JUSTICE 1 COMMITTEE

Wednesday 19 November 2003
(*Morning*)

Session 2

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JUSTICE 1 COMMITTEE
13th Meeting 2003, Session 2

CONVENER

*Ms Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Mr Stewart Maxwell (West of Scotland) (SNP)

COMMITTEE MEMBERS

*Bill Butler (Glasgow Anniesland) (Lab)
*Marlyn Glen (North East Scotland) (Lab)
*Michael Matheson (Central Scotland) (SNP)
*Margaret Mitchell (Central Scotland) (Con)
*Margaret Smith (Edinburgh West) (LD)

*attended

COMMITTEE SUBSTITUTES

Roseanna Cunningham (Perth) (SNP)
Helen Eadie (Dunfermline East) (Lab)
Miss Annabel Goldie (West of Scotland) (Con)
Mike Pringle (Edinburgh South) (LD)

THE FOLLOWING ALSO ATTENDED:

Hugh Henry (Deputy Minister for Justice)

THE FOLLOWING GAVE EVIDENCE:

Megan Casserly (Parole Board for Scotland)
Professor Neil Hutton (University of Strathclyde)
Alan Quinn (Scottish Executive Justice Department)

CLERK TO THE COMMITTEE

Alison Walker

SENIOR ASSISTANT CLERK

Claire Menzies Smith

ASSISTANT CLERK

Douglas Thornton

LOCATION

Committee Room 3

Scottish Parliament

Justice 1 Committee

Wednesday 19 November 2003

(*Morning*)

[THE CONVENER *opened the meeting at 10:07*]

Sentencing and Early Release from Prison

The Convener (Ms Pauline McNeill): Good morning, everyone, and welcome to the 13th meeting of the Justice 1 Committee in the second session. I ask members to do the usual and switch off their mobile phones and anything else that might interrupt the meeting. There are no apologies, as everyone is here.

Item 1 concerns sentencing and early release from prison. I remind members that the purpose of this agenda item is to gather information to assist us in considering agenda item 4, which is to decide whether we wish to proceed with an inquiry into sentencing.

I welcome Professor Neil Hutton from the University of Strathclyde's law school and thank him for coming along. I also congratulate him on his appointment to the sentencing commission.

Professor Neil Hutton (University of Strathclyde): Thank you very much.

The Convener: We have a number of questions and I do not know whether you want to make an introductory statement.

Professor Hutton: Not particularly. I am happy to take questions from the committee.

Margaret Mitchell (Central Scotland) (Con): In a recent presentation to the committee, you highlighted the lack of confidence in sentencing. Has that lack of confidence contributed to a more punitive culture in sentencing?

Professor Hutton: The evidence on a punitive culture is difficult, because such a culture seems to have crossed all western jurisdictions. It is beginning to be felt in western European jurisdictions that, up till now, have maintained low prison populations—those prison populations are starting to rise. There seems to be a more punitive mood throughout western jurisdictions. That is not necessarily caused by a lack of confidence in criminal justice and judges, but it is part of the phenomenon.

Margaret Mitchell: How could the lack of confidence be addressed? Does automatic early release contribute to the lack of confidence?

Professor Hutton: One thing that the criminal justice system could do is provide people with more information. Evidence suggests that people have little knowledge of the system and of what happens in prisons or courts. Nevertheless, they have strongly held views and base what they say not on fact but on emotions and opinion.

There is a great deal that the criminal justice system could do to tell people what goes on and to give people more positive messages about what happens. The newspapers tend to focus on the more negative things—that is probably their job—but the criminal justice system could do a lot more to tell people what works and what is effective and good about the court system.

Margaret Mitchell: So is it a matter of more information or would the ending of automatic early release help in that respect?

Professor Hutton: I think that you are talking about truth in sentencing.

Margaret Mitchell: Yes, I am talking about honesty in sentencing.

Professor Hutton: The short answer, which I know is not helpful, is that I am not sure whether the ending of early release would make a difference. People do not know the reasons for early release and what happens after someone has been released early. People have a knee-jerk reaction; they say that, if someone was sentenced to two years and spends only one year in prison, there must be something wrong with the system. The fact is that almost all jurisdictions have an early-release provision. There are good reasons for early release, but it would be helpful if those reasons were explained to people more carefully

Margaret Mitchell: Would it help if early release was earned through good behaviour and rehabilitation programmes as opposed to being granted automatically?

Professor Hutton: I do not know of any evidence on that, but what you say sounds plausible. If prisoners were able to take positive steps to earn early release, that could be one way of presenting the system more positively to the public. You might be right about that, but I do not have any evidence on the issue.

Michael Matheson (Central Scotland) (SNP): My question concerns public confidence, too. You mentioned that, in western Europe, we seem to be becoming more punitive about locking people up. What external factors have led to that change? If that approach is being taken across western Europe, surely a number of external factors are coming into play to lead us down the route of

becoming more punitive about the length of time that people spend in jail. Will we ever get to the bottom of addressing the problem in Scotland without knowing what those factors are? Rather than tinkering with the present system, should we not go right back, look at the factors at play and address them? Surely we should do that before we change anything in the present system.

Professor Hutton: I am sure that the committee has heard the evidence from other small jurisdictions, such as Finland. Over a period of 30 years, those jurisdictions were extremely successful at developing policies that actively reduced their prison populations. I understand that the prison population is starting to creep up again, but it is doing so from a level that is about half our rate of imprisonment.

Even although we live in a world in which people are becoming more anxious and feeling less secure in general, small jurisdictions still have the capacity to do something. People are anxious about terrorist bombings, for example, or the movement of an industry from one country to another that leaves people jobless. There is some evidence that people focus those sorts of general anxiety on crime. People talk about the need to do something about crime because terrorism or the movement of money across nations is not something that we can do much about. It may not be possible to do much about people's general anxieties, but that does not mean to say that we cannot do something about crime—something that will make people feel more secure.

The Convener: If we wanted to study a jurisdiction to find out which country has effective sentencing, which jurisdiction would you suggest? Would you suggest Finland?

10:15

Professor Hutton: Effective sentencing in Finland and Sweden means something a little different from what we might think of as effective sentencing. Their jurisdictions do not expect that criminal justice systems and punishment in particular can solve society's social problems. Finland and Sweden have relatively modest expectations of the crime reduction potential of punishment, for example. They have community programmes, but they tend not to evaluate them thoroughly, as they do not expect them to have a marked effect on reducing offending behaviour.

The issue seems to be cultural. Finland and Sweden have fairly extensive social welfare programmes and they approach crime from a broad social, preventive point of view. They regard the criminal justice system as something that punishes, marks society's disapproval and perhaps offers people the opportunity to change their lives and stop offending, but that does not make that system the cornerstone of their approach. Some people might argue that such an approach is an effective approach to criminal justice, although it is not quite effective sentencing, to use the words that you used.

The Convener: If consistency in sentencing could be achieved, would that lead to greater public confidence in the criminal justice system?

Professor Hutton: One complaint that members of the public have about sentencing is that, in their view, it is inconsistent and all over the place. I think that that complaint is largely based on newspaper reports of sentences that appear to be out of line, at least from the information that is given in the newspapers. The public have a perception that sentencers are inconsistent. I hope that any steps that can be taken to encourage sentencers to pay more attention to consistency and make more efforts to be consistent will have some effect on improving public confidence.

Members probably know that the High Court of Justiciary has a sentencing information system, in whose production I was involved. The system seems to have a great potential to carry a message to the public that High Court judges are trying to be consistent with what they have previously done and are trying to share information about sentencing by all judges so that they can try to be consistent within that pattern. Modern technology is being used, which shows judges to be in touch and up to date. The public tend to think of judges as being out of date and old fashioned. If the benefits of the system were trumpeted so that they were more widely known, that might improve public confidence. Consistency is an important issue.

The Convener: Have you considered what your input might be to the sentencing commission, of which you will be a member? More specifically, should the commission focus on effective sentencing rather than on issues to do with bail or remand, which I understand are the two key areas that the commission will consider to start off with?

Professor Hutton: The commission has a broad remit. It will consider bail and remand, parole and early release, fines, consistency and effectiveness. I understand that we will deal with those five areas in turn and that bail and remand will be the first area that we will consider.

The agenda seems to be very large for two years. Any one area in itself would be enough. Most sentencing commissions that have been established in other jurisdictions have started off from the big picture, considered what the aims of punishment and the system should be and then thought about how those aims might be realised and how more consistency in sentencing could be

achieved, for example. I am not sure that the commission will do that.

You asked about my role. I will certainly try to encourage the commission to consider the big picture. I would particularly like it to think about how to achieve more consistency in sentencing.

The other issue about which I am particularly concerned and which was reflected in last week's debate in the Parliament on alternatives to custody is short prison sentences. There seems to be an emerging consensus from political leaders as well as practitioners in the criminal justice system that we make excessive use of short prison sentences. The Executive has said that it will introduce supervised attendance orders instead of custody for people who do not pay their fines and the sentencing commission will consider remand.

Prisoners on remand and fine defaulters form two large parts of the short-term prison population, but we do not know much about the rest of that population. I am interested in getting the commission to examine that. Who is getting sent to prison to serve short sentences and for what kind of cases are short sentences being imposed? If we had data on that, that might encourage a more open public debate about the issue and we might even be able to persuade the judiciary to get involved.

I would like the judiciary to be more involved in the debate about sentencing in Scotland. I know that that is a difficult issue, given the independence of the judiciary, but in other jurisdictions it is possible to engage the judges in more public debate. I really hope that we can find a mechanism for that and that the sentencing commission will enable it to happen.

The Convener: That was helpful. In your view, are bail and remand strictly part of the sentencing regime?

Professor Hutton: I would not have thought so. The issue was not the first thing that came to mind when someone said that there was going to be a sentencing commission, although judges—and the police—make decisions about bail and remand. However, the issue is important, because our remand population is high—something like 50 per cent of prisoners in Barlinnie are on remand. The issue is difficult and complex, but it is well worth investigating.

Margaret Smith (Edinburgh West) (LD): You said that sentencing commissions in other jurisdictions started with the big picture. What other jurisdictions have had sentencing commissions and where do you think that they have been used most successfully?

Professor Hutton: Many states in the United States have had sentencing commissions. They are established often as permanent bodies and their job is usually to draw up and administer sentencing guidelines—not a phrase that we are used to using in Scotland. In the mid-1980s, Canada set up a sentencing commission to review sentencing, which was more like a committee of inquiry. It produced what I thought was a helpful document. Although no legislation resulted from the inquiry, the document is regarded widely as a useful review of sentencing.

The Halliday report, "Making Punishments Work: Review of the Sentencing Framework for England and Wales", which was produced a couple of years ago, was a comprehensive review, some of whose recommendations have been incorporated into the Criminal Justice Bill. I am not recommending the Criminal Justice Bill, because I have strong reservations about the way in which England and Wales are going about their sentencing, but the Halliday document is useful in providing a big picture of all aspects of the aims and purposes of punishment. I am not sure whether Scotland needs to produce such a review from scratch. We could probably borrow from work in other jurisdictions and from Halliday, from which we could learn a lot.

Mr Stewart Maxwell (West of Scotland) (SNP): I am glad that you mentioned the situation in England and Wales, because I was going to ask you about the difference between what is happening with the sentencing commission in Scotland, with the justice community's view of guidelines, and the establishment of a sentencing guidelines council in England. Some of the comments that we have heard suggest that England is going down a slightly more prescriptive road. Will you expand on that and give us your view on the differences between the two jurisdictions?

Professor Hutton: As you know, England and Wales have always had guideline judgments, which are issued by the Court of Appeal; the magistrates courts have their own guidelines. The Court of Appeal in England and Wales has been very active in issuing guideline judgments, which tend to be for the more serious offences at the top end of the scale.

In recent years, the Court of Appeal has been assisted in doing that by the Sentencing Advisory Panel, which is a body made up of judges and experts. The panel has a budget, research officers and an executive. It is well resourced and can produce impressive supporting evidence to help the Court of Appeal in developing guideline judgments. The panel will advise the sentencing guidelines council. This time last year, there was a rather controversial judgment on burglary, for example.

The judgments are very detailed. They consider the impact of previous convictions and how those should affect the sentence, they consider data on the prevalence of burglary and they consider past sentencing practice. They collect a lot of information so that the court is well informed when it makes its guideline judgment. That is a useful approach to take. England and Wales have always had that tradition of having guidelines.

In Scotland, as far as I am aware, there is only one guideline judgment—on the crime of plagium—which was passed by Lord Hope when he was Lord President a number of years ago. The appeal court, despite having the power to pass guideline judgments, has never done so. Scotland has no tradition of guidance, or guidelines, for sentencing—certainly nothing that is done in public.

My view, which is fairly well known, is that it is time that we reviewed that. I would like judges to do that themselves. The evidence from around the world suggests that sentencing reform is always most effective when judges are very much involved in the reform process. If reforms are imposed from outside on unwilling judges, it is much more difficult to get the system to work effectively. I would like judges to be closely involved in any kind of guidance for sentencing—that is something that we should be considering.

Mr Maxwell: I am interested to hear your view that it would be good to go down the road of issuing guidance, but—this may lead back to the consistency arguments that we discussed—I am concerned that the freedom, if you like, that judges have to judge is lost if we effectively provide a grid that says that so much of this and so much of that equals this sentence. The room for flexibility and manoeuvre would be lost. I am sure that any judge would say that every case is different. Will you expand on that, because I have concerns about heading down that road?

Professor Hutton: I am no great supporter of numerical guidelines either. I have deliberately used the word "guidance" rather than "guidelines" to try to make that distinction. Some numerical guideline systems leave judges with very broad discretion because, if you like, the boxes are very broad—within the two levels of penalty prescribed in the box, there is quite a lot of room for variation. Other systems are much narrower.

The approach in England and Wales is a kind of narrative guidance given to judges. The guidance says that the going rate for such an offence is X years and gives examples of the kinds of things that would make the offence less serious and the things that would make it more serious. It suggests the number of years that a judge should consider adding on. It leaves discretion entirely with judges; it is just an attempt to give a more explicit statement of the boundaries within which discretion should be pursued. Such a narrative approach towards defining consistency is much more likely to meet the support of judges, as it allows them to take into account the facts of each individual case, some of which can be very difficult or special.

Bill Butler (Glasgow Anniesland) (Lab): In response to a question from the convener, you said that the sentencing information system has great potential to promote consistency in sentencing. Is it working now to make sentencing more consistent? Do judges use it and, if so, do they use it sufficiently?

10:30

Professor Hutton: The system was implemented last year in the High Court, but unfortunately no information is available about whether judges use it and find it helpful. It is probably too early for us to be able to say whether it has improved consistency in sentencing. Given that about 1,000 cases pass through the court every year, we would have to wait for a few years before evaluating the system.

Bill Butler: What is your impression of how the system is working?

Professor Hutton: I do not have an impression, because I no longer have access to the system. Data are not being produced; the judges run the system.

Bill Butler: Hence your earlier answer that the system has great potential.

Professor Hutton: Yes, I think that it does.

Bill Butler: The Scottish Executive recently said that it would not rule out extending the sentencing information system into sheriff courts. That would obviously require a great deal of planning and consultation. Could the system function effectively in the sheriff courts?

Professor Hutton: There is significant potential for a sentencing information system in the sheriff courts. More research and consultation would be needed to determine exactly what form the system would take. We would not simply transfer the existing system into the sheriff courts, which are very different from the High Court in terms of the numbers and types of cases that they deal with. Most High Court sentences are custodial, whereas the sheriff courts use a wider range of penalties. Careful thought would have to be given to how the system might display community and prison sentences. However, none of those issues would be impossible or tremendously costly to resolve.

The system could be tailored to meet the needs of sheriff courts. That would depend on

consultation with sheriffs to establish what they would find helpful and on the involvement of sheriffs in the system's design. For example, the data that are available from the Scottish Criminal Record Office could quite easily be transferred to a sentencing information system. Those data do not contain enough detail to be tremendously helpful, but if sheriffs were to add guidance, so that the SIS showed both the patterns of sentencing and sheriffs' guidance about the going rates for particular types of offence, the system might be very useful.

Such an approach would demonstrate to the public that sheriffs are taking consistency seriously, which is very important. Currently, when sheriffs are the subject of public criticism for passing maverick sentences, they cannot respond, but the introduction of a sentencing information system would enable them to do so.

Bill Butler: In your view, sheriffs would be central to any system that was developed for the sheriff courts. Were judges involved in the development of the system for the High Court?

Professor Hutton: Yes. The main reason why the system was finally implemented and has been successful was that it had judicial support from the start. A team of judges worked intensively with researchers, especially at the beginning of the project. Attempts to develop sentencing information systems in Canada have failed, mainly because of a lack of judicial involvement and commitment. We know of only one other such system, which operates in New South Wales.

Bill Butler: Is the system in New South Wales working?

Professor Hutton: Care is taken not to present detailed evaluations of the system, but people are very positive about it. The sentencing statistics database—which is what we have developed in Scotland—is the central part of the system, but a lot of other pieces of information are attached to it, such as reported cases, appeal judgments, legislation and other useful resources for judges. The number of log-ins to the system shows that there are impressive rates of usage, but we do not know what bit of the system judges are consulting. It might be that the statistics part is not consulted as frequently as others. However, when judges become experienced in and confident about sentencing after a number of years, they probably know the going rate and need to refer to the system only from time to time instead of every day. The information system is helpful for new judges.

Bill Butler: How long has that system been in operation in New South Wales? Did it inform the construction of the SIS in Scotland?

Professor Hutton: In about 1991, when he was Lord Justice Clerk, Lord Ross saw the New South Wales system in operation, by which time it had been operating for two or three years. He came back to Scotland and persuaded the Scottish Office to fund research into the feasibility of setting up such a system. Things developed from that point.

Mr Maxwell: My point brings us back to guidance and deadlines and relates to the discussion on the SIS that we have just had and the previous question that I asked you. Do you feel that the SIS contains enough detail for judges to use it as effectively and as properly as it was originally intended? I do not know what detail the system goes into, but a system that simply consists of a list saying that one case got four years and another got five years does not seem very effective or useful, while a system that is jam-packed with background data will be overloaded and equally unusable. How useful have judges found the system? I understand that the question is a difficult one.

Professor Hutton: I do not know how useful judges find the system, because they will not tell me.

When 13 or 14 judges used the system during its initial implementation phase, we asked them how useful it was and whether they found it helpful. We received positive results from those judges. Although that information is now a few years old, it suggested that they found the system useful for seeing patterns of sentencing. Moreover, when they were trying an unusual case, they could find out whether there had been a similar case and what happened. Because the system contains appeal court data, judges could also find out what appeal court judgments had been made in an area that they were about to sentence in.

The system also provides an opportunity for judges to write a short explanation of their sentence, although that feature was introduced latterly and has not really been evaluated. Judges felt that such a feature is helpful because it provides the sort of picture of an individual case that judges are so keen on against the background of the data. For example, judges could explain why a particular sentence appeared to be lenient or could say why they gave only four instead of six years in certain circumstances. As a result, such a feature would allow judges to have an electronic conversation about sentencing.

For all those reasons, I feel that the system helps judges to pursue consistency. Your first point was very well made. On the one hand, a system could contain such general data that it would not be very useful; on the other, it could contain such detailed information that it would not

be very useful either. The aim of the system was to strike a balance. Obviously, I think that we did a pretty good job, but that is for other people to judge. Of course, as far as pursuing consistency is concerned, the onus is on judges to want to do that and to take that matter seriously. It is their responsibility.

Michael Matheson: Much of the discussion has centred on inconsistency in sentencing. Apart from what we read in the tabloids, has any credible research been carried out into sentencing in Scotland that demonstrates that we have a clear problem in that respect?

Professor Hutton: There are two sources of information. First, the Executive publishes annual statistics on patterns of sentencing in the courts in its costs and sentencing profiles series. However, those data are of modest use, because they do not have controls for the seriousness of the case load in each court. For example, it does not help us much to know that an average fine is £123 in Banff and £172 in Dundee if we do not know whether the case load in each area is broadly comparable. However, within those limitations, the statistics demonstrate quite considerable variations of sentencing.

The only other research that I know about is a small study that a colleague and I did approximately 10 years ago, which examined the patterns of custodial sentencing of 10 sheriffs. It showed that two of the 10 sheriffs were more severe sentencers than their colleagues, who were broadly in line with one another for all offences. There was a broad element of consistency in the sentencing, but two people were a bit out of line. That coincided with anecdotal information from the local bar about who were the tough guys in town.

I know that that is a problem in some jurisdictions. People who work in the courts tell anecdotes about sheriff shopping and people not going in front of a particular sheriff because he is seen as being more serious. However, we do not have any data other than that small research project that was done in one jurisdiction several years ago.

Michael Matheson: I wonder whether we should have that kind of data before we rush ahead and start changing things. Perhaps the sentencing commission could consider that in some detail. Given that England has much more in the way of guidance and guidelines for sentencers, has any research been done there that suggests that they are more consistent?

Professor Hutton: The short answer is no. As far as I am aware, there has been no systematic research into whether judges follow the guidelines passed by the Court of Appeal.

Marlyn Glen (North East Scotland) (Lab): The previous Justice 1 Committee expressed concern about the rising number of women being sent to prison. There seem to be variations in the sentences given to men and women. Will you outline how that could be addressed?

Professor Hutton: A relatively small number of women are sent to prison in Scotland; we are talking about fewer than 200. That is far too many, but it is still a relatively small number so it would be quite easy to collect fairly detailed data about the patterns of sentencing for women offenders. That would be helpful when working out what to do about the problem.

I understand that a considerable proportion of the women in Cornton Vale are there for fine default and that seems to be easily avoidable. I know that the Executive has recently said that supervised attendance orders will be used, which will remove custody as an alternative for fine default. That might have a significant impact on the women's prison population.

I also understand that the number of dangerous women in Scotland is tiny, so we do not need one prison to hold the number of women who represent a danger to the public. The women in Cornton Vale are there for a whole range of other reasons. Perhaps the provision of more imaginative community-based alternatives will help. The time-out centre in Glasgow is an excellent idea, which I hope will be used more widely throughout Scotland and not just in Glasgow.

Marlyn Glen: It is good to hear that, especially because Cornton Vale is crowded and there are women in other prisons as well. That is something that can be addressed.

Professor Hutton: With some strong political leadership, we can deal with that problem, although it has been some years since the report "Women Offenders—A Safer Way" was published.

Mr Maxwell: Your comment about the Executive's pilot projects on the mandatory use of supervised attendance orders seemed to suggest that the orders would be very effective in addressing the issue of the number of fine defaulters who are in custody. Will you expand on that?

Professor Hutton: As I understand it, if people repeatedly do not pay fines, despite means inquiry reports, reviews of their payment schedules and being given further opportunities to pay, they end up in prison. There might be people who do not want to or will not pay a fine even if they can afford to and who are happy to take the alternative. There are also probably a lot of people who cannot pay the fine or who find it difficult to do so. Having a non-custodial and non-financial penalty

that could be imposed on people offers a great opportunity to reduce the rate of imprisonment of people who do not pay their fines.

I am afraid that I do not have to hand the figures on fine default; however, most people pay their fines. Defaulters constitute a relatively small number. The issue is how we manage fine defaulting, and we could probably learn from private sector debt management how to manage the non-payment of fines rather than regard it as an issue purely of enforcement. I believe that there has to be an ultimate sanction for people who will not pay the fine and will not observe the orders of the court, but we could do much more than we are doing at present to put off the moment when custody is inevitable.

10:45

Mr Maxwell: I am glad that you have raised that point. I am interested in the idea of people who are just not going to pay a fine. You mentioned a particular group that would rather take the short, sharp custody option than pay the fine, even if they could afford to pay. What makes you or anybody else think that those people would comply with the supervised attendance orders rather than just ignore those as well and do what they wanted to do in the first place, which is spend one or two nights in prison?

Professor Hutton: As I said, if people are recalcitrant and will not observe the order of the court, prison is the only option. However, I am suggesting that we could be more patient than we are at the moment and process people for longer—in other words, postpone the day when they have to be sent to prison—in the hope that they will comply with supervised attendance orders, pay back their fine or do something else in the meantime. We should do that rather than enforce a prison sentence immediately. It is a matter of timing.

Mr Maxwell: Do you think that unit fines have a role to play in dealing with fine defaulters? You mentioned people who could not afford to pay. If fines were based on income, the financial amount would vary enormously, but it would have the same impact on the individual. Do you think that people would be more likely to pay in such circumstances?

Professor Hutton: Unit fines are a good idea. They have operated effectively in many continental jurisdictions for many years. The system was introduced in England and Wales in 1991, but because it was badly implemented and badly thought out, with badly written legislation, it was ditched. Some middle-class person got fined £800 for throwing a crisp packet out of the window and that killed it. That was due to bad drafting.

It seems logical that people should be fined in proportion to their income. It is equal impact that we are looking for in the punishment, and I am in favour of unit fines. I see no reason why we should not be able to design a unit fine system that would, I hope, make a difference to fine defaulting. It is unavoidable that there will still be people who do not pay their fines. Nonetheless, a unit fine system would go some way towards reducing that.

Margaret Mitchell: When fine defaulters wilfully refuse to pay although they have the means to do so, would you favour civil diligence and arresting their wages, for example, or taking the fine out of their benefits, rather than having them serve a community-based alternative?

Professor Hutton: There is some scope to look in that direction. The difficulty is in designing a scheme that distinguishes between people who are being wilful and people who simply cannot afford to pay. I would be reluctant for us to have a scheme that takes benefits away. Benefits are designed to be a minimal level of money for people to live on, and taking money away from benefit is likely to be ineffective. It might even cause criminality if benefits were taken away from people who would have to find somewhere else to get the money from.

Margaret Mitchell: If people's means and outgoings are assessed for supervised attendance orders, as they have been in the pilot scheme in Hamilton, it becomes clear which people do not have the means to pay—the search is then for an alternative measure to address their offending behaviour, perhaps in responding to their alcohol problems or money management difficulties—and which people have the means to pay. If that were put in place, as a belt-and-braces approach, would civil diligence and recovery of money from benefits be a way forward in order to keep the places in the community, which are at a premium, for the people who will get more benefit from them as they are willing to participate in them?

Professor Hutton: There might be scope for that, but designing such a system would be a difficult exercise. I still think that it is difficult to distinguish between people who refuse wilfully to pay and people who simply find it difficult to do so.

Margaret Mitchell: I commend the pilot scheme in Hamilton.

The Convener: I turn to the question of custody only for those who are a danger to the public, which was suggested in the previous Justice 1 Committee's report on alternatives to custody and by agencies such as Safeguarding Communities-Reducing Offending. I struggle with the idea that we should lock up only those who are a danger to the public, because I am not sure what we mean by that. In the debate last week on alternatives to

custody, I mentioned crimes of dishonesty. A person might not be a danger to the public, but they might not be holding back in that they have been convicted for housebreaking on 30 or 35 occasions. Removing such offenders from the community has a direct impact, even though they might not be a danger to the public. Do you share that view, and if so, why?

Professor Hutton: The issue of recidivist offenders, which is what people are concerned about, is difficult. It is a question of degree. When has someone committed house burglary so many times that we feel that there is no alternative but to send them to prison? How many chances do they get and what other avenues can we explore before we send them to prison? At the moment there is no real debate about that, because judges make that decision and we do not really know how many chances people are supposed to get or how often they can commit offences without going to prison. Many of those offenders will be stealing because they have a serious drugs problem. We can try to address the problem through drugs courts and drug treatment and testing orders. There is great scope for developing those options, because if we can address the reason why people are stealing, we can address and perhaps reduce their offending behaviour, such as housebreaking.

My view more generally is that prison is not effective; it is expensive and it should be used for protecting the public. Even people who are an extreme nuisance for committing property offences persistently can be managed and punished in the community more effectively and more cheaply than they can by sending them to prison. Prison is not the only form of punishment: community sanctions deprive people of liberty and impose restrictions on them. The problem is that we think that prison is a punishment and everything else is not. Community sanctions are a punishment and they are more effective and cheaper. If I thought that sending someone to prison would stop them reoffending, I would be quite happy to do so, but it does not stop them.

The Convener: You said that prison is ineffective. If a group of people are caught housebreaking repeatedly in an area, locking them up removes them so they cannot commit crime. Surely that is effective. I do not disagree with what you said about community sentences. If there is a consensus about community sentencing it could be used more. The big job is building confidence among the judiciary in community sentencing. I do not agree that prison is completely ineffective in the scenario that I outlined.

Professor Hutton: I cannot dispute that locking up a persistent housebreaker will give a small section of the community respite for the time that that person is locked up. It is clear that imprisoning that person will be effective, in that it will incapacitate them, but imprisonment will have no impact at all on burglary rates generally, because only a tiny proportion of the people who commit such offences end up in court and only a small proportion of them go to prison. It is misleading to suggest to the public that by imprisoning burglars you are reducing the amount of burglary in the community, because you are doing that only by a very tiny amount, and at considerable cost.

The Convener: Yes, I can see that. I am only trying to address the question whether we should hold people in custody only if they are a danger to the public.

Margaret Smith: In the last week or two, we have heard from the chief inspector of prisons, and last week we had a debate in the chamber on alternatives to custody, during which we heard about the large number of people in our prisons. What would be the most effective way of changing sentencing practices in Scotland in order to reduce prisoner numbers?

Professor Hutton: That is not an easy question.

Margaret Smith: Take a couple of minutes.

Professor Hutton: The easiest way to address the question is by distinguishing between people who get short prison sentences and people who get long prison sentences. We can then talk about the difference between the average daily population—who is in prison on any given day?—and the total number of receptions.

With long-term prisoners, the question is rather more difficult. I do not have the statistics in front of me, but on any given day most of the people in prison are serving longer-term sentences. How that is dealt with is a matter for the judiciary. If society thinks that judges are passing sentences that are too long on offenders who have committed at least moderately to very serious offences, that is an issue for Parliament. It is either for the judges to decide that their sentences are too long, or for Parliament to decide that they are too long and to legislate to introduce guidelines to reduce the length of sentences. Those are both difficult problems.

We have already touched on short sentences of six months or less. Of all custodial sentences passed by the courts, 82 per cent are short sentences, so they account for a lot of sentences. Of the receptions into prison in any year, 60 per cent are for people serving sentences of six months or less. Although dealing with such sentences might not affect the average daily prison population hugely, it would significantly reduce the number of receptions into prison, which would free up the resources of the Scottish Prison Service and allow more time to be spent working

constructively with people who are in prison for long-term sentences.

How do we reduce the number of short-term prisoners? Parliament could be draconian and pass legislation saying that the summary courts do not have the power to sentence to custody. That would stop the summary courts sending people to prison, but it might result in different practices by the Procurator Fiscal Service in deciding where they send people and how they mark courts.

I talked about the remand population, and we have talked about fine defaulters, which brings us back to the question that I asked earlier: who is getting short-term sentences? We need to know more about that population. When we know who is getting short sentences, we can address the issue. That will require the co-operation of the sheriffs.

The Convener: I am afraid that we have run out of time. I know that members want to ask many more questions, but we have to find time for our second set of witnesses. If the committee were to examine sentencing, would you advise us to focus on any particular areas?

Professor Hutton: The issue of short prison sentences needs attention, so it would be helpful if that were considered.

Sentencing is such a large issue that it is hard for me to give you a direct steer about what you should focus on. I still think that there needs to be more public airing of the debate about what prison and punishment are for. It can be helpful to examine smaller issues that relate to different aspects of the system and such work provides useful information and data but, if we do not consider the bigger picture about what the system is trying to achieve, it is difficult to set targets in those more discrete areas. The committee might like to talk about the bigger issues, too.

11:00

The Convener: On behalf of the committee, I thank you for a very interesting session, which I am sure will help us when we consider item 4 on the agenda.

Professor Hutton: Thank you for the invitation.

The Convener: I welcome our second panel of witnesses. Mrs Megan Casserly is the vice-chair and Hugh Boyle is the secretary of the Parole Board for Scotland, and Alan Quinn is head of the parole and life sentence review division in the Scottish Executive Justice Department. Thank you all for coming—I know that Hugh Boyle has given evidence to the committee before. We have until about 11.30 for questions.

Margaret Smith: Good morning. Some members are still quite new to this committee and have no legal background. Although I found it useful to read the Parole Board for Scotland's annual report, I was aware that I probably needed a general explanation of the system. If I had just been released on parole, what would happen to me? What conditions might be attached to my licence? What support would I receive on the ground? Who are the personnel who would support me—or not, as the case may be?

One thing that did not appear to come up in the discussions about outcomes and risk assessment was the impact on the outcome of the level of support that was available for the person released on licence.

Megan Casserly (Parole Board for Scotland): I do not have a legal background either, so I sympathise with you. Are you asking me to describe what happens when an individual is released on parole?

Margaret Smith: Yes.

Megan Casserly: The individual is released on parole with standard licence conditions—I understand that the last time witnesses from the Parole Board for Scotland gave evidence to the committee they did not bring a copy of the licence, but we have done so today. There are standard licence conditions and there might well be additional licence conditions, which pertain to the individual and depend on the risk that that person is thought to pose. The individual is released to the local authority to be supervised; we hope that, increasingly, throughcare arrangements will ensure that an individual has met their supervising officer before being released.

After that, there are national standards and guidance for supervising officers in the community. It always annoys me when I see written in a report that someone will be supervised in line with national standards. We really want chapter and verse on what the supervisors are going to do. If someone is released on parole, the chances are that we will have had a report and will know exactly what is going to happen. As soon as the person is released, he will be obliged to report to the supervising officer. Thereafter, he will have to follow the supervising officer's directions.

The Parole Board may say that the person must have additional licence conditions—typically, drug counselling—and in such cases the supervising officer must ensure that the conditions are kept to. The person would have to attend drug counselling as directed by his supervising officer. Depending on the details of the case, there might be different recommendations. There may have been a bit of a problem with drugs—and the problem may still be there—but there is no evidence, from mandatory drug tests, of drugs having been consumed. In

such a case, we might recommend an assessment for drug counselling.

If we want to put extra conditions on a licence, we are very precise. The three conditions that we add most often are approved accommodation; drug or alcohol counselling, or both, as directed; and attendance at an agency that has experience in searching for jobs for offenders. Thereafter, we rely a lot on the relationship between the person and the supervising officer.

Margaret Smith: Do local authorities have the resources to make you feel secure that support is there for people who need it? Do you have anxieties about that?

Megan Casserly: Yes, I have anxieties, because situations vary. We know that our anxieties have been justified when people are recalled to custody.

Margaret Smith: Can you give us examples of that?

Megan Casserly: When somebody has been recalled and the panel of the Parole Board is considering whether that person should stay in prison, the information that we get from the supervising officer can vary. Sometimes it is apparent that people have been supported very closely, but sometimes that has not been possible for various reasons. We all understand the competing pressures on supervising officers. However, as a member of the board, I know that support has sometimes not been as close as I would have hoped. In other cases, supervising officers can give clear evidence that they have been supportive.

Margaret Smith: Does that affect outcomes?

Megan Casserly: What do you mean by outcomes?

Margaret Smith: Whether someone reoffends.

Megan Casserly: Yes, it could affect that. We often say that we think that risk can be managed in the community, so there is an expectation of some risk. The level of support will often affect that. Sometimes it does not: sometimes a person receives very good support but then fails—for want of a better word. We look into the kind of supervision that is offered. Sometimes it is not as immediate or close as we would have hoped.

Margaret Smith: Would a single correctional agency assist the process?

Megan Casserly: You are asking an ex-social worker from a local authority about a correctional agency. I liked the fact that, at recent meeting of the Scottish Association for the Study of Delinquency, Ms Jamieson did not use the word "correctional".

I can see the advantages of having overarching principles, because the failures in the system happen where things do not join up. Overarching principles would assist with that. On the other hand, I believe that people are members of a community first and foremost. That is where the intervention has to take place, so I am not yet fully persuaded of the need for a single agency.

Michael Matheson: You mentioned that, when someone is released on licence, they have a supervising officer.

Megan Casserly: Yes—in Scotland, the supervising officer is a social worker.

Michael Matheson: What is their role when someone is released?

Megan Casserly: The supervising officer has a statutory obligation to supervise that person in the community; they must remember that that person is on licence—serving their sentence in the community. They have a responsibility to inform the Parole Board, via the Scottish ministers, of any failures by the person on licence to co-operate or to conform to the conditions of their licence. The supervising officer is supposed to support that person and monitor their behaviour; they are not supposed to collude with that person. If they know that the person on licence is breaking the law or not conforming to the conditions of their licence, they are obliged to report back to say so. That is the supervising officer's job.

Michael Matheson: If I heard correctly what you said earlier, you stated that, when someone was released on parole, you hoped that they would have met their supervising officer.

Megan Casserly: That is right.

Michael Matheson: I was interested that you said "hope". Is there a problem there? Before someone is released on parole and goes into the community, should they have met and been interviewed by their supervising officer? Are there cases in which that does not happen?

Megan Casserly: Before the Parole Board makes its decision, it gets reports from a community-based social worker and a prison-based social worker. The best practice is for the home-based social worker—or a member of their team—to come to the prison and meet the prisoner before the prisoner is released and before they write their report to the board with their recommendations. That is the local authorities' ultimate objective, but it does not always happen, for resource reasons. It strikes me that best practice would be for the person who is to be released and the supervising officer to meet before the release, which would mean that the supervising officer would be in a better position to supervise. Even if that does not happen, we nearly

always have dialogue between the prison-based social worker and the home-based social worker before the person is released.

Michael Matheson: That best practice is not very widely spread.

Megan Casserly: It varies. One can understand that it would be difficult for a social worker on a far-flung island who has a lot of other work to do to go to Shotts. On the other hand, there is a higher expectation that someone who is a member of a throughcare team in Glasgow would be able to go to Barlinnie or Shotts; indeed, that happens. That is the kind of thing that I am talking about.

Mr Maxwell: We have been discussing what happens when people are released on parole. I want to take you back a stage, to the point at which the Parole Board is considering a prisoner for release on parole. What range of information is available to the board when it considers people for release? Is more importance placed on any one of those bits of information? I am thinking about the public's idea that good behaviour reduces a sentence.

Megan Casserly: Do you mean good behaviour in prison?

Mr Maxwell: Yes.

Megan Casserly: We have a dossier on each prisoner. If we are talking about the straightforward case of someone who is being considered for parole for the first time, rather than the case of a lifer, I would receive his or her dossier, along with many others, to read in advance. The information in that dossier is comprehensive. In fact, some of it is repetitious but, given that the prison has to ask various people for their reports simultaneously, I do not mind that—I would rather have an element of repetition than not have the information.

We would have factual information from prison staff, which is a bit like a data set, and opinions from prison staff who know the prisoner, so we are likely to get different views on how the prisoner performs at work and how he is in the hall, for example. The prisoner can sign to say that he agrees to our getting some medical information, so we would have a report from the medical officer.

We would have a trial judge's report on the offence, how the judge arrived at the sentence and what he took into account—perhaps he made another couple of recommendations. We would have a home background report, as I explained, and a report that had been compiled by the social worker in the establishment. The prison social work report would include a risk assessment that was based on risk factors. There is a matrix of risk factors and we would be advised on the factors that it is thought would reduce the risk if the prisoner were to be released. Social workers would probably recommend whether there should be parole.

11:15

We might receive reports from various groups that the prisoner has attended—we would expect to see such reports. If the prisoner has been on a cognitive skills course, an anger management course, a drugs awareness course or an alcohol course, we would want a report on its outcome. The person who is being considered for parole would have the opportunity to be interviewed by a board member; most prisoners take that opportunity and there would be a report of the interview.

Of course, the prisoner sees all the reports before we do. In addition, there would be the prisoner's representations. He can write directly to the board and say whatever he wants to say about his likely release. There might be a psychologist's report or a psychiatrist's report, although we do not always get them. It is not standard practice to receive such reports, but we might have them to consider. We receive a range of information.

You asked whether more attention would be paid to some reports than to others. A person's good behaviour in prison is not always a good indicator of what their behaviour will be once they are released. Frequently, a prisoner might be what used to be called a model prisoner, particularly if they are used to being in prison as a result of their many previous convictions. Therefore, good behaviour in itself would not be given a particularly high priority.

Each case is considered individually. People argue about consistency, but it is hard for them to understand that there will be detailed examination of a dossier on a case that might superficially appear to be similar to another case, although it will not be similar to it in detail. Board members will consider all the factors holistically, but we pay attention to how well prepared a prisoner is for release, what work they have done in prison and whether there has been any demonstrable change in the person since they went into prison. We would pay more attention to reports on such matters, but all reports are considered.

Mr Maxwell: You mentioned consistency. There is a question about the consistency of reports from different prison officers—some of which will be opinion based—different regimes and different prisons. How did you tackle the possibility of inconsistency across the prison system?

Megan Casserly: A work party officer might say that a prisoner is good at his job, that he turns up, does his work and is no problem, and the person in the hall might say that the prisoner does not

often approach staff and is quite dour. Those two facets could be found in any person, and such reports would not be particularly troublesome to me. My job is try to make an assessment of risk for the person who is being released, so I am more interested in factors that indicate the kind of risk that they are likely to pose. Obviously, previous convictions in relation to the index offence and whether that offence is analogous to them play a part. What the prisoner has done about drugs and whether he has found or lost them in prison would interest me. I would be interested in such factors.

Mr Maxwell: You prefaced what you said by excluding lifers.

Megan Casserly: I did so only from the point of view of answering the previous question. We consider lifers differently, via a tribunal.

Mr Maxwell: Is the process the same or different for young people who are sentenced under section 208 of the Criminal Procedure (Scotland) Act 1995?

Megan Casserly: They come to the board in the same way. Those with shorter sentences come because we have been asked to give a view on whether additional licence conditions should be imposed. Others come because we are being asked whether they should be released. The process and the principle are exactly the same—we still consider the risk.

Mr Maxwell: But the reasons for coming before the board are slightly different.

Megan Casserly: Yes.

Margaret Mitchell: From what you have said, it is not possible to highlight the most significant factors that influence your decisions on whether the risk of reoffending is acceptable or unacceptable. The decisions are based on the particular circumstances of the case and the reports on the individual who is in front of you. Is that correct?

Megan Casserly: Yes.

Margaret Mitchell: I want to explore that issue a bit further in the light of the Minister for Justice's proposal to tag offenders who are deemed to be at risk of reoffending when they are released. What is your view of that proposal?

Megan Casserly: The prospect that we could order tagging has been raised with us in principle, but I have not examined it in great detail—I tend to consider proposals just before they are implemented because I do not have a great deal of time to do so on other occasions. However, I have given the matter some thought and it strikes me that board members might find tagging to be a useful alternative to recall.

We sometimes receive conflicting information when we have to decide whether to recall a person. A good example of that is somebody who has not been convicted of a further crime but who is facing charges and on whom we have received a police report. We might receive a conflicting report from the supervising officer, which says that the person is responding well to supervision. That is a difficult decision for the board. The extra dimension of tagging might be useful in some cases. Another example is that somebody who has been recalled might be re-released if tagging were an option. I would need to give the issue an awful lot more thought.

Margaret Mitchell: What worries me most is the apparent inconsistency in the fact that someone might be released even though they are deemed to be at a sufficiently high risk of reoffending to justify tagging them.

Megan Casserly: I take that point.

Margaret Smith: A recent report suggests that there is no real way in which we can work out risk. The issue is complex, but does the board consider that there are any categories of offender who consistently present as low risk? For example, the report claims that those who are convicted of drug-related crimes have a good success rate when they are out on licence. That surprises me, given the information that we have about the chaotic lifestyle of those who are involved with drugs and alcohol. Those who were on short sentences were also seen as low risk. Whom do you consider as low risk?

Megan Casserly: That information also surprised me when I read the report, because the situation does not feel that way to me. However, if that is the finding of the research, I accept that it is probably the case, although the report did not say what types of drugs were involved. We are always concerned about the results of what we do and, at our conference, we will examine some recall cases. Many ex-drug users who are released may well abide by the terms of their licence, but among those who are recalled, the return to drug misuse is prevalent. However, that might not reflect the overall picture.

We want to examine that finding again. I was as surprised by it as you were.

Margaret Smith: You said that there were three typical conditions that would be applied; the first two concerned accommodation and attendance for job search and the third was to do with drug and alcohol counselling. Do you feel that the necessary support services for drug and alcohol counselling are there specifically to assist those individuals?

Megan Casserly: Do I think that they are always available?

Margaret Smith: Are the services adequate, given that those are the typical conditions that you would want to take into account in putting people on licence? Are the drug and alcohol counselling facilities available to allow you to use those conditions?

Megan Casserly: Hugh Boyle may want to comment on that. The situation has improved. About three years ago, the Parole Board for Scotland wrote to drug action teams, because we found that we were applying those conditions and then released prisoners were saying, "Well, I applied for support, I was referred to the service and I was put on a waiting list." We get that information less frequently now. In fact, I cannot remember any recent instance of someone coming back and saying that they did not actually get the counselling for which they had been referred, so it seems that they are getting the services that they require.

Bill Butler: Could you outline for the committee how much input a prisoner has into the release process? Are there any specific factors that would play a prominent part in a prisoner opting out of the process? I notice from the most recent annual report that more prisoners opted out of consideration in 2002 than in 2001.

Megan Casserly: Proportionately more?

Bill Butler: No, numerically more. Fifty-eight as opposed to 43.

Megan Casserly: Prisoners make a decision when the parole papers are being referred to them on whether they want to be involved in the process. If they do not want to be involved, they have to sign a declarator. Sometimes they change their mind subsequently and are referred late. They have their dossier, they participate in the interviews for the parole process and, as I said, they have an interview with a member of the parole board.

Bill Butler: Are there any specific factors that would cause them to pull out of the process?

Alan Quinn (Scottish Executive Justice Department): The parole process can be quite stressful for certain prisoners. When they have sight of the material that the board will consider, they might not want to put themselves through that stressful situation, if they feel that they are unlikely, on the basis of those reports, to be successful in obtaining early release. Rather than go through that stressful situation, they will avoid it.

Bill Butler: Is that the major factor or the only one?

Alan Quinn: I would not say that it is the only factor, but it is a factor.

Megan Casserly: It is quite difficult to answer that question, because I know only those prisoners who participate in the process. We normally consider prisoners for non-parole licence conditions, so we would normally see a given prisoner anyway at a later stage in his sentence. The only information that is given at that stage is that the prisoner does not want to participate in the parole process and has not said why. I would be speculating if I were to answer your question.

Alan Quinn: It might be helpful to explain what Mrs Casserly means by non-parole licence. We use that term to refer to those people who are not released between the half and two-thirds stages of their sentence and who are automatically released on licence at the two-thirds stage. The board has the opportunity before they are released to look at additional licence conditions.

Bill Butler: Are the views of the victim or the victim's family taken into account when the Parole Board considers a prisoner for release on parole?

Megan Casserly: Not currently.

Alan Quinn: If a victim or a victim's family makes us aware that they wish to be involved, they will be involved.

Bill Butler: Should that be automatic? You say that it is not currently so.

11:30

Alan Quinn: If they express a desire to be involved, they will have that right. The relevant provisions in the Criminal Justice (Scotland) Act 2003 will come into effect next year. The difficulty with automatically involving victims or their families is that some might not want to be involved. It should therefore be their positive decision, rather than an assumption on anyone else's part, that they want to be involved, because the process can be quite intrusive if they do not want to know.

Michael Matheson: Will you advise us on the impact that the Convention Rights (Compliance) (Scotland) Act 2001 has had on the Parole Board's workings?

Megan Casserly: It has had a significant impact, particularly in relation to life licences. We all studied it hard and worked out exactly what we would be doing because of it. Its impact was pretty profound.

Michael Matheson: Was there an impact on the number of life prisoners who had been in prison for a longer period of time than their tariffs and were then eligible for parole?

Megan Casserly: Previously with life-licence prisoners, the board would make a recommendation to ministers; the recommendation would be taken into account but

not necessarily agreed with. Now, the board makes the decision about whether someone will be released. We see people as soon as their punishment part has expired. They come to a tribunal and the members of the tribunal—which has the judicial member at the head and two wing members—make a decision. As I said, the 2001 act has had a profound impact on our decisions.

Michael Matheson: Has it altered in any way the way in which you assess risk?

Megan Casserly: It has given us a sharper focus on how we assess risk. I cannot remember whether the test for a life-licence prisoner has to be serious harm or risk to life or limb.

Alan Quinn: It is risk to life or limb or of serious sexual offending.

Megan Casserly: That is a sharper focus than we had before.

Alan Quinn: I should add that that test derives from Strasbourg jurisprudence. It is not statutory, but case law has stipulated that that is the degree of risk that the prisoner must represent for him to continue to be confined.

Margaret Mitchell: Do you have any concern about the impact on public accountability of the removal by the European convention on human rights of the minister as the ultimate arbiter of whether parole should be granted, especially as the public have often rebelled against the prospect of a particular prisoner being released?

Megan Casserly: I am sorry; I did not catch your question—I caught the end, but a siren was going off in the background.

Margaret Mitchell: It was about the European convention on human rights removing the minister—the politician, who is elected by the people—as the ultimate arbiter of who gets released on parole, especially in the light of certain emotive cases in which the public would rebel against an individual's being granted parole. As a result of the ECHR, politicians are not involved, so that element of accountability has gone. Is that a matter of concern to you?

Megan Casserly: No. I have seen indications of public opinion influencing a minister's decision, although that was not entirely in keeping with the details of the case. I believe that the separation of functions is better, because we have a pure job to do on any case that is in front of us and such cases are therefore not subject to influence by any other factors.

It is right for ministers to make policy, but it is also right for them to be removed from dealing with individual cases because of the pressure that they are likely to be under from public opinion. Although public opinion should be respected, it does not take account of all the details and all the facts.

Margaret Mitchell: Does your assessment include a risk to the individual from the public reaction to their release, even though you might have deemed it right for them to be released?

Megan Casserly: Do you mean that the alternative is for someone to stay in prison for their own safety, because the public reaction would be so strong if they were released?

Margaret Mitchell: Yes.

Megan Casserly: I have never been to a tribunal at which someone has asked to stay in prison because of fears for their safety.

Margaret Mitchell: That goes back to the public's perception that some crimes are so hideous that life should mean life.

The Convener: This is perhaps a question for Alan Quinn, and it follows on from Bill Butler's line of questioning about the information that is available to victims. There are now additional requirements as a result of the Criminal Justice (Scotland) Act 2003. What impact is that having on information for victims?

Alan Quinn: The 2003 act's provisions have not commenced yet, but victims will be able to sign up to be notified about various matters that are related to a prisoner's management and release. The Parole Board will have obligations should a person want to know the outcome of its considerations. A victim or victim's family will have the right to know the board's decision on the particular conditions of a licence that impact on them.

Megan Casserly: I do not think that my answer to the question that Bill Butler asked was full enough. Victims sometimes write in with their points of view, and those views are always respected. However, where a victim has been identified, whether they write in or not, we would include additional licence conditions to prevent people from approaching them if appropriate. Such decisions are taken on the merits of the case, and that particularly applies in cases involving children.

The Convener: I have dealt with constituency cases in which I have been asked by the victim of a crime about someone's release. In such cases, I advise them to write to the Parole Board but, where conditions have not been applied, people are concerned that the offender might appear in their street or in proximity to them. I suspect that if victims become more aware that they can write to the Parole Board to say that they are aware that offenders are about to be released, they would do so more often. Have you considered that possibility?

Megan Casserly: I suppose that they might. When I said that we put additional conditions on licences, I did not mean that we do that routinely. There would be an assessment of the case. I can understand that someone would be unhappy if they wrote in and did not get the outcome that they wanted.

The Convener: I think that you misunderstood my point. I am suggesting that many people do not know that they can write to the Parole Board. The 2003 act gives victims the right to sign up to get information, and I suggest that when that right becomes more apparent to the public, more people will write in.

Megan Casserly: I am sure that the new legislation will result in that, but that is fine.

Alan Quinn: This is a sensitive area and it is sometimes difficult to get victims to focus on the issues that the Parole Board considers, which are to do with risk. The families of murder victims in particular consider that the murderer should never be released simply because of the impact that the crime has had on them. It is difficult to get those families to understand that there is a punishment part and when that is up, the only grounds for continued confinement are related to risk.

The Convener: My final question relates to the research report "Parole Board Decisions and Release Outcomes". I note from the 2002 annual report of the Parole Board for Scotland that you have been successful in making the right judgments in four out of five cases. The research concluded that

"the Parole Board for Scotland was consistently over-estimating the risk presented by parole candidates and that the parole rate could be substantially increased without increasing the proportion of prisoners who would be reconvicted of a serious offence."

I was a bit worried by that remark because although you have had a lot of success, with four out of five judgments being right, you still get the occasional decision wrong. However, the research says that that is okay and that you are overestimating the risk. What do you think of the research?

Megan Casserly: The English research also concluded that we were overcautious. It is a bit of a no-win situation: we are concerned about the people who we do not release and who successfully complete their licence—we wonder whether we could have made a different decision in those cases. As you point out, however, if only four out of five judgments are correct, there is room for improvement with the people who we release. We need to be vigilant and keep looking at the reasons for our failures. Other than that, I cannot comment.

The Convener: That is the end of our questions. I thank the three witnesses for giving valuable evidence. We will discuss later in the meeting what we might do if we were to conduct a sentencing inquiry that would cover issues that concern the Parole Board for Scotland.

Subordinate Legislation

Proceeds of Crime Act 2002 Amendment (Scotland) Order 2003 (Draft)

11:42

The Convener: I welcome the Deputy Minister for Justice, Hugh Henry. Under item 2, we will deal with a draft instrument under the affirmative procedure. I refer members to the note prepared by the clerk and invite the minister to speak to and move motion S2M-566.

The Deputy Minister for Justice (Hugh Henry): The draft order is proposed in exercise of powers conferred by section 142(6) of the Proceeds of Crime Act 2002, which I will refer to as POCA. Section 142(6) allows the Scottish ministers to amend schedule 4 of POCA, which applies to Scotland only. That is done through draft affirmative procedure.

Part 3 of POCA allows courts in Scotland to make confiscation orders against offenders who are convicted of an offence. Where the accused is deemed to have a criminal lifestyle, the court has the power in certain circumstances to assume that the accused's assets over the previous six years have been obtained from criminal activity and to calculate the confiscation order accordingly.

Schedule 4 lists the offences that are indicative of a criminal lifestyle. They include pimping, brothel keeping, drug trafficking, arms trafficking, money laundering and blackmail. The order before members today proposes the addition of the offence of trafficking in prostitution etc to the list of lifestyle offences in schedule 4.

The offence of trafficking in prostitution etc was created by section 22 of the Criminal Justice (Scotland) Act 2003 and came into force on 27 June 2003. The offence covers arranging or facilitating the travel of an individual to, from or within the United Kingdom for the purposes of sexual exploitation, namely prostitution or the making or production of obscene or indecent material.

Trafficking individuals for the purposes of prostitution or the making or producing of obscene or indecent material is an exploitative crime. We believe that it belongs in schedule 4 along with other offences through which individuals seek systematically to make money from criminal activity and the suffering of other people. Similar provisions are in force in the rest of the UK by virtue of the Nationality, Immigration and Asylum Act 2002.

The proposal to add the offence of trafficking in prostitution etc to the list of lifestyle offences is entirely sensible and consistent. It will allow the courts to confiscate profits from the criminal lifestyles connected to that despicable trade. I therefore ask the committee to recommend to the Parliament that it should approve the making of the order.

I move,

That the Justice 1 Committee recommends that the draft Proceeds of Crime Act 2002 Amendment (Scotland) Order 2003 be approved.

11:45

Margaret Smith: When we were working on the budget, we had some discussion about what was happening with the money that is confiscated under the Proceeds of Crime Act 2002. We found out that 50 per cent of the money came back to Scotland via the Treasury but we are still a bit unclear about what that money is being used for. Can you give us some hard examples of what it has been used for up to now? For example, would it be your intention to put back some of the money that comes from the proceeds of prostitution into work with those who suffer as a result of prostitution?

Hugh Henry: I am not sure that we would want to start ring fencing money that was recovered for the sole benefit of those who might have been affected by specific offences. We would not be able to anticipate how much money would be recovered as a result of the activities of those engaged in trafficking in prostitution. Further, at some point in the future, we might want to help in that regard and might therefore want to use money that had been recovered in relation to other crimes.

Currently, £250,000 is being provided to help to support addiction services for the Glasgow homeless. Clearly, that money is being used to work with a group of people whose lives are affected by criminal activity. We have also spent £180,000 to help to establish a new network of family support groups for the families of drug misusers. Often, the families are the forgotten victims of drugs. Some people make money from the drug trade and some individuals become victims of it, but families also suffer, sometimes because the drug user steals from them but also because of the emotional and physical consequences of having a drug user in the family.

We have been trying to support those family support groups, which do an excellent job. However, we are keeping the situation under review and will reflect on what future moneys should be used for.

Michael Matheson: Would it be possible for us to see how much money is brought in under the orders each year? It is important that the public be

made aware of the effectiveness of the legislation and one of the best ways in which to do that would be to show how much had been confiscated.

Hugh Henry: The Executive and the Crown Office will soon be able to give the committee details of money that is recovered. You might recall that we gave a commitment to publish details and make them available to the Parliament. However, the legislation has not yet been in operation for a full year—the cash seizure provisions commenced on 30 December 2002, the civil recovery provisions commenced on 24 February 2003 and the criminal lifestyle provisions commenced on 24 March 2003. Once we have been able to find out what has been happening over a period, we will report back to Parliament on a regular basis.

The Convener: The provision is welcome. When we discussed the Criminal Justice (Scotland) Bill, the connection between the new offence of trafficking in prostitution and proceeds of crime did not occur to me, but they are connected. We welcome the addition to the other offences that the minister outlined.

The question is, that motion S2M-566 be agreed to.

Motion agreed to.

That the Justice 1 Committee recommends that the draft Proceeds of Crime Act 2002 Amendment (Scotland) Order 2003 be approved.

Victim Statements (Prescribed Offences) (Scotland) Amendment Order 2003 (SSI 2003/519)

The Convener: Agenda item 3 is on a negative instrument and will not take long. Members will recall that we asked the Scottish Executive to add to the offences in the schedule to the Victim Statements (Prescribed Offences) (Scotland) Order 2003, which it has agreed to do. That shows that we are paying attention. Is the committee happy to note the order?

Members *indicated agreement*.

The Convener: In that case, we will break for tea and coffee. We will take agenda item 4 at about 12 o'clock.

11:50

Meeting suspended.

12:02

On resuming—

Sentencing

The Convener: Okay. We move on to item 4. I refer members to the note that the clerk has prepared, which sets out the background to the remit for the sentencing inquiry.

When we discussed whether we would take on a sentencing inquiry, I think that we agreed that we would need to be specific about the particular area of sentencing that we want to consider, otherwise the inquiry would be extremely broad. Following the evidence that we have heard this morning, do members have a particular aspect of sentencing into which they think it would be worth while conducting an inquiry?

If members feel that there is not enough evidence at this stage to warrant our embarking on a big inquiry into sentencing, we have the option of holding an inquiry into the resourcing and efficiency of the police, as we agreed at our meeting of 17 September. I remind members that we asked for research to be undertaken on the situation in other jurisdictions. It will be some time before we receive that and members will also have to think about timing.

As members know, the sentencing commission has been formed. We know that it is going to start with an examination of bail and remand issues, so members may decide to focus on what it is doing. We also thought that the debate on alternatives to custody that was held in the chamber last week would highlight the broad issues that have not been covered to date.

The range of possibilities is wide so I ask members to focus their minds on specific areas on which it would be worth while for us to spend time.

Margaret Smith: The issue of short sentences cropped up today, in last week's debate and in Her Majesty's chief inspector of prisons for Scotland's report. It does not appear to be in the remit defined for the sentencing commission, but it is part of the background to issues such as effectiveness of sentencing. Given what Neil Hutton said, there seems to be a question mark over who gets short sentences and the sort of cases that are involved. Andrew McLellan commented on how ineffective short sentences are for rehabilitation.

Perhaps there is a gap there. The sentencing commission is not considering short sentences, but a number of agencies have flagged up the issue. We might also consider the alternatives to short sentences. Safeguarding Communities-Reducing Offending gave us costings during our

evidence on the budget. We heard that the cost of keeping in prison all the people who are sentenced to less than six months is about six or seven times the cost of serving them with various community orders. There is an issue about whether we have the capacity to shift people from short sentences to community orders. There might be quite of lot of scope for investigation of that, without the inquiry being too broad.

The Convener: You mentioned the cost of community orders. It occurred to me during the debate last week that the figure for restriction of liberty orders in the former Justice 1 Committee's report on alternatives to custody is £4,800. For some reason it stuck in my mind that when the former Justice 2 Committee dealt with the Criminal Justice (Scotland) Bill, the Scottish Executive gave the different figure of £6,000.

Margaret Smith: There seemed to be a range of amounts, depending on the type of community disposal, from £1,500 to £6,000 for drug treatment and testing orders. Some disposals in the middle of the range cost about £3,000 or £4,000. The cost depends on the order that is being used.

The Convener: Yes, but I was talking about figures for the same sentence, which was a restriction of liberty order, or tagging order. In the inquiry into alternatives to custody, the Scottish Executive gave the figure of £4,800, but in evidence during consideration of the Criminal Justice (Scotland) Bill—and I have checked the *Official Report*—it gave the figure of £6,000. I mention that because I am going to ask why there is such a disparity. It makes me think that some figures have just been plucked out of the air. I do not have a lot of confidence in the figures that anybody is using. A sub-group of the criminal justice forum, including the Scottish Executive, the Scottish Prison Service, North Lanarkshire Council and SACRO, prepared a report on short-term sentences, which was published in 2002. Work has been done in that area.

Margaret Mitchell: My feeling is that, one way or another, sentencing has been given a good airing, given that the sentencing commission is considering it and given the alternatives to custody debate and the reports that you mentioned. We are also waiting for information to come back. My preference is to move on and consider the resourcing and efficiency of the police. It would be worth while for us to consider that.

Michael Matheson: Having been on the Justice 1 Committee and the former Justice 1 Committee for four years or so altogether, I am conscious that every year we consider the issue of prison numbers—the figures are still bad. We got to the stage of carrying out an inquiry into alternatives to custody, but we are now to have a sentencing commission and I would not want the committee to be caught up in a matter that should be within the sentencing commission's remit.

We must address the question of what we expect of our prisons when people are given custodial sentences. We should move on, so that we consider not the symptoms—which, to some extent, are about the people who are sentenced to short prison terms—but what we expect of the prison service. I think that there is a bigger issue about the central role that the service plays in the criminal justice system and the fact that we so often look to it to provide solutions to issues around crime. Perhaps that links in with the idea of having a single correction agency, but we should not carry out an inquiry into that—it is for the Executive to propose a policy that we can scrutinise.

The rehabilitation of prisoners is being considered at Westminster. Do we expect prisons to deliver effective rehabilitation? We know that they have often not been able to do so. That is fundamental to how we address the problem. If we examine what is happening in other jurisdictions and link that to the international comparative data, we can see that in some jurisdictions prisons are not regarded as having a rehabilitative role, but are seen as a deterrent and a punishment. In such jurisdictions, the rehabilitative aspect is dealt with in the community.

I am thinking off the top of my head, but I think that we potentially have an opportunity to open up a new area by considering whether the central role in rehabilitation that the system gives to prisons is appropriate. We should consider how to reform the delivery of rehabilitation in the context of measures such as community disposals.

The Convener: That is an interesting idea. When Andrew McLellan gave evidence at the joint meeting of the Justice 1 Committee and Justice 2 Committee, I was struck by his comment that rehabilitation programmes are suffering, but when we tried to press him on precisely which programmes are suffering, I had difficulty seeing where real damage has been caused. The performance indicators show that programmes are at least being completed, although we have no information about their quality. There seemed to be a disparity between what Andrew McLellan said and the information from the performance indicators.

Are you suggesting that, rather than take up Professor Neil Hutton's suggestion and consider what prison is for, we consider what we expect from prisons in relation to rehabilitation?

Michael Matheson: I might not have articulated my ideas fully, as I have been thinking off the top of my head. I am trying to say that the main argument for alternatives to custody is that such

alternatives deal more effectively with offending behaviour. However, the driver for such measures is prison numbers.

One of the key roles that the Scottish Prison Service is meant to have is to rehabilitate offenders and address offending behaviour—as well as to act as a deterrent and to provide public safety. It is said that the main reason why short-term prison sentences do not work is because they do not address offending behaviour.

Should the prison service have the role of addressing offending behaviour? If we are going to go down the route of pushing more alternatives to custody and addressing offending behaviour, should we do so in a different way? One of the submissions describes what happens in Scandinavia, where the role of dealing with offending behaviour has been taken away from the prison service and given to other agencies. I know that that would be a shift from the current policy, but I wonder whether, in the discussions that are taking place around prisons and prisoner numbers, the prison service is regarded too much as being central to the system. We should try to get away from that.

Marlyn Glen: Michael Matheson is suggesting something really fundamental but I am not sure that now is the time for it. I have visited only two of the prisons, but I think that prison staff would be really shocked if we wanted to take rehabilitation from them when they are just getting to grips with it.

I agree with Michael Matheson that shorter sentences are given for a different reason. I am concerned that although we seem to have general agreement on lots of initiatives and a lot of research, as Professor Hutton said, we need the political will to push them along. It is difficult to say how, but I would like the committee to choose to do whatever will push matters along, rather than just spread into something new again, because it looks like the Justice 1 Committee has done an enormous amount of work in the past four years and it would be good to see it through to fruition.

12:15

The Convener: Marlyn Glen makes the good point that in choosing what to do, the principle should be to do things where we can make a difference by pushing things to happen on which there is consensus.

Margaret Smith: I will pick up on Michael Matheson's point. I tend to agree with Marlyn Glen that we want to do something that will be more likely to effect change. Michael Matheson's suggestion is a bit more ethereal than that; it is more about the general concept. Perhaps I have got that wrong, but taking the role of addressing reoffending and offending behaviour away from the prison service presumably would not work in relation to long-term prisoners and specialist prisoners, such as sexual offenders. Getting at them when they are in a defined place gives the best hope of addressing offending behaviour, rather than waiting until they are back out in the community. There might even be scope for a different approach depending on whether one is dealing with short-term or long-term prisoners. The issue is detailed.

Michael Matheson: That is not really what I am saying. I am not saying that that role should be taken away from the prison service. I am saying that there is a need to examine the central role of the prison service in our justice system and to examine what we expect of it. Whether or not prison officers deliver the services, how should they be managed? How do we deal with the issue? That is the problem. We know from the evidence that the prison service is not good at managing that. External agencies can work with long-term prisoners. A range of models can be pursued. Services do not have to be delivered in the prison service.

Mr Maxwell: I agree with much of what Michael Matheson said about the big underlying question. A lot of what has come out is saying that we do not have a clear idea of what prison is really for. I am not sure that that is not a good question that we should examine and answer. However, it is a big question about a fundamental shift, and I am not sure that we have the time to answer it.

One of the issues that came out of the previous Justice 1 Committee's alternatives to custody report—which also came up in discussions that I have had and in the alternatives to custody debate last night, which I attended—is that nobody knows whether alternatives to custody are effective. Everybody keeps telling us that they are more effective, but there seems to be no empirical evidence that says, "Yes, they are definitely more effective. Here's the research that says we took this group of prisoners and one went to prison and one was given an alternative to custody, and now we can prove that alternatives to custody—non-custodial sentences—are more effective." As far as I can see, we do not have that research.

In the debate last week, several members made the point that the type of person who is given a custodial sentence might well be—and probably is—different from the type of person who is given a non-custodial sentence, so to compare the two is like comparing apples and pears. I still do not understand whether we have a clear picture of whether one disposal is more effective than the other.

The other question about alternatives to custody concerns the figures that Margaret Smith

mentioned. Between £1,500 and £6,000 is the range that we are always given for the cost of alternatives to custody, whereas prison currently costs £27,000 per prisoner per year in Scotland, or so I understand. From that, it would seem clear that it is much cheaper to give people non-custodial sentences. However, are non-custodial sentences really cheaper in the broader sense? If such sentences are not more effective, they are not necessarily cheaper. If those who are given non-custodial sentences reoffend, are such sentences cheaper to society as a whole?

I am not clear whether non-custodial sentences are actually cheaper than custodial sentences. That fundamental issue underpins the whole idea about alternatives to custody. If we have not yet answered the question whether alternatives to custody are more effective and really cheaper, I am not sure that we have moved the debate forward any.

Marlyn Glen: I think that research on behaviour management—from schools, for example—shows that taking people out of the usual context to teach them anger management or to provide cognitive behaviour therapy does not help. What is needed is to work with people in situ—that is, in the community. The pupil may be fine when they are taken out and talked to, but they might still behave in the same way when they are put back into the classroom. What they need is to be taught how to behave in the classroom. In the same way, prisoners have to learn how to behave in the community, because that is where we want them not to reoffend. We should also take on board the idea that an alternative to custody that involves working in the community can be a real punishment. I think that Michael Matheson will find that there is research on those issues, which I will try to find.

Bill Butler: I am interested in what Michael Matheson said. I take Stewart Maxwell's point that the subject that he has raised is huge, but it is obviously linked to sentencing. From the notes that I scribbled earlier, I think that Professor Hutton gave us a steer on that when he said that the issue of short-term custodial sentences needs to be linked to—I think that I am right here—what prison is for and what punishment is for.

I agree with Margaret Smith and others about the need for our inquiry to keep within the time constraints while being able to make a difference and add to people's knowledge. I think that we could ensure that that happened if we had a brief inquiry into short-term custodial sentences. That would allow us to develop some of the thoughts that Michael Matheson has expressed and consider the issues that arise from them. If we went for a brief inquiry into the effectiveness or otherwise of short-term custodial sentences, we would be able to consider both that issue and the deeper, more philosophical issues that would naturally arise. Having said all that, I think that we should take the steer that Professor Hutton gave us in his evidence.

Margaret Mitchell: I agree that it is important to examine the effectiveness of alternatives to custody and of short custodial sentences. I suggest that, instead of coming at the issue from the same angle, we could move on by considering the subject in terms of the efficiency of the police. We could get good and worthwhile information from the people who are on the front line in dealing with reoffending. The police might want to look at the efficiency of their having to go yet again to deal with someone who has already been in prison for a short-term sentence. The person's behaviour may still persist because the underlying cause of that behaviour—for example, drugs or alcohol abuse—has not been addressed.

In that way, we could approach the issue from a different angle but still consider the kind of things that we would want to address in an inquiry into the effectiveness of short-term custodial sentences. Advertently or inadvertently, the police play a major part in sentencing, given their knowledge and experience of having to react to the situations that arise. I do not think that the issue has been adequately considered in the debates around alternatives to custody that we have had so far and it might not be examined by the sentencing commission. An inquiry into that issue would complement the important points that others have raised about short-term sentences.

The Convener: I surmise that the committee will at some point want to pick up the inquiry on the police; we are debating whether to do that now or later. I take your point that we have to establish whether we can now do something productive, as Marlyn Glen suggests, to develop the work that has already been done. We must remember that there is a lot of incomplete research and there are reports already on the table, so we must continually ask ourselves what we can add to what has already been done. Bill Butler said that we might follow Professor Hutton's steer, which is, in a way, connected to Michael Matheson's suggestion that we examine expectations of prison. If we narrowed the focus, we would effectively go in the opposite direction from the one taken in the report into alternatives to custody: we would be asking what prison was for. We could narrow the focus further and ask what prison does to reduce offending—we do not know the answer—and what it should be doing.

Bill Butler: We should obviously follow Margaret Mitchell's suggestion of conducting an inquiry into the resourcing and efficiency of the police, but that is something for a later stage. Most

members have given their views on the way that we should be going. Perhaps the police would be interested in giving evidence to us, which would allow them to make their input. In that way, we could perhaps accommodate all the views in the committee under a heading such as "the effectiveness and efficiency of short-term custodial sentences" or something a bit snappier. We want to add something and that would be a way of doing so, given the time constraint.

Margaret Mitchell: I would be happy with Bill Butler's suggestion that we take the police's evidence on short-term custodial sentences with the proviso that, sometime in the future, we conduct a more in-depth study on the police.

The Convener: We can do that, but we can let the committee examine both issues without committing ourselves to an inquiry, as long as that is manageable given the other work that we have to do. I feel that, whatever we do, we need a watching brief—and probably a reporter—on the sentencing commission. As Stewart Maxwell pointed out, we do not yet have a clear picture of what is happening, but some of that picture might begin to emerge as more work is done and I would like the committee to keep an eye on the various things that are going on. That might mean a periodic report so that we can remind ourselves that something has happened—perhaps when the commission issues its first report—and so that, if the committee wishes to pick up other points, it has an opportunity to do so. If we say that there is nothing else that we can do now, we would not give ourselves a connection though which we could come back to the matter.

Margaret Smith: You mentioned the constraints of the timetable, convener. If we go with the wording that Bill Butler suggested, which I agree with, and produce a report examining the effectiveness of short-term sentences, what will our time frame for that be? If we take on board the suggestion that we should consider the police—I agree with that, as there is a lot of scope for us to consider issues in the police—it may be useful for us to start thinking sooner rather than later about what aspects of the police we might want to focus on. If there is any preparatory work or research that we could be doing for that, we could get working on it sooner rather than later so that, when we come to do the work on the police, we will have done some of the preparatory work already. It might even be useful to talk to the police to find out whether they think that there are issues that it would be particularly useful for the committee to consider.

12:30

The Convener: We can work round the decisions that the committee makes, if I am clear about what its priorities are and in which order it wants to do them. Obviously the legislative timetable is fixed, but sometimes there might be a slot at the end of a meeting if we do not have a full day of witnesses, or we could just choose to take half an hour or 45 minutes to hear from the police, for example.

To address the questions that Margaret Smith, Marlyn Glen and Stewart Maxwell have raised about how we move on, I think that we have to monitor all aspects of sentencing, including the sentencing commission and proposed alternatives to custody. We are going to get a report back on the research into other jurisdictions. In time, it might be quite good if we have a reporter on that to keep us informed.

Bill Butler and Michael Matheson have suggested that we take slightly different angles to the subject matter. Perhaps we could examine Michael Matheson's question about what we expect from prison and rehabilitation in the context of what Bill Butler said, following on from Neil Hutton, about what prison is for in the short term and the long term. I am concerned that if we consider only the short term, we will be looking at some of the areas where we believe that prisons should not be used anyway.

Michael Matheson: The delivery of services within the prison system is different for long-term and short-term prisoners. Rather than the prison officers, many external agencies provide services to short-term prisoners. We have to get a flavour of what the Scottish Prison Service is doing. We could focus on short-term offenders, but we might get a skewed view of what is happening in the prison system if we did that.

The Convener: If we take that a stage further, what agencies would you like to hear from? What sort of information would you be looking for?

We could ask the Scottish Prison Service to give us more detail on what it does with short-term prisoners. Are there any programmes for those prisoners and, if there are, what do they consist of? It would be natural to follow that by asking the SPS what it does with everyone else. What is the content of its programmes? Who is evaluating whether the programmes rehabilitate people? Is the SPS aiming to reduce offending behaviour? Where in the programmes is the SPS trying to do that? We could then consider the suggestion that short-term prison sentences are not effective because they are short and that in order to address offending behaviour, the offenders need to spend longer on the programme. The suggestion is that people are in prison for too short a time to make any progress.

Michael Matheson: We should also consider whether the SPS is an effective agency for addressing rehabilitation.

The Convener: Once we have the information about what is being done in prisons and who is involved, we could take that question on.

Bill Butler: Could we do something on the effectiveness of rehabilitation programmes in prison? That is a title that would allow us the flexibility to compare and contrast and consider some of the more complex and philosophical issues that Michael Matheson has raised. It would also let us look at the practical and everyday issues with regard to the merits and demerits of attempts to rehabilitate offenders within prison.

The Convener: That is a good suggestion, which covers many of the issues that members have raised. We can leave other people to make the picture clearer for us. Doing what Bill Butler suggests would allow us to tackle the major question of what we expect from prisons and to compare long-term and short-term sentences, which in itself is quite a narrow focus and could make for a short inquiry. I do not think that we would be debarred from kicking off by getting preliminary information from the police for a full-scale inquiry into resourcing.

Margaret Mitchell: Could we include the voluntary sector as well as the Prison Service? That sector has a major part to play in rehabilitation.

The Convener: It looks like a consensus is forming. There are other obvious issues such as throughcare and drug rehabilitation programmes, but now that we have a focus, we can present the committee with possibilities and timings for taking evidence. We can decide whether there is any space for us to hear initially from the police. That would satisfy everyone's desires.

Do members want to consider appointing an adviser?

Michael Matheson: I think that we should.

The Convener: We will investigate who might be an appropriate adviser. As the weeks go on, it gets more difficult because there is so much activity around some of the subject areas that it is hard to find an adviser who is not involved elsewhere. We will investigate the possibilities and come back to the committee with some suggestions.

I remind members that there is a visit to HMP Greenock on Monday 24 November. Our programme of visits has been pretty hectic, but I am sure that members have found them to be useful.

Our next meeting will be in the chamber on Wednesday 26 November, when we will be taking evidence on the Criminal Procedure (Amendment) (Scotland) Bill from the Scottish Executive and Crown Office officials.

Margaret Smith: I submit my apologies for Monday; I think that I am going to be in court then.

The Convener: Oh dear. We will not ask why.

Margaret Smith: I have to give evidence about who nicked my handbag.

The Convener: Margaret is getting personal experience of the criminal justice system and I am sure that she will share it with us.

Margaret Smith: All those visits to courts have been very useful and I will try not to fall asleep.

Bill Butler: I give my apologies as well. I will not be in court, but I will be elsewhere.

The Convener: I am sure that the Justice 1 Committee will be well represented at the visit.

Meeting closed at 12:36.

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