

JUSTICE 2 COMMITTEE

Wednesday 12 September 2001
(*Morning*)

Session 1

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JUSTICE 2 COMMITTEE

21st Meeting 2001, Session 1

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Bill Aitken (Glasgow) (Con)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)

*Mrs Margaret Ewing (Moray) (SNP)

*Mrs Mary Mulligan (Linlithgow) (Lab)

*Tavish Scott (Shetland) (LD)

*Stewart Stevenson (Banff and Buchan) (SNP)

*attended

WITNESSES

Elizabeth Carmichael (Scottish Executive Justice Department)

Iain Gray (Deputy Minister for Justice)

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERK

Claire Menzies

ASSISTANT CLERK

Fiona Groves

LOCATION

Committee Room 1

Scottish Parliament

Justice 2 Committee

Wednesday 12 September 2001

(Morning)

[THE CONVENER opened the meeting at 09:33]

The Convener (Pauline McNeill): The committee is quorate, so I will open the meeting. I would like to start the morning's proceedings by saying a word on yesterday's events. Everyone is conscious of the devastation that hit New York and Washington yesterday and we will mark our solidarity this afternoon in Parliament. Our thoughts are with the people of Washington and New York.

Interests

The Convener: We move to item 1 on the agenda. I welcome Margaret Ewing and Stewart Stevenson, who have now formally joined the committee. I invite them to declare any interests that they have.

Mrs Margaret Ewing (Moray) (SNP): I have none, other than those that are in the register of members' interests.

Stewart Stevenson (Banff and Buchan) (SNP): I have none, other than those in the register of interests. However, for future reference, I draw attention to the fact that I own 39,000 shares—which is below the mandatory reporting level—in HBOS, which was previously the Bank of Scotland. I am in receipt of a pension from that company. As HBOS's activities cover almost everything in Scotland, it is appropriate to put that on the record.

Items in Private

The Convener: Item 2 is to ask for the committee's permission to take item 7, which is to discuss our work programme, in private. Is it agreed to take item 7 in private?

Members indicated agreement.

The Convener: I ask members to think ahead to next week's meeting and to consider whether to discuss the lines of questioning on sexual offences in private. Is it agreed to take that discussion in private?

Members indicated agreement.

International Criminal Court (Immunities and Privileges) Order 2001 (Draft)

The Convener: Item 3 is on subordinate legislation. We have with us the Deputy Minister for Justice and his team.

The Deputy Minister for Justice (Iain Gray): All Executive engagements today have been cancelled, but my attendance is an attempt to minimise disruption to the committee's business. It will be the only business that Executive ministers will be undertaking today.

The Convener: Minister, you are required to move motion S1M-2057, in the name of Mr Jim Wallace. Members will then ask questions, if they so wish. The debate may last for up to 90 minutes, but I hope that it will not.

Iain Gray: The draft order before the committee is necessary for the United Kingdom to be able to meet certain of its obligations under the Rome statute and is thus required prior to ratification of the statute. The draft order is made under the International Criminal Court Act 2001, which, members will recall, received royal assent on 11 May 2001. Section 1(3) and paragraph 1 of schedule 1 of the 2001 act contain the relevant powers to make the order. Paragraph 4 of schedule 1 stipulates that the Westminster and Scottish Parliaments must approve the order, which will then be submitted to the Privy Council. The draft order completed its passage through the Westminster Parliament on 12 July.

The draft order implements articles 4.1 and 48.2 of the Rome statute. Article 4.1 stipulates that the court is to have

"such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes."

Article 48.2 states:

"The judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall, when engaged on or with respect to the business of the Court, enjoy the same privileges and immunities as are accorded to heads of diplomatic missions".

Accordingly, the draft order makes provision to implement both of those articles. Article 4.1 is implemented by paragraph 3 of the order and article 48.2 is implemented by paragraph 4 of the order.

The order will recognise the international criminal court as a body corporate and will permit the authorities to extend immunities and privileges to ICC officials to enable them to carry out their duties effectively. For instance, under the order, judges and other officials would be immune from

legal actions that might be raised against them in connection with the exercise of their duties for the ICC.

The draft order is a small, but necessary part of the legal framework that is needed to enable the ICC to function effectively. I commend the draft order to the committee.

I move,

That the Justice 2 Committee recommends that the draft International Criminal Court (Immunities and Privileges) Order 2001 be approved.

The Convener: Do members have any questions on the draft order?

Tavish Scott (Shetland) (LD): I have a small question. The minister talked about the privileges and immunities that would apply to officials of the court. I understand—from the note on the background to the order that members have—that there is provision for those privileges and immunities to be waived. Will the minister clarify under what circumstances that would happen and who would be the arbiter in such considerations?

Iain Gray: It might be that you slightly misunderstand the issue of the waiving of immunity. Article 4(2) of the order states:

“Privileges and immunities may be waived:-

(a) in the case of a judge or the Prosecutor, by an absolute majority of the judges;

(b) in the case of a Deputy Prosecutor, by the Prosecutor;

(c) in the case of the Registrar by the Presidency.”

That means that the privileges and immunities that the order will confer could be waived by more senior members of the court.

The Convener: Scott Barrie, did you wish to ask a question?

Scott Barrie (Dunfermline West) (Lab): I was only going to show that I had read the order by pointing out what the minister has just said. I only raised my hand because I knew the answer to Tavish Scott’s question.

Mrs Mary Mulligan (Linlithgow) (Lab): He just wanted to show off.

Bill Aitken (Glasgow) (Con): I am intrigued that article 4(1)(b) says that the judges, the prosecutor, the deputy prosecutors and the registrar shall be exempt from domestic taxation. Bearing in mind that, unlike a member of the diplomatic corps, those people will spend the bulk of their time under UK jurisdiction, I am unsure why they are to be exempt from income tax. I am sure that there is a degree of logic, but I await your explanation with interest, minister.

Iain Gray: The statute covers the domestic tax regimes of all those who sign up. It is important that the same arrangements apply whatever the domestic tax arrangements might be in the country in which the prosecutors and so on were acting. Also, if someone is involved in lengthy investigations, it is quite possible that they could end up spending a lot of time in a country in which they do not normally reside.

Bill Aitken: Of course, the tax regime in those countries might be more benign than this country’s. That is a point, is it not?

Iain Gray: The basis of this part of the order is the standard provision for diplomatic immunity. The point that you make may be correct, but the position is consistent with that of diplomats.

Bill Aitken: The fact that it may be standard and consistent does not mean that it is right.

The Convener: There being no further questions on the draft order, the question is, that the motion be agreed to. Are we all agreed?

Motion agreed to.

Women's Offending

The Convener: At our meeting on 12 June, the committee agreed to take evidence from the Deputy Minister for Justice in his capacity as a member of the ministerial group on women's offending.

The committee visited Her Majesty's Prison and Young Offenders' Institution Cornton Vale some months ago and also received excellent evidence from Turnaround and Routes Out of Prostitution. For the benefit of our new members, the clerks have helpfully provided a summary of the visit and copies of the report on the inter-agency forum, which summarises many of the main points of the issue.

Minister, it would be helpful to the committee if you would take a few minutes to outline your involvement in the issue and update us.

Iain Gray: With me are Elizabeth Carmichael, from the community justice services division in the justice department, and Angus Skinner, who is the chief inspector of the social work services inspectorate.

I am pleased that I have been invited to tell the committee about the work of the ministerial group on women offenders. It is an important group with important work to do. The group was set up last December and has met on six occasions. It is an inter-agency group that draws together people from a number of organisations, such as Strathclyde police, the Crown Office, the Scottish Prison Service, the social work services inspectorate, the social work departments in Glasgow City Council and Fife Council, Greater Glasgow Health Board, Turning Point and the justice department.

09:45

To understand the work of the group, it is necessary to consider the background to the problem and the formation of the group. In 1998, the chief inspector of prisons and the chief inspector of social work, Mr Skinner, carried out a major review of community disposals and the use of custody for women offenders in Scotland. The origins of the review lay in the tragic loss of young lives in Cornton Vale in the period between 1995 and 1997.

The report that was produced, "Women Offenders—A Safer Way", was a milestone in our understanding of the problem of women offenders. For the first time in Scotland, the special circumstances that relate to women in prison were highlighted. That led directly to the setting up of the inter-agency forum on women offenders which met from 1998 to last year. The forum harnessed

the local knowledge and expertise that existed in the Glasgow agencies that were represented on the group and produced two reports. The forum confirmed that practical measures were needed to tackle the root causes of a great deal of women's crime: addiction; abuse; and anxiety.

The Executive felt that the debate was moving on and that, rather than asking why women offend, we should be doing something about breaking the cycle of despair that leads them into criminal behaviour. That is the key objective of the ministerial group, which I chose to chair in order to give renewed impetus to the work.

We are concerned that the number of female prisoners has continued to rise, going from 146 in 1991 to 212 in 1999. The most recent provisional prison statistics show that the average daily female prison population fell by 4 per cent in 2000, from 212 in 1999 to 203. The general trend in 2000 was downwards, with a 12 per cent drop in the number of remand prisoners and an 11 per cent drop in receptions for fine default. Unfortunately, we cannot jump to conclusions about long-term trends from those figures, as we already know that the number of female prisoners has increased during the course of 2001. The ministerial group has examined the statistics and recognises that many of the women pose little risk to their communities. It accepts that the most effective means of rehabilitation and of preventing further offending is to tackle the causes of the crime rather than to impose what is often a pointless period of incarceration. That is even more important in relation to the impact of incarceration on families, as many of the women have children.

The group has examined the work that has already been done to address the problems that have been identified. In particular, we know that a range of changes has been made in response to the points made in "Women Offenders—A Safer Way". I am sure that the ministerial group will applaud the work of the Scottish Prison Service in improving conditions in Cornton Vale.

That does not, however, address the real issue. Given the problems of many of the women and the nature of their offences, I expect that the group will conclude—as the chief inspector of prisons has done—that we must provide the courts with more effective alternatives to custody. Indeed, work is being done to develop effective community alternatives for women. There are increased accommodation facilities in Glasgow for women on bail. The Turnaround project, which provides access to drug services for women offenders, has been set up and has given evidence to the committee. Drug treatment and testing orders are being used in Glasgow and Fife and are being extended to a further seven sheriff courts. The

diversion from prosecution schemes are being extended across the country and are targeted at problem drug users, young people and women offenders. A number of other measures are in train.

However, the group must consider why, given all that work, the number of women in prison has not declined. That may be due to disturbing trends in the nature of female offending, which appear to be towards more serious crime. Recent statistics show that almost two thirds of women sentenced for over six months were convicted of a crime of violence or faced drug-supply charges. Nevertheless, the majority of women are still being imprisoned for less serious offences such as shoplifting and defaulting on fines.

The problem is that their crime is often persistent and their lifestyles chaotic. The ministerial group has examined all the issues so as to identify where we can make the greatest impact on prison numbers. Fine defaults result in a significant number of women receiving custodial sentences, albeit for short periods of time. The debate in the ministerial group will continue. The group will not reach its final conclusions until nearer the publication of its report, which will be after the end of the calendar year. I am happy to share some of the group's provisional findings with the committee.

The group made a proposal to provide a centre that would focus on the needs of women fine defaulters. By offering the courts and the criminal justice system an option that would serve the needs of the women and the judiciary, the centre would aim to reduce the number of female offenders. Its purpose would be to assist women to avert the crisis that often accompanies their lives and to enable services that would enhance the provision of preventative work. It would provide a comprehensive service to enable women to move on in their lives to the extent that they could realistically leave the support of the centre and reintegrate fully into society. The proposal includes plans for a day centre with a small residential unit attached. At its heart is the goal of helping women to deal with the problems of addiction, abuse and anxiety. We know that those problems lie at the root of their offending. The ministerial group called its idea the "time-out centre proposal".

I know how busy the committee is with its pressing business, but I want to acknowledge how pleased I am that it has taken the time to consider the subject of women's offending, which is complex, but of great importance.

The Convener: Thank you. The committee will want to examine a number of issues that you have raised. It is worth my saying again that, following the committee's visits to Cornton Vale, it was said that Cornton Vale is either a prison or a

rehabilitation centre. That phrase has stuck in the minds of committee members and it is at the back of our minds when we examine the Executive's policy on women's offending. We are pleased that you have come to speak to us and to discuss the way forward as to how proposals such as that for a time-out centre could be developed.

Scott Barrie: The minister will be aware that the former Justice and Home Affairs Committee identified women's offending as one of the issues that it wished to examine. Because of a lack of time it was not able to devote as much time as the committee hoped to the issue. It is good that the Justice 2 Committee is able to address the issue.

I was unable to visit Cornton Vale on either of the two dates on which committee members made visits. As noted by the convener, the committee's report was encouraging as to changes that have been made by the SPS at Cornton Vale.

However, the complex subject of women's offending is constantly changing. When I was a practising social worker, the received wisdom was that a disproportionate number of women from the west of Scotland and, in particular, from Glasgow were to be found in Cornton Vale. A disproportionate number of women were in Cornton Vale for defaulting on fines that were imposed originally for offences for which no custodial sentence was appropriate.

Many services have been established, in particular in Glasgow, to address the issue of women's offending and yet women from other parts of Scotland are increasingly represented in the prison population. Are there plans to extend to other parts of Scotland the services that have been successful in Glasgow?

Iain Gray: Mr Barrie's point is well made. Until recently, received wisdom was that the problem of the number of women in Cornton Vale was a problem for Glasgow and the west of Scotland. The make-up of the inter-agency forum on women's offending reflected that perspective, as did the ministerial group. It is clear from recent statistics that that is less true of the situation today, as Cornton Vale has significant levels of admission from other parts of Scotland.

At this point, I give the committee the apologies of Mr Swan, the Cornton Vale governor, who had intended to be with us today. If he had been here, Mr Swan would have been able to confirm those statistics. However, he was erroneously informed that there was no business today.

The statistics show that over 50 per cent of the women who find themselves in Cornton Vale do so because of fine default. However, because fine default sentences are shorter, the daily population of fine defaulters at Cornton Vale amounts to perhaps one per cent of the total prison

population. Prior to coming before the committee today, I checked the figures at Cornton Vale for the day before yesterday. On that evening, one prisoner was there as a result of fine default. Fine default is important, as it leads us to address the needs of a significant number of women, but we must be honest about what impact fine defaulters make on the daily population at Cornton Vale.

A significant number of women from Glasgow and the west of Scotland continue to find their way into custody. When focusing on Glasgow, it is not wrong to look at options such as the time-out proposal. That is what we will do. We must look at making services that are already in place—such as Turnaround—available more widely. Turning Point Scotland, which runs the Turnaround service, has recently opened services in Peterhead and in Stranraer. By extending its service, Turning Point Scotland is making a contribution to the problem that was raised by Scott Barrie.

Scott Barrie: I am glad to hear that those services have been rolled out to other parts of Scotland. When the committee took evidence from Turning Point Scotland, we were impressed by its excellent work. If we had had services such as Turnaround in Fife, we could have prevented some women from entering Cornton Vale.

The minister made an interesting point about the number of fine defaulters. Concern has been expressed that a number of women go in and out of prison for short periods. The committee heard evidence from the prison service about the disruptive nature of a constantly-changing prison population. It must be especially disruptive for a prison such as Cornton Vale, as it is the only all-female prison in Scotland. The constant ebb and flow of people must put added pressure on the establishment. In addition, many of the women have child care responsibilities, for which other family members or the state must make provision.

The thorny issue of TV licence default falls disproportionately on women, as it is women who seem to have the houses in which the televisions are located. Are there plans, in conjunction with Her Majesty's Government, to look at making the non-payment of TV licences a civil and not a criminal offence?

Iain Gray: As Scott Barrie implied, the question is a reserved matter. The sanctions for failure to pay a TV licence lie with our colleagues at Westminster. My understanding is that the matter is under review.

To return to Scott Barrie's previous question about trends in women's offending, I understand that over the past three years or so for which figures are available, the numbers of those appearing in district courts for failure to pay a TV

licence have dropped from 14,000 to 600. I do not want not to trivialise the matter, but trends are changing.

Mrs Ewing: As a new member of the committee I am trying to catch up with colleagues who have done a great deal of investigative work on the subject of the paper that is before us today.

You said that rehabilitation is more important than imprisonment—that statement is significant.

In addition to the money for Base 75 and Turnaround—I welcome the inclusion of Peterhead and Stranraer—what assistance does the Executive plan for the communities to which women will return after those immediate support services end?

10:00

Iain Gray: I must always be careful with the words that I use in committee. My key point is that the priority is to deal with the underlying causes of the crimes of most women in Cornton Vale. Some women in custody have committed serious crimes and are there for punishment and deterrence reasons. That will not change.

Mrs Ewing's point is good. We can put in place services that support women who are serving community disposals or who are in Cornton Vale, but it would be better if women who have underlying problems, such as addiction, could access services to support them in addressing those problems before they come into contact with the criminal justice system. It is true that providing short-term support while such women are in contact with the criminal justice system serves little purpose if support then disappears. That is why much of the work that is being done with women offenders must be considered in the context of investment in expanding drug treatment and rehabilitation services generally.

I am sure that committee members are tired of hearing me talk about the additional £100 million that is being provided during the current comprehensive spending review. That figure has grown because of budget consequentials. A good example is the services at Stranraer and in the north-east that we discussed. Turning Point provides that service not only for those who are involved in the criminal justice system—that service can intervene earlier with women who seem to be on a path that will lead them inevitably to the criminal justice system.

From that £100 million, £10 million is devoted to the introduction of a new throughcare service for women leaving custody. That service applies to women in custody, but not only to them. In the first 12 weeks after women leave prison, that service will take great care to ensure that ex-prisoners are

fully in touch with the services and support that they require, in order to continue their support beyond those 12 weeks. As Mrs Ewing said, that is extremely important in preventing those women from returning to the criminal justice system.

Bill Aitken: Fine default has been correctly identified as the cause of many women ending up in Cornton Vale. I do not accept that defaulting on TV licence fines is a serious problem, but it is clear that a problem exists. I suggest that that problem concerns mainly those who end up in Cornton Vale as a result of means warrants in respect of unpaid fines for prostitution. As such women hurt no one but themselves, is there not a better way?

Iain Gray: Bill Aitken's point covers another situation that has changed. Statistics show that of women offenders who are in custody for fine default, 14 per cent defaulted on fines for soliciting. That figure is not insignificant and the issue needs to be addressed, but that is not the core problem. That leads us to consideration of whether custodial sentences for fine default are the most efficient and effective way of dealing with fine compliance.

As Mr Aitken knows, courts can, as an alternative, issue supervised attendance orders. Such orders have been successful in some parts of Scotland, but their application is inconsistent. We are keen to encourage more use of supervised attendance orders. The criminal justice forum produced a paper on fine default that suggests that a way of ensuring that such sanctions are used would be the removal of custodial sentences as a sanction for fine default. We must consider that carefully.

We must take account of two aspects. One aspect—I smile because it is close to Bill Aitken's heart—is that the rate of compliance with fines is high, at about 80 per cent. We must be sure that whatever we do maintains and, if possible, improves compliance with fine payment. That is important. The second aspect is that it would be a mistake to introduce alternative sanctions to custody for fine default that carried—as sanctions for breach—longer periods of custody than fine default does, which would mean that we sent fewer people to prison for fine default, but for longer. That would defeat at least some of the purposes that we discussed.

Bill Aitken: Section 235 of the Criminal Procedure (Scotland) Act 1995 could prevent custodial sentences from being imposed for default on fines of less than £500. I hope that ministers will not consider doing that, but have they considered it?

Iain Gray: We are considering that matter.

Bill Aitken: I will now discuss how to get people out of difficulty. Much work has been done,

particularly in Glasgow, on trying to get prostitutes out of prostitution and back into the marketplace for work. Such work is inhibited by the Rehabilitation of Offenders Act 1974, which might or might not be national legislation. Soliciting is registered as a sexual offence, which is exempt from that act and must be declared on any application for employment. Might not some remedial action be taken on that?

Iain Gray: My understanding is that that is not the case. I have checked that advice twice. A conviction for soliciting does not require registration and would, under the 1974 act, be spent following a period that depended on the sentence. Of course, convictions with sentences that are longer than two and a half years would be excluded from being spent under that act, but it seems unlikely that such a lengthy sentence would be imposed.

Bill Aitken: The maximum fine is £500.

Iain Gray: Exactly. The only other exception concerns somebody who has such a conviction and seeks to work with vulnerable children or in any occupation that is excluded in the 1974 act.

Bill Aitken: I was slightly disturbed by your comment—I do not doubt that it is true—that women are becoming more likely to commit fairly serious offences that merit an immediate custodial sentence. Is there evidence that those who are connected with the drug trade seek to have women take the rap when two or three are accused, because the judiciary is understandably inhibited about imposing custodial sentences on women who have young families? Is what I hear largely apocryphal?

Iain Gray: I know of no evidence of that situation. That is not to say that what Bill Aitken says is untrue. It is clear that women are involved in the criminal networks that distribute and sell drugs—I have seen evidence of that. I do not know whether that is done for the purposes that Bill Aitken describes, but it seems plausible.

The Convener: I want to go back to the Rehabilitation of Offenders Act 1974. When representatives of Routes out of Prostitution gave evidence to the committee, they asked the committee to consider amending that act. However, the minister has just said that there would be no requirement to amend that act. If that is the case, it is very important to the work of Routes out of Prostitution. Would you write to the committee on that point?

Iain Gray: I appreciate the point that you are making. That is why I double-checked the advice that I was given on the issue. However, I would be happy to write to the committee.

The Convener: That would be helpful.

Mrs Mulligan: One of the more positive aspects that we saw in Cornton Vale is the health service that is provided, which is clearly making a big difference to many women's lives.

I would like to ask the minister about two related issues. First, it has been suggested that there is a growing need for the psychiatric evaluation of women at the court stage. Has any work been done on improving and developing that service so that, if women are given a custodial sentence, there is awareness of their difficulties when they reach Cornton Vale? Secondly, if the minister is suggesting alternatives to women going to Cornton Vale, will those alternatives ensure that the women receive health provision that is just as good as it would have been had the women received custodial sentences—especially if we believe that problems with health care are among the reasons why women continue to have difficulties in their often chaotic lives?

Iain Gray: I should, to be fair, discuss with the SPS any plans for improvement of psychiatric services at Cornton Vale and then write to the committee. If Mr Swan had been here, I would have asked him to comment.

Mrs Mulligan's second point is very powerful. If we are to provide alternatives to custody for women offenders, all those who are involved—especially sentencers—must have absolute confidence that we are providing the support services for community disposals that will allow the kinds of intervention that Her Majesty's chief inspector of prisons made clear last week are being provided for women at Cornton Vale. It would be entirely unacceptable if women had to be in custody in order to get the kind of health and other support services that they needed. That would be quite wrong. If that is the situation, we must address it.

The idea at the heart of the proposal on the time-out centre is that somebody who is serving a community disposal should not be left unsupported. The person's case should be rigorously managed, which would involve designing interventions that would be appropriate to that person's circumstances.

Earlier this week, when the ministerial group discussed the emerging proposal, there was much discussion of what it would mean for the provision of health services—especially mental health services—for women who used the time-out centre. As with everything else, the proof of the pudding will be in the eating. However, I assure members that it is well understood that the kind of support that women receive in Cornton Vale, which is immediate and comprehensive, is the kind of support that they must receive in the community if they are to avoid Cornton Vale.

Mrs Mulligan: My question on psychiatric services might not have been well put. I was asking about the court stage rather than the stage at which women had entered Cornton Vale. If there were psychiatric evaluation of women at the court stage, liaison between the courts and Cornton Vale would be required. The governor could perhaps have answered part of my question, although perhaps not the part about the court stage. I would be happy for the minister to come back to me on that.

10:15

Iain Gray: One of the measures that has been operating in Glasgow and that we are very keen to use throughout Scotland is arrest referral. That is based on the wider needs—assessed either at the police station or at the court—of those who have been arrested. In Glasgow, Turnaround—which provides that service—has preferred for a number of reasons to do that work in court. However, in England and Wales, arrest referral schemes have been based in police stations.

We want to increase the availability of arrest referral throughout Scotland. Later this month, the Scottish Executive will run a seminar to try to spread best practice. However, the Scottish Executive cannot—by statute—directly fund arrest referral schemes through 100 per cent criminal justice social work funding. I am not sure why that is the case, but I am informed that it is. We must change that so that we can fund such schemes directly rather than indirectly.

Similarly, we are in the process of rolling out schemes on diversion from prosecution. Again, that will give the opportunity for psychiatric or mental health input rather than punitive input, when appropriate. The Scottish Executive is funding that work this year through 100 per cent funding.

The Convener: Mary Mulligan made some important points on what we saw in the medical centre at Cornton Vale and Clive Fairweather has reported on the vast improvements at Cornton Vale. Recent reports indicate that there have been quite a few successes. There would be concern if the successes of Cornton Vale were lost through the diversion of resources—although I hope that resources will be added.

We were struck by the fact that the input from the psychiatric nursing services was crucial. The nurses are specialists—for example, because of the number of women that nurses had to see in a short time, the drug rounds in Cornton Vale were not the drug rounds that you would see in an ordinary hospital ward. How could the medical successes of Cornton Vale be protected in the time-out centre?

Iain Gray: We are talking about a relatively small number of women, so the work and support involved will always be very specialised. I am confident that it will be possible to build in the time-out centre community services in which that degree of specialism could develop.

You asked about protecting the success of Cornton Vale. I am not sure whether the question suggested that, if we were successful in reducing the burden on Cornton Vale, there would be a reduction in the availability of the services offered there. Such a suggestion, if not pessimistic, is not over-optimistic. Cornton Vale is currently operating at more than its capacity, so there is no reason to think—even if we were successful in obtaining a significant reduction in the number of women locked up there—that that would lead to any reduction in the scale of operations at Cornton Vale.

The funding route for the alternatives to custody comes from criminal justice social work funding, which is secure. For example, this year's budget for community disposals runs to £53 million, which is an increase of £9 million on the previous year. The additional resources that are required to advance arrest referral—if and when we can do that—diversion from prosecution, and even proposals such as the time-out facility should be in place and will not have to be found from any other source that is currently available to Cornton Vale.

The Convener: That is what I was getting at—there will always be a need for a women's prison. We are talking about a more integrated service with centres that address some of the particular issues that are better addressed in time-out centres, but there will still be a need for a women's prison. We would not want to lose resources for a reduced population.

The medical records system that we saw at the prison is effective. The first thing that prison staff do when a woman—usually a returner—arrives at Cornton Vale is to dig out her medical records to find out her medical history. That gives some indication of what they can do to assist that woman while she is in Cornton Vale.

I would like your reassurance that we will keep an eye on maintaining the limited successes that there have been.

Iain Gray: It would be perverse if we received a report on Cornton Vale from HM chief inspector of prisons that praised the progress in all those areas but did not protect and encourage that progress. We certainly seek to protect and encourage it.

However, if we look further into the future and find that the trend in Cornton Vale is for more women to serve longer sentences, it is incumbent on us to try to create the possibility for Cornton Vale to focus on the needs of its longer-term

women prisoners, who have different needs and who require different support. That is partly the point that HM chief inspector of prisons made when he said that Cornton Vale is not only a prison but a casualty clearing centre. If it were possible to reduce the burden on Cornton Vale of some services—it was agreed that it should not provide them—that would be a good thing. It would be optimistic to think that we can make that kind of impact in the short term so I agree that we must protect the health service and the progress that has been made at Cornton Vale in recent years.

Stewart Stevenson: I read that medical records are retained for 13 years, but that in the case of psychiatric patients they are retained for life. In today's climate, is it not appropriate that we should no longer stigmatise psychiatric as opposed to general illness? Would you consider aligning the period for which physical and psychiatric medical records are retained?

Iain Gray: Is Mr Stevenson referring to the retention of medical records in the prison service?

Stewart Stevenson: Yes.

Iain Gray: That question has not been raised with me before. If the member will allow it, I will consider the matter and get back to him.

Tavish Scott: I return to the points about general crime levels that the minister made in his opening remarks. If I am correct, one of the action points from the second report of the inter-agency forum on women's offending was:

"The difference in policing policies on prostitution is an issue which should be addressed at the national level".

I am interested in recent events in Edinburgh, in the approach of the police there and in the tolerance policy towards that city's prostitutes. Fears have been expressed by women's groups about the potential for significant increases in crime levels if that policy changes. What is the current thinking on those two issues?

Iain Gray: The recommendation of the inter-agency forum is that the perceived difference between the way in which prostitution is dealt with in Glasgow and in Edinburgh is of great significance in the matter of women offenders. That recommendation has less force now than it had a number of years ago because, from the statistics that I gave, it appears that the proportion of women who find themselves in custody through the route of prostitution is lower than was previously thought.

The position on prostitution is well known. Prostitution—providing sexual favours for payment or paying for sexual favours—is not a crime, but someone who loiters in a public place or who solicits commits an offence that carries a fine of up

to £500, as Mr Aitken said. It is for the police and the procurator fiscal to decide how that law is enforced.

There should be a significant debate on the laws that govern prostitution. The ministerial group was not the place to resolve that debate as trying to do that would have made it difficult for the group to progress on other matters, such as the proposal for a time-out facility. The ministerial group has considered how prostitution is dealt with, but no agreement was possible on what the approach to prostitution should be. The group reached no conclusion and I do not know how that will be reflected in its final report.

Policy on prostitution in Edinburgh is a matter for the local police and the procurator fiscal. I am concerned not so much about an increase in the incidence of crime associated with prostitution as about the fact that some people who were involved in the recent discussions believe that the suggested changes might lead to an increase in the vulnerability of the women. That would be unfortunate and regrettable, to say the least, but the residents in the area in question have the right to lead their lives free from crime, as other citizens do.

Bill Aitken: Let us play the devil's advocate for a moment: so many people do not pay their fines because the alternatives are derisory, are they not? If timed correctly, the equivalent of a £200 fine is one day in jail, so no one will pay the fine.

Iain Gray: I have already made the point that when considering alternatives to custody as sanctions for fine default, a priority must be retaining—or, preferably, improving—the rate of compliance. If what you say is true, Mr Aitken, the changes to disposals other than custody that we have discussed might improve the compliance rate and the payment of fines. We would all welcome that.

Bill Aitken: Are you prepared to make representations to your Westminster colleagues to discover whether it would be possible to deduct the fine payments from benefit, for example?

Iain Gray: We must consider all aspects of how fines are paid and the effect that that has on compliance. For example, we are currently involved in the review of the district courts and I will make an announcement soon on how we will proceed on that matter. A point that has been raised with me is the apparent anomaly that that court system is run by local authorities, although fines imposed cannot be paid in many of the usual places where local authorities accept payment for other things such as rent. There are issues about how fines are paid that could help with improving compliance rates.

10:30

Bill Aitken: That is an interesting approach.

The Convener: I will return to time-out centres in a bit more detail, but before I do, Mary Mulligan has a brief question.

Mrs Mulligan: I have a simple question for the minister. There has been a small number of occasions on which women under the age of 18 have been placed in custody. That is worrying. Do you have proposals to tackle that?

Iain Gray: Although the number is small, we are concerned. It is a matter of great regret that it remains the case that some young women are held in Cornton Vale. We would like that to end. At the moment, the most significant initiative in that regard is the imminent report from the review of secure accommodation, which will be given to the education ministers. The review group was asked to consider the position of young women in particular. I hope that it will recommend how we end the practice whereby young women serve time in Cornton Vale. I hope that we will make progress very soon, but it is to be regretted that that has not happened already.

The Convener: Before we close, I would like to spend a bit more time considering time-out centres, which were proposed by the inter-agency forum on women's offending. How will that proposal progress? Will there be a pilot study? Where will it take place? Perhaps you have not got that far yet.

Iain Gray: The ministerial group expressed a desire to progress that idea, which was raised in the inter-agency forum. There are around 12 people in that group. It was my view that we needed to move forward quite quickly so, to that end, a smaller sub-group was formed, which was asked to draw up a practical proposal. The sub-group has done that and presented its proposal to the group earlier this week. The sub-group's suggestion was accepted in principle and we are now forming a small project team that will work towards a proposal that can be put out to tender.

Along the way, some decisions on how we proceed will need to be made. There will have to be discussions with a range of agencies because the purpose of the time-out centre will be not to replicate services but to ensure proper co-ordination of the services that individuals require. Discussions have already been undertaken with Greater Glasgow Health Board and with Glasgow City Council social work department, but the team will need to discuss more widely than that.

Perhaps for the reasons that we discussed, the inter-agency forum conceived that a centre would be set up in Glasgow and that is how the proposal has developed. The suggestion that is being

worked up at the moment is for a centre in Glasgow, which is seen as the place in which the largest number of women who might benefit from its services are found. I do not envisage that that centre could technically be called a pilot. However, if the centre provides an effective service, we might want to consider how we could replicate it elsewhere.

Some decisions are still to be made, but I am quite optimistic that we can move forward on the proposal relatively quickly.

The Convener: How quickly?

Elizabeth Carmichael (Scottish Executive Justice Department): The work will be done through Glasgow City Council social work department, which has decided that it would like to tender the project. We therefore need to work up the proposal to a specification that can be tendered. Finding premises in Glasgow might be a problem but, with a fair wind, we hope that once the tender has been agreed, we are talking about six months—that was the figure that came from the ministerial group on Monday. We are pressing people about the urgency of getting the centre up and running.

The Convener: Who will run the centre?

Iain Gray: As Mrs Carmichael said, Glasgow City Council social work department will have responsibility for the overall management and so on. It has worked up the proposal to put the provision of the service out to tender. It may be that a voluntary organisation will tender to run the centre. That is not dissimilar to the way in which the Turnaround project is run.

The Convener: Will there be no direct connection with the Scottish Prison Service? Will the SPS be involved in running the time-out centre?

Iain Gray: I do not think that there will be no connection, but unless the Scottish Prison Service bids for the tender—which is unlikely—it will not run the time-out centre. However, there will certainly need to be co-ordination and co-operation.

Elizabeth Carmichael: In Scotland, the money for criminal justice social work goes to local authorities. Therefore any community disposal—the time-out centre will be for community disposals—will be through Glasgow City Council social work department. Clearly, it will need to work closely with Cornton Vale to make those connections.

Iain Gray: The group envisaged that, rather than being a smaller prison in the community, the time-out centre will be a service whereby women can serve community disposals instead of custody. That is why the title “half-way house” was

not used. A different quality of support and service will be provided in the course of that community disposal.

Let me give a specific and quite extreme example of that. The previous governor of Cornton Vale was clear that a short spell in custody could provide respite for some women from, for example, an abusive relationship at home. In that case, a community disposal that did not involve some kind of alternative residence would not meet that particular need. That is why the time-out centre will have a residential element to it. For cases in which the difference between a community sentence being successful and unsuccessful is simply that a community sentence served at home would not work, there will exist the possibility of serving a non-custodial sentence that allows for physical respite from the circumstances that make compliance with the ordinary community disposal almost impossible.

The Convener: What sort of numbers would the time-out centre provide for?

Elizabeth Carmichael: The centre will have a small residential unit containing something like six or eight beds. The advice is that that is what is manageable within the community. Around that unit will be the day centre. At the moment, Glasgow has 220 women on community sentences. The centre would develop women-centred programmes that would link into the mainstream community services so that there would be help with education and training to move people on. The rehabilitation services—which are the strengths of community sentences—would be built in so that the community and family links would not be broken, as happens when people go into prison. The centre would take the best of what Cornton Vale is doing except that it would be within the community and would create those links.

Iain Gray: The plans also recognise the requirement for intensity of support provision. Providing support that is too thinly spread will be ineffective for everyone. Although the residential unit will be relatively small, a 24-hour-a-day unit is envisaged. It is envisaged that even the day centre will operate seven days a week, perhaps from 9 in the morning till 9 in the evening.

It would be possible for those who are not in the residential centre to be in a supported environment for a significant part of their day and week, if that is required.

The Convener: I come to what is the big question for all of us. We have been talking about providing a wider range of options for women offenders, rather than simply sending them straight to custody. We recognise that those women have chaotic lifestyles because of their

particular problems. We are therefore trying to create a range of options that suit the particular circumstances of any woman who comes to court. We are also trying to get away from the contradiction in the system, where more women coming through the district courts end up in custody than women who come through the sheriff court, which is the higher court.

It is difficult to bring all that together. However, have you given thought to the kind of guidance to give to courts? How can courts and their users be encouraged to use those options sensibly and in the way that they are intended to be used?

Iain Gray: We can encourage those who provide training to make as many sentencers as possible aware of the available options. For example, I spoke at the District Courts Association's training weekend in Dundee, on a Friday evening two weeks ago. During that weekend, the DCA was considering all aspects of district courts' work. There are mechanisms that we can use to ensure training and awareness.

However, the real answer to that question comes in two parts. First, we cannot do much. We can provide alternatives to custody but it is the sentencers who will decide whether those alternatives are used generally, and in specific cases. Therefore, the best way to ensure more use of alternatives to custody is to ensure that sentencers have confidence that those alternatives will work. In the end, that is what we have to achieve in order for more women offenders to receive an alternative sentence to custody.

There is some optimistic evidence. An example is the use of drug treatment and testing orders. In Glasgow, the uptake of those orders by sentencers was low initially, but it has increased as the sentencers have gained confidence in them. It is incumbent on us to provide alternative sentences in which the bench can have confidence. That is why, although it is slow, piloting and evaluating before rolling out is the right approach.

Elizabeth Carmichael: We are also working on information for sentencers. We are currently speaking to the Judicial Studies Committee about drawing up information that would be helpful to sheriffs and magistrates. That information would explain the nature of the various disposals because there is now a large number of them. It would also explain how those disposals are targeted, what they are most suitable for, how effective they are and how much they cost. Each sheriff would have a bench book that would show the available options and some advice on when and where those options should be used.

We are also considering the development of the

"What Works" initiative, which, in Scotland, comes under the banner of the "Getting Best Results" programme. That initiative is considering increasing the range and quality of community disposals. We are considering the accreditation of those programmes, which will probably start next year. The sentencers would then know that the programmes had gone through a quality control process that showed that they were effective. All of that comes together along with broadening the range of available disposals.

The Convener: There has been criticism of bail hostels and issues have been raised about the lifestyle of women offenders who have been through prison or who have had an addiction. Often those women lose all their belongings and it is difficult for them to get back into the system. Are we any further forward on doing something about an identity card for women in those circumstances to help cut down on their difficulties?

Iain Gray: The committee knows that the Turnaround project is considering introducing a passport system that is based on a system that has been used successfully in parts of England. The director of Turning Point Scotland gave me one of those passports two days ago. I regret to say that I have lost it so I cannot to show it to the committee. Turnaround is developing that idea and is optimistic that it can make a difference to the difficulties that women offenders face in trying to get back into the system following a period in custody. The passports are exhaustive although the example passport given to me was a miniaturised version and therefore difficult to read. I am assured that the real thing is a bit bigger. There is a prototype and I expect it to be in use soon.

10:45

The Convener: The second part of that issue relates to the benefits system. The issue is about offenders being able to designate one address only. A lot of women would not agree to go into a bail hostel because the different address would disrupt their benefit cheques. Have there been further discussions about how to resolve that issue?

Elizabeth Carmichael: That is a reserved issue but it is being considered and we are in touch with the committee that is considering it. There is an acceptance of the fact that people leaving prison are socially excluded. Work is being done to discover how various Government agencies might address those issues. The Benefits Agency is involved. The last time I heard, the plan was to publish something about that issue in the autumn.

Iain Gray: Getting back into the benefits system is one part of what prison throughcare is meant to

cover. As I said, £10 million has been allocated to that and it is on the point of introduction. Again, the idea is one of rigorous case management and support. Direct help should be given to someone who is leaving prison not only to get in touch with drug treatment and rehabilitation services but to ensure that their housing needs are met and that proper contact with the Benefits Agency has been established and benefits put in place. I am, however, conscious that there are issues surrounding which day of the week someone is released and whether they have been given a release grant. Those issues are being discussed by the UK Government.

The Convener: Thank you for your contribution and I thank members for all the discussion and debate this morning. The committee will want to return to the subject and follow the good work that is being done and progress that is being made in the area of women's offending.

I propose a short break.

10:48

Meeting adjourned.

11:02

On resuming—

Petitions

The Convener: We begin the second half of the meeting with item 5 on our agenda, which is consideration of two petitions that we have already dealt with at previous meetings. The first petition is PE324. Members should have a note from the clerks describing the progress that has been made on that petition. The second petition is PE333. The purpose of discussing these items today is to ask members whether they wish to seek further clarification or to take further action on the petitions.

PE324 invites the Scottish Executive to consider instituting a right of appeal in fatal accident inquiries. We requested evidence from the Scottish Law Commission and the criminal law committee of the Law Society of Scotland on that subject. Paper J2/01/21/6 lists possible options for the committee. Would any member like to comment on those?

Scott Barrie: When reconsidering this petition, it occurred to me that we could write to the Lord Advocate suggesting that he ask procurators fiscal to explain in more detail the reasons for their decisions. That issue is raised in a variety of situations; indeed, it was raised when we visited the procurator fiscal offices. We may want to return to the matter as part of our inquiry into the Crown Office and Procurator Fiscal Service, as it relates not only to fatal accident inquiries—although those are perhaps the most contentious cases—but to other aspects of the service. At the moment procurators fiscal either feel hamstrung when it comes to explaining their decisions or do not explain them at all.

Bill Aitken: Scott Barrie's suggestion is eminently sensible. Clearly, there is a degree of concern about this matter. We are dealing here with sensitive and evocative issues. It is much better if people are kept informed. They may not accept the reasons that are advanced, but they may understand them. That must be a good thing. We could consider this issue as part of our continuing inquiry into the running of the Crown Office and Procurator Fiscal Service.

The Convener: There seems to be a consensus among members that we should pursue with the Lord Advocate the notion that people should be given fuller reasons for decisions, so that they can understand why no proceedings have been initiated.

There has been no suggestion that we explore further the issue of whether fatal accident inquiries should be mandatory or discretionary.

There is one further nagging doubt in my mind. At some point we received a letter on this subject from Michael McMahon MSP. He had concerns about a failure to follow the correct procedure in fatal accident inquiries. I would like to look into that before leaving the subject. I suppose that such cases would be subject to judicial review, which is an option whenever the correct procedure in a case has not been followed. With that proviso, are members happy to pursue only the issue of people being made aware of the reasons for a decision?

Members *indicated agreement.*

The Convener: PE333 is from Charles Douglas, on behalf of the Humanist Society of Scotland. The committee considered the petition at a previous meeting, when we requested more information on it. A question had arisen in relation to the places where a civil marriage can take place. That matter is clarified in the correspondence that has been circulated to members. Last week Jim Wallace indicated that it would be dealt with in the Executive's legislative programme. Do members have any questions about or comments on the petition?

Bill Aitken: Generally we have some sympathy for the petition, but the Minister for Justice has dealt with the issues that it raises. It is hoped that the petitioner's requirements will be met in forthcoming legislation.

Stewart Stevenson: My house used to be a manse. Occasionally people chap the door as they want to visit the front room where they got married. It seems unreasonable that a minister can marry people in my front room whereas a representative of the Humanist Society cannot.

The Convener: Do members want to pursue the matter further? You have received additional correspondence from the petitioner. There seems to be some overlap with the issue of people not being able to get married in the place and under the circumstances of their choice. The petition seems to relate to the work that the Executive intends to undertake. The petitioner refers to the restrictions on the number of people who are able to attend a civil ceremony and the cost that is involved in having two ceremonies. Hopefully, some of his concerns will be addressed in the forthcoming Executive bill. It may be useful for us to seek clarification from Jim Wallace on that point. That would go some way towards reassuring the petitioner that his concerns are being addressed.

Scott Barrie: I agree with the convener. I have a great deal of sympathy with aspects of the petition. Those members who have attended civil

marriage ceremonies will know that some registry offices are not in good locations or particularly well designed. The number of people who can attend ceremonies is restricted. The petitioner makes the point in correspondence that marriages can take place only on certain days, which is a great inconvenience. I know that those points are not central to the petition itself, but they are interesting issues. Euan Robson's proposal, which has been taken up by the Executive, offers us a means for examining them further. For the moment, the Executive may have ruled out a further change to the law, but we should indicate to the Minister for Justice that there appear to be some anomalies that should be investigated.

The Convener: In his letter, Jim Wallace indicates that the Executive is prepared to review the situation. However, we need to consider the impact of saying that the Humanist Society should have the right to conduct marriage ceremonies. Other groups might then express a desire to conduct civil marriage services. We have to consider what we might be opening up. The minister has said that he is prepared to review the position, and I think that that is good enough.

Annual Report

The Convener: Under item 6, we will consider our draft annual report. It does not seem that long since we started, and there have been many changes, but the draft report outlines the main items that we have been dealing with. I invite members to comment on anything else that they would wish to be included in the report.

Stewart Stevenson: Obviously, I was not a member of the committee for the period that is covered by the report, so I will just make a general point. The committee might wish to take the opportunity to comment on its work load—whether it is too much or too little.

The Convener: Do any members have any feelings about the work load? I suppose that only I, Mary Mulligan and Scott Barrie can comment—this is only Bill Aitken's second meeting.

Mrs Mulligan: If Stewart Stevenson had had the opportunity to be on other committees, he would recognise that, while our work load has always been heavy, the work load is also heavy everywhere else. If we say that our work load is heavy, we have to make a comparison. The committee will work to the best of its ability to ensure that it deals with the necessary legislation and takes on board issues of interest and importance that are brought to it. I am not sure that the question of our work load is relevant for inclusion in our annual report.

Stewart Stevenson: I was not suggesting that the committee's work load was excessive, nor that the balance was right, nor that we had too little work—I was not a member of the committee until today. I wondered merely whether work load was an issue upon which members wished to comment. If those members who have been on the committee for longer feel that the balance is right, perhaps they should say so, so that, if excessive demands are made at a later date, it will be possible to refer back.

The essence of the Parliament is its committees. If this committee is a model for getting the balance of work right, let us say so. The Rural Development Committee, which I have also been put on, has serious concerns about its work load and about the balance of where it is coming from. This committee does not have to share that view, but, if members think that the balance is right, it might be useful to say so. That would put down a benchmark for other committees.

Scott Barrie: I do not want to go on about this, but I am reluctant to get into the subject of work load. The Justice and Home Affairs Committee mentioned its work load in every report that it submitted to the Parliament. One of the solutions that the Parliament came up with to address that

concern was to set up a second justice committee. If we keep going on about the work load, there might come a time when we legitimately say that enough is enough; if we keep flagging up the subject, we are in danger of flogging a dead horse.

Stewart Stevenson: We could say that we have got it right.

Scott Barrie: I do not think that we need to mention it at all.

Stewart Stevenson: Okay. I defer.

Mrs Ewing: I have a different point, on the introduction, which deals with the work of the Justice and Home Affairs Committee and then that of the Justice 1 Committee and Justice 2 Committee. The last sentence reads:

"Work is allocated between them by agreement, depending on their current workload."

Could we add something to the effect that we have joint meetings? I recall that there is to be a joint meeting fairly soon. We should make it clear that such meetings are held and that it is not a case of the two conveners just meeting in a wee huddle and deciding to divvy things up. We should stress that the members of the two committees actually meet.

11:15

The Convener: That is a good point. We should weave into the report the fact that there is a joint approach when necessary between the Justice 1 Committee and the Justice 2 Committee. We have had some teething problems with that, but it made some sense—although we may need to discuss this in future—that the committees considered the budget report jointly, and that we should continue to hold joint meetings.

Mary Mulligan is right about work load—many committees have heavy work loads. Let us see how things go. I think that the nature of the justice committees is that we will always have a substantial work load. That means that there is, unfortunately, quite a lot of reading of stuff that may seem quite mundane and boring, but which contains much that is of crucial technical importance. It is recognised that, even if three justice committees were dealing with the work load, the nature of the work would still be intense. We will leave it at that.

If members have no further points on the draft report, the suggestion made by Margaret Ewing is agreed, and we can get the report drawn up.

We now move to item 7, which we agreed to discuss in private.

11:16

Meeting continued in private until 11:35.

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