JUSTICE 1 COMMITTEE

Wednesday 29 September 2004

Session 2

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JUSTICE 1 COMMITTEE
30th Meeting 2004, Session 2

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Stewart Stevenson (Banff and Buchan) (SNP)

COMMITTEE MEMBERS

*Bill Butler (Glasgow Anniesland) (Lab)
*Marlyn Glen (North East Scotland) (Lab)
Mr Bruce McFee (West of 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:

Dr Sylvia Jackson (Stirling) (Lab):
Tavish Scott (Deputy Minister for Finance and Public Services)

THE FOLLOWING GAVE EVIDENCE:

Moira Graham (Over-21s Visiting Committee, HMP Cornton Vale)
Bernadette Monaghan (Apex Scotland)
Bob Shewan (Association of Visiting Committees for Scottish Penal Establishments)
Professor Jacqueline Tombs (Scottish Consortium on Crime and Criminal Justice)

CLERK TO THE COMMITTEE

Alison Walker

SENIOR ASSISTANT CLERK

Douglas Wands

ASSISTANT CLERK

Douglas Thornton

LOCATION

Committee Room 4

Scottish Parliament

Justice 1 Committee

Wednesday 29 September 2004

[THE CONVENER *opened the meeting at 10:21*]

Interests

The Convener (Pauline McNeill): Good morning, everyone. I welcome you to the 29th meeting of the Justice 1 Committee in 2004. I apologise for the late start, which is due to some essential preliminary matters that we had to attend to. I apologise to the minister and his team for keeping them waiting—it was absolutely necessary, I am afraid. I ask members to do the usual and switch off things that could possibly interrupt the meeting. I have received apologies from Margaret Smith, who will not be able to join us today. However, we will be joined at some point by her substitute, Mike Pringle, as soon as he has finished his present engagement.

Item 1 is a declaration of interests. I formally welcome Bruce McFee, who is not with us at the moment, to the Justice 1 Committee, and I welcome back Stewart Stevenson to the justice committees. I knew that you would be back—you could not stay away for long. I invite you to declare any interests that you have.

Stewart Stevenson (Banff and Buchan) (SNP): I have made a declaration of my interests in the usual way. None of those, nor anything else, bears upon the matters that the committee considers.

Deputy Convener

10:23

The Convener: Item 2 is the choosing of a deputy convener. Under rule 12.1.2 of standing orders, the Parliament decides on a motion of the Parliamentary Bureau who is eligible to be nominated as deputy convener. The Parliament has agreed that members of the Scottish National Party are eligible for nomination as deputy convener. I therefore seek nominations from members of that party; however, as Bruce McFee is not here, I suppose that I had better do it. I would be delighted to nominate Stewart Stevenson. I have worked with him in the past and know that he was a valued member of the Justice 2 Committee. I would be delighted to have him as deputy convener.

Stewart Stevenson was chosen as deputy convener.

Subordinate Legislation

Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (Draft)

Freedom of Information (Fees for Disclosure under Section 13) (Scotland) Regulations 2004 (SSI 2004/376)

10:24

The Convener: For item 3, I welcome Tavish Scott to talk to us about subordinate legislation on freedom of information. I refer members to several notes that have been prepared for them on the draft Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004. I call the minister to speak to and move motion S2M-1749.

The Deputy Minister for Finance and Public Services (Tavish Scott): I thank the committee for all the work that it has done on the freedom of information regime in general, prior to considering the two sets of regulations that are before us today. We found the committee's consideration of the proposals and legislation entirely constructive, and it has served as an important check for us in the work that we have been doing.

I am grateful for this morning's opportunity to clarify for the committee the purpose and contents of the draft Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004. It is not the first time that members have deliberated over the draft regulations. You will recall that the committee offered comments on the draft regulations and the accompanying guidance document in response to the recent public consultation that was undertaken by the Scottish Executive. The committee will have seen the Executive note accompanying the draft regulations. There is little point in my labouring over a further detailed explanation. In summary, the draft regulations set out the cost that public authorities can take into account when calculating the level of fee that may be charged for providing information.

During the passage of the Freedom of Information (Scotland) Bill, the Executive made it clear that the costs incurred by public authorities in meeting their obligations under the eventual act would not be fully recoverable. By the same token, however, authorities should not be diverted unreasonably from carrying out their day-to-day business. In essence, the charging framework that has been set out in the draft regulations before the committee aims to address the necessary balance between those two things and to present a clear, consistent basis for charging across public authorities.

As members know, charging for providing information is discretionary. If an authority chooses to charge, it should use the framework that is set out in the draft regulations, according to which the first £100 of costs are to be provided free. Thereafter, 10 per cent of the projected costs, up to a threshold of £600, may be charged. An authority is not obliged to provide the information if the cost of doing so exceeds that threshold. The amount that is chargeable for staff time is restricted to £15 per hour per member of staff, which is to encourage a consistent level of charging among authorities. The regulations set out what can and cannot be charged for. They deal with the production of a fees notice and the aggregation of costs in cases where an authority receives two or more requests from different persons covering the same subject area.

I should also mention the complementary set of regulations that were made on 2 September and which were laid at the same time as those before the committee today. The Freedom of Information (Fees for Disclosure under Section 13) (Scotland) Regulations 2004 cover the fees structure that is to be used by authorities when the cost of providing the information exceeds the £600 threshold—when the authority is not obliged to provide the information but chooses to do so in any case. When that applies, the authority is restricted to charging at the concessionary rate, which is 10 per cent of the projected costs after the first £100, up to £600. The authority may recoup all the projected costs above £600, bearing in mind the fact that the staff rate remains subject to a maximum of £15 per hour.

Subject to any questions that members may have, I ask the committee to recommend that the draft regulations be approved. I have with me John McNairney, from my freedom of information staff, with whom members will be familiar, and John St Clair, who is one of our lawyers. I hope that we will be able to deal with any questions that members might have.

I move,

That the Justice 1 Committee recommends that the draft Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 be approved.

The Convener: Members will note that the minister has been speaking to the draft regulations before us, which are subject to the affirmative procedure. We also have in front of us the Freedom of Information (Fees for Disclosure under Section 13) (Scotland) Regulations 2004, which we are not considering under the affirmative procedure. Although he is not here for this purpose, the minister has agreed to try to answer

any questions that members might have on that set of regulations, too.

This is a debate for the committee to discuss the issues contained in the draft regulations, but normal practice would be for the minister to try to answer any specific points that members may have. Unfortunately, we cannot invite the officials accompanying the minister to speak, but we can give the minister time to confer with them before responding, if he needs to. I invite contributions to the debate or questions.

I will begin by drawing to the minister's attention the Subordinate Legislation Committee's report on the draft regulations. That committee drew our attention to the question whether the regulations are intra vires. The report says that although the

"purpose of the Regulations was to make provision regarding the calculation of the fee",

they were not specific about the content of the fees notice and the Executive has taken quite a liberal approach to the interpretation of the enabling act. The Subordinate Legislation Committee is quite concerned about that. Will you comment on that point?

10:30

Tavish Scott: I am happy to deal with that point. Your interpretation is entirely fair; it is a matter of—dare I say it—legal interpretation. I suspect that the Subordinate Legislation Committee was tight in relation to its consideration of the proposed regulations.

The Executive accepts that section 9(4) of the Freedom of Information (Scotland) Act 2002 is the primary enabling power, but our considered judgment is that when that section is read with section 9(5), which elaborates the power, it is meant to be quite wide in its scope and would cover how a fee is to be stated in the fees notice. I accept that we could get into lots of different sections, but we are arguing that wider interpretation is appropriate. To support that, I refer the committee to the reference in section 9(4) to the

"fee charged under subsection (1)",

which links the section 9(4) power to the notice under section 9(1).

The Executive considers that this approach to the construction of the regulations is reasonable because having the calculation of the fee properly set out in the fees notice is more or less essential to enable the applicant to decide on an informed basis whether to proceed with his application, which is a primary purpose of section 9. If we reflect on where we were in earlier discussions on the issue, I think that I would be right in saying that the objective was shared by the committee, by the Government and by those seeking to influence the process. A person making an application should be very clear about what that application will cost so that he or she can judge whether they want to proceed. That is the purpose of the regulation as it is proposed. The individual citizen of Scotland will be able to make the judgment and understand, on the basis of the advice that a public authority gives on charges, whether he or she wishes to proceed. That is the kernel of the argument.

The Convener: I just want to be clear about why the Executive wants to interpret the act in that way. I understand that you are asking us to look at section 9(4) and section 9(5) to see that interpretation. The importance of drawing the conclusion that the Executive does would be that the person making an application under the act would want to see how the fees were arrived at. Is that why it is important to state what the fees notice means?

Tavish Scott: You are correct. If the draft regulations are approved by Parliament, the breakdown will be available to the citizen who is making the application. That is as it should be and is very much in the spirit in which the bill was passed at the outset.

The Convener: With hindsight and given the Subordinate Legislation Committee's comments, I just wondered whether in drafting the bill the Executive could have been clearer about what it wanted to say. I accept that the provision in question is desirable and that it is what the Parliament wanted, but if we were doing this again, perhaps we would say in the bill that regulations should specify the fee to be charged and how it was arrived it, and then it would be clear.

Tavish Scott: I would probably accept the point that you are making. From my experience of the legislative process, there is not much doubt in my mind that all that the Parliament considers, deliberates on, scrutinises and passes could, with hindsight, be subject to a number of tweaks and clarifications. I do not dissent from your central point. I guess that we are where we are.

The Convener: That is a helpful comment. In considering whether to give our approval, I would be happy to accept the Executive's interpretation as long as it accepted that the drafting could be a wee bit clearer. I accept the principal point that you make.

Bill Butler (Glasgow Anniesland) (Lab): The Subordinate Legislation Committee said that it agreed that

"the powers to prescribe a fees notice are very wide and are not limited by the detail in subsection (5). However, as subsection (1) of section 9 clearly indicates, the prescription of the fee and the content of a fees notice are two different things."

Given that comment, do you still think that the regulations are intra vires?

Tavish Scott: I think Mr Butler would accept that I have explained as best I can—given that I am not a lawyer—that it is the Executive's strong contention that the regulations have been drafted so as to achieve the policy objective, which I think we all share. There are nuts and bolts to that and, as the convener has said, with hindsight we can see that there might have been a more precise definition. I contend that because of the policy objective and route that we have chosen to give effect to it, the manner in which we have gone about it is not ultra vires and is compliant with all that you would expect us to be compliant with.

Bill Butler: So you are absolutely content that it is intra vires.

Tavish Scott: I am content that that is the case.

The Convener: I turn to the Freedom of Information (Fees for Disclosure under Section 13) (Scotland) Regulations 2004, which I am more concerned about, as in the draft Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004, the policy objective was clear. On the Freedom of Information (Fees for Disclosure under Section 13) (Scotland) Regulations 2004, the Subordinate Legislation Committee said:

"The Subordinate Legislation Committee considers that the Executive has once again taken a very generous approach to the interpretation of the enabling powers in this Bill that the Committee finds difficult to concede."

The point that the Subordinate Legislation Committee makes relates to regulation 4, which is that there is no indication that where there is a fee for disclosure the authority needs to seek the agreement of the person applying. The Subordinate Legislation Committee seems to think that the Executive's interpretation of the regulations is that some kind of negotiation goes on between the authority and the person applying. I can see why you want that to be the case, because the purpose of the Freedom of Information (Scotland) Act 2002 is not to make applications cost prohibitive. A person making an application should know that they have to pay for it and see how much they have to pay and how that fee was arrived at. The way that regulation 4 is worded seems to suggest an extremely liberal interpretation of the primary legislation, which the Subordinate Legislation Committee argues was not discussed during the passage of the Freedom of Information (Scotland) Bill.

Tavish Scott: Forgive me, convener, but the bill was passed during the time of a previous Administration. John McNairney is telling me that you are quite right that there was not a lot of discussion about that particular point, so your interpretation is entirely fair. You are absolutely right about what we are trying to achieve by the regulations. The policy objective is to ensure that an applicant has the opportunity not to proceed with an application if they decide that they do not want to pay or cannot afford the charge. The policy objective is clear; we have to consider how we give legal effect to it. We have proceeded in the way that we think best does that.

The Convener: It might be helpful to the committee to hear, through you, your officials' interpretation of regulation 4, on the fee payable, which states:

"Where an authority proposes to communicate information to which section 13(1) of the Act (fees for disclosure in certain circumstances) applies, the fee which it may charge shall be such a fee as it shall notify to and agree with the person who requests the information".

It is the phrase

"shall be such fee as it shall notify to and agree with the person"

that concerns the Subordinate Legislation Committee. Primary legislation does not say that any agreement is required. How do you interpret the phrase? Will there be negotiation between the applicant and the authority that is providing the information?

Tavish Scott: The agreement is as to whether the applicant—I keep using the word "citizen"—wishes to proceed with the application to the public authority. The negotiation is to ensure that the individual is clear about the charging regime and has the opportunity to decide whether to go ahead with the application. If the individual decides that the cost is too high, they might decide not to go ahead. That choice is what we have tried to give legal effect to in the regulations.

Bill Butler: Are you saying that there will be a briefing or a consultation rather than a full-blown negotiation?

Tavish Scott: If you make an application to a public authority in order to gain information, you will have the right to have the charges explained to you—once the authority has worked out what fulfilling the request will be likely to cost. The regulations affect the process whereby you are given the opportunity to decide whether to proceed with your request for information. There has to be an interaction, allowing you to say yes or no, but it is not a negotiation on the fees, which are set out in the framework.

Bill Butler: That is what I was driving at. I am content with your answer if you are content with it.

Tavish Scott: I am sorry that it took me so long to get to the right point.

Bill Butler: That is all right.

The Convener: I, too, am content with your intention, but I still question the wording in regulation 4, which says that the charge

"shall be such fee as it shall notify to and agree with the person who requests the information".

The Subordinate Legislation Committee says that there is no reason to use that wording, and that it can be interpreted liberally. It appears from the wording that the fee has to be notified to the person and agreed with the person. However, you are saying that the person cannot negotiate but can simply agree whether or not to proceed. If that is the policy intention, it would be helpful if it were reflected in the regulations. You might feel that what you have said this morning is enough to ensure that the regulation is interpreted properly, but I would ask the Executive to consider making the point clear in some other way.

Tavish Scott: I look to John McNairney to advise me on how the system will operate. As committee members will know, the commissioner—independent of Government and appointed by Parliament—will also be concerned with this issue. I have no doubt that the commissioner will ensure that the citizen making the application is properly dealt with. That is what we have sought to ensure in the regulations. I honestly do not believe that there will be any interpretation of how the regulations will operate in practice other than the interpretation that we—and, I hope, the committee—share.

10:45

The Convener: I do not think that there are any further questions; however, I would like that regulation to be made clearer, although I know that that would involve an amending regulation. We might say that in our report to you. For the avoidance of any doubt—[*Interruption.*]

Tavish Scott: I am sorry, convener, but I have been trying to grasp all the fine legal points from my legal adviser. If I get this right, I will be amazed.

The second set of regulations is different from the first. In relation to Bill Butler's fair point, there is in effect a contract between the person and the public authority. Although I take the point that you make, the Executive's legal view is that the way in which regulation 4 is drafted gives effect to what we are trying to achieve. We have reflected that in our discussions this morning. In our legal view, it is the right way in which to take matters forward. We are not convinced that changing or amending it would make that process any easier or clearer, as there is a different legal process under the second instrument from that under the first one that we discussed. Our judgment is that it is the best way in which to give effect to the policy position.

The Convener: Members have no further comments or questions. The question is, that motion S2M-1749, as printed on the agenda, be agreed to.

Motion agreed to.

That the Justice 1 Committee recommends that the draft Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 be approved.

The Convener: The committee is required to report to the Parliament on the Freedom of Information (Fees for Disclosure under Section 13) (Scotland) Regulations 2004. The report may reflect only the points that have been made in our discussion. We can circulate the report for comment by e-mail, as it has to be published by Tuesday 5 October in order to meet any deadline. Is the committee happy for us to do that?

Members *indicated agreement*.

The Convener: With the committee's indulgence, I would like to pursue the question of clarity in our report and withdraw the proposal that the Executive produce an amendment. I would like us to say that the wording of the regulations could be made a wee bit easier to understand.

Margaret Mitchell (Central Scotland) (Con): We would like clarification of what "agree" means, basically. As long as it is understood that "agree" means "accept" rather than implying negotiation, that is fine.

The Convener: Okay. [*Interruption.*] The clerk has reminded me that we have been considering two sets of regulations. We have agreed to a motion on one of them—the one that the minister spoke to—and the other is the negative instrument, on which we will make that comment in our report.

I thank the minister for answering all of our questions so well. We did not need to put you under so much pressure, minister, but we like to do a good job of ensuring that the instruments that come before us are as clear as possible. Our thanks also go to your officials.

Tavish Scott: Thank you.

Rehabilitation Programmes in Prison

10:50

The Convener: Item 5 on the agenda is our inquiry into the effectiveness of rehabilitation programmes in prisons. I welcome our first panel of witnesses: Professor Jacqueline Tombs, the honorary director of the Scottish Consortium on Crime and Criminal Justice, and Bernadette Monaghan, the director of Apex Scotland. Thank you for coming before the committee this morning. As we have a number of questions for you, we will go straight to them.

Bill Butler: Good morning, colleagues. I will begin with some background questions to set the scene for later questioning. My first question is straightforward. What does each of your organisations do?

Professor Jacqueline Tombs (Scottish Consortium on Crime and Criminal Justice): The Scottish Consortium on Crime and Criminal Justice brings together a number of the main voluntary organisations that work in criminal justice in Scotland. It also brings together academics who are involved in the field. Our aim is to bring together the knowledge base in research and the expertise in the field to address the issues of major concern in contemporary crime and criminal justice.

Bernadette Monaghan (Apex Scotland): Apex Scotland is a national voluntary organisation, which has been going since 1987. We have a staff of 160, who work in 15 units and four prisons across Scotland. Our remit is to work with offenders, ex-offenders and young people who are at risk. We address their employability needs and progress them on to what we call a positive outcome, by which we mean full-time or part-time employment, further training or education, voluntary work or an intermediate labour market placement.

We offer a range of services. We provide employment and guidance to clients on probation or community service. We help people through new futures fund initiatives, which are funded by Scottish Enterprise, and through local enterprise company contracts. We also deliver the progress 2 work initiative—in fact, we are the largest provider of progress 2 work—which is the Jobcentre Plus initiative that is designed to move former drug users or people who have a measure of control over their substance misuse into employment. Our work also includes the delivery of supervised attendance orders on behalf of local authorities.

Our specialised services for young people are mainly about bridging the transition from education to employment. We are a partner with Glasgow City Council and NCH Scotland in the Glasgow community justice and employment project, which provides integrated supervision for 15 to 21-year-olds who are at risk of being put into immediate custody or of progressing into the criminal justice system. The project provides an integrated supervision package that combines work on offending behaviour with employability programmes.

Bill Butler: How would each of you define rehabilitation?

Professor Tombs: I would define rehabilitation as working towards reintegration into the wider society. I say "working towards", because rehabilitation is not an overnight job for any offender—by and large, they have become progressively excluded from all sorts of areas.

Bernadette Monaghan: I have a slight difficulty—this is a personal opinion—with the term "rehabilitation", which to me is about the 1960s idea that we could treat people and put them through a range of programmes that would cure them of their behaviour in a psychological or medical way so that they would come out the other end and not reoffend. I prefer the term "reintegration". I think that people stop offending when they decide that they want to, for whatever reason. That is usually because they acquire something in their life that is valuable to them and gives them a reason to re-evaluate their situation and resolve their difficulties.

I am not in favour of the notion that we can somehow treat people. As Professor Tombs said, change is not a one-off thing and it does not happen overnight; it is a long, slow process. It is about considering whether an individual's level of offending has become any less serious, whether their time in prison between periods in the community has lessened and whether they feel that they have made progress in addressing aspects of their life and behaviour that have led them into offending. As Professor Tombs suggested, there is a complex picture around what we are trying to achieve.

Bill Butler: One of the ways in which to facilitate the process of reintegration is to make people employable, to skill them and to draw out their potential. How far and how fast is that element of reintegration proceeding?

Bernadette Monaghan: Do you mean how much success are we having?

Bill Butler: Yes.

Bernadette Monaghan: I have left marketing folders with the committee, which give up-to-date

statistics for this year on the number of referrals, starters, completers and outcomes that we have had. We have dealt with more than 6,700 referrals and we have worked with about 4,500 people, of whom in the past year 2,206 completed work with us and 50 per cent had a positive outcome. Getting a job enables people to move on because of the structure that the job provides. I do not think that people offend because they are unemployed and need to offend to sort that out; the issue is more that, if they are in employment or are occupied, they have less opportunity to offend. That is the part that employment plays. However, I should add that, in isolation, employment is not enough. People have to be motivated to get a job. Factors such as a significant relationship, family support and, primarily, stable accommodation all have to be in place. Employment alone is not a panacea; an holistic range of needs has to be taken care of.

Marlyn Glen (North East Scotland) (Lab): I take on board what you say about the holistic range of needs. I have a question about opportunities. Apex cites in its submission research that indicates that placing more emphasis on literacy and numeracy skills and helping prisoners to find employment, as opposed to putting them on psychologically based cognitive skills programmes, could be the key to preventing their returning to crime. Do you consider that the Scottish Prison Service places sufficient emphasis on core skills such as literacy and numeracy?

Bernadette Monaghan: It does and it does not. The way in which the SPS measures what it does is all about outputs. If there is an output that says that education is measured by the number of prisoner learning hours that are delivered, there is pressure on—and a financial incentive for—the contractors to ensure that they keep up the numbers coming into the learning centre. That does not leave scope for one-to-one help.

I know that in Polmont—where I wear my visiting committee hat—some of the young men with whom we have worked could not cope in a group setting such as a classroom. Last year, 149 of our referrals were young men whose level of achievement was that of a primary 3 child—that was quite stark. Education needs to be pitched to individual needs, but the way in which contracts are structured does not allow for that, because the contracts tend to be about the throughput of numbers. A conservative estimate is that something like 25 per cent of people who end up in prison have below-functional levels of literacy and 33 per cent have below-functional levels of numeracy. That is fundamental. Someone cannot do cognitive skills programmes if they cannot read and write because they cannot do the coursework. They cannot go to a work party because they cannot read health and safety notices. There is a whole knock-on effect.

I suppose that what I am saying is that cognitive skills programmes have a value but that they are not enough on their own. We cannot just give someone thinking skills if, when they come out of the door, they are never going to have the opportunity to put those skills into practice because they cannot get a job and do not have support or a roof over their head.

11:00

Professor Tombs: The issue is the balance of how resources are devoted in prison to programmes, training or whatever. There was a wholesale following of cognitive skills programmes in prisons for quite a while—they were one of the great white hopes and a lot of money was spent on them. There has been a good deal of research, but the most solid piece in this country was done by the Home Office and published last year. It found that cognitive skills behavioural programmes make no difference to reconviction rates. Indeed, a substantial and growing body of evidence is showing that things such as basic literacy and numeracy make a bigger impact. That is not to say that cognitive skills programmes are never of any use; it is a question of what the balance has been.

I conducted a study in the throughcare centre at HMP Edinburgh. The level of need for one-to-one basic skills training is very high among prisoners, some of whom are prevented from taking the opportunities that are available to them because they cannot read or write. However, those people are often put on cognitive skills programmes. That does not make a lot of sense.

Marlyn Glen: The way of measuring success in such programmes would not be by the number of hours spent on them.

Professor Tombs: That is right. Another thing that we should be aware of is that part of the process of going through prison involves getting category upgrades. Doing programmes in prisons helps people to get category upgrades. That issue must be addressed. The key to the success of any measure in which an offender becomes involved is motivation. However, the motivation should not only be to get a category upgrade to make life in prison more bearable, although that is perfectly understandable. Added to that must be some motivation to be able to live a law-abiding life when offenders come outside. That has to be encouraged, too.

Bernadette Monaghan: Professor Tombs mentioned the Home Office research. When the cognitive skills programmes were piloted, there were some successes, although in the pilot phase the programmes would have been properly

targeted. Once something is rolled out globally and offered as the holy grail that will sort everything out, there is probably a quality issue, as the targeting may not be on the right people. That reinforces the point about people taking up programmes in prison. A proper assessment has to be done of whether a programme is appropriate for a particular person at a particular time. That is the crucial point.

Stewart Stevenson: I want to develop my understanding and, perhaps, that of my colleagues of your views on cognitive skills programmes and their place in the scheme of things. In the Scottish Prison Service, the programmes were introduced largely through prison officer initiative rather than psychologist initiative. However, the programmes tend no longer to involve the prison staff and affect the operation of the whole prison, not just in the classroom, but in residential accommodation; now, they are, in essence, a few hours a week in the classroom. My visits to a Welsh prison showed that the prison as a whole had not changed its attitude as a result of putting people in a classroom for a couple of weeks.

To what extent do you think that the perceived failure, as reported in the Home Office research, relates to the implementation of such programmes in what is now a rather partitioned way? Are the programmes intrinsically not capable of being delivered? In asking that, I make the assumption that people are being pre-qualified with the necessary literacy and numeracy skills to benefit from the programmes. I recognise the validity of what you said in that regard.

Professor Tombs: Prisons are a very inappropriate place to try to do anything positive. Cognitive skills, properly targeted and integrated with a whole raft of initiatives that are required in relation to the individual prisoner, may have an important place in the reintegration or rehabilitation—whatever word we use—of prisoners. The key factor is that resources are limited.

There are far more important things to do with people in prison, such as linking them to support and agencies outside, which will help them to get trained, to do a job, to run a house, to pay their bills and so on. People in prisons are lacking in basic skills. That is the issue. Programmes such as those for cognitive skills are fine, provided that they are linked with a lot of the other support that helps to sustain a person living in the outside world. No wonder they do not make a big impact when that is not the case.

Bernadette Monaghan: I would like people in prisons to be taught independent living skills at some point in their sentence. Such skills are seriously lacking.

The role of the prison officer has been mentioned. Prison officers act as key workers to groups of people. Sometimes, that provides the most significant relationship that a prisoner will have in their life. I have seen prison officers coming into work early to write parole reports, for example, and they really engage with the prisoners.

The difficulty about programmes that are started in prison and about the relationships that build up there is that they are often not continued post release. If someone is transferred from Polmont young offenders institution to an adult prison, or if they move from the closed estate to the open estate, there is no mechanism for picking up and continuing the work that they have started. That can be devastating to somebody who has been making really good progress.

I am not sure that social work is linked into the sentence management process. The whole issue of throughcare needs to be linked in better, too, so that, once someone is released, a programme is in place for them and the work that they started in prison will be continued on the outside.

It is not enough to examine the delivery of programmes only in the context of prison; there is an issue over how programmes are being implemented and, more important, how the work will be continued in the community. I am not sure that we have cracked that yet.

Stewart Stevenson: You refer to sentence management. For long-term prisoners—which is where my interest lies—a case conference is essentially an annual event. Is that likely to be frequent enough to ensure that the appropriate structure and sequencing of activities leads towards release and towards a higher probability of reintegration into society? Is that likely to be achieved with the relatively hands-off style of sentence management for long-term prisoners that is currently operating in the SPS?

Bernadette Monaghan: I cannot comment on the detail of that, but I know that not an awful lot of pre-release work goes on for long-term prisoners. There are not many such programmes going on in the open estate, either. We should be concerned about the number of people who go to the open estate from the closed estate and who do not survive there. Some want to return to the closed estate. Indeed, some prisoners do not make it to the open estate in the first place. All those people will have to be released back into the community at some point, but there are not many throughcare arrangements in place.

We are talking about people who have been in prison for quite a long time and who will have been high risk. We have to consider the arrangements for those people. If they start work in a closed

prison and then go to the open estate, that work should be continued in the open estate. Again, that is about ensuring that the person is followed around the prison system. People should not be just cut off when they move from one place to another; they should be able to continue the work that they started in one place when they move to the open estate, or wherever they are transferred to.

The Convener: The committee is interested in the issue of what have been called short-term prisoners and long-term prisoners. Those are probably misleading terms, especially because a short-term sentence is defined as four years or less, whereas we are really talking about sentences of three months or less. Most witnesses have told us that nothing very much can be achieved in that time. Do you agree with that?

Professor Tombs: What do you mean by "achieve very much"? Obviously people cannot be put on programmes and all that sort of thing if they are in prison for the short term. However, constructive things can be done with people who are in for a short period if that is what is decided; I leave to one side the question whether short sentences are sensible.

Edinburgh prison's throughcare centre, when it was up and running, was a positive development. The research to which I referred earlier showed that even people who were on very short sentences could go to the centre. Apex Scotland was involved with the SPS in setting up the centre, so Bernadette Monaghan might want to say more about that.

That throughcare centre provided a point where outside agencies could come in and work with prisoners, many of whom were serving sentences of only six to nine months. Some long-term prisoners who had hardly ever seen anyone volunteered to go to the centre because they could get access to help with housing, with employment issues, with drugs and other addictions and with the whole range of other problems that they would be going back out to. The centre was like a one-stop shop where people could get help with the practical problems of life. That was a positive development and it could be rolled out in a lot more Scottish prisons.

Bernadette Monaghan: I come back to the point about short sentences. Most people would agree that a six-month sentence, which means three months in reality, will not achieve much at all. We have to examine why people end up in prison for short periods. My bet is—and it is just a guess—that if people did not breach community sentences and appeared in court when they were supposed to, they would not end up in jail for short periods.

Something seems to be going wrong with the implementation of community sentences. I hear sentencers saying that they are willing to use community-based programmes but, to some extent, there is a postcode lottery. There are specific programmes in different areas but they are not rolled out nationally. Sentencers are willing to give community sentences but they are sometimes told that there is not a place on the programme for someone who is doing three or six months' community service.

The sentencers are therefore left with a dilemma. In considering a sentence, they have to decide between imprisonment and a community sentence. The dilemma is whether to let the person stay in the community until a place becomes available on a community programme when that person might continue offending—and what message that gives them—or whether to send them to jail for a short period.

We have to consider why that is happening. The issue may well be one of resources. We need to consider alternatives in the community to remand. We need to consider what is going wrong with community sentences. People should be able to be put on to a programme or a scheme for a short period as soon as the decision is made, so that it is more intensive and more focused and feels like a punishment. Within that, though, there should be a constructive element that addresses their needs.

We are finding that the breach rate for supervised attendance orders is quite low. That is because it is a constructive penalty. It is a punishment, in that a person has to turn up, but, within that, people work on different issues, such as money management and debt. If they have issues to do with alcohol and drug abuse, they work on those issues and then they do a job placement.

You will see from our annual report that we are meant only to get people through the order, but we have had quite a lot of success with people going on to employment and education. If we had community penalties that took place as soon as the decision was made, and within which people's needs were addressed and they could work on their issues, the success rate could be much improved.

11:15

The Convener: Presumably that would account only for a proportion of offenders; there would be some offenders—repeat offenders—for whom there is no alternative to imprisonment.

Bernadette Monaghan: Yes, absolutely.

The Convener: Our inquiry is specifically about rehabilitation—that is the word that we are using at the moment—in prisons.

Professor Tombs: We are talking about whether we can do something useful in prison with people who are doing short sentences. A prison's commitment is not only to hold people in humane and reasonable conditions; part of the SPS's vision is that a prison should do something positive as well.

The Convener: I assume that there is a percentage of prisoners—or a type of prisoner—at any given time who will be responsive and a proportion who will not. There has not been much discussion about that so far; it has all been about which type of prisoner could get this response and which type could get that response. The reality, presumably, is that some offenders will not co-operate, whatever the circumstances. Alternatively, there are, in some cases, offenders who believe that they are innocent and that co-operating would be an admission of their guilt. Can you give the committee any idea of the percentage, or variety, of prisoners in the system who are able or willing to respond to programmes?

Professor Tombs: What kind of programmes? There are so many different programmes. The sex offender programmes have been shown to have a positive impact on a number of sex offenders, although not all. Some are in the category to which you refer; they are living in denial about their problems and do not want to co-operate for whatever reason. The same applies to anger management programmes and so on. It depends on the offender. It is hard to say whether there is a recalcitrant—

The Convener: Could I go back at this point?

Professor Tombs: Yes, go back. The issue is quite complex.

The Convener: I was interested that you said that most prisoners do programmes to get a category upgrade. Do most prisoners want to do something to address their offending or are you saying that most prisoners see those programmes as a way of having a better life in prison?

Professor Tombs: Most prisoners whom I have come across do not want to go back to prison. Most of them would prefer to live crime-free lives, although most do not believe that that is possible. We cannot really generalise about all categories of prisoner, but I am talking about the research on persistent young offenders who end up in prison.

Most prisoners want the same lives as everyone else has—they do not have different values—but they do not see a way of making that happen; they do not believe that it will happen. Part of the process is about beginning to make such people believe that they have a chance. It is a question not just of changing attitudes, but of changing capabilities and opportunities. I suppose that that is what I was trying to get at.

Other groups of prisoners, such as the old lags who have been in and out for years and who have had problems with alcohol—in the past, the problem was always alcohol, but now it is drugs, although the users do not live so long—are caught in the revolving-door syndrome. As Bernadette Monaghan said, many of those people have become unable to live in the outside world. They undertake rehabilitation programmes not only to improve their time in prison through getting improved conditions; they would also say that they want something to help them to have a better life. However, the programmes must be broken down by the types of prisoners.

Bernadette Monaghan: Can I just pick up on that—

The Convener: No. I want to finish on this subject. It is interesting to get a bit of variety. As you say, there is a huge prison population and we are trying to get into the detail of how groups are responding differently. Is there any indication whether it gets harder to involve people in the programmes as they get older? Some of us were at HMP Barlinnie a few weeks ago, where we met some older prisoners who were being held on remand. You would probably describe them as being caught in the revolving-door syndrome. Is there any evidence to suggest that, as people get older, it is harder to convince them that they have a chance to do something about their lives?

Professor Tombs: Yes, I think so.

Mike Pringle (Edinburgh South) (LD): I was interested to hear Professor Tombs say that we should not get into whether short-term sentences are sensible. I would be interested in her comments on that. Bernadette Monaghan went on to talk about the resources issue, which I think is particularly important. To me, a short-term prison sentence is one of less than six months, and a huge number of people serve such sentences. How can we address that problem? Is it just about the Executive throwing money at it?

Professor Tombs: What problem? Are you talking about the short sentence problem?

Mike Pringle: I am talking about short-term sentences.

Professor Tombs: My view is probably different from that of a lot of people.

Mike Pringle: That is why I asked you the question.

Professor Tombs: I think that we should keep prison sentences as short as is humanly possible.

I am not a sentencer—I am not a judge—but I have just finished a piece of research on sentencers. It is not written up yet, but it seems that their view is that they have tried everything. The fundamental issue is that nobody knows what prison is for, but they have tried everything else and they think that they need to try a prison sentence because of whatever. If that is what happens, I think that prison sentences should be kept as short as is humanly possible, unless it is being used to protect the public from serious crime and seriously disturbed people, who would not be serving three-month sentences anyway.

Offenders in all other categories should be sent to prison for as short a time as is humanly possible. If that means custody plus—for example, three months in prison plus a year's supervision in the community—even better. Prison further isolates people who already are not integrated into society and, as Bernadette Monaghan said, it is more difficult to reintegrate people from prison than it is to do so from a community sentence.

I am not running about saying that we should get rid of all short prison sentences. However, perhaps the short sentences that are given now do not need to be given. For example, people who get two years now could perhaps get six months. I would like the length of prison sentences to be reduced. Over the past 20 or 30 years in Scotland, we have increased the use of custody and our prison sentences have got longer. We do not need that. I know that I am straying outwith the remit.

The Convener: Yes. We are considering rehabilitation in prison rather than sentencing policy, although I know that that is an interesting issue to explore.

Mike Pringle: I return to the question of resources. Given what the professor just said about what I would call short-term prison sentences, a three-month sentence could be reduced to almost nothing, but how would we address the problem?

Bernadette Monaghan: Currently, if someone is sentenced to prison, the Scottish Prison Service has no option but to find room for them somewhere, even though the prisons might be overcrowded. We could implement prison sentences much more creatively. I do not know what structure we would need to do that. Perhaps we could suspend sentences, or we could assess a person's needs and say, "All right, you have been given a short prison sentence, but here is how we are going to implement that. You need to go and learn how to live independently. We need to find you accommodation. We will put you on this programme. If you do all that, we will see at the end whether you still need to go to prison." Scandinavian countries, including Finland, do that. I believe that there are two options: either a fine or custody. When custody is given, a range of other things kick in and the sentence can be implemented in different ways.

We do not have any creativity when it comes to considering how to deal with people on short sentences. We could replicate the idea of the throughcare centres—or the link centres as they are now known—in the community. Why not have such a centre as a focal point, where all a person's needs are addressed and all the agencies are linked in, with somebody managing the person and plugging them into different agencies that can sort out their needs and work with them on their offending behaviour and so on? We could probably achieve more in that way than by putting someone into prison for three months.

We have resources that we could use a lot better. Resources are an issue in relation to being able to implement community sentences properly. We must consider that issue as well.

Professor Tombs: Another area that the committee should consider is the provision of residential treatment facilities for people with severe alcohol and drug problems—particularly the latter—whose offending is associated with that. Many judges find such provision totally absent from the range of what is available to them. We spend £1.5 million a week on upgrading the prison estate. I know that we are doing that because conditions in prisons have been found to be in breach of human rights legislation, but we must consider resources across the board. Many prisoners should be put into residential treatment facilities.

Stewart Stevenson: When Professor Tombs said "seriously disturbed", I presume that she meant societally rather than mentally.

Professor Tombs: Yes.

Stewart Stevenson: Right. Thank you.

Let me move on to the subject of employment. Clearly, there is an expectation that if people are to be reintegrated into society, employment will be part of the ultimate position that they reach. How well is the SPS doing at equipping people with new skills and connecting them to employment opportunities during the time that it has care of them?

Bernadette Monaghan: In the past, prison industries did not reflect the kind of work that would be available to people on release or did not equip them with the skills and the opportunities to take up work on release. In 2003, the SPS's learning, skills and employability sub-group published a paper that set out its commitment to modernise prison industries and ensure that whatever vocational training and opportunities are

available in prison reflect what is available on the outside.

There is a debate about whether we need to examine specific types of work and whether people in prison are learning an awful lot of skills that are valuable to an employer. That is the work that we do with them. If someone is going to join a work party, they have to work as part of a team. They have to be reliable. They have to get up in the morning and turn up to work. They need to learn how to deal with authority and with conflict. If they work in the kitchens, they learn about food hygiene, food handling, food preparation, health and safety and so on. Young people will become involved in community sports leaders awards, youth at risk courses and so on.

11:30

Those are all valuable skills to employers, but employers are more interested in the quality of the person. They will ask whether someone will be reliable, whether they can be trained, whether they are adaptable, whether they will turn up on time and so on. They will be more concerned about those questions than about the skills, vocational training and qualifications that we give people. There is a debate to be had about that. Large employers, particularly in the construction industry and the hospitality sector, recognise that, in future, they will have a huge number of vacancies, and that the only way they will fill them is if they start considering groups of people whom they excluded before. Ex-offenders are one such group.

I do not know whether members saw during their visit to Barlinnie the construction and training and development initiatives in operation. It is a matter of the SPS training people and of employers recognising that they need people to do certain types of work otherwise they will experience shortages. The idea is to train people up before release and to plug them into jobs in the appropriate sector, but there is a fundamental flaw in that, in that it is not enough to bring employers into prisons, link them up with people who have been trained and say, "Off you go—they'll do the job."

We got funding from Scottish Enterprise to put a key worker in place and, without her, the whole initiative in question simply would not have worked. We are very involved in the Scottish welfare to work task force, which now has an offenders sub-group, which is examining such initiatives. The fact that it is not enough to have a guaranteed job with an income of £380 a week has been forgotten. People need shelter, and they need to apply for community care grants to get the equipment necessary to go and work on building sites, for example. They need to be able to sort out bank accounts.

Once ex-prisoners are in employment, they need support. The Scottish Prison Service cannot provide that, and employers do not know how to do it. The voluntary sector is brilliant at that—if I may sing our praises for a moment. We can stick with people. We can work with them before they are released and we can stick with them afterwards to ensure that they have continuing support once they are in a job. If someone is released under a certain type of licence, they need to know that they cannot walk off the building site, as there will be consequences to that. A whole piece of work has to be done to sort out the issues and to ensure that the person is ready to take up the job in question. There is a huge fear factor among people who have never worked and who have never benefited from the structure that goes with work. Before they are released, they fear what it will mean, and they need support.

That illustrates where the debates are in respect of employment in prisons. It does not work without the support of someone whom an ex-prisoner can phone once they are working or who can phone the ex-prisoner and ask them how they are getting on.

Stewart Stevenson: Are we being ambitious enough? All the employment opportunities that you were describing were essentially manual labour. When I visited the Bapaume prison, north of Paris, I found that an entire office was being run from there. One of the prison wings was a women's wing, and it did not strike me as immediately obvious that women would find any of the employment opportunities that you have mentioned attractive or practical. Are we restricting what can be achieved? What do prisoners or, more properly, former prisoners think about the provision that is being made?

Bernadette Monaghan: I think that we probably are restricting things. The SPS will have a whole lot of other considerations, which I am not aware of. However, I know that discussions are going on with learndirect Scotland about a secure technologies project at Polmont. We need to start bringing in computers. People will be working with them and they need to know how to use them to get a job. Call centres could be based in prisons. Inmates would not handle financial information and so on, but they could be trained to work in that type of setting. There is scope for being a lot more imaginative about what we can do within prisons.

Stewart Stevenson: Are you familiar with the United States, where a number of call centres operate commercially inside prisons?

Bernadette Monaghan: I am not really familiar with it but it does not surprise me. Some of our clients go on to that kind of work. I imagine that it is particularly anonymous.

I agree that we have to get away from the whole manual labour thing and start matching up the skills that people will need with the kinds of employment that are around in the community, which changes over time as well.

Stewart Stevenson: How much training in computers is going on in prisons? Are you aware of any? I am certainly aware that quite a lot of computer training is going on in Peterhead prison, which is my local prison. That is partly to ensure that sex offenders do not abuse computers when they leave.

Bernadette Monaghan: The honest answer is that I do not know.

Professor Tombs: Not a lot is the answer. One or two places, such as the one Stewart Stevenson mentioned, have specific reasons for doing such training, but by and large very little of it is being done in the prison estate.

The Convener: What can you tell us about the role of prison officers? I am aware that some restructuring of the job was done a few years ago and some promoted posts were abolished, but I am vague about the detail. Have you any idea about what grade an officer has to be, or is being involved directly with a prisoner's personal development and rehabilitation a basic component of the job?

Professor Tombs: Officers are different. Some volunteer to be trained to be involved in prisoner programmes. I expect that it will be the same in the link centres as they roll out, but in the throughcare study at Edinburgh prison, officers volunteered and said that they would like to be part of such special initiatives. For sentence management, the longer-term prisoners have personal officers.

From the work that I have done in prisons over the years, I think that prison officers have a key role to play. Establishing good relationships with prisoners can make all the difference.

The Convener: Is it essential that all prison officers should be involved or is there a case for saying that it should only be those who volunteer?

Professor Tombs: That is a very good question. Let me think about that one for a minute.

Bernadette Monaghan: It comes down to the quality of the individual. It is the same for my staff or any other agency working in prison.

The Convener: But should it be? Our inquiry is examining exclusively what we can do in prisons and not comparing it with anything. If you could make changes, would you make it a more fundamental role? Is it possible to do that, given the prison officer's role as gatekeeper and custody officer? I wonder whether it is practically possible or whether the roles might have to be separated out.

Bernadette Monaghan: We have to remember that the prison officer's responsibility stops at the point of release. There might be a financial argument for prison officers doing everything and for everything to be done inhouse, but I am not sure that that is the only argument. There have to be links with the voluntary agencies, which can come into prisons beforehand and then continue to work when the prisoners are released. If prison officers try to refer people to our services, they will not go. We have to go in and meet the person and sell what we do, and then we have to pick them up at the point of release.

What makes a person respond is the quality of the individual and how they engage. It is about values. There is a big drive for prison officers to get certain qualifications within set periods of time, but the values and the attitudes of the individual are fundamental. I have seen some examples of excellent work, and I have seen others that have not been so good because people did not have the skills or the ability to engage.

Such work cannot be made compulsory. People cannot be told, "You will do this as part of your job." The function that custody officers at Kilmarnock perform is very different—there is not a lot of engagement with the prisoners there. How can behaviour be challenged and confronted? If there are assaults, how are they dealt with? There must be a level of engagement with prisoners.

Professor Tombs: It is a very serious issue.

Stewart Stevenson: Sorry—could I come in at this point?

Professor Tombs: Yes—but I would like to add something later, as this is a very serious question.

Stewart Stevenson: I would like to clarify something that Bernadette Monaghan said. Am I correct in saying that, in Kilmarnock prison—of which I am no great fan—there is still a role for the personal prison officer? Is it not the case that the ratio of personal officers to prisoners is much higher? From memory, it is 1:10 whereas, in the Scottish Prison Service, it is more like 1:6. There is not a change in principle there, but a change in operational practice.

Bernadette Monaghan: You may well be right about that. My understanding was that, in the private prison, there are specialists who come in to deliver programmes. The involvement of prison officers in delivering programmes would not be the same at Kilmarnock as it would be in the SPS.

Stewart Stevenson: Is it not the case that a lot of specialists come to prisons to deliver or participate in programmes throughout the SPS? I

wonder whether we are making an artificial distinction here.

Bernadette Monaghan: We might well be. There is a view according to which fewer specialists ought to be coming in and prison officers ought to be more involved, but I am not sure that I would entirely agree with that view.

Professor Tombs: The issue about the role of prison officers in delivering programmes is a central one, and I would like to say two or three key things about that. I would be very worried about completely separating off officers' custodian-type function. I would rather that prison officers had a more rounded role, as the convener was indicating, but in the United States, where the custodian function has been separated off, prisoners have ended up running the jails—it is as simple as that. That does not have a good effect on prisoners or on the relationships that they can form with prison officers. Prison officers should all get involved, working with prisoners in one way or another, but I emphasise Bernadette Monaghan's point about the need for agencies from outside to come into prisons. I do not confine that to the delivery of programmes; I think that there is more need for agencies to come into the prisons and work there, helping people as they get out of prison.

The throughcare centre at Edinburgh was very impressive when prisoners were released. I observed different prisoners, some of whom had been involved in the throughcare centre and some of whom had not. Those who were being released who had been involved in the throughcare centre were met at the door by a representative of one of the agencies involved in the centre. They were brought some clothes to wear outside and they were taken to accommodation that had been arranged for them while they were in prison. They might also have had an appointment with Apex two days down the line. In the case of others being released, the prison gate was opened, and then it was shut. They might have had £55 with them, but who knows where they went. It is imperative to break down the barriers as much as possible and to bring the outside into prisons.

The Convener: We are getting close to finishing this evidence session, but Marlyn Glen has a question on a slightly different topic.

Marlyn Glen: Do you find that special policy consideration is required to assist persons from socially marginalised groups to develop employment skills? Are the needs of specific groups of people addressed while they are in prison in preparation for their release?

Bernadette Monaghan: Special consideration is given, but I am not sure that those issues are addressed as such. We are only just becoming aware of the high number of our clients who are possibly dyslexic, and of the need to ensure that any training materials that we use are tailored to their needs. We have had some funding from the Scottish Executive to address that. We look into people's needs as far as employment is concerned. If people are dyslexic or have other needs, it might be better for them to become self-employed, and we have been speaking to Scottish Enterprise about that.

The short answer is that our learning is evolving over time. We were not aware of people with different needs and specific needs, but we are becoming more aware as time goes on, and we are certainly trying to do something about it.

11:45

The Convener: That concludes the questions that the committee had for you, although I think that we would all like to continue the session, as it has been dynamic and valuable. I thank both of you very much for giving evidence and for your written submissions. We did not have to ask some questions, as you had already covered the issues, which was helpful. The session has been excellent.

If everyone is sitting comfortably, I welcome our second set of witnesses. Bob Shewan is convener of the Association of Visiting Committees for Scottish Penal Establishments and Moira Graham is convener of the over-21s visiting committee, HMP Cornton Vale. I refer members to the helpful paper that has been submitted by the Association of Visiting Committees for Scottish Penal Establishments. Bill Butler will begin and there will be a series of questions thereafter.

Bill Butler: Good morning—it is still morning—and welcome, colleagues. For the *Official Report*, will you explain the role of visiting committees for Scottish penal establishments?

Bob Shewan (Association of Visiting Committees for Scottish Penal Establishments): Yes. Visiting committees are appointed in two ways. Councils appoint committees for adult prisons and the Minister for Justice appoints committees for under-21s. The functions are the same.

There have been visiting committees since the state took over the running of prisons at the end of the 19th century. Before then, they had an executive function, but they have no executive function now. Their role is to consider conditions in prisons and the welfare of prisoners and to hear any complaints that prisoners may have, follow them through and try to find answers to what is requested. The Association of Visiting Committees for Scottish Penal Establishments was formed only in 1988, so we have been running for 16 years. I

was not involved back then, but the idea was to support one another, compare notes, share good practice and try to work more effectively on the training of visiting committee members.

Bill Butler: In answer to how they define the term "rehabilitation", previous witnesses have said that they prefer the term "reintegration". How would each of you define the term "rehabilitation"?

Moira Graham (Over-21s Visiting Committee, HMP Cornton Vale): When I knew that I was coming to the meeting, I looked up the dictionary definition of "rehabilitation", which was interesting. The definition of "rehabilitate" was

"to make fit, after … imprisonment, for earning a living or playing a part in the world".

Visiting committees would agree with that to some extent, but the definition should be much wider than that. The whole prison setting is important. In other words, there should be an holistic approach, rather than a focus on one particular part of the prison experience.

Prisoners should have better coping skills by the end of their sentence. Many prisoners, particularly the women with whom I work, come from chaotic backgrounds and have been traumatised or abused, for example. They need to learn to cope better when they leave prison. We try to provide them with skills that make them employable, if that is possible. We want to reintegrate them into the community and to reduce reoffending, if we can, although as the convener rightly said, that often happens naturally. We often find that when people reach the age of about 30 they stop offending for some reason. It is difficult to know whether that happens because they have gone through a maturing process.

We must remember that the people who come into prison have an identity. They are mothers, fathers, sisters, brothers, sons and daughters and they bring that identity with them. It is important to recognise that we are not rubbing that identity out and that the maintenance of emotional support within families is an extremely important part of the rehabilitation process. Of course, that happens through the visits system, so the means of working towards rehabilitation is very wide.

It is important to have facilities that enable visits to be successful. The governor of Cornton Vale prison would agree that the visits room at the prison is inadequate—I think that some members have seen it. The room is very small, compared with the facilities at Greenock prison, which uses a large, open, spacious area that means that families have a good experience. When the visits area at Cornton Vale is busy and there are children around, many women are quite stressed by the end of the visit, because they have not had a good experience. That has an impact on rehabilitation, so there is much work to be done.

Noranside prison has a specific problem with access. Prisoners' families used to be collected by a prison van, which would transport them to and from the prison. That system has ended—I presume for insurance purposes, but I do not know the details—which means that if prisoners' families do not have a car, they must pay about £40 for a round trip by taxi. Members can imagine that that puts off many families. Our colleagues on the visiting committee at Noranside are considering the problem in detail, because it must be addressed.

I listened to the evidence that Professor Tombs and Bernadette Monaghan gave and I think that we need a multiagency approach that brings together local and national Government, the voluntary sector and anyone involved in criminal justice. We must see what we can do to work together on rehabilitation.

The Convener: That was a full answer.

Moira Graham: I am sorry if it was too long.

The Convener: No, you gave a detailed answer. Does Bob Shewan want to add anything?

Bob Shewan: I agree with a lot of what Moira Graham said; I will not repeat it.

A very simple definition of rehabilitation is that it is changing people, we hope for the better. If that is to happen, many factors have to work together. Resettlement is a bigger and better concept than rehabilitation. If prisoners are to get back to positive living when they are discharged from prison, all the factors that work together to make for a settled life must be encouraged in the prison; for example, family contact through visits. Visits must be good experiences, but that is not always possible in closed prisons.

Closed visits in our prisons sometimes last for far too long. A prisoner may be put on closed visits because an illegal substance has been passed and received or simply because of suspicion as a result of intelligence that has been received in the prison. When the latter is the case, the situation must be examined rigorously so that closed visits do not continue month after month, as has sometimes happened.

The other part of resettlement is finding somebody a house and a job. Prison interrupts all that, unless a family can cope for the term of a sentence.

Bill Butler: Moira Graham said that identity was important and referred to page 1 of the submission, which says:

"in order to survive they mentally occupy a different world, one which allows them to retain a sense of their own identity."

The submission also says that

"An understanding of the impact imprisonment has on the concept of identity, particularly for women, is crucial to a consideration of the notion of rehabilitation".

Will you elaborate on that?

Moira Graham: For all of us, it is important to know who we are. An attempt to eradicate identity and to make everyone in prison the same will increase prisoners' loss of self-esteem. Their confidence can go and they can begin to feel stressed. Many of the women with whom I work undergo a bad stage during which they feel that they are lost in the prison system. That applies especially to those who are serving long sentences, who realise suddenly that they may be in prison for 10 years, which is horrible to realise. We must work hard with them to ensure that they still appreciate that they have much going for them, and to develop their skills in the prison.

Bill Butler: So, it is essential that prisoners retain their sense of self to prepare them for—hopefully—leaving prison and being different in a positive way.

Moira Graham: I think that it is.

Bill Butler: Moira Graham and Bob Shewan both described the goal of rehabilitation, resettlement or even reintegration. Do prison officers understand that goal clearly?

Moira Graham: I will speak about Cornton Vale, because I know that prison best. The prison has about 260 officers. As in any organisation that has a couple of hundred employees, those employees are not all the same and do not all have the same goals or aspirations. Some have been prison officers for a long time so they are bound to have entrenched attitudes to the job, which has changed over the years, as members know. The job now involves care more, and rehabilitation where that is possible. Some officers subscribe fully to rehabilitation and work well with prisoners. We keep hearing about good officers, but some officers do not really feel committed to rehabilitation and might do better to move on.

Bill Butler: Do good officers outnumber bad officers or, rather, the officers who have more entrenched attitudes?

Moira Graham: I speak only from my own perspective.

Bill Butler: I am just asking for an impression.

Moira Graham: I have been quite impressed by several officers whom I have come across and with whom I work closely, as have been the women. Many prisoners are supportive of officers and are concerned if the hours that they work are too long or if they work double shifts, for example. Prisoners know which officers they want to work with; they avoid the officers who have entrenched attitudes.

Bill Butler: Does Bob Shewan's opinion coincide?

Bob Shewan: It is impossible to generalise; there is good and bad. The SPS would say that all officers are trained in rehabilitation, but we know that officers are recruited essentially for custody and restraint purposes and that they are paid a very low wage. It takes quite a lot of time to build into them a firm view of the part that they can play in rehabilitation. The training of a social worker takes two years, whereas a prison officer trains in six weeks. I doubt that it is possible to provide all the skills that are required to play an active role in rehabilitation in a six-week training programme.

Beyond that, the in-house training that goes on takes time. Those who will make a difference in delivering the programmes and rehabilitation strategies to prisoners come from the pool of experienced officers, but I would say that they represent a minority rather than the majority of prison officers.

12:00

The Convener: I want to ask about short-term sentences, which we have covered quite well. I note that you say in your submission that not much can be achieved in a short period. You spoke about the problems that such sentences cause for individuals. They might lose their tenancy, for example; their life will be completely disrupted and they will find it very hard to pick it up when they come out. I do not ask you to comment on the policy of short-term sentences, but should there be—in the case of sentences of three months or less—a requirement on authorities to freeze tenancies or a requirement on employers to freeze jobs? In your view, should there be any more radical measures that would allow people on short-term sentences to pick up their lives when they get out of prison?

Bob Shewan: If we talk about radicalism, there are so many changes that one could think of that would make prisons suitable for the 21st century. I know that the SPS would say that it wants an estate that is fit for the 21st century but, to me, that is not the same as having a prison service that is fit for the 21st century.

All the evidence indicates that short-term sentences—which last for an average of 13 weeks—do not achieve much as regards rehabilitation. Nearly 50 per cent of the people who are released after a short sentence will reoffend and return to prison; that is the revolving

door that we talk about. I agree with the chief inspector of prisons when he says that short-term sentences are pretty valueless and that they ought to be served—

The Convener: I will stop you there. I am not asking for a comment on the policy. I know that there is a widely held view that short sentences might be worthless. Given that they exist—that is the situation that our inquiry addresses—is there anything that could be done? What radical measures could be taken?

Moira Graham: I would like to reply to that by providing a little example. The prisoners with whom we deal are real people. I am in and out of Cornton Vale as often as three times a week and the prisoners are real people to me: I know them and I know something about their families. A prisoner who spoke to us the other week—let us call her Mary—had a simple story. She had been caught shoplifting, was brought into the prison on remand for a while and was bailed while waiting to be convicted. She lost her tenancy and her child had to go and stay with Mary's mother. She went to court and was convicted and sentenced. The time that she had spent on remand was taken into account and she went back into Cornton Vale to serve the remaining two weeks of her sentence. Because she has lost her house, she has to go back to the beginning and start again.

What the convener suggested would be most welcome—women in particular are affected by short sentences. Often, when a man goes into prison, there is still someone at home looking after the house and keeping the tenancy going. Women often lose that and their children are taken into care. As you say, they can lose their jobs as well.

The Convener: They would lose their tenancy because of the remand period. If that is added on to the two weeks, they are in prison for a much longer period.

Moira Graham: Yes. A woman would lose her tenancy and, I presume, have to start all over again to get that sorted out. If, as you suggest, a tenancy or a job could be frozen, that would be very welcome.

The Convener: Do you agree with that, Bob?

Bob Shewan: I do. That is one instance among many that could be cited. Loss of home, job and sometimes of family contact can follow prison.

Stewart Stevenson: I want to challenge slightly what has been suggested. I have a lot of sympathy for the idea of freezing a job; however, I wonder whether the effect of that might be the opposite of what you desire. It is important that people come back out of prison: we have established that in your evidence and in the evidence from the previous panel. It is important that those people go into employment, which provides a stable environment, an income and so on. However, someone who has come out of prison is more likely to offend again, even in that environment. Will not employers be less likely to take on cons when they come out not only because of fear that those people will reoffend but because they will have to hold the jobs open if they do reoffend? Do you not think that there are risks associated with that? Socially, it is a quite reasonable comment that you make, but in the real world what you suggest might have an adverse effect.

Bob Shewan: It is a huge problem for someone with a conviction record to come out of prison and get a job, but I see the problem of freezing jobs. However, Barlinnie has active links with employers whereby there is a carry-over from prison into work, even when convictions are known. The scheme is in its early days, but if it is successful it could be replicated throughout the country, which would make a difference.

Stewart Stevenson: So, honesty and openness on the part of all the parties to employment is vital to someone's having a fighting chance of using employment as part of the rehabilitative process.

Bob Shewan: Yes.

Moira Graham: A lot would depend on the crime—that goes without saying. Research suggests that if someone coming out of prison gets a job and has a supportive family, there is something like a 79 per cent chance that they will not reoffend. That is especially true in the case of men. Employment is important in the whole process, as is family support.

Stewart Stevenson: Are you citing specific research?

Moira Graham: I will need to look in my papers for the figure. Yes, it was from a piece of research.

In terms of openness and people knowing that an individual has been in prison, we have work experience programmes in the community. One long-term prisoner in our independent living unit is employed by a large garage group. She has already been promised a job at the end of her sentence because her employers are so delighted with her work. She has been completely accepted. Her colleagues know what her position is—it has been well advertised in the press—and they are 100 per cent supportive of her.

Other women have had jobs in local government. In the initial stages, the person in charge of the department was open with the other employees and said to them, "We're bringing in someone from the prison on work experience." Immediately, the other people said, "We'll have to lock up our handbags and hide things away." In

fact, the scheme has been an outstanding success. The person has come in, been accepted and become part of the team. It can work; people will be apprehensive to begin with, but that is the kind of thing that has to be tried to see whether it is going to take.

Stewart Stevenson: Could I just check which hat you are wearing at the moment? Is this all visiting committee stuff?

Moira Graham: Yes.

Stewart Stevenson: So your visiting committee extends its remit beyond what goes on inside the prison walls.

Moira Graham: In what way do you mean?

Stewart Stevenson: You are talking about what is happening after people leave prison, but you are wearing your prison visitor's hat.

Moira Graham: I am building on the fact that, when people are in prison, they are doing external work experience placements with employers.

Stewart Stevenson: Thank you for that clarification.

Moira Graham: We deal with those women; they talk to us about the jobs that they do outside.

Stewart Stevenson: I am sorry. I must have misunderstood. I was not listening carefully enough and I was getting slightly confused.

Bob Shewan: If you have visited Cornton Vale, you will know that there is no open estate for women. Outside the prison walls however, women have independent living quarters where they learn to live and order their own lives. Being outside is a big change from having everything ordered for them inside the walls. The open estate for male prisoners is a different matter, of course.

Margaret Mitchell: The submission from the Cornton Vale visiting committee states that addiction is a huge problem for the majority of prisoners. Can you quantify that? How successfully is the problem being addressed?

Moira Graham: I think it is well known that something like 98 per cent of the women coming into Cornton Vale have addiction problems. On one occasion over the past year, the governor asked the prison reception to monitor the situation closely over a period. Of the women who came in during that time, 100 per cent were on drugs—sometimes literally a cocktail of drugs and sometimes just one or two. It is as if once they know that they are coming into prison, they want to take as much as they can to ensure that they have had their share.

We have an addictions team and the governor has done much to put in place an addictions strategy. The seven members of the addictions team work closely with the women. The aim is to reduce the amount of drugs that the women are taking; some may go on to methadone programmes. We should make it clear that drugs are available in prisons. In some prisons, such as the open estate at HMP Noranside, there are very real problems with the amount of drugs that are being used. It is hard to tell whether or not methadone is a satisfactory substitute, because it replaces one addiction with another. The women are aware of that, and they become anxious if they feel that their methadone script has been reduced or if it does not come at the right time. Cornton Vale does its best to deal with the drugs that come in.

Drugs come over the fence or over the wall in all prisons. They come in via visitors, they come in with women who are being admitted and they come in in body cavities—members do not need me to explain all that to them. I am not sure whether the problem will ever be dealt with satisfactorily; I do not know how we can ever deal with that problem in prisons. I am not sure whether the experience at the prison with which Bob Shewan is concerned is different.

Bob Shewan: I do not think that the percentages for drug addiction and prisoners failing drug tests when they come into prison are quite so high in the male prisons. However, I do not think that we are winning on the drugs issue in our prisons. Failures on mandatory tests still run at about 35 or 36 per cent. If the committee is thinking about rehabilitation, drug taking is one area that you could consider.

We assumed at one time that those who were drug free would move on to open prisons. In fact, drug taking is now as rife in the open prisons as it is anywhere. Prisoners who have been through a drugs relapse programme might tick the box to say that they have done it, as they do with other things, but it is a matter for debate whether those programmes make a real change and whether prisoners can resist taking drugs when they are put under pressure and when drugs are more freely available.

Margaret Mitchell: Would staffing levels have an impact? Would it make a difference if more staff were present to detect and prevent drug taking?

12:15

Bob Shewan: Staffing is a big issue in all the prisons. We know that in the larger male prisons, the lack of staff means that classes and programmes are sometimes closed down because staff are needed for escort duties, for example. The Reliance Custodial Services contract will

make a difference only if the 5 per cent cuts that prisons are having to bear year on year do not mean that the only way that the governors can meet their budget is by reducing the number of staff. If our prison population continues to rise, the number of staff must also rise if we are going to have the quality involvement of staff with prisoners that will make a difference.

The Convener: We are not aware of the 5 per cent cut in governors' budgets. Is that in the SPS?

Bob Shewan: Yes.

Moira Graham: Yes. Last year the SPS asked all governors to cut their budgets by 5 per cent, so they all did a major exercise, in the usual way, to reduce their budgets. They were asked to make another 5 per cent cut this year; that has started to impact on staffing, because last year they trimmed back as much as they could in other areas. Perhaps I am out of order in saying this, but there is a rumour that they will be asked to make another 5 per cent cut next year.

Margaret Mitchell: You mentioned staffing levels in relation to preventing drugs from getting into prisons. Is there any incidence of officers turning a blind eye to drugs getting into prison, for example because a particularly difficult prisoner is perhaps easier to deal with if they are taking drugs?

Moira Graham: I have never come across that.

Bob Shewan: I do not think that anybody would ever admit that. However, there are occasions on which drugs' route into prison could be through prison officers. That is why in Perth prison, where I serve on the visiting committee, there are random searches of officers as they go on duty.

Margaret Mitchell: That is helpful. You mentioned an addiction team and a seven-member harm reduction team to address the problem of addiction. Do you have a general comment on how the SPS is tackling the problem? Is it doing so successfully? Can more be done?

Moira Graham: I imagine that the SPS has a policy on trying to reduce the amount of drug taking in prisons, on which it takes quite a rigorous line. Within prisons it would like to be as rigorous and successful as it can. However, it is a fact of life that drug-taking is endemic in the prison population.

Margaret Mitchell: It was suggested in your paper that rather than look specifically at drug addiction there is a need to consider its underlying causes. Are alternative programmes addressing the causes as well as the addiction? Alternatively, could organisations in the voluntary sector be brought in, such as Alcoholics Anonymous being brought into deal with alcohol addiction? I noticed that the submission from Cornton Vale visiting committee says there is not enough exchange of ideas with, and use made of tapping into, the voluntary sector, which might help.

Moira Graham: You know about the 218 time out centre and its philosophy in dealing particularly with women on drugs. East Port House in Dundee takes a maximum of 16 men and women, some of whom are referred straight from court and some of whom have been in prison and have asked to get in. It has a specific way of working with prisoners. The model of those initiatives, particularly that of the 218 time out centre, should be replicated where possible. It is difficult to say whether that will be available, because it is resource intensive.

Bob Shewan: The SPS has bought in Cranstoun Drug Services Scotland, which has specialists in dealing with drug addiction. However, engagement with a drug reduction scheme is entirely voluntary. If a prisoner does not want to be involved, he will find ways of having his needs met. Drugs in prison also relate to violence and bullying, so the issue is wider than just the taking of drugs; it is about a way of life that is worrying.

Margaret Mitchell: Another aspect of prison life that you touched on is the importance of trying to maintain family links. For example, you highlighted problems in Cornton Vale concerning the inadequacy of the visiting room. Are there other aspects that need to be considered to try to improve family relationships?

Moira Graham: I should have mentioned the little cherubs initiative in Cornton Vale. A special area has been set aside and mothers can book it and have their children there. One mother has three young children and she can arrange for them to come in together. They can play together in the little cherubs area for a couple of hours in a way that is not possible in the visits room.

There are constraints on that initiative, however. A family contact development officer must be present with a mother and her children. There are two FCDOs in Cornton Vale, but because of staff illness they have not been available. There are further problems to do with the FCDOs leave time and so on. Because of a recent staff shortage elsewhere in the prison, the FCDOs were redeployed to normal prison officer duties. At that point, the whole thing began to fall apart. They had to cancel prisoners' meetings with their families, which caused a lot of distress to the prisoners and their families.

I am not sure how to deal with that situation, but it seems to me that more people should be trained as FCDOs so that there is no immediate shortfall in which two suddenly become none and the scheme is unable to continue. However, the model is a successful one. Recently, Bob Shewan and I,

with some others, saw a scheme in Maghaberry prison in Northern Ireland, where the prison goes out of its way to do a lot of work specifically with fathers and their children. When the mothers or partners come with the children, the women are taken away for a cup of tea somewhere and perhaps a chat with prison officers. Meanwhile, the fathers work closely with the children on things such as reading programmes. For example, they may build a story together; the child goes away and does some more, then comes back on another occasion and works with the father again on the story.

I think that Janice Hewitt referred to a reading scheme somewhere when she gave evidence to the committee, but I am not sure about the detail of that.

While I am on the subject of Northern Ireland, I should mention that women who were being held in Maghaberry prison were about to be transferred to another location. There are only 20 women in prison in the whole of Northern Ireland. If we had the same percentage of the total population of women in prison, we reckon that there would be only 70 women in prison in Scotland. Either we are a much more criminal society, or there is a different sentencing policy. I know that issue is outwith the committee's remit, but the committee might want to consider it in detail at another time.

Margaret Mitchell: It seems to me that staffing levels is a huge issue. Holidays do not seem to be built into the equation, with the result that it seems to come as a surprise when people go on holiday. Should there be a strategic view that caters for and anticipates such things and which ensures that resources and back-up exist to allow programmes to go ahead and which ensures proper staffing levels?

Bob Shewan: There are cost implications in that, as you will know. I do not think that staffing necessarily takes into account holidays, illness or stress-related issues. Moreover, when there is pressure on staff, the security and custody side must take priority while other aspects suffer. There is much more to turning one's life around in prison than simply going through the hoops of certain programmes; prisoners have to develop a whole different way of living and thinking. Being involved in art, drama, education, the chaplaincy service, discussion groups and so on are all material to giving a person a much fuller life. However, if staff shortages continually interrupt such activities, disillusion eventually kicks in and prisoners begin to think that the staff are not really serious about such things and that they are simply a good way of occasionally filling in time.

Margaret Mitchell: As far as voluntary sector involvement is concerned, I note that activities such as cookery classes have not really been considered. However, if one, two or three prisoners took part in such activities, would more or fewer staff be needed to police them while representatives from the voluntary sector were present?

Moira Graham: I do not think that there is any need to police them in such a way. Obviously, the prison is responsible for ensuring that they are policed because, for example, some of the women might be high-category prisoners. However, that will be laid down by the SPS. More use could be made of the voluntary sector in some of these activities, perhaps in the same way as the learning centre is used for some activities outwith the classroom.

There seems to be an inability to deal with staff shortages in the prison. I should point out that I am not talking about the staff complement, which we feel is satisfactory. However, at the moment, eight officers are pregnant and will then—as they say—go off-line. Because the Reliance contract has not been rolled out, 10 of our officers are still on escorting duties. The recent delivery of two babies means that four officers might be tied up in the hospital. On top of all that, we still have to deal with the usual incidences of sickness and so on. Members will see from that how the situation builds up and becomes very difficult.

At one point, I discussed with the governor of Cornton Vale whether it would possible to have a pool of supply cover similar to that used in schools. I do not know whether members are familiar with that sort of setting, but 20 years ago there were no supply teachers in Scottish schools. Indeed, we were told that such a step would never work. It is now an established part of the school system.

The only problem with introducing such an approach into prisons is finding the kind of people who would be suitable for such supply work. However, I would have thought that retired policemen would have some of the necessary qualifications. After all, they do not need to be completely in the front line; they could carry out off-line work, which would allow officers to move forward and take on other necessary work. People with a social work background who have taken early retirement might be happy to come in. It cannot be beyond us to come up with a model for a pool of staff that could be used in the same way as schools use supply teachers.

Margaret Mitchell: But usual matters such as holidays would still be planned for. You are talking about planning for contingencies.

Moira Graham: Yes, absolutely.

Bob Shewan: I should point out that arranging cover sometimes means calling people back from their days off or even from leave. Under the time

off in lieu scheme that works in the prison service, an officer who does 40 hours' overtime within six weeks should qualify for time off. Forty hours' overtime would mean four days off. We have heard of an extreme case of a man who worked up 260 hours of TOIL, which is not four days but four weeks off. The service cannot cope with that sort of situation. Our view is that the easy way to resolve a situation like that would be to pay people overtime, but it would appear that that is not possible. TOIL is quite a big issue and it needs to be looked at.

12:30

Marlyn Glen: I want to ask about the rehabilitation of vulnerable and difficult groups of prisoners. I am thinking in particular about the difficulties of rehabilitating prisoners who have mental health problems, for example in Cornton Vale, which holds a high percentage of such prisoners.

Moira Graham: They say that 80 per cent of the women who come into Cornton Vale have a history of some kind of mental illness—indeed, some of those women are very disturbed and the difficulty is what to do with them. It has to be said that some of the women with mental health problems who come into Cornton Vale should not be in prison; they should be in some kind of hospital or care setting. It is inappropriate for them to be in prison, but that is where they are sent.

Cornton Vale has developed a team of about six or seven mental health nurses and so forth, based in Ross House, whose job it is to work with those people. Many women prisoners at Cornton Vale are vulnerable. From my experience of working with them, I can say that it would be difficult to rehabilitate them to the extent that they could be fully employable in the outside world. The team does its best with some of the women, but others will never be able to cope fully in the outside world. Some of them come in from and return to a homeless hostel setting. It is difficult for those women to reintegrate into the community in the way that we discussed earlier.

Marlyn Glen: I wanted you to expand on that point because I see the drive towards employability as unrealistic for a number of prisoners.

Moira Graham: For some of them, yes.

Bob Shewan: It seems that we are talking about two categories of prisoner, as in addition to mentally disturbed prisoners, there are also those who are physically disabled. Our newer prison blocks cater for physically disabled prisoners, but not always as sensitively as one would like.

I remember an instance of a fellow who had no legs and who was in a wheelchair. Obviously, the decision had been taken that he was self-sufficient enough to be able to cope with prison life. He was put in the disabled cell, which had a shower attached to it. Of course, as he had no legs, he had to sit to have a shower, but the seat had broken away from the wall. I am not sure why that had not been picked up on and seen to before I visited him, but I had to draw attention to the fact that it was impossible for him to have a shower unless the seat was repaired.

That example is symptomatic of the lack of genuine concern in the service. The fact that there is a disabled cell means that there is token concern about disability, but genuine concern is another matter altogether. The individual should get the kind of care in custody that the service says that it offers.

The Convener: I think that we have covered much of the ground. Only one point on your list of concerns has not been covered, and that is the lack of continuity in top-level management, which can destabilise prisons. Do you mean that there are many changes at governor level?

Bob Shewan: There are changes at governor level and there are secondments of governors to headquarters for special projects. Our view is that, where that happens very often, as it has done in one or two of our prisons, the delivery of programme services is interrupted. The prison service culture is still that the governor is the top man; if he is not there, people mark time until he comes back. There must be greater awareness of the damage that can be done by the too rapid promotion of people in the service, which we know happens for lots of reasons such as people retiring, going off on long-term sick leave, and so on. The important thing is the delivery of the service at the sharp end, in the prison, and the governor and top-level management are essential to that delivery.

The Convener: That is very helpful. You have given us some valuable evidence for our inquiry. The committee would probably like to have more to do with your organisation anyway, as you are in Cornton Vale three times a week and have a different, hands-on perspective of the prison system. I would like the committee to have a closer working relationship with the visiting committees.

Bob Shewan: We would value that, too.

The Convener: Perhaps we can discuss at another time how we can develop that relationship. I think that we would all benefit from that. I am sure that we will be back in touch to cover some of the ground that we have not covered. I thank you both for coming to the

committee and for your evidence, which has been very helpful.

Bob Shewan: Thank you very much indeed.

Subordinate Legislation

Register of Sasines (Application Procedure) Rules 2004 (SSI 2004/318)

12:36

The Convener: We move to item 6. We have three statutory instruments on today's agenda, all of which are subject to the negative procedure. I refer members to a note prepared by the clerk, which sets out the background to and information on the rules. Does the committee wish simply to note the rules?

Members *indicated agreement*.

International Criminal Court (Enforcement of Fines, Forfeiture and Reparation Orders) (Scotland) Regulations 2004 (SSI 2004/360)

The Convener: I refer members to the note prepared by the clerk, which sets out the background to and information on the regulations. The Subordinate Legislation Committee raised some issues on the regulations and its convener, Sylvia Jackson, will join us at about a quarter to 1, in case members have any questions. We also have Executive officials on hand. The Subordinate Legislation Committee uses very strong language in its report, which the committee needs to take note of in deciding whether the regulations are vires. That is a serious issue for the committee to debate.

If members have no comments on the background paper to the regulations, I will defer the item until Sylvia Jackson arrives, as it might be useful for us to hear from her. We can tidy up the rest of the business, which will take us until a quarter to 1. If Sylvia Jackson is not here by then, we can act accordingly.

Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Amendment Regulations 2004 (SSI 2004/370)

The Convener: I refer members to the note prepared by the clerk, which sets out the background to and information on the regulations. The regulations simply add another prescribed police station to the list. We have seen a few such instruments before, and it is fairly straightforward. Do members agree simply to note the regulations?

Members *indicated agreement*.

Proposed Protection of Children and Prevention of Sexual Offences Bill

12:39

The Convener: Agenda item 7 is consideration of whether to appoint an adviser for the proposed bill to protect children and prevent sexual offences. I refer members to the note prepared by the clerk, which invites the committee

"to consider whether it wishes to appoint an adviser to assist it in its consideration of the proposed Protection of Children and Prevention of Sexual Offences (Scotland) Bill."

I ask members to think about the Emergency Workers (Scotland) Bill, which we have been dealing with, and our initial thoughts about that, which might have been that the bill was small and quite straightforward. The proposed bill might not be large, but it might be equally complex. We have not yet seen it, but in the light of what I have said, members might want to consider whether an adviser would assist the process.

Margaret Mitchell: I think that certain evidential problems will have to be considered and we should ensure that we get things right. Having an adviser to consider the implications of such problems would certainly be helpful.

Stewart Stevenson: I agree with Margaret Mitchell in that respect, but suspect that we differ on whether the bill is required, or even possible in evidential terms, albeit that I think that there is no difference in our wish to protect children from the kind of offences that the bill addresses. On that basis, there is a substantial need for the committee to have an informed adviser. I make the additional point that the matter is not simply about having legal advice—it is about having expert advice that touches on matters of technology.

The Convener: That is a good point.

Stewart Stevenson: It might be helpful to say that the British Computer Society maintains a list of people who are willing to provide advice on technological matters. I say that only because I know about that list, but I am sure that there are other sources.

The Convener: Okay. If members are minded to consider Stewart Stevenson's suggestion, they could consider the person specification for the adviser and try to determine whether someone is available who has that added expertise. If they are not, we may have to ask a society such as that suggested by Stewart Stevenson for additional input in some way. Given the nature of the proposed legislation, that would be helpful.

Margaret Mitchell: Some lecturers certainly concentrate on that area of law. A number of them have written to me, as I have been concerned about grooming in the past. There is certainly an interest out there and a section of the legal community that is particularly exercised about the matter and that has—I hope—the necessary expertise.

The Convener: Paper J1/S2/04/30/11 suggests a specification for the duties of an adviser. Do members agree in principle to the appointment of an adviser and to the suggested role that the adviser would play, as outlined in paragraph 5? The role is fairly standard.

Members *indicated agreement*.

The Convener: It has therefore been agreed in principle that we will appoint an adviser and we have agreed their duties. We will consider the person specification in the light of Stewart Stevenson's comments on the expert advice that we will need. I invite members to agree that the committee will meet in private to discuss a person specification, as we will be discussing individuals. We normally take that approach.

Stewart Stevenson: I am happy to support meeting in private to discuss individuals, but I am not sure whether you are saying that we should discuss the specifications that the individual should fulfil.

The Convener: We have just agreed the principle that we will appoint an adviser and their list of duties. That will be shown in the *Official Report*.

Stewart Stevenson: That is fine.

The Convener: What I am asking is, do members agree that, when they are given a list of potential advisers, we should meet in private, as we normally do, to protect the identities of the individuals?

Bill Butler: That would be entirely sensible.

Stewart Stevenson: I support that proposal.

Members *indicated agreement*.

The Convener: I propose to suspend the meeting for a few minutes to give Sylvia Jackson a chance to get here. If she does not appear, I propose to continue the meeting.

12:44

Meeting suspended.

12:49

On resuming—

Subordinate Legislation

International Criminal Court (Enforcement of Fines, Forfeiture and Reparation Orders) (Scotland) Regulations 2004 (SSI 2004/360)

The Convener: I welcome Sylvia Jackson, convener of the Subordinate Legislation Committee, to the meeting. She is aware that we have just started our discussion on the International Criminal Court regulations. We note that there is quite a strong report from the Subordinate Legislation Committee outlining its concerns, so we are grateful that Sylvia could join us for a short while. Perhaps she would like to say something to amplify those concerns.

Dr Sylvia Jackson (Stirling) (Lab): I note that Mike Pringle, who is a member of the Subordinate Legislation Committee, is also here. He, too, has expertise in the area.

I hope that the committee will bear with me, because there is a substantive problem with the regulations, but there is also an issue to do with the Scotland Act 1998. I will work my way through the issues, if the committee is okay with that.

The Subordinate Legislation Committee feels that there is a strong case that the regulations that purport to authorise the Scottish ministers to appoint the Lord Advocate as the person to enforce orders of the International Criminal Court are ultra vires. The purpose of regulation 3, which is the one in question, is to authorise the Scottish ministers to appoint the Lord Advocate as that person, and regulations 4 and 5 impose duties directly on the Lord Advocate rather than on the Scottish ministers collectively—I will return to that issue later.

The Subordinate Legislation Committee doubted that the enabling power allowed that authorisation, so it asked the Executive for further justification and questioned the constitutional propriety of conferring statutory functions on the Lord Advocate as an individual Scottish minister that do not relate to his position as head of the systems of criminal prosecution and of the investigation of deaths in Scotland. The Executive replied that it considers that regulation 3 is within the vires of the enabling power, which confers a power on the Scottish ministers to appoint a person to act on behalf of the ICC. In the Executive's view, section 26 of the International Criminal Court (Scotland) Act 2001 provides no reason why the Lord Advocate should not be that person.

The Subordinate Legislation Committee was not persuaded, because section 26(2) of the 2001 act provides:

"The regulations may authorise the Scottish Ministers-

(a) to appoint a person to act on behalf of the ICC for the purposes of enforcing the order; and

(b) to give such directions to the appointed person as appear to them necessary."

We think that that indicates that the person is a third party. We see no indication that the section intended that the Scottish ministers should appoint one of their own number. On the contrary, because it also enables Scottish ministers to give directions to the person appointed, the appointment of a Scottish minister appears clearly to be ruled out; it cannot have been intended that the Scottish ministers should give the Lord Advocate or any other minister directions as to how they were to carry out their functions.

Simply to specify by regulations the person to be appointed also appears to be of doubtful vires, as it can be argued that the power is intended simply to authorise to ministers the subdelegation of the power to chose the person appointed, so it is not for the regulations to specify that person. The Subordinate Legislation Committee noted that, in that regard, the equivalent English regulations, which are made under identical powers, confer powers to appoint a person rather than a named individual.

In the Subordinate Legislation Committee's view, if there is any doubt about the intention behind the section 26 powers, the situation is clarified beyond all reasonable doubt by statements that were made by the ministers in charge of the International Criminal Court (Scotland) Act 2001 on two occasions during its passage through the Parliament. I think that the committee has before it the information on what Iain Gray and Jim Wallace said.

The Convener: Yes, we do.

Dr Jackson: If, as the ministers stated, it would be inappropriate to confer powers directly on the Lord Advocate in the parent act, it cannot be right to do so by subordinate legislation under that act.

That seems to the Subordinate Legislation Committee to be the central point, but there is the second point that the problem raises a serious constitutional issue about the collective responsibility of the Scottish ministers under the Scotland Act 1998. Do you want me to go into that aspect, convener? It is not the substantive point that we want to make.

The Convener: I think that we understand the point that you were going to make anyway, but what you have said has been helpful.

I clarify that committee members do not have Iain Gray's statement before them, but I will pass a copy to them. The relevant bit—from the conclusion of Iain Gray's statement—is highlighted. It says:

"It is therefore appropriate that"

the functions

"are conferred upon Scottish ministers collectively."—[*Official Report*, *Justice 2 Committee*, 26 June 2001; c 306.]

He said that in response to an amendment that was moved by Christine Grahame, whose argument was that the Lord Advocate should be given responsibility for enforcement under what became the International Criminal Court (Scotland) Act 2001. I will pass that document to the committee.

Stewart Stevenson: Would it be useful if you accepted a motion from me that nothing further be done in relation to the instrument? The Subordinate Legislation Committee has considered the instrument carefully, had considerable discussion of the subject and remained unconvinced. That committee is best placed to advise us and its convener has come here to do that. I would like to accept her advice; I take that position not in a partisan spirit, but with the aim of good administration and of protecting the Lord Advocate's independence, which is very important. As a non-lawyer, I do not pretend to understand fully the implications of the Lord Advocate being put or—perhaps equally important—being thought to be put in a position in which others can direct the discharge of his duties. If you were minded to accept a motion without notice, I would be more than happy to move one.

The Convener: The deadline for considering a motion is Tuesday. The matter is open to the committee. I propose further discussion before we return to Stewart Stevenson's proposal. The issue is not whether a motion without notice is possible. We should ensure that the committee is clear about the issues and what it wants to do.

Bill Butler: I understand Stewart Stevenson's suggestion, but before we proceed to that option it might be more appropriate to write to ask the Scottish Executive to amend the instrument. The information that the convener of the Subordinate Legislation Committee has supplied is that the problem lies in having a named individual. Perhaps we could suggest in a letter from our convener that the Executive might wish to amend the instrument to say "the Scottish ministers will apply". That would put the matter in the hands of the Cabinet or of the First Minister.

If the Executive accepted that suggestion, that would get us out of a possible problem that none of us wishes the Executive or the Parliament to face, which is that the regulations might be considered ultra vires rather than intra vires. That is the first option with which we should proceed, although Stewart Stevenson's suggestion should be kept in reserve.

The Convener: That course of action is also open to the committee. A policy officer from the Executive's criminal procedure division and a solicitor from the Executive's legal and parliamentary services are here if members wish to hear from them.

Bill Butler: Unless those people say that the Executive has had a change of mind or heart, or both, I see no need to hear from them. If the committee accepts my suggestion, we will write to the Executive to emphasise our serious concern, which is additional to the Subordinate Legislation Committee's serious concern. I hope that if this committee allied itself with the Subordinate Legislation Committee, the Executive might change its mind.

If the gentlemen were going to say that the Executive had had a change of mind, that would be fine, but I doubt that they are. That being the case, I do not think that the suggestion that we should hear from them now is appropriate at this juncture.

13:00

The Convener: Bill Butler has made another proposal about what the committee might do.

I want to clarify what Sylvia Jackson said. You are suggesting that the regulations might be ultra vires and that a constitutional issue might arise from that, although not a substantive one. You also seem to be concerned, as I am, that the Executive appears to have changed its position. I took part in the debate on the International Criminal Court (Scotland) Bill and I remember the discussion about whether the Lord Advocate should be named in the legislation—the amendments to that effect were rejected. Has the Executive attempted to give you an explanation for its turnaround?

Dr Jackson: No. The Executive has provided nothing apart from its view that that is how it interprets the International Criminal Court (Scotland) Act 2001.

Mike Pringle: Sylvia Jackson might be able to answer my question. The Subordinate Legislation Committee considers numerous statutory instruments, but I thought that we had written to the Executive after we had discussed the regulations and that we had received a reply. Perhaps what Bill Butler is suggesting has already been done.

The Convener: The Subordinate Legislation Committee got a reply; we have excerpts from it in our papers.

Dr Jackson: We got a reply, but we had not suggested an amendment, which is what is being suggested now. I am informed that what Stewart Stevenson suggested cannot be done, because a minister would have to be present.

The Convener: Do you mean that it is necessary to have a minister present to annul the regulations?

Dr Jackson: I mean that a minister must be present to debate a motion to annul the regulations.

The Convener: We will check the procedure for that.

Margaret Mitchell: In my view, the advice that we have received from the Subordinate Legislation Committee is overwhelming, so I think that, given that the officials are here, it would be useful for them to say why they have not taken cognisance of that advice. Our timeframe is very tight and I do not want us to lose sight of the main thrust of the legislation, which is what we are trying to achieve. Anything that we can do to ease the flow of conversation at this early stage, before we get into entrenched positions, would be helpful.

Stewart Stevenson: I just want to be clear about the timescales. Did someone say that the 40 days would be up on Tuesday?

The Convener: That is the deadline for lodging a motion to annul the regulations.

Stewart Stevenson: That is the deadline for lodging such a motion, but would it be possible to deal with it after then? I just want to be clear about the timetable.

The Convener: Tuesday is the last opportunity for the Justice 1 Committee to consider a motion to annul the regulations, so that it could recommend annulment to the Parliament. The 40th day will fall on the first day back after the October recess, so Tuesday will be our last opportunity to consider a motion to annul the regulations. The Executive would be entitled to attend that debate.

Stewart Stevenson: A motion to annul is the nuclear option and, in my experience, it is generally not necessary if the Executive acknowledges that there is strong feeling on a matter. Perhaps now would be an opportunity for any member of the committee to indicate that they felt that the regulations should proceed in their current form. In the absence of such an indication—I suspect that that is the situation that we are in—the Executive might consider whether it is at risk of losing the argument, either in committee or, subsequently, in Parliament and might therefore consider withdrawing the regulations and reintroducing them in another form, as Bill Butler suggested. There is no point in our being confrontational if it is evident that there is a clear view on the subject. In my view, the Executive does not generally fail to recognise the realities of the situations in which it finds itself.

Bill Butler: I take Stewart Stevenson's point. We want an option that works, so that the serious doubts and concerns that have been raised by the Subordinate Legislation Committee can be addressed. Although I take Margaret Mitchell's point that time is short, there is still enough time to pursue the option that I suggested. The Executive may be unwilling to pursue that option, but we will cross that bridge when we come to it. I still suggest that we should do what I said a few moments ago.

The Convener: I support Bill Butler's proposal, in so far as we can do both things if we do that. If we are not satisfied, we can move to Stewart Stevenson's proposal—a motion to annul—and have the minister before the committee to debate with us. We can then decide whether to agree to that motion to annul the instrument.

I presume that Sylvia Jackson takes the same view that the committee appears to be taking. I do not think that there is any issue with the Lord Advocate being the person who exercises the powers of enforcement; however, that should be done in his capacity as a minister of the Scottish Executive and with the collective accountability of that position. We do not object in any way to the end result, but we share the Subordinate Legislation Committee's concerns about whether the instrument is competent. There is also a policy matter in that, on the face of it, the Executive appears to have reversed its position, and that cannot be allowed to happen.

Dr Jackson: We think that what you are suggesting would be a reasonable route to pursue.

Bill Butler: We are trying to save the Executive from itself, if I may say so.

The Convener: If members agree, we will write this afternoon to the Executive, outlining our serious concerns and our agreement with the Subordinate Legislation Committee that there are big issues in the instrument that need to be addressed. Following Bill Butler's suggestion, we will ask for the instrument to be withdrawn and relaid so that it is vires. We will also ask the Executive to address the discrepancy between the policy position that it adopted during the passage of the bill and the policy position that it appears to be taking now. As soon as a reply to that letter is available, we will circulate it to members. If members are not satisfied with the Executive's response, is there a deadline for lodging a motion

to annul? [*Interruption.*] I am advised that the clerks would need to be given notice on the day before the next meeting so that they could draft a motion with the appropriate wording.

Stewart Stevenson: I would not be quite so prescriptive. We have described the problem, and the Executive might find a variety of ways of dealing with it—including, for example, amending the instrument. As long as we receive an indication that it will end up in the right place, I would not be unduly prescriptive.

Bill Butler: I would go along with that. That is more emollient.

Stewart Stevenson: Well, it works.

Margaret Mitchell: Given that the Executive maintains—I presume—that the instrument is vires, to suggest that it makes it vires is probably looking for a lot. I would have liked to hear what the Executive had to say, but I realise that that is not the collective will of the committee. We have to hope that, if the Executive is convinced that its way is right, the political reality will cause it to change its mind, as opposed to winning the argument of the day.

The Convener: That ends the discussion. As Stewart Stevenson has suggested, we will be less prescriptive. We are now clear on the process; let us see what response we get from the Executive. I thank the Subordinate Legislation Committee, the legal adviser, the clerks and Sylvia Jackson for taking the trouble to come to the committee and voice their concerns.

At the next meeting of the Justice 1 Committee on Tuesday 5 October at 3 pm, we will undertake our quarterly consideration of petitions and consider our approach to the Emergency Workers (Scotland) Bill at stage 2. The strange timing of the meeting is due to the arrangements for the opening of the new Parliament building, which apply for that week only. Thank you for your attendance.

Meeting closed at 13:10.

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