JUSTICE 2 COMMITTEE

Tuesday 16 December 2003
(*Afternoon*)

Session 2

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JUSTICE 2 COMMITTEE
17th Meeting 2003, Session 2

CONVENER

*Miss Annabel Goldie (West of Scotland) (Con)

DEPUTY CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

COMMITTEE MEMBERS

*Jackie Baillie (Dumbarton) (Lab)
*Colin Fox (Lothians) (SSP)
*Maureen Macmillan (Highlands and Islands) (Lab)
*Mike Pringle (Edinburgh South) (LD)
*Nicola Sturgeon (Glasgow) (SNP)

COMMITTEE SUBSTITUTES

Ms Rosemary Byrne (South of Scotland) (SSP)
Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
Michael Matheson (Central Scotland) (SNP)
Margaret Mitchell (Central Scotland) (Con)
Margaret Smith (Edinburgh West) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

George Anderson (Children's Panel Chairmen's Group)
John Anderson (Children's Panel Chairmen's Group)
Edith Blake (Children's Panel Chairmen's Group)
Alison Cleland (Scottish Child Law Centre)
Rosemarie McIlwhan (Scottish Human Rights Centre)
Alan Miller (Scottish Children's Reporter Administration)
Jackie Robeson (Scottish Children's Reporter Administration)
Diane Watt (Children's Panel Chairmen's Group)

CLERK TO THE COMMITTEE

Gillian Baxendine
Lynn Tullis

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Richard Hough

LOCATION

The Chamber

Scottish Parliament

Justice 2 Committee

Tuesday 16 December 2003

(*Afternoon*)

[THE CONVENER *opened the meeting at 14:04*]

Item in Private

The Convener (Miss Annabel Goldie): Good afternoon, everybody. I welcome you to the 17th meeting this session of the Justice 2 Committee. Item 1 on the agenda is to ask the committee whether it wishes to take item 3 in private. Is that agreed?

Members indicated agreement.

Antisocial Behaviour etc (Scotland) Bill: Stage 1

The Convener: Item 2 on the agenda is an evidence-taking session on the Antisocial Behaviour (Scotland) Bill. We commence with Rosemarie McIlwhan, the director of the Scottish Human Rights Centre. We are very pleased to welcome you to the meeting this afternoon. I have scheduled a rough time scale: I suggest that we spend about 30 to 35 minutes on this, depending on how we get on. I ask members to indicate their desire to put questions to our witness. Mike Pringle is interested in antisocial behaviour orders for under-16s.

Mike Pringle (Edinburgh South) (LD): Thanks very much for coming, Rosemarie. I hope that your crutches are not with you for too long.

It is suggested that ASBOs will be used for under-16s, but only for those above the age of 12. Do you have a view as to whether 12 is the right age for that lower threshold? The Communities Committee recently suggested that ASBOs should be available for those aged between eight and 15, rather than just those between 12 and 15.

Rosemarie McIlwhan (Scottish Human Rights Centre): Thanks for those warm wishes. We suggest that ASBOs should not be used on children at all. If they are to be used, they should be granted through the children's hearings system. However, I emphasise that we think it inappropriate for ASBOs to be used against children. You must bear it in mind that we are talking about children, rather than about people who are fully responsible for their actions. On that basis, we should be able to treat them as children and treat the reasons why they engage in antisocial behaviour with that in mind.

The children's hearings system offers a much more appropriate way of dealing with things, as it treats the behaviour. If there is a problem at home, social work can get involved. If there are psychological problems, medical practitioners can get involved. That is better than criminalising people's behaviour when they are just children, which effectively gives them a criminal record at the age of 12, or possibly younger. That is unacceptable. You need to treat the behaviour, not criminalise it. I suggest that if you proceed and allow antisocial behaviour orders to be used against children, the threshold of eight years is certainly not acceptable. Twelve is pushing the limit as it is. We would be happier if ASBOs were used only for those aged 16 and over.

Nicola Sturgeon (Glasgow) (SNP): I appreciate what you say about keeping children who have problems in the children's hearings system rather than introducing them into the court

system—although ASBOs are a civil measure. If hearings had the power to grant ASBOs to under-16s, would you feel more relaxed about that? Is it the granting of the ASBO to an under-16 that you are more worried about or is it the fact that that is done by a court rather than through the hearings system?

Rosemarie McIlwhan: We would certainly feel happier if ASBOs were granted through the children's hearings system, as hearings have a much more holistic approach and consider the circumstances around the behaviour, rather than simply put a penalty on it. I accept what you say about ASBOs being a civil measure, but it is a criminal offence to breach one. That is a serious blurring of the distinction between civil and criminal law, over which we have fundamental concerns.

We would not be happy about ASBOs being used against children under 16 in any shape, manner or form, but we would have fewer concerns about their being implemented through the children's hearings system.

Nicola Sturgeon: I draw your attention to the part of the bill that gives the police the power to designate an area a problem area and, within that area, to disperse groups of two or more if their behaviour is deemed likely to cause or to be actually causing distress or alarm.

Could you comment on those provisions? Are they necessary, in that they add powers that the police do not have at the moment? Are they compatible with a human rights position? Is it your organisation's opinion that they are useful provisions, or do you agree with the Association of Chief Police Officers in Scotland that they might be counterproductive, in that they run the risk of alienating young people from the police?

Rosemarie McIlwhan: With regard to whether they are necessary, we take our steer from the police. I know that you have had lots of evidence from the police that the powers are not necessary, as the police already have sufficient powers. In terms of law, we agree with that.

In terms of compatibility with the European convention on human rights, we have serious concerns that the powers potentially breach article 11, on the right to freedom of assembly and association. The committee needs to give careful consideration to the balance that is struck. In particular, you must have regard to how the measures might actually be used. Already, there are allegations against the police of discrimination against young people, which could be exacerbated if the provisions are allowed. That would then raise issues under article 14 of the ECHR.

I agree totally with the ACPOS suggestion that the provisions are counterproductive. If you allow the police to use the measures, they may alienate themselves from the communities with which they are trying to deal. I can give you an amusing example of that. We all congregate on the corner of the Royal Mile after cross-party groups. If somebody complained that we were getting a wee bit agitated about, for example, antisocial behaviour orders, we could be moved on just because of that. That is not what you want the measures to do. You need to be careful about what is put in place, so that you do not breach people's freedom of assembly.

Nicola Sturgeon: I take it from that that you argue that there is too much subjectivity in the bill, because it focuses not on whether the behaviour of the group is legal or illegal, but on the effect that the behaviour has on other people, and different people will react in different ways to a group of young people hanging around the streets. Should the bill be more objective, and focus on the behaviour? If people are committing an offence, fair enough, but if they are simply hanging about talking to each other, that is something different.

Rosemarie McIlwhan: That is our concern with the vast majority of the bill—it is very subjective. There is a lot of discretion in deciding whether an offence is being committed. That raises problems of certainty under article 6 of the ECHR and in terms of how the measures will work in practice, which opens up a lot of potential for discrimination. You mentioned people being concerned about young people being noisy on the street corner, but there are many other issues. For example, if some people were protesting outside Faslane, they had not provided notification under the Civic Government (Scotland) Act 1982—which is provided for in the bill—and someone complained, they would be moved on, despite the fact that they were peacefully exercising their ECHR right to protest.

The Convener: Is your objection to the proposed dispersal power that an offence of itself is not being committed, and that the bill would create the new offence of being in a group of two or more people, or is it—as you have just suggested—that you do not like the mechanism in the bill to establish the areas where non-dispersal will be an offence?

Rosemarie McIlwhan: Both points are right. We disagree that there is a need for the offence to be created, but if you persist and the offence is created, we have serious concerns about the procedures through which the offence will be designated.

Maureen Macmillan (Highlands and Islands) (Lab): I wish to press you on that. There are tremendous safeguards. Before a group can be moved on, there has to be serious and persistent antisocial behaviour. You may say that that is a

subjective judgment, but the police know serious and persistent antisocial behaviour when they see it. It has to have been happening over a long period of time. You gave the example of a gathering on a corner of the Royal Mile after a cross-party group meeting being a wee bit noisy, and the police using the measures to move you on, but that could not happen, unless that corner of the Royal Mile had been designated and groups of people had been causing disturbances there on a regular basis. There are a lot more safeguards than you said.

I return to antisocial behaviour orders. You said that—

The Convener: Maureen, just to keep things clear, do you want Rosemarie to comment on the point that you have just made?

Maureen Macmillan: Okay, as long as I can come back and ask about ASBOs.

The Convener: Your point was that you believe that the bill has sufficient safeguards.

Maureen Macmillan: I think so.

The Convener: Rosemarie, will you comment on that?

Rosemarie McIlwhan: The safeguards in the bill are quite strong, but I still dispute the need for the measure. The situation that I outlined as a joke could arise. The Royal Mile might not ever be designated—although it could, given the number of marches that go up and down it—but Faslane could quite easily be designated and that would cause real concern. The measure is unnecessary and should be excluded from the bill.

14:15

Maureen Macmillan: My next point is about ASBOs. You said that the imposition of an ASBO could give a child a criminal record. Is not the imposition of an ASBO a civil procedure? It would become a criminal offence only if the ASBO were broken; a bit like an interdict.

Rosemarie McIlwhan: That is correct, but if someone breaches an ASBO, they will end up with a criminal record, so that potential exists.

Maureen Macmillan: I agree. I just wanted to clarify the point.

Jackie Baillie (Dumbarton) (Lab): Reparation for antisocial behaviour has been widely acknowledged as a positive measure. What is your view of the proposals for community reparation orders?

Rosemarie McIlwhan: We are generally in favour of community reparation orders. The focus on reparation is a positive step. However—as always—there is a "but". Sufficient support should be put in place to ensure that they happen. For example, community service orders are currently given out by the courts but we often hear that there is insufficient support, largely because of lack of resources in social work departments and elsewhere, to ensure that they are enforced. If community reparation orders are going to be introduced, there must be sufficient support mechanisms to deal with them.

Jackie Baillie: As I understand it, CROs would be restricted to 12 to 21-year-olds. Some other organisations have said that there should be a degree of flexibility and no upper age limit. What is the centre's view on that?

Rosemarie McIlwhan: We suggest that putting an age limit on CROs would discriminate against young people and that it should be reconsidered. There is no reason why someone over the age of 21 could not benefit from a CRO in the same way as anyone else. The implication is that only young people behave antisocially and that only they should be subject to CROs. We suggest that the age limit be removed.

Jackie Baillie: There is some concern that there would be duplication of effort between that new kind of court order and the children's hearings system. Do you foresee any difficulties arising from that?

Rosemarie McIlwhan: Similar to our suggestion about ASBOs, we suggest that it should be open to the children's hearings system rather than to the courts to use CROs. We have a strong feeling that courts are not the place for children and that anyone under the age of 18 should be dealt with through the children's hearings system in a holistic way, rather than put through an adult court.

That said, if a child is in court, a CRO might be appropriate. However, the safeguards provided by the children's hearings system and its holistic approach and support for those dealing with the child's behaviour make it a much better place to deal with CROs.

The Convener: The Law Society of Scotland has expressed two concerns about parenting orders. First, they might be counterproductive in the relationship between the parent and the youngster involved. Secondly, there might be other issues of ECHR enforcement. Do you share those concerns?

Rosemarie McIlwhan: We share those concerns. Although the concept of providing support to parents to deal with children with whom they are having problems is good, a parenting order would not help in that situation. It might bring the parent and child into further conflict, which is not what we want to happen.

The Convener: What about the broader issue of the fundamental right of families to operate as they desire and the enforceability of the parenting orders? Do you think that a parenting order would be easy to enforce if it had been breached?

Rosemarie McIlwhan: In terms of parents' being able to deal with their family as they see fit, at certain points the law has to intervene. When the Criminal Justice (Scotland) Bill was passing through the Parliament, there was a real need for the Government to intervene and stop parents' being able to hit their children. That could also apply to giving parents support to deal with children if they are out of hand. My suggestion is—as it was when the Criminal Justice (Scotland) Bill was being passed—that support should be provided through parenting classes, not through the imposition of civil or criminal measures.

Could you please remind me of your second question?

The Convener: How do you feel that breach of a parenting order should be dealt with?

Rosemarie McIlwhan: There is real concern that although a parenting order is a civil matter, breach of a parenting order is a criminal matter. That is a blurring of the difference between civil and criminal law.

Putting the additional pressure of a level 3 fine or potential imprisonment on a single parent on a low income who is already under pressure makes the situation worse rather than better. Following the measure to its extreme but logical conclusion, if a parent is imprisoned for non-payment of the fine there is a real issue about the right to family life for both the parent and the child. That raises the questions who would care for the child and whether that is really what we want to do.

Maureen Macmillan: Can I come in on that?

The Convener: Sorry, but I want to clarify a point. The first thing you said was that you felt that the thrust of the approach should be education through parenting classes.

Rosemarie McIlwhan: Absolutely. Yes.

The Convener: That being the case, you would consider the provisions in the bill to be a mixture of the unnecessary and the undesirable.

Rosemarie McIlwhan: Basically, yes. Including a measure that criminalises parents, whether in criminal law or by telling them that they are bad parents, would be counterproductive. Education and awareness raising would be a much better direction in which to go and would deal with the wider problems in society.

Maureen Macmillan: I want to pick up on what you said about the blurring of the distinction between civil and criminal law. We are talking about interdicts, which, surely, are well known. They are common in the courts, whether they be matrimonial interdicts or interdicts with powers of arrest under the Protection from Abuse (Scotland) Act 2001. Interdicts are a civil matter, but if they are broken it becomes a criminal matter. What the bill proposes is not something new in law.

Rosemarie McIlwhan: It is not something new, but it is not desirable. Let us take your example of protection from abuse. In that case, the courts are trying to protect somebody from a criminal act taking place—somebody assaulting another person. In the context of the bill, we are talking about the civil matter of people dealing with their families. There is a real concern about the blurring of that distinction.

Maureen Macmillan: Surely a parenting order would be sought if parents were not looking after their children properly and, thereby, harming them. Therefore, it is a measure that is aimed at protecting a child.

Rosemarie McIlwhan: There are other measures in place to deal with that.

The Convener: I do not think that harm is mentioned in section 76. I make that point just for clarification. Harm is not a criterion—the circumstances are broader than that.

Maureen Macmillan: I do not mean physical harm. I mean that, if a parenting order is necessary, that is because the parent is not looking after the child properly and the child is lacking support from their family—after interventions, let us say. Therefore, I regard a parenting order as comparable to protection from abuse because it is something that is done for the good of the child.

Rosemarie McIlwhan: It does not appear that way in the bill. It appears that a parent will be subject to a parenting order primarily because their child is committing antisocial behaviour. Welfare is mentioned only once and is far down the list. I would argue that education for parents in how to support and care for their children is a better way to deal with the problem than parenting orders.

Mike Pringle: The problem as I see it is that, in many instances, parents have not engaged. The parenting order is a method of trying to get them engaged. You suggest that we should introduce parenting classes, but the problem with that idea is that the parents would just not turn up to those classes. We could not make them turn up to the classes, but the parenting order would make them get involved. I accept what you say, but how could we get the parents to go to parenting classes without making them do so?

Rosemarie McIlwhan: That is perhaps based on a bit of a rash presumption—if you pardon me saying that.

We have been doing a lot of work on the matter. I have spoken to a lot of parents who are in that type of situation and most of them are wringing their hands, saying, "I do not know what to do and I would love some help." Perhaps more research should be conducted into how many parents do not care and will not turn up at parenting classes and how many parents cannot cope and do not know what to do.

I again hark back to the children's hearings system. If a welfare-based approach is taken, the parents can get the support and information they need in addition to the child getting support and care. However, if a criminal, court-based approach is taken, the ethos is different and the situation will not be resolved.

Nicola Sturgeon: Would you say that what we might find is that the parents you have described—the ones you have spoken to who want help and feel that they do not get it—are likely to respond to the voluntary measures and that the parents who do not engage with voluntary support and find themselves in a situation in which court-enforced parenting orders are being contemplated are the parents who do not care? Is there an argument that at that stage going to court to force a parent who does not care to care is not what we should be doing? Instead, should we ask whether it is in the child's best interest to remain with that parent?

Rosemarie McIlwhan: That is a very good point. That issue would need to be considered, because if the parent really did not care, that would effectively be neglect. Parents have rights and responsibilities under the Children (Scotland) Act 1995. We must consider whether they are fulfilling those responsibilities, which include responsibilities for the welfare and care of the child. We should, as you say, ask whether the child is best placed with that parent. That again comes back to the type of issue that the children's hearings system will look at; a children's hearing will make the decision that a child should be placed in care, either temporarily or permanently, if the parent is neglecting the child.

Karen Whitefield (Airdrie and Shotts) (Lab): The bill proposes an extension of restriction of liberty orders so that they may be used for under-16s. It also proposes that children's hearings be able to introduce remote monitoring arrangements. What are your views on those matters? Do you see any problems with the proposals?

Rosemarie McIlwhan: The SHRC is strongly against the use of restriction of liberty orders for children under 16. In America, tags have become a status symbol rather than an effective means of stopping children behaving as they have been behaving.

The SHRC supports the use of RLOs for adults, because it means they are not in prison and are able to interact with their families, but the use of RLOs for children effectively makes their house a prison, which can exacerbate the problems. If the child is out taking part in antisocial behaviour and so on because they have problems at home, restricting them to their house will exacerbate the problem rather than make the situation any better. The RLO would also impact on the rest of their family life. The committee will be aware that that is protected by article 8 of the ECHR.

There are real concerns that RLOs would be counterproductive rather than deal with the situation.

Karen Whitefield: Not all children or young people who are the perpetrators of antisocial behaviour are being abused or neglected at home. Sometimes there is a misconception that young people who are the cause of the problem come from some of our more deprived communities, but that is not always the case.

Do you not think that there is an issue about how we prevent some young people from having an opportunity to engage in situations that lead to antisocial behaviour? How can that be done if we do not physically prevent them?

Rosemarie McIlwhan: I raised that only as an example. I take your point that not every young person involved in antisocial behaviour is in that situation, but I still think that imprisoning someone in their house only localises the problem—it does not deal with it.

To deal with children who commit antisocial behaviour or any other crime, it is necessary to deal with the situation. That means re-educating them in what they are doing, for example using community reparation orders to make them aware of the damage they have done to the community, and perhaps getting them into other forms of education so that they know what their offending behaviour is and how to address it. That is preferable to saying, "Well, we are going to lock them up." Whether they are locked up in a detention centre, a prison or their own home, locking them up does not deal with the problem. It is evident from our criminal justice system that locking people up does not solve the problem. It is necessary to address the issue.

I will hark back to the holistic approach that is taken by the children's hearings system. We need to look at why the problem exists. The young person might not be being abused at home—it may not be anything—but it could be that they have psychological problems or that they are

being bullied. There is a raft of reasons why someone might commit that behaviour; they might not do it just because they felt like it. We need to deal with the issues as well as address the behaviour.

14:30

Karen Whitefield: Absolutely, but that is only one aspect of the bill. Do you accept that some of the issues that you have highlighted are also covered in the bill? Surely if issues such as education, the need to assist parents to be better parents and—at the heart of the bill—the need to protect communities are included, the bill is not quite as draconian or as dangerous as it may be perceived to be?

Rosemarie McIlwhan: My apologies, but I beg to differ. There is nothing in the bill about education or about assisting parents, as parenting orders would not assist parents. The proposals would not create better communities; they would divide them. Young people and old people feel discriminated against. I have already heard people saying, "That consultation discriminated against me as an old person. It portrayed me as a little feart old woman, sitting in my house because I am scared by those young people." That is pretty much a verbatim quotation of someone we spoke to. Communities are divided over the bill. That will not make them better communities.

Jackie Baillie: I was going to stay quiet during this set of questions, but I need to challenge some of the things you are saying. I do not think that either approach is mutually exclusive. It is possible to accompany restriction of liberty orders with some of the measures that will improve and address the causal factors behind the behaviour.

Let me give you an example. A community that is being terrorised by one person is not divided in its view of the situation. The person in question is basically an arsonist who is setting fire to everything that moves. As a consequence, they are also damaging people's properties. Surely, in that kind of instance, it is the security of the entire community that matters and not the fact that one individual is tagged. Surely the solution for that community is to tag the individual and, at the same time, to address their behaviour.

Rosemarie McIlwhan: I would probably query whether tagging the person will stop them, but I guess that people will find out only if it is tried. Arson is a serious crime. The person could be put into a juvenile detention centre for that offence. I suggest that that would be the best place for that person to address their behaviour. It should not be done in the community as that would pose a threat to the community. Tagging people does not take away the threat.

You cannot tag a young person and say that it is in the interests either of the young person or of the community. If the person is so dangerous to the community, they need to be imprisoned. They should be in a juvenile detention centre, in a programme to address their behaviour. They should not be imprisoned in their own home, as that would be detrimental to them and to their family. It is not possible to justify the use of RLOs on children under 16.

Karen Whitefield: I seek clarification on something you highlighted in your submission. You expressed concern that a breach of article 6 of the ECHR could result from the decision to allow children's panels to impose remote monitoring arrangements on young people. Your opinion is that children's panels exist to address behaviour and not to punish. Why did you reach that conclusion?

The Convener: To be fair, the point was made in the submission from the Scottish Children's Reporter Administration. It would be helpful to have your opinion on the SCRA's concerns. Do you share that apprehension?

Rosemarie McIlwhan: Article 6 of the ECHR covers the right to a fair hearing. Obviously, the SCRA is concerned about S v Miller—the case that, under article 6, challenged the fairness of the children's hearings system and its processes. There are potential concerns about the children's hearings system implementing restriction of liberty orders in that such orders require a fairly invasive determination of the child's civil and criminal rights. I share the SCRA's concerns.

Colin Fox (Lothians) (SSP): I have a brief question for Rosemarie McIlwhan about electronic tagging. In a previous debate in Parliament, there was discussion about tagging being used as an alternative to imprisonment, during which the Minister for Justice made it clear that she believed that electronic tagging could be used as an alternative to custody. Do you see electronic tagging and remote monitoring arrangements in that light? Could they be used as alternatives to sending people to juvenile detention centres or prison?

Rosemarie McIlwhan: As I said, we support the use of electronic tagging for adults, but we think that it would be a breach of children's rights—it would be potentially inhuman to tag a child. Situations need to be dealt with in different ways. We do not agree with restriction of liberty orders, tagging or electronic monitoring for children.

Karen Whitefield: On that point, what is the difference between someone who is aged 15 and a half and someone who is over the age of 16? There seems to be little difference between the two. People might well have views on the rights

and wrongs of restriction of liberty orders, but if there is a genuine belief that such an order could change a person's behaviour, would not it be easier to do that when the person is a child than when they are perhaps entrenched and set in their ways?

Rosemarie McIlwhan: I accept that the younger a person is, the easier it probably is to change their behaviour.

To answer your question about ages, a definition of what constitutes a child—whether or not it is a legal definition—needs to be set at some point. Particular support and care would then be afforded to such persons because of their vulnerability as children. The legal definition of what constitutes a child varies. The age limit can be 18, 16, 12 or eight, depending on what is being dealt with. Even the bill varies—different provisions can be imposed at the ages of 12, 16 or 18. We work with the internationally accepted United Nations definition, which is that one is a child until 18. In reality, there may be no difference between a 15-year-old and a 16-year-old, but in law a decision must be made about the ages at which protection will be afforded to people as children. The SHRC works with the international limit of 18.

Maureen Macmillan: I am still confused by your response to Jackie Baillie's example about somebody who goes around setting fires. When she asked whether such a case would merit an RLO, you said that the person would be a criminal and therefore should basically be locked up. You seem to have contradicted yourself in another answer because you said that children should never be treated as criminals and therefore, I presume, should never be locked up. I am not terribly sure where that line comes from. You would have children put into secure accommodation, but you think that they ought not to be subject to electronic tagging.

Perhaps I could also ask—

The Convener: Let Rosemarie McIlwhan deal with that point first.

Rosemarie McIlwhan: I did not say that such a person would be a criminal; I said that arson is a crime. There is a slight difference. The age of criminal responsibility in Scotland is eight. A children's hearing can decide how to deal with such issues and, where there is a threat to the child or the community, can impose detention. That is a balance that has to be struck. In the situation that Jackie Baillie outlined, in which there is a severe threat to the community, one could justify detention of the child if the child was found to be guilty of having committed arson.

What was your second point?

Maureen Macmillan: My second point is that RLOs need not only restrict people to their houses, but can keep them away from places. For example, the tag could be to keep somebody away from a shopping centre rather than to keep them at home. Would not that be a useful tool in helping children address their behaviour?

Rosemarie McIlwhan: The fundamental concern remains that to put a tag on a child is a breach of that child's right to privacy. I do not think that it would in any reasonable manner keep a child away from a shopping centre—the child might still go there and get punished for it—and I do not believe that it would stop antisocial behaviour. As I said, tags are status symbols in the United States. They have not stopped crime there in any way, shape or form, so what makes you think that they will work in Scotland?

Nicola Sturgeon: Let us put to one side the example of the arsonist; on balance, I agree with you about that case. We will accept that, whatever disposal is used, intensive support to tackle the underlying causes of offending or antisocial behaviour is as important as, if not more important than, any punitive measure. Do you therefore see a role for tagging in cases in which it is clear that some restriction must be put on a young person to prevent certain behaviour? Do you envisage any circumstances in which tagging might be preferable to secure accommodation, in the sense that it is a less restrictive alternative that might enable us not to rip a young person out of the community, but to work with them in the community in a much more constructive way?

Rosemarie McIlwhan: I see what you are getting at, but we do not believe that the use of tags on anyone under 16 can be justified. I know that that is a hard line to take, but we must accept that such people are children and should be treated as such. The paramount underlying principle in such cases must be the child's best interests; to make a child wear an invasive tag is not, and could never be said to be, in that child's best interests.

Nicola Sturgeon: Would that be the case even if tagging could be seen to be less restrictive than locking the child up?

Rosemarie McIlwhan: The short answer is yes.

The Convener: As no committee members want to ask any further questions, I thank Rosemarie McIlwhan for being with us this afternoon and for being so robust in presenting her position. She has been very helpful.

I now welcome Alison Cleland, who is the convener of the Scottish Child Law Centre. We are grateful to her for joining us.

Colin Fox: A lot of the submissions that I have had—

Alison Cleland (Scottish Child Law Centre): I am sorry: I am having difficulty hearing you. I am actually deaf in one ear, so could you speak up a wee bit?

Colin Fox: I must confess that I get that excuse a lot of times in the chamber.

A lot of the submissions that we have received from various organisations suggest that existing law covers many of the actions that might be considered to be antisocial behaviour and that the problem is that the current system is not well-enough funded. Do you have a view on that?

Alison Cleland: I do. The Scottish Child Law Centre hears of many situations in which young people have been placed under social work supervision and either nothing happens or very little happens. Not only is the young person let down—because their offending behaviour is not tackled or because they feel that, although there was a big hoo-hah about their coming into the hearings system, nobody cares—but the parents, who might have been able to work with the social work department or might have been prepared to consider doing something to support the young person, find that there is nothing for them, either.

I accept that that is merely anecdotal, but even the child protection review saw that there were young people who were failing. I ask the committee to remember that many of the young people in the child protection review who were lacking in support from society, who were getting into all sorts of difficulties and who were at risk, are the same young people about whom we are talking at present. They hit the headlines in different ways and get a negative reaction from society, but they are the same young people. I agree that they are not getting the support that they need.

Colin Fox: One of the things that struck me after reading your submission was this: if the Antisocial Behaviour etc (Scotland) Bill is passed, is there a danger that we might end up with problems being caused by the two systems running parallel to each other?

14:45

Alison Cleland: I hope that this does not sound as though I am avoiding your question but, although you are right to point out that there might be a cross-over—which might not always be a bad thing—I am more concerned about the fact that the principles behind the children's hearings system and the way in which we try to deal with children and young people are different from the principles that appear to underlie the bill. There is a real danger that we could end up excluding and stigmatising young people, as I said in my submission.

The difficulty is this: either we believe that children who do horrendous things and upset loads of people in society do so because they are having a horrendous time and have no support or understanding of what is going on and need to be worked with intensively, or we do not. If we do, we do not need to go down the road that is suggested in the bill, but should instead work with young people intensively within existing systems. However, if we think that punishing and stigmatising young people is the correct approach, we should go down the route that is proposed. Obviously, my plea is that we do not.

Colin Fox: Just to be clear, you are contrasting two sets of principles. You suggest that the principles that underlie the children's hearings system are holistic in that they take all circumstances into consideration, whereas the principles that underlie the bill are more to do with punishment and stigmatisation.

Alison Cleland: That is correct.

Mike Pringle: The bill proposes that ASBOs will apply to people from the age of 12. At present, they apply only to people over the age of 16. Several people have said that the age of 12 is quite an arbitrary point and that ASBOs should apply to people over the age of criminal responsibility, which is eight. Do you have a view on that?

Alison Cleland: Again, I am sorry if it sounds as though I am not answering the question, but I do not think that discussing the age limit in relation to antisocial behaviour orders is helpful. I do not think that the purpose of antisocial behaviour orders is likely to be fulfilled. They are intended to make a statement to young people that what they are doing is wrong but, in the Scottish Child Law Centre's view, that is not the way to tackle antisocial behaviour.

No one would deny that some young people are involved in antisocial behaviour, but we believe that it is important to focus on the reasons for the behaviour. It does not matter what age the person is—we must consider what they are doing and how we can tackle it. We do not think that imposing an antisocial behaviour order is the right way to do that.

Mike Pringle: So you would not be in favour of imposing an ASBO on over-16s, either. Am I right in thinking that you do not want antisocial behaviour orders to be imposed on anyone?

Alison Cleland: I do not think that they are helpful.

Maureen Macmillan: My impression of the bill is that antisocial behaviour orders will be used only as a last resort. I accept what you said about resources. Perhaps we would not have an out-of-

control 15-year-old if more resources had been used in earlier years, but if all other methods had been tried, what would you use as a last resort, if not an antisocial behaviour order?

Alison Cleland: You may well have experience—I am sure that plenty of committee members have—of social workers who say that they have tried everything. I have heard that many times, and children's panel members might also tell the committee that they have heard that many times. What is clearly missing from the committee's information and the existing research is young people's experience of all the things that have been tried.

The phrase "everything has been tried" might mean just a supervision requirement with an ability to hold somebody in a secure unit and that is it. I appreciate that that is anecdotal and that the committee might wish to call for evidence from those who work with young people in secure units, for example, but I have been to such units and I have had clients who were held in them. I have talked to young people in such units who say that nothing is happening with them and that they are in limbo. I apologise for appearing to duck the question, but I am saying that not everything has been tried.

Maureen Macmillan: Is that a resource issue or is it connected with a lack of will among social work departments or others?

Alison Cleland: It is obvious that resources are an issue, but some very talented social workers want to work with young people. The youth crime review mentions projects of intensive work with young people. Special resources are provided for such projects, but I imagine that if the social workers who are trying to do that work do not have back-up, they are stuck. The committee should ask social workers about that.

I am not sure whether the problem is just resources, or whether a question of expertise is involved; the situation is really difficult. As was said in "Putting our communities first: A Strategy for tackling Anti-social Behaviour", which preceded the bill, the behaviour that we are dealing with is complex and challenging, so the chances are that a complex and well thought-through initiative will be needed to deal with it. The problem might concern not resources, but expertise.

Nicola Sturgeon: The bill will allow the police to designate a problem area, which will give them the power to disperse groups of two or more people. Are those powers necessary because the police do not have those powers? Do you foresee any danger that the provisions will be used inappropriately? If so, why? Are those powers useful, or is your view similar to that of the Association of Chief Police Officers in Scotland, which says that the powers could be counterproductive in that they might alienate young people from the police?

Alison Cleland: We have statistics on callers to our centre and what they call about. Members should remember that the young people who call the Child Law Centre do not necessarily call it—as they would call ChildLine—about abuse issues. The young people call about legal issues, to the extent that they identify a matter as being legal. The most obvious legal issues for the young people who call us relate to the police, because it is simplest to link them with the law. Almost all of the young people who call to talk about the police give similar stories about being treated with utter disrespect and about facing aggression.

As far as I am aware, no discussion or consultation was undertaken with young people about their experience before the consultation document was produced. It appears to the Child Law Centre that young people's experience is that the police are aggressive and disrespectful. I am sure that from the police's point of view, that may well work the other way too, but we give the police powers to act in society's interests. The Child Law Centre's impression is that young people meet with disrespect, which creates alienation.

For a start, the police have the powers that have been described anyway. I am not an expert in criminal law, but I do not think that they need those extra powers. If the police were given more powers, experience dictates that they would use them in areas that tend to be identified as problem areas, because they respond to what the community says. If the community in general picks on and stigmatises young people—members can choose whether to accept that that is the case, but I suggest that, in general, society picks on and stigmatises young people because they are visible—they will be moved on by police and will be alienated further.

To answer the question, the police do not need such powers because there is a danger that they would be used against young people. I back that up by saying that we have received calls that suggest that that is the case. That is why I said in my paper that, on the antisocial behaviour strategies, we would like local authorities to be required to examine policing practice, for example, which is an area that has not been explored. No one has sought information from young people about their experience of that, but if Parliament is to make changes that will directly affect the liberty of young people, it must gather a lot of information from those who will be affected. That has happened in many other areas in which Parliament has made new legislation, but it has not happened with the Antisocial Behaviour etc (Scotland) Bill.

Maureen Macmillan: I want to ask you about parenting orders because, as you know, children's hearings have no powers to impose requirements on parents who come before them. A parenting order would be a court order for which the principal reporter of the children's hearings system or the relevant local authority could apply to the court, on grounds either of antisocial behaviour or offending. I believe that parenting orders are not a replacement for voluntary parenting classes or for support for parents who need it, but are a last resort. What are your views on that?

Alison Cleland: Our view is that the case for parenting orders has not yet been made. I refer members to our paper on the Executive's consultation. I will not bore members with the detail, but in that paper we refer specifically to a couple of pieces of research that talk about parenting skills and how social workers can help parents with those skills. That research shows that there are things that can be done. The first thing that we say is that a parenting order is just a piece of paper and that it is the work that is done with it is what matters.

The second thing that we say is that that research shows that more than 20 per cent—that is a fifth—of the families in which a difficulty with parenting was identified did not have a social worker working with them. That goes back to the point that I made before. The phrase "parenting order" suggests that more is being done, but what we are really talking about is the development of parenting skills in and around the family.

That was the intention of the Kilbrandon committee when it set up the children's hearings system. It talked about an education department, but it meant parental education, as well as children's education, in and around the family. Our point is that, if those things do not exist, it will not be possible to get things to work and the parenting order will not make them work. What will make things work will be the work that is done with the parent to explain what they should do, why they should do it and how it would help them. That process would make the difference to the young person, rather than the order itself, which would make no difference at all.

Maureen Macmillan: Do you not think that a parenting order might focus a parent's mind on their responsibilities if, until that point, they have refused to engage with social work or whomever to improve the family situation as regards the behaviour of the child? I can think of cases in which the parents are not interested and they need something to focus their minds.

Alison Cleland: I understand that argument. In England, there was a well-publicised case of a parenting order in relation to a child who was not attending school. My argument would be that there will be parents who will finally accept their responsibilities, but that could just as well happen through the hearings system. It is for the committee to make a judgment on that argument. I have seen good hearings' work, the result of which has been that the parents have understood that they are being listened to. They go through the hearing and are allowed to make their case. At that point, they realise that someone is listening and are prepared to work with them.

I suppose that I am saying that a parenting order might focus a parent's mind on their responsibilities, but I do not think that it would do so to a greater extent than other measures would, so why use it?

The Convener: I want to be clear about that: you are saying that parenting orders are likely to work only because the parent will eventually co-operate. You suggest that that might happen by another route, without the need for parenting orders.

Alison Cleland: That is exactly right.

Jackie Baillie: I want to ask a supplementary question on parenting orders. One or two social workers have suggested to me that a benefit of the statutory parenting order would be much better focusing of resources in local authorities. Voluntary agreements do not attract the same level of resources to do exactly the kind of work that you are talking about.

15:00

Alison Cleland: That just underlines my point about resources. A supervision requirement is a legal order, but such orders have not brought in resources. We could be cynical and ask why voluntary agreements would bring in resources; or we could focus on the fact that people are saying that they cannot do the work that they want to do because of the lack of resources. We should focus on that. We should put money in for parenting skills or that type of work, rather than simply impose orders. We know, when a new order is introduced, that a lot of administrative and other costs go along with it. It might be better, therefore, simply to focus on helping people to do the work that they want to do.

Jackie Baillie: The two ideas are not mutually exclusive.

Alison Cleland: I must accept that they are not.

The Convener: I did not ask about what would happen if a parenting order was imposed, but breached. Does your organisation have a view on the breach provisions in the bill?

Alison Cleland: We simply do not think that they are helpful. When young people and their

parents are involved in all sorts of legal situations, another would add chaos and confusion to the family. I understand the points about punitive measures when people breach court orders, but the effect of such measures is to take the focus away from the child. People worry about breaching of court orders, but do not focus on children's needs. Again, that view is based on anecdotal evidence.

Jackie Baillie: I want to ask about community reparation orders. Reparation for acts of antisocial behaviour has been widely recognised as quite a positive measure. Does the Scottish Child Law Centre have a general view on community reparation orders?

Alison Cleland: We see a distinction between reparation itself and community reparation orders. The centre supports the idea of reparation. That view may not come across in our written submission because we were responding only to the questions on community reparation orders. I will explain our view; if it is not clear, please let me know.

We accept the importance of making reparation for things that one has done against society or against individuals. We support intensive work—such as that done in the Freagarrach project that is mentioned in the youth crime review—and other projects to tackle offending behaviour. The Executive and others have funded such projects with tremendous success. The projects have reparation elements. They are about people saying, "We accept what we have done." We support that.

I have seen reparation working in family group conferences in New Zealand, where young people have breached criminal orders. I found seeing that very helpful.

The idea of reparation is not alien to the children's hearings system; it could easily be accommodated. I am sure that people from the hearings system will say, "If you want us to do all this, we need more money and more support," but it could be done.

If that explanation is clear, I will go on to say that our difficulty with community reparation orders lies in the way in which they are discussed in the consultation paper and the way in which they are presented in the bill. The consultation paper states:

"A central tenet of the criminal justice system is that offenders must be held to account".

The difficulty lies in the idea of the offender being held to account in a punitive way, as opposed to being held to accept what they have done and to make reparation for it.

It might seem as if I am splitting hairs, but if community reparation orders come through a system that is trying to punish, it is difficult to understand how they are appropriate for young people. They are intended to change young people's behaviour, but that can be done with various intensive programmes and the diversion of young people, through the hearings system, into projects to deal with their behaviour, which can involve reparation elements. Not long ago, I was at a conference at which delegates talked about a lot of such work that is already being done in Scotland, as Cathy Jamieson has mentioned.

Our difficulty with community reparation orders is that they do not feel right because of the context in which they appear, whereas reparation itself, using the systems that we have, might be fine.

Jackie Baillie: I do not want to put words into your mouth, but surely a community reparation order, whose clear objective is to challenge behaviour by making people face up to their actions, would be acceptable to the Scottish Child Law Centre. The particular words that you take issue with are not contained in the bill.

Alison Cleland: The difficulty is that the bill does not mention the specific purposes of CROs or what would need to be taken into account. Despite the fact that the bill does not contain the words that I quoted, I still think that the purpose of CROs—to change behaviour—is lost and that they would be about punitive sanctions. I accept what you say in the context of the question, but I cannot accept it in the context of the bill.

Jackie Baillie: I know that this is difficult for you, but can we accept that community reparation orders will happen, and move on to two specific areas? First, should CROs be restricted to 12 to 21-year-olds? Some people have suggested that there should be no upper age limit, and I wonder whether you have a view on that?

Alison Cleland: I do not have a view on that.

Jackie Baillie: Secondly, in effect, CROs will be a new court order. Is that likely to lead to duplication or confusion between the courts and the children's hearings system?

Alison Cleland: The problem is not so much about duplication, but goes back to the point that I made to Colin Fox. Instead of focusing our attention on young people within a primarily welfare-based system, we are suddenly changing. My point is that courts do not change behaviour. They can provide punishment and can send people to places where their behaviour might be changed, but other places, such as children's hearings, could also do that. I think that to say that young people can be sent to court for doing things wrong is wrong.

The Convener: Jackie Baillie raised an interesting point, and I am still a little unclear about

the distinction that you draw. If I understand you correctly, you take exception to the concept that a community reparation order for a young person should be associated with punishment. Is that correct?

Alison Cleland: That is correct.

The Convener: Do you take exception to the proposition that a young person should be called to account for what he or she has done?

Alison Cleland: No.

The Convener: That is acceptable.

Alison Cleland: Yes. The question is about how they are called to account. My answer is based on the Scottish Child Law Centre's view that courts have consistently been shown not to be a useful or appropriate forum in which to work with young people. We accept reparation and we accept that young people should be called to account, but we do not accept all the negatives of courts and the criminal justice system, such as the difficulties that we saw in England before the Crime and Disorder Act 1998. Those negatives create too big a risk and they do not help young people. If we want to call young people to account, we should do so quite separately from the court system.

The Convener: I see. So Jackie Baillie's question about whether there would be a way in which to manage the incorporation of the provision in question is probably difficult for you to envisage, as you are troubled by the essence of what a community reparation order is.

Alison Cleland: Yes. To be simplistic, I am troubled by the court-based procedure. Many members will have seen how a court system works—people keep their heads down and do not do anything. The only things that will help young people to deal with their problems are what they are sent to do or where they go. There is plenty of research that the committee can request that shows the negative effects on young people who are involved in court structures. If it is believed that reparation is good for young people, but that the courts have negative effects and go against what people are trying to achieve, we should ensure that there is a way of getting young people to do things that is not court based. That is my argument.

Karen Whitefield: In your response to the Executive's consultation document, "Putting our communities first: A Strategy for tackling Anti-social Behaviour", you said that restriction of liberty orders should not be used for under-16s. Am I right in assuming that your position has not changed? Will you summarise why it is inappropriate to use restriction of liberty orders for under-16s?

Alison Cleland: Our position has not changed. Restriction of liberty orders should not be used for under-16s. I risk boring the committee by saying that they should not be used because they do not affect behaviour or take note of children's and young people's circumstances and because they are primarily punitive.

Karen Whitefield: In your response to the Executive's consultation, you say that nothing is more stigmatising than giving a young person a tag. You believe that the Executive should concentrate on providing more secure accommodation. What kind of accommodation do you mean? What kind of accommodation do you consider to be secure? Is not it stigmatising to take a young person away from their home and community and lock them away in an alien environment? Would it not be more inclusive to keep young people at home in their communities and to support them, so that their offending behaviour can be addressed, rather than to take them away from the problem and the situation in which they find themselves?

Alison Cleland: You make a couple of points. I will take your last point first, if you do not mind. It is less stigmatising to keep a young person in their community and to deal with their offending behaviour there. My point is that electronic monitoring will not help. It will tell you where someone is, but it will not change their behaviour, affect how they feel about their situation or change their family circumstances. The tag would simply be there—it would not affect the young person's offending behaviour.

On secure accommodation, it would be naive of me to suggest that we have fantastic secure accommodation and that we simply need more of it. There are probably people who have more expertise in secure accommodation than I have; however, I want to be clear that I mean accommodation within local authority residential accommodation that can be locked. Secure accommodation is usually within residential accommodation, but I mean accommodation that can be locked. I apologise if this sounds simplistic, but we either accept that foster care, residential accommodation and other accommodation that we provide for young people are ways in which we should deal with young people who come into local authority supervision, or we do not.

I understand your argument that young people might be taken away from their communities and might go into secure accommodation in another local authority area. I am not saying that that is great for the young person, but the system is that local authorities provide accommodation. Is that the right way of looking after young people? As I understand it, that is not the argument at the moment. Our argument is that the system of local authorities providing supervision for young people is appropriate and realistic. Many countries in

Europe also have local authorities or social service departments that provide that service.

If the service is provided in a young person's community, they would not have to leave it; they would be part of the community—I do not necessarily accept what you said about that. Tagging, even if they are kept in the community, would not deal with their behaviour. I honestly think that it just sounds tough. People have cottoned on to it because it sounds great, but it will make absolutely no difference. A young person who is tagged hears only that no one is interested—people want to know where the young person is, but they are not interested in seeing them as a person and doing any work with them. It would be totally counterproductive.

15:15

Karen Whitefield: I appreciate your views on that, and would understand them if the bill proposed only to impose restriction of liberty orders and to do nothing else. However, we must accept that the bill is not the only measure that the Executive is attempting to take. We are proposing to do other things and to put resources into local authorities to provide activities for young people. It is also about improving attainment and standards in our schools. All those things work together to address some of the underlying causes of antisocial behaviour.

Could not a tag be used as a positive incentive? Rosemarie McIlwhan said that it could become a badge of honour, but perhaps a young person who is growing up in a community where antisocial behaviour is the norm and is seen to be something in which people engage when they are a particular age will be helped to avoid putting themselves in that situation by being tagged. It could also be used to ensure that they go to school so that they are not placing themselves in a vulnerable situation. Do you accept that tagging could do some of those things?

Alison Cleland: It is difficult to get out of the scenario that you have just drawn of a young person surrounded by young people who believe that the thing to do is to be involved in antisocial behaviour. If that young person is removed to residential or secure accommodation and given support, that might be the chance that they need to get out of their situation. I do not accept what you say.

The Convener: Our next witnesses have not arrived. I think that our questions to Alison Cleland are drawing to a close, so if members are agreeable, and Colin Fox is brief, we will shortly have a 10-minute break.

Colin Fox: If there is a promise of tea, I will definitely be brief. I want to follow up Karen Whitefield's line and press Alison Cleland on something that, on the face of it, seems to be hugely illogical.

You say that you are against the use of restriction of liberty orders or tagging, but surely it restricts someone's liberty more to take them away altogether and put them in a secure unit. Does your argument seem to be illogical because you believe that restriction of liberty orders represent a punishment and do not offer support, and that secure units are an attempt to rehabilitate or to challenge the offending behaviour in the round? Is that the root of your seemingly illogical argument?

Alison Cleland: That is a good point of clarification. That explains exactly why, although our argument might appear to be contradictory, it is not. In the case of S v Miller—the principal reporter may refer to that case—it was considered whether secure accommodation was a restriction of a child's liberty under article 5 of the ECHR and whether young people's right to liberty meant that they could not be restrained. The decision was that secure accommodation is a restriction under article 5 but that it is not a breach because the secure accommodation regulations have careful provisions about the education, support and rehabilitation of the child. Those things are crucial to the reason why secure accommodation is a restriction that is not a breach.

Jackie Baillie: I want to pursue that issue a little bit. My understanding is that tagging could be considered as one of a number of tools in a much wider toolbox. The type of tool picked would be dependent on the individual child, the circumstances and what will work. Indeed, one might choose to use more than one tool, so a restriction of liberty order might work alongside specific education and support interventions. Do restriction of liberty orders not fit in the context of that kind of toolbox approach?

Alison Cleland: No, they do not fit because, as Colin Fox has pointed out, a young person's liberty can already be restricted. If there are concerns, as I imagine there are, about young people who pose a risk, there are limitations on the duty of local authorities towards such young people. Local authorities have duties to support the welfare of young people up to the age of 16, but there is a limitation on that duty where the young person poses a threat to society. Throughout the existing legislation, there is an acceptance that there will always be a point at which a young person's liberty might be restricted more than would ordinarily happen, so young people's liberty can be restricted anyway. Why do we need restriction of liberty orders? Why do we need to bring in the courts?

Jackie Baillie: I would have thought that the answer is so that the child is not removed from the support that they might derive from their family.

Alison Cleland: There are a number of assumptions in there. All that I would say is that support can already be provided to young people while keeping them within the family.

Jackie Baillie: Not necessarily.

Alison Cleland: It can be done. Perhaps you have a scenario in mind that I have not envisaged.

Jackie Baillie: No, I am just keen to hear why you rule out restriction of liberty orders in all circumstances.

Alison Cleland: I think that they are unhelpful and unnecessary. We can do what we need to do with young people and support them without the orders.

The Convener: In response to the situation that Karen Whitefield described, you said that that was the very situation in which a restriction of liberty order would be inappropriate, as the young person would possibly need to be physically removed from the environment to get away from that influence. Do you not accept that there is an argument that young people sometimes need to be protected from themselves? Is it not foreseeable that a young person from a relatively stable home who is just temporarily out of control might welcome the excuse of a restriction of liberty order, so that he or she could say to his or her pals, "I can't come with you because I will be found out and get into trouble"? Do you accept that there are situations in which a young person might want people to intervene to give them a bit of support?

Alison Cleland: I understand the question. I would love to know what young people would say about that, but I can tell you only what young people have said to us, which is that they get the impression that people do not care. I would be very surprised if, having been given a restriction of liberty order, their reaction was as you suggest rather than to feel that they have been stigmatised. However, that is my view rather than the view of young people. I suggest that you would need to find out what those who have been subjected to such orders in other jurisdictions have thought.

Maureen Macmillan: I keep coming back to the corollary to your answer to what Jackie Baillie said—

The Convener: Given what the witness has said, we are unlikely to get her to change her opinion. Please keep your question pointed.

Maureen Macmillan: You say that putting someone into secure accommodation with a great deal of intervention is a good thing for a young person, whereas having a great deal of intervention plus a restriction of liberty order, which might restrict a child from entering one place, such as a town centre, but would allow him to go to a youth club and other places, would not be a good thing. I cannot see why a great stigma is attached to one of those disposals but not to the other. Surely as much stigma is attached to being sent away to a secure unit.

Alison Cleland: I do not mean to be rude, but the member has a view on how restriction of liberty orders will work. My evidence is that young people would not perceive them in that way. The committee needs to take other evidence on that point. I think that restriction of liberty orders would be seen as stigmatising. Either we can give young people support and concentrate on providing the resources that are needed to do that, or we can concentrate on punishment. I do not believe that it is realistic to do both. I understand the arguments that Maureen Macmillan is making, but I do not accept them.

Nicola Sturgeon: We should not try to bludgeon you into taking a different view. I accept and agree with many of the concerns that you are expressing, but is there a slight danger that the debate about electronic tagging is becoming needlessly polarised? Some people see it as a panacea and the answer to every problem, whereas others do not accept it in any circumstances. In fact, as one solution among many in certain well-defined circumstances, it might have a role to play.

Let me paint a picture for you. Take the example of a young person whose behaviour needs to be controlled forcibly and who will not voluntarily stop going to the neighbouring street every night and causing havoc outside someone's house, but who comes from a supportive family. Is it not better to restrict their liberty within a community setting than to take them out of their family and put them into secure accommodation where they might receive social work intervention, but the kind of intervention that could probably also be provided in the community? Do you not see that in some circumstances restriction of liberty orders might have a role to play?

Alison Cleland: Yes. I accept what the member is saying. In principle, there could be a benefit for the young person if the other interventions were provided. Jackie Baillie was trying to make that point to me earlier, but I did not quite see that. I can understand that the situation might be as Nicola Sturgeon has described. If we stick to that example, there are two points. First, the committee should attempt to get reactions from young people in similar situations. If they believe that restriction of liberty orders would be helpful, that would be a

strong argument for giving them a go. Secondly, such orders should never be issued except with a list of other support—we cannot say that support is something that we will add on, maybe. I now understand the arguments that several members have tried to put to me. I am sorry that I was a bit thick about those.

Nicola Sturgeon: You should not apologise—I understand the points that you are trying to make and agree absolutely that those points need to be made forcibly. If not, there is a danger that electronic tagging will become a way of restricting someone and using the least resources and effort, without tackling the underlying causes of the problem. Your points are well made.

The Convener: On behalf of the committee, I thank you for joining us this afternoon. Your evidence has been extremely helpful.

I suspend the meeting for 10 minutes. We will reconvene at 3.38.

15:28

Meeting suspended.

15:42

On resuming—

The Convener: I welcome members back to the meeting. On behalf of the committee, I welcome Alan Miller and Jackie Robeson from the Scottish Children's Reporter Administration. We were also going to hear from Douglas Bulloch, but I believe that he is unable to be with us this afternoon. We are very grateful to you for coming through to assist us with evidence in respect of the Antisocial Behaviour etc (Scotland) Bill. I invite Mike Pringle to start the questioning.

Mike Pringle: I welcome Alan and Jackie to the meeting. I would like to discuss one particular aspect of antisocial behaviour orders. Currently, they may be given to those aged 16 and over. The bill would extend their application to 12 to 16-year-olds. Some of the evidence that we have received suggests that 12 is a fairly arbitrary figure, and I am not sure that I disagree with that. Some people have suggested that they should start at the age of criminal responsibility. Does the administration have a view on whether the threshold for ASBOs should be eight or 12, or on whether they should be granted at all?

Alan Miller (Scottish Children's Reporter Administration): Good afternoon. Before answering, I present Douglas Bulloch's apologies. He would very much have wished to be here.

Our starting point is similar to the view of ministers: that ASBOs should be an extreme measure, to be used only in a very small number of cases. We think that most young people who present difficulties because of their behaviour and attitude should be dealt with through the children's hearings system. My understanding of the suggestion that 12 be the age at which ASBOs may be granted is that it is pegged to the age at which a young person is presumed to be able to instruct a solicitor, for instance. We must remember that if a young person is made the subject of ASBO proceedings, they will effectively be the defender themselves—personally—in court proceedings.

The basis of the children's hearings philosophy, which was set out 40 years ago, is that courts are not a good place to try to deal with problems that affect children and young people. There might be a difficulty in placing a child under 12 in the position of trying to instruct their own solicitor and of being the defender in a court proceeding that focuses on their behaviour. It is correct that the age of criminal responsibility is eight, but in practice virtually every child under 12 who offends is dealt with through the children's hearings system. The number of that age group who are prosecuted is less than the number of fingers on one hand.

15:45

Nicola Sturgeon: Do you have views on the bill's provision for giving the police dispersal powers? The view has been expressed, not least by the police, that dispersal powers are unnecessary because the police have similar powers already. Some people are also of the view that dispersal powers might be counterproductive, because they could alienate young people from the police.

Alan Miller: We have questions rather than views. We do not have the expertise that the police have from being out on Friday and Saturday nights at street corners, dealing with incidents. I have confidence in the views the police express. We have a question about the possible impact of the proposed powers on the relationship between the police and young people, and between young people and the community generally. As with so many things, the proof would be in the eating. The issue would come down to how the dispersal powers were enforced.

In our original response to the consultation paper, we suggested that it would be worth looking at the model that is used in many parts of Denmark. My understanding is that in that model the first response to a call to the police about concerns about young people on a street corner would be for a community worker to engage with the young people and, perhaps, the complainers from the community.

I can well understand the concerns of people in communities who are faced with difficult, hostile and threatening behaviour night after night in particular spots. We can envisage how dispersal powers would have their use in such situations. However, we must make every effort to engage with young people and build up relationships between them and other members of the community. Sometimes that will involve removing and trying to address hostile attitudes and a lack of understanding. There may well be scope for the use of dispersal powers, but I would hope to see them used in parallel with other more proactive measures.

The Convener: On a broader front, the tenor of the bill is such that children will be brought before sheriff courts or into their jurisdiction. Will that confront the children's hearings system with any difficulties?

Alan Miller: It will not confront us with a fundamental difficulty because we assume that the majority of children will still come before children's hearings. However, there is undoubtedly a small number of young people throughout the country whose behaviour is persistently troublesome. One view is that we can address such behaviour by improving resources and services. There is no doubt that some services now work on a 24/7 basis and are getting to grips with the extremely difficult behaviour and attitudes of some young people.

The Convener: Should that work be given more time to unfold?

Alan Miller: It is a question of having a range of available strategies. The one to which I referred is well under development. During the past four or five years, there has been almost a revolution in how we deal with youth offending in the children's hearings system. If we were not alive to youth offending as a real issue five years ago, we certainly are now. We are trying to deal with the issue holistically, to address the underlying needs.

We do not feel any sense of competition, challenge or undermining. There is potential for the two systems to work together. I am encouraged because the bill proposes, for instance, that if a sheriff makes an ASBO on a child, he should also have the option of asking a children's hearing to look at the support arrangements for the child.

There might be scope to take that one step further and give the sheriff the power to remit the case entirely to the children's hearing, just as the sheriff court or the High Court can do in criminal proceedings at the moment. There is certainly scope for the two jurisdictions to work in tandem.

The Convener: On the broader question of resources, we have received evidence that suggests that more resources might solve some of the problems that the bill seeks to address. Do you agree with that view?

Alan Miller: There is no doubt that the greatest single challenge that faces the children's hearings system is not about process or system, but about the delivery of services to children and young people at the prevention and support stage, which is before they come to us, and at the outcome stage, once a children's hearing has made a decision. It is hard to quantify, but we are confident that high-quality services such as those that exist in some parts of the country address the needs and behaviour of children and young people and would do so in other parts of the country too.

The Convener: Do they address behaviour at the moment?

Alan Miller: Yes, indeed.

Nicola Sturgeon: A minute ago, you referred to the fact that, when a sheriff grants an ASBO, they will have the power to ask the children's panel to examine the case to determine what support might be necessary. Is there an argument for sheriffs' being obliged to do that in all cases in which an ASBO is made on somebody who is under 16, to ensure that an ASBO is never granted purely as a punitive measure or simply as a means of controlling behaviour, and that an attempt is always made to tackle the behaviour's underlying cause?

Alan Miller: That would certainly be an option, and it would allow the children's hearing to consider what it could offer in the way of a supervision requirement. I expect that, in practice, sheriffs would want to use the power in most cases, so I am not sure that there is a huge distance between presenting it as an option and presenting it as an obligation. However, in the circumstances of an ASBO being made on an under-16-year-old, an obligation may be an acceptable alternative.

The Convener: I will ask about parenting orders, which are one of the specific measures the bill proposes. I noticed that, in your submission, you said that you would like

"widespread provision of parenting support on a voluntary basis",

but I am not clear how that view sits with the bill's proposals. Will you clarify that for the committee?

Alan Miller: It sits behind and before the bill's proposals. One of the key principles of the children's hearings system is that families, children and young people should have the opportunity to engage with services on a supportive and voluntary basis to address their difficulties and that we move to compulsory measures, such as a supervision requirement, only if compulsion is

needed because voluntary support will not be enough. The same principle applies as equally to working with parents as it does to working with children and young people.

The evidence from the piloting of parenting orders south of the border suggests that many parents welcomed and benefited from the services they were offered, but expressed some surprise that they had to be taken to court and labelled as bad parents to get that kind of help. There are parents who, for their own personal and sometimes rather convoluted and contorted reasons, do not want to accept the kind of support that is clearly needed to help their children. They are the parents for whom a parenting order would be a valid option, but I do not think that it should be the case that the only way parents can get help they are desperate to have is through some kind of legal proceeding.

The Convener: On the mechanics that are proposed for applying for and obtaining a parenting order, would you welcome the children's hearings system being given more powers to deal with the parents of young people with recurring difficulties?

Alan Miller: Yes. We said in our response to the consultation that we could see a role for children's reporters applying for parenting orders after a children's hearing had considered a case, or as a parallel option.

If there were immediate risk to a child's welfare, we would want a children's hearing to consider the case. If the issue were much more about the parent than the child, the children's hearing could state clear expectations of the parent, although it could not place a legal order on the parent. However, if the issue were purely about the parent's unwillingness to follow a suggested course of conduct or to take some steps to support the child, the parenting order might be a more direct means of achieving the end result.

The Convener: Is there likely to be a gap between what a children's hearing might be trying to achieve—especially if it knows the young person and the home situation—and what a third party intervention by a court might be trying to achieve in granting a parenting order? I am not clear about how the holistic approach to which you referred earlier would be served by those arrangements.

Alan Miller: We would hope that there would not be a gap. We have suggested to the bill team that they consider integrating the proposals on parenting orders into the Children (Scotland) Act 1995, so that applying for a parenting order would become one of the options that the reporter could consider during the investigation and decision-making phase. That could happen alongside referring the child to a hearing because of welfare concerns. The system could be quite integrated. Parenting orders could become one of a range of options available to us.

The Convener: I have no idea whether what you suggest will happen but, were it to happen, the children's hearings system would be confronted with breach situations when parenting orders had not been complied with. Do you feel fairly relaxed about the children's hearings system being asked to expand its area of responsibility slightly?

Alan Miller: I think that "fairly relaxed" is a good way of putting it. Clearly, questions have to be resolved. In many cases that hearings deal with, the issues are as much about the parent as about the child. Sometimes, through a decision made about a child, it is possible for the hearing to state clearly its expectations of the parent and to state what the consequences will be if those expectations are not fulfilled. However, there may well be cases where that does not provide as clear an answer as a parenting order would.

Your point about our moving into the area of breaches and enforcement is fair. The bill provides that breach of a parenting order could be a criminal offence, at which point the case would move beyond the hearings system. At the moment, it is a criminal offence for a parent to refuse to attend a children's hearing when they have been cited to attend. The link to the area of breaches exists already, although perhaps more in a process way than in a substance way.

The Convener: From that, I conclude that you think that the role envisaged for the principal reporter in the bill is useful.

Alan Miller: We see it as potentially valuable. I am not sure that we would use it in a large number of cases. In most cases where issues arise to do with parental inadequacy or failure, issues will also arise to do with risk to children. Those issues would have to go to a children's hearing. However, in some cases, the issue is really parental intransigence, in a way that does not really raise that kind of risk for the child.

Jackie Baillie: I want to ask about community reparation. Reparation—especially in response to antisocial behaviour—has been widely regarded as quite positive. In the context of the children's hearings system, do you think that community reparation orders, and reparation in general, are to be welcomed?

Jackie Robeson (Scottish Children's Reporter Administration): In general, our organisation welcomes the use of reparation measures. The hearings system is really about reparation anyway—trying to restore and repair. In the hearings system, there has been an increasing

use of restorative and reparative measures. What may have been missing is the ability for hearings to apply those measures. Reparation is another option that could be open to the hearings system in its repertoire.

Jackie Baillie: In its submission, the children's panel chairmen's group said:

"there is very little experience of the role of reparation in the Children's Hearings System".

Is that the case, or are we simply confused about definitions? If it is the case, do you see that as a significant barrier?

Jackie Robeson: Reporters have used reparation in their decisions before matters have reached the stage at which a children's hearing considers compulsory measures. That would be the perspective of the children's panels.

16:00

Jackie Baillie: That is helpful to know.

There has been a suggestion that there should be no upper age limit on community reparation orders, which currently apply to people between the ages of 12 and 21. Do you have a view on that?

Alan Miller: To be honest, we do not have a view on that. Our interest basically terminates at the age of 18.

Jackie Baillie: You do not need to have a view on everything.

Alan Miller: Good.

Jackie Baillie: Currently, the way in which community reparation orders are specified means that they are, in effect, court orders. Do you think that, as a consequence of that, there will be any duplication of effort between the courts and the children's hearings system? Do you think, as some other witnesses do, that community reparation orders might be a better tool for the children's hearings system to use, rather than the courts?

Alan Miller: I do not think that it will raise any issue about duplication. The hearings system is waking up to the flexibility and scope of the one sentence that we have available to us, which is a supervision requirement. The current legislation leaves it open to children's hearings to add whatever conditions they think appropriate for a child. It is perhaps due to a combination of a lack of imagination and a lack of resources that we have not used that scope widely enough in recent years. However, in the three fast-track hearings pilots we are seeing much more creative use being made of the scope that is available under a supervision requirement to offer some quite intensive packages of intervention to some damaged and challenging young people and their families. The early evidence is that that is having a positive impact.

Jackie Baillie: Can I press you on whether you think community reparation orders should be, in effect, court orders, or something for the children's hearings system?

Alan Miller: I think that they should be used by both systems. There is scope for the children's hearings system to consider having reparative measures either as part of a supervision requirement or as part of a diversionary decision. If it works for the children's hearings system, I would not want to deny it to the courts.

Karen Whitefield: I want to deal with the restriction of liberty orders and the remote monitoring arrangements. Do you believe that the proposals that are contained in the bill would make a positive contribution to the range of disposals that are open to children's panels?

Alan Miller: The proposals in the bill have moved a long way from the options that were set out in the consultation paper. We are happy with the way in which they have moved, as that seems to reflect the comments that we made.

Under the existing scope for the flexible use of the supervision requirement, it is already open to children's hearings to impose restrictions on the movement of children and young people, where that is in their interests. That is an example of supervision that has perhaps not been used very often. As I said, that might be because of a combination of a lack of resources for monitoring and a lack of imagination. We have no difficulty in clarifying that that is the kind of condition that hearings can add to a supervision requirement.

Monitoring needs to be considered in the context of the package of measures that will address the behaviour and needs of a particular young person. We were concerned that the original consultation paper seemed to establish a link between monitoring and secure accommodation in two ways, both of which seemed to us to be entirely inappropriate. The first was that breach of monitoring might lead, more or less automatically, to the use of secure accommodation. We saw that as creating a criminal sanction by the back door; such a sanction for breach of monitoring would have been inappropriate in a welfare system. The second was the suggestion that monitoring could be used only for a child who met the secure criteria. Our view on that is that, if a child's behaviour is creating such a danger to them or to others that they meet the secure criteria, that child needs to be in secure accommodation.

The fact that the bill has left it open to children's hearings to use monitoring as part of a package of measures is a positive aspect. That has the effect

of placing trust in children's hearings to consider all the issues in an individual case. If a hearing were considering monitoring, it would have to weigh up issues such as the child's behaviour and whether that was problematic at particular times or in particular places; on the other hand, it would need to weigh up welfare and safety issues. If the child's home was not a safe environment for them to be in, I cannot envisage that any children's hearing would want to impose a monitoring condition that required the child to be in such an environment, in which a parent was likely to be high on a cocktail of drink and drugs or to be abusing the child repeatedly. The scope is being provided for children's hearings to use the monitoring condition appropriately and, I hope, sensitively and relatively infrequently.

Karen Whitefield: Are the hearings well enough equipped to use the additional powers or will training or additional resources be necessary to allow you to use them, where you feel that it would be appropriate to do so?

Alan Miller: There will be a need for training. For example, neither children's panel members nor reporters are very familiar with how monitoring works and it would be helpful for them to have a greater appreciation of that. The question of resources is much wider; it is a big challenge for the system as a whole. That challenge is highly pertinent to the issue in question because, in any case in which a children's hearing was considering the use of monitoring, it is likely that it would also be considering a range of other interventions to address the behaviour and the needs of a young person whom we would have to assume was at the high-tariff end of the scale. Resources in the wider sense are always an issue and they may well be an issue in the kind of cases in which monitoring would come up as an option.

Karen Whitefield: We have heard various points of view on the use of restriction of liberty orders. I think that the police, when they gave evidence to the Communities Committee last week, said that restriction of liberty orders could be seen as a badge of honour by young people. Earlier witnesses at today's meeting have said that we would be stigmatising the young person and that it would be preferable to send them to secure accommodation. Do you have a view on that? What do you think about the need for the use of restriction of liberty orders?

Alan Miller: Some research evidence is available about young people who have been subject to monitoring. That research is mostly from the English and Welsh system, which obviously works in quite a different way to the hearings system, so we must treat it with a little caution. However, Scottish 15-year-olds are not so different from English 15-year-olds and the evidence seems to suggest that young people have a range of responses to monitoring. Certainly, some treat it as a badge of honour and a clear sign that they have arrived, but it seems that others use it much more constructively as a reason for disengaging from a group with which they were getting into trouble. That tells us that each young person's reactions are different and are very much down to their character, personality and setting; in turn, that reinforces the need for the legal framework for the option to be left quite open so that children's hearings can consider cases on a case-by-case basis.

Maureen Macmillan: From time to time in your evidence, you have mentioned lack of resources to progress children's supervision requirements, which children's hearings would like to see. From anecdotal evidence, we know that social work departments do not always manage to fulfil expectations in that respect. The bill imposes an obligation on local authorities to perform their statutory duties in relation to supervision requirements; indeed, local authorities can be taken to court. Is that draconian? If a director of social work thinks that he or she may be in court next Friday if they do not quickly come up with what you require, what will that do to your relationship with the social work department? Are there enough resources or will resources have to be made available to local authorities?

Alan Miller: The issue of resources has a number of elements—it is not a straightforward and simple matter of more money being required. If the resource were doubled overnight, that would not produce any increase in the number of professional social work staff who would queue up to do children and families work. A number of issues to do with re-energising and remotivating the professional social work service, in children and families work in particular, are not simply about money.

If grant-aided expenditure figures are considered, local authorities are in rather different positions in respect of how much they spend on social work services and on children and families work in particular. There is quite a mixed picture. My starting point would be to redefine the outcomes and objectives of the work that we all do with young people, children and families and to use that redefinition as a basis for defining more clearly our community expectations of social work services. From there, a sense of remotivation should be built into the professional service and then the issue of resources could be addressed more clearly.

We recognise that the issue is complex and will not be resolved overnight. I hope that we will never have threatening relationships with local authorities, as I think that local authorities

recognise their responsibilities. Perhaps some local authorities have been slower than others in recognising that the responsibility to implement a supervision requirement is a corporate responsibility of the whole authority and not merely a responsibility of the social work department. That change was introduced when the Children (Scotland) Act 1995 was implemented in 1997.

There is an issue around getting things right at the priority level, not so much for social work or children's services, but for local authorities corporately. Our experience is that some local authorities have taken imaginative approaches to bringing in other groups of staff, voluntary sector organisations and community services to broaden the mix of people who work with young people and families—Jackie Robeson may be able to expand on that.

I see the provision that you mentioned as a backstop power; it is not how we would want to start off any relationship with local authorities. Those relationships are important and it is important to build on the good will and commitment that exists. The provision would be a backstop measure that could be used if all other measures failed, and it would be appropriate if it was felt that a local authority was not taking the issue seriously enough. The issue is much wider than the relationship between us and social work services.

16:15

Maureen Macmillan: But do you think that the backstop should be available and that what we have in place at the moment is not working? Do you believe that the present system could be improved through negotiation?

Alan Miller: First, the bill makes more explicit what the local authority's duties are. The Children (Scotland) Act 1995 says simply that it is the local authority's duty to give effect to a supervision requirement, but that is not defined any more closely. The provisions in the bill focus on that and make that responsibility clear; they also provide that that responsibility might include engaging with other local authority services as part of the mix following a decision by a children's hearing. That is a useful starting point.

The second improvement in the bill's provisions compared with the original consultation document is that the children's hearing remains clearly at the centre of the process and the local authority has the opportunity to come back to the hearing to account for what it proposes to put in place for the child or young person. That is important because the process should not be seen as bypassing the children's hearing, and the hearing should not be seen as being toothless and unable to obtain resources. In that context, there is scope for considering a fallback legal power. In one sense, the bill will provide an option that would always have been available under common law; it would be open to anyone who showed an interest in such matters to take an action of specific implement against, for instance, a local authority on the ground that it was not implementing its statutory functions. The bill is therefore placing in statute a power that already exists and making the local authorities' duties more explicit.

Maureen Macmillan: Is the local authority solely responsible? For example, a child might need to go to a secure supported place, but there might be no such place available in the local authority area or anywhere else. Such situations arise now and directors of social work might be worried that things that are outwith their control will be laid at their door, with the result that they have to appear in the sheriff court.

Alan Miller: I cannot see that we would consider such an option in those circumstances. We would look to the local authority to come up with a credible alternative plan for that child or young person. Any child or young person who reaches the stage at which secure accommodation is a real possibility is a child or young person with considerable needs who might also put other people at risk. If the preferred option of secure accommodation were not available, it would be incumbent on the local authority to come back with something else that could be placed on the table for discussion and decision by the children's hearing.

Maureen Macmillan: You are saying that there could be negotiation.

Alan Miller: Yes.

The Convener: I am slightly troubled about one apparent dichotomy. I was looking at what the children's panel chairmen's group said about the broad question of local authority accountability:

> "Under current legislation local authorities already have a duty to implement supervision requirements. It is in no small measure the failure of many authorities to do so that has resulted in the whole Children's Hearing System being questioned as to its effectiveness."

That is a sweeping condemnation. If that is people's view now, how on earth will the system cope with the bill's statutory consequences?

Alan Miller: I would put the bill in the context of several things that are happening within the children's hearings system and more broadly. For example, one of the resource issues that impacts on us is the difficulty of providing support and prevention help to children and families, which means that many children come to us later at a crisis point or with no attempt having been made to engage with the family to resolve matters.

Children come to us when matters have become more difficult or when there is no history of prior support. Improvements in resources and staffing in that area could reduce the number of children who come into the children's hearings system in the first place.

The Convener: Will you expand on that? How would that work?

Alan Miller: As at present, children who come to us would have had an opportunity to work consensually and informally with either a social work service or a voluntary service to try to address any concerns. We must remember that the criterion for entry to the children's hearings system, particularly to a children's hearing, is a need for compulsory supervision measures. That implies, in the majority of cases, that some kind of voluntary supervision and support ought to have taken place beforehand. If such voluntary measures do not work, that makes the case for compulsory measures.

Often, there has been no voluntary engagement and, as a consequence, children and families come into the children's hearings system to get a service that could have been provided earlier when matters were at less of a fever pitch. That is one way in which the resources issue affects the hearings system. It is not such an obvious way as the issue about the implementation of supervision requirements, but it has a significant impact on us.

The point that was made by the chairmen's group picks up on some rather loose talk that has gone around in the past two or three years. I refer to the view that we hear sometimes—it is expressed even in the parliamentary chamber—that the children's hearings system is not working. That is a simplistic view and we need to consider what it means. Our view is that, given the resources and with different agencies pulling together, the hearings system can and does work extremely effectively. We hope that, when we begin to produce the data, the impact of the fast-track pilots in the next few months will demonstrate how effective the system can be with some of the most difficult, persistently offending young people.

We do not believe that there is a fundamental issue about the system's effectiveness in terms of the process or the legal framework. We believe that the issue is getting the delivery resources to match the desire of everyone who is involved in the system to address the needs and behaviour of the children and young people who come before children's hearings.

The Convener: As there are no other questions from members, I thank Mr Miller and Jackie Robeson for coming before us this afternoon. Your evidence was extremely helpful.

I welcome Mr George Anderson, Mr John Anderson, Edith Blake and Diane Watt, who represent the children's panel chairmen's group. Thank you for making yourselves available to us. Without further ado, I invite members to proceed to questioning.

Mike Pringle: Antisocial behaviour orders currently apply to anyone over the age of 16, but the bill proposes to extend that provision to children aged 12 and over. We were told in evidence last week that that figure is slightly arbitrary; I would agree. Why is the age not younger than that, considering that eight is the age of criminal responsibility? Should the age limit be extended down? If so, how far down should it go?

George Anderson (Children's Panel Chairmen's Group): My view, which I have expressed in the chairmen's group, is that to go down as far as eight is just not on. Twelve, perhaps, could be considered, but we should not consider ASBOs for children under 12.

Mike Pringle: Does anyone else want to add to that?

John Anderson (Children's Panel Chairmen's Group): I agree with that position.

The Convener: We have been interested in the broad relationship that will exist among all the participants if the new legislation is enacted as drafted. One of the areas that we explored with the administration group was the relationship between the panel and other forums, such as local authorities, and possibly the sheriff court for applications. In the case of an ASBO, does that cause you concern? Do you feel that you will still have control over that holistic approach?

George Anderson: If we can get across any message today, it would be that we think that the children's hearings system should be at the heart of all decisions that are made in respect of children. The hearings system comprises the children's panel members who sit on hearings, the Scottish Children's Reporter Administration, and local authorities and so on. We welcome the proposals, but if they are to work it is imperative that the members of the children's hearings have their say and are seen as part of the overall process in considering making antisocial behaviour orders in respect of children and young people.

The Convener: On the broader resources issue, we have heard the view that earlier intervention with more provision of resource might address some of the problems that have been envisaged. Do you share that view?

George Anderson: Yes. Early intervention is a subject that crops up often at our meetings, especially among those from a teaching

background, who see children at an early age and can identify where problems are likely to occur. The old adage about prevention being better than cure applies in great part to children. If a problem is identified early and a suitable resource is applied to it, perhaps we will not have continuing problems as the child grows up. I would have no problem—I am sure that the same applies to my colleagues—with voluntary intervention, if at all possible, to address any problems at a very early stage.

The Convener: If I understood Mr Miller correctly, he seemed to indicate that there might be an argument for more resource to be made available at the pre-children's panel stage, and that such early intervention could prevent, or certainly restrict, the activities of some young people that subsequently place them before the panel. Do you share that view?

George Anderson: Perhaps I misunderstood. By early intervention I thought that you meant really early intervention, before even the pre-referral to the reporter stage. However, if we are talking about children who have been referred to the reporter, and about who looks at the child's background and considers whether compulsory measures of supervision are necessary, voluntary interventions by one of the projects that various organisations run throughout the country would have a role to play. We are all agreed that a child should be subject to compulsory measures only if those measures are necessary.

16:30

The Convener: I turn to the dispersal of groups. The bill would create a specific offence of two or more people congregating. Do you have a view on the power? Is it useful?

George Anderson: In all honesty, no. Perhaps my colleagues have their own views on it.

Edith Blake (Children's Panel Chairmen's Group): When we consulted on the consultation paper, the view was expressed that not all groups are necessarily bad. Some parents prefer their children to be part of a group to their being out in the street on their own. If groups are to be dispersed, the policing of that would have to be quite skilled in order to assess whether a group is behaving badly or antisocially. We are of the view that not all groups of children necessarily behave antisocially. It would be necessary to police and assess carefully the groups that were perceived to be behaving antisocially.

The Convener: That seems to reflect all the witnesses' views. Is that correct? Nobody is demurring.

George Anderson: Children and young people will always congregate—it is a natural thing to do. If the same group congregates in the same spot at the same time every week and causes disruption, perhaps there is a case for saying to them, "Come on—move on and do something else," but there has to be something else for them to do. Perhaps, rather than sell off playing fields, local authorities and others should supply places for children to go to and to congregate socially. We adults congregate socially all the time; are we saying that children cannot do so at the corner of a street? I do not think so.

The Convener: I am filling in for one or two members who have had to leave, so I will deal with parenting orders shortly. Would Jackie Baillie like to ask about community reparation orders?

Jackie Baillie: I would be happy to do so to give you a rest, convener.

Reparation as a response to antisocial behaviour has been welcomed widely as a positive measure in the bill. Do you have a view on whether community reparation orders are a good thing?

George Anderson: We would have difficulty with making reparation a condition of a supervision requirement, because the essence of reparation is that it is done voluntarily and requires the buy-in of the victim—the community. If reparation is a precursor and is done voluntarily at the early intervention stage, which has been referred to, then by all means give the young person a chance to make amends. However, there would be difficulty with reparation being part of a hearing's disposal and our saying, "You must, as part of your supervision requirement, do this, that and the other." Technical though it may be, if the other party did not buy into the reparation, the child would be in breach of the supervision requirement and would have to come to another hearing. As a disposal, a reparation order would be a bit difficult.

Jackie Baillie: Given that there are different ways of framing reparation orders and that those logistical problems could be overcome, is there a benefit in the young person's facing up to the consequences of his or her actions, whether against an individual or the community? Is there a benefit, perhaps a learning experience, in reparation orders that goes beyond punishment and fits with what the children's hearings system is about?

George Anderson: I could not agree more that there is. Getting a child to face up to his or her actions and their consequences is best done in a children's hearing. If that same case were to go to court, the child would appear, an agent would speak for them, something would happen and the child would disappear. They would have no need to address their behaviour whereas, in a children's hearing, we could talk about their behaviour.

Jackie Baillie: In essence, the reparation order is a new court order, not a disposal for the children's hearings system. Do you see any difficulty in that or do you take the view that the Scottish Children's Reporter Administration outlined to us, which was that children's hearings already do the sort of thing that the order allows?

George Anderson: Diane?

Diane Watt (Children's Panel Chairmen's Group): George is passing the question to me because I am part of the fast-track pilot. One of the things that we are learning about from that is the skill of the youth justice social workers who work with young people who are persistent offenders and those who offend less persistently. From experience, I can say that reparation is brought into discussions with the young people. Certainly, we discuss it at hearings and we would encourage it whole-heartedly.

I agree with George Anderson: I would not want to have a reparation order disposal available at children's hearings, but I respect the fact that it will be available to sheriffs. However, I wonder what would happen if a young person refused to follow the order. Where would that leave them? If they were in breach of an order, what would happen next? The community reparation order is a positive step that should be viewed by the young person and the community as a positive experience, but how that process will be managed needs to be examined.

Jackie Baillie: Am I right in saying that you wrote an article for a recent panel newsletter?

Diane Watt: Yes.

Jackie Baillie: Do you think that, given that fast-track pilots have been run in a number of areas and a lot of attention and resource has been devoted to them, we can learn lessons from them and spread them across Scotland?

Diane Watt: Yes.

Jackie Baillie: What would stop us from doing that?

Diane Watt: Lack of money and a lack of skilled social workers would stop us. However, from my point of view, the community reparation order is one of the best recent developments in the hearings system.

Jackie Baillie: At the moment, community reparation orders are restricted to 12 to 21-year-olds, but some people have argued that there should be no upper age limit. Do you have a view on that?

Diane Watt: From experience, I think that a community reparation order would benefit anyone who wanted to stay in a community to which they had done something that the community was not happy about, because they would have a chance to put that right. I do not think, therefore, that there should be an upper age limit.

The Convener: Earlier, the opinion was expressed that community reparation orders were a punitive disposal and therefore rather sterile. Do you share that view?

Diane Watt: I do not think that they are punitive—I think of them as being a positive experience. When we are dealing with a young person who has offended or who is behaving antisocially, the children's panel considers the child as a whole. We consider everything about the child's situation, from their life at home to their time at school. Certainly, the children's panel chairmen's group believes that education has a major role to play in this area, especially in relation to citizenship, which is now part of the curriculum and could be used to get messages across, including messages about reparation. That would help to make reparation a positive experience.

Karen Whitefield: There has been much discussion of electronic monitoring of under-16s in the media and this afternoon. Do you believe that the proposals in the bill for remote monitoring arrangements and the use of tagging for under-16s will be positive additional tools for the children's hearings system?

George Anderson: They might be, although I am not sure about the circumstances in which we will use tagging. The proof of the pudding will be in the eating, and we will have to wait until we are in a situation in which we think that electronic tagging might help solve a particular problem or is in the child's interests.

The bill does not contain a fantastic amount of information on the details of electronic tagging. We have discussed the matter and feel that tagging might be useful in some circumstances—especially when it would be in the interests of the child's welfare for it to be known where the child is and what he or she is up to. If a child is continually self-harming and running away, knowing where they can be found so that they can be kept safe might be in the interests of their welfare. Similarly, when a child comes out of secure accommodation, there has to be a trial period to see how they react to coming out of that secure environment. Tagging may be of use in such circumstances.

I do not regard electronic tagging as being any more draconian than making a secure order—which entails depriving a child of liberty and putting the child in secure accommodation. Tagging might be seen as a lesser option that would allow attempts to solve the problem in the community in which it first arose. Locking children up tends not to work. If anything can be tried that might prevent that, I think that our group would be

in favour of it. However, to be fair, there were diverse opinions in the children's panel chairmen's group.

Tagging is a new measure. To those who say that there is no evidence that tagging works, I point out that we have a different legal system in Scotland and we have the children's hearings system. Let us try it out with the proper back-up and resources, thus creating evidence that others could use. We do not have to follow other people whose use of tagging may have failed. We are a totally different animal.

Karen Whitefield: Will there have to be appropriate training in the use of the new measures? Would you like a commitment to be given to ensure that training is provided for panel members?

John Anderson: Children's panel training is, I think, one of the best things going on in Scotland. It is superb—it is of a high standard and of great quality. As members will have read from our response to the consultation, we look on electronic tagging as an additional tool in the toolbox. There will be training because it is essential and every panel member in the land will be delighted to avail himself or herself of the training opportunities. Let us have the training and we will do the job.

Colin Fox: The word "toolbox" has come up before. George Anderson's answer gave a sense of the mixed views and differences of opinion that exists even among yourselves. On electronic tagging, your submission says:

"It is fair to say that any enthusiasm … has been balanced by"

the fact that

"there is little evidence of any success".

Is there so little enthusiasm because you see tagging as a measure that would never be used on its own? Many people see electronic tagging as an alternative to putting a youngster into secure accommodation. You say that tagging and restriction of liberty orders would be part of a panoply of other measures, but would not be used on their own.

George Anderson: Tagging must be used with other measures. Just putting an electronic tag on a young person serves no purpose whatever—other than to say where they are. It does not address the root causes of why the tag was put on in the first place. The use of a tag must be seen as a trigger, perhaps, for other support measures to be put in place.

Experience in England has been that children who were tagged spent more time just lying in bed, watching television and vegetating, rather than doing anything constructive. If a child is tagged, we would like an accompanying package of support measures to ensure that the time that is spent tagged is used actively.

The Convener: An idea that we are going to copy from elsewhere is parenting orders, which are used south of the border. I want to ask a couple of questions. First, is a new court order—an innovative intervention—the best way to deal with certain situations? Secondly, should children's hearings impose parenting orders?

George Anderson: I do not think that the hearings should impose the parenting order. However, we think that the hearings should be able to instruct a reporter to make an application to the sheriff. As the bill stands, the local authority or the reporter would make the application. We think that that is not quite right because the decision should be made by the hearing, especially if the child is under a supervision requirement. The proposals might be seen as giving far too much discretion to the local authority and the reporter. The hearing should be involved.

Furthermore, there is an anomaly in the bill in that it says that a sheriff can make a parenting order only when he has been assured that the local authority has the resources to implement it. Can you imagine a scenario in which a chief executive of a local authority that does not have the necessary resources encourages staff to take out parenting orders in the sheriff court that it will be impossible to fulfil? The parenting order has to come from the hearings system as part of the overall recommendations to the sheriff.

16:45

We are all volunteer panel members and have all seen cases in which the problem lies mainly with the parents and not with the children. We would welcome having some influence in trying to ensure that parents are given the opportunity to be better parents, whether or not that is done through an order.

The Convener: If the children's hearing is not the granter of the parenting order, should it be the sole referral point to the sheriff court for the ultimate granting of the order?

John Anderson: The children's hearing should be one of the routes, but we are happy for the other two routes to remain. The words "may require" in section 11(1) should be replaced with the word "requires", so that it reads: "Where the sheriff makes an antisocial behaviour order or an interim order in respect of a child, the sheriff requires the Principal Reporter to refer the child's case to a children's hearing."

The Convener: At the moment, provision is made in the bill for cross-referencing, but all that it

says is that, before an application is made by a local authority, the local authority

"shall consult the Principal Reporter".

and that, before an application is made by the principal reporter, they

"shall consult the appropriate local authority".

I do not know what "consult" means in that regard. Does that provision seem to be a little imprecise to you?

John Anderson: Yes, because it makes no specific reference to a children's hearing, it mentions only the principal reporter.

The Convener: You would like that to be tied into the hearing recommendation.

George Anderson: It might be a cynical view, but if the local authority does not have the necessary resources to fulfil a parenting order, would it make the application in the first place? The children's hearing, however, can act totally impartially and can say that, having seen the parents, it takes the view that some compulsory work should be done with the parents. We have no provision to do that within the hearings system at the moment, but can refer that view through the reporter to the sheriff, who can make that parenting order.

The members of the hearing have an important part to play because we will not take into account whether the local authority has those resources available.

The Convener: The Scottish Children's Reporter Administration is supportive of greater involvement in trying to deal with bad parenting, but it was clearly anxious to try to pursue that on a voluntary basis. Is that your view as well? This goes back to the question of what to deal with first. Do you think that more could be done in relation to parenting problems before matters are even referred to the children's hearing?

Edith Blake: I do not think that parenting orders will be suitable for every case in which parenting falls short for one reason or another. The cases in which an order will work will be quite few and far between. Some parents are, for whatever reason, incapable of parenting; no amount of compulsion will make them better parents. Because we deal with individuals, rather than take a blanket approach, the hearings would be better placed to recognise and pick out those who would benefit from an order than would a reporter or local authority.

The Convener: Earlier in the afternoon, an interesting view was expressed by a witness. She said that, if a parenting order were to work, it would only be because the parent had co-operated. The witness felt that the parent could co-operate anyway, without the need for a parenting order. She felt that if good will did not exist, an order would not create it. How do you feel about that opinion?

George Anderson: I would tend to disagree with that. We regularly see parents who come along to hearings. Some parents may need to be told that they must do something. Simply telling them to do something may lead to the co-operation that may not have been coming voluntarily.

Parenting orders can be seen as a method of securing a resource. If there were no parenting orders, I wonder how many local authorities might just slope shoulders and not do anything. There are parents out there who are asking for help but cannot get it. If a parenting order is imposed, the onus is on the local authority to provide the resource. Perhaps the end justifies the means.

The Convener: That is an interesting proposition, because one would hope that any new legislation would be intended to cover a situation where things are not working and can be properly addressed only by force of law. However, you are identifying a resource issue. You are identifying a situation in which a local authority is not providing the resources—whatever the reason behind that may be. From the children's panel angle, this provision is attractive as it is a big stick to compel the production of resources.

George Anderson: There may be an element of that. I would always advocate that if anything can be done on a voluntary basis, it should be done on a voluntary basis. We are long-serving panel members and we make supervision requirements only if that is necessary. We work on the principle of no intervention—we say, "Do not do it unless it is necessary."

I repeat that, although they may not articulate it very well, lots of parents are really saying that they need help with their kids. In many cases, the help is not there. It is sad to say it, but perhaps a court order is the only way of ensuring that that help is there.

The Convener: Let us assume that a parenting order has been granted but that it has been breached. Where does that leave the youngster?

George Anderson: If the parenting order is granted and the parents refuse to comply, the situation for the youngster is probably no worse than it was before. That might seem a glib answer, but if something that did not exist previously is tried and fails, it still just does not exist. What happens next would be up to the court.

The Convener: The parent could now face criminal sanctions for being in contempt of court.

George Anderson: The indications are that that would happen only at the very end of the line. If the hearings system is involved, the last thing that we want to do is see a family split up and parents jailed because they have not complied with a parenting order. We have to consider the effect that that would have on the family. The hearings system has to be at the heart of all decisions made in respect of children. We can consider all the issues impartially and arrive at a decision in the best interests of the children and, therefore, the whole family. Does that answer the question?

The Convener: I hear your view, Mr Anderson. That is all that the committee is designed to do—to elicit individual views and opinions such as those held by you and your colleagues.

I want to move on to the broader question of accountability. You probably heard the evidence of Mr Miller and his colleague. I referred to the submission from the children's panel chairmen's group, which, in my judgment, is fairly damning of local authority activity in implementing supervision requirements. I think that Mr Miller said that that was probably based on what he called "loose talk". Given Mr Miller's comment and the fact that the committee is simply trying to find out what the situation is, do you want to add anything else to that point in your submission?

George Anderson: Do you mean the paragraph towards the end of the submission in which we say that the children's hearings system perhaps—

The Convener: Yes. I am referring to page 7 of your group's written submission where, under the heading "Local authority accountability", you say that your group

"does not believe that"

that aspect

"should even be considered in the same light as other proposals. Under current legislation local authorities already have a duty to implement supervision requirements. It is in no small measure the failure of many authorities to do so that has resulted in the whole Children's Hearing System being questioned as to its effectiveness."

That statement very much implies that that is your group's view not just of the existing resource issues but of the proposed legislation's practical consequences.

George Anderson: The group holds that view because, although I could single out local authorities that have given effect to every supervision requirement, I could also mention authorities that have not done so. As a result, the press latch on to that and report that the children's hearings system is not working. The system consists of children's panel members, children's reporters and the local authority. If certain supervision requirements are not being implemented in certain areas, people say, "The hearings system's not working," and tar us all with the same brush. However, two out of the three partners in the system are working well; we are simply being let down by the third partner, which cannot get away with letting people down any more in certain areas. Under the bill, if that partner does not fulfil a supervision requirement, the hearing can instruct a reporter to inform it that an application is being made to the sheriff court. That will address that part of the problem.

However, in our submission, we question the effectiveness of the whole hearings system because of the element in certain local authorities that lets the side down. The bill seeks to take steps to stop that happening.

The Convener: And you welcome that.

George Anderson: Totally, and I think that I speak for my colleagues when I say that.

John Anderson: Indeed. We absolutely welcome that measure. It is important to underline what the convener said 20 or 25 minutes ago about the partnership that involves different sections of the children's hearings system. It is important to note that under section 70 of the Children (Scotland) Act 1995 the supervision requirement might require the child to do various things. It is about time that we ensure that local authorities are also required to do certain things. I—and colleagues in Edinburgh and other areas—sit on many panels where the child comes back to us after a year without even having seen a social worker. In such circumstances, how will that child get the chance to engage and to improve their situation? It is really not acceptable.

Diane Watt: The 1995 act introduces the notion of corporate responsibility within local authorities. We should recognise—as many panel members do—that the social worker cannot always fix the problem. Local authorities have to open their eyes to the fact that the matter is a corporate responsibility and that some situations might be better handled by education specialists, psychological services and so on. After all, at no point does the 1995 act say that the supervision requirement is held by the social worker. Some new thinking on this issue might help to solve the problem of not putting supervision requirements into action.

Colin Fox: In the witnesses' responses to the two previous questions, I am picking up a sense that there are great hopes that the bill will ensure that the resources that they desperately need from the social work department will be provided because of the powers of compulsion that might fall to the children's hearing reporter. Is it fair to say that one of the bill's big attractions for you is that it seeks to put greater pressure on local

authorities to perform certain functions adequately?

George Anderson: I think that the bill puts greater pressure on the Executive. The Executive might expect something to happen when it launches an antisocial behaviour campaign, but it will all come to nothing if proper long-term—not short-term—resources are not available. Making an antisocial behaviour order on a child is worthless if it does not address the behaviour that caused the order to be made. If addressing that behaviour costs money for social workers, health officials and so on, that will be the cost of solving the antisocial behaviour problem.

We cannot deny that antisocial behaviour is out there and that something must be done about it. Our submission says that we would like decisions about the behaviour of children up to 16 or children who are within the hearings system—which can deal with those up to the age of 18—to be made within the hearings system, as we can perhaps see the bigger picture and we are impartial. We have no axe to grind. We do not necessarily wonder where resources will come from. We make decisions impartially. The assumption is that implementation of the bill's proposals will put an onus on the Executive to provide resources as, without the resources to implement the proposals, the bill is a complete waste of time.

17:00

The Convener: That is a very clear message.

Mike Pringle: I have two brief questions for John Anderson, as I know that he is involved with Edinburgh. I was disappointed to hear that a child sometimes comes back to you after a year, as there is a lack of social workers. Perhaps George Anderson has already given part of the answer to my questions. How common is that? Is the answer simply to throw money at the problem?

John Anderson: It is quite common. As you know, the supervision requirement means that a case must come back to the panel within a year or it simply expires. I refer to what George Anderson said a few moments ago. If we are thinking about resources, it is also important to think about what Diane Watt said about imaginative use of resources. We think about the whole child, so we should think about the whole team, including education and so on. It is not only the social work department that should be involved. We should use imagination, backed by resources.

The Convener: On behalf of the committee, I thank George Anderson, John Anderson, Edith Blake and Diane Watt for attending. Your evidence has been helpful and we appreciate your making yourselves available.

We now move into private session.

17:02

Meeting continued in private until 17:10.

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