JUSTICE 1 COMMITTEE

Wednesday 10 December 2003
(*Morning*)

Session 2

£5.00

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

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JUSTICE 1 COMMITTEE
16th Meeting 2003, Session 2

CONVENER

*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:

Graham Ross (Scottish Parliament Research and Information Group)

THE FOLLOWING GAVE EVIDENCE:

Assistant Chief Constable Malcolm Dickson (Association of Chief Police Officers in Scotland)
Douglas Keil (Scottish Police Federation)
Chief Superintendent Allan Shanks (Association of Scottish Police Superintendents)
Professor Martin Wasik (Sentencing Advisory Panel)

CLERK TO THE COMMITTEE

Alison Walker

SENIOR ASSISTANT CLERK

Claire Menzies Smith

ASSISTANT CLERK

Douglas Thornton

LOCATION

The Hub

Scottish Parliament

Justice 1 Committee

Wednesday 10 December 2003

(*Morning*)

[THE CONVENER *opened the meeting at 10:43*]

Criminal Procedure (Amendment) (Scotland) Bill: Stage 1

The Convener (Pauline McNeill): Good morning everyone and welcome to the 16th meeting this session of the Justice 1 Committee. I apologise for keeping people waiting, but we had some preliminary matters to attend to. Everyone is here, so there are no apologies. As usual, I ask members to switch off mobile phones and so on.

Agenda item 1 is consideration of the written evidence that we have received on the Criminal Procedure (Amendment) (Scotland) Bill. I refer members to the note that the clerk and the adviser have prepared as a summary of the written responses that we have received to date. There have been a couple of late submissions and other submissions may still trickle in, but the note summarises the main body of evidence. I invite members to comment, if they wish, on the written evidence that we have received so far.

On oral evidence, I have to report to the committee that, although we were due to hear from the Procurators Fiscal Society this morning, we were notified on Thursday that the society wished to give written evidence instead of oral evidence. We have not yet received that evidence but it is on its way. As convener, I intimate to the committee my concern at the fact that we were told particularly late on that we would not hear from the society this morning. I am concerned that we are not able to have a dialogue in public with the society. I wanted to make the committee aware of that and I invite members to comment on that issue, too.

Michael Matheson (Central Scotland) (SNP): It is obviously a great concern that an organisation such as the Procurators Fiscal Society feels that it cannot give oral evidence to the committee. I have two suggestions. First, the convener might wish to meet the society to ascertain its reasons and to find out whether the committee should do anything as a result.

Secondly, if we are having problems with obtaining oral evidence from some organisations, we should write to tell the Presiding Officer that we might have to extend the time scale for the stage 1 process, because it is extremely important that we examine the full body of evidence. That is necessary for a thorough consideration of the bill.

Margaret Smith (Edinburgh West) (LD): I support Michael Matheson's comments. It is important to have the widest range of evidence on the record and to have the chance to clarify points from written evidence with the fiscals. If we do not have full evidence from that organisation and others, we may slightly compromise our ability to produce a proper stage 1 report.

I am aware that we will take informal evidence in a range of fora and from a range of people. What can we do with informal evidence? I presume that people who give informal evidence believe that it will not be used on the record. If we can put in our report only the evidence that we hear formally, it will be critical to have the fullest range of witnesses, so that we know the bill's practical impact.

I concur with Michael Matheson and suggest that we flag it up to the Parliamentary Bureau and probably the Presiding Officer that the timing for producing our report might change if we have a delay before we obtain necessary evidence.

The Convener: We have prepared a draft letter, in my name, that expresses concern. I presume that the committee agrees that it is important to send that letter.

We have been given reasons for the decision—for instance, the society does not feel that it can comment at this stage on the policy matter of how the bill will reform the system. However, it might be useful to seek a meeting with the society, so that we can report to the committee on precisely why we will not hear oral evidence from it.

Members suggested that the Presiding Officer should be alerted to the fact that we have a large body of informal evidence. That is fine for the stage 1 report, but I take Michael Matheson's point that we might need to alert the Presiding Officer to our difficulties if we need a bit more time to ensure that we have all the evidence that we need to compile the stage 1 report. Is that agreed?

Mr Stewart Maxwell (West of Scotland) (SNP): I agree to the suggestions. May I talk about the written evidence that we have received?

The Convener: We agree that we will take that action to establish why the Procurators Fiscal Society does not want to give oral evidence. We will seek a meeting with the society and alert the Presiding Officer to our concerns.

Mr Maxwell: The written evidence contains several points of detail. I will not go into them, but it might be worth while to put on record comments on the general principles. I have concerns about

several comments that we have heard. I am still unclear about whether managed meetings will take place face to face, over the telephone, through e-mails or faxes or through a combination of those methods. How will the meetings be organised? Various witnesses have been unclear about how the meetings will operate, but they seem an important part of the process. We have not got to the bottom of managed meetings.

On the preliminary hearings, Victim Support Scotland did not understand why they would take place only in Edinburgh and Glasgow. I do not understand that either. If we are going to have preliminary hearings they should be available in all places, not just in Edinburgh and Glasgow. I thought that that was a bit strange.

On cases with multiple accused, we discussed last week with a number of witnesses the issue of a written agreed record, or some sort of joint lodging of papers, prior to a preliminary hearing. There seem to be concerns, particularly in cases where there are multiple accused, and therefore multiple representatives, that that would cause problems. I am not clear about how that system would work.

The bill introduces quite a major change in respect of trials in the absence of the accused. I have great concerns about that, which are shared by a number of witnesses. We do not seem to have any statistics to show us why such a change would be necessary. Has there been a sudden deluge of people not appearing for trial? The evidence seems to say that most accused turn up, so I am not sure why that major change is being introduced. I refer the committee to comments by the Law Society of Scotland and Lord Rodger of Earlsferry about the importance in Scots law of the long-established principle, with which I agree, that a trial can proceed only in the presence of the accused.

I am concerned about the issue of reluctant witnesses. I agree with the Scottish Legal Aid Board's comments about that issue. The idea sits uncomfortably with me that somebody would be tagged or dealt with in some other way when they have committed no crime. They have not been accused of anything other than that they might not turn up. I understand the practical problems, but I have concerns about the human rights issues. If someone is tagged or in some way held, it will be extremely important that they have access to legal representation, but I am not clear about whether that will happen in those circumstances.

It has been stated by a number of witnesses that there will be cost savings as a result of the transfer of cases from the High Court to the sheriff court. I am not clear about where those savings would come from. It seemed to be suggested that counsel would appear in the High Court but not in the sheriff court, and that there would be a subsequent saving. If I were the accused in a High Court case that transferred to the sheriff court, I would want to be represented by counsel. The case would be exactly the same, the circumstances would be exactly the same and the people involved would be exactly the same. It does not seem reasonable to expect that, just because the case is in the sheriff court, counsel would not appear. I am therefore not sure whether I would agree that there would be huge cost savings because of such transfers.

There are other issues where we have not received clarification, but I do not want to hold up the committee.

The Convener: Thank you—you have obviously been doing your reading over the weekend.

Margaret Smith: We are still in the middle of taking oral evidence and we do not want to come to conclusions before we have all the evidence before us. However, there are already some gaps in the evidence that we could try to address before we write our report. Stewart Maxwell referred to one key area that is missing: the statistics on the number of cases in which the accused absent themselves. I am concerned about the whole idea of trials in the absence of the accused. My party would have to be strongly convinced that there was a real need for such a measure and, in the absence of the statistics, the case has not been properly made to us so far. It would be useful if the committee could try to acquire those statistics before we get to the stage of writing our stage 1 report.

Margaret Mitchell (Central Scotland) (Con): I have one main area of concern, which is the extension of the 110-day rule. There has been conflicting evidence, but a considerable number of people have said that they are uncertain about whether it is necessary to extend the rule. They think that the system seems to be operating reasonably well at the moment, if there are extenuating circumstances for an extension. They say that to change the rule may mean that we are looking for an extension in time as opposed to setting a target. I certainly have reservations about the need to do that. Perhaps other measures should be looked at to see how they are working before we tamper with something so fundamental. That is worth flagging up at this stage.

The Convener: There are certainly some areas in which there are conflicting views. For example, in the case that Stewart Maxwell raised, we have been told by some witnesses—the bill team—that counsel would appear in the sheriff court, whereas other witnesses have told us that that would not necessarily be the case because that is where the savings would be made. We need clarity around

that so that we can form a view about whether we think that the proposal is right or wrong.

Another area in which we need clarity concerns the process for the preliminary hearings, how the timetable will look and how managed meetings will be dealt with. There are differences of opinion about what a managed meeting should be, but the committee needs to clarify what the process will look like—for example, what should happen seven days before the preliminary hearing and how the written record should be produced two days before it. Then there is the preliminary hearing itself. Some witnesses told us that they expect that to last for an hour. However, it is not clear how many times a preliminary hearing could be continued. There is scope for a preliminary hearing being continued two or three times, as the trial date cannot be set until the parties have had that hearing—that is the whole point of the exercise—and there is only a 30-day window in which to do that within the 140-day limit. We have also heard in evidence that the systems will be put in place.

The other common theme is early disclosure. We have yet to hear any strong evidence that the whole system would have to be underpinned by mechanisms to ensure early disclosure, especially from the Crown's point of view. We may have to go back to the Crown Office and other witnesses to ensure that we understand what mechanisms they could put in place. We need clarity on that before we can come to a decision on whether we, as individual members, support the provisions in the bill.

The bill team has offered to return at any time—in fact, we have arranged a meeting for this afternoon. [*Interruption.*] We had arranged a meeting, but I am told that it has been cancelled. We need a chance to talk through those issues so that our understanding of how the bill will work is the same as the Executive's. That is an important starting point.

We move on to agenda item 2. I formally welcome our two advisers, Christopher Gane and Paul Burns, whom I thank for the work that they have done so far and for coming to the meeting today. [*Interruption.*] Before I welcome our first witnesses, I will rewind because I have missed out item 2, which is a very brief item on witness expenses.

I advise members that requests for witness expenses do not have to be considered by the whole committee each time. Normally, members would be invited to delegate that responsibility to me. I do not think that the proposal is controversial, and I hope that members can agree to it.

Members *indicated agreement*.

The Convener: We have circulated as a late paper a written submission from the Association of Chief Police Officers in Scotland and the Association of Scottish Police Superintendents. I hope that all members have managed to get hold of a copy.

I welcome to the committee Assistant Chief Constable Malcolm Dickson, who is representing the Association of Chief Police Officers in Scotland, Chief Superintendent Allan Shanks, who is representing the Association of Scottish Police Superintendents, and Douglas Keil, who is the general secretary of the Scottish Police Federation. We will go straight to questions.

Margaret Smith: Good morning, gentlemen. In his review of the practice and procedure of the High Court, Lord Bonomy said:

> "Over the past few years, there has developed widely among those working in the High Court the impression that business is not dealt with efficiently."

Is that also your impression and, if so, why? Does the bill offer realistic solutions to some of the shortcomings in High Court procedure that you—and, indeed, Lord Bonomy—identified?

11:00

Assistant Chief Constable Malcolm Dickson (Association of Chief Police Officers in Scotland): Yes. As far as ACPOS is concerned, High Court business does not appear to have been conducted efficiently to date. We have come to that conclusion primarily as a result of police officers' experiences as witnesses in the High Court and their perceptions of other witnesses' experiences.

Trials are scheduled to take place during a two-week sitting. An estimate is made of the number of trials that can take place during those two weeks and all witnesses are then cited to appear on the first day of that period, in the full and certain knowledge that only a small minority will be required on that day or even on the following day. That experience is perpetuated throughout the two-week sitting.

The system appears to be inefficient, not only from the point of view of the police witnesses who are inconvenienced, but because the public purse pays for police officers to attend court. The system creates a large drain on our resources, particularly as our experience is that the High Court is less prompt than are sheriff and district courts in notifying police witnesses of changes to the timetable, such as adjournments, which mean that a police witness is not required. In terms of the drain on the public purse, the shorter the notice of a change, the greater the cost to the police force. The direct effect is that fewer police officers are available operationally.

Chief Superintendent Allan Shanks (Association of Scottish Police Superintendents): I agree with Mr Dickson. As a divisional commander, one of my problems is the rescheduling of police witnesses and I know that my colleagues throughout Scotland have the same problem. A large number of police witnesses are called—in particular to the High Court—in the fairly certain knowledge that cases will be adjourned and witnesses rescheduled. That has an impact, not only on our budgets but on availability of resources.

We receive strong feedback from members of the public who are witnesses in such cases about their frustration at what they regard as inefficiency in the process. That perception perhaps breeds a lack of public confidence in how justice is delivered in Scotland. Increased efficiency in relation to the citing and scheduling of witnesses would increase confidence in the justice system, as there are certainly inefficiencies in the current system.

Margaret Smith: In your written submission, I think that you suggested that the procurators fiscal and High Court managers should be responsible for police overtime costs. Would that focus their minds a little?

Chief Superintendent Shanks: It might focus their minds. It is very difficult for us to manage the problem. I speak to procurators fiscal and I know that they experience the same difficulties and frustrations as we do, but there is a perception among police officers that they do not bother about the problem because they are not responsible for the costs.

The efficient management of the scheduling of witnesses, irrespective of who paid the police overtime costs, would make a difference.

Margaret Mitchell: One of the key proposals in the bill is the introduction of mandatory preliminary hearings. How would that provision affect the utilisation of police resources?

Douglas Keil (Scottish Police Federation): I agree with the comments that were expressed by Mr Dickson and Mr Shanks. We welcome Lord Bonomy's report and its recommendations for changes to High Court practice. Many of the proposals that are contained in the bill will lead to change for the better. Preliminary hearings are one of the changes that we think will be for the better. Anything that manages the process better or that determines with more certainty when a case is going to proceed, which witnesses are required and which witnesses can be agreed by the defence and the prosecution as not being required would impact significantly on the police.

From my perspective, the question is one of police resources. An enormous number of the police officers who have to be in court waiting to give evidence do not, in the event, give evidence. Mr Dickson has circulated to the committee his report "Silent Witnesses", which expresses our perspective extremely well.

Assistant Chief Constable Dickson: The report that Douglas Keil has just referred to showed that between 1991 and 1997, when intermediate diets were introduced in the sheriff courts, the effect was almost to halve the number of police witnesses who had to turn up at court every day. The survey that we have just conducted in 2002-03, which resulted in the "Silent Witnesses" report, showed that that huge improvement had fallen back a bit, although not to the 1991 levels. One of the purposes of the report was to try to encourage people to use the intermediate diets more meaningfully.

Lord Bonomy's proposals for preliminary hearings, which are included in the bill, afford the High Court the opportunity to manage its business much more robustly through the use of preliminary hearings. From our point of view, the proposals are to be welcomed.

Margaret Mitchell: The ACPOS submission says that preliminary hearings in summary proceedings could halve the number of police who would be used. Is that also the view of the ASPS?

Chief Superintendent Shanks: There is strong evidence that preliminary hearings in sheriff courts reduce the number of police witnesses that are required in subsequent hearings. I have to say, however, that that is not the universal experience across Scotland, and there has certainly been a drop-off in the reduction in the number of witnesses. However, some form of monitoring process should be introduced into High Court proceedings to ensure that a reduction happens.

I get the impression that sheriff courts operate differently throughout Scotland. There are differences in the volume of cases that are disposed of at preliminary hearing stage. Some sort of monitoring process should be put in place to ensure that good practice is shared. That would ensure that the ethos and principles of the bill, as articulated by Lord Bonomy in his report, are carried through into the delivery of improvements and efficiency savings in High Court practice.

Margaret Mitchell: What accounts for the disparity? Is it the operation of the fiscal service or is there some other reason?

Chief Superintendent Shanks: I am unclear about why that happens. When I speak to my colleagues, I hear that some sheriff courts are efficient and appear to be robust in ensuring that preliminary hearings work, whereas sheriff courts in other areas appear to be less robust.

Margaret Mitchell: Both the ASPS and ACPOS have raised the question of sanctions if either defence or prosecution fail to come up with written evidence or are not prepared for the preliminary hearing. Do you have a view on the sanctions that could be implemented?

Assistant Chief Constable Dickson: I have noted that the committee has asked this question of other witnesses. The question seems to focus on the apparent lack of sanctions. The response to date has been that it would be a humiliating experience for a lawyer to be dressed down by a High Court judge. Although I have never experienced it, I can imagine that that would be the case.

Our only concern is that we would want the system to work. Our suspicion—we are naturally suspicious; it is part of the job—is that the use of the preliminary hearing might fall into disrepute if there were no incentive or motivation for all parties to achieve the kind of consensus that is imagined. I would not put it any stronger than that. I cannot think of any sanction that there would be for failure to be prepared for the process, other than that it might affect an accused's chance of continued bail or of being granted bail in the first place.

Chief Superintendent Shanks: It is difficult to envisage such a sanction. When we consulted on the issue, we got a range of responses, from the suggestion that the Crown and the defence should be held in contempt of court to the proposal that there should be some financial sanction. At the end of the day, we do not think that that is the important issue. From a justice delivery point of view, any sanction should not affect the accused's sentence or whether they are found guilty.

However, I totally agree with Mr Dickson that there must be a sanction available to the judicial system to ensure that the process is not abused—there must be some means of ensuring that people sign up to the process and deliver on it and there should be some form of sanction, such as one that relates to support through legal aid. We think that there should be some means of getting people to sign up to, and participate in, the preliminary hearing process.

Margaret Mitchell: It has been suggested that the key will be how the judges view someone who does not come to, or who is not prepared for, the preliminary hearing. In summary proceedings, is there any evidence about how the way in which the sheriff handles matters has an impact on whether there are frequent postponements and adjournments?

Chief Superintendent Shanks: I have certainly heard anecdotal evidence from my colleagues that suggests that some sheriffs are more robust in managing that process. If that had been replicated throughout Scotland, it could have had a significant impact on a number of trials that went ahead. With some sheriffs, it is more a question of their presence and their management of the court than of detailed sanctions because, as Mr Dickson says, it is not a pleasant experience to be hauled up in front of the court and given a public dressing down. That might be sufficient to make the process operate and I would be delighted if that were to happen. There are different approaches among sheriffs in Scotland.

Margaret Mitchell: Would it be useful to monitor that situation to identify where there were not adjournments and to try to work out why?

Chief Superintendent Shanks: Yes—that would be an interesting exercise.

The Convener: You and other witnesses have mentioned sanctions. If we investigate the possibility of imposing sanctions and discover that there is none that could be imposed, would your support for the bill remain the same?

Chief Superintendent Shanks: Yes. The important aspect is that we make a difference in delivering justice. A High Court judge has considerable authority and presence, which might be wholly sufficient to make the process work. With the support of the Crown and defence solicitors, the preliminary hearings could work, because we all have an interest in making the administration of justice more efficient. If the judge's presence is sufficient as a sanction, we would be happy with that, but the issue does not affect our overall support.

Marlyn Glen (North East Scotland) (Lab): Both ACPOS and the ASPS comment on delays that can result from the accused dismissing his or her legal representation, and they suggest that the bill does not deal adequately with circumstances in which an accused person repeatedly dismisses their legal representation. Is that a significant problem in practice and do you have any suggestions about how it could be addressed?

Assistant Chief Constable Dickson: I cannot give the committee a quantitative analysis of how often that happens, but when it does happen, I imagine that it appears not only to police witnesses, but to everyone involved in the process—whether they are other witnesses or people within the court system itself—that such repeated dismissal of legal representation seriously undermines the court's authority and its ability to deal with a rogue individual who is cocking a snook at the system.

Chief Superintendent Shanks: I agree with Mr Dickson's comments. Officers' perception is that dismissal of legal representation is a process that people employ to delay delivery of justice.

Marlyn Glen: So, you think that there is a significant problem in that respect.

Chief Superintendent Shanks: I do not think that it is a problem in terms of numbers. However, as I said earlier, when the public see such things happen, what is their perception of the efficiency of justice? The more that we can do to tighten things up and to ensure that justice is delivered and seen to support victims of crime, the higher the regard in which people will hold the judicial process in Scotland.

Douglas Keil: I have to say that the Scottish Police Federation did not address that issue.

Margaret Mitchell: Do the police find it difficult to carry out their investigations within existing time limits?

11:15

Assistant Chief Constable Dickson: Police officers preparing cases under the direction of the Crown Office have found it difficult—sometimes impossible—to prepare all the evidence within existing time limits. However, the question is whether the bill's proposals will improve the situation, to which I would respond with a qualified yes.

Obviously, the measures will allow us some more time, with a window of at least 30 days between the preliminary hearing and the trial. That said, we are concerned about the logistics and management of citation of witnesses. After all, it might take a couple of weeks to issue a citation after a preliminary hearing, which leaves the police only two weeks to distribute the citation internally and to locate, identify, get hold of and cite the witness. The witness—civilian or otherwise—might have between a day and a week to make their own arrangements to attend the trial, which tightens things up a bit too much. If people perceive that the change will give lawyers more time to prepare for trials, they might also think that the public is being given less time to do so.

Douglas Keil: I agree with that. With regard to time limits and difficulties in citing witnesses, we were slightly disappointed that Lord Bonomy's question mark over the matter of who should cite and countermand witnesses was not addressed. No one now remembers why the police were made responsible for delivering those legal documents. However, despite the many changes that we have made over the years, such as using support staff to carry out the postal witness-citation process that has been introduced in some areas, it puts a significant burden on our time and resources. It is a pity that Lord Bonomy's suggestion that further consideration be given to who cites and countermands witnesses was not taken on board. I encourage the Executive to do that, because it might lead to significant savings.

Margaret Mitchell: Human nature being what it is, is there a danger that increasing the time limit will simply make people think that they have a new deadline to work to rather than a target to ensure that they get things done within the existing time limit?

Assistant Chief Constable Dickson: As the Crown Office's response shows, if it still works to the 80-day rule, introducing such a measure will not mean a slip to a just-in-time process. The proposal affords people an additional chunk of time within the system which will allow them to do more.

I agree with Douglas Keil that we have missed an opportunity to take sufficient cognisance of Lord Bonomy's focus on the fact that each of the eight police forces administers the citation of witnesses differently and would not list citation of witnesses as a major priority. We could address that inefficiency throughout Scotland simply by creating one agency. I am not even saying, as I have done in the past, that the work should be removed from the police service; I am saying only that it should be done by one agency with one system for citing and countermanding witnesses. It might be that that would be better done by an agency other than the police, but I am willing not to make that judgment.

The Convener: To clarify what you said about the creation of a single agency, are you saying that you are not against the police managing such an agency, or do you not have a view about that?

Assistant Chief Constable Dickson: I would prefer the police not to manage any such agency because it would be a certain distraction. I can see some arguments for the police at least being involved, particularly with reluctant witnesses or witnesses who are difficult to trace, but I do not see a need for police officers to be involved in the vast majority of citations. I am sure that members know that most forces employ non-police officers to do that job. However, there are eight forces, which probably cite witnesses in eight different ways, and citation is not by any means at the top of our priority pile.

The Convener: Who should run such an agency? Should it be done by another public sector agency?

Assistant Chief Constable Dickson: If we take the process and track it back to its origin, we find that citations originate in the court but are then dealt with by the Crown Office and Procurator Fiscal Service, which issues them. At the moment, as Douglas Keil mentioned, we are rolling postal citation out over Scotland, which is a big step forward. I am fully in favour of that, not necessarily

for High Court cases, but for citation in general. Why should not citations be dealt with by the Crown Office and Procurator Fiscal Service? It is a national agency that has ultimate responsibility for the issue and return of notices of service to the courts.

The Convener: So it might be more appropriate were the Crown Office and Procurator Fiscal Service to manage the agency.

Assistant Chief Constable Dickson: It might be appropriate for the Crown Office and Procurator Fiscal Service to manage the whole process.

The Convener: It is important that we get your view on that. If we were to create an agency, the work could be hived off to a private company, because if the police do not need to manage the process—as you said—anybody could. However, your view is that it might be better were the Crown Office and Procurator Fiscal Service to manage the agency.

Assistant Chief Constable Dickson: It certainly seems that the Crown Office and Procurator Fiscal Service has responsibility for citation of witnesses, and I am sure that it would accept that. It issues citations as a result of what happens in court and notifies the court when citations have been served. It seems but a short step from that to saying that the Crown Office could run a citation agency. I think that other reviews of the justice system—not least the McInnes review—are considering the possibility that agencies other than the police should service the collection of unpaid fines. It is not difficult to imagine that a single national agency could combine those two tasks.

Mr Maxwell: You welcomed the roll-out of postal citations. Has the fact that you no longer have to deliver a number of citations already had an impact on your work? If postal citations relieve you of that burden, does that have an effect on the time limits about which Margaret Mitchell asked you: can you now manage easily within the existing time limits and is extension of time limits no longer such a priority? On who should carry out the citations if not the police, would you support the idea of sheriff officers doing that task?

Assistant Chief Constable Dickson: It is too early to tell whether postal citations are having a discernable effect. The Scotland-wide roll-out started on 8 December, so postal citations have not yet worked their way through the system. However, my experience in Lothian and Borders is that the number of citations that we receive for personal service is beginning to come down. I expect the number to fall dramatically over the next few months, and I suspect that our ability to serve notices to which a degree of urgency is attached will increase.

The question of time limits for the High Court—110 days and 140 days—does not come into the matter because we are not anticipating that postal citations will be used for the High Court. I suppose my earlier answer means that we would have the resources to chase up the more urgent citations, but I am keeping an eye on the public purse and hoping that I will be able to reduce the resource that we allocate to service of witness citations.

Chief Superintendent Shanks: As Assistant Chief Constable Dickson said, postal citations are a fairly recent innovation, but they have been used in my area. Although I cannot give ACPOS's view, my police area has seen a significant reduction in the number of personally served citations. However, the number of citations in which postal service has failed has increased, so we get short-notice requests for personal delivery, which upsets the efficiency of our legal document service process.

For example, prior to postal citations, in West Lothian the legal document officers would work to a route—if that is the right description—by working their way around the various communities, serving documents. Now, with the urgency that is imposed by later citations, they have to do some criss-crossing, so there is a bit of a trade-off. However, early indications are that postal citations have had a positive effect on the number of documents that have to be dealt with.

As to who undertakes the process, we must consider where the most efficient place to locate it is. It does not strike me that it will be efficient for the Procurator Fiscal Service to produce the citations, bundle them into an envelope and send them off to the local police station, where they would have to be sorted and distributed. Likewise, when cancellations and countermands come out, the fax machine prints off pages of citations that the fiscal service has collated, then the police are asked to cancel them. The fundamental question is: does it require the exercise of police powers to deliver those documents? If the answer to that is that it does not, we have to question why police officers are required to do it.

However, there should be close co-operation with the police when the Procurator Fiscal Service is trying to trace witnesses who might have moved addresses. One of the natural routes for that is to use police records to track down where the documents should be delivered. An adjunct of the Crown Office and Procurator Fiscal Service therefore strikes me as being the most logical place for that process.

Mr Maxwell: Do either of you have a view about the idea of using sheriff officers for the work?

Chief Superintendent Shanks: I do not have a specific view about using sheriff officers. They have some very specialist roles. I know that there has been discussion about a new agency for imposing fines. Perhaps a separate group could be set up as a court service support agency that could combine many of those functions. That is just a thought off the top of my head.

Mr Maxwell: It has been argued that enhanced pre-trial disclosure to the defence of information that is available to the Crown would make a significant contribution to addressing the problems that were identified by Lord Bonomy. I am thinking particularly of statements that are made to the police; obviously, they come in a variety of formats. Will you comment on that? Do you think that such disclosure would have implications for the way in which the police take statements or gather other evidence?

Assistant Chief Constable Dickson: The standard of statements obtained by the police has been discussed by the police and the Crown Office for decades. When we are talking about the High Court, solemn procedure and serious cases such as murder and rape, it is only right for the judiciary to expect the police to obtain the highest-quality statements. We hope and anticipate that that has come through in the courts. We are therefore quite happy to continue discussing with the Crown how to authenticate such statements for disclosure. We do not have too much of a problem with that issue. My only word of caution is that in the courts, statements that are obtained by police are occasionally relied upon too heavily.

11:30

It seems unrealistic for a justice system to expect that statements taken by police officers in every case—we are not just talking about cases heard under solemn procedure—down to summary cases will be verbatim accounts of what a witness has seen or can speak to. It does not seem to be a logical conclusion that the police service is the best agency to prepare court-ready evidence. It is unrealistic to assume that a statement that is obtained by one of 14,000 police officers in Scotland on a rainy night on a street corner after a pub fight will be court-ready evidence. The best that we can say about that kind of evidence is that it is a subjective approximation by a police officer of what a witness is able to recollect about an incident at the time. That falls far short of what is needed for a trial. I am happy to make the distinction between statements for cases heard under solemn procedure and those heard under other procedure.

There might be cases in which an officer takes a statement in the circumstances that I have described without being aware that the result will be a High Court case, because the incident in question was a street brawl and it was not clear that the injuries involved were serious. The officer would therefore take the kind of statement that he or she is used to taking in an operational situation when pressures of time are on him or her. That kind of statement might appear occasionally in the High Court. I would hope that in between taking the statement and the preparation of a case for court, the Crown Office and Procurator Fiscal Service would have precognosced witnesses. That precognition should surely be more valuable to a court in its pursuit of truth than the scribble that a police officer has made in his notebook on the rainy street corner.

Mr Maxwell: We are talking not necessarily about presentations to court but documents that would be disclosed to the defence in the preparation of its case. There is a slight difference.

Assistant Chief Constable Dickson: Yes. It is important to make that point. I am happy for statements to be disclosed to the defence, provided that everyone concerned—defence, prosecution, court—is aware of the interpretation of the statements that I just gave. It seems to me that too much is made in court of the difference between the information that a police officer has obtained from a witness and what the witness says in the court room. That is an insidious and unnecessary distinction.

Mr Maxwell: If the bill is enacted and it works in the way that some people think it will work, there will be early disclosure of police statements and other types of evidence that the police have gathered, which will lead to the defence's being able to meet the new time limits for the trial. Will that have resource implications for the police? If police officers know that all the notes and evidence that they take on rainy street corners after brawls will have to be disclosed to the defence, will that have an implication for the amount of time involved in taking the statements? Will that, by logical extension, lead to additional police training?

Assistant Chief Constable Dickson: I will answer that and let my colleague Chief Superintendent Shanks come in, too. The point that I am trying to make is that we do not anticipate instructing or training all our 14,000 officers to take every statement from witnesses to the standard that is expected in the High Court.

The vast majority of statements taken for High Court cases will be taken in quite different circumstances; they will be taken either in police stations or in witnesses' homes. The witness will be sitting down and will be taken through the evidence over a long period in order that a proper statement can be produced, which will be read back to the witness. Serious cases require that,

and there will be no change in that respect. However, witnesses should not be required to give such statements for every single case that appears before the High Court.

Chief Superintendent Shanks: I have no difficulty with disclosing any information that police officers take. That evidence is under scrutiny when officers have to produce their notebooks in court. The information is available for examination by the bench, the defence and the prosecution.

There is a distinction between taking a statement for a breach of the peace on a high street somewhere on a Saturday night and a murder inquiry. I have taken statements in both situations, so I know that it might, during a murder inquiry, be necessary to sit down with the witness for two or three hours to go into great detail about what has happened. If an officer takes a brief description of what happened during an incident on a Friday or Saturday night, and that incident turns out to be more serious, the witness will be reinterviewed and a more detailed statement obtained. I have no difficulty with disclosure of statements in either case.

However, I would have a difficulty with our requiring police officers to take very detailed statements in every situation. That would front-load police time—if I may use that term—and the availability of police officers on the street. I do not think that that would be necessary, given the number of cases that reach court. The most detailed statement that is taken for any High Court case is the precognition statement that is taken by the Procurator Fiscal Service. As Assistant Chief Constable Dickson said, it might be worth making that the disclosed document, because it will be on the basis of it that the Crown will proceed.

The Convener: I would like to press you further on that point, and I also invite Douglas Keil to come in on this. The evidence that you are giving us now is crucial to the debate about the purpose of precognition statements and police statements. In my view, we have been getting the two mixed up. We have heard evidence from others who almost suggest that, if the police were better trained or if the statements could be made more detailed, we could miss out one stage and get earlier disclosure. Perhaps Douglas Keil could answer the question first: what is the purpose of a police statement, and do you think that it is important to protect that part of the procedure, as opposed to a precognition statement?

Douglas Keil: I should say first that I would not wish to add to, or disagree with, anything that the other two witnesses have said. Depending on the type of case, there will a big difference between a statement that is taken by a police officer about a breach of the peace under the circumstances that Chief Superintendent Shanks described, and a court-ready statement for a High Court trial.

By taking a statement at the time of an event, a police officer is satisfying himself that he has sufficient evidence to arrest or detain a person and submit a report to the court. In giving a statement, a civilian witness will, for example, detail the facts that he owns the house that was broken into, that he locked it up at a particular time of night and that he discovered the break-in at a particular time in the morning. He will list to the police officer the property that was stolen and its value. It is that statement upon which the officer will act.

If it is a complex matter that develops into a High Court trial, the witness will be reinterviewed and a more detailed statement taken. Often, although not exclusively, a High Court case will involve the criminal investigation department; it might otherwise have been dealt with by uniformed officers. Even the processes for taking statements under those two conditions are very different. A court precognition statement is a complete document, which is written in perfect English under controlled circumstances. That is very different from a statement that a police officer notes down at the time.

The Convener: In your view, is that the way that things should remain?

Douglas Keil: Yes. If you were to ask an operational police officer who had attended an incident to note down a court-ready statement on every occasion, the amount of time that an incident took to deal with would be multiplied by a huge factor. That would not be practical in my view; with the resources that we have, we would grind to a halt.

Chief Superintendent Shanks: Having been involved in preparing murder cases for the High Court, for example, I know that the statements that are included in the final report are detailed and, although they do not get to the level of the detailed precognition statement, they are as accurate as is humanly possible in reflecting all the circumstances of the case. However, they are far away from statements on breach of the peace on a Saturday night.

Bill Butler (Glasgow Anniesland) (Lab): ACPOS and the ASPS welcome the bill's proposals on trial in the absence of the accused. Is non-appearance by the accused a significant problem in solemn proceedings in Scotland?

Assistant Chief Constable Dickson: Earlier, you said that you were short of statistics on that matter, but it would be wise to examine some. I do not have figures in front of me, so I cannot say how significant the problem is. I can only say that, according to experienced and long-serving police officers—who tend to be the ones who attend at

the High Court—the situation is sufficiently concerning to comment on. Frustration is felt by all concerned who put in so much effort. They may have had to work hard to get reluctant witnesses to appear in the first place. Everyone is assembled, the jury is empanelled and then, lo and behold, there is no accused. That kind of experience for the public, the victim, the witnesses and the professionals is a concern.

Chief Superintendent Shanks: The experience of police officers is that the situation does not arise very often and that it happens less in High Court proceedings than in other court proceedings. However, when proper procedures have been followed and the accused, having been given fair notice, deliberately absents themselves to avoid the judicial process, it is not unreasonable for that process to continue, under the governance of a High Court judge to ensure that fairness to the accused is reflected in the court.

Bill Butler: ACPOS notes that trial in the absence of the accused is

"a situation in many European courtrooms and no ECHR challenges are known."

Could you provide the committee with further information on that—for example, on the extent to which the situation occurs in other European jurisdictions and on European convention on human rights compatibility?

Assistant Chief Constable Dickson: I am sorry that I cannot give you more than is in the written evidence. That information was given to me by our advisers in the service. On the ECHR, my understanding is that, if sufficient effort has been made and notice has been given to the accused, it would be deemed that their rights were not being abused, because they had the opportunity to attend.

Bill Butler: In its written evidence, the Sheriffs Association stated on the ECHR:

"For the avoidance of doubt we should also say that we are opposed to … trials … where the accused person has left the jurisdiction of the Court and has no intention of … returning voluntarily. Such trials are meaningless and are, in any event, now actively disapproved of in recent European Court decisions."

Would you like to comment on that, because it seems to take a different tack?

Assistant Chief Constable Dickson: Sheriffs are probably far more qualified than I am—not probably, definitely—to comment on matters of law. From a practitioner's point of view, however, it seems to us that it would be possible to implement the measure.

Bill Butler: The Sheriffs Association also makes the point that justice should be done and should be seen to be done. It says that there is a

"possibility of active misuse … by accused persons to achieve tactical advantage. Having had the benefit of legal advice on the issue, they may wilfully absent themselves from trial in the belief that the trial will continue in absence".

The association says that if the person is finally arrested, they will simply appeal against the decision that was taken in their absence. It adds:

"We consider that in the normal situation the Appeal Court would find such submissions"—

that the defence had not been heard by the jury—"irresistible" and would order a retrial. Surely that is a worry.

11:45

Assistant Chief Constable Dickson: It is certainly a worry. One cannot second-guess how sheriffs and juries will react. I expect that the eventuality that you describe would not be common or frequent and that every effort would be made to get the accused into a courtroom. We anticipate that a trial would go ahead in the absence of the accused only where the accused had absented themselves from the country and was all but impossible to track down.

Chief Superintendent Shanks: I do not envisage the situation ever arising except where a considerable weight of evidence can be brought to the court to show what has been done to try to trace the accused and what we believe the accused has done deliberately to absent themselves. The situation will not arise through the accused failing to turn up for their first appearance.

I will paint a scenario. If somebody who has deliberately absconded to a country that is outwith the United Kingdom and where extradition proceedings do not apply comes back to this country after 10 years and is detained and brought to trial, how good will the witnesses' recollections be? Will the witnesses be able to deliver accurate information to the court to allow a judgment to be made? I suggest that the fact that the witnesses could not recall information accurately would swing the balance of the accused person being found not guilty. Is that just? If there is strong evidence to show that the accused has deliberately absented themselves and if a High Court judge is in court to ensure that fairness is applied to the process, that will be the fairest way of delivering justice, particularly from a victim's perspective, in what will be a very small number of circumstances.

Mr Maxwell: Do you think that a trial would go ahead in the absence of the accused only in cases such as you have described, in which someone had fled abroad and we were unable to bring them back?

Chief Superintendent Shanks: The evidence shows that the number of High Court cases that do not go ahead because the accused does not turn up is not considerable. In many High Court cases, people have been remanded in custody and they appear from there. We are talking about a small number of High Court cases; we would need to consider the matter differently if we were discussing summary cases. My view is that the bill provides an opportunity to deliver justice to someone who has deliberately absented themselves from the process with a view to trying to avoid the delivery of justice and that it allows the public to see justice carried out.

Mr Maxwell: I want to clarify that point. I agree that the quantity of such cases is small and I understand your point about cases in which the accused has gone to a country with which we have no extradition treaty. However, the accused might be in a country with which we have an extradition treaty or they might be somewhere in the UK and could be apprehended under warrant. Should the bill state that only in cases where the person cannot be apprehended, either by warrant or through extradition, may a trial go ahead in the absence of the accused?

Chief Superintendent Shanks: My view is that if we are talking about fairness to the accused, which is fundamental to Scots law, we must try every means possible to detain them. We have that test at present—if we apply for a warrant for somebody's arrest because we have not been able to trace, caution and charge them, we must satisfy the procurator fiscal that we have made diligent inquiries to try to trace that individual. The same test would still have to be applied—we would have to make every possible effort to trace the individual and bring them before the court before we went down the route provided for in the bill.

The Convener: I understand your concern about the provision and your point about fairness to the accused, but might an accused try to manipulate the system? It has been suggested that we add to the provision so that, if the accused appears during the trial, they could be tried in their presence. However, a person might want to hear what the witnesses say about their case and then disappear. Could the system be manipulated in that way?

Chief Superintendent Shanks: That is possible. The important point is that the process must be fair in the eyes of the accused and the victim.

Michael Matheson: Section 12 deals with reluctant witnesses being brought before the court. In its written submission, the ASPS states that it is "uncomfortable" with the proposal. ACPOS states that the provision requires further clarification, although perhaps that is a more diplomatic way of saying that the association is uncomfortable. Will the witnesses outline why they are uncomfortable with the proposal or what further clarification would persuade them that the provision is useful?

Assistant Chief Constable Dickson: The clarification that we seek is about the grounds on which a court will decide that a witness is reluctant and

"is not likely to attend to give evidence".

Will it be sufficient for the court to hear from a police officer that they have had dealings with the person before and that they know that he will not turn up? Alternatively, will the ground be that a witness citation has been served and the person has indicated flatly that he has no intention of attending? For example, he may have shown his ticket to Torremolinos, which will take him out of the country at the time. We want to know what degree of proof the court will require to label someone as a reluctant witness.

Chief Superintendent Shanks: Our members have expressed concerns about coercion. At present, we can ensure a witness's attendance—a warrant can be granted to bring a witness to court. However, we are concerned that the provision works against the effort in the justice system to support vulnerable witnesses. We want to ensure that there is a balance. The greatest coercion that can be provided is to instil confidence in the system and to provide protection for witnesses who feel vulnerable and frightened. Many witnesses say that they feel intimidated by the accused or the accused's friends, or by the process. The use of coercion might counter some of the measures that are being introduced to tackle that issue.

Douglas Keil: We have not said a lot about reluctant witnesses, although we have concerns about the resources that might be required if restriction of liberty orders were to be applied to such witnesses in the same way as they apply, as an alternative to remand, to people who are released on bail. However, the Scottish Police Federation has not taken a view on the issuing of warrants for reluctant witnesses.

Michael Matheson: Victim Support Scotland's written evidence highlighted that

"intimidation and fear of reprisals often underpin such a reluctance"

to appear before the court as a witness. Is that comment followed through in your experience of pursuing reluctant witnesses? Does the point relate to your concern about coercing witnesses?

Chief Superintendent Shanks: That is the point that I was trying to make. Many witnesses are reluctant to go to court because they feel

vulnerable or threatened. If we provide support for witnesses to give them confidence in the process and to help them through it, we will achieve greater benefits. We need a carrot-and-stick approach. We need the carrot of support for vulnerable witnesses. However, we can already request a warrant to ensure the attendance of a witness, if they deliberately want to absent themselves.

Michael Matheson: When Mr Dickson spoke about dealing with witness citations and so on, he mentioned the hard work that is sometimes required to get witnesses to come to the courts. On balance, given those concerns about the need for further clarification, would it be fair to say that the provision would probably help to reduce the amount of hard work that has to be put in just now to get folk to come along to the courts?

Assistant Chief Constable Dickson: On balance, we support the idea that there should be a course of action to deal with reluctant witnesses who fall into the category not of those who are fearful but of those who are wilfully absenting themselves. As the committee has heard from others, the provisions in the bill would speed up an already existing process for reluctant witnesses. At the moment, warrants can be applied for, but the process takes a bit longer than it would under the bill. The bill would make it possible for a High Court judge sitting on the day to ensure, as far as possible, that a reluctant witness appeared in court.

The Convener: My final question is about bail conditions and remote monitoring. ACPOS has expressed reservations about breaches of bail conditions being notified directly to the police. What lies behind those concerns? Would that process not be more efficient than notifying the court?

Assistant Chief Constable Dickson: I suppose that what lies behind that concern is a worry about resources, as an additional burden would be placed on the service. At the moment, the monitoring of restriction of liberty orders is dealt with by a third party. We certainly have no objection to the police being used in the process at some point if that is necessary, but we simply say that we do not need to be the first person to be notified. Other things can be done before requiring the long arm of the law to rest itself on the shoulder of the individual concerned.

Douglas Keil: The federation has views about that provision in the bill. If restriction of liberty orders are to be used as a condition of bail instead of remand, we would like to think that the court will continue to view the safety and security of the public and of victims and witnesses as paramount. The provision could impact on our resources in that, if more restriction of liberty orders are imposed, more breaches will be reported.

An interesting trial is taking place in a limited way in the Hamilton youth court, where restriction of liberty orders are passed down as a condition of bail. If the restriction of liberty order is breached, Reliance Monitoring Services contacts the offender's home to establish first of all whether there is a simple reason for the breach. If that is not the case, the monitoring company faxes and telephones the police office, which then dispatches someone as a matter of priority to apprehend the offender and bring him to court. The trial is apparently working extremely well.

However, it is important to remember that the reason why the trial is working well is that it is 100 per cent funded by the Scottish Executive for the two years of its duration. In other words, those duties do not compete with any other duty. If a restriction of liberty order is breached in the way that I have described, the police have available the resources, including the vehicle and the court set-up, all of which are 100 per cent funded. If similar resources were not made for the provisions in the bill, there would be questions about how well that side of things would work. However, we appreciate that the provision will be piloted—we think that that is exactly the right way to go about it. We will be interested to see what develops.

The Convener: Of course, the provision in the bill is meant to be considered as a direct alternative to remanding a person in custody. As the bill stands, will the provision have implications for the police anyway?

Douglas Keil: There will be implications for the police in that there will be more restriction of liberty orders and consequently, one presumes, more breaches and therefore more police involvement.

The Convener: I am trying to clarify the question of resources. I hear what you say about added resources for the police if breaches are notified to the police as opposed to the court. However, under the bill, the court will have to consider more restriction of liberty orders as an alternative to remand and there will be a requirement for additional police resources anyway, will there not?

12:00

Douglas Keil: I do not know whether I understand that, convener.

The Convener: The bill asks judges and sheriffs to consider a restriction of liberty order as a direct alternative to remanding a person in custody. If the court is duty bound to consider more cases, there will arguably be more restriction of liberty orders than there are at the moment.

Douglas Keil: Yes.

The Convener: You may ask why, if a judge wanted to remand an accused person in custody, they would allow bail on the basis of a restriction of liberty order, but that is how the bill is constructed. If the court is duty bound by the bill to consider such orders, will more police resources be required?

Douglas Keil: As I understand the bill, restriction of liberty orders as a condition of bail will be considered only for those who would, in the first instance, have been remanded. As I said, provided that the court continues to take public safety and security as its paramount priority, I do not see why the provision should not go ahead. However, the question of resources arises from the fact that, although there is no police resource for a person who is remanded, a breach of order by a person who is not remanded but is in the community, albeit with an electronic tag, has resource implications for the police.

The Convener: I thank the three organisations for their evidence, which has been extremely valuable to the committee, and for their time.

On behalf of the committee, I welcome Martin Wasik, chairman of the Sentencing Advisory Panel. Perhaps you could begin by saying a few words about the panel, Professor Wasik.

Professor Martin Wasik (Sentencing Advisory Panel): Thank you for inviting me to talk to you today. I thought that it might be helpful if I were briefly to set the context and to explain what the Sentencing Advisory Panel does in England and Wales. The panel was set up by statute about four years ago and our job is to advise the Court of Appeal on the content of sentencing guidelines. From time to time, the Court of Appeal issues guidelines on sentencing for specific offences, primarily to guide the discretion of the Crown court. Rather than have those guidelines simply being produced by three judges in the Court of Appeal on a given day, Parliament decided that it would be better if the Court of Appeal had access to broader advice about what the guidelines should contain and our panel was established to do that job.

There are 12 of us on the panel. I am an academic and professor of law and I chair the panel. The panel also consists of three circuit judges and a senior lay magistrate, who represent sentencers, two other academics—one a professor of law and one a professor of social policy—and a range of other people drawn from within the criminal justice system. They include a chief probation officer, a chief police officer and a former director of Her Majesty's Prison Service. We also have three members who have no previous experience of the criminal justice system but who bring a lay view to our discussions.

The advice that we give to the Court of Appeal is based on our discussions, which in turn are based on consultation. For each piece of work that we produce, a consultation paper is released on our website and in paper form. As the committee would expect, we receive comments from organisations throughout the criminal justice system, as well as from pressure groups and members of the public.

Occasionally, we commission independent research, particularly on public attitudes to sentencing. That is funded via the Home Office but is administered by us as an independent body. We ask members of the public for their views about aspects of sentencing in respect of particular offences. All that information is fed back to us and we produce a report for the Court of Appeal.

The court does not have to do what we recommend. It retains its independence as to whether it follows our advice, but in practice it has done so. To date, we have submitted 12 pieces of advice to the Court of Appeal. In 11 of those recommendations, the Lord Chief Justice has adopted the recommendation either in its entirety or pretty substantially. Guidelines have resulted from our advice in many appeal cases.

Bill Butler: Will you please explain to the committee the significance of the power of the court? For example, how significant is the power of the court to reduce a sentence for a guilty plea? What proportion of cases is disposed of in the Crown court or in magistrates courts by a guilty plea? In what proportion of cases has a reduction in sentence been allowed?

Professor Wasik: The reduction of sentence for a guilty plea is probably the most important issue in sentencing because it affects the great majority of cases. There is probably no more important topic in terms of practical impact. In magistrates courts in England and Wales, which is the jurisdiction that I am familiar with, 90 per cent of cases are dealt with by way of a guilty plea. The proportion in the Crown court is probably not so great—between 60 to 65 per cent of cases are dealt with in that way in the Crown court.

We are talking about a significant impact on the resulting sentence. Although there is no strictly quantifiable reduction in arithmetic terms, the norm is a reduction of somewhere in the range of a fifth to a third. The degree of reduction will depend on a number of circumstances that pertain to the case in question.

Bill Butler: Will you outline some of those circumstances?

Professor Wasik: The main consideration is the time at which the defendant pleads guilty—to put it crudely, the earlier the better. If the defendant pleads guilty at the earliest possible opportunity,

ordinarily one would be looking at a reduction in the order of a third. If, however, the defendant delays the decision until the door of the court, some reduction is appropriate, but it will be much smaller. There are, of course, the various stages between those two scenarios.

Other issues are involved. There are cases in which the defendant is caught redhanded at the scene of the crime. In those cases, the defendant has little practical opportunity to contest the case. For example, virtually no defence could be run if the defendant were captured on closed-circuit television as they committed the offence. In those circumstances, even an early plea would not attract a full discount, because it would be recognised that, realistically, the case was not contestable.

The rationale behind offering the reduction is primarily the saving of court time and of the expense of convening a contested case. Witnesses may also be saved from having to go through the unpleasant ordeal of testifying and being cross-examined in court, particularly in a sensitive case such as one involving an allegation of a sexual offence.

The Convener: I think that I heard you say that the sentence would not be discounted if the person was caught redhanded. Is that correct?

Professor Wasik: It is debatable; the position is not altogether clear. Some judges would say that no discount should be given in those circumstances; others would say that there has to be some minimum level of reduction to avoid the likelihood—even if the case appears at first sight to be unarguable—of people insisting on having their day in court in the hope that something might come up, such as a procedural error, that would result in their acquittal. It is therefore thought that some discount, albeit small, might be worth keeping, even in those cases. However, different views are held on that one.

Margaret Smith: We would like to explore with you the particular circumstances that, in English practice, count for or against a reduction in sentences. What is the rationale behind granting a reduction in sentence at all? Why should there be a reduction of sentence for someone who pleads guilty? It could be argued that, just because the accused has pleaded guilty, the offence is no less of an offence. It could also be argued that if there is to be a discount for somebody who pleads guilty and so saves court time and witnesses' time as you have suggested, the quid pro quo is that if somebody does not plead guilty but is subsequently found guilty, their sentence should be extended.

Professor Wasik: I accept that in many cases the defendant's plea of guilty does not reflect great credit on the defendant. We are giving a reduction—in some cases a substantial reduction—purely for system-based reasons. The argument is that if large numbers of defendants insisted on their day in court, the whole system would rapidly grind to a halt, causing delays for other cases. We may have got ourselves into a situation where, just to keep the current throughput of cases, we rely on large numbers of defendants pleading guilty. If that did not happen, a crisis could be generated in terms of getting people into court. One has to be realistic. It is a system-based argument.

I mentioned another possible rationale behind offering reductions in sentences—doing so will sometimes save vulnerable victims and witnesses from giving evidence. That should not be overlooked. In its research on rape and rape victims, the panel encountered a point of view expressed by some rape victims that they had actually wanted the opportunity to speak in court. It would be wrong to say that the arguments are all one way. The majority of victims would probably welcome not being required to give evidence, but some feel cheated, in a sense, if they do not have the opportunity to say what they want to say. They may also feel cheated if the defendant has had a benefit—a discount—by pleading guilty.

On the argument about whether a sentence should be increased if a case is contested, it depends on how one looks at things. The way in which things are currently characterised is that there is a discount if a person pleads guilty. Obviously, therefore, if a person contests a case and loses it, they will get a relatively longer sentence than they would have received if they had pleaded guilty in the first place. On the other hand, there is a basic principle that if somebody declares their innocence, they should have the right to insist that the prosecution should prove the case that it is required to prove. It seems to go a step too far to say that somebody should be additionally penalised in some way for declaring their innocence if they are ultimately convicted.

12:15

Margaret Smith: I would like to pick up again on the doing-the-time-for-the-crime approach. You said that you have done work on public attitudes towards sentencing. What is the public's attitude towards discounting?

Professor Wasik: We have done two pieces of public attitude research—one was on sentencing for rape and one was on sentencing for burglary. Members of the public tend to be pretty cynical about having a discount for a guilty plea. I do not think that they appreciate the system-based reasons that I mentioned a moment ago. They are primarily interested in their own cases. Their view

tends to be that they do not see why a person should get a lesser sentence simply by coughing early. In part that might be because the public do not appreciate some of the broader issues, but I do not think that the topic is explained well. However, you asked what we found in our work and that was the view that we found.

Margaret Smith: Do you have figures or information on that matter that you could provide to the committee?

Professor Wasik: Yes. I do not have the information with me, but I could certainly provide relevant extracts from our two public attitude reports if you would like to see them.

Margaret Smith: Thank you.

Michael Matheson: I would like to follow the research theme. Margaret Smith's question was interesting—indeed, I intended to ask it myself. Professor Wasik, you mentioned that complainants, particularly in sex crimes cases, might want their day in court to give evidence—although other complainants in cases involving other crimes might not want to do so. However, there are witnesses who might not want to be witnesses in the first place and are reluctant to give evidence. It is clear that there is potential tension between those two parties. There could be general witnesses who do not really want to be witnesses, but there could be complainants who want to go to court. Has much research been done into the different views of those different parties that would help to inform our view on potential impacts on them?

Professor Wasik: I do not think that there is much robust recent evidence on that subject. A number of smallish-scale studies have probably considered particular questions relating to reluctant witnesses and they will have gone into that matter.

Children are another type of victim or witness that we ought to mention. If a child is a victim of an alleged offence or happens to be a witness to an offence, the priority should be to avoid their having to give evidence in court, even with the modern safeguards that exist to make giving evidence less of an ordeal than it once was. Therefore, there might be a good case for giving a discount for a guilty plea in such cases to avoid the child having to give evidence.

I said that, in some of our research, some victims expressed a kind of disappointment about the guilty plea and wished that they had been able to give evidence. I would not want to represent that as being a majority view, however, as I do not think that it was.

Michael Matheson: Was it a significant number of people?

Professor Wasik: Yes.

Michael Matheson: Could you give us an idea of the figures?

Professor Wasik: I would need to check the report again, but I think that around 10 or 15 per cent of rape complainants expressed disappointment that the case had fallen short and said that they had expected that the case would come to trial and that they would be able to give evidence. That is despite the fact that there is now the possibility of producing a victim impact statement and so on.

However, only a minority of respondents expressed that view. There would probably be more people who felt relieved that they did not have to go through it all again. Certainly, the members of the judiciary who responded to our consultation on rape took the view that that is an offence in relation to which a substantial sentence discount should be given to people who plead guilty, as an incentive to do so. Those judges had seen the emotional upset that is caused to a rape victim who has to go into the witness box and relive in considerable detail the alleged offence while the defendant is present in the court.

Michael Matheson: Would you like any changes to be made to the system to accommodate the views of the minority?

Professor Wasik: Not as such. The only thing that one should bear in mind is the changes that have recently been introduced in England and Wales to allow victims to submit to the court an impact statement in written form to explain the effect that the crime has had on them. That statement can be taken into account when passing sentence. I think that that goes some way towards bridging the gap, although it is not a complete answer.

Mr Maxwell: You said that rape and other sexual crimes were the obvious cases in relation to which there should be substantial discounting. In a sense, there is a logic to that suggestion, as it would prevent the victims from having to experience the possible trauma of the court case. However, although that might be logical, there is a view that the victims of such crimes and the general public would find the idea of sentence discounting in relation to those serious crimes repugnant and unacceptable. Has that view been expressed to you?

Professor Wasik: The panel is consulting on the issue of the guilty plea. We are awaiting responses to our consultation paper, a copy of which I would be happy to let you see.

One of the issues that we raise in the paper relates to the question of a proportionate reduction. If, for the sake of argument, we say that

the reduction is a third off the sentence, the consequence is that someone pleading guilty to a serious violent or sexual offence gets a greater benefit than does someone who pleads guilty to relatively minor offences. I will compare that with the jurisdiction with which I am more familiar. At the moment, lay magistrates are limited to sentencing people to a maximum of six months' imprisonment, so the maximum discount that they could give is two months. It is conceivable that the Crown court could hand down a sentence of 12 years and for the same amount of assistance to the authorities, the individual would get a reduction of four years to their sentence; the same amount of help would make four years' difference.

One of the ideas in the paper on which we have sought comment is whether there should be a limit to the discount in terms of months and years, rather than a proportion. Should we move away from the idea of proportion and start thinking in a different way? That would be a radical change to existing practice and I do not know how our consultees will respond to it. Nevertheless, it seems to be a problem at the margins; in the serious cases that you are talking about the defendant gets the greatest benefit in terms of a reduction to their sentence for pleading guilty.

The Convener: A third off a sentence is the maximum discount in England. That seems quite a lot to me. Have you any reservations about that level of discount?

Professor Wasik: No. If anything the Court of Appeal has been pushing slightly the other way recently and saying that there are some cases where a reduction of more than a third should be given. In a recent decision of the Court of Appeal, Lord Justice Rose said that if in a triable-either-way case that had gone to the Crown court, the defendant had pleaded guilty in the magistrates court at the earliest opportunity, the sentence could have been discounted by more than a third. However, we question that in our paper; we are of the view that a third off ought to be the absolute top discount. We might get responses saying that a third off is too high a discount.

Nobody knows where the figures have come from and they are hard to defend. It would have been nice if at some stage someone had made a calculation that a discount of X per cent has the greatest beneficial effect in terms of encouraging the largest number of people to plead guilty, but no one has done that. The figures represent a matter of convention, which the courts have developed over the years. It would be hard for anyone to try to defend a third against another figure.

The Convener: Would you like to see the development of conventions? You have talked about considering the types of offences and perhaps giving more of a discount. My concern is that the further we go down this road—it is becoming a negotiation between the accused and the court as to what sentence will be handed down—the more we will open up all sorts of possibilities for challenging the sentence, not just on the basis that it is too harsh, but on the basis that another judge gave a 20 per cent discount, for example. Are we opening ourselves up to a complicated system if we go as far as that?

Professor Wasik: I agree that we would be moving into a much more complex situation if we started saying that different reductions ought to apply to different offences. For the sake of argument, one could say that there should be a greater reduction for a guilty plea in sexual offence cases, because it saves the victims from having to give evidence, but a lesser reduction in relation to violent crimes. That situation would probably promote more appeals, as you say, because the defendant would say that different rules applied to someone else in a different court. At least the current system is reasonably clear, regardless of whether one agrees with the basis for the rules. It leaves sufficient discretion at the margins for a judge to decide whether in a particular case a third off or less should be given, depending on when the plea was made and the circumstances surrounding it.

The Convener: Is your primary worry that if we leave the decision too much to judges' discretion, we will get inconsistency?

12:30

Professor Wasik: The more that we leave the decision entirely open to judges, the greater the danger of inconsistency. The provisions that I have seen in the bill appear to be a step in the right direction. It is not difficult for judges to say that they have taken the guilty plea into account and state what the effect of taking it into account has been or to say that, given the circumstances of the case, they have decided not to take the guilty plea into account and give the reasons for that. That makes the decision making more transparent and may help to explain to members of the public why decisions have been made, which would make sentencing more transparent, which is good. Also, because reasons will have to be given, it ought to help towards consistency, because requiring judges to speak the words and explain why something has been done will encourage consistency.

Michael Matheson: It strikes me that the main driving force for a reduction mechanism is to aid efficiency within the court system, and I struggle to understand how we balance that with maintaining public confidence in sentencing. It concerns me that the further we go down the route of sentence

discounting, the more sceptical the public will become about whether justice is being served.

Professor Wasik: I agree with your observation. The research that we have done suggests that there are two things that make the public more cynical about sentencing than anything else does. The first is the fact that because there is a reduction by way of early release, the sentence does not mean what the judge says—the judge says five years, but everybody knows that it is not five years but something else. That is the number 1 thing about which the public are sceptical, and the second is the reduction for a guilty plea. Those two things together exacerbate the lack of public confidence in the system.

On the reduction for a guilty plea, I come back to the fact that we must balance the feeling of unease against the other arguments, which are that an awful lot of cases must go through the criminal justice system, that those cases must be resolved one way or another, and that, if a significantly high number of defendants were to contest their cases, the process would be much more expensive, much slower and people who were sitting on remand would have to wait longer for their cases to come to trial because the courts would be dealing with other cases. Therefore, removing the incentive to plead guilty would have a significant impact on the way in which the system processes cases. However, I accept that it is arguable whether a third is the right reduction or whether it should be something less.

Margaret Mitchell: How does sentence discounting work for non-custodial sentences?

Professor Wasik: That is an interesting question and another one on which we are consulting. It involves two separate issues. The first is that it is clear that there are some cases in which a guilty plea might make the difference between a custodial sentence and a non-custodial one. So, in a case that would have been just over the borderline if it had been contested, the judge may be able to impose a top-end community sentence because the defendant has pleaded early.

However, your question relates more to sentencing within community penalties. In England, the Magistrates Association's guidelines say clearly that the discount applies to fines and community sentences as well as to custody. With community service orders that require people to do unpaid work in the community, the logic appears to be that if a person who would have been given 240 hours on the basis of the offence pleaded guilty, the sentence would be reduced to around 180 hours.

We questioned the use of discounts with community sentences in our consultation paper on the issue because it seems to us that there are different kinds of community sentences. Although a discount might make sense in the example that I have just given, it would not make sense if the court had imposed a community sentence that was designed to rehabilitate. For example, if the offender would, under normal circumstances, be put on a course designed to last 12 months, what would be the point of saying that the person only has to go on the course for nine months because they pleaded guilty? With community sentences that are geared towards rehabilitation, the discount ought not to apply. That leads us into all sorts of complexities about which sentences should be discounted. To be frank, I do not know the answer to that question. The issue is interesting and has hardly ever been examined. There must be an answer to the question, but we have not found it yet.

Margaret Mitchell: If the purpose of the sentence was not rehabilitation but the sentence was, for example, a supervised attendance order for a money management module, would you expect that the discount would not apply and the person would have to complete the module?

Professor Wasik: Yes. The same applies to community sentences that have an element of public protection, such as curfew orders. It would be strange to say that because the defendant has pleaded guilty, a lesser degree of public protection is appropriate. If the community sentence is about punishment, a discount has logic, but as most community sentences are not primarily about punishment, it is hard to understand why a discount should apply.

Marlyn Glen: It is sometimes argued that a system of reducing sentences following a guilty plea may put pressure on accused persons to plead guilty when that is not appropriate. Will you comment on that? Are there concerns about that in England and Wales?

Professor Wasik: There certainly are concerns. Quite well-known, although not very recent, research evidence from England suggests that some defendants feel under considerable pressure to plead guilty in circumstances in which they maintain their innocence but the advice from their lawyers, as they understand it, is to plead guilty. That situation comes about because of the size of the discount. The discount system can have that corrosive effect, but it is hard to know in what percentage of cases that happens. The research evidence suggests that, even though some defendants maintain their innocence, their lawyer tells them that they have not got much of a defence. For example, the lawyer may say that if a defendant pleads not guilty, their defence will be that the police fabricated the evidence, but with that defence, the defendant's previous convictions

will be considered and the jury will not believe them. In those circumstances, the message that the defendant will get is that it may be better to plead guilty.

As I said, it is hard to know how many cases are involved, but I am sure that the big difference in sentences that is generated by the discount system must have that effect in some cases.

Mr Maxwell: Lord Bonomy, in his review of practice and procedure in the High Court, noted the possibility of suspending part of a sentence following an early guilty plea. For example, if a person would originally have been sentenced to six years, under the proposal, rather than being given a discount of two years, they would have two years of their sentence suspended. Does that happen in England and, if so, how does it work? In effect, giving a suspension rather than a discount is a halfway house between no discount and a full discount. If the person in my example failed to live up to the rules, they could end up serving the full six years. Is there such a process in England?

Professor Wasik: The difficulty with the system with which I am more familiar is that, in a sense, all fixed-term sentences do not mean what they say. If a court passes a sentence of six years, that means that the person will serve three years and will be eligible for release from custody at the halfway point. Then, they will be in the community for a period of supervision at something like the three-quarter point in the sentence. After that, nothing happens except that they are subject to recall if they commit a further offence. There are already gradations within sentences. It is a little bit like what you suggest: in the period after someone is released, there are still restraints on their behaviour, partly because they are under the supervision of a probation officer.

If a further offence is committed during that period, the court that deals with it can reimpose the unexpired portion of the original sentence that was not served. The process is complicated, but not dissimilar to what you propose. However, I have not seen it advanced as an option for dealing with the guilty plea issue. Such arrangements could work only if the sentence meant broadly what it said. An adjustment for a guilty plea would then have a meaning to it. If a sentence is already being adjusted in various ways to take account of early release, home detention curfew and all the other things, you might lose sight of the benefit that pleading guilty would provide.

Michael Matheson: If someone receives a six-year jail sentence and enters a guilty plea at a stage when they get a two-year discount, they will, in effect, be sentenced to four years.

Professor Wasik: Yes.

Michael Matheson: When they go to prison, they will still be entitled to their 50 per cent remission.

Professor Wasik: Yes.

Michael Matheson: From a six-year sentence, they would actually do only two years. Is that right?

Professor Wasik: Yes, you are right.

Michael Matheson: There are two different components: remission and the discount on the sentence. I wanted to clarify whether they worked together or whether one would cancel out the other. You are suggesting that the early-release system would need to be cancelled out if we were to opt for a suspended sentence option.

Professor Wasik: Yes. I have not thought about it, because the idea had not occurred to me. If you were to take that option, you would have to take account of the early-release rules in some way. If you were going to increase one aspect, you would have to reduce the other. At the moment, as Mr Matheson rightly says, the discount for pleading guilty works for the whole sentence. It is then worked out what the sentence is; that sentence, however, is subject to reduction by virtue of the early-release rule.

The Convener: Your clarification of that point was helpful. Are you considering the possibility of the judge stating in advance of a case what discount might be given for a guilty plea?

Professor Wasik: We have not consulted on that, but Lord Justice Auld, in his "Review of the Criminal Courts of England and Wales" suggested that perhaps there ought to be a legislative scheme that would set out bands of reductions, whereby if someone were to plead guilty within a certain period, the reduction would be so much, and so on. That would put into a much more rigid form the basic principle that I mentioned earlier: that the earlier the plea, the greater the discount.

The Convener: That would move away quite a bit from relying on the judge's discretion, would it not?

Professor Wasik: Yes, it would. For what it is worth, I am not greatly attracted towards having an overly rigid system. There are other factors to take into account apart from the precise time at which a person pleads guilty. Other issues come into play, such as the nature of the offence, or whether the person was caught redhanded. I think that some discretion is required.

Margaret Mitchell: Judges say that they do not take account of early release when sentencing. Are you suggesting that, in the discounting, judges should take account of early release?

12:45

Professor Wasik: I am trying to imagine what a scheme along the lines that you suggest would look like. From what you suggest, it would probably follow that if we were to move to a system in which part of the sentence was suspended to take account of the guilty plea, the judge would have to spell out how long the sentence would have been and how much was being suspended for the guilty plea—the public and people in court ought to know that so that there can be no doubt about the matter. You are right to say that the judge would have to indicate what the effect of the sentence would be in practice.

Margaret Mitchell: There is currently no question of a judge saying that the sentence would have been six years, but that as it will be discounted they will make it eight years.

Professor Wasik: They are certainly not meant to do that.

Margaret Mitchell: They say that they do not. Would you want the early-release path to be taken into account in a judge's deliberations on discounting? That would be a fundamental change from the current situation.

Professor Wasik: I am not arguing that judges should be able to circumvent the early-release provisions. If the Parliament has decided that there should be early-release arrangements, which have the effect that someone who gets a six-year sentence serves a maximum of three years, it seems to me that it would be wrong for judges to circumvent that by saying, "Okay, six years really means three years, so I will pass a heavier sentence." Judges would be circumventing the scheme, so that could not be right.

What you suggested was that, in a sense, we might substitute for the existing early-release arrangements another kind of arrangement that would suspend part of the sentence in light of the guilty plea. If that system were to come into place, it would be important that judges explained what was being done and what the effect of the sentence would be.

The Convener: We may need to do some further work on that matter as it applies to the Scottish system. Judges in England are required to state in open court if they have reduced a sentence for a guilty plea, but judges in Scotland are not required to do that. Are English judges also required to say if they have not reduced a sentence for a guilty plea and, if they have not, to say why?

Professor Wasik: Statute requires judges to explain the way in which they have taken the guilty plea into account.

In fact, I probably need to correct that comment. Section 152 of the Powers of Criminal Courts (Sentencing) Act 2000 states:

"a court shall take into account-

(a) the stage in the proceedings"

at which the person has pleaded guilty and

"(b) the circumstances".

The section further states that if, as a result of taking into account any of those matters, a lesser punishment is imposed, the court must state that that has been the case. Therefore I must correct what I said. If judges have not given the discount, they do not have to explain why that is the case. However, given the wording of the section, I think that it would be very strange if they did not give an explanation. If judges are required to explain why they have reduced the sentence, it would seem odd for them not to explain an exceptional case in which they had given no discount. I suspect that in practice judges would give an explanation, although statute does not specifically ask them to do so.

The Convener: I am afraid that we have to leave it there. Your evidence is crucial because it gives us a valuable opportunity to compare the situation with that in another jurisdiction. You have come a long way—from Manchester, no less—to talk to us. Thank you very much for making that trip to give us your evidence, which we will certainly use in our stage 1 report.

Professor Wasik: Thank you. I have brought some material from the panel, including a couple of our recent annual reports, which I will leave for anyone who wants to read about our current work.

The Convener: That is great. Thank you.

Alternatives to Custody

12:49

The Convener: For agenda item 4, members have a note by the clerk on a proposal for a comparative review of alternatives to custody. I remind members that, on 17 September, the committee agreed to develop a funding bid. I invite members to consider the proposal in the paper. With us are Graham Ross and Frazer McCallum of the Scottish Parliament information centre. Will you say a word or two about the paper?

Graham Ross (Scottish Parliament Research and Information Group): Yes. I do not know how much background detail members would like. The information is all in the draft bid for funding. However, I can run through the paper fairly quickly.

Paragraph 1 is self-explanatory—it contains a summary of the proposed research project. Paragraphs 2 and 3 give the background to the research. As members probably know, the Justice 1 Committee conducted an inquiry into alternatives to custody in session 1. One outcome was the suggestion that the Executive might wish to research alternatives to custody in other jurisdictions. The Executive agreed that such research would be valuable, but said that it did not intend to conduct it at this stage, so the committee decided that it would go ahead with a draft bid for research funding.

Paragraphs 4 to 7 set out the research aims and objectives that the clerks and researchers have developed. Members can see that the bullet points suggest that the research would consider

"The availability and … use of alternatives … in … other jurisdictions",

the effectiveness of those alternatives and

"The applicability of the approach and experience in the jurisdictions studied to the situation in Scotland".

The document is a draft, so it can be changed before it is presented to the Conveners Group, but we suggest proposing a two-stage study. The first stage would involve a desk-based study and a literature review of the alternatives in other jurisdictions. At the end of that stage, an interim report would be produced for the committee that flagged up the jurisdictions that we might want to examine in more detail. The second stage of the study would involve examining those jurisdictions.

Frazer McCallum and I will answer any questions on the draft bid or the process of making the bid.

Margaret Mitchell: The paper is self-explanatory.

The Convener: It is sensible to see what is out there at stage 1 and then to proceed to stage 2 when we have that information. What do we need to decide about the information that the Conveners Group needs to agree to a bid?

Alison Walker (Clerk): The paper that members have will form the basis of the bid to the Conveners Group.

The Convener: As members have no comments, is everybody happy with the paper?

Members *indicated agreement*.

HM Prison Kilmarnock

12:53

The Convener: Do Stewart Maxwell and Margaret Mitchell have brief comments on their visit to HM Prison Kilmarnock?

Margaret Mitchell: I saw some good practice at the prison. Rather than have a governor, the prison has a director, because it is privately run. That means that the Scottish Prison Service monitors the prison's operation. The director and Premier Prison Services are involved in the prison's day-to-day running and an independent and objective person monitors operations; that is a good system, instead of having the prison service monitoring the prison service. That was positive.

The atmosphere throughout the jail is good. As the prison is new build, it incorporates certain features. For example, unlike older establishments, the roof space allows no possibility for prisoners to go up there with hostages or to demonstrate.

Another good practical policy was a committee involving the director, some of the wardens and the prisoners' representatives, at which any points that the prisoners wanted to put to the management were discussed. The meeting was videoed and the video was then played throughout the prison. There was very much a sense of ownership and everybody felt that they were participating in the decision-making process. The committee helped the prisoners to understand that, although some things could be resolved immediately, other things took a little bit longer. That all worked to create good relations.

On the whole, the visit was useful and I was very impressed by what I saw.

Mr Maxwell: I agree with some of Margaret Mitchell's comments. The joint committee that sat in the prison was a good idea, but that happens in other Scottish prisons, not just in Kilmarnock. I was impressed by a lot of the prison's features, but many of them were down to the fact that the prison is new build. It did not matter whether it was in the public or the private sector; the fact that it was new build on a new design meant that we were not dealing with a crumbling Victorian building. That impression sometimes colours one's judgment when one is visiting some of the older prisons.

Nevertheless, some of the facilities were a bit cramped in comparison with those at other prisons that we have visited, especially HMP Greenock. Some of the rooms for education were very small, as was the art room, and the cells were quite small. We saw only one cell that had a single prisoner in it, but we were told that prisoners often double up in such cells. I also thought that the cells for two prisoners were exceptionally small and that the living conditions could be quite problematic. Even though the facilities were modern and the prisoners had televisions and in-cell toilets, I felt that the space that was provided was quite small.

My overall feeling was that the building was a little bit cramped in general, aside from the rooms that I have mentioned, and that the number of staff on duty was quite low. That fact was mentioned by some of the controllers who operate in the centre of a four-wing block. The block is effectively closed down at night and there are no more than one or two warders patrolling it. In the light of our discussions on cost comparisons between the private and public sectors, I wondered whether the prison was driving down costs by driving down the number of staff on duty. While everything runs well, that is fine; however, if things were to go wrong, that would be a serious concern.

I was slightly concerned about the training that the staff receive and the opportunities for staff development. I spoke to several prison officers, who seemed to come from a variety of backgrounds that were not particularly related to security or the prison service. There is nothing wrong with bringing in people from other organisations: that was not the issue. However, I was concerned that the prison staff as a whole had little background expertise and knowledge, as people had come from outside organisations and did not have much experience or receive the training that we would hope that they would receive within the Scottish Prison Service.

I had some concerns about the prison. My overall feeling was that, although we can learn a lot from new build, the prison was rather cramped and I was concerned about the number of prison officers who were on duty at certain times.

The Convener: Okay. Thank you for your observations. I presume that the committee will get a full written report on that visit.

An informal meeting with Lord Bonomy has been arranged for Monday 15 December at the High Court in Glasgow at 4.30. Our next meeting will be on Wednesday 17 December in committee room 1, at which we will take evidence on the Criminal Procedure (Amendment) (Scotland) Bill from the Scottish Human Rights Centre, Professor Peter Duff and the Scottish Legal Aid Board. I ask members to note that the final visit on our programme of prison visits will take place on 26 January and will be to HMYOI Polmont. Members will receive an e-mail, inviting them to take part in that visit, should they so wish.

I thank members for their attendance today. I am sorry that it has been so cold. I thank Dougie Thornton for providing a heater for the latter half of the meeting.

Meeting closed at 12:59.

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ISBN 0 338 000003 ISSN 1467-0178