JUSTICE 2 COMMITTEE

Wednesday 5 June 2002

Session 1

£5.00

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

Her Majesty's Stationery Office is independent of and separate from the company now trading as The Stationery Office Ltd, which is responsible for printing and publishing Scottish Parliamentary Corporate Body publications.

CONTENTS

Wednesday 5 June 2002

JUSTICE 2 COMMITTEE
22nd Meeting 2002, Session 1

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Bill Aitken (Glasgow) (Con)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)
*Mr Duncan Hamilton (Highlands and Islands) (SNP)
*George Lyon (Argyll and Bute) (LD)
Mr Alasdair Morrison (Western Isles) (Lab)
*Stewart Stevenson (Banff and Buchan) (SNP)

COMMITTEE SUBSTITUTES

Roseanna Cunningham (Perth) (SNP)
Lord James Douglas-Hamilton (Lothians) (Con)
Donald Gorrie (Central Scotland) (LD)

*attended

WITNESSES

Douglas Bulloch (Scottish Children's Reporter Administration)
Lucy Chapman (Commission for Racial Equality Scotland)
Mick Conboy (Commission for Racial Equality Scotland)
Gavin Corbett (Shelter Scotland)
Alan Ferguson (Chartered Institute of Housing in Scotland)
Ann Ferguson (Age Concern Scotland)
Susan Gallagher (Victim Support Scotland)
Louise Johnson (Scottish Women's Aid)
Grainia Long (Shelter Scotland)
Norman McFadyen (Crown Office and Procurator Fiscal Service)
David McKenna (Victim Support Scotland)
Sheriff Hugh Matthews (Sheriffs Association)
Alan Miller (Scottish Children's Reporter Administration)
Sheriff Richard Scott (Sheriffs Association)
Dorothy Sutherland (Age Concern Scotland)
Geri Watt (Crown Office and Procurator Fiscal Service)

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERK

Fiona Groves

ASSISTANT CLERK

Richard Hough

LOCATION

Committee Room 2

Scottish Parliament

Justice 2 Committee

Wednesday 5 June 2002

[THE CONVENER *opened the meeting in private at 09:43*]

10:12

Meeting continued in public.

Criminal Justice (Scotland) Bill: Stage 1

The Convener (Pauline McNeill): Good morning. I welcome everyone to the 22nd meeting this year of the Justice 2 Committee, particularly Professor Gane, our adviser, who will be present throughout the day. I ask members to do the usual and check that mobile phones and anything that makes a noise are switched off.

We have eight sets of witnesses for today's all-day meeting—with a short break for lunch—which will be dedicated to the Criminal Justice (Scotland) Bill. For the record, our private session was simply to agree lines of questioning for our many witnesses this morning. We will cover most parts of the bill today and members will go straight to questions, except in the first instance.

I welcome our first witnesses, who are Douglas Bulloch and Alan Miller, the chair and principal reporter respectively of the Scottish Children's Reporter Administration. I thank you for coming, for your submission and for your 2000-01 annual report, which arrived late but looks very interesting. You have asked to make a brief opening statement. I will allow that if you promise me that it will be brief. Unfortunately for us, we have only half an hour with you.

Douglas Bulloch (Scottish Children's Reporter Administration): Thank you, convener. I will be brief. I will mention three things. First, I commend to you the Scottish children's hearings system, which is a flexible and efficient way of dealing with difficult issues that are presented by children and young people whether they are victims or perpetrators of crimes. We have not heard much in recent weeks about our major partners in the children's hearings system, who are the children's panel members. They are volunteers who are alert to the issues within their communities. They are a major virtue and value of the system. Together with them, we want to develop and refine the system.

Secondly, effective work is being done in the rehabilitation of children and young people through community-based projects. The public mood seems to be for the removal of children from our streets and out of our communities. Those children who need to be removed can be worked with in non-community settings, but many children can be worked with in community settings. We need to avoid going in the opposite direction from adult criminal justice services, which emphasise community-based disposals and rehabilitation, reserving custody for when it is required.

Lastly, immediately before taking up my appointment, I worked for more than a year examining children's services in Scotland on behalf of the Executive. We produced the report "For Scotland's children". I highlight an issue from that report that might be of interest to you. Every professional to whom we spoke as we did our field work said that they knew in advance the children who would present difficulties and who would be referred to children's hearings or other specialist services at some point in their future. Paediatricians told us that they knew that as a child was leaving the maternity unit. We asked what happens with that knowledge, which relates to predictability and risk. We were told that nothing happens and that services waited until something went wrong before offering to intervene.

Two weeks ago, I heard a children's commissioner from Norway describe, metaphorically, how his municipality was trying to pull children from the river and put them back on their feet on dry land. He said that eventually the people there thought that they had better start to look upstream and find out why their children were falling in the river in the first place.

I emphasise that in youth justice we have to deal with children who currently present difficulties and we have to deal preventively with problems that might arise in the future. We need to consider the fact that some of the young people about whom we are most concerned today are, or soon will be, parents. We have the highest rate of teenage pregnancy in Europe. We need to deploy services to those young people and their new families or we will be concerned about the behaviour of their children in 12 to 14 years. The cycle must be broken.

10:15

Bill Aitken (Glasgow) (Con): I want you to give us some factual information at this stage. We are all aware, of course, that the children's hearings system is multifaceted and that you deal not only with children who are involved in criminality, but with children who might best be described as at risk. Off the top of your head, can you say what percentage of the cases with which you deal are

cases of criminality? I would exclude from that category such matters as truancy. In addition, what percentage of your cases deal with children at risk?

Alan Miller (Scottish Children's Reporter Administration): Broadly speaking, half our referrals are for crimes or offences that have been committed by young people and half are non-offence cases. The latter covers everything from truancy, family problems and drug and solvent misuse through to child abuse and child protection issues. Of course, many children fall into both broad categories.

Bill Aitken: I am sure that the information is readily available in your 2000-01 annual report. However, can you say for the record the number of cases with which you dealt last year?

Alan Miller: Yes. Going by the figures in the annual report, I can say that the number of offences referred was 40,850, which is a drop of 12 per cent from the 1999-2000 figure.

Bill Aitken: Last summer, I spent some time investigating the children's hearings system in Glasgow. I concur with Mr Bulloch's remarks about the quality of the lay members' input into the hearings system, which I thought praiseworthy in the extreme. However, I sat on several panels and, although I heard some harrowing tales of children at risk, I did not see one case of offending. The view seems to be that not a lot of offence cases are hitting the hearings system. Is that the case?

Alan Miller: I would welcome the opportunity to take you to other parts of the country. In Glasgow, the situation is being driven by considerable shortages in social work staff and by the considerable difficulties that we face in obtaining services for children who come to hearings. However, in many other parts of the country, panel members express great confidence in the available services. I assure you that children who are referred for committing offences come to children's hearings when we are satisfied that that is the appropriate course. Similarly, children who are referred for other reasons come to hearings when that is the appropriate course.

Bill Aitken: I am not at the stage of bringing in the blame culture and I may well take up your invitation. However, was my finding correct that, in Glasgow, of the cases that were going through the hearings system, the percentage relating to offending was not high?

Alan Miller: I would have to check that out, but my impression is that offence cases in Glasgow go to children's hearings where that is the appropriate way forward, just as they do elsewhere. In many cases, we look for a degree of parental responsibility so that the parents can deal with the situation themselves. That is probably what we would all want. Sometimes we seek intervention that can be provided with the full agreement and co-operation of the family, which is clearly desirable, where that can be obtained.

Bill Aitken: However, your work in Glasgow seems to be inhibited by resource implications. Is that the case?

Alan Miller: Yes. The shortage of social work staff is evident is many parts of the country, but it is a particularly serious issue in Glasgow.

The Convener: Your submission says:

"Scotland is the only country in Western Europe in which 16 year olds who are charged with breaking the law are routinely dealt with in the adult criminal justice system."

You are not the only witnesses to have said that. However, I am concerned that although you tell us how good the children's hearings system is—many people would agree with that—you criticise what happens to over-16s. You imply that Scotland is not doing a good job whereas other western European countries are. What do you know about practice in other western European countries? What do other western European countries do with under-16s? Do they have the equivalent of a children's hearings system?

Alan Miller: There is a huge variety of youth justice systems in Europe. England and Wales have a youth court, which covers the age group from 10 to 18. They have, in effect, reinvented children's hearings—for first-time offenders who do not require custody—as an adjunct to the youth court. Many other countries do not have a formal youth court as such or an integrated system like the children's hearings system. However, offending behaviour by children and young people is dealt with if it becomes a risk or a child protection issue.

For example, recently we were visited by a delegation from the Norwegian Government. The members of the delegation were concerned that their current system has no way of properly and appropriately addressing offending by children and young people under 16—it can be addressed only if it can be seen as a problem of lack of parental care. They were very interested in the hearings system as a model for an integrated system that deals with both care and offending issues.

The Convener: We know of young offenders who start offending when they are eight or nine and are dealt with in the children's hearings system—rightly so. However, if those children are still offending by age 12, what use would keeping them in the children's hearings system be when they reach 16?

Alan Miller: The issue relates to the availability of disposals and interventions to work with those young people. One of the advantages of the

hearings system is that it follows through on the child or young person; if a child is placed under supervision, that must be reviewed in a further children's hearing. The review process means that the up-to-date situation can always be reassessed and a new decision can be reached.

Over the two years since the publication of the "Report of Advisory Group on Youth Crime", Scotland has engaged in a great catch-up exercise. We must all accept that, going back four or five years, there was no proper focus, either politically or in the service, on youth offending. That may seem surprising in view of the concern that the issue is raising now, but at the time that was the case. It would be fair to say that in international terms we had fallen slightly behind the pace in providing effective services to address the needs and behaviour of young people who offend. A huge catch-up exercise is under way, part of which involves services taking evidence about what works best with children and young people who offend and applying that to their front-line services to deal with the needs and behaviour of different age groups.

The Convener: In all honesty, I do not know the answer to my question, which many of the people who are following the debate also want to ask. They want to know why a 16-year-old, who can do other things in law, is not referred to the adult court system. We need some answers, particularly from you, as the principal reporter, on the difference that the children's hearings system can make. That is the critical issue. Are you saying that you cannot make a difference, because the resources available to the children's hearings system are not what they should be? If so, surely we should examine the system before we extend it further.

Alan Miller: Forgive me, but I am not saying that at all. It is clear that certain 16-year-olds should go through the adult court system. That is entirely right—no one, least of all me, is saying that all 16 and 17-year-olds should come into the children's hearings system. Equally, clear evidence exists that many 16 and 17-year-olds offend because they are particularly vulnerable and at risk. If we are to change their behaviour and reduce their offending, which is the objective that we all want to achieve, we must do so in a way that addresses their needs. We must take a two-pronged approach. I suggest to the committee that that is the approach that the hearings system is designed to deliver. The system is designed to deal with needs and deeds in a way that the adult court system is not entirely geared up to do.

The Convener: If more community-based services and disposals were available, why could not the procurator fiscal, rather than the children's hearings system, deal with offenders? Would that not be a better way of doing things?

Alan Miller: The fiscal already deals with 16 and 17-year-olds. The proposal to have a pilot study offers us the opportunity to evaluate, compare and contrast the process costs, time scales and outcomes of the hearings system and the criminal justice system. Remarkably little is known about those issues in the adult criminal justice system as it impacts on young offenders. One of the values of a controlled pilot is that we could do that kind of comparison on a level playing field and produce data that would be of value to the adult system as well as to the children's hearings system.

The Convener: You are not ruling out the possibility that, if a greater variety of disposals were available, another way of dealing with 16-year-olds would be to refer them all to the procurator fiscal.

Alan Miller: No, I am not ruling that out. However the key issue is to address and change offending behaviour. I believe that the hearings system and the agencies that work within it are attuned to challenging and confronting offending behaviour and to dealing with the underlying social and personal issues.

Bill Aitken: I am sorry to be a bit of a statistician, but can you let us know the recidivism pattern in the half of the cases that you deal with that relate to general criminal behaviour?

Alan Miller: We find that about 70 per cent of the children are referred for offending on only one or two occasions. A small minority—probably about 5 per cent of the children who are referred for offending—are responsible for 30 or 35 per cent of the offences.

Bill Aitken: Are you saying that there is a 70 per cent reoffending rate?

Alan Miller: No—I am saying that about 70 per cent are referred only once or twice for offending. Therefore, about 30 per cent go on to offend more persistently.

The Convener: We are finding it difficult to establish exactly which offenders should be referred to the children's hearings system. That is a matter of great importance to the committee, particularly if we are to legislate as the bill proposes, because we do not want all 16-year-olds to go through the children's hearings system. As you rightly said, some of them should go through the adult system.

We have heard that persistent offenders, first-time offenders or offenders in cases involving certain kinds of dishonesty—which to me can mean different things—should be kept within the children's hearings system. In your opinion, which offenders should be kept within the system?

10:30

Alan Miller: We need to consider two criteria, the first of which is the nature of the offence or offences. Clearly, serious offences should be prosecuted in court. However, we must also consider the circumstances, characteristics and background of the offender.

It is important to remember that, under the proposed pilot, all cases for consideration would be discussed between the local procurator fiscal and the children's reporter. While the fiscal examines whether prosecution is needed in the public interest, my staff will consider the nature of the offence and the offender's background. I assure the committee that we will not seek to take cases willy-nilly under the pilots. Instead, we will take cases only where we believe that there is a real opportunity to intervene and make a difference.

George Lyon (Argyll and Bute) (LD): You said that Scotland was way behind other European countries and that a lot of catching up had to be done. Which countries are dealing best with the problem of youth crime and where can we find examples of best practice? How do we compare with those countries as far as outcomes are concerned?

Alan Miller: It is difficult to compare outcomes because systems vary so radically and because not much outcome information is available in many cases. South of the border, the Youth Justice Board has led in making great strides to improve the effectiveness of services in England and Wales. We can learn many lessons from that example.

We can also learn from Australia and New Zealand, which were in the forefront of developing restorative justice approaches such as victim-offender mediation and conferencing. Such approaches are becoming common in the Scottish children's hearings system. The advantage is that they represent a good deal for the victim, as they give victims a sense of involvement and constructive engagement in the process. I guess that those would be the obvious international comparators.

A considerable body of research evidence exists about the types of interventions that work well. Indeed, a good summary of that evidence was included in an Audit Commission document called "Misspent Youth", which was published a few years ago. I am happy to submit copies for the committee's information. The document contains a five or six-page summary that sets out the characteristics of effective intervention.

George Lyon: Are you saying that we cannot compare like with like in Europe because the outcomes are not measured in other countries?

Alan Miller: It is difficult to compare like with like internationally. However, research has tended to focus on what makes for effective interventions on a project-by-project basis. As a result, we can be confident about what needs to be done to change and reduce offending on a case-by-case basis. There are good examples of that in Scotland, including Freagarrach, Includem and victim-offender mediation schemes. We already have evaluation evidence showing that many of those approaches significantly reduce the levels and change the nature of offending by very troubled and troublesome young people.

George Lyon: Is there any evidence comparing the two justice systems in Scotland to support the comment in your submission that

"adolescent offending is best addressed by … Challenging criminal behaviour and attitudes"

while at the same time

"addressing personal and social issues"?

Alan Miller: There is certainly evaluation evidence from specific projects such as Freagarrach and from a relatively new body called Includem, which works intensively with some of the most troublesome young people who would often otherwise be in secure accommodation or incarceration. Those projects are having a real impact on the offending behaviour and the instability of young people's lives. The evidence is mostly at that level. There is not much comparative evidence between the children's hearings system and the adult system. Audit Scotland's study is a first in that it is examining youth justice up to the age of 21.

As I said, I see the pilot studies as a major opportunity for us to compare and contrast what happens when 16 and 17-year-olds in pilot areas are dealt with through the hearings system. It will be possible to find control groups, or comparative groups, going through the adult criminal justice system in those and other areas and to track what happens to them in terms of the time taken, the cost of the process and the effectiveness of the outcome. Those data do not currently exist but we need them. That is why I support the idea of a pilot rather than a full launch of the new development.

Douglas Bulloch: Even within Scotland we are not good at replicating best practice. The Scottish Children's Reporter Administration is interested in working with our partners to identify best practice, consider the statistics and see what is working in terms of recidivism rates. We want that best practice to be put in place throughout Scotland, rather than in isolated projects. In the past, we have tended to set up projects, measure them and say that certain ones are good. We have not been good at saying that we will therefore deploy that technique or approach universally throughout

Scotland. Once we have learned from the projects—there is now good research evidence from a couple of them—we want a similar approach to be replicated throughout Scotland.

Mr Duncan Hamilton (Highlands and Islands) (SNP): I have a factual question, which follows on from the convener's line of questioning. It is about how we decide who goes into the criminal justice system and who goes into the children's hearings system. You said that there were two aspects to that decision. The first is the impact of the crime, which the fiscal will consider, and the second is the background of the offender, with which you are more concerned. Obviously, those aspects cannot be given equal weighting. I presume that crimes that have the greatest impact might be committed by those who have had the most convoluted and distressing background. In that decision-making process, does the assessment of the crime's impact have predominance?

Alan Miller: It does, in the sense that following consultation and discussion the fiscal has the final say. If the fiscal determines to keep and prosecute the case, that will be the outcome. I would describe the situation as being that the first consideration is the nature and seriousness of the offence and the second consideration is the character and background of the offender.

Bill Aitken: Part of the problem that the committee is having, and that the Parliament and the Executive are having, is that there appears to be a lack of confidence in the children's hearings system, as it is currently constituted, to deal with what I would define as hard-core offenders. Do you accept that?

Alan Miller: Every system, including the adult criminal justice system, is challenged by persistent and repeat offending. I do not think that our adult criminal justice system fares particularly well in that regard either. We face a challenge in dealing with persistent offending, but all the time we are learning more about how to address effectively the situation of the children and young people involved. As Douglas Bulloch said, a number of projects and services are now doing that. They are achieving remarkably impressive results. The challenge is to spread those good approaches and ensure that they are adopted throughout the country.

We must make a clear distinction between the nature of the process and the outcomes. I argue that the process of children's hearings is well geared to identifying the range of issues: the behaviour, its causes and the underlying problems. The challenge is to improve the outcomes.

Douglas Bulloch: The most important point that we can make this morning is that we must make an absolute distinction between process and disposals. I argue that the children's hearings process is working well. We are well established and have 30 years of good experience on which we can build.

However, we have problems in relation to disposals. We heard earlier about the young people who are coming to the hearings; your concern is what happens to the 16 or 17-year-olds who may come to the hearings in the future. We are having discussions with the Convention of Scottish Local Authorities and the councils outwith COSLA to ensure that, as our partners in the children's hearings system, they are geared up to meet their responsibilities. Sometimes, a false view is taken that the responsibility lies with social work services. In fact, the responsibility lies with councils and we want to talk to councils about how they can fulfil their responsibilities towards children who are already in the system.

On the older age group, over the past 10 years courts have gained confidence in the community disposals that have been available to them. Sheriffs are also gaining confidence in the youth justice approach that has been taken, the pilot schemes that have been running in councils for a couple of years—the youth justice teams for the 14 to 18 age group—and the children's hearings. I see no reason why the Parliament should not have confidence in those as well. When the specialist services are in place, you will see that they can be effective and work to the benefit of the children as well as leading to safer communities and a reduction in crime.

Bill Aitken: Parliament's function is to represent the public and the public perception—rightly or wrongly—is that the children's hearings system, dealing just with offenders up to the age of 15, is not working. Part of the problem seems to be not the system, but the fact that the available disposals are not adequate. Do you have any comment to make on that?

Douglas Bulloch: We want to make a full range of disposals available. At the moment, we have some difficulty in seeing supervision requirements implemented in some parts of the country. We want to discuss that with our partners and see the problem worked through. Despite that difficulty, the overall response rate is good, in terms of the supervision requirements that are made. As I said earlier, we want to refine, develop and improve the service where we can.

The Convener: Can you give us some information—statistical or otherwise—about what happens after children with whom you deal leave the children's hearings system? Do they continue to offend? Do you have statistics on that?

Alan Miller: We do not. It is quite difficult to

follow children and young people from one system to the other. Some work was done on that in the context of a study called "Children in Focus", which was published by the Scottish Executive a couple of years ago. That was a longitudinal research study on children and young people who are referred to the hearing system. The researchers tried to track children across from one system to the other, which was complicated because the details in the two systems do not match up.

The Convener: Do you agree that, to make a determination about extending the hearing system, that kind of information could be important, as it would allow us to compare the statistics with those of children who have not been near the children's hearings system, but who have ended up in the adult system because they happened to offend at a certain age?

Alan Miller: The data are important. Many persistent offenders at the age of 16, 17 and 18 have been involved in the children's hearings system. Many were referred initially on grounds relating to care and protection. However, that is anecdotal rather than statistical evidence. There are many things that we need to discover about people in that age group in order to find the most effective way to deal with them. However, those things will come into focus only when we undertake the pilot study and evaluate across the two systems. Then we can assess whether, for the longer term and on a national basis, that development will work and can be put in place for the benefit of the community.

George Lyon: I am getting a little confused. Every time we ask for evidence, there seems to be none to substantiate the claims that are being made either for the children's hearings system or for the adult system. If we are to reach any sensible conclusions, we must match up the two systems of information and track outcomes. That is the only way to reach serious conclusions about the right way of tackling the issue. Is work being done to ensure that that evidence is gathered and that we can make a comparison that is based on good hard facts, rather than subjective views, which is what we have at the moment? We have heard much subjective opinion on which system will deliver results.

10:45

Alan Miller: The opinion is based on experience. Audit Scotland is undertaking a study of youth justice that is examining the hearings system and 16 to 20-year-olds in the adult criminal justice system. It is due to publish that in December. I hope that that will be available in time for the committee to consider it. The study is a first, because it examines the two systems. You are right—there is a significant gap in our understanding that must be filled.

The Convener: That is a problem for the committee. I do not lay all the blame at your door, but we have asked several witnesses to back what they say with statistics. While we were in Aberdeen, Scott Barrie and I visited the Barnardo's project there. It was impressive. Scott Barrie is not here, but he is a social worker by profession. I am not, so I can ask the questions that a social worker might not dream of. When we ask what is wrong with prison, everybody puts their hands up in horror. However, the public must have an answer for why prison is ineffective. I know that some of the answer is based on experience, but some of it must be based on statistics.

We probably share the overall objective, which is to find the system that can prevent young people from becoming offenders for life. Who has the answer to that? Is the objective—whatever the process—to stop young people from being locked up? Can you put it another way?

Alan Miller: No. The objective for the hearings system was set by the Kilbrandon report in 1964, which said that a system was needed that would reduce or, ideally, eliminate juvenile delinquency. It said that the way to achieve that was to examine the underlying situation of the child or young person. That is the objective of the hearings system, which applies whether we are dealing with child protection or care issues—because those issues may later lead to offending—or whether we are dealing with the offending behaviour of a young person. Clearly, if a young person can be diverted from crime then they will not be locked up.

The Convener: So, it does not matter whether you lock them up, provided that you challenge their behaviour?

I ask these questions because I visited Polmont young offenders institution and I was impressed with what its staff did. The throughcare system there picked up many young people who had had problems at school and who could not read or write. The education system was good. In some cases, would not such an institution be more appropriate? I had been convinced that you would not want a young person to be in that environment. That is why I ask whether one objective for you, as the children's reporter, is to prevent as far as possible a young person from ending up in such an environment. I do not know why you want a pilot study and to keep young people in the children's hearings system if it is not for that reason.

Alan Miller: That is a factor. If children and young people can be diverted from crime, they will

not be locked up. There is evidence about reoffending rates post prison that would give us all cause for concern. The reasons for high rates of reoffending post prison are clear. Whatever efforts staff make—I share the commendation of staff at Polmont—prison is a pretty brutal environment in which drugs are frequently widely available. It is also extremely difficult to carry over from prison back into the community the effect of any good work that is done. One clear finding of a range of research studies on effective intervention with young people is that, if possible, it is best to work with them in their community. In their own environment, the issues and problems that they face or create every day can be dealt with in a real way. That is difficult to replicate in the artificial environment of a custodial centre.

Douglas Bulloch: There is also an economic argument. Imprisonment is a much more expensive option than some of the community disposals that exist. If community disposals are working, and if we can see that community service and probation work in the adult criminal justice system, that is an advantage in relation to the public pound.

The Convener: You talk as if there are no consequences to keeping young offenders in the community, facing the people against whom they have committed crimes. There has to be a dimension to this that takes into account what offences have been committed, say against an elderly person.

Douglas Bulloch: I said at the outset that custody has its place. We should use it where it can be effective and where it provides the best option for the individual and for the community. That is when custody should be used.

George Lyon: I return to the range of disposals that are available, and to what you might require should the pilot study go ahead. You said earlier that one of your current problems is that your partners are unable to deliver on some of the community disposals handed out by the children's hearings system. Can you elaborate? What do you mean by that? Are councils not providing the necessary social workers and supervisory people to implement the orders or disposals? Can you give us examples? How do we tackle that problem before considering what other disposals might be required?

Douglas Bulloch: Alan Miller will be able to say more about this, but we are concerned that there are areas in which supervision requirements are either not being implemented by councils or are not being implemented quickly.

I spoke earlier about the reflection of best practice into other areas. Some councils are managing to make things work from the resources available, even where they are having difficulty, for example in recruiting social workers. It is seen as the corporate responsibility of the council to find solutions. We are having discussions around such subjects with COSLA and the other councils this month.

George Lyon: What happens at the moment if there is no social worker to do the supervision?

Douglas Bulloch: Nothing. Well, councils have options. They can choose to do nothing; they can defer; they can provide a contact point for a family; they can find another member of staff who is not a social worker—to whom the historical pattern does not apply—who is able to fulfil some kind of service to the family; or they can provide another member of staff from within the social work department to supply that service. Councils can do a range of things, and we want to talk to them about the current best practice in Scotland, particularly in relation to contingency plans to cover the difficulty of not being able to recruit social workers. It would also be a matter of councils advising each other about things that they might want to try.

George Lyon: I gather from what you are saying that it is more a matter of councils' inability to recruit social workers, rather than a lack of finance to place them. Is that the problem?

Douglas Bulloch: There is a range of difficulties, which is why the Minister for Education and Young People has produced an action plan that covers a whole range of points, not just recruitment.

Alan Miller: It is a bit of both. There is a particular problem in relation to children and families and social work.

George Lyon: What other disposals would the children's panel require if the pilot study were to go ahead? The report of the advisory group on youth crime stated that if 16 and 17-year-old offenders were to be diverted to the children's hearings system, it would need to be

"strengthened and given access to a wider repertoire of services".

Could you define what that means?

Alan Miller: There is an important distinction between disposals in the sense of various legal options or decisions and disposals in the sense of the services that are put in place. In a sense, the children's hearings system has only two disposals available: one is to make a supervision requirement; the other is not to make a supervision requirement. A supervision requirement can mandate the application of whatever interventions or services are required to address the behaviour and problems of the young person concerned. That can include the use of a

residential establishment or secure accommodation, where justified.

The issue is not one of changing the legal structure, because its flexibility allows different things to be put in place as and when required; rather, it is one of the availability of a range of services. The advisory group on youth crime produced a shopping list of the services that are required. Many children and young people who offend are already involved with drugs or alcohol. Besides developing approaches or interventions that confront young people's offending, we need to have specialist workers who can address their alcohol or drugs difficulties. We cannot do that simply by placing them in a project that is working with adults. A different approach is needed. A range of services must be available. Following discussion with children, their families and services, children's hearings can identify the interventions that are most needed. Later review hearings can assess how successfully those interventions have been applied.

The Convener: Are you familiar with the studies by Professor Hallett and Professor Waterhouse?

Alan Miller: Yes.

The Convener: We have not had a chance to examine those studies, but they have been brought to our attention. You will know that many respondents to Professor Hallett's study expressed concern about the capacity of the system to deal with older and persistent offenders. Professor Waterhouse's study did not seem to show that referrals to children's panels led to an overall reduction in rates of offending. Would you like to comment on those two studies?

Alan Miller: The University of Edinburgh study led by Professor Waterhouse revealed that by and large reporters and children's hearings were identifying as early as possible the children and young people who were most likely to find themselves in serious problems. Again, that raises the issue of the interventions that are taking place.

Professor Hallett's study was written four or five years ago. Since then, a tremendous amount of work has been done to improve the effectiveness of the services that address offending behaviour by young people. In many parts of the country, members of children's panels and others are expressing considerable confidence in the services that are available. They are right to do so, because many interventions are simply applications of the approaches that are taken to dealing with adult offenders. They are based on research evidence from international studies. If Professor Hallett's study were to be repeated now, it would reveal a much more mixed picture. In some parts of the country a crisis of confidence would be apparent, but in others there would be much greater optimism.

Douglas Bulloch: Two other reports are due to be published soon. One is the quinquennial review of the Scottish Children's Reporter Administration, and the other is the second report of the Scottish committee of the Council of Tribunals on the children's hearings system. I hope that both those reports will be published while the committee is considering this matter, as they will provide members with further reassurance about the arrangements that are currently in place in Scotland.

The Convener: Thank you for that information. In conclusion, would you like to emphasise any points or highlight issues that you feel have not been covered?

Douglas Bulloch: We took the opportunity to do that at the beginning of the meeting, convener.

The Convener: Thank you for your oral and written evidence, which was helpful and of high quality.

Next we will hear from David McKenna and Susan Gallagher. David McKenna is the chief executive of Victim Support Scotland, and Susan Gallagher is the organisation's special projects development manager. Welcome back to the Justice 2 Committee. Thank you for your written submission and for attending today's meeting. We will go straight to questions. We have only half an hour, which is a short time for all our questions.

Mr Hamilton: I have a number of questions on victim statements, but before we get to them, will the witnesses make it clear whether Victim Support Scotland is, in principle, in favour of or against the introduction of victim statements?

David McKenna (Victim Support Scotland): Victim Support Scotland is not against the introduction of victim statements, but we are not immensely in favour of it. Perhaps that is not the best way in which to start the morning. We recognise that, for some victims of crime, particularly victims of serious crimes such as the survivors of murder victims, the opportunity to put before the court the impact of the crime on their family is important. However, there are downsides as well as upsides.

11:00

Mr Hamilton: I want to tease that out. My basic problem with your submission is that it leaves me no clearer as to whether you are in favour of or against victim statements. Paragraphs 6 and 7 of your submission go into great detail about the potential downsides. For example, you say that statements might in some cases lead to increased dissatisfaction with the criminal justice system because people might feel that their statements

are not properly reflected in the sentence. Your submission also mentions the potential for people who are not as articulate as others to feel guilty because they have let their family down. The submission continues:

"Statements could lead to an increase in violence and intimidation before during and after a court case."

That is a fairly damning indictment of victim statements. Given that, I find it hard to accept that you cannot come to a view on the matter.

David McKenna: Our view is that the potential value of victim statements to some victims is positive. We have co-operated and worked with the Government and various committees to consider the potential for the introduction of victim statements to the legal process in Scotland. We support the proposal for a pilot project to examine the implications of victim statements in Scotland.

Mr Hamilton: So you are happy to explore the potential of victim statements, but you are not definitively in favour of them.

David McKenna: Victim statements can be an important way of involving some victims in the justice system by improving their feeling of having had a say in the process. Our submission recognises that the measure is not a panacea for victims of crime and that it does not address all their needs. Although statements might appear attractive, and might be valuable for some victims, they could have a negative impact on other victims. The pilots will help to clarify the position.

Mr Hamilton: Your submission states that victim statements

"could be subject to evidential challenge in court".

I suggest that it is a lot more than possible that the statements will be open to challenge; it is probable. If they were not open to challenge there would be an issue about compliance with the European convention on human rights. Does that change your view?

David McKenna: No. There is experience of victim statements in North America, England and Wales and the Republic of Ireland. In general, it has been found that, although the statements are open to challenge, they are rarely challenged in practice. Two weeks ago, my colleague in Dublin told me that she did not have one example of a victim statement being challenged in court and I am not aware of any challenges in England and Wales. However, you are right that challenges are a possibility; perhaps in Scotland they are a probability.

Mr Hamilton: If challenges are a probability, that would impact on your judgment.

Your submission mentions that the statements might be of variable quality because more articulate people would be able to present their case in more moving terms. Should there be assistance with the statements and who should provide it? If there should be assistance, is not it likely that that would provide another ground for challenge because such statements would not be what they are meant to be, as laid out in paragraph 62 of the policy memorandum? That paragraph states:

"The aim is to provide the court with the victim's own personal account of the impact that the crime has had on them".

If there is coaching, the statement will not be a personal account.

David McKenna: The pilots might provide some answers to those important questions, but I will take a step back from that.

Victims must first understand the purpose and use of a victim statement. We must also clarify the expectations of the justice process that people might have as a result of providing a victim statement. They must be clear about whether the statement will have an impact on sentencing and whether it will be taken into account. Secondly, they will need assistance to determine the parameters of what the statement can be used for, and I am sure that the guidance notes would provide that.

It is quite right that there should be a challenge when it comes to the point at which the victim has to write the statement in their own words. How can that be done while ensuring that the statements are of the same standard and quality and that victims have the same access to the court through their statements? Victims will need assistance to write their statements and I suspect that that assistance should be provided by an independent agency, rather than by an agency that is part of the criminal justice system. For example, in England and Wales, the police service provides that assistance, but I do not think that that is the answer. Too many victim statements would read, "I was proceeding in a northerly direction", but not many victims would describe walking down the road in that way.

There are issues about the way in which the statements will be taken, the format in which they will be recorded and the parameters that will be set. I do not have the answers, but I recognise the points that Duncan Hamilton makes.

Mr Hamilton: You recognise the problem, but we are not much further on in addressing it.

One of the questions that we have batted back and forth with the Executive is whether the victim statement will have an impact on sentencing. For the statement to do that, it would have to be accepted that the sentences that are being passed down now are inappropriate. The Executive is not

willing to say that, but are you willing to say that the current situation is unsatisfactory?

Paragraph 68 of the policy memorandum says explicitly that the statements

"will help inform the decision-making process."

Is it your understanding that victim statements will impact materially on the sentences that are passed down?

David McKenna: The starting point is that it cannot be a bad thing for courts in Scotland to have information about how a crime has affected a victim—I cannot believe that that is not a good thing. Victim statements will be the vehicle through which that information can be delivered to the entire court—not just to the judge or the prosecution, but to the defence.

On whether the impact of the crime on the victim should be taken into account when the sentence is being considered, I hope that that happens already in Scotland. I hope that our judiciary listens to what happened and that it is able to take that information into account. The impact of the crime on the victim may not be the major or most significant factor when a sentence is determined, but I hope that it is taken into account. The problem, or challenge, that we face in Scotland is that victims of crime and witnesses do not know whether that happens.

In a murder case, the accused can say anything that he or she—usually he—likes about the person who has died, and their comments are often unchallenged in court. In other words, the character assassination will go unchallenged and will be reported in the newspapers, and no one will ever try to put forward the victim's side of the story. That is a clear example of a situation in which a victim statement could improve the quality and mercy of justice and the experience of the person who has suffered the crime, or their family.

Mr Hamilton: The problem is that the Minister for Justice told us that the statement would have two functions. The first would be to allow the victim to have their say. In a sense, that is very therapeutic—I take the point from the example that you just gave. However, that is quite different from the statement having a material impact on the sentence that is passed down. Do you accept that, if the statement will have an impact on the sentence, it is inevitable that it will have to be open to cross-examination? Is it the view of your organisation that that should be the case?

David McKenna: In general, I suspect that the victim statement would not have a material impact on sentencing. I accept that, under the law of Scotland, the European convention on human rights and so on, the statements will be open to challenge.

Mr Hamilton: That is important. You are saying that the statement will have the first function that the minister identified—it will be of therapeutic value, if you like, rather than of punitive value. Is that correct?

David McKenna: Victims of crime believe that, too often, responsibility passes to them without any rights. That belief is not expressed because many victims say that there are too many other things wrong with the system—they have not reached that issue yet.

In some senses, a victim statement could become a responsibility for victims of crime. A victim might feel that they have to complete a statement because, if they do not, the person would not get 10 years instead of eight years, or something else would not happen. Victims might feel that they have to make a statement to aid the process of justice. From our perspective—from the perspective of victims of crime—it is not the intention that victim statements should have a material influence on sentencing.

The Convener: What you say to the committee today is very important, because of whom you represent. Duncan Hamilton's line of questioning is the right one, because the provision on victim statements in section 14 is in danger of being undermined by the submissions that we have received. Everyone finds that there is a problem with it.

In fairness to the Executive, the provision is bold. I presume that organisations such as Victim Support Scotland have been asking for such a provision, but perhaps you could clarify that. Someone needs to speak up for the provision and to address how we can sort out the difficulties, because the submissions that I have seen, on balance, point out too many problems with the provision. For example, the Faculty of Advocates, from whom the committee will hear next week, raised a number of issues in its submission. The Faculty of Advocates states that victims react differently, even to the same crime, and it sees that as a problem.

How would the court treat victim statements? Another problem, as you said, concerns who takes the statement. There is no doubt that some issues require to be sorted out and that the provision, as currently drafted, is not perfect. Unless we get a few more positive signs that such a provision is wanted, it is only fair to say that it is in danger of being in question altogether. Are you aware of that?

David McKenna: In principle, there is nothing wrong, within the law of Scotland, with the victim's side of the story being heard, but that side of the story is not currently heard in our courts. Whether it is called a victim statement, a victim impact

statement or whatever, the victim's side of the story is missing. Victim statements are one means by which that story could be heard. Like almost everything else, they will not necessarily be simple and straightforward and there will be complications. That is why we have supported the proposal to conduct pilot projects. From our perspective, if pilot projects go ahead we will consider them closely and carefully.

There is still an issue about people being able to plead guilty. A plea in mitigation can be made and nothing is said about the victim. The victim has not even been called as a witness. They sit in the public gallery and hear things being said that no one challenges. That is a real issue about giving victims a voice in the court.

The Convener: Could you be a wee bit clearer? You have said that there is a rule issue and that victim statements are no bad thing. Does that mean that you are in favour of victim statements, if we get some of the issues sorted out about who takes the statements and at what stage they are used? We need to pin you down on the issue because, to be blunt, if Victim Support Scotland does not give the committee answers on the matter, I honestly do not know who will.

David McKenna: I am clear that victims should have a voice in our courts. The Scottish Executive's proposal on victim statements is one way of achieving that. I cannot tell you that the proposal will work 100 per cent. I believe that the matter should be examined and that we should consider how we could deliver an effective scheme in Scotland.

The Convener: So you want some kind of victim statement scheme.

David McKenna: There must be a mechanism by which the impact of the crime and the experience of the victim are heard in our courts. That does not happen currently.

The Convener: What would that mechanism be if it is not what is proposed in the bill?

David McKenna: The model that is proposed in the bill is being used in many parts of the world and is relatively successful.

The Convener: So you think that it is a possibility.

David McKenna: Yes.

George Lyon: The submission from the Sheriffs Association expresses grave reservations about the current proposals. The association suggests that the victim statement may contain inappropriate evidence that would not be admissible in court, and questions the use of the victim statement in an appeal process or if the statement is challenged in court. It also suggests:

"Those difficulties would be largely avoided if what was provided was that it was for the prosecutor to lay before the court not the victim statement or statements themselves but the substance of any victim statement or statements. In that way the chances of any irrelevant or controversial material being placed before the court would be reduced by being filtered through the Crown."

How do you react to that proposition?

David McKenna: The proposition is a possibility, but my view is that it is scare tactics. The truth is that systems can be put in place to create checks and balances. That is done with all kinds of evidence that is taken or led in court, and would also have to apply to victim statements. A victim could not just say anything that they liked in a victim statement. There would have to be rules and guidelines that would allow victim statements to be effective when they were put to the court.

George Lyon: Would you reject the Sheriffs Association's proposition?

David McKenna: Evidence might not be led in court for lots of reasons. It does not just apply to victim statements; it applies to all evidence.

George Lyon: You are not getting the point of my question. Do you support the Sheriffs Association's suggestion that the material statement would not be placed before the court but that, instead, the prosecutor would lay the substance of the statement before the court?

11:15

David McKenna: I do not support the proposition, because it is only about a quarter of a centimetre from where we are now. If the prosecution wants to, it already has the power to bring out the impact of the crime on the victim when summing up and leading evidence in cross-examination. That happens rarely, unless it adds to the prosecution of the case. The prosecution might or might not use a few lines from a statement, but that will not happen.

George Lyon: As I understand the Sheriffs Association submission, doing that would be a legal requirement and that is the mechanism or process that would allow it to be done. We are not talking about whether the prosecution would do it. The Sheriffs Association suggests that that process would take the place of the victim statement being placed before the court. It also points out some of the difficulties that might arise from the process of placing a victim statement before the court.

David McKenna: I am not convinced by that proposal. I do not believe that it would work.

George Lyon: You would reject it. That is what I have been trying to establish.

David McKenna: I do not believe that it would meet victims' expectations.

Susan Gallagher (Victim Support Scotland): My experience is of working with people who have been bereaved as a result of murder. I can say categorically that, until the statement scheme is piloted, there is no mechanism for those people to give their views and statements.

George Lyon: I am sorry, but I do not think that the bill is about piloting. I think that the bill seeks to introduce the scheme throughout Scotland.

David McKenna: It is to provide for piloting.

Susan Gallagher: As far as I am aware, it is about piloting.

David McKenna: It provides a power to set up pilots rather than to put the pilots in place.

Susan Gallagher: The Sheriffs Association's proposal would mean another system in which what victims want to say is not put across in court. Someone else would be subjecting the victims to their idea of what they said. That is taking away the victim's voice.

Stewart Stevenson (Banff and Buchan) (SNP): I just want to press the point. Our dilemma is that we have to recommend to the Parliament whether we should proceed with what is in the bill. Your support for the bill is principled, but it is also heavily qualified. Is it safe for us to recommend to Parliament that we should proceed with the proposals that are currently in the bill?

David McKenna: I support the bill's proposals to pilot victim statements. We should do that. We might have a lot of questions, but we will never find out the answers if we do not move on to the next step.

Stewart Stevenson: The bottom line is that we should move forward with those proposals.

David McKenna: Yes.

Mr Hamilton: I return to whether victims' views are properly taken into account. I do not understand the logic of your position. I could understand that you would say that victims' rights are not respected under the current system and that that has an impact on sentencing. Are you saying that that has no impact on sentencing and that you do not want it to have an impact on sentencing? I am not clear why the victim's view is not being heard. Does not that suggest that the problem lies with the victim's perception of the current system? I understand that, and I can understand the need to improve the perception of the current system. That is not necessarily an argument for changing the system, is it?

David McKenna: To correct you, I do not believe that victim statements should have no impact on sentencing. I believe that the impact of the crime on the victim is already part of the sentencing process.

The second point is that the real issue is not about increasing or reducing sentencing; it is about ensuring that victims should have the opportunity, within our formal criminal justice process, to put their side of the story. The Government has made that commitment and all victims organisations in Scotland and many people in our communities support it.

Mr Hamilton: I understand the point that victims' views should be taken into account and that they are, or, as you rightly say, we hope that they are. However, we just had a conversation about the proposal under consideration and you did not think that victim statements should have a material impact on sentences.

David McKenna: That is right.

Mr Hamilton: So all that you are saying is that the problem is the perception, under the current system, of whether victims are listened to properly or have the opportunity to make their case. You are not saying that the current system is deficient in terms of sentencing.

David McKenna: The justice system could be improved by courts' having more information about the impact of the crime on the victim. That is the primary purpose of giving the victim a voice in the court setting. Of course information is made available in the process of the case itself, but it is limited in comparison with what is available.

You must start by asking whether you, as a Parliament, believe that the people who suffer the crime, give up their time to report it, make statements, go for precognition and turn up as witnesses have a right to an opportunity within our formal justice system to put their side of the story. I believe that they do, although there might be different ways of arriving at that. The victim statement has been used around the world to allow people access to that opportunity, but it is not used in our courts. Voices and views are not heard.

Mr Hamilton: So you want the voices to be heard, but you do not want them to affect sentencing.

David McKenna: The victim statement is a bit like a social inquiry report. When a judge calls for a social inquiry report, does it have a major impact on sentencing?

The Convener: You tell us. I do not know.

David McKenna: I do not know either. I cannot say whether the victim statement will affect sentencing. I can say to you—

Mr Hamilton: The point about introducing something new is that it will change what we have at the moment. If you do not want to change materially what we have at the moment, we will

not bother doing so.

David McKenna: I want us to change materially the justice system in Scotland.

Mr Hamilton: But you do not want to change materially the impact on sentencing.

David McKenna: No, I do not. I do not think that victims want that responsibility.

The Convener: It is clear that that is what Victim Support Scotland's position is, but it is at odds with what the minister said. The legislation proposes that the sheriff or judge must "have regard" to the victim statement. I presumed that they would take it into account, but you are saying that you do not want that.

David McKenna: They should take the victim statement into account—any information that goes before the court has to be taken into account. The degree of importance that is attached to the statement is at issue. I suspect that few, if any, judges in Scotland would look at the victim statement and say—

The Convener: That is your opinion; we will hear from the sheriffs later. Your position is that the purpose of the victim statement is not to affect sentencing.

David McKenna: Yes.

The Convener: There was confusion earlier about whether the victim statement scheme would be introduced in a pilot. The notes that we have suggest that there has to be consideration of what type of offence it covers at the moment, but there will not be a pilot scheme as such. To start with, the scheme will

"include victims of non-sexual crimes of violence; crimes of indecency; domestic housebreaking and racial offences."

Do you think that those are the right offences with which to begin the scheme, or do you wish the list to be extended?

David McKenna: Those offences are a good starting point that will give us an opportunity to learn how to provide Scotland with the best victim statement scheme in the world. We would want to go at a slow pace, beginning with less serious crimes. People would want to have the opportunity to make a victim statement in relation to very serious crime—I am talking about the families of murder or rape victims, for example. However, the proposal is a good starting point for learning what makes a victim statement scheme work well.

Bill Aitken: As a question of fact, do you get involved on behalf of the victims of crime in submitting claims to the Criminal Injuries Compensation Authority?

David McKenna: Yes.

Bill Aitken: Do you feel—I am playing devil's advocate—that the lily might be gilded in the completion of victim statements to justify criminal injury compensation claims?

David McKenna: There is always the possibility that one in 1,000 people will do that, but the vast majority of criminal injury compensation claims are from legitimate victims of violent crime. Whenever there is an opportunity, there will be someone who will try to use it to their advantage, but that is almost irrelevant.

Bill Aitken: On the basis that most people have considerable sympathy with the view that victims of crime—as well as the accused person—should have their day in court, I take it from your evidence that while you fully support that concept, you are somewhat lukewarm about the proposals in the bill. Can you propose an alternative way in which to achieve the desired aim of ensuring that the victim's voice is heard?

David McKenna: That could be achieved in a range of ways. The victim could be legally represented in court, so that they could cross-examine or examine witnesses. The victim could be a party to the case, so that they sit with the prosecutor and give information to the prosecutor—for example, "That is not right. It was X, Y and Z." A responsibility—more substantial than that suggested by George Lyon—could be placed on the Crown Office and Procurator Fiscal Service to ensure that more information was given in court.

There is a range of ways of doing that. The victim statement provides a simple and straightforward way, compared with the other options.

The Convener: I have a few final questions, in particular on alternatives to victim statements, which Bill Aitken asked about. Do you have any comments on the provision of information to victims on offenders' release on licence, as laid out in sections 15 and 16 of the bill?

David McKenna: We welcome the strengthening of that opportunity for victims of crime. The release of offenders on parole is quite traumatic for some victims of crime, in particular if the offender lives in the same community. It is not unusual for us to find that the woman who was raped lives two doors down from the man who committed the offence, and that the first she knows of him being out of jail is when she bumps into him on her own stairs. We warmly welcome the opportunity that is afforded by the bill. The sharing of information between the Parole Board for Scotland, victims and offenders will improve the quality of justice for everybody in Scotland.

The Convener: In your experience, are there any statistics on the number of victims who might

use that information to get back at their accused?

David McKenna: In my experience of 16 or 17 years with Victim Support, and having worked with tens of thousands of victims, I have no examples of a victim taking retributive action against an offender. That does not mean that it cannot happen, but I have no experience of it. In fact, the opposite situation usually applies. We have victims who say, "I am leaving the country. I am going to move to Birmingham," or, "I am going to move to France, because I'm frightened. I don't know when he will get out. I don't know where he will go when he gets out."

The Convener: Are the provisions in sections 15 and 16, on the release of information, more important than victim statements, or are both provisions needed?

David McKenna: Giving victims a voice and giving them information are part and parcel of the same thing—improving the justice system in Scotland so that it meets the modern 21st century needs of our communities. The provisions can be considered separately, but they are part and parcel of a fundamental shift and rebalancing of the justice system that protects the rights of offenders—quite rightly—but which says that the victim has a role to play too.

The Convener: That is a good point on which to end. Given what you do, we value your evidence, so I apologise if you thought that you got a bit of a grilling.

David McKenna: No, it wakened me up for the afternoon.

The Convener: We have to make the legislation work, so what you have said to us is crucial. We thank you for dealing with all our questions. Once again, I am sure that it will not be the last time that you come before us—I hope not, anyway. Thank you for your submission and your evidence.

I propose that we take a coffee break for 10 minutes.

11:30

Meeting suspended.

11:45

On resuming—

The Convener: I open the second part of the meeting and welcome Louise Johnson from Scottish Women's Aid.

Louise Johnson (Scottish Women's Aid): Good morning.

The Convener: I thank you for coming and for your detailed submission. We will go straight to questions, if that is okay.

Louise Johnson: Surely.

The Convener: If you feel that you want to emphasise a point or add something that we did not ask you about, I will allow you to do so at the end. We will begin questions with Bill Aitken.

Bill Aitken: As the convener said, your submission was detailed, which is always helpful. However, there are a couple of points on which we might require further information.

Part 1 covers orders for lifelong restriction. You suggest that consideration should be given to using OLRs for persons who are guilty of domestic abuse or stalking. It might be argued that that would be slightly over the top and disproportionate. What is your view?

Louise Johnson: I understand that OLRs can be used for repeat offenders or offenders who, in one way or another, exhibit a propensity to commit a particular crime. The figure for repeat offending among domestic abuse offenders is high. The bill is an ideal opportunity to introduce legislation that could cope with those repeat offenders.

Bill Aitken: You appreciate that the restriction orders are draconian. As I recollect, Executive officials stated in an earlier evidence session that they thought that there would be about 10 or 12 OLR cases in a year. I understand the logic of your perspective, but you will appreciate that if we were to go along the lines that you suggest, there would be a considerably greater number of OLR cases.

Louise Johnson: If I remember correctly, Lord MacLean's report referred to repeat offenders who had not committed serious crimes but who exhibited a propensity to commit a particular crime. I know that deciding how many offenders will receive OLRs will be partly a trial-and-error exercise, but we have an opportunity to address the issue of repeat violent offenders—and domestic abuse offenders are violent offenders. The issue is how to measure the degree of severity. There are those who commit severe crimes, but there are also perpetrators of domestic abuse, who might have seven or eight convictions, possibly for breach of the peace, and so who have clearly shown a tendency or propensity to commit violent crime. The bill is an opportunity to address that type of offending.

Bill Aitken: Surely that would depend on the nature of the breach of the peace. As you properly said, it can be of a violent type, but it can also be a baying-at-the-moon type of breach of the peace.

Louise Johnson: Indeed. Again, the issue would be the nature of the offence and the severity of the breach of the peace. We would not necessarily deal with someone who has been found wandering outside licensed premises on

several occasions in that manner. That is a different matter and needs to be addressed differently. However, a breach of the peace that involves a violent offence against a particular individual and which is a repeated crime shows a propensity to violence and a clear lack of consideration towards the victim and society as a whole. If that behaviour carries on, it should be addressed by an OLR.

Bill Aitken: You raised stalking in your submission. You are still firm in your view that there should be a specific offence of stalking in Scotland instead of the breach of the peace charge that is currently apposite. What is the thinking behind your view?

Louise Johnson: We consider that stalking should be a specific crime or even an aggravated offence. Clearly, the issue must be dealt with. As you said, the trouble with breach of the peace is that it covers a gamut of offences from the fairly trivial to the fairly serious. The charge does not reflect the repeated, intrusive, unwarranted nature of the crime of stalking. We are not talking about someone in the street who has been charged with one minor assault, but about a repeated campaign against an individual. Breach of the peace on its own does not convey that either to the offender or to the public, because, as you have pointed out, the charge also covers trivial offences.

We were not sure whether the way forward was to label the crime as an aggravated offence or a breach of the peace aggravated by stalking, or to make stalking itself a specific crime. Obviously, we do not want something that is so defined that all the offender needs to do to avoid prosecution is to step outside a particular boundary.

I understand that the Scottish Executive has commissioned the Robert Gordon University in Aberdeen to research the nature and extent of stalking and the operation of the Protection from Harassment Act 1997. Something might well come of that research. We need something that highlights the severity of the crime. I notice that stalking is supposed to be highlighted in cases of breach of the peace, but I do not think that that is being done.

Bill Aitken: Clearly, you seek to protect women in such a vulnerable position. Although I totally empathise with that, you must appreciate that breach of the peace can be taken on indictment and could result in a three-year sentence at the sheriff court. Indeed, if the case goes to the High Court—as has happened in the past—the maximum sentence that can be imposed is seven years. Does that not meet your requirements?

Louise Johnson: We should bear in mind how many times that has happened. Although I do not have the figures, I do not think that it has happened in the majority of cases. If stalking must come under breach of the peace, it must be regarded as an aggravated crime, to demonstrate to society that an individual is being prosecuted for a stalking offence and to show the offender that their behaviour is not being tolerated and is being recognised as a criminal offence. The idea of punishment must be put over. An offender would have to be punished not simply for a breach of the peace, but for an aggravated offence of breach of the peace involving stalking or for the offence of stalking on its own. I am worried that, if we define the offence too closely, the offender will find ways around it, but we need to be able to highlight stalking as part of the crime.

Bill Aitken: But if the individual who is guilty of the offence is weighed off for an appropriately lengthy period, would that not meet the requirement to protect women?

Louise Johnson: We still need to emphasise the stalking part of the offence. An offender might receive two years under breach of the peace, which does not contain any specific stalking element, for a stalking offence. It should be made clear that the offender has received a more severe sentence than usual because the offence has a stalking aspect.

The Convener: I cannot remember whether you came to speak to the Justice and Home Affairs Committee at the time, but I compiled a report on whether a separate offence of stalking should be introduced. Although the committee fell short of saying that there should be such an offence, we had a lot of issues in common with your organisation. We felt that the law should be developed to identify stalking and other specific offences that come under the heading of breach of the peace. The committee and Scottish Women's Aid are quite close to each other in our views on the matter, despite the fact that you feel that there should be a separate offence while we feel that such an offence would be difficult to define.

In England and Wales, a separate offence of stalking has been introduced. Can you give us any information on how that system is operating?

Louise Johnson: A Home Office statistical bulletin on stalking highlighted the fact that there were difficulties in enforcing the legislation. First, it was hard to prove the course of conduct that led to stalking; secondly, there seems to have been confusion with the police about what constitutes the crime of stalking; and thirdly, there was a degree of confusion in the Crown Prosecution Service about how such cases should be prosecuted. The overall tenor of the document was that there was a lack of information and cohesive interchange among all the parties involved. That situation is reflected to a degree up in Scotland.

I hope that the section about the statutory powers of arrest will clarify the situation for the police. Unfortunately, the police have been confused, because the order can be granted in a civil or criminal court.

Stewart Stevenson: The bill attempts to cross international boundaries. I use the example only to make a point to you. When bribery and corruption are committed outside our jurisdiction, people can be held to account here. Would orders for lifelong restriction be appropriate for people who have committed crimes outside our jurisdiction? Stalking can now be conducted not only in person but by telephone and over the internet—I know of a case in which someone made 5,000 international calls to a woman in another country. Does the bill adequately address such issues?

Louise Johnson: That is a good question. If the original conviction from another jurisdiction were commensurate with the parameters that the bill lays down, the order for lifelong restriction would be appropriate. We should not make an ad hoc decision, but an order would be appropriate if the offence fell within the boundaries of the legislation.

I do not know whether the bill will deal with such stalking. I cannot answer that question, because I did not think of that in my submission. Will you expand on your comments?

Stewart Stevenson: I was pushing the boundaries of what we are discussing. I was asking whether there were issues with transnational—

Bill Aitken: Cyberstalking.

Stewart Stevenson: He is up to date. I asked whether we should address cyberstalking.

Louise Johnson: The bill should probably not do that, but that could be considered in any future review regarding stalking. We must consider the forms that stalking takes because, as you said, it can involve physical presence or unwanted correspondence. That must be dealt with. I do not think that the bill is the platform for doing that, but I have not had time to consider the matter.

The Convener: I return to your position that orders for lifelong restriction should be extended to domestic abuse cases. Several organisations—notably the Scottish Human Rights Centre—have cautioned us that to base the issuing of an order for lifelong restriction on an offence that has not yet been committed—to base it on the balance of probabilities—is a possible contravention of human rights. Are you worried about that? You are asking us to go a bit further and extend the scope a bit, to include what might, in some cases, be violent crime, but less violent crime than we are trying to identify. Are you concerned about human rights issues?

Louise Johnson: In many cases, the human rights of victims are almost unilaterally overlooked, so any legislation must give the victims' human rights equal weight with those of the accused. As for expanding the net of the offences, the bill talks about a propensity to commit offences, or a pattern. I hope that a pattern of convictions for domestic abuse would satisfy the criteria in the bill.

I cannot see how that would contravene the European convention on human rights, although there may be technical areas that I do not know about. The only parts of the bill that may give rise to human rights issues are to do with the consideration of previous offences or situations in which there has been no conviction. There could be problems with this, but it would be marvellous if such situations could be used, because women are often terrified to report domestic abuse. Situations can arise in which the police have arrested the abuser but then, for whatever reason—perhaps intimidation of the victim—there has been a problem with getting evidence.

12:00

The Convener: In our law, there is a presumption of innocence until someone is proven guilty—that is a fundamental human right. We may be taking away that presumption. You are asking us to go further: you are asking us to extend the offences and you are suggesting that evidence where there has not been a conviction may be used.

Louise Johnson: As far as Scottish Women's Aid is concerned, that would be wonderful. However, I am not convinced of the practicalities. As I said, it would be useful for securing prosecutions when women have been too scared to give evidence or when, for one reason or another—perhaps the actions of the abuser—evidence has been difficult to gather. However, there could be difficulties vis-à-vis the human rights of the accused. We could almost be reversing the presumption. Then again, perhaps it is time for redress. Perhaps we have to consider the way in which we prosecute people, deal with evidence and consider burdens of proof. That is not for me to say but the committee may want to consider the issues in a different arena.

The Convener: What is your experience of non-harassment orders? You were very much involved with the Justice and Home Affairs Committee in work that led to the Protection from Abuse (Scotland) Act 2001. What evidence is there that the new legislation is protecting women from abuse?

Louise Johnson: It is possibly too early to say—the new legislation came into force in February, I think. I know that a solicitor in the Alloa area had a couple of actions pending, but I have

had no reports back from our groups. If the committee wanted, I could certainly approach the 39 groups around Scotland and ask them and their solicitors about their experience of sheriffs awarding such orders. If the committee wrote to me, I could certainly undertake to do that.

The Convener: That would be useful—especially as we are once again strengthening the law by ensuring that the situation of non-harassment orders not having the power of arrest will be rectified in line with the Protection from Abuse (Scotland) Act 2001. It will be important to know that we are doing that for the right reasons.

I do not know whether you heard the earlier evidence on victim statements, which are a matter of great importance to the committee. We have tried to clarify the purpose of victim statements. We are now clear about that, but we are unclear as to whether organisations such as yours would welcome them.

Louise Johnson: We feel that victim statements could be detrimental to the victim. First, they are another layer of proof that the abuser can overcome because, if he knows that his victim will make a statement to the court, he and perhaps his defence lawyer can prevail upon the woman not to make the statement, to change it or to make it beneficial towards him. From experience in court, we know that women in domestic abuse cases suffer intimidation from the abuser to recant their stories, change their evidence or deny that the abuse happened at all.

Secondly, I feel that the victim statement can be a burden on the victim herself. We have said in various reports that we should be moving towards taking the burden and the pressure off the victim.

Thirdly, we have considered whether the use of victim statements could be challenged. I suppose that it could be challenged on the ground of human rights considerations. I cannot for a minute see a defence solicitor allowing an unchallenged victim statement to be put to the court. The woman would probably want to talk about previous experience. Would that be allowed? Mr Aitken is shaking his head. The woman would want to say, "It is not the first time that he has done this. He has done X, Y and Z." That would not be allowed and the woman would wonder why exactly she was being asked to give a statement. She would already have undergone cross-examination, unless the accused had pleaded guilty, and she could be examined again.

In theory, victim statements are a good idea. I cannot say how they would work for other victims of crime. They might be quite useful—I do not know.

The Convener: So, you are not in favour of them.

Louise Johnson: No. Certainly not. Allowing them would be dangerous for women.

The Convener: You will appreciate that the idea was suggested in response to the comments of many victims who feel that they have not had the opportunity to address the courts. However, I suppose that it is not so easy to make the idea work in practice.

We have no more questions for you. Thank you. You have been very clear and helpful. If you could provide us with any statistical information or feedback in relation to how things are operating now and any of your experiences, that would be crucial.

Louise Johnson: I shall do that. I have a brief comment on section 17, which I mention in a supplementary submission, regarding the disclosure of certain information relating to the victims of crime. Under section 17, a police officer would have the power to disclose to a prescribed organisation or organisations information on a victim of crime so that the victim could receive counselling. We think that that could be incredibly dangerous for victims of domestic abuse. If information was given to an organisation that did not have experience in dealing with domestic abuse victims, it might send a letter or e-mail or turn up on the victim's doorstep. We must remember that abusers will read e-mails, record telephone calls, open letters and so on, so the woman and her children could be put in serious danger.

Our submission also contains various questions about the powers of the police and the guidelines, training or briefing that might be given to an officer who would carry out that duty. The disclosure of information may have a place in the treatment of other victims of crime, but our organisation considers that it would be a dangerous practice in cases of domestic abuse. Furthermore, the policy memorandum and other documents indicate that the prescribed organisations could be voluntary organisations—possibly Victim Support Scotland. We have no criticism of Victim Support Scotland's service, but it is a generic organisation that deals with all victims of crime. A specialist organisation is needed to deal with the complex issues and problems that are faced by a victim of domestic abuse, rape or sexual assault, and there are also safety issues.

The Convener: You have put an important point our way. We will take that seriously when we come to write our stage 1 report. We have no further questions for you. Thank you.

Louise Johnson: Thank you for your time.

The Convener: Our last witnesses this morning are from the Commission for Racial Equality. We welcome Mick Conboy and Lucy Chapman. We

have approximately half an hour to engage you in questions. Thank you for your submission. We were pleased to get a submission from you. The bill covers many important areas of criminal justice, and we thought that it was quite important to look at the whole question of race. Thank you for your comments.

Let us begin with your submission on section 43, on the physical punishment of children. You are concerned that provision should be made for ethnic minority families and visitors to Scotland. You want to ensure that they understand the law if it is passed. Could you expand on the reasons for your concern?

Mick Conboy (Commission for Racial Equality Scotland): We want to thank the committee for inviting the commission to talk about our submission. The general point, which we made in our submission and which applies equally in this area, is that public education will be required for the bill. As in other areas of our work, we would expect the promotional activity to cover all sections of the community.

In the field of health and safety and food hygiene, recommendations that are introduced may have an impact on the restaurant sector and catering trade. In some instances in the past, public authorities were not aware of the need to educate a particular section of those sectors. The same is the case in respect of the bill. There may be a need to provide additional public education that is specifically targeted at ethnic minority communities. We are not suggesting that ethnic minority communities have a better or worse attitude towards the physical punishment of children. We simply want to say that, if there is to be a public education campaign, it should take into account Scotland's diversity of communities and the needs of those communities.

The Convener: Do you mean that different minority groups have different views about the physical punishment of children?

Mick Conboy: We have no evidence of that. Our principal concern is that any public education campaign should take on board the diversity that exists in communities.

The Convener: Okay. I will move to consideration of section 44, on the youth crime pilot study. I understand that your position is that a crime with a racial aggravation element should not be referred to the children's hearings system. I understand why you might say that, but perhaps you might expand on your reasons for the record.

Mick Conboy: Two issues are involved. First, we are unclear about the definition of a minor offence, although that may be lack of awareness on our part. Secondly, the evidence from police forces up and down the country is that a good proportion of offences, in particular racial incidents, are carried out by young children. I have the figures and can provide them after the meeting. Our principal concern is that, if a referral is made to the children's hearings system, the panel should know about and understand the nature of the offence. The panel should also have the wherewithal to refer children to schemes or programmes that are appropriate in dealing with their attitude problem.

The Convener: I am not yet clear about your reasons for wanting that to happen. In what way could the adult court system deal more effectively with a crime that was committed by a young offender in which a racial aggravation element was involved? Are you concerned about the element of punishment or whether more could be done in an adult court to address the question of the young offender's racial attitude?

Mick Conboy: The venue for the trial is not at issue, but whether the children's panel or the court system is enabled to handle racial offences. We have no view one way or the other about which is more appropriate, although we note the suggestion to bring 17 to 18-year-olds within the court system. Our key concern is education and the prevention of racially motivated crime. We are aware that the Scottish system does not have a great deal to offer in terms of rehabilitation to people who have been found guilty of racially motivated offences. That concern cuts across the children's hearings system and the adult system.

The Convener: I agree, but does that not suggest that a racially motivated crime should be dealt with more severely?

12:15

Mick Conboy: If there is a possibility of diversion into programmes that can effectively deal with offending attitudes, the sooner there is such diversion the better. Obviously, we have concerns that young children who go into the adult system might not have the opportunity to address possibly deep-seated attitudes in a more constructive way and to come out with a more enlightened view.

The Convener: Witnesses have spoken about why there should be provisions in the bill to extend children's hearings and why there should be a greater variety of diversions from prosecution. They seemed to be saying that there would be a chance to challenge behaviour. Would that not be true in respect of racially motivated crimes?

Mick Conboy: Perhaps there is confusion about the definition of minor offences. I am not clear about the definition in the bill of minor offences. Irrespective of where an offence is dealt with, we think that effectiveness is the key issue. Is there

an appropriate support programme to deal with somebody who is accused and convicted of a racist offence? That is the key issue.

The Convener: You are correct in saying that there is confusion—we are certainly a bit confused—but if mention is made of referral for minor offences, I assume that your concern is that a racially aggravated crime might be categorised as a minor offence and that is why you do not want such offences to go to children's hearings.

Mick Conboy: Thank you for that. I think that there has been Lord Advocate's guidance on the issue. Where there is evidence of racial motivation in an offence, the fiscals are instructed to take the case to the High Court rather than the lower court.

Mr Hamilton: Your submission mentions sections of the bill in which there should be

"explicit guidance on racial equality."

Section 36, on persons referred to drugs courts, is one of those sections. Will you expand on that? I was confused by that reference.

Mick Conboy: The broad point should be made that, although specific implications for racial equality are not necessarily explicit in the bill, we have a continuing concern that we have brought to the Parliament. We discussed with colleagues from the Equal Opportunities Commission how mainstreaming equality could be taken forward in committees' scrutiny of bills. From our point of view, the drugs courts are an area where explicit guidance would be useful. Currently, we have no evidence one way or the other about the operation of the courts and their potential impact but, from a racial equality perspective, there is clearly a need to ensure that those who operate all the various systems have clear guidance.

Recently, the updated "Equal Treatment Bench Book" was produced. It is being issued to the bench in Scotland to assist in dealing with ethnic minority victims, witnesses and accused. We should ensure that people who operate the system are aware of the different elements that might come into play with ethnic minority accused, witnesses or perpetrators. There should also be a rigorous monitoring system. It is quite right that we now have ethnic monitoring information on racist crime, but there is probably a need for better information in other areas of the justice system.

Mr Hamilton: I want to be clear about what you fear. Do you fear that people from different backgrounds will not have access to the drugs courts, or will they have disproportionate access to them? What are you trying to avoid?

Mick Conboy: The general issue is that critical decisions are being made about people's lives. We cannot say, hand on heart, that the system is being applied to people from all our communities in an even-handed way. From our perspective, one way of ensuring that the system is applied to everyone would be to provide adequate guidance to those who operate the system and to have in place a rigorous monitoring system.

Mr Hamilton: But you do not have a fear that the system would be over-used or under-used. The issue is a simple one that you want to flag up. Is that correct?

Mick Conboy: Yes.

The Convener: I have a final question on victim statements. Do you have a view on whether victim statements might be useful in the context of racially motivated crimes if we were able to resolve some of the issues about the operation of the system?

Mick Conboy: I will pass that question to my colleague Lucy Chapman, who is our parliamentary officer.

Lucy Chapman (Commission for Racial Equality Scotland): We have concerns about the provisions that relate to the victim statement scheme. As you will be aware, the racial aggravation element in crimes is recognised, and the courts have set tariffs for such crimes. We do not envisage a need for a victim statement to be taken into account, to be given weight or to have an influence on sentencing. However, we appreciate and welcome the objective of involving victims more and of giving them an opportunity to vent their feelings.

On raising awareness of the impact of race crime, there needs to be a debate on whether such a statement is appropriate. Our primary concern is with the introduction of an element of subjectivity, which could increase the potential for the introduction of prejudicial and discriminatory material. If section 14 is passed, explicit guidance will need to be issued, both on the scope of victim statements to influence the court and on the contents and admissibility of such statements.

The Convener: I hear what you say about the fact that there is no need for a victim statement to be given weight in relation to sentencing, because that is dealt with through the existing system. Given what you have said, would you prefer victim statements to be introduced, so that victims could choose to make a statement?

Lucy Chapman: If the scheme were to go ahead, the victim statement would have to be balanced carefully against the rights of the accused. We would have grave reservations about a victim statement having an influence on sentencing. If the scheme were to go ahead, explicit guidance and training would have to be provided for the agencies that will work with victims on preparing statements, in order to

ensure that prejudicial and discriminatory material is inadmissible. The issue of when the defence would have an opportunity to challenge the statements would also need to be addressed.

The Convener: As we have no further questions, do the witnesses have any comments to make on issues about which they have not been asked, or any points that they would like to emphasise?

Mick Conboy: I would like to add a point about victim statements that relates back to a comment made by one of the previous witnesses. There is evidence to suggest that there is a greater impact on ethnic minority victims of crime if the crime is racially motivated. Given the reservations that Lucy Chapman outlined, our view is that there would be scope to introduce a beneficial victim statement scheme specifically in relation to racist crime. However, the pilots will be critical in determining how the scheme, if it is to go forward, is formulated and put into practice. For that reason, we believe that the pilots would have to be fairly extensive and last for a year to 18 months. Detailed analysis of the results would have to be undertaken before the scheme was fully introduced. We are confused about whether the pilots are covered by the bill.

The Convener: Let me clarify that point. I do not know whether you heard the earlier dialogue on the issue, but the introduction of victim statements is not a pilot. The statements can be given for specific offences. The scheme will go ahead if there is an agreed category of offences for which the statements will apply. What you have to say on the issue is important. I am not sure whether both of you are saying the same thing, but you do not seem to be in favour of victim statements. If you want to say something more positive, this is your last chance. Victim statements will go ahead, but there is no specific mention that they should apply in the case of racially motivated crimes. If the scheme is successful, it might be extended to more crimes.

Lucy Chapman: I think that it is stated in the policy memorandum that the intention is for victim statements to cover race crime. If the scheme goes ahead, we would want supporting arrangements for explicit guidance and training to be in place. That guidance would be on the scope for influencing statements and on the content of the material. As Mick Conboy said, the pilots would have to be carefully assessed and analysed to ensure that improvements were made.

Mr Hamilton: Are you saying that you would not be happy for victim statements to be implemented without first having a pilot scheme?

Lucy Chapman: Yes. We would have to consider the impact of a pilot scheme.

The Convener: Racial offences are in the list of offences. Is it your evidence that you would prefer a pilot? That is not in the bill at present.

Mick Conboy: I suspect that some of the issues that we have raised are fairly substantial. We feel that a pilot would provide the opportunity to iron out some of those concerns. You are saying that victim statements will become practice when the bill is enacted, so it does not sound as if there will be a pilot.

The Convener: That is the case. It does not sound to me as if you are in favour of victim statements.

Mick Conboy: Some of the concerns are not inconsiderable, but the impact on the victim is one aspect of racially motivated crime that is overlooked. There has been a great deal of activity to ensure that such crimes are reported and acted on, but the victim has been overlooked. Although we are keen to raise that issue, we have reservations about victim statements. We would be happy to work either with the Executive or the committee on the detail.

The Convener: Thank you for your evidence. The session has been short but useful. I am now much clearer about why you do not want offenders in cases of racially aggravated crimes to go through the children's hearings system. I am sure that the committee will take that point on board in its stage 1 report.

Mick Conboy: I will add one further point on sectarianism. It came to our attention recently that Mr Gorrie's member's bill is to be withdrawn for reasons of which the committee will be aware. It is the commission's view that there is a need to examine the incitement sections and the sections on racially motivated offences in the Public Order Act 1986 to discover whether they could be amended to introduce a religiously motivated crime. In other quarters, the bill has been called unwieldy, but it may offer an opportunity for the commission to propose amendments to that act.

The Convener: It is open to any MSP to lodge an amendment at stage 2. The committee is trying to deal with the issues in front of it. As the bill is general, I have no doubt that there will be opportunities for further amendments. We have already heard that there will be further amendments from the Executive. You will have to watch this space.

That takes us to the end of the morning session. We will reconvene at 2 pm in private session to discuss our lines of questioning. We will begin questioning the witnesses at 2.30 pm.

12:29

Meeting suspended until 14:05 and thereafter continued in private.

14:38

Meeting continued in public.

The Convener: Good afternoon, everyone. We continue to take evidence on the Criminal Justice (Scotland) Bill. I welcome Norman McFadyen, who is the Crown Agent designate and Geri Watt, who is head of policy for the Crown Office and Procurator Fiscal Service. I thank you both for coming to give evidence to the Justice 2 Committee. We do not have a submission from you and we will go straight to questions. We have half an hour, but I will allow some flexibility because your evidence will be crucial to our consideration of the bill. If there is anything that you would like to add after we have finished our questions, you can cover that at the end.

I will begin the questions. Two weeks ago, we had a long meeting during which we focused on section 43, on the physical chastisement of children. The evidence that we took was extremely polarised: one set of people were in favour of keeping the law as it is and the other set were very in favour of strengthening all aspects of the law in relation to the physical chastisement of children. Many witnesses have been making assumptions about what the Crown Office will or will not do in relation to the prosecution of the offence that will be created by the bill, particularly in relation to the removal of the defence of reasonable chastisement in cases involving children under the age of three. Can the Crown Office apply any discretion in such cases and in the event of the bill being passed, how would the Crown Office deal with such a law?

Norman McFadyen (Crown Office and Procurator Fiscal Service): That is a general question. Generally, we would deal with any change to the law on offences of this kind on the same basis on which we deal with other criminal offences. We would consider whether there was sufficient evidence to justify criminal proceedings and whether proceedings were in the public interest. That invariably also means considering whether alternatives to prosecution would be more appropriate in the circumstances of particular cases. Those considerations would apply to the physical chastisement of children at the lower end of the spectrum, but we would have to make decisions on a case-by-case basis.

The Convener: Can you tell us how many prosecutions there have been over the past two years of a parent smacking their child?

Norman McFadyen: No, we do not have any statistics on such prosecutions and we have no ready way of measuring them. One is aware, from anecdotal evidence, of a few cases in which there has been violence towards a child and in which the defence of reasonable chastisement has been used.

The Convener: At this stage I am trying to get evidence on the difference between beating a child and smacking a child in the sense that people would understand it—light hitting that is not violent. The crux of the matter is that people think that the Crown Office would have discretion and would not prosecute in the case of light smacking, but I do not see where discretion would come in, given how the bill stands.

We are yet to hear from the Faculty of Advocates, but in its submission it says that it thinks that the legislation will catch out some ordinary parents who smack their children and they will end up in the criminal justice system. Do you agree with that?

Norman McFadyen: If section 43 were enacted as it stands, such persons could be the subjects of police reports, because it provides for the absolute prohibition of physical punishment of the under-threes. It follows that if a complaint were made to the police and if it were investigated, it might be reported to the procurator fiscal if there were enough evidence. It does not automatically follow that there would be a prosecution in each case, just as it does not automatically follow that there is a prosecution in cases with any set of facts.

The current position is that if the procurator fiscal receives a report about someone striking a child and the police have considered it appropriate to report that as assault, the case will be considered on its merits. The difference is that the legislation will remove a possible line of defence that is available at the moment and will clarify the position on actions such as striking a child on the head or using implements to strike a child.

The Convener: The Faculty of Advocates states in its submission:

"these proposals require to be examined closely. To exclude *any* physical punishment of children under the age of three years carries the risk of bringing into the criminal justice system persons who would not otherwise come to the attention of the police or social services."

Do you think that that is fairly accurate? Although you would have some discretion—not every case is prosecuted—parents whom you do not normally see would come into the system.

Norman McFadyen: Yes, potentially. However, we have to bear in mind the fact that there would have to be a complaint. Someone would have to draw a case to the attention of the police, unless a police officer witnessed the incident in question, and that would trigger an investigation.

As things stand, if the police receive a report that someone has assaulted a child—which is how it will have been viewed by the witness or person who learned about it—they have to investigate it anyway. I have no way of gauging whether a significantly greater number of cases will be

investigated, but the effect of the legislation will be to exclude a possible line of defence that applies at present.

The Convener: I am sorry to dwell on this, but it is important to understand whether this will be a good piece of legislation. We are talking about trivial smacking, about which there is a worry. Has the Crown Office given any consideration to how it might deal with the legislation? What factors will you take into account if a trivial smacking of a two-year-old is brought to your attention via the police?

14:45

Norman McFadyen: At this stage, we have not given thought to whether there is a need for express guidance on the legislation, although it is quite common for us to issue guidance to procurators fiscal in relation to new legislation. Plainly, some thought would have to be given to whether there was a need for guidance.

You referred to triviality. Of course, triviality is one of the factors that procurators fiscal are required to consider in the context of any decision to prosecute or take other measures. Triviality is a justification for not proceeding. It is open to the Lord Advocate to determine that a triviality opt-out will not be available in particular categories of offence, but no consideration has been given at this stage to taking that step. Unless there is a ruling by the Lord Advocate that procurators fiscal are not to consider triviality, it will be open to procurators fiscal in each case to consider whether the circumstances are too trivial to merit prosecution.

The Convener: So on balance, if section 43 is passed into law, in your opinion will the number of prosecutions increase?

Norman McFadyen: It is hard to say, but I would be surprised if there were a significant increase in the number of prosecutions. There may be some increase. In some respects, the provisions in the bill would make the law clearer for the prosecutor and the courts, but I would be surprised if there were a very significant increase in the number of prosecutions.

George Lyon: The submission from the Faculty of Advocates states that, as it stands,

"The common law may be sufficiently robust and capable of development adequately to deal with changes in society's views."

In light of that, in how many cases has insufficient clarity of the common law prevented prosecutions from proceeding, because that is one of the justifications that the Executive has used for introducing the legislation?

Norman McFadyen: I cannot say. I do not think that there is any way of measuring that, because there is no statistical information.

George Lyon: So there is no evidence at all.

Norman McFadyen: I cannot give figures. I am aware of one case in which a sheriff upheld a defence of reasonable chastisement, where a child was slapped hard on the head and required hospital treatment. That is the sort of case that would be caught by this legislation. Where at present it would be open to the defence to run a plea of reasonable chastisement, in that case the prosecution presented the case on the basis that that was not a justifiable plea on the facts of the case. Nonetheless, it was open to the court to consider that plea. That is one example. I cannot give you any other examples. I am aware of cases of serious physical abuse of children where a defence of reasonable chastisement has been attempted to be run, but unsuccessfully. It follows that the greater the degree of violence, the far less likely it is that a court will be prepared to accept that defence.

George Lyon: Does the Crown Office accept that there is a lack of clarity in the current common-law position?

Norman McFadyen: The policy is not for us to decide, but it is undoubtedly the case that the current law leaves it open to the discretion of the court to deal with cases involving violence towards very small children and violence of the kind that the bill contemplates, such as the use of implements and striking the head. Some people would regard that as unacceptable in any case, but plainly other people take a different view. It is currently left to the court to decide and it is necessary for the court to do so case by case. The bill would provide clarity in that regard.

George Lyon: Are you aware of many cases that have not been investigated because of lack of clarity in the current law?

Norman McFadyen: No, I am not. I expect that, when a complaint is made that a child has been struck, unless it is of a very trivial nature, the police will investigate such a case in any event. The case will not necessarily come to the procurator fiscal, because if the police investigation does not establish a sufficient basis the police will not be required to report it. I am afraid that the answer is no, I do not know of many such cases.

The Convener: I will move on to section 44, on youth crime pilot studies. We have heard a variety of evidence, which up to this point has mostly been in favour of referring some 16 to 18-year-olds to the children's hearings system and keeping them out of the criminal justice system for adults. Does the Crown Office have a view on what the impact would be if some young offenders were referred to the children's hearings system?

Norman McFadyen: Impact in what sense?

The Convener: Would it relieve some of your work load? Would it make any difference to you in that way?

Norman McFadyen: It would depend to some extent on exactly what criteria were applied for the cases that would go to the children's hearings system rather than to the court. Our best guess—this is to some extent guesswork—is that the reduction in cases going to the court, which would lead to a reduction in some work for the court and for fiscals, would to a large extent be counterbalanced by the increased effort and consideration that would need to be given to all of those cases. We anticipate that they would be dealt with in the same way in which many cases involving under-16s are currently dealt with. There would be joint reporting by the police to the reporter and to the procurator fiscal. It would be necessary for the procurator fiscal and the reporter to discuss the cases face to face on a case-by-case basis before deciding in each case whether it should be dealt with by the reporter or by the court.

That work is, as members can imagine, relatively labour intensive. As best as we can estimate it, there is not likely to be any net effect on the work load of procurators fiscal. The situation would change depending on the use that is made of the provision; the use of the provision would change the balance of work in some respects. One of the values of a pilot is that it would enable us better to assess the likely volume of work.

The Convener: Are you in favour of such a pilot?

Norman McFadyen: That is not something on which we have a policy view. If a pilot took place, we would work with it. Our officials have been in discussion with justice department officials about how the scheme would be implemented. We would need to be actively involved in that process.

The Convener: You are being very diplomatic.

Norman McFadyen: The policy is not for us to decide.

The Convener: The Crown Office and Procurator Fiscal Service must have a lot of experience of dealing with this age group. The committee is struggling to get to the bottom of all the evidence that has been thrown at us. Some statistics are reliable and some have not been independently scrutinised. The committee is trying to establish whether we would all have safer communities if this age group were referred to the children's hearings system. Surely, with all your experience, you must have a view about whether it is better that the adult system deals with that age group or that the children's hearings system deals with it.

Norman McFadyen: Any view that I have on that matter would be a deeply personal view. As I say, the policy is really not a matter for the Crown Office and Procurator Fiscal Service. We would certainly work with whatever legislation is passed and whatever pilot is run. We would work as best we could to ensure that the public interest was adequately represented. You will appreciate that a significant number of the less serious cases that are currently reported against 16 and 17-year-olds are not the subject of formal criminal proceedings. They may be the subject of warnings or alternatives to prosecution. In any event, if a 16 or 17-year-old is reported for a minor offence, it does not immediately follow that they will be taken straight to court.

The Convener: We are thinking about alternatives to custody and different ways of prosecution for that age group and we seem to have an opportunity to give more thought to what we do to address offending behaviour. If more diversion schemes were available to prosecutors, would the service be better able to manage that? I wonder whether we could achieve just as much with the age group that we seek to address by prosecutors deciding on diversionary schemes rather than by referring young people to a children's hearings system that, we are hearing, is a bit under-resourced.

Norman McFadyen: I guess that resourcing is a separate issue. The prosecution service is not particularly well geared to monitoring a continuing diversion scheme. If a case goes to diversion, to the various schemes that exist in social work, mediation and reparation, for example, it almost invariably falls out of the prosecutor's hands once the diversion has been accepted—unless the case fails altogether and is sent back to the prosecutor for consideration of further proceedings. A weakness is that we cannot engage directly with an alleged offender about their offending behaviour. We can suggest that they be referred for diversion, but the High Court has made it clear that if the procurator fiscal were to go further and invite the offender in for a discussion about the case and about what is best, that would act as a bar to further proceedings.

Although we embrace alternatives to prosecution and are anxious to pursue them, there are limits to how far we can go in interacting with offenders. In that regard, the reporter and the children's hearings system are better equipped, because their whole ethos is dealing with the interests of the child.

The Convener: The procurator fiscal could make a decision to put someone on a diversionary scheme. Thereafter, they could be supervised by

criminal justice social work services.

Norman McFadyen: Yes, that can happen, where resources permit.

Bill Aitken: It has not been a good morning for establishing basic facts and figures. I wonder whether you could help me to establish the number of cases that you divert out of the prosecution system through social work referrals and so on. Is a track kept of how a person performs when they go through that diversionary process and are records kept to indicate levels of recidivism?

Norman McFadyen: I do not think that we have any information on that score. I will check that and arrange for us to write to the committee if we have any information. As I explained, once a case has been diverted, that represents the end of our dealings with the case, for most purposes.

Bill Aitken: You must understand my concern. If you do not have the figures, you cannot know how successful the project and the thinking are.

Norman McFadyen: I appreciate that, although the scope for diversion is limited at present. If we have any additional information, I will ensure that a note of it will be passed to the committee.

The Convener: It would be useful if you had the number of 16 to 18-year-olds with whom you deal.

Norman McFadyen: I will certainly look into that.

George Lyon: On the subject of victims' rights, we have been presented with some conflicting evidence this morning on victim statements. Overall, what we heard did not seem to underpin the argument in favour of them. What do you believe victim statements, as set out in the bill, are intended to achieve? We heard two or three different views this morning on whether victim statements are intended to influence or have an impact on the sentence that the court hands down or whether that is not their purpose. What is your view?

15:00

Norman McFadyen: Victim statements appear to be intended at the very least to inform the court before it passes sentence. Section 14(5) says that prosecutors must "have regard to" victim statements. If the court is to "have regard to" them, it must presumably evaluate them and take account of them if they are relevant to the issue of sentence. They will not necessarily be relevant to it, but that very much depends on the information that the victim can make available.

George Lyon: A number of concerns were raised in the submission from the Sheriffs Association. If the victim statement has an impact on the sentencing policy, its contents may be used as the basis for an appeal. The association is concerned about inappropriate evidence or information being contained in the victim statement and about how that would be dealt with. Its view is that the Crown Office should be the vehicle for expressing the substantial matters in the victim statement without the statement itself being placed before the court. What is your view on that suggestion?

Norman McFadyen: We will work with whatever model is created. The downside of the Crown being the mouthpiece is that it could not literally be the mouthpiece, because it would somehow filter, dissect and decide what to place before the court; my understanding of the policy is that the bill should enable the victim to speak directly to the court. That is plainly not something that could be done if there were a direct input from the Crown, rather than from the victim. The prosecutor's duty is to place the document in question before the court.

George Lyon: Would the prosecutor place the victim statement before the court even if it contained inadmissible evidence? How would the process accommodate that? As I understand it, the victim statement is to contain the victim's views. There might be some assistance and guidance on how victims write statements, but their views will not be interpreted and then put down on paper. How would you deal with the matter of inadmissible evidence in victim statements, which was raised by the Sheriffs Association?

Norman McFadyen: There are two aspects to that. The problem is not about inadmissible evidence being placed before a court of trial or a jury; rather, it is about so-called inadmissible evidence being placed before the judge at the time of sentence. Professional judges are expected to understand the difference between what is relevant and irrelevant, and between what is admissible and inadmissible. Undoubtedly, the role of the procurator fiscal in receiving the victim statement and placing it before the court would enable the procurator fiscal to exercise discretion in not placing before the court—if that was thought to be appropriate—material that was quite irrelevant.

The best example that I can think of would be a case in which the victim made representations about the level of sentence. The appeal court has made it clear that it would be improper for a court to consider such representations. In that case, it would be open to the procurator fiscal to excise the relevant part of the statement.

The question would arise whether there should be a duty on the procurator fiscal to go further. I would be somewhat wary of that, but that could be

examined in the context of the pilot and in terms of how the information would be handled in particular cases. However, if the policy were to give victims a direct voice to the court, I would hesitate to allow procurators fiscal too much of a role in sifting that information, in particular as the information will not go before the court during trial or when the court is assessing the credibility of witnesses. It is post-conviction information.

George Lyon: In criminal proceedings, does the fiscal have, as a rule, information about the impact of the crime on the victim? If so, from where does that information come? Is it routinely placed before the court at the time of sentencing?

Norman McFadyen: The extent and quality of that information will depend on the facts of an individual case. For example, if the accused is reported in custody by the police for a case that is not serious, the procurator's information could be limited simply because they do not know at that stage whether the victim has been off work for a time, or whether there is any other medium to longer-term impact. The source of information in most cases is the police, who are not necessarily given, nor are they able to get, victim impact information immediately.

In more serious cases, we hope that the procurator fiscal's investigation or precognition will give a good account of matters such as the effect of injury. That information is placed before the court, but not directly by the victim; it is not the victim's voice, but the prosecutor's voice, except in cases in which the victim gives evidence that is relevant to proof of the charge. Therefore, in a very serious assault, matters such as the extent of the victim's impairment and the fact that he or she is no longer able to work are brought out in evidence. In some cases, those matters are canvassed thoroughly in evidence before the court. In others, the prosecution considers what it can properly place before the court, but the information is not the victim's direct voice.

George Lyon: What impact would there be on prosecution of a case if a victim statement were made available to the accused before conviction?

Norman McFadyen: That is hard to address as a general question. There would be some reluctance on the part of those whose interest is in the victim for victim impact information routinely to be made available to the accused—in essence, it would be to the accused—in advance of conviction. That information might be personal. It is accepted that the information would have to be disclosed prior to sentence. However, it is not guaranteed in any case that the accused will be convicted. Therefore, the view could be taken that it would be inappropriate unnecessarily to provide such personal information to an accused person because it would not be known whether he or she was going to be convicted.

I think that there is concern that victims would feel inhibited about providing personal information if they knew that it would be made available to the accused in advance of trial. The issue is difficult. If section 14 of the bill is enacted as it stands, a procurator fiscal will be able to make earlier disclosure of the victim statement if that is appropriate in the circumstances of a particular case. However, it would be open to us to explore in the context of a pilot whether we should consider earlier voluntary disclosure. We could do that in one of the pilot areas and assess how it works in practice.

George Lyon: We are coming back again to victim statements being piloted in certain areas. That is not our understanding of what is in the bill. Could you clarify from where that information about pilots is coming? It has been referred to time and again in evidence this morning.

Norman McFadyen: Our understanding is that victim statements will be applied first in a pilot.

The Convener: We need clarification from the Executive about where the pilots are being run. There is no reference to pilots in the bill. We presumed that a scheme would be run after the bill was enacted. However, we have heard from witnesses that pilots are obviously being run somewhere. We will ask the Executive for clarification.

Norman McFadyen: By all means. We have not yet reached that point; although we are discussing pilots with Executive officials, we have not yet identified particular pilot locations. However, the understanding is that there would, apart from anything else, need to be a pilot to assess resource implications and implications for the courts. Piloting the scheme in a small number of areas would enable us to be better informed about its operation. However, a pilot cannot operate without legislation.

George Lyon: I understand that. However, we are confused. I was not aware, from the evidence that the committee has received so far, that discussions about piloting the scheme had reached such an advanced level. It seems rather strange that this information is emerging only after Executive officials have given evidence. Have there already been advanced discussions with Executive officials about the pilots and where they will be introduced?

Norman McFadyen: No. We are discussing with Executive officials the possibility of pilots, but we have not yet discussed where the pilots will be introduced. Various places have been mentioned as remote possibilities, but—if I can put it this way—we have not yet reached the stage of discussing with our own people whether they would wish to have a pilot in their area. Naturally,

we would do that before we made any formal decisions.

The Convener: Perhaps you could let us know.

Norman McFadyen: I am sure that the Executive will let the committee know.

The Convener: We will take the matter up with the Executive. We understood that the bill was enabling legislation that would allow the victim statement scheme to be based on certain categories of crime. However, we have learned something new this morning. We will seek clarification on the matter.

George Lyon: I have a couple of final questions. If a victim statement is to have any impact on sentencing, it will be open to challenge by the defence. Will the prosecution have a role in that process, perhaps by being invited or required to rebut what the defence says about the statement or any information that is contained within it?

Norman McFadyen: Based on the provision as it stands, I expect that if the facts in a victim statement were challenged and if they were in any way material to the issue of sentence, the court would fix what is described as a proof in mitigation and would hear evidence before deciding whether to proceed based on the victim statement's contents. That comment contains a few ifs because the fact that particular information is challenged does not necessarily mean that it is relevant to the sentence. The victim might want to make information known to the court, which might not consider that information to be relevant. It does not automatically follow that there would be a hearing of evidence in any case in which the accused or his legal adviser did not fully accept everything that was in a statement. However, the choice will be open to the court.

George Lyon: I want to explore further the contents of the victim statement. Clearly there is a risk of discrepancy between offences as described in the victim statement and the offence to which the accused pleads guilty or for which he is convicted. How can such a discrepancy be addressed? You said earlier that you were uncomfortable with the Procurator Fiscal Service having to interfere and be the judge and jury in such a case. How on earth will the process work? Someone somewhere will have to decide whether evidence is admissible or otherwise.

Norman McFadyen: The procurator fiscal will have to have some role in that regard. The simple case would be one in which the victim statement related to a charge of which the accused was acquitted, which would mean that no relevant victim statement could be properly placed before the court. However, there are shades of grey with cases in which the court might convict someone of only part of what is alleged in a charge.

For the life of me, I do not know how we will be able to divide up the impact on a victim of part of the crime that they feel was committed. Indeed, the crime might well have been committed, in which case it might simply be a matter of law; it is not proved against the individual that he or she committed the crime. That leaves a difficult issue for the court to address, but we ask courts to address difficult issues all the time.

15:15

Bill Aitken: Part 1 of the bill deals with orders for lifelong restriction and contains fairly radical departures from long-standing principles of Scots law. The Crown has a duty to place before the court the full facts, after which the sentence or disposal is a matter for the court. However, cannot the Crown trigger an application for an order for lifelong restriction?

Norman McFadyen: It can.

Bill Aitken: Is not that a slightly dangerous precedent?

Norman McFadyen: It is not necessarily a precedent. Traditionally, the Crown is regarded as having no interest in sentence, but that is more mythology than actuality in modern life. The Lord Advocate can appeal against unduly lenient sentences, so the Crown must assess, at the edges, what it is reasonable for a court to do. Every day, the prosecution considers the likely level of sentence in deciding on the court in which a case is indicted or proceeded against.

It is wrong to say that the Crown is indifferent about sentences. It is also not the case that the Crown has no role following conviction. For example, confiscation of the proceeds of crime or drug trafficking occurs post conviction and is relevant to the sentencing process. The Crown frequently moves for forfeiture of items that have been used in connection with crimes. An application for an order for lifelong restriction does not give the Crown a unique role following conviction.

Bill Aitken: Another departure from the normal standards is that alleged offending behaviour can be relied on to obtain an order. Is not that a little dangerous?

Norman McFadyen: It is not for me to assess that. I understand that the provision implements a recommendation of the MacLean committee, which considered the issues carefully and concluded that allegations that had not been proved or had not been the subject of criminal proceedings might be relevant to assessing the risk that an offender posed. I understand that all that the bill would do is allow that information to be

taken into account and reflected in the risk assessment report. The sentencing court would decide what to do with that information. Of course, if the information were challenged, evidence would need to be presented to the court.

Bill Aitken: The provision seems to discard to some extent the presumption of innocence.

Norman McFadyen: The provision applies only to someone who has been convicted, who would have had the benefit of a presumption of innocence during their trial.

Bill Aitken: Nevertheless, any subsequent offending behaviour that was not the subject of proceedings would be taken into consideration.

Norman McFadyen: I understand that what would be taken into consideration is not necessarily offending behaviour, but the facts involved, as much as anything, which may not be in dispute. It is typical of someone who is charged with a serious sexual offence on a child to minimise their conduct; it is not unknown for an offender to say, "This was a spur of the moment thing. It wasn't planned. The child just came to my door collecting for charity and I took advantage of the situation." On the face of it, there might be little evidence to contradict that, but if it were known that that person had repeatedly lured children into his house—although he had not been convicted of sexual offences against them—that information might be relevant to a risk assessment. The evidence would show that that person was in the habit of luring children into his house, and we would have evidence of a serious sexual offence on one occasion.

That is a hypothetical case, but it is not a million miles away from some of the cases with which I have dealt in the past. In that sort of case, I can see how the person carrying out a risk assessment would be able to make use of that information. If the information were challenged, it would be a matter for proof.

The Convener: We have evidence from the Scottish Human Rights Centre on the orders for lifelong restriction. That organisation is concerned that those orders tip the balance against the presumption of innocence because the information has not been tested in court and a sanction will be applied on someone for life. We heard from Scottish Women's Aid earlier, which suggested that we should go even further and apply such orders to cases of domestic abuse. That is quite a departure from the legal principle that we have adopted until now, which is that in the main we do not apply any kind of restriction or detention until the matter is proven in a court of law. Some organisations are now saying that we should go even further than that. Is there a danger in going down that road?

Norman McFadyen: The issue requires careful consideration. As I have been at pains to point out, the policy is not for the prosecution service, but the prosecution service can work with it. I can understand the logic behind the provision. It was carefully thought through by the MacLean committee. It is all about assessment of, and response to, risk. The provision will be used in cases in which people are convicted of serious offences. The High Court will make those orders, so they will not be made other than following a conviction for a serious offence.

The Convener: I will go back to victim statements. Your comments on them were helpful. I accept your point that it is for the Parliament to decide whether the proposals will be passed into law. Given all the pitfalls and the problems that we need to get round to make the proposals on victim statements work, are they too tricky to be effective in practice, or is it possible to make them work if the desire to do so exists?

Norman McFadyen: It is dangerous to hazard an estimation of those matters. I understand that a similar scheme has been operated in England and Wales without major ill effect. Similar schemes and slightly different schemes operate in other jurisdictions. It is difficult to say why we should be the one that cannot do it.

The Convener: That is helpful.

We will move on to a different subject—part 6, on non-custodial punishments. Part 6 develops the powers of arrest in relation to non-harassment orders. It is a similar provision to that in the Protection from Abuse (Scotland) Act 2001. Should there be a specific offence in relation to non-harassment orders in Scots law or will those provisions strengthen the law sufficiently?

Norman McFadyen: There is an offence of breaching a non-harassment order. I am not aware of a particular difficulty with the existing offence provisions. The provision will mean that there is a specific statutory power of arrest. My understanding is that the police will find it easier to deal with such cases if they have a statutory power of arrest. The common-law powers of arrest are currently pretty broad, but a statutory power of arrest would not be unhelpful. Beyond that, the provision would not have any material effect as far as we are concerned.

The Convener: Are you saying that the provision would have no material effect?

Norman McFadyen: It would make it easier to arrest people who break the orders.

The Convener: I would have hoped that bringing the position into line with that in the Protection from Abuse (Scotland) Act 2001 would strengthen the law in that respect, because up

until now there would not necessarily have been the power of arrest.

Norman McFadyen: That is correct. I am sorry. When I said that the provision would have no material effect, I meant on the Crown Office and Procurator Fiscal Service as an organisation. I am sure that the provision will enhance the ability of the police to make early arrests in appropriate cases and to take earlier action.

The Convener: Those are all the questions that we have for you. I offer you the opportunity to emphasise any point or mention anything about which you feel you have not been asked.

Norman McFadyen: Members have covered everything. Thank you.

Geri Watt (Crown Office and Procurator Fiscal Service): I have nothing to add.

The Convener: We have had a very useful evidence-taking session with you. I thank you for that. I have no doubt that we will see you on another topic in future.

Norman McFadyen: We look forward to that.

The Convener: We move on to our next panel of witnesses, who are from Age Concern Scotland. I welcome Ann Ferguson, who is the elder abuse project leader, and Dorothy Sutherland, who is a board member of Age Concern Scotland.

While you are getting settled, I thank you for your written submission and for coming before the committee. Our questions will focus mainly on part 2 of the bill, which concerns victims' rights, and on part 6, which concerns interim anti-social behaviour orders. If committee members have questions on other issues, they will put them to you as and when the subjects arise.

Scott Barrie (Dunfermline West) (Lab): Contrary to what the convener said, I will start with a question that does not concern part 2 or part 6 of the bill. In your submission, you identify issues that are not dealt with in the bill. You state:

"we are disappointed the opportunity has been missed to introduce greater protection for Vulnerable Adults, including older people."

What greater protection did you envisage?

Ann Ferguson (Age Concern Scotland): Is that in relation to neglect?

Scott Barrie: Yes.

Ann Ferguson: Neglect in itself is not a crime. We cannot charge someone with neglect of a vulnerable older person. Dorothy Sutherland will expand on that. She will be able to give a much more detailed response on the effect that neglect has on vulnerable older people.

Dorothy Sutherland (Age Concern Scotland): In my voluntary role with Age Concern Scotland, I deal with people in the community and I deal with a number of cases of neglect in my professional life. I will describe a scenario that might help members to understand our concerns about neglect.

An elderly gentleman lived in the community with his family. Four generations lived in the one house. Neighbours complained to social work services that they were not seeing the man out and about, and the general practitioner was asked to call. The GP was the only person who was admitted to the house. He discovered that the man was living in a room the size of a large cupboard at the back of the flat and that he was quite frail. However, the man said that he was quite happy and content.

A lot of work was put into trying to get admission to the house, and the family eventually agreed to one day's day care. After some time, trust was built between a key worker and the man, who shared such facts as that he was not getting enough to eat and that he could not remember when he had last had a bath. Once again, the GP was asked to intervene, and the man was taken into hospital. A hospital consultant assessed the man and declared that he was emaciated, physically very frail and had a medical condition.

After six weeks, the man's benefit payments stopped and the family persuaded him to discharge himself from hospital. He went back home to the same situation and died two weeks later. One must ask whether, if an 18-year-old had died in that situation, the death certificate would have been written without an inquiry.

That is what we mean by getting round neglect—or, better still, preventing neglect—and considering seriously cases that involve older people.

Ann Ferguson: I have an extra point. We are aware of a significant number of incidents of neglect of vulnerable older people. About 75 per cent of those incidents are tied to financial abuse. There seems to be a link between the financial abuse of elderly relatives and their serious neglect.

15:30

Scott Barrie: Dorothy Sutherland depicted a tragic scenario and described its consequences. She asked whether the same consequences would have resulted if the person involved had been an 18-year-old. I suggest that the same might have happened because, under the present law, 18-year-olds are deemed to be able to make decisions for themselves. The dilemma that we face is how to decide what rights people have and

what rights the state has to intervene. Was your mentioning the scenario prompted by section 43, which is on the abuse of children?

Ann Ferguson: Yes. The opportunity has been taken to introduce a new aspect of criminal law by defining certain acts as criminal. Those acts have parallels with the proactive neglect of vulnerable older people. We should consider such neglect and decide whether it, too, is a criminal act.

Scott Barrie: Section 43 attempts to clarify exactly what we can and cannot do to children, but it also attempts to remove the present legal definition of reasonable parental chastisement. People who hit their children can claim, as a defence in law, that the act was one of reasonable parental chastisement. However, there is no such defence in law for attacking adults; older people have the same protection under the law as do you or I.

Ann Ferguson: An increasing number of older people are in exactly the same circumstances as were outlined in the case study that Dorothy Sutherland described. We are often approached by victims of neglect. You said that adults can choose whether to remain in such a situation, but it might be that the older person's only remaining family member neglects or mistreats them. Family dynamics, such as a false sense of family loyalty, mean that adults do not want to report their child for mistreating them. The neglect of vulnerable adults is another issue that must be considered if new criminal acts are to be introduced.

Scott Barrie: I understand that point.

On part 6, which is on non-custodial punishments, your submission states that you welcome the introduction of interim anti-social behaviour orders. How will those orders improve older people's lives?

Ann Ferguson: The elder abuse project, which we launched in February 2002, has raised awareness of the abuse of older people. Since the launch, an increasing number of older people who are abused by their neighbours have contacted us. Those older people put up with difficult behaviour from their neighbours, such as physical assault and verbal abuse and they are frightened to go out of their front door. They feel that they can do nothing to improve the situation.

Any improvement in the access to legal remedies for such situations will benefit older people. However, many older people who are in such situations are afraid of retribution. They can telephone the police, but they are worried about what might happen to them when the police go away and the neighbour is still next door. Older people who are harassed, intimidated, threatened or physically abused by neighbours are afraid; we welcome anything that will help to address that fear.

Dorothy Sutherland: I would certainly suggest having robust interagency procedures between housing departments, social work departments and the police. In many instances, the police are dealing with perpetrators under the age of 12 who are directly affecting the quality of life of vulnerable older people. It will not work for the older person without those agencies working together.

Scott Barrie: Your submission says that a frequent remedy—if we can call it that—for old people who are victims of anti-social behaviour is for them to be moved to a care establishment. Can you give us an indication of how widespread that practice might be?

Dorothy Sutherland: No, but we could submit some figures on that to the committee. The extent of that practice is considerable, from my experience over the years.

The Convener: You draw our attention to part 1 of the bill, which covers protection of the public at large. You suggest that those undertaking the assessment for an order for lifelong restriction should have some knowledge of serious violent sexual offences against vulnerable and older people. Is there any particular aspect of the bill that you wish to highlight in that regard?

Ann Ferguson: Over the past two years, we have found that there is a general lack of awareness of crimes against older people and the effect that crime has on them. There undoubtedly seems to be an increase in the incidence of serious violent and sexual offences against older people—3 per cent of calls to the elder abuse helpline are about rape and different types of sexual offences.

We are concerned that there is very little research on or knowledge in the system of the perpetrators of such crimes. If there is little understanding of why they are offending in the first place, there will be little ability to assess the likelihood of their reoffending. There is very little research on crime against older people in this country. There needs to be a better understanding and knowledge base of such violent and sexual offences against older people in order to carry out assessment effectively.

The Convener: To what effect would the development of such a knowledge base be? The whole point of the part of the bill that aims to protect the public at large is to protect older people and others from serious and violent offenders. There will be an assessment of an offender's history and of the likelihood of their offending again. What, specifically, would need to be taken into account in that assessment in relation to older people?

Ann Ferguson: Society still does not accept or believe that, for example, 88-year-old ladies can be raped, or that 94-year-old ladies can be sexually assaulted. If there is not a body of knowledge or understanding of why sexual offences are perpetrated against older people, we are asking whether it is possible to carry out a proper assessment of the risk of reoffending.

The Convener: Are you posing the question or are you suggesting that there would be some material difference if the people carrying out the assessment—

Ann Ferguson: We are highlighting—

The Convener: We are perhaps not clear about what you are getting at. Orders for lifelong restriction are quite a draconian measure. The whole point of them is to deal with someone who has offended against elderly people, who might be a serious violent or sex offender. You are saying that there has to be something in the assessment process to ensure that some understanding of older people has to be taken into account for the order to be applied.

Ann Ferguson: No—I was saying that there should be some understanding of the crimes perpetrated against older people and an understanding of that specific type of criminal behaviour. We know that that has not been well researched or documented, and that there is a poor body of knowledge about it.

The Convener: Because you represent and deal with older people, you do not specifically mention those provisions in the bill that aim to deal with youth offending. Do you have a view about that? I was not surprised that you commented on the interim anti-social behaviour orders, which are very important, particularly in neighbourhoods where there are many older people. Are those orders not tied in with youth crime? Do you have a view about the provisions in the bill that propose that children or young people aged from 16 to 18 should come out of the adult court system and go into the children's hearings system?

Ann Ferguson: We did not consider that matter, given the limitations on the size of our submission.

Dorothy Sutherland: I agree with the proposals, which I think are important. We would like to submit something to the committee on the matter. In my experience, the police have their hands tied when it comes to protecting people if very young children are involved. They do not seem to be able to deal with the problem. I am talking about incidents this week, last week and the week before that have been related to me by telephone. You are right, convener: it is essential that we give you something in writing on the subject.

The Convener: If the offer is there, we will take it up. That would be very useful. Do committee members have any further questions?

Bill Aitken: No, but I would like to say that the written submission was excellent, and answered many of our questions. You must have anticipated a number of the questions that we might well have asked, and I thank you very much for that.

The Convener: Before you leave us, do you wish to say anything in conclusion or emphasise any points?

Dorothy Sutherland: I would just like to thank you for the opportunity to be here today. We will follow up this evidence with two written submissions in further response to your questions.

The Convener: Thank you both for your evidence today and for your very full and helpful submission.

Coffee is available if members wish to take a five-minute break before we hear from our final two witnesses. Would you like to do that?

Bill Aitken: Could we make it 10 minutes?

The Convener: So that people can get some business done, I take it. Yes—we will break for 10 minutes and return just after 10 to 4.

15:41

Meeting suspended.

15:54

On resuming—

The Convener: I formally open the last session of the meeting. I welcome our second last set of witnesses on the important subject of the interim anti-social behaviour orders. We have not had much opportunity to discuss that matter, but we think that it is an important area of law. I welcome Alan Ferguson, who is the director of the Chartered Institute of Housing in Scotland, and Gavin Corbett and Grainia Long, who are the head of campaigns and the parliamentary policy officer, respectively, for Shelter Scotland. We will go directly to questions, but I will come back to you at the end to check whether there is anything that you want to put on the record before you leave us. We will begin with a line of questioning from Scott Barrie.

Scott Barrie: The proposal to create the interim orders suggests that there is a need that has perhaps not been met by existing provisions on anti-social behaviour orders. Is that your view?

Alan Ferguson (Chartered Institute of Housing in Scotland): I will go first. Thank you, convener, for asking us along. The institute's

response to the question raised by Scott Barrie is that there is a problem and that particular needs are not being met. We have done research over the past couple of years into anti-social behaviour orders and their use. Some local authorities are still not using the orders and there are also problems with their use.

We talked to our members throughout Scotland and to others in the housing community and found a concern that anti-social behaviour orders are not being used as well as they could be and that interim ASBOs will solve only one of the problems, which is being able to stop quickly anti-social behaviour. There is a perception that we are currently not able to do that and while that behaviour continues it disrupts the life and quiet enjoyment of other members of the community and other communities. There is a concern that the existing structure is not meeting particular needs.

Scott Barrie: I will turn later to Shelter Scotland to answer my original question. However, can you explain your point about local authorities using the current legislation in different ways?

Alan Ferguson: There is a range of remedies to tackle anti-social behaviour and there has been for some time. The difficulty is that it is up to each agency, whether local authority or housing association, to use those remedies. Our research found that not all local authorities have used anti-social behaviour orders. Similarly, not all of them in the past used interdicts or professional witnesses and they are not all good at developing the cases properly. Our research was done for the Executive and examined all local authorities and some housing associations. The evidence is that not all local authorities are using the existing remedies.

We are trying to demonstrate to local authorities what good practice is and why they should be using not only ASBOs to tackle the problem of anti-social behaviour, but a range of remedies.

Scott Barrie: I turn now to Gavin Corbett and Grainia Long.

Gavin Corbett (Shelter Scotland): One problem with ASBOs is that it takes longer to get one than it theoretically should. I suppose that interim ASBOs are intended to address that particular problem. The guidance on ASBOs, which was issued when they were introduced, states that in principle one should be able to get a hearing within two days of an incident arising. That clearly does not happen in practice. It usually takes much longer than that.

However, there are other problems with ASBOs that the interim form would not address. Those include issues about prosecution for a breach of an ASBO. That would continue to be a problem with an interim ASBO. Our evidence and anecdotal evidence indicates that prosecution for a breach is a relatively low priority and will remain so. There are also issues about practice. Some local authorities have made insufficient investment to familiarise staff with ASBOs so that they will work. That requires time and capacity building within local authorities.

Another relevant issue arises from the fact that registered social landlords—housing associations particularly—own more housing stock. They may have a problem with anti-social behaviour that they think an ASBO could address, but they have to get the local authority to take that order out on their behalf. Interim ASBOs will not address that problem—they will address some problems but not the whole range of problems.

16:00

Scott Barrie: We have heard that different local authorities interpret and use ASBOs in different ways, but time and the court process is your main concern. You have said that interim ASBOs would not be a remedy, so what would be a remedy for anti-social behaviour?

Gavin Corbett: I would draw on the substantial review of civil legal remedies that was commissioned by the then Scottish Office in the mid-1990s and published a couple of years ago. That review said unequivocally that tackling anti-social behaviour does not need new legal remedies; it needs investment in training and good practice to take the management of the response to anti-social behaviour into the communities where it happens.

There has been legal change three times in the past four years, and each change has required new training. That is time taken away from work on the current range of good-practice remedies, such as investment in sound insulation and using professional witnesses to get over some of the problems with evidence. I know that many cases are more serious, but more than half of all anti-social behaviour cases involve noise and that can be to do with the poor quality of the housing stock. Sometimes, when new legal remedies are introduced, they distract people from consideration of those quite basic issues.

Scott Barrie: I appreciate that we cannot keep adding to and changing the law because something does not work or is perceived not to work; and I appreciate that, at some point, we have to draw a line and say that what we have must be made to work. That seems to be what you are suggesting. However, as we have heard, and as we know from experience, different local authorities use the legislation in different ways and to varying effect. Are you saying that the current

legislation is adequate, but that it is not being applied adequately?

Gavin Corbett: I would not want to give the impression that interim ASBOs are a wholly bad idea—with a couple of caveats I would say that it is fine that they address one aspect of the problem. We have always supported ASBOs as being much more benign than eviction. However, if we expect interim ASBOs and other legal changes to bring about the changes that we all want in the most hard-pressed communities, we will be disappointed.

Alan Ferguson: There is difficulty with some aspects of the administration of the current legislation and we want to change that by using good practice. We have to get across to organisations how to use the legislation properly. The difficulty is that communities want problems solved now, but some of the remedies take time. Whether we are talking about mediation or whether we are moving towards eviction, it takes time, but communities want the problems solved quickly. We think that interim ASBOs can play a role, but that more needs to be done.

Over the years, problems have been highlighted to do with sheriffs interpreting things in different ways. They need more information and training to do with housing and anti-social behaviour. Local authorities, housing associations and landlords should not be left on their own to deal with the problem. Too often, we hear housing professionals saying that they are left on their own and that the police do not take the problem seriously, or seriously enough. We need to make the parts of the system work together to tackle the problem; we cannot simply rely on interim ASBOs as another layer on top of all the other layers. We have to make the system work better than it does just now.

The Convener: Trying to make the system work better is the crux of the matter and I want to pin you down on the detail of what you are looking for. The Housing (Scotland) Act 2001 tackled part of the problem, but there was to be further legislation on it and that is what we are discussing today. I take on board the point that dealing with anti-social behaviour is not just about legislation. However, if we believe that legislation is needed, we have to accept that the Criminal Justice (Scotland) Bill is the Executive's last chance in this session to deal with the problem and the last chance that we have to get it right. It would be useful if you were to give us a breakdown of exactly what the bill needs to include to provide a framework for the way forward. You talked about having more RSLs as opposed to local authority landlords. Is your starting point that we need to pass the powers of local authorities to RSLs?

Alan Ferguson: I will start answering that question and perhaps Shelter Scotland can come in afterwards. In the consultations that we have had with people who work in housing, we have found that there is no great desire for lots more legislation. However, you are right to say that we have to make the bill work. Although there is broad support for interim ASBOs, housing associations and RSLs cannot take them out—they have to go through local authorities. There is a perception that, in some local authority areas, housing associations have difficulties in getting the local authority to take out ASBOs. We are not arguing that all RSLs should be able to take out ASBOs, because that is not strategic. The issue is not just about a landlord—

The Convener: So what are you saying?

Alan Ferguson: No one knows why some associations cannot get a local authority to take out ASBOs against households in communities that are suffering problems, because no research has been carried out. All we know is that the associations have reported the problem. We have to try to ensure that the system works. I do not think that we necessarily need new legislation. We might have to get across the message to the Executive, COSLA and local authorities that they need to see ASBOs more as a tool with which to tackle anti-social behaviour not just in dealing with their own stock, but as part of their wider strategic role.

The Convener: Do you not want to see more legislation?

Alan Ferguson: I am clear that interim ASBOs will be another tool and we welcome them. I am saying that we need to get a number of other remedies right, because interim ASBOs will not solve all the problems.

The Convener: So the other remedies that you are talking about are not legal remedies.

Alan Ferguson: We are not using a range of remedies to tackle anti-social behaviour to the extent—

The Convener: Before we leave this point, I would like you to confirm that you do not think that we should legislate for RSLs to have the power to pursue anti-social—

Alan Ferguson: We have not come across any desire in Scotland for RSLs to go direct—

The Convener: So how do we get round the problem? You are saying that RSLs are having problems getting local authorities to take out ASBOs, so what is the alternative solution to giving RSLs the power to take them out?

Alan Ferguson: It is about guidance, good practice, the social neighbourhoods national co-

ordinator trying to get across to local authorities the importance of ASBOs and—

The Convener: Could we not shortcut all that by legislating to allow RSLs to take out the orders? What is the problem with that?

Gavin Corbett: There might not be a problem with that in principle and it might happen in the long run. When the idea of ASBOs was mooted in 1996, it was made clear that anti-social behaviour affects all our communities. We know that the problem is largely concentrated in the most deprived council and housing association estates, but the issue is one of community safety rather than only of housing management. If we make the ASBO only a landlord tool, we will be saying that anti-social behaviour is a problem that councils and housing associations have as landlords. That would be a step back.

For practical reasons in the future, there might be no alternative but to legislate for housing associations to be able to take out the order directly, but that would be a mistake at the moment, given that we do not know why housing associations are not finding it easy to get local authorities to take out ASBOs.

The Convener: In other words, you do not want RSLs to take on the role of dealing with anti-social behaviour in the community.

Gavin Corbett: No. It would be premature for them to deal with ASBOs.

Grainia Long (Shelter Scotland): COSLA has told us of a number of examples of protocols, written or otherwise, between RSLs and local authorities. Those protocols are an example of good practice, rather than legislation, being used to address anti-social behaviour.

George Lyon: Will you clarify why some housing associations are unable to get local authorities to implement ASBOs? Can you provide us with evidence of which local authorities are giving your members difficulties and the reasons for that? You must know how many ASBOs have been implemented in each local authority area. Can you give us written evidence of the picture throughout Scotland?

Alan Ferguson: We know of particular instances, but we are not yet clued up about why they are happening. We can try to find out.

George Lyon: Do you have the number of ASBOs that have been implemented in each local authority area?

Alan Ferguson: Yes.

George Lyon: Will you give us an example of the range?

Alan Ferguson: Last year, we carried out research for the Executive that showed that there were—I will try to get my hands on the number.

Gavin Corbett: The range is between three and five. The numbers are small.

While Alan Ferguson is looking up the numbers, let me add that, as Grainia Long mentioned, Diane Janes of COSLA, who gave evidence to the committee, has examples of the protocols. It would be possible to determine from those examples the areas in which more positive relationships have been built up between housing associations and local authorities. I may sound as though I am knocking the question back to someone else, but Diane Janes would be the best source of that information.

George Lyon: We are looking for the evidence now. If you can find it, that would be helpful.

Alan Ferguson: The survey that we carried out last year showed that only 14 of the 32 local authorities had applied for ASBOs and that five councils accounted for two thirds of ASBOs. It is clear that some local authorities have been using ASBOs more than others. Part of the problem is that the issue is not about more and more legislation, it is about trying to—

George Lyon: So you are saying that only five councils have taken out the majority of the orders.

Alan Ferguson: Yes. Five councils have taken out the majority of orders.

George Lyon: You have no idea why the rest are refusing or unwilling to use them.

Alan Ferguson: The authorities might feel that the problems with ASBOs are such that they do not want to go down that route or they might be dealing with the problem in other ways—a number of other remedies exist. Evidence shows that some local authorities are not geared up to taking out ASBOs. We get that information from our members or we pick it up in our discussions with housing associations.

George Lyon: Are the poor relationships that you mention between housing associations and local authorities one of the problems?

Alan Ferguson: Some difficulties arise because of communication problems between the local authority and the housing association or between the local authority and the police. There are problems in sharing information, communicating, co-operating and working together.

Gavin Corbett: One thing that emerged from the institute's research is that, although local authorities have the power to take out ASBOs as a strategic or community-wide tool, they perceive the orders to be a housing management tool, which makes them reluctant to respond to the desire of other landlords to have the orders taken out on their behalf. The policy area is immature.

One hopes that, over time, local authorities will perceive ASBOs to be a strategic tool and will become more responsive to the idea that other organisations can come to them with concerns. If that happens, a local authority can take out an ASBO on behalf of an RSL to protect the housing stock, community or neighbourhood for which they provide a service. However, we are not there yet.

George Lyon: Do you see interim ASBOs as a result of failure of communication in the areas where ASBOs cannot be put in place?

Alan Ferguson: I do not think that they will remedy the communication problems to which I referred. However, they will speed up the process for tackling problems about which communities are concerned. The key feature of interim ASBOs is that they allow speedy action to ensure that anti-social behaviour is stopped.

16:15

George Lyon: However, in the majority of areas there are no ASBOs. How can the process be speeded up if there are no ASBOs in place? Do you see interim ASBOs as filling that gap?

Alan Ferguson: Interim ASBOs are another tool that is available to us, but they will not fill the gap to which you refer. That will be done through encouragement, guidance and good practice. We need to show organisations how ASBOs and interim ASBOs can be used and the outcomes that those measures can have. It is important to demonstrate the practice and benefits of ASBOs and interim ASBOs.

Gavin Corbett: The introduction of interim ASBOs could have one of two results. First, it could lead to the same number of ASBOs being applied for, but their being granted more quickly. The number of ASBOs granted might remain at about 100 a year. Alternatively, the existence of an interim ASBO could lead many more authorities and housing associations to invest time in familiarising themselves with ASBO application procedures, which could mean that ASBOs were applied for more often.

Currently, authorities and housing organisations believe that obtaining ASBOs in time to deal with a problem is difficult. The introduction of interim ASBOs might remove that perception. The introduction of interim ASBOs could lead to many more ASBOs being granted each year. That would address concerns about the limited spread of ASBOs across the country and the fact that in many areas they have never been used. If provision is made in legislation for the introduction of interim ASBOs, it will become apparent over time whether that has led to an increase in the overall number of ASBOs granted.

The Convener: The committee may want to consider why the powers that currently exist are not being used. Do you think that the loss of security of tenure associated with ASBOs deters sheriffs from taking action against people who are responsible for anti-social behaviour?

Grainia Long: Shelter is concerned about the possibility of a link between interim ASBOs and security of tenure.

Gavin Corbett: The Minister for Social Justice has assured us that the bill is not intended to create a link between interim ASBOs and security of tenure. It would not be possible for a local authority or housing association to use the granting of an interim ASBO by a sheriff as a ground for reducing a Scottish secure tenancy to a short Scottish secure tenancy. We need to be vigilant to ensure that that does not happen. If it did, sheriffs might feel that by granting interim ASBOs they were opening up the possibility of tenants losing security of tenure and facing summary eviction. In such cases, the grounds for summary eviction would not be limited to anti-social behaviour. Tenants could be evicted for reasons entirely unrelated to the circumstances that had led to interim ASBOs being granted in the first place. That is our primary concern about interim ASBOs.

Grainia Long: We are concerned that such a provision would single out tenants in the social rented sector, as opposed to tenants in the private sector. Margaret Curran has given us assurances on the issue and we hope that Parliament's approach will reflect the Executive's policy intention.

The Convener: Would our witnesses like to make some concluding remarks?

Alan Ferguson: I thank the committee for inviting us to give evidence. If members require further information from us, the Chartered Institute of Housing in Scotland or Shelter Scotland will try to supply it.

The Convener: Thank you for that offer, as we may require further information.

As I said, we think that the provisions relating to ASBOs are vital to the bill. Bill Aitken was involved in scrutiny of the Housing (Scotland) Bill, which dealt with another aspect of anti-social behaviour. The Criminal Justice (Scotland) Bill may provide us with the only opportunity to put in place the right framework for dealing with anti-social behaviour. However, I acknowledge what you say. The issue is not just about legislation; it is about protocols and practice. Perhaps we will have to think about the fact that we do not have information on why local authorities do not proceed with the measures that exist at the moment, as addressing that problem might be fundamental to establishing the type of framework

that you talk about. What you have said to us is important. If any more information is available, we would be happy to receive it. Thank you for your evidence.

We move to our final set of witnesses. We will hear from Sheriff Richard Scott, who is the president of the Sheriffs Association, and Sheriff Hugh Matthews, who is the association's honorary secretary. Thank you for coming along to the tail-end of the meeting. It has been a long day for us, but we are interested to hear what you have to say to us this afternoon. We would like to take Sheriff Matthews up on his offer of telling us a bit more about the drugs courts, if there is time. We are interested in that whole area.

We will go straight to questions. We have approximately half an hour. At the end of our questions, I will give you the opportunity to talk about anything that you feel has not been covered.

George Lyon: In your response to the Executive's consultation, you were sceptical about the idea of a non-statutory scheme for victim statements. Now that a statutory scheme has been proposed, has your response changed?

Sheriff Richard Scott (Sheriffs Association): Our position is substantially the same as the one that we adopted in our response to the consultation and that Sheriff Matthews stated in the letter that he sent to the committee. I hope that you have had a chance to read that letter.

George Lyon: We have indeed.

Sheriff Scott: The main thrust of our comments in response to the consultation was that information on the impact of the crime on the victim should come through the Crown. In paragraph 16 of our comments, we say that

"the key element is the role of the Crown. It must be a matter for the Crown to ensure, as far as it can, that the impact on the victim is adequately taken into account in the decision whether or not to prosecute. Similarly, it must be a matter for the Crown to ensure, as far as it can, that the court is adequately informed of the impact of the crime on the victim."

Unfortunately, that point has not been accepted in the bill. Section 14(5) reads:

"Where a victim statement is made, the prosecutor must—

(a) in solemn proceedings, when moving for sentence"

or

"(b) in summary proceedings, when a plea of guilty is tendered … or the accused is convicted"

lay the victim statement or statements before the court. In other words, the bill wants us to have the statement in our hand and read it all, rather than have the information collated, put into logical order, with the irrelevant bits taken out and the relevant bits left in, and presented to the court in the traditional way. That is where we stand on the substance of the matter.

George Lyon: So there has been no change from your original views.

Sheriff Scott: Not on the main point. Although we were willing to accept your invitation to come here, we believe that, if the provision for having the victim statement placed before the court is to be placed in statute, most unfortunate consequences will flow from that—consequences that we spelled out both in our comments and, to some extent, in the letter that we sent to you.

George Lyon: In paragraph 6 of your comments on the Executive's consultation document, you quote the Law Reform Commission of New South Wales, which states:

"A court applying dispassionate justice is simply an inappropriate forum for addressing the need of victims to express their grief and anger".

Do you endorse that view? Does it follow that there is no role whatever for victim statements in the criminal justice process?

Sheriff Scott: The answer to the first question must be largely yes—a court must apply dispassionate justice. For example, it is important that we do not sentence when we are angry about what we hear. We must be entirely dispassionate and see all sides of every question that we must consider and decide on. We quoted the commission to make that point.

On your second question, I hope that we have made it absolutely clear that we are not against victim statements or the principle that the impact on a victim of a crime is an important factor to be taken into account by a court in sentencing. We would be unhappy if people got the impression that we think that the impact of a crime on a victim is not important. However, we are concerned about the mechanism whereby information that we need about the impact of a crime on a victim is brought before a court.

George Lyon: Will you elaborate on what the impact of victim statements, as described in the Executive's bill, is likely to be on court procedures, sentencing policy and appeals to sentences?

Sheriff Scott: There are many questions there. I will try to deal with them one by one as quickly as I can. If the bill becomes law, whenever somebody is convicted, the victim statement or statements—there may be dozens of them if a person who likes to write letters is involved—will have to be put before the court.

It is inevitable that statements will contain a great deal that is irrelevant, that may not be true or that may be prejudicial to one party or the other.

People out there—victims, ordinary men and women, members of the public—do not have a sense of what is relevant. To be fair, they do not know what will be relevant by the time the case comes to be decided.

We can be involved in 10 or more summary trials in a day and we find that, in many of them, there is not just one accused person—there may be one, two, three, four or five accused persons. In many of them, there is not just one simple charge—there may be one, two, three or sometimes 20 to 30 charges to consider and 20 or 30 victims in one case.

Unless there is compromise, we, the fiscals or justice would never be done. Pleas must be reached and understandings arrived at between the Crown and the defence. A case is presented on the basis that someone pleads guilty to part of the charge, but not to the rest of it, so we are left with only a part of what the person has been charged with.

The victim who has prepared their statement does not know anything about that. The victim statement might include material that is not even relevant to what the accused was originally charged with. It might include details of a previous history of ill will and malice between the parties and all sorts of prejudicial, irrelevant stuff. The bill wants us to deal with such material in every applicable case.

16:30

The document that the Executive submitted for consultation estimated that there would be 250,000 victim statements in a year. We did some sums to reckon how many we would get and we worked out roughly that, if a sheriff did nothing but criminal work, they could expect an average of 40 victim statements a week, which is eight a day. That is based on the assumption that we do only criminal work, but as we do civil work for at least a third of our time, we might expect the figures to be much higher than that. Therefore, victim statements would represent a huge and unnecessary imposition, to use the literal meaning of the word, and, as we said in our submission, they would not serve victims because they would lead to more dissatisfaction and disillusionment. The reform would not achieve the ends that it has been designed to achieve.

In addition to the point about reduced pleas, there is the complication of the statement having to be shown to the accused. According to the bill, it would be shown to the accused once they have been convicted. The accused or their advisers would have to examine the statement and consider whether they agreed with it. If it contained material that the accused or their advisers did not know about or that they believed to be false, it would be challenged. They would say to the court that they did not accept such-and-such a part of the statement or, more than likely, they would ask for time to consider the statement. Instead of being dealt with there and then, the case would be put off to another day and, most likely, to further days beyond that. I could go on.

George Lyon: I take it that you disagree that the victim statement should have some bearing on the sentence that is handed down to the accused.

Sheriff Scott: That depends on what the victim statement says. If things were done in the traditional way, with the Crown stating the facts, we would expect the Crown to give us any information that it had on the impact of the crime on the victim. If victims had a right to give victim statements—we do not quarrel with that concept—the Crown would be able to give us a comprehensive indication of the impact of the crime on the victim without introducing irrelevant or challenged matters and of course we would take that into account. We would take into account everything that was relevant and material to sentencing. That is what we do—we hear the facts from the procurator fiscal and we hear the plea in mitigation. If we have heard the trial, we will have heard the evidence. In making any discretionary decision, we take into account all considerations in determining how much weight to give to one factor or another.

I am speaking mainly about cases in which a plea is made, because in the vast majority of cases a plea is made. If there is a trial, we get the best evidence of all—the evidence that the victim gives. Under existing law, we expect the Crown to lead evidence, not just of what happened, but of the effect on the victim. The Crown is alive to such considerations and it has been for some years. People are often asked, "How did you feel about this? How are you now? How has this affected your life?" We receive evidence about that and make decisions on whether it is relevant or important. In most cases, it is. We can give effect to that when we reach our ultimate decision.

George Lyon: Does that usually happen in the case of a plea of guilty?

Sheriff Scott: If there is a guilty plea, we do not hear evidence. We hear a statement from the Crown.

George Lyon: Does that statement usually contain information about the impact of the crime on the victim?

Sheriff Scott: It does and it does not in that, if the impact is not spelled out, it is still obvious. I do not want to be cynical or complacent about that—I hope I am not.

However, we might, for example, be given information that as a result of an attack, an old lady had broken wrists that did not heal properly and so she had to go back to hospital several times to have her wrists rebroken and reset. She was scared to go out of the house and had to give up going to the social club where previously she had her lunch every day with her friends. If the Crown statement tells us about that, we do not need to know much more. Even if we do not hear the detail and all we hear is that the old lady was knocked down, broke her wrists and had to go to hospital for a couple of operations, we know that that is very nasty. We do not live in the clouds; we are ordinary people and members of our families have had that sort of thing happen to them. Some of those things have happened to us. We do not need to have it all spelled out in great detail.

To some extent, although we do not under existing law know about the whole impact, we think that we know enough in most cases. If the law were changed so that everyone had the right to make a victim statement to the Crown—which is what we think we should happen—then the Crown would have to tell us what that statement says, in so far as it is relevant to the crime. That might be an improvement.

The Convener: Could you clarify what you said to George Lyon? You said that you understand the impact of a serious crime on the victim, such as the old lady that you talked about. Would you take the severity of the assault into consideration when sentencing?

Sheriff Scott: What I have been trying to make clear is that we listen to everything that we are told. Everything that we are told is relevant and is not in dispute. We hear the statement about what happened, and we hear the plea in mitigation. If neither of those is challenged, they become the facts in the case.

The Convener: So the answer is that you do take the severity of an assault into consideration.

Sheriff Scott: Yes, definitely. It would be wrong if we did not. Under existing law, without any of the changes that are proposed in the bill, that is what happens. Sheriffs understand that if we did not, it would be wrong.

Mr Hamilton: That said, paragraph 9 of your submission is relevant, because it says:

"We know that sometimes the Crown's narration of the facts of the case is less than full. If there is relevant information, such as information about the impact of the crime on the victim, that the court is not getting, then we welcome efforts to make it more likely that the court gets the information it should have. That, we believe, is a matter that should be addressed by the Crown."

You are really saying that the situation is adequate at the moment but, even if it is not adequate, the way to resolve it is through reform of the system, so that the Crown brings such information to your attention. However, you are saying that that is quite different from a full victim statement, which you are obliged to use to inform your decision making.

Sheriff Scott: That summary is entirely accurate. The Crown's information is not in all cases as full as we would like it to be, but I am not saying that that is a general situation. Sometimes we say, "The information that we have is not as full as we would like. Please give us more and we will hear you next week on the subject." We can deal with such situations even as matters stand.

We acknowledge that we do not live in a perfect world and that there is room for improvement. However, that improvement must come through the Crown. The best way of dealing with such situations is not to have to wade through sheaves of irrelevant, perhaps spiteful, perhaps malicious or untrue, self-interested or ill-motivated material.

Mr Hamilton: I asked that question because I wanted to go back to the beginning of the process. Why is this happening at all, what is the problem that has been identified and what are we doing to resolve it? The evidence that we have heard does not relate the problem to sentencing. No one, including the Executive, is suggesting that wrong sentencing decisions are being arrived at. None of the witnesses—a bizarre coalition of Victim Support Scotland, Women's Aid and the sheriffs, which must be a rare combination—suggests that victim statements should be taken on board during sentencing. If victim statements are not to have a material impact on sentencing—that seems to be the coalition view—I wonder why we are bothering with them in the first place.

The Minister for Justice outlined two different bases for victim statements. First, they have some therapeutic value—a victim will be able to have his or her say in court. I absolutely agree with and understand that. Secondly, such statements would have an impact on sentencing. Why are we doing this?

Sheriff Scott: Duncan Hamilton has identified the two elements, which are information and victims' feelings. Our acceptance of and, to some extent, our enthusiasm for victim statements is based on getting fuller and better information in order better to do justice and to reach better decisions. In general, the more informed a decision is, the better it is. We welcome victim statements because they will give us better information.

The other side is apparent in the victims charter and some of the associated rhetoric. We have heard it from Victim Support, which I used to support; I was chairman of the victim support

scheme in Aberdeen when I was a sheriff there. Some of that rhetoric presents difficulties. Enabling victims to participate in the criminal justice system, empowering victims, making them feel that their voice has been heard and that they are listened to are worthy, if unachievable, aims.

We must deal with eight or 10 cases between 10 am and 10.45. In such cases, the fiscal might get up and say that the victim's house was broken into and that £3,000 of intimate personal property including family heirlooms was taken, but that the accused denied the offence when spoken to by the police and has a drug problem or did it to buy Christmas presents for his children. It is totally unrealistic to expect victims in those cases to be other than slightly disappointed when they hear the sheriff say, "Very well," and dispose of the case. It is all over and done with in five minutes. One can understand how that is rather disappointing for a victim who wants to say, "This happened to me!" We understand that, but we cannot put it right by telling the sheriff to go away, read all the stuff and show how concerned he is. We would not get through the day; we do not have the time.

Mr Hamilton: I am aware of the time so I shall be brief. You will have heard questions being asked about the practicalities of the proposal: when the statement would be taken; whether the sheriff could challenge the statement against subsequent statements; who would take the statement and guide it; whether it is a legitimate personal statement or something that is coached; and so on. It strikes me that any half-decent lawyer would challenge such statements until he or she was blue in the face, but that does not seem to be the evidence from England. Do you know anything about that, why have the statements not been challenged and would you expect the level of challenges in Scotland to be significant?

Sheriff Scott: I know that the minister said that he was making his own inquiries about the situation in England. I do not know about that. I was out of the country last week and I have not had time to check it out—Sheriff Matthews has not done so, either. We cannot tell you what happens in England, but we know what happens here.

If the Crown starts leading evidence in its statement or during the trial of something that is not relevant to the charge that is before the court or the charge upon which the person has been convicted, the defence will start shouting and say that that evidence is inadmissible, that the court should not listen to it and that it is not relevant. We try to resolve such situations quickly. If we cannot, the trial must be put off until another day and witnesses have to be brought back to the court or have to appear before the court when they would not otherwise have had to.

We have experienced something similar in relation to the recovery of the property of convicted drug dealers. At the end of a few cases—certainly not 250,000 a year—the Crown will serve on the accused a document, of which the court is given a copy, saying that it proposes to seize a specified amount of property. Invariably, the accused, through his adviser, says that the specified amount is not the proceeds of drug dealing. That means that it takes, on average, nine months before the amount of money that is to be seized can be agreed on. The matter usually comes back to court once every three to five weeks. That sort of thing could happen easily with victim statements if, as the Executive proposes, the document is served on the accused at the same stage of the process at which a convicted drug dealer's property is seized.

16:45

The Convener: Unfortunately, we must leave that subject because I want to spend a few minutes discussing with Sheriff Matthews the experience of Glasgow's drugs courts. Bill Aitken will begin that line of questioning.

Bill Aitken: I do so with the advantages of having had a presentation from one of Sheriff Matthews's colleagues and of having discussed the matter informally with Sheriff Matthews.

How many people are under the jurisdiction of the drugs court in Glasgow?

Sheriff Hugh Matthews (Sheriffs Association): I did not know that I was going to be asked that question so I do not have that information with me. I think that about 37 or 38 people are currently under our jurisdiction and a few more are in the pipeline. However, the numbers are drying up at the moment and have been for the past few weeks.

Bill Aitken: I should perhaps ask you to underline the fact that there are 38 cases, rather than 38 people who have appeared once. Each person appears more than once.

Sheriff Matthews: Yes, each of the 38 people has numerous complaints. They have committed a vast number of offences. There are 38 individuals with a lot of baggage.

Bill Aitken: I recall that the average number of offences that each person had was 17 and their average number of custodial sentences was 10. Is that the case?

Sheriff Matthews: Far be it from me to argue—I have not counted them. The figure is something like that.

Bill Aitken: In dealing with those people, you

recommend that they undergo drug testing. However, I was surprised that no sanction is taken against any person who turns up for testing on fewer than four out of six occasions. Is that the case?

Sheriff Matthews: I am not sure whether that is right. There is a protocol that involves formal verbal warnings and written warnings. There is a certain amount of discretion in the hands of treatment providers, social workers and addiction workers. If someone provides a reason for having missed a meeting, the matter will not be taken anywhere. However, we are notified of any absences. It is up to us thereafter to take such action as we see fit. We are not bound by protocols, unlike medical professionals and social workers, but there is a sort of protocol to be followed before a written warning is issued, for example. Bill Aitken may well be right about the actual figure.

Bill Aitken: I am trying to establish the thinking behind this. A person can fail to turn up to one third of drug tests and there will be no sanction. They can still be under the influence of drugs and can test positive and there will be no sanction. Can you explain the thinking behind that?

Sheriff Matthews: Failing to turn up might occur over a short period, for example over two weeks or a review period of a month. If such failure were to persist for longer, we would take action. We would probably take the view that such a failure was a breach of the order. If the person is not turning up, we cannot do anything with them, and that is a ground for viewing that failure as a breach.

As far as testing positive for drugs is concerned, the point of such orders is to try to get people off drugs and thereby to reduce offending. If we could get them off drugs on day one, there would be no point in the drug court. The drug court's raison d'être is to get people off drugs. Over six months, we have seen a substantial reduction in drug use by most people who have become the subject of orders; however, we appreciate that it is a gradual process and that there will be relapses. We are not empowered to take action if somebody simply tests positive for heroin or cocaine—that is not the point of the drug court. We are building heavily on the experience of drug treatment and testing orders. The Parliament's intention was to reduce drug taking, but not necessarily to do so right away. It is not realistic to expect us to be able to do that right away.

Bill Aitken: How has the reoffending rate been?

Sheriff Matthews: I am not sure whether to say it has been very good or very bad. It is very good in the sense that very few people are reoffending. Some have reoffended—I cannot say that nobody has—but in my experience, the reoffending rate compared with that before the orders were introduced is much reduced. It is early days. One must be cautious six months into an order. I think that it was the *Evening Times* that said that we had reduced drug-related crime in Glasgow by 90 per cent. I do not think that even Eliot Ness could do that. We have to take it canny.

Bill Aitken: That is fair. I am conscious of the time, convener, but I have one final question. What about pipeline cases? Suppose that someone who is under the jurisdiction of the drugs court commits another offence—allegedly—and pleads not guilty. With the current trial diet delays in Glasgow it would be about five months before the case was disposed of. What happens in such cases?

Sheriff Matthews: Until the case is disposed of, we simply carry on with the disposal, because a person is presumed to be innocent. People who are the subject of orders frequently plead guilty. The first calling of new cases is generally before either me or my colleague Sheriff O'Grady. If the person pleads guilty, we decide each case on its merits. We have sometimes sentenced people to custody with a view to their re-engaging in the drug court programme when they come out. On other occasions, we have not done that—it depends on the nature of the offence.

We have to make sure that offenders appreciate that they cannot be the subject of an order and commit offences and get away with them, but sometimes we defer sentences. We have a number of people on deferred sentences to enable us to have some sort of hold over them—for want of a better expression. We have done that in particular because interim sanctions have not been available to us. However, the bill will provide them; they are important. If I may, I will address that issue for a moment. I am pleased about the interim sanctions. I was on the working group that helped to set up the drug court in Glasgow. Incidentally, it is a drug court, not a "drugs court". I do not know where the term "drugs court" has come from.

I have a problem with section 36 of the bill. It gives the drug court the powers that we are looking for—to impose short periods of detention of up to 28 days, and to impose community service, without bringing an order to an end. That is perfectly fine, but my colleague Sheriff O'Grady and I are concerned about what happens at a review hearing at which a breach of an order is alleged, which the offender denies. As section 36(7) stands,

"only if … that person's failure to comply is proved to the satisfaction of the drugs court is that court entitled to proceed"—

that is, in other words, to take the suggested measures.

When we set up the court, we were of the view that, if a breach was contested, it should be farmed out to one of the other courts in Glasgow for another sheriff to decide upon. The basis for that is simple. A fundamental aspect of our drug court—and every drug court of which I am aware—is that we have a team approach. The addiction workers, the medical workers, the sheriffs, the fiscal and the defence play a part in the process. Everyone who is involved plays a part in the process. The ultimate decision on what to do is the sheriff's, but before the court sits in the afternoon, we have a pre-court review, at which we go into details about the offender. We can discuss personal matters, such as HIV problems and family problems, that we would not go into in open court. We know all about the offender. Not only do we do that, but we train together with the other members of the team so that we all know what the others do.

The team approach is crucial to the success of the court. My difficulty is that, if a failure to obtemper the order is alleged and goes to proof, an innocent bystander would see the accused and a member of my team and would have little difficulty working out whom I will believe. That cannot be objectively right. I take the view that that would be a breach of the European convention on human rights. We could therefore not deal with such a case and if we cannot, nobody can.

The Convener: I thank you for bringing that to our attention. We need that sort of evidence on where the bill needs to be amended to ensure that it has the practical effect that is intended.

Sheriff Matthews: I am happy to provide written amplification of that matter. My description just now was a bit brief. If the committee wants anything in writing, I will be happy to provide it.

The Convener: Because you have offered, we will take you up on that. It would be useful if you could provide any statistics, even though you accepted Bill Aitken's statistics—which we do not doubt for a second.

Sheriff Matthews: I can provide those for you.

The Convener: We are discussing a particularly important aspect of the bill. We have not had a proper chance to examine that aspect apart from today. What you have said to us is extremely interesting and helpful.

I will ask Sheriff Scott a question about victim statements. I heard loud and clear what you said about practical difficulties, but you said that procurators fiscal do not always give you the information that you would like about victims. Might one of the ways to address that be to revise the practice, rather than to place a duty on the procurator fiscal?

Sheriff Scott: That arose earlier when one of the committee members asked about it. I said then that we acknowledge that information on victims needs to be improved, but I would not like anyone here to think that we are criticising the way in which the Crown has presented such information in the past. More recently, the procurators fiscal have shown themselves to be alive to the issue. Sometimes they cannot get the information; they have often to rely on the police to get information for them, so if something in that process breaks down they do not get all the information that they need. I do not want to give the impression that the problem is serious.

The Convener: That was not the impression that you gave. I just thought that revising the practice might be another direction in which you could go to ensure that the maximum amount of information on the position of the victim was given, if victim statements are not the way forward.

Sheriff Scott: I have said—it is on paper—and I repeat that we are not against victim statements. Victim statements should go to the fiscal, and the fiscal should present what is relevant and material to us, using the statement. We are not against the statements.

I will comment on one other matter that has come up only indirectly during questioning. Quite a number of people who might choose, or be invited to give and accede to giving, a victim statement might, one way or another, live to regret it. We base that on having considered what the situation would be if, for example, the victim, at a moment when they were particularly angry about what had happened, said something on paper that was exaggerated or untrue and wished to withdraw it. There is no going back on something such as a victim statement. It is not possible to withdraw it. It is not confidential. If it is produced in court, it is a public document. It is in the public domain and everything that is in it can appear in the papers. Victims might live to regret that.

We referred to an article in the *Criminal Law Review*, entitled "Victim Impact Statements: Don't Work, Can't Work". The writers found increased levels of dissatisfaction among victims who had made victim statements. A proportion of them ended up being much more dissatisfied than they would have had they given no statement.

There are big problems with victim statements. It is a lovely idea to allow victims their say, but it does not work.

Sheriff Matthews: I have a copy of that article. I will leave it with you, if you like. I do not want to say much else, except that the views that I have expressed are not those of the Sheriffs Association; rather, they are my views as a drug court sheriff.

The Convener: I thank you for those views because, as much as I am a reader of the *Evening Times* and believe everything that it says, I find it useful to attach some caution to what I read there.

I thank you both for your evidence. It has been very interesting and the quality of what you have had to say has been important to us. I cannot thank you enough for it.

Believe it or not, those were the last of our witnesses. That is the end of a very long day. I remind committee members that we meet again next Wednesday. We will discuss the Criminal Justice (Scotland) Bill again, if members have not been put off by today. I am sure that you will be back for more. Members have a chance to think about the evidence that we have heard today and I am sure that all agree that it was very interesting.

Next week, we will hear from the Faculty of Advocates, the British Psychological Society and the Parole Board for Scotland. That will be another interesting set of witnesses. We will also hear from the Law Society of Scotland.

George Lyon: Will that be different from the evidence that we heard from the British Psychological Society two weeks ago?

The Convener: Yes. We will deal with part 1 of the bill. We dealt two weeks ago with part 7.

George Lyon: So we are bringing the British Psychological Society back.

The Convener: Yes, we are bringing that society back because it has something important to say about part 1.

That is all the business for today. I thank you for your patience and for attending.

Meeting closed at 17:02.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, 375 High Street, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Friday 14 June 2002

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Central Distribution Office, the Document Supply Centre or the Official Report.

PRICES AND SUBSCRIPTION RATES

DAILY EDITIONS

Single copies: £5
Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WHAT'S HAPPENING IN THE SCOTTISH PARLIAMENT, compiled by the Scottish Parliament Information Centre, contains details of past and forthcoming business and of the work of committees and gives general information on legislation and other parliamentary activity.

Single copies: £3.75
Special issue price: £5
Annual subscriptions: £150.00

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75
Annual subscriptions: £150.00

Standing orders will be accepted at the Document Supply Centre.

Published in Edinburgh by The Stationery Office Limited and available from:

The Stationery Office Bookshop
71 Lothian Road
Edinburgh EH3 9AZ
0131 228 4181 Fax 0131 622 7017

The Stationery Office Bookshops at:
123 Kingsway, London WC2B 6PQ
Tel 020 7242 6393 Fax 020 7242 6394
68-69 Bull Street, Birmingham B4 6AD
Tel 0121 236 9696 Fax 0121 236 9699
33 Wine Street, Bristol BS1 2BQ
Tel 01179 264306 Fax 01179 294515
9-21 Princess Street, Manchester M60 8AS
Tel 0161 834 7201 Fax 0161 833 0634
16 Arthur Street, Belfast BT1 4GD
Tel 028 9023 8451 Fax 028 9023 5401
The Stationery Office Oriel Bookshop,
18-19 High Street, Cardiff CF12BZ
Tel 029 2039 5548 Fax 029 2038 4347

The Stationery Office Scottish Parliament Documentation Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries
0870 606 5566

Fax orders
0870 606 5588

The Scottish Parliament Shop
George IV Bridge
EH99 1SP
Telephone orders 0131 348 5412

sp.info@scottish.parliament.uk

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers

Printed in Scotland by The Stationery Office Limited

ISBN 0 338 000003 ISSN 1467-0178