

# **JUSTICE 1 COMMITTEE**

Wednesday 10 November 2004

Session 2

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## JUSTICE 1 COMMITTEE

† 35<sup>th</sup> Meeting 2004, Session 2

### CONVENER

\*Pauline McNeill (Glasgow Kelvin) (Lab)

### DEPUTY CONVENER

\*Stewart Stevenson (Banff and Buchan) (SNP)

### COMMITTEE MEMBERS

\*Marlyn Glen (North East Scotland) (Lab)  
\*Mr Bruce McFee (West of Scotland) (SNP)  
\*Margaret Mitchell (Central Scotland) (Con)  
\*Mrs Mary Mulligan (Linlithgow) (Lab)  
\*Margaret Smith (Edinburgh West) (LD)

\*attended

### COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)  
Helen Eadie (Dunfermline East) (Lab)  
Miss Annabel Goldie (West of Scotland) (Con)  
Mike Pringle (Edinburgh South) (LD)

### THE FOLLOWING ALSO ATTENDED:

Colin Fox (Lothians) (SSP)

### THE FOLLOWING GAVE EVIDENCE:

Rod MacCowan (HM Prisons Inspectorate for Scotland)  
Dr Andrew McLellan (HM Chief Inspector of Prisons for Scotland)

### CLERK TO THE COMMITTEE

Alison Walker

### SENIOR ASSISTANT CLERK

Douglas Wands

### ASSISTANT CLERK

Douglas Thornton

### LOCATION

Committee Room 2

† 34<sup>th</sup> Meeting 2004, Session 2—joint meeting with Justice 2 Committee.



# Scottish Parliament

## Justice 1 Committee

*Wednesday 10 November 2004*

[THE CONVENER *opened the meeting at 11:11*]

### Prisons

**The Convener (Pauline McNeill):** Good morning and welcome to the 35<sup>th</sup> meeting this year of the Justice 1 Committee. We have a full committee this morning and therefore there are no apologies. I remind everyone to ensure that mobile phones are switched off, because they interfere with the sound system.

Item 1 is on prisons. I am delighted to welcome Dr Andrew McLellan, HM chief inspector of prisons, and Rod MacCowan, HM deputy chief inspector of prisons at HM prisons inspectorate for Scotland. Thank you both for coming before the committee this morning. We have about an hour and a half, which is great from our point of view. I believe Dr McLellan is going to make a short introductory statement.

**Dr Andrew McLellan (HM Chief Inspector of Prisons for Scotland):** Thank you. I am grateful for this opportunity. I am really pleased to have been invited here, because I count it an honour to come before the justice committees.

I want to talk a little bit about “HM Chief Inspector of Prisons Report for 2003-2004”, copies of which I know you have. I have three points—like in all good Church of Scotland sermons. At the back of the report there is material about how we do inspecting, which I am happy to talk about, if it interests you. We can see that progress has been made in how we do inspecting. We have given a lot of thought to what is the right way to listen to prisoners and the right use to make of our listening to prisoners. We have brought real seriousness to the process because of the way in which we engage with other inspectorates. Her Majesty’s Inspectorate of Education, the social work services inspectorate and NHS Quality Improvement Scotland all participate regularly in our inspections. We have also developed better techniques of inviting the prisons to assess themselves first before we arrive, and we make a lot of use of the self-assessments.

In the middle part of the report there is a summary of the reports of every inspection we have carried out in the course of the year. I think that this is the first time there has ever been a document that gathers together a summary snapshot of every prison in Scotland. When I

came to the committee last year one or two members suggested that it would be useful to have every prison represented in that way and we responded to that suggestion. I hope that we will be able to do almost the same next year, but I make no promises thereafter.

In the summaries you will find, and should note, that there have been only two escapes. That is significant and the committee should be aware that Scottish prisons are good at keeping people in. Report after report mentions good relationships between prison staff and prisoners, which has been one of the real surprises for me in the two years that I have done this job. I came into the job thinking that my task would be to bring a little humanity, civilisation and decency to the rogues and brutes who run our prisons—I could not have been more wrong. I have learned a great deal from prison staff about the right way to treat prisoners and I am glad that the report is able to record that.

As you will see, the summaries refer to the repeated presence of children under 16 in Scotland’s prisons, which is a matter of concern to me—and, I hope, to the committee—and one that I draw to people’s attention at every opportunity.

11:15

The summaries also highlight the variety of provision in different prisons. A prisoner’s experience of prison food or prison visits very much depends on the particular prison that they happen to be detained in. In the middle section, members will find descriptions of really good conditions in Scotland’s prisons. In particular, I have highlighted the new halls in Polmont and Edinburgh and a change in accommodation in Low Moss. In each of those circumstances, one can almost taste the difference in prisoner attitudes. I am a convert—if people from my background can use that word—to the concept of good prison conditions changing staff morale and prisoner attitudes, and the report contains evidence to show the reasons for that.

Members will also find in the summaries accounts of really bad prison conditions—by which I mean, primarily, slopping out. We have condemned slopping out wherever it has occurred and I will continue to do so. I voice my disappointment at the practice in one part of Polmont, where not only under-21s were slopping out—which by itself seems a very unhappy circumstance—but unconvicted under-21s were slopping out. The word I use for that in the report is “disgraceful”.

In the first part of the report, I reflect on what the year has felt like and what I think is going on in our prisons. Unsurprisingly, I begin as I began last

year's report—with overcrowding. In the context of the Scottish Executive's recent consultation on reducing re-offending, I am quite clear that overcrowding makes achieving that aim much more difficult because it results in bad conditions, less staff time, less access to facilities and less access to opportunities for change.

On reducing re-offending, I also draw attention to what might be seen as patchy provision across the Scottish Prison Service for preparing prisoners for release. Perhaps the year's best development in that regard has been the introduction of links centres in many prisons that follow the key and immensely important concept that outside agencies should be based in the prison. Those prisons do not make contact with outside agencies in the community; instead, agencies are coming into prison to meet prisoners in a context that prisoners know and where they are known. Such an approach is very helpful and could be quite significant.

That said, I raise questions in the report on the open estate and the ways in which many long-term prisoners are prepared for release, and I suggest that the estate has not yet found the right medium. I have also drawn attention to the difficulties of preparing for release long-term sex offenders, particularly those who are detained in Peterhead.

Over the year, the matter that attracted the most press attention was a short report on Compton Vale, which drew to the general public's attention something that is well known to people in the room. So many women who come into prison are in an awful condition due to the combination of mental illness, a history of abuse and an addiction to illegal substances. Any one of those elements is destructive, but the combination represents in itself a huge imprisonment and the report had to ask "What good can prison do in addressing that problem?" In that context, I recognise more and more that the contribution that prisons can make to reducing reoffending is limited.

To sum up, there are more and more people in prison and more and more damaged and vulnerable people in prison. That means that there is less and less that prison can do. Prisons will not solve the problems of Scotland; however, the report suggests that, if the circumstances are created in which prisons can operate—if they are not overcrowded and they are in good physical condition—they can make a difference. Thank you for giving me the opportunity to introduce the report.

**The Convener:** Thank you for being so clear and concise. It was helpful to have included in your report a snapshot of where we are with the prisons. The report is going to be an important and helpful reference document for the committee.

You talk a great deal about the need for good conditions in prison. That is of interest to the committee. As you know, we are conducting an inquiry into rehabilitation in prisons, and that is what we are trying to examine. We will have several questions for you about why you think that good conditions are important for rehabilitation.

**Mr Bruce McFee (West of Scotland) (SNP):** Hello, Dr McLellan. In your report, you say that although what happens in prisons can be only part of a strategy to reduce reoffending—an idea that you backed up in your introductory remarks—it might be an important part. You also refer to a 1984 House of Commons report that

"declared that imprisonment would only make society safer if it helped offenders to resume normal lives on release: but 'the constraints imposed by overcrowding make the attainment of these aims extremely difficult'. Twenty years later it is no different."

There is a recurring theme in what is being said in this year's report and what was said in last year's report in relation to overcrowding. This year's report states:

"One year later overcrowding is worse"

in Scottish prisons. Can you outline for the committee the impact that overcrowding has on rehabilitation programmes in prisons?

**Dr McLellan:** Can I clarify something in case I give the wrong answer to that? Is that question specifically about programmes that are designed to effect personal change, such as anger management and cognitive skills programmes?

**Mr McFee:** I think that it is wider and relates to all rehabilitation programmes, although the ones that you outline are extremely important in changing personal behaviour.

**Dr McLellan:** If I may, I would like to reflect on the implications of overcrowding for rehabilitation in general rather than specifically for programmes that are designed to effect rehabilitation.

First, the conditions in which prisoners live are very important in determining the attitudes that prisoners have towards themselves and the prison that is imprisoning them. The worse that the conditions are, the more negative are the attitudes of the prisoners and the less likely it is that prisoners will engage positively in matters that are going to address their rehabilitation. Therefore, I put right at the top of the list, as a matter that is affected by overcrowding and is likely to lead to negative attitudes towards rehabilitation, the conditions in which prisoners live. The combination of sharing a cell and slopping out—both cell sharing and slopping out are products of overcrowding—is hugely destructive.

Secondly, overcrowding limits immensely the personal time that prison officers can spend with

prisoners. I rate highly the personal engagement of individual prison officers with prisoners, but it is clear that a prison staffing complement that is arranged to deal with 40 people in a hall cannot deal adequately with 80 people in a hall—a circumstance that occurs reasonably often.

Thirdly, the more prisoners there are in prison, the more people there are ahead of someone who is in the queue for education services or programmes for rehabilitation, in the more technical, limited sense. We should add to that the fact that large numbers of prisoners and small numbers of staff mean that prison staff often have to be taken from one duty to another. Even though escorting duties outwith the prison are being reduced, escorting within the prison is still a major demand on many prisons. Understandably, security takes priority over rehabilitation when staff are moved around. The duties that get cut are often those that would lead directly to rehabilitation, anger management and cognitive skills programmes.

I will give an example from England; therefore, it does not cast aspersions on Scottish prisons. Last year, I visited Holloway prison, which was a painful experience. I remember that, in the education department, 11 teachers were sitting around desperate to teach, but none of them could do so because, for staffing reasons, the prison could not get prisoners to the education centre. That is an exaggerated and dramatic example of something that happens elsewhere all the time on a smaller scale. Groups are not able to get to education services or to programmes because the pressure of overcrowding limits staff time.

**Mr McFee:** That was a comprehensive answer. Lack of physical space because of cell sharing plays a major role in prisons' inability to deliver the rehabilitation that we desire.

Have you observed any action by the Scottish Prison Service to address the overcrowding problem and, if so, have you assessed the success or otherwise of that action? Has the Prison Service made any progress down the road of alternatives? You may interpret that question as widely as you wish.

**Dr McLellan:** The action that the Scottish Prison Service can take on overcrowding is necessarily limited. It cannot control the number of people who are sent to prison and it must take everybody who is sent to prison. However, members will know that, in the past year, the Scottish Executive announced two measures that are intended to reduce overcrowding. One is the building of more prison spaces at sites in two existing prisons; the other is the possibility of electronic tagging for people in certain circumstances. However, it is not yet possible to assess either of those measures because neither of them is in place.

Next week, I will visit the 218 hostel in Glasgow. The convener has already visited it, but I have not and I am looking forward to the visit. I constantly hear from prisoners who have had the opportunity to serve a non-custodial sentence in the community that that is a hard option, not a soft one, and I believe that to be the case. However, it is inevitable that most of the people whom I meet have not had that opportunity because they are in custody.

**Mr McFee:** Are you aware of any action that is being taken within prisons that might help to alleviate overcrowding? Rather than the Executive building more units, is there anything in current prison practice that might help to resolve or ameliorate the overcrowding problem?

**Dr McLellan:** Mr MacCowan has a professional prison background, which I do not have. I cannot identify in my head any such steps. I think that the Scottish Prison Service can only juggle prisoners around. However, Mr MacCowan might have a different answer.

11:30

**Rod MacCowan (HM Prisons Inspectorate for Scotland):** Individual Prison Service establishments try hard to liaise with one another and with headquarters to try to ensure that every space is appropriately filled. As members will be aware, overcrowding tends to be a feature of local prisons, which are generally prisons in which people are held before trial or prisons of initial committal such as Aberdeen, Inverness, Barlinnie and Edinburgh.

Considerable emphasis is put on managing the open prison estate and long-term prisons, so people are moved as quickly as possible. The Scottish Prison Service's general practice is to keep long-term prisoners in single-cell accommodation, so an attempt is made to manage the population in so far as possible by keeping the open prison estate full and by keeping the top-end prisons full. However, the Prison Service is essentially dependent on the number of people who are committed, or sentenced, to prison; it simply has to manage those numbers.

**Mr McFee:** My last—but by no means least—question is on rehabilitation, on which you have taken a broad view in your answers. Do you believe that an adequate number of rehabilitative programmes is offered in our prisons? Is provision patchy in certain areas? Which areas need further development?

**Dr McLellan:** A full answer to that question would require research that is not available to me or to the committee on the effectiveness of the whole range of rehabilitative programmes. As you will be aware, I have no research facility available

to me. The whole strength of my department is present in the committee room at the moment. It is not possible for us, as it might be for the Scottish Prison Service, to engage in a more detailed assessment.

However, we are able to assess access to the programmes that are available, so let me make one or two comments on that. The report's most striking comment on that issue concerns access to the STOP programme in Peterhead. The number of participants that the prison had aimed to get on that programme was a very low number indeed, yet it was not able to achieve even that low number. Secondly, all programmes are liable to be curtailed or threatened by pressures of overcrowding. I think that that happens across the Prison Service. Even where programme are available, they are unlikely to achieve full take-up.

We have prepared a summary of our report's findings that contains some statistical information on the take-up of programmes in each prison. I am happy to provide that to the committee as further written evidence at some point in the future.

**Mr McFee:** That would be useful. Thank you for your answers.

**Marlyn Glen (North East Scotland) (Lab):** My question is on the preparation for release of long-term sex offenders. In the light of the comments in the report, which you have repeated, about the lack of programmes and about the low number of prisoners who complete the STOP programme, will you expand on the present arrangements for the preparation for release of long-term sex offenders?

**Dr McLellan:** There are two aspects to the preparation for release of long-term sex offenders. One is the STOP programme, in which staff and management in Peterhead have invested a good deal in the past. The programme was brought to Scotland from elsewhere, but it had a good reputation and it has been well developed in Scotland. The STOP programme seeks to change personal attitudes and personal behaviour.

I made a deliberate choice not to sit in on a STOP programme group. What goes on in those groups is by its nature confidential. I felt that to sit in on one would infringe the confidential nature of the group. I am not sure whether that decision was right or wrong, but the result is that I have never experienced what happens on the STOP programme. Many prisoners and staff have told me that their experience of the programme turns prisoners inside out and is immensely difficult. I have anecdotal experience of prisoners and staff saying that the programme changed prisoners for the better.

Nevertheless, in the reporting year to which we are speaking, the target for the number of people

completing the STOP programme at Peterhead was 24—for a prison population of more than 300—yet the actual number achieved was 14. Of course, the end of the year had not been reached by the time we prepared the report, so the final number might be higher, but it will not be immensely higher, which is a matter for serious reflection.

Not everybody in the prison is eligible to go on the programme straightaway. There are three reasons for that, the first of which is that the programme is designed entirely for people who acknowledge their offence. As the committee is aware, statistics show that sex offenders are less likely to acknowledge their offence than other offenders are. The second reason is that some people in the jail will have been on the programme already and the third reason is that some of them are at the beginning of a very long sentence and it would not be appropriate to address some of the more difficult issues that they face at the beginning of their sentence. Even with those three caveats, the number is still very small.

I am also concerned about another aspect of the preparation for release of long-term prisoners. The arrangements include opportunities—initially under close supervision and then with responsible guidance—for time in the community to learn what it is not to be in a jail, for home leave and for supervised work in the community. Those opportunities, which are so much part of the theory of preparation for release of other long-term prisoners, are not available to sex offenders. Although I understand the reasons for that, the result is that the very people about whom the public might be most anxious in terms of how they will do when they are released from prison are the people who have the least opportunity to be tested. For those significant reasons, I am concerned about the preparations for the release of sex offenders.

**Stewart Stevenson (Banff and Buchan) (SNP):** As you know, I have a personal interest in Peterhead. If we leave to one side the fact that the SPS is failing to meet its target, is the target of 24 the right one? We have to acknowledge that the average sentence for a long-term sex offender is between six and seven years. We also have to acknowledge that the number of offenders who are prepared to acknowledge their offence is around 140, or slightly under half the prison's population. Does the target allow the SPS to deliver the opportunity to participate in the STOP programme at the appropriate time in an offender's sentence? Have you formed a judgment on that?

**Dr McLellan:** I am not prepared to accept the thesis, which the Scottish Prison Service has accepted, that only persons who are prepared to



acknowledge the nature of their offence can appropriately take part in any kind of programme. There may well be opportunities to offer other kinds of programmes that might help sex offenders to address their circumstances.

**Stewart Stevenson:** I confirm that I wholly accept that. I understand that Peterhead and other prisons that deal with sex offenders are looking to provide programmes for those who are not prepared to acknowledge their offence. However, those programmes would be different from the STOP programme.

**Dr McLellan:** I have three further comments. First, the current number of programme places means that people are regularly released from Peterhead who have acknowledged their offence and have not done a programme. Some people have not had the opportunity to do a programme.

Secondly, I am certain—I have to say that that is because of what people have said to me rather than what I have seen on paper—that the number of people who go through the programme is governed by the number of people who can run it, and not by the number of people who might need it. Thirdly, as I am sure Stewart Stevenson will know, the governor of Peterhead last year visited two prisons in England of a similar size to Peterhead, where he found very much higher numbers of people going through the STOP programme.

**Stewart Stevenson:** Work placements and community visits are an essential part of the reintroduction into the community of long-term prisoners of all kinds. Where is the appropriate place for those to take place? Committee members visited Glenochil on Monday—like Peterhead, Glenochil is for long-term offenders, albeit not sex offenders. Offenders go on such placements not from Glenochil but from the top-end prisons—the local prisons—to which they move prior to release. Should that model apply at Peterhead for the sex offenders or is there something different about Peterhead that means that placements in the community should take place directly from the long-term prison, although they do not take place from Glenochil, which is also a long-term prison?

**Dr McLellan:** First, I have to inspect what is there rather than what I would like to see there. What is there, as you would have heard in Glenochil when you visited it, is that it is hard for prisoners who are ready to move into placements in the community to get them because of the shortage of places in top-end prisons and the open estate. That leads me to think, although I have no evidence from inspections to support this, that it would be good if it were possible in certain circumstances—even in the higher-security prisons—to find ways, as happens in the high-

security prison in Edinburgh, for people to get placements in the community locally from their prison. That is *faute de mieux*, as there are not enough opportunities for such placements in the open estate and in top-end prisons. Nonetheless, that model might be worth pursuing.

On the provision of such placements for long-term sex offenders, I have sought time and again to encourage conversation in top ends and in the open estate about Peterhead people coming to those places. I wish I could say that those conversations had borne any fruit. It is amazingly difficult to conceive of a circumstance in which prisoners from Peterhead would be comfortably placed in top ends in other parts of the country. For reasons of public safety, it is important that sex offenders should have such opportunities but, for reasons related to everybody's safety, it looks to me unlikely that the situation will change much in relation to the top ends in the central belt. Therefore, the most likely opportunity still seems to be to make some provision from Peterhead prison in the community there.

I live in Dunfermline, so of course it is easy for me to say, "Let the risk be in Peterhead." I understand that and I am aware that you are the member of the Scottish Parliament who represents that community. Nevertheless, perhaps a big ask—as Mr Bush might say—is being made of the people of Peterhead: such opportunities might be one of the prices that have to be paid for keeping the prison in the community.

However, if such provision were made, the Scottish Prison Service would be required—and I am sure that it would want—to engage in the most careful possible risk assessment and the closest possible supervision of the needs involved. There have been a few circumstances in which a Peterhead prisoner has gone to a top-end prison, but such circumstances are very unusual and very difficult.

11:45

**Stewart Stevenson:** I will come to a close because the convener is nudging me. Do you accept that there are plans to develop a means whereby escorted visits to the community can take place? Those plans have my support and that of the local council, which is working on the matter.

Do you also accept, however, that unsupervised visits to a small community are much more difficult to contemplate than unsupervised visits to cities? To put it bluntly, there is a helpful degree of anonymity in a city. The Prison Service should be seeking to ensure that the rehabilitation of sex offenders and their reintroduction into the community takes place throughout Scotland, rather than being limited to a single community,

which would create difficulties, whether we are talking about Peterhead prison or any other prison.

**Dr McLellan:** I am glad that I am not near enough to the convener for her to be able to nudge me—

**The Convener:** I have other ways.

**Dr McLellan:** I will be brief. I not only acknowledge the movement in which Stewart Stevenson has been engaged and his public support, but I am grateful for it. The committee should also recognise that the governor of Peterhead prison has been a leader in seeking to make such provision. Moreover, I accept all the qualifications that Stewart Stevenson made in the second part of his question.

**The Convener:** Colin Fox has to leave at 12 o'clock, so I am happy to bump him up the list and allow him to ask questions.

**Colin Fox (Lothians) (SSP):** Thank you. Like Dr McLellan, I am a guest of the Justice 1 Committee—I am a member of the Justice 2 Committee. I am sorry that I will have to leave before all the questions have been asked.

I had the opportunity to visit Cornton Vale prison on Monday and the governor of the prison was good enough to show me round. I want to focus on two matters. First, your report highlights your concerns about the service's ability to manage the current number of prisoners in the light of the savings that it is required to make. You comment that prisoner numbers will rise next year and talk about

"an effect on the conditions and treatment of prisoners."

Will you elaborate on those concerns?

**Dr McLellan:** I am not a prison professional; I must listen to what people tell me. The consistency in what three groups have told me about their anxieties about savings has been striking. Prison managers, prison staff and—remarkably—prisoners have all said that they perceive that there are difficulties ahead. Almost every visiting committee—people who come into the prison from outside and represent the community in different ways—has said the same thing. When we inspect prisons, I always meet representatives of visiting committees and I ask them, "What is the main issue that confronts the prison?" I think that in at least half the prisons that we inspected the response was, "The main issue is the conversations that are going on about savings."

In my report I hint, in my economic naivety, that it seems to me that overcrowded prisons that are using 100 per cent of their resources to run 140 per cent of their business must already be making significant savings. I gather that economic

sophisticates can find holes in that argument, but that should still be taken into account when we are thinking about savings in prisons.

**The Convener:** In considering that issue earlier, we discovered that the accounting that is carried out concerns the capacity of the prison, rather than the actual number of prisoners.

**Dr McLellan:** Mr MacCowan is whispering to me—he knows the answer. It might be more valuable to hear his information, rather than my bluster.

**Rod MacCowan:** You are quite right, convener, to point out that the crude measure that is used is cost per prisoner place, not cost per prisoner. Consequently, for a prison operating at full capacity, it is a matter of dividing the budget by the number of cells, which gives the cost per prisoner place. Running a prison at 40 or 50 per cent overcrowding gives no apparent benefit, because the same measure is still used—it is about the cost per place available, rather than the cost per prisoner.

**Dr McLellan:** There are some interesting comparisons between the Scottish Prison Service prisons and Kilmarnock prison. As the report on Kilmarnock makes clear, when Kilmarnock prison gets more prisoners in it, it gets more prison staff. In other words, there is more expenditure on Kilmarnock when it becomes overcrowded. That seems to be a significant difference from what is happening in Scottish Prison Service prisons.

I said earlier—in a phrase that I just invented and that has no real significance—that security always takes precedence over rehabilitation. My anxiety about savings is that the so-called soft targets will be most vulnerable. The conversations that I have heard about family contact development officers, for example, being offered up—to use the technical term—disappoint me immensely. I know that the committee previously heard evidence from Families Outside, which would have strengthened your view that family contact is an important part of rehabilitation. I have also had a conversation about possible savings in relation to the potential provision of a crèche facility for visitors' children. It is important that prisoners get a chance to see their children.

To return to the matters to which Mr McFee drew my attention earlier, the specific programmes that are designed to change offending behaviour might also be involved—in individual prisons, those provisions have been suggested as the possible source of savings. You do not need me to tell you this, but I will say it: the drive for efficiency does not necessarily bring with it an increase in effectiveness. Nevertheless, as far as the detail is concerned, I should add that the impact of the savings has not yet taken effect in the prisons. I

hope that you will ask me the same question when I come back next year and that I will say, "I was wrong about that."

**Colin Fox:** So your underlying assumption is that the savings will be made in those programmes that could be viewed as optional, rather than fundamental.

I was interested when you said earlier that you could taste the difference between the attitudes, feedback, outlook and general well-being of prisoners who are housed in good conditions and those attributes among prisoners who are housed in poorer conditions. I wanted to press you on that. Is that difference discernible within individual establishments? Having visited Edinburgh prison recently, I know that there is a welcome development there, involving a move out of A hall and other areas to new build. Is it fair to say that there are differences within establishments, as well as between establishments?

**Dr McLellan:** That is dramatically the case within establishments. I recognise that, for a whole variety of reasons, it is quite likely that the least engaged, least hopeful and least positive prisoners in a prison are likely to be in the least attractive conditions. Therefore, we would not be entirely comparing like with like. However, in the three examples that I list in the report—Edinburgh, Polmont and Low Moss, which has different circumstances, but where there are nevertheless differences—we could identify where every prisoner group was living as soon as they began to speak. Engagement of staff with the prisoners was much more positive in certain cases.

The Low Moss experiment and report are interesting. I suspect that the future of Low Moss prison is limited, although you will know more about that than I do. Nevertheless, a significant change has been made at the prison, which has shabby, depressing and frightening dormitories in which 24 strangers sleep. At relatively low cost, cubicles have been installed in half the dormitories. Mr Fox made the point that one can feel differences within the same establishment. That is noticeable at Low Moss, where there are differences in staff relationships, in the attitude of prisoners and in how safe the place feels.

We find the same thing at Polmont, where on the one hand there are under-21s slopping out and on the other hand there are good conditions. It would be naive and a pastiche to suggest that the report states that prisoners say, "We are being treated decently so we will behave decently." However, I would certainly like to believe that and we found evidence in our conversations with prisoners, in what we saw and in the prisoner survey that there is indeed some reality in that.

**Colin Fox:** The question that springs to mind is whether it is overly simplistic to say that, when

someone is taken out of poor conditions and put in new conditions, there will be a turnaround. A big part of prisoners' rehabilitation lies in the good work of staff, because the rehabilitation process is staff led and labour intensive. I take your point that better establishments raise the morale of staff, but is it fair to say that the rehabilitation process demands the positive and valuable engagement of officers as well as improvements in the conditions in which that engagement takes place?

**Dr McLellan:** Absolutely—I have no doubt about that. In my opening statement, I tried to suggest the importance of the positive engagement of prison staff with prisoners. Indeed, we noticed and reported a more positive engagement of prison staff with prisoners, for which there might be a variety of reasons. For example, bad living conditions for prisoners are bad working conditions for prison officers. Who would want to work day by day in conditions where there is slopping out? If staff work in decent, clean conditions, that affects their attitude and morale. Secondly, prison staff are no different from anyone else. When staff deal with someone who is beginning to engage with them and to have a positive attitude, that affects them and they, too, become more positive.

**Colin Fox:** Finally, as a bridge between my two questions, I want to ask a financial question on good conditions. I am sure that you know that, when the report came out, there was a response in the press on food in prisons. Your report states that the standard of food provision varies greatly and it has been reported before that that variation is high on the list of prisoners' criticisms. Press reports stated that we spend on average £1.65 per day per prisoner on food provision. Do you have a comment to make on that? One of the points that was made to me at Cornton Vale on Monday is that that amount has been reduced in recent years. Does that cause you concern?

12:00

**Dr McLellan:** It causes me a great deal of concern. I am grateful for the question. I thought that the figure was slightly lower than the figure that you quoted, but I may be wrong—that is certainly conceivable.

I have four quick points to make about food. First, with the exception of health care, food is the issue about which prisoners are most unhappy. That may not be a driving force, but it is significant that, although prisoners say that other things in the jail are good, they say time and again that the food is bad.

Secondly, across prisons, the way in which the food is served has a lot to do with the quality of the experience. If food is served in sealed containers

that are taken long distances on trolleys so that the meal is eaten an hour after it has been put in the containers, prisoners' experience of it is universally negative. If, on the other hand, the food is served straight from the kitchen on to the plate and eaten there and then, the experience is almost universally positive.

Thirdly, I keep trying to manipulate people—without success, but perhaps you are a soft target—to take up the cause of promoting fruit and vegetables in jail. The Scottish Executive says that everybody should eat five pieces of fresh fruit and vegetables a day. Who are the only people in Scotland whose diet the Scottish Executive controls absolutely? Yet prisoners get two apples a week if they are lucky.

Fourthly, the issue about food in Polmont that was the subject of public comment was the quantity of it. The visiting committee, the governor, the chief catering officer and all the prisoners told us—and we experienced it for ourselves—that there was not enough food. Dramatically and clearly, not enough food is provided for growing boys, which is what those people are. The matter has been before the Scottish Prison Service in the past; the service has considered the amount of food that is being given and has decided not to review it.

**The Convener:** I suspect that the same reactions might be given to hospital food, although I might be wrong. I do not know whether hospital patients get five pieces of fruit a day.

For the record, let us clarify the critical point that you made to Colin Fox about the importance of conditions. You are saying that the benefit is more than just good management of the prison and positive attitudes among the staff. Are you going as far as suggesting that good conditions in prisons might lead to the overall reduction in offending?

**Dr McLellan:** First, bad conditions in prisons are wrong in themselves. Secondly, bad conditions in prisons generate bad attitudes in prisoners. Thirdly, good conditions in prisons are the right way of treating prisoners.

Fourthly, in the short experience that we have had of the difference that good conditions have made in Polmont, Edinburgh and Low Moss, we have heard from prisoners, we have seen from prison surveys and from written work that has been done by prisoners and—critically—we have heard from staff that prisoners who have been living in good conditions are more determined not to return to prison. Innocent people might think that bad conditions would encourage people not to return to prison, but it appears that many prisoners who live in bad conditions think that that is just what they are going to get for the rest of their lives

anyway. Among the prisoners who are living in good conditions, we detected a much more positive attitude towards using their time in prison to ensure that they would not return. However, I add the caveat that I added when I answered Mr Fox. It is likely that the prisoners who are living in the better conditions in Polmont and Edinburgh are those who would have been trying to develop those attitudes anyway.

Fifthly and finally, the one prison in Scotland that has universally good conditions for prisoners to live in is Kilmarnock prison, of which we have just completed an inspection. The report is not yet published, but it confirms what is in the report for 2003-04: prisoners say that, although there is bad food, the good conditions have changed their attitudes significantly from what they were when they were living in bad conditions in other prisons.

**The Convener:** Are you going to be saying that in the report?

**Dr McLellan:** I was confirming the view that is in the report for 2003-04, which you have. I am regretting referring to a report that is not yet published—I was hoping that nobody would be sharp enough to pick that up. I was seeking to ground my comments on the forthcoming report in what is in the report before you about Kilmarnock. I will be saying something about good living conditions in Kilmarnock when I come to publish the report on it, but that will be some time from now.

**The Convener:** We look forward to that. Perhaps you will not think that we are such a soft target then.

**Dr McLellan:** Meanwhile, I will trust you to be comfortable with my indiscretion.

**Margaret Mitchell (Central Scotland) (Con):** Good morning, gentlemen. I want to ask you about security in prisons. You have already touched on prison officers' dual role of maintaining order and carrying out rehabilitation and care programmes. I want to raise the general issue of prisoners' access to mobile phones, which has worrying implications for security.

**Dr McLellan:** I read press publicity about that recently. Prisons take seriously the issue of access to mobile phones for the obvious reason that conversations on mobile phones cannot be monitored. The general assumption is that mobile phones will be used to find ways in which to bring wrong things into prison or to arrange for bad things to happen outside prison. Although I have seen all sorts of things that I should not have seen in a prison in the past two years, I have never seen a mobile phone, but then they are reasonably easy to conceal. The security measures that make it difficult to get mobile phones into prisons are impressive. When you

were at Glenochil, you will have had to go through all sorts of security procedures. We are not allowed to take mobile phones into a jail; we can take them into the main office, but not the jail.

**Margaret Mitchell:** May I stop you there, Dr McLellan?

**Dr McLellan:** Yes. Do you feel that I am not giving you much of an answer?

**Margaret Mitchell:** A number of prison officers throughout the estate have said that mobile phones are a problem. I have been told that on occasion a prisoner will give up a mobile phone by leaving it lying around, because they are under severe pressure from outside. There is no question among prison officers that prisoners' access to mobile phones is an issue and that mobile phones are difficult to detect. I wonder how you would address the issue of the prisoner having access to the outside world and, given overcrowding issues, their ability to contact other prisoners. I would have thought that it was a major security issue.

**Dr McLellan:** I think that it is. I hope that I did not suggest that I was dismissing it, because I have seen publicity about it. I will ask Mr MacCowan to reflect on our experience in the past two years with regard to that. The second matter that you raised is something about which I have heard less. I hear a good deal about mobile phones being used as a way of getting drugs into the prison or as a way of arranging violence outside the prison, but I have heard less about prisoners using mobile phones to contact other prisoners.

**Rod MacCowan:** As with anything, if there is a demand, people will attempt to meet it. There are obviously prisoners, particularly on long-term sentences, who have extensive resources outside, such as money from drug trafficking and other crime, and who have the influence to persuade others, by cash or threat, to traffic phones into prisons. Most prison managers would say that it is very difficult to estimate whether there is one mobile phone in a prison or 10 or 20. Occasionally mobile phones are found. They are relatively easy to conceal. They are certainly an issue. The major benefit of the phone system in prisons is obviously that all phones are monitored, but a mobile phone cannot be monitored so it might be used for trafficking or other crime, for the intimidation of witnesses or for a range of other things. Mobile phones are certainly a problem, but it is difficult to establish how much of a problem they are. HM Customs and Excise has a similar problem—how much are they catching and how much is getting through?

**Margaret Mitchell:** Is it possible to work with mobile phone companies to find a way of detecting

the phones? I am told that equipment might be available that could detect them.

**Rod MacCowan:** That is outwith my competence. I know that the operations element at Prison Service headquarters regularly works with the police and other agencies. I assume that it is working with mobile phone companies or taking advice from the police's technical branch. However, I cannot answer specifically.

**Dr McLellan:** I am grateful that the matter has been raised. Although I have always known in my head that it was an issue, only through listening to this exchange have I realised how serious it is. If no one else has learned anything this morning, I have.

**Margaret Mitchell:** There is also an issue around the potential to threaten other prisoners unless phones are given up voluntarily.

Do staffing levels and the ability to deliver programmes threaten security when prisoners do not get access to a work programme or recreation facility to which they were hoping to get access, or when they do not get to work through a programme that might help them to move closer to getting into an open prison? Is there an issue with understaffing because of sickness and so on causing prisoners to become frustrated, and is there a security implication in that? The prisoners might be frustrated because they cannot get on a programme or are stuck in their cells; that kind of frustration might build up into bad behaviour or worse.

**Dr McLellan:** There is no doubt that that frustration exists. I said that there are people in Peterhead who have been waiting for some time to be put on programmes, but have not been able to access them. It might be difficult to identify a direct relationship between such frustration and breaches of security or trouble in the prison because often—as far as I can see—prison trouble is almost irrational; it does not have an absolute cause and something very trivial can spark it off.

I tend to hear frustration rather than anger from prisoners about that kind of cancellation. Anger tends to come from issues such as visits, food, and what prisoners perceive to be intimidating behaviour from staff. In the area you are talking about, they tend to say, "I want to get on a programme but I can't." The problem seems to be with long-term issues rather than immediate issues. Prisoners seem to accept that they might miss the occasional day, but they get frustrated if they have to wait a year or two years to get on a programme that is required for their parole performance.

Despite what I have said about violence erupting in a prison for irrational reasons, one of the things

that always disappoints me about prisoners is how ready they are to accept bad things. There is an attitude—particularly among young offenders—to the effect that “This is all we are going to get in life—this is what we deserve, so if we’re left out of programmes, that’s just what happens to us.”

**Margaret Mitchell:** I was thinking specifically of a time frame for when a prisoner who had gone through a certain programme would be eligible to move into the open estate. If a prisoner has been holding a figure of a year in his mind but has not been able to access the appropriate programmes through no fault of his own, that could be very frustrating. I was not just thinking about security but about rehabilitation.

Should not the SPS factor into its numbers matters such as sickness and holidays? We visit prisons, where we see excellent workshops that sometimes have no prisoners in them because staff are ill or on holiday. Nowhere in the Prison Service is there a strategic view that takes account of things that are self-evident. There will always be sickness and holiday leave, so where is the contingency planning?

12:15

**Dr McLellan:** First, I will respond briefly to your comment about frustration in respect of programmes, with which I agree. You also need to recognise—you would have met such people in Glenochil if you were there on Monday—that many people have completed all their programmes, but for them there is perhaps greater frustration because they are still not able to pursue other matters.

My responsibility is to inspect the conditions in which prisoners live and the treatment that they receive. I have no responsibility for inspecting staffing matters, therefore the comments that I make now are peripheral to the main evidence that I gather. I have said already that prisons are in some cases working at 140 per cent capacity with resources for 100 per cent, so even if all the factors to which you refer were taken into account, prisons would still be stretched. The fact that the figures are not taken into account against the background of overcrowding makes for all sorts of pressures.

There are two matters to which I think the SPS would draw attention, were any of its representatives here. I know that SPS witnesses have attended the committee in the past and I am not here to speak for the SPS, but I think that first it would draw attention—as do I—to the improved relationships between management and unions within the service in the past two or three years. Everybody speaks of that. It may be that those improved relationships will move towards better staffing relationships in future.

Secondly, we are waiting to see the benefits that a privatised escort system will bring to prison staff and to relationships between staff and prisoners. The SPS has said that there will be no redundancies as a result of that. As yet, those significant numbers of staff have not found their way into improving staffing provision in prisons, but it may well be that by this time next year we will be able to have a happier conversation in which we say that, because of those people, it has been easier for the SPS to address holidays, sickness and so on.

**Margaret Mitchell:** I was interested in your comments on Kilmarnock prison where, if there are more prisoners, more officers are brought in. Is that one of the potential answers to overcrowding, which would alleviate the problem a little and help to ensure that programmes were delivered?

**Dr McLellan:** Are you asking whether the response that is made in Kilmarnock prison would be helpful in SPS prisons?

**Margaret Mitchell:** Yes.

**Dr McLellan:** I have no doubt that it would.

**Marlyn Glen:** I accept what you said about not having responsibility for staffing matters, but you mentioned in your opening remarks and the report that, in general, you find good relationships between prison officers and prisoners. Will you comment on the impact of staff attitudes on rehabilitation?

**Dr McLellan:** It is always important to speak about rehabilitation in terms of what was called a package when I was young, but which we now refer to as holistic rehabilitation. We do not separate one item from the rest and say that it is the key matter. However, relationships between prison staff and prisoners are absolutely key. My colleague and I were talking yesterday about his and my rereading of Jimmy Boyle’s book “A Sense of Freedom”, in which he accurately describes awful relationships between staff and prisoners 30 years ago in Scotland’s prisons. We just do not find such relationships now.

To speak of a sea change might be a cliché, but that describes how very much less violent and confrontational the relationships between prisoners and prison staff are. The initiative has clearly not been taken by prisoners, so it is right that we pay tribute to prison staff for developing more humane relationships. I do not know what evidence I can give to say that that contributes particularly to rehabilitation of prisoners except for two things. One is that prisoners speak all the time about the importance to them of good relationships. In particular, women prisoners find themselves to be in an almost therapeutic relationship with staff, which is clearly

determinative of what happens to them when they are in prison.

**Marlyn Glen:** Thank you for that. I know from the education background that I share with Mr MacCowan that schools inspectors speak all the time of the ethos of schools and that that is one of their key performance indicators. That is an interesting comparison.

**Dr McLellan:** Even though that was not a question, I will respond to Marlyn Glen by saying that one of the really serious lessons that we have learned in the past two years is to try to take seriously the techniques and methods of Her Majesty's Inspectorate of Education and some of its theories. However, we do some things better than it does.

**Margaret Smith (Edinburgh West) (LD):** Dr McLellan has said in his report and today that we have patchy provision across the prisons estate for preparation for release. Obviously, some of us have seen less of that than you have, so the middle section of your report is helpful to us. However, if I just dip into the report, I see that at HMP Peterhead there is "little preparation for release" and that for sex offenders there is

"less preparation than other long-term prisoners."

At HMP Shotts,

"No formal pre-release initiative is in place",

but at the other end of the scale, at HMP Inverness,

"The exit interview is a good model."

The report commends the new throughcare centre at Kilmarnock. I have visited the links centre in Edinburgh on a couple of occasions. There is patchy provision. Why is preparation for release so important and how important is it for the Scottish Prison Service to bring everybody up to the standard of the links centre and the throughcare centres that are springing up in some, but not all, of the estate?

**Dr McLellan:** Preparation for release is the second most important factor in reducing re-offending. The most important factor is reducing offending in the first place and ensuring that folk do not get into trouble. However, once they have got into trouble, preparation for release is designed to reduce re-offending, so the answer to the question why it is important is twofold. First, it is a matter of public safety—it is a matter of making people who have damaged society in some way less likely to damage society a second, third or fourth time. Secondly, there is a humanitarian issue. For all that many prisoners have done bad things, many prisoners are often also victims and losers in all sorts of ways. It is simply right that steps be taken to help them or to

give them opportunities to help themselves to prepare for being released into the community.

I will make a little comment to Ms Smith about there being no formal pre-release course at Shotts prison. I am glad that I said that about Shotts, but nevertheless, as regards the answer that I gave to Marlyn Glen earlier, I do not want members to think that a formal pre-release course is the only part of preparation for release or that because that does not happen, nothing happens.

**Margaret Smith:** Do you, however, agree with your own comments that we have patchy provision at the moment?

**Dr McLellan:** I agree with my own comments.

**Margaret Smith:** I am not going to ask you what your view is about a single agency, but you touched on the importance of multi-agency working and of outside agencies becoming, in a way, inside agencies that work within prisons. Will you explain more about why you consider that to be the best way forward for integration of services and preparation for release?

**Dr McLellan:** Prison is a hugely artificial environment. It is a hostile environment and it is an environment of coercion. Therefore, almost by definition, what prisoners do in prison is only partial preparation—they will be only just beginning to prepare for release when they are in prison. It is important that that preparation moves in the same direction as what happens when they come out, so I welcome the developing dialogue on what happens in prisons and what happens outside.

Recently, I had the opportunity to visit prisons in Holland and Belgium, where I was struck by the absence of formal preparation for release from jail. The political theory is that all work on addiction issues must be done once people are released because only when they are in the community can addiction issues be seriously addressed. I do not believe that that is true, but I think that it is based on an element that we must not forget.

**Rod MacCowan:** The issues around release and the role of prison relate to transition of the individual from the community into prison and then out again. The huge advantage that agencies coming into prisons have is that they are virtually guaranteed that their clients will be available; there is usually no difficulty in making appointments. Work can be done in preparation for visits and people can be linked to services. For example, jobcentre plus—which works in all the prisons—tends to work on the basis that, six weeks prior to release, arrangements will be made in respect of benefits and other linkages. The housing associations in both the voluntary and public sectors work on issues relating to maintenance of or, in the case of long-term prisoners, termination

of tenancies and can make arrangements for accommodation on release. The fact that such work is done in the prisons means that, on release, a prisoner who is homeless or who has lost his tenancy does not have suddenly to make contact with a barrage of agencies. A person's ability to cope when they get back out is important in relation to reoffending.

**Margaret Smith:** Those are the sorts of issues that are picked up by the various needs-assessment tools that are now used. Is the situation much better than the arrangements that existed in the past and which still exist in some prisons? Is the short-term offender needs assessment—STONA—a helpful tool?

**Rod MacCowan:** The second part—the community integration plan—is as important as the needs assessment. Although it is aimed at short-term prisoners, long-term prisoners go through a similar process. There is a planned response to the needs that are identified at the beginning of the sentence. In the past, that has been haphazard in prisons.

**Margaret Smith:** What problems have been encountered in the open estate and how might they be addressed? Were we wrong to close parts of the open estate in the past? Do we have enough places?

**Dr McLellan:** We should not forget the conversations that we have had about the numbers of people in Glenochil and other places who have wanted to be placed in the open estate but have not been. That number has increased because of a change in management rules that means that more people are, in theory, eligible to be placed in the open estate. Consequently, more people are frustrated about not being able to go to the open estate.

Another frustration that exists is to do with the lack of clarity about whether the open estate is equally for long-term prisoners and short-term prisoners or whether one or other of those groups has priority. Whichever group a prisoner is in, that group believes that it should be prioritised.

12:30

In the open estate, there must be recognition that decreased security, which is an essential part of an open prison, makes it much easier for people to get drugs in. That is an issue that we have asked the Scottish Prison Service to reflect on and to address. There has been a certain amount of publicity in the press about that and we ought not to pretend that the matter is not one of the difficulties. There are two ways in which we could deal with that: either we can say that open prisons are a bad thing or we can say that we need to get better at assessing the people who go to open

prisons and what happens to them while they are there. I certainly take the second view.

Open prisons have been good at doing two things. They have been good at arranging community placements for work in the community, which have generally gone very well and are appreciated by prisoners and by community employers. Secondly, the provision that they make for home leave, which prisoners treasure, is also an important part of preparation for release.

Apart from the difficulties around addiction, the frustration that our reports suggest about the open estate is in relation to the lack of serious engagement with prisoners while they are there. Open prisons are good at putting prisoners out into the community and good at giving them home leave, but there needs to be improvement in the employment that is available to prisoners while they are there, and in the drugs programmes and educational opportunities that are available. Our reports have indicated that quite clearly and we are in conversation with the open estate about the steps that are being taken to address those matters. As I have said several times, I hope that when I come back next year there will have been significant improvement.

**Margaret Smith:** What is the average length of time that somebody would spend in an open prison?

**Dr McLellan:** I do not know.

**Margaret Smith:** We all accept that one of our problems is in dealing with short-term offenders, who are often the prisoners who do not get on to educational or work programmes. A prisoner might be in a prison in which he is not being engaged with because it is thought that that is not where he will finally end up, and he might then be moved to the open estate but not for long enough for such engagement to happen there. That might mean that medium-term prisoners are treated in two different places almost as short-term prisoners when it comes to access to education.

**Dr McLellan:** I think that that is correct. Perhaps Rod MacCowan can reflect a little on timing. There is also a third category of prisoner—as well as those whom you described—who are told when they get to the open estate that provision does not exist for them because they should have had it before they came to the open prison.

On the average time spent in an open prison, I am sure that I can find out the answer and reply to the committee in writing.

**The Convener:** I did not understand your final point about there being a third category of prisoner.

**Dr McLellan:** The easiest example to give is that of prisoners who are addressing addiction



issues. They come to the open estate saying, "Before I'm released, I really need a programme to help me deal with my addiction." However, they are told that they should have addressed that problem before they went to the open prison.

**The Convener:** Margaret Smith has asked how long prisoners spend in the open estate; we need an answer to that. You can correct me if I am wrong, but I believe that prior to 2000, when we closed two parts of the open estate—Penninghame and Dungavel prisons—there was not such a prevalence of drugs in the open estate. Am I right? I recall that that was one of the issues that were raised at the time. The reason for closure, we were told, was that there was undersubscription for places in the open estate, so the places in those prisons were not required. One of the points that were raised at the time was that those were parts of the estate in which we had managed to get the drugs problem under control. Are you familiar with the history of those closures?

**Dr McLellan:** I am not familiar with that history. However, I am familiar with the history of Perth, Barlinnie, Edinburgh, Kilmarnock, Glenochil and Shotts prisons, from which prison managers and prison officers say that they cannot move prisoners on. They have prisoners whom they need to move on, but there are not places for them to go.

**The Convener:** So we now have a shortage of places, albeit because of the change in eligibility. I can assure you that the reason that the SPS gave in 2000 for why Penninghame and Dungavel were chosen as the prisons that had to close was that the number of people was inadequate for the number of places. We are four years on from that and I accept that situations change. Perhaps you are not able to answer on that.

**Dr McLellan:** I do not mean to be difficult, but Mr Cameron and the SPS would need to answer on that.

**The Convener:** I realise that. Stewart Stevenson has a point of clarification.

**Stewart Stevenson:** This arises from something that Margaret Smith highlighted. In relation to preparation for release, can you clarify that both Peterhead and Glenochil prisons do not release prisoners directly? Is it the case that they only transfer prisoners to other prisons prior to their release and that their role in preparation of prisoners for release is therefore not total?

**Dr McLellan:** I do not think that I can confirm that; I am confident that prisoners at Glenochil are released direct into the community.

**Stewart Stevenson:** Right. Prisoners at Peterhead are not released in that way, however.

**Dr McLellan:** That is correct—at least, they are not released physically into the community. It is,

however, a matter of only 24 hours before they are returned to the community because they will have reached the end of their sentence at Peterhead.

**Stewart Stevenson:** Yes, but the policy is that they are transferred elsewhere. The practice that the SPS seeks to achieve is that those prisoners are transferred elsewhere so that they can establish connections with the agencies that are supposed to support them in the prison from which they will be released.

**Dr McLellan:** It is clear that you know Peterhead prison very well. What you say surprises me very much.

**Stewart Stevenson:** I am telling you what the Scottish Prison Service's intention is.

**Dr McLellan:** That may well be its intention.

**The Convener:** Again, that is an issue that we need to return to with the SPS, to check the policy and the practice. It could be pertinent to our inquiry. We want the practice to be happening throughout the country, not just here and there.

**Dr McLellan:** Absolutely.

**Mrs Mary Mulligan (Linlithgow) (Lab):** You referred to the importance of the role that family support plays. How do you view that role while the prisoner is in prison? Will you tell us how the prisoner–family relationship develops, how it should develop and how it might affect a prisoner following release from prison? Does the present prison estate allow that relationship to flourish? Do you think that some prisons have demonstrated good practice in that area and, if so, what lessons can other prisons learn?

**Dr McLellan:** I will begin at the end and work back. In our report, we have referred to the imaginative ways in which families of prisoners at Edinburgh and Polmont prisons have been helped to understand what imprisonment is like. They have been given the opportunity to come into the prison when the prisoner is beginning their sentence, to meet the prison staff who will engage with the prisoner and to see where prisoners are detained. That represents a positive step forward in helping families.

Helping families is statistically important for reducing reoffending. The fact that a prisoner continues to receive family support while they are in prison and is able to return to a secure family environment is a key predictor of their being less likely to reoffend. There are public safety and public money aspects to supporting families.

As I indicated before, the introduction of family contact development officers in Shotts prison was an imaginative initiative, which had quite a high profile in the context of developing better ways of contacting prisoners' families. I am anxious that, in

the present economic climate, there might be less engagement there.

I would make a number of caveats. Many prisoners get very few visits, and many of them have no family. There was an appalling statistic—I withdraw that judgmental remark. A very unhappy statistic was mentioned at a Families Outside conference that I attended recently. One speaker said that more than half of prisoners' families do not look forward to the return of the prisoner. It seems that family contact development officers could help with that, as well as with prisoners.

All prisoners will say that the most important thing in a prison is the visit room and that continuing engagement with their families is both the thing that helps them most in addressing their offence and the thing that makes them feel most positive about coming out of prison. You will not be surprised to hear that that experience is more limited for prisoners who are women than it is for prisoners who are men. Prisoners who are women have less secure family support outside than do prisoners who are men.

**Mrs Mulligan:** You mentioned family contact development officers. You perhaps see them as providing one of the easier options for making savings. Do you think that they represent an important development, and that their work should continue?

You also mentioned that there have been difficulties with people accessing the visitor centre at Cornton Vale. Those of us who visited Glenochil prison on Monday found that there were issues around people getting there, given where it is and the limited access and transport there. Do you have comments to make on that?

**Dr McLellan:** I am pleased to say that, since we made our report on Polmont, a bus service has been introduced there. I like to think that that is because we drew attention to the need for it, but I have no way of knowing whether that is the case. It is certainly easier for people to get to Polmont. Glenochil presents a particular difficulty. Most people who visit prisons are poor and getting to the out-of-the-way places where high-security prisons tend to be is difficult for them. I sometimes wish that there was a little bit more imagination on the part of prisons in finding ways to engage with local bus companies, or perhaps with local churches, to see whether transport could be arranged. Safeguarding Communities-Reducing Offending provides a certain amount of transport to a certain number of prisons, but it is limited.

I wish that I could say that that is the fundamental difficulty in relation to visiting prisoners. However, in many prisons the fundamental difficulty is the total inadequacy of the room in which visits take place. The rooms are

often far too small and things are often arranged in a confrontational way. Because of the size of the room, there is often an atmosphere of intimidation, as there is nowhere for the prison officers to be other than very close to the prisoners and visitors. In at least half the prisons, the facilities are not such as to encourage good family contact or good, humane relationships.

**The Convener:** We are well over our time and we still have a few other questions that we want to ask. If we have some speedy questions and answers, we might be able to squeeze everything in. After all, this evidence session has been so valuable to us that it is important to complete the questioning. We want to ask you briefly about Cornton Vale, drugs and the importance of work.

**Marlyn Glen:** Can Dr McLellan estimate the number of prisoners in Cornton Vale for whom prison is inappropriate?

**Dr McLellan:** I do not see how I can answer that question. Appropriateness relates not only to a prisoner's needs but to the offence that brought the prisoner to prison in the first place. I do not have access to the information that judges have access to.

That said, one could not be in Ross House in Cornton Vale for 10 minutes without thinking that jail will make these people worse. Whether it is appropriate that they should be there is a question of jurisprudence that I would not be able to answer; however, the number of people who will be made better by the experience of being at Cornton Vale is very small.

12:45

**Marlyn Glen:** Will you hazard a guess at a number?

**Dr McLellan:** No.

**Marlyn Glen:** I have no doubt that a tremendous amount of good work goes on at Cornton Vale. What examples have you observed at the prison?

**Dr McLellan:** Given that I have pretended to know the facts off by heart all morning, I should at least do some justice to our reports and remind myself of what they contain.

First, very high-quality therapeutic mental health support is available to people who are admitted to the prison with the complex of mental illness, addiction and abuse that I highlighted earlier. Whether that level of quality is maintained throughout their sentence is another question, but support is very good for people when they are at their most vulnerable.

Secondly, an independent living unit has been opened at the prison. I hope that members will recall that when the committee and I were

reflecting together on preparation for the release of long-term offenders, top-end prisons and so on we realised that almost none of those facilities is available to women. Cornton Vale now has a unit outside the main security wall that at least gives prisoners the sense that they are beginning to be a part of the community.

Thirdly, when we took an inspector from the care commission to the prison, she looked in particular at the mother and baby unit. I will leave aside the issue of how painful it is for a baby to be in prison, but she spoke very highly of the standard of provision.

There is a great sense of energy at Cornton Vale; it feels like no one is lying down in front of the issues. When I return, I will be looking for a more sophisticated programme to address the needs of young offenders, but I have no doubt that the matter is under consideration and that the sense of determination is quite significant.

I would say of Cornton Vale something that I would say of many prisons and which has not been mentioned today: we must not ignore chaplaincy's contribution. However, I was once the chaplain of Cornton Vale, so I would say that, wouldn't I?

**Marlyn Glen:** What are the obstacles to preparing prisoners for release and addressing offending behaviour? Have attempts been made to link work within the prison with continued support in the community following release?

**Dr McLellan:** Are we talking specifically about Cornton Vale?

**Marlyn Glen:** Yes.

**Dr McLellan:** Arrangements have been introduced into the independent living unit to allow the people there to work on community placements. It is still early days, but there is some indication that one of those placements might lead to a real job.

Although work is immensely important to any rehabilitation and release provision, the state of so many of the women in Cornton Vale after five, 10 or 20 years of having the wrong things in their minds and bodies is such that, even with the best will in the world, it is unrealistic to expect them to enter normal employment until they have dealt with their mental health and addiction issues. Provision for work in Cornton Vale has necessarily had a slightly lower profile than it has had in some other prisons because of the condition of the women who are there.

**The Convener:** As you mentioned addiction, we will conclude on that matter.

**Margaret Mitchell:** I will be brief. Tackling addiction, for example to drugs and alcohol, in

prisons comes in several forms. We have already identified the need to tackle supply, whether things are getting into prison through people using mobile phones or in other ways, but family support is also a key issue. Will you comment on the fact that a female partner is often the key person in a male's rehabilitation, by supporting him in getting off drugs? There is evidence from the Edinburgh experiment that there is not always the same support for women, because sometimes the men are on drugs and so are not a key partner in supporting them.

On best practice, you mentioned that Barlinnie has an impressive record of dealing with drugs issues. How could its approach be extended to the rest of the prison population?

Finally, you will be aware that the Executive is talking about banning smoking in public places, which is a topical matter today. If that were to happen, what impact might it have on the prison population?

**Dr McLellan:** It is unfair to ask me to respond briefly to all those questions, but I shall do my best.

Family contact is immensely important to prisoners who are dealing with addictions. I am talking not only about female partners, but about mothers too. Such contact is almost a driving force for some people.

Prisoners are no different from people who are outside in the community. A person will not deal with their addiction if they do not want to do so, and a prison cannot get somebody to the wanting stage, no matter what it offers. We now use an addictions inspector from the inspectorate's works department, who comes with us to identify things. He seeks to evaluate what is done in prisons against what is done in the community, but he finds the task almost impossible because of its scale. The proportion of people involved is very different from the proportion involved in the community.

Our reports draw attention to a range of efforts that are taking place. I single out from those not the efforts that take place in the community, but those that we discussed earlier, whereby community-based organisations come into prisons to support prisoners when they come out. We want to draw attention to what we have said about programmes, but we could also send the committee summaries of what we have said about addiction matters in prisons, which would draw attention to other examples of best practice, which is what was asked about. I would be happy to do that.

**Margaret Mitchell:** Would banning smoking in workplaces or workshops affect prisoners in any way?

**Dr McLellan:** It is by no means possible to smoke everywhere in a prison. A prisoner can smoke only in certain, limited places. A matter of considerable concern to us is the assessments that are currently made, whereby it is possible for smokers and non-smokers to share cells. From the evidence that I have seen, I am not sure that I can say anything useful about banning smoking completely in prisons, except to say that I am grateful that you have drawn attention to the fact that addiction to heroin and other drugs is only one of three huge addictions that are prevalent in every prison in Scotland, and that it would be a distortion to concentrate entirely on illegal addictions.

**The Convener:** That was a good, controversial note to end on, given that the Parliament will discuss banning smoking today. Your report repeatedly mentions the sensitivity of prisoners who do not smoke sharing cells with prisoners who do. Today is a good day for us to highlight that issue.

We did not get the chance to pursue two or three issues, one of which was the role of work in preparing prisoners for release. Do you agree to our writing to you with a few outstanding questions? We have had two hours with you, which have been tremendous. Our inquiry has benefited greatly from hearing your responses to the questions, which have been a great deal of help to the committee. If you do not mind answering a few questions that we did not get a chance to ask, we will ask them by post.

**Dr McLellan:** Not only would I be willing to do that, but I shall tell my colleagues who are sitting behind me to be enthusiastic in responding to the questions.

**The Convener:** We will try not to make them too many in number.

I thank you and Mr MacCowan for attending for so long. We are grateful for the evidence that you have given us.

**Dr McLellan:** I very much appreciate not only being here, but the way in which we have engaged in the matter together. Thank you very much.

## Subordinate Legislation

### International Criminal Court (Enforcement of Fines, Forfeiture and Reparation Orders) (Scotland) (Revocation) Regulations 2004 (SSI 2004/437)

12:55

**The Convener:** We have two other items, the first of which concerns subordinate legislation. I refer committee members to the note that the clerk has prepared setting out the background information on the International Criminal Court (Enforcement of Fines, Forfeiture and Reparation Orders) (Scotland) (Revocation) Regulations 2004, which is an instrument subject to the negative procedure. I point out that there is an error in the title and number that are given for the regulations in the committee paperwork.

The regulations seek to revoke the International Criminal Court (Enforcement of Fines, Forfeiture and Reparation Orders) (Scotland) Regulations 2004 (SSI 2004/360), which the committee considered on Wednesday 29 September. Committee members will recall that we felt that some points in those regulations appeared to contradict the Executive's position during the passage of the International Criminal Court (Scotland) Act 2001. The Executive has decided to revoke the original regulations for the time being, which is what this instrument is about.

Are members happy to note the regulations or do they wish to comment on them?

**Stewart Stevenson:** It is appropriate to welcome the Executive's change of heart on the matter. It is an appropriate response, and I am sure that the Executive will get the regulations right the next time round.

**Margaret Mitchell:** I welcome the fact that the Executive is prepared to reconsider the regulations, but there has been a bit of dithering about the process and we are not addressing an issue that should now have been done and dusted. That is worth noting.

**The Convener:** I am not sure what you mean by that. We asked the Executive to review its position because we were not happy to recommend to the Parliament that the original regulations be passed. The Executive has now done that. To revoke the original regulations, it must lodge a negative instrument, which is the regulations that we are considering today.

**Margaret Mitchell:** The matter has been around for quite some time. When we dealt with it in

September, the issues were clear in what the Subordinate Legislation Committee said. Given the direction that the Justice 1 Committee gave, it should have been possible for the Executive to proceed with amended regulations or push on with the original ones.

**The Convener:** I must speak in opposition to that, because the revocation regulations are what we asked for and what we have. If you are saying that you would like to know what the Executive intends to do next, I am happy to acknowledge the point. This will not be the end of the matter, because we must be clear about who will take responsibility for fines and forfeitures. I am pleased that the committee took a strong line on the original regulations and that the Executive has decided to take our view on it, because it avoids many difficult issues being raised in the Parliament. However, you are entitled to take a different view.

**Stewart Stevenson:** We should be cautious about urging speed on the Executive in this matter. Let it consider the matter carefully and introduce regulations that we can sensibly support, because we want to get them right. That is our role in having drawn the Executive's attention to what we considered to be the defects of the original regulations.

**The Convener:** Notwithstanding Margaret Mitchell's comments, is the committee happy to note the International Criminal Court (Enforcement of Fines, Forfeiture and Reparation Orders) (Scotland) (Revocation) Regulations 2004?

**Members indicated agreement.**

## Protection of Children and Prevention of Sexual Offences (Scotland) Bill

12:59

**The Convener:** Item 3 concerns the Protection of Children and Prevention of Sexual Offences (Scotland) Bill. I refer committee members to the note inviting the committee to consider the approach that it wishes to take to the bill.

I invite members to consider what witnesses they would like to call before the committee to give oral evidence. I would also like members to consider a proposal that I put together in the paper to hold a seminar as part of the evidence taking. In my mind was the fact that, in the past, that has been a different and successful way of bringing witnesses together to have a discussion about a bill. That might be another way of getting evidence, making the session more interesting and allowing direct dialogue with groups that might have different views. It is only a suggestion; it is for committee members to determine what they want to do with the time that is available for evidence sessions.

**Stewart Stevenson:** I am not opposed, in principle, to the policy objective of the bill; however, I have real concerns about whether the bill will deliver on that policy objective. I asked the Scottish Parliament information centre to discover the age of consent and the age of permissible marriage around the world. It appears that we might make illegal in this country acts that are preparatory to committing legal acts in other countries. I take no position on that; I just say that the issue needs to be explored. I have discovered a series of such issues.

Scottish Executive officials have been suggested as witnesses for our first evidence session. We might consider whether we want to preface the formal evidence session with an informal session with the Executive officials, to examine more openly some of the details of the bill to ensure that they support its policy objectives. If we took that evidence in public, the officials might, of necessity, have to be more constrained in what they say to us. I am not suggesting that with the objective of catching anybody out or making life difficult; I am suggesting it so that, if there are things that we do not understand, the officials can explain why they came to some of the conclusions that they have reached. I suspect that that can best be done in private or informal session before we question them in public immediately afterwards.

That is the key issue that I want to raise; otherwise, I am relatively content.

**Marlyn Glen:** I support that idea. I also support the idea of holding a seminar, which would work quite nicely along with that and would better prepare us for dealing with the bill.

I have a couple of suggestions of people who might give evidence. I see that written evidence is called for as well. It would be a good idea to get oral evidence from the Association of Directors of Social Work, which I see is on the list. What about education? I declare an interest as a member of the Educational Institute of Scotland. The EIS might be in a position to give evidence on the bill. It might also be useful for us to talk to the cross-party group on survivors of childhood sexual abuse, which brings together many experts.

**Mrs Mulligan:** I agree with Stewart Stevenson's suggestion. An informal session would be really helpful, as we need to clarify exactly how the bill has been conceived and what its intentions are. I am also attracted by the convener's suggestion of a seminar. When we have witnesses before the committee, we sometimes receive evidence that is contrary to what we have heard but we cannot fire it back and forth. The seminar might give us the opportunity to have a more rounded discussion of some of the issues that we will address. I would be supportive of that suggestion.

**Margaret Mitchell:** I agree that an informal session would help to iron out issues and perhaps allay some of Stewart Stevenson's fears. I suggest that we involve Children 1<sup>st</sup> in the evidence seminar, as that organisation has expressed an interest in the subject and will make a worthwhile contribution.

**The Convener:** I know that Margaret Mitchell has a special interest in the issue and has done some work already. Would it be important to hear evidence from experts on enforcement?

**Margaret Mitchell:** Yes.

**The Convener:** I confess that I have not been able to devote much time to the bill so far, but I am struck by Marlyn Glen's point about learning lessons from previous legislation. For this bill, it will be important to spend time with people who have expertise in enforcing the law.

**Stewart Stevenson:** I think that the slimness of the bill will turn out to be deceptive.

**Mr McFee:** The convener's point is important. The purpose of the bill is to prevent offences from occurring rather than to deal with the aftermath. Therefore, enforcement of the sections that deal with prevention of the offence is extremely important. I have read the bill and the accompanying documents only once, but I am already concerned. Although the intention is laudable, how will we make the provisions stick and ensure that they are effective?

I came late to consideration of the Emergency Workers (Scotland) Bill but it set the alarm bells ringing. We need legislation that is enforceable and which operates to prevent situations from occurring in the first place.

**Margaret Mitchell:** It is a question of taking a step back and considering the whole grooming aspect. We have to prove that there was an attempt to groom—grooming being a forerunner to an illegal sexual act taking place. If we can concentrate on enforcing the provisions on grooming, it would be helpful. I agree with the convener's suggestion.

**The Convener:** We have Stewart Stevenson's suggestion of an informal session with the officials, which I think makes perfect sense. Everyone agrees that a seminar would be useful and members have a proposal in front of them. Marlyn Glen has suggested some additional witnesses, including the cross-party group on survivors of childhood sexual abuse. Witnesses from Children 1<sup>st</sup> have also been suggested, although I think that we would have included them anyway.

The suggestions have been helpful and we can now prepare a list of witnesses and a timetable. I see that Margaret Smith has had a brainwave.

**Margaret Smith:** I just wondered about the commissioner for children and young people in Scotland.

**Stewart Stevenson:** Would she have special expertise in this issue?

**Margaret Smith:** No, but the bill is specifically about children. Unless I am wrong, this is the first piece of legislation that is specifically about children since we have had a children's commissioner.

**Margaret Mitchell:** I wrote to the children's commissioner—she had just been appointed—and she did not really know anything about the issue and could not comment, so I am not sure how worth while it would be to have her as a witness.

**Margaret Smith:** It might focus her mind.

**The Convener:** Members might think about inviting the children's commissioner to the seminar. She might be more comfortable with that.

**Margaret Smith:** One of her jobs is to be a conduit between children and decision makers. This is the first bill about children since she was appointed—the Vulnerable Witnesses (Scotland) Bill was earlier—and we should show that we are serious about involving her. It is difficult to listen directly to the views of children but we might be able to do so indirectly, through the commissioner.

**The Convener:** I have no difficulty with that suggestion. I agree with Margaret Mitchell and Bruce McFee that, when it comes to scrutinising

the bill, having the expertise of the enforcers will be critical.

**Margaret Smith:** It was a political point with a small p.

**The Convener:** When we have the seminar, we could invite the children's commissioner as a courtesy. She might have something to say on how we can canvass the views of children.

**Margaret Mitchell:** I have one other suggestion. An organisation that deals with victims of sexual abuse—of which grooming is an important aspect—might be able to contribute something on likely scenarios and evidential issues.

**The Convener:** Sorry, I missed that. Which organisation are you referring to?

**Margaret Mitchell:** We should hear from representatives of an organisation that deals with the victims of sexual abuse. They would have a worthwhile take on the grooming issue because they are familiar with it.

**The Convener:** Which organisation do you suggest?

**Margaret Mitchell:** The cross-party group on survivors of childhood sexual abuse would be able to give suggestions.

**The Convener:** Is that the group that Marlyn Glen mentioned?

**Margaret Mitchell:** Yes.

**Marlyn Glen:** Marilyn Livingstone is the convener.

**The Convener:** Do members agree to the suggestions in the paper, with the additions that have been discussed?

**Members** *indicated agreement.*

**The Convener:** Okay. We will draw up proposals for a timetable on that basis. I draw members' attention to the proposal for an informal session with the Sheriffs Association, which would be useful. Such sessions have proved useful in the past.

As I said at the beginning of the meeting, we have rejigged our business and will not meet next week. We will consider the item that we would have considered on 17 November at the meeting on 1 December. Our next meeting will be on 24 November, when we will begin stage 2 consideration of the Emergency Workers (Scotland) Bill. I am sure that members are looking forward to that.

*Meeting closed at 13:11.*





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