account as well.

Lord James Douglas-Hamilton: Earlier, I heard a considerable amount of evidence to the effect that short-term prison sentences do not have an adequate rehabilitative dimension to them. In that light, and depending on the circumstances of the case, is there a tendency among sheriffs and judges to concentrate much more either on alternatives to custody or on longer sentences?

Sheriff Scott: With respect, we cannot talk about tendencies among judges, but we consider which factors are to be taken into account. Rehabilitation is one factor; there are many others. We take into account what the chap—if it is a chap—has done. Quite often, it is something pretty unpleasant that has done a lot of damage. We must also take into account what the person at the immediate receiving end of the damage thought about it, not to mention what the offender's friends would think if we were to give the dear little chap a fourth community-based penalty. We must also consider the wider public, and their confidence in the system. Every case is judged on its merits.

I have read the evidence of people who have been here before. I would not like you to get the impression from them or from anyone else that we spend our time sending those who might be turned around by social workers off to jail, telling them that they have had enough chances. Frankly, that is not what happens.

The figures for all penalties in all of Scotland in 2001 put custody at 13.7 per cent and community service and probation at 10.9 per cent. When you consider that the higher, jury courts will order more imprisonment than they will community-based disposals, the figures are eeksie-peeksie. That is what our daily experience tells us. We make delicate judgments about whether, in the public interest, we can give this chap another chance.

Lord James Douglas-Hamilton: Do you have any views or evidence to provide on the numbers of offenders sent to prison as a result of fine default?

The Convener: I suspect that it is not appropriate to ask for views on persons sent to prison for fine default.

I am conscious of the time, and I want to stop at 4 pm, so let us move on.

Paul Martin: There seems to have been little research into the effectiveness of alternatives to custody. How do sheriffs assess the effectiveness of such disposals?

Sheriff Matthews: What is meant by effectiveness? A sentence could be regarded as effective if the offender never offended again; if it prevented the offender from reoffending for a period, which is the principal benefit of incarceration; or, in the case of very persistent offenders, if it resulted in no further offences for a quite short period, slowing their rate of reoffending.

We are not persuaded that one type of sentence has been shown to be more effective than others. It is often said that people who are sent to prison are most likely to reoffend, but we are not sure that sufficient regard is had to the fact that, because prison is a last resort, generally the worst and most persistent offenders are imprisoned. [*Interruption.*]

The Convener: A pager or phone is going off—naughty, naughty. I ask the person concerned to deal with it.

15:45

Sheriff Matthews: The Scottish Executive statistical bulletin CJ/2001/1 deals with reconviction of offenders who have been discharged from custody—[*Interruption.*]

The Convener: I can tell who the offender is, because the colour of her face now matches the colour of her jacket.

Sheriff Matthews: The bulletin to which I referred deals with reconviction of offenders who have been discharged from custody or were given non-custodial sentences in 1995. The key points are set out on page 3 of the bulletin, which states:

"Those discharged from a custodial sentence (67%) or given probation (63%) were on average more likely to be re-convicted within two years than those given community service (50%) or a monetary penalty (42%)".

The obvious conclusion is that most of our sentences are not particularly effective.

Even if such figures suggest that particular types of sentence are more effective than others, they do not help us to decide which sentences are likely or unlikely to be effective in individual cases. Every case is different and must be decided on its own merits.

As we have explained, a sheriff does not impose a custodial sentence unless there is no other appropriate way of disposing of a case. The search is for an appropriate way of dealing with the case. If a credible, appropriate non-custodial sentence is available, it will be used, but regard must be had to all the circumstances in a case. The sheriff will impose a custodial sentence if the interests of the public or victim, or the gravity and nature of the crime, override any ideas that a sheriff may have about the likely effectiveness of such a sentence as compared with that of a non-custodial alternative. Often, if the offender has consistently or repeatedly failed to co-operate with non-custodial disposals, there is no credible alternative to a custodial disposal.

Paul Martin: A number of organisations that provide programmes for alternatives to custody advised the committee of the success of their programmes. However, they were unable to provide details based on having tracked individuals who had participated in the programmes. Does it concern sheriffs that the organisations that advocate the programmes cannot prove their efficacy, because the individuals who take part in the programmes are not tracked?

Sheriff Scott: We have all noticed that, when schemes are evaluated, many of the data are subjective. That has been the case for the drugs court and will be the case for the youth court. Evaluations consist of asking the people who have been managing the scheme whether they think that it has worked well. Offenders are also asked what they think about it and are given an opportunity to say that they like it a lot.

Paul Martin: Yes, but there are two different strands to the issue.

Sheriff Scott: I have said what I propose to say on the matter.

Sheriff Lockhart: It is difficult to gauge effectiveness in the sense of preventing people from reoffending. Sheriffs send people to prison only if no credible and appropriate alternative is available. The people who are sent to prison are likely to commit other crimes when they are released, because they have already reached the end of the line. There is no question of reforming an offender's behaviour during a short custodial sentence. Such a sentence is seen as a punishment for failure to co-operate with the other facilities that are available. The reconviction figures of those who receive a custodial sentence are bound to be bad. We are talking about people who are in no mood to co-operate with society.

Paul Martin: Is it a concern that we do not track offenders to ascertain from reoffending rates how effective a scheme has been? No organisation could provide a snapshot of where its clients were now.

Sheriff Scott: I think that Apex Scotland is building a database of all the people that it has had through its books, with the objective of tracking them over a protracted period. Mr Martin should ask Apex about that.

Sheriff Matthews: That is a fair point. The drugs court has been mentioned. We started a drugs court just over a year and three months ago and the interim evaluations are positive. However, the people who appear before the drugs court get intensive support. I do not know what such people will be like in three or four years' time, when they will no longer be under the court's auspices. It is important that we get a full picture to ascertain whether the drugs court is a credible disposal.

The Convener: I disagree with your point that people who have been in custody reoffend when they come out because they are the bad guys anyway.

Sheriff Lockhart: The point is that we would not send them to prison if we thought that there was another way of dealing with them.

The Convener: Having seen that short-term sentences give little or no opportunity for any kind of rehabilitation, the committee is examining whether the situation might be turned around if, instead of just saying that reoffenders are bad anyway, something else were done. Is that prospect worth examining?

Sheriff Lockhart: Certainly. However, you must understand that when we impose a sentence, we imagine that we have in the court a victim—

The Convener: The sentence must be seen as worth while by the community at large.

Sheriff Lockhart: We must be seen to strike that balance.

The Convener: I was just not content with what you said about reoffenders being bad guys anyway.

Sheriff Lockhart: That point arises purely from the statistics. The people whom we send to prison are those who have committed many offences.

The Convener: We understand that, but the point is about trying to break that cycle by doing something else.

Paul Martin: I think that we have covered the issue raised by the next question, but we need to ask it for the record. Have you any suggestions about how information on the effectiveness of alternative disposals could be improved? If national data on the effectiveness of such disposals were available, would they be widely used by sheriffs?

Sheriff Matthews: Further study of reconviction rates might yield new knowledge. Work, including the piloting of new forms of non-custodial alternatives, continues in several areas. The reports of such studies tend to be enthusiastic, perhaps because the people who take part in setting up new programmes are able and enthusiastic. It would be useful if programmes were revisited after the novelty had worn off.

Nevertheless, it is good that innovation seems to breed enthusiasm. If people think that a scheme does some good, it becomes credible—for the time being at least—and is more likely to recommend itself to sheriffs. If established schemes were more carefully monitored and positively evaluated, that might help to maintain their credibility.

However, monitoring is resource intensive. Because each case must be decided on its own merits, reference to an overall national picture might be of little assistance in deciding on an appropriate disposal in a particular circumstance. As we said, the definition of "effectiveness", which would underlie any statistics, is, in any event, problematic.

Paul Martin: On a different point, is there a case for having a database that would provide details of organisations? If I were going to a restaurant this evening, for example, I could find out the best restaurants in Edinburgh for a variety of cuisines. Should a guide be available to sheriffs about the effectiveness of different kinds of alternatives-to-custody programmes? Such a guide could indicate not only that a programme was available, but that, for example, a Glasgow drug addict could be sent to a specific, tailored programme.

Sheriff Scott: We agree that such a guide would be helpful. I referred earlier to my attempt, when I was the chairman of the SASD, to create a similar register to the one that the justice department was trying to set up. I used to call it—with no analogy in mind—the "Good Schemes Guide". We want such a guide, if it is possible.

The Convener: That is what we are all looking for. In the short term, I think that the aim should be to assist everybody out there by providing a good schemes guide that is available in electronic form and that is accredited so far as that is possible. That might be the first of our targets.

Lord James Douglas-Hamilton: How are community penalties allocated?

Sheriff Matthews: Sheriffs are not opposed to the application of such penalties, provided that various conditions are met. For example, a social inquiry report might need to state that the offender is suitable. Sheriffs may impose whatever measure they think most appropriate, but their choice of penalty is affected by such factors as how well a particular scheme is perceived to be working. One example of that relates to the difficulties that have been mentioned about community service orders.

The distribution, as opposed to the allocation, of penalties may be affected by the credibility of a scheme, which may in turn be associated with financial difficulties. For example, we have heard that some of the difficulties are caused by a

shortage of social workers in some areas. We have been told that local authorities' financial allocations take into account estimates of how many orders of a certain type will be made. If a court in a particular locality made less use of one type of order, the local authority might receive less money from central Government and staff numbers might go down, which could exacerbate the difficulties. That is what we have been told. However, we cannot comment further on the allocation of penalties in that sense.

Lord James Douglas-Hamilton: What is the average length of time for dealing with a case of that nature? If a social inquiry report has to be ordered, does that mean that the case needs to be continued for many weeks, or can it be dealt with speedily?

Sheriff Matthews: Do you mean from the time of conviction?

Lord James Douglas-Hamilton: Yes.

Sheriff Matthews: The statute says that the report should be made within four weeks, but there can be up to eight weeks between the time of ordering the report and the receipt of the report. Sometimes the process can go on for longer than that, but I have found that it normally takes about four weeks to get the report.

Lord James Douglas-Hamilton: Is the weight of work on social workers and the courts so great that it causes a problem?

Sheriff Matthews: The time taken for such reports used to be three weeks—sometimes it took only two weeks—so it is increasing.

Lord James Douglas-Hamilton: So it is not too bad.

Sheriff Matthews: It is not too bad, but I think that the time taken has increased by about 30 per cent over the past year or so.

Sheriff Lockhart: Four weeks is quite a long time for someone to await their fate. It has always been a matter of concern to me that it can take three and a half weeks before somebody comes to see the person, who will have been released on bail while the case continues. The question is about the resources that are available. It must be in the interests of justice that a person should be dealt with quickly. If the case has to be continued because a report is not available, that is a further matter of concern.

Lord James Douglas-Hamilton: As was said earlier, the issue comes back to the resources that are available for social work departments. We need to ensure that there is a sufficiency of social workers to produce the reports timeously.

Sheriff Matthews: The report will often throw up another avenue of investigation, such that a particular type of disposal might be indicated. For example, the report might recommend the access project in Glasgow for people with mental health difficulties, the partnership project for youths or the Clyde Quay project for sex offenders. If the report recommends something like that, we might need to continue with the case further until we get more details about the disposal.

Lord James Douglas-Hamilton: What obstacles hinder the process of applying the right sanctions to the right offenders?

Sheriff Matthews: The question assumes that it is known what the right sanctions are. As we have tried to explain, we try to identify the most appropriate way of dealing with a case, but it is often difficult to reconcile the various factors that must be taken into account. No one can say with certainty that custody or an alternative to custody is the right sentence in any particular case; each case must be considered on its merits.

Lord James Douglas-Hamilton: I think that that is the fundamental point: each case must be considered on its merits.

This question may already have been answered. Are breaches of disposals particularly difficult to deal with, or does that depend on the circumstances of each case?

Sheriff Matthews: I have found that the biggest difficulty in dealing with breaches is the length of time that it takes for the breach to come to my notice. For example, I have had cases—it has happened more than once—in which breaches of probation have been intimated to me after the probation order has run out. Unless one strikes while the iron is hot, as it were, one can find that, for one reason or another, circumstances have changed considerably and the offender is not the same as he was when he breached the sanction—he may be worse or he may be better. Apart from that, we just deal with each case on its merits.

Lord James Douglas-Hamilton: Again, there is presumably a strong case for ensuring that there are sufficient resources to allow the cases to be brought before the sheriff with all possible speed.

The Convener: By whom should sheriffs be told about such things and why are sheriffs not told timeously?

Sheriff Matthews: We should be told by the supervising officer, who is a social worker.

The Convener: Why does that not happen? Is it simply pressure of work?

Sheriff Matthews: I think so.

Sheriff Lockhart: Another full report is involved.

The Convener: We come back to the pressure of work, because another full report is required for a breach.

Sheriff Lockhart: Please believe us that we did not discuss things with the social workers before we came here. Sheriffs are generally sympathetic to the plight of social workers, because the social workers must not only complete the reports but supervise everything. When there is a breach, the social worker must also make a further detailed report and come and give evidence, which is a time-consuming job. We feel that social workers are under-resourced.

The Convener: The committee would agree with that. We are well aware of the issue.

I thank our witnesses very much for coming. Their evidence has been very interesting—more interesting than we suspected when we started out, when we thought that we would be constrained. We have been given a lot to think about—as, I suspect, has the Scottish Executive.

We will suspend the meeting for five minutes for coffee. We will then work on the draft of our legacy document for our successor committee.

16:00

Meeting suspended until 16:10 and thereafter continued in private until 16:40.

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