JUSTICE 2 COMMITTEE

Tuesday 6 January 2004

Session 2

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JUSTICE 2 COMMITTEE
1st Meeting 2004, 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 ALSO ATTENDED:

Patrick Harvie (Glasgow) (Green)

THE FOLLOWING GAVE EVIDENCE:

Patricia Bowerbank (Apex Scotland)
Helen Hunter (Children 1st)
Douglas Keil (Scottish Police Federation)
Dr Lesley McAra (University of Edinburgh)
Susan Matheson (Safeguarding Communities-Reducing Offending)
Maggie Mellon (NCH Scotland)
Bernadette Monaghan (Apex Scotland)
Keith Simpson (Safeguarding Communities-Reducing Offending)
Professor David Smith (University of Edinburgh)
Chief Constable David Strang (Association of Chief Police Officers in Scotland)

CLERK TO THE COMMITTEE

Gillian Baxendine
Lynn Tullis

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Richard Hough

LOCATION

Committee Room 2

Scottish Parliament

Justice 2 Committee

Tuesday 6 January 2004

[THE CONVENER *opened the meeting at 10:04*]

Antisocial Behaviour etc (Scotland) Bill: Stage 1

The Convener (Miss Annabel Goldie): Good morning, everyone, and welcome to the first meeting of the Justice 2 Committee in 2004. I wish everyone a happy new year. I am sure that we are all anticipating and speculating about the months ahead, and this meeting will play no small part in that.

It is my pleasant duty to welcome to the meeting witnesses from Safeguarding Communities-Reducing Offending: Susan Matheson, who is the chief executive; and Keith Simpson, who is the head of service development. We are grateful to them for coming and glad that they are not afflicted with any bugs or disorders. I have apologies from Colin Fox, who is ill, unfortunately, and cannot be with us. Nicola Sturgeon is well, but cannot be with us this morning, although she will join us this afternoon. I welcome Patrick Harvie, who is here as an observer.

The purpose of this meeting is to take evidence on the Antisocial Behaviour etc (Scotland) Bill, and the witnesses from SACRO are here for that. We are fairly tight for time today and will therefore proceed straight to questions, if that is acceptable to the witnesses.

I will lead off. When I looked at your submission to the consultation, I noticed that, fairly early on, you considered laws that already exist to deal with various difficulties and disorders that arise within communities. Will you be a little more explicit in your comments on those? A number of organisations have taken the view that, at the moment, rather than create new powers, we need more resources to improve the deployment of existing powers. Will you expand a little on the view that you expressed in your submission?

Keith Simpson (Safeguarding Communities-Reducing Offending): I think that your consultation document—I have not brought it with me—listed a number of examples of behaviour that was considered to be antisocial. Without exception, all those examples would be subject to existing criminal law; they would be covered by legislation on breach of the peace, vandalism or under-age drinking. At least, I do not believe that there was one example that was not covered by existing law. That was our point. The issue is how we respond to breaches of existing criminal law and our ability to detect, respond to and process offences. Researchers have estimated that less than 2 per cent of crimes end up in court because of the various stages that are involved in detecting, apprehending and processing the people who are responsible. Our view is that that is what requires attention. The behaviour that goes on is already proscribed by existing legislation, and the challenge for us is how we enforce that legislation and deal with such behaviour.

The Convener: In your response to the consultation—it was an Executive consultation, not a committee consultation—you also said:

> "If strategic priorities or resourcing issues hinder efficient use of existing powers, how confident can we be that new powers are either necessary or able to be implemented more effectively?"

Are you concerned that the level of resourcing is impeding the deployment of existing measures? If so, what are your feelings about the implications of the bill, if it is enacted, for consequential resourcing?

Keith Simpson: I am grateful to you for those questions, because they get to the heart of the matter at the outset. I hasten to add that we agree with many of the proposals in the bill. There is a small number with which we disagree, although those proposals seem to have a central role in the bill—antisocial behaviour orders and dispersal of groups, for example. Our concern is that, at best, they attract attention away from the real issues, as I tried to outline before; at worst, they may aggravate the situation by turning our attention to less serious behaviour when we should be focusing on more serious behaviour.

There are already indications that that is happening in England and Wales. You will be aware that England and Wales has had legislation on antisocial behaviour orders for people aged 10 and upwards since, I think, 1999. Last year, I was at a conference in England, which was well-attended by police officers, a number of whom said that increasing attention was being given to more minor offences, which were attracting attention away from more serious offences. That is worrying to hear, particularly when crime statistics tell us that our areas of major concern should be on more serious offences, particularly serious violence. If some of the proposals in the bill will tend to attract attention away from such offences and, without additional resources, aggravate the situation that already exists, that is a worrying prospect.

The Convener: So you have a real concern.

Keith Simpson: Yes. Our motivation is the same as that of the committee. SACRO stands for

Safeguarding Communities-Reducing Offending, which describes why we exist. We are concerned about how we can pursue those objectives best. We are not saying that no issues need to be addressed, but we are concerned about whether we are focusing in the right direction and we are really concerned that some proposals might aggravate rather than improve the situation.

The Convener: My next question might be more difficult to answer. Given your views, what is your attitude to the proposals in the bill? Would it be wise to restrict them to a pilot operation?

Keith Simpson: As I said, our major concerns are about extending antisocial behaviour orders to under-16s, the provisions on dispersal of groups, some aspects of community reparation orders and some aspects of parenting orders. We can go into more detail if the committee wants that.

The Convener: Other members will question you on those issues.

Keith Simpson: We are conscious that the proposal to extend antisocial behaviour orders to under-16s has a head of political steam behind it, so our objection is unlikely to prevent that measure from proceeding. If so, we have proposals about safeguards. Restricting such a measure initially to a pilot might well be a useful safeguard.

Susan Matheson (Safeguarding Communities-Reducing Offending): In common with other organisations, such as NCH Scotland, which gave evidence to the Communities Committee, we emphasise that the children's hearings system works well and can deal with all the issues that the bill attempts to deal with, but that the system has not had the resources for its programmes and back-up services to allow panels to be sure that their disposals will be implemented thoroughly. That is another resource issue.

The Convener: That was helpful.

Mike Pringle (Edinburgh South) (LD): I will ask about your attitude to ASBOs for under-16s, which were just mentioned. The bill suggests extending ASBOs from over 16s to people from the age of 12, which would bring 12 to 15-year-olds into the system. Why has the age of 12 and not eight been chosen? Some people have suggested the age of eight because that is the age of criminal responsibility. At a previous meeting, we received evidence that the age of 12 was chosen because people can consult a solicitor from that age. I am not sure of the foundation for that. Should no level be set, or should the age be eight or 12? What is the cut-off point? The age of 12 seems to be a bit of an arbitrary figure that somebody has plucked from the air.

Keith Simpson: The cut-off figure should be 16. As I said, we are conscious that a head of political steam has built up. If it is determined that ASBOs should be extended to under-16s, we must ensure that the bill—or guidance—provides that all other measures should be attempted first, as in existing legislation for adults, which provides that the courts should satisfy themselves that all other measures have been attempted; that legislation also mentions mediation.

The policy memorandum that accompanies the bill refers to

"restorative justice … including reparation and mediation",

but that is one aspect of the bill that disturbs us—the confusion of criminal behaviour and antisocial behaviour. Restorative justice, mediation and reparation are measures that are appropriate for dealing with criminal behaviour. We suggest that community mediation is required to deal with antisocial behaviour that falls short of criminal behaviour, because we are dealing with clashes of lifestyle, particularly when young people's behaviour conflicts with the quality of life of other members of the community. Those clashes need to be resolved in a way that does not criminalise such behaviour. That is why we want community mediation to be referred to.

10:15

If the Executive goes ahead with extending the application of ASBOs, they must be dealt with entirely by the children's hearings system. First, that will allow an holistic approach that takes into account all aspects. Secondly, as I learned in England and Wales, because an antisocial behaviour order is a civil measure, it is not subject to the media reporting restrictions that apply to criminal matters, so in England and Wales, the national media are running campaigns with titles such as "Shop a Yob". Local papers are publishing front-page pictures of young people against whom antisocial behaviour orders have been taken out with their names and other details—those papers encourage local people to keep an eye on the young people and to shop them if they are seen doing things that they should not. I understand that that is being encouraged by judicial guidance. At the conference that I attended, opinion was divided on the matter.

SACRO believes that plenty of evidence suggests that such a measure will increase the likelihood that a young person will be confirmed in such behaviour and that it will make it difficult for them to get out of it. That is another reason why we suggest that if the Executive extends the application of ASBOs to under-16s, that must be undertaken through the children's hearings system, to protect the privacy of the young people who are involved. I understand that if civil courts are used, the legislation will not provide such protection. That is an important point.

Thirdly, one danger of the proposals on antisocial behaviour orders and the dispersal of groups is that the breadth of ways in which people can be drawn into the system and the conditions that can be imposed are virtually unlimited. We think that restrictions should exist, particularly if we are talking about behaviour that falls short of being criminal behaviour. What the courts can do in relation to criminal behaviour is restricted, so it is wrong that restrictions should not apply to measures to deal with behaviour that is less than criminal behaviour.

I heard that in England and Wales, what might be called plea or condition bargaining is being conducted. The police, for example, might take to court a list of conditions with which they require a young person to comply. They know that several conditions will be unacceptable and they bargain with a young person's solicitor to drop one condition if a young person complies with another condition and vice versa. Much dangerous practice is developing in England and Wales and we should take account of that.

Susan Matheson: Another factor is that as the behaviour under discussion is not criminal behaviour, no test of reasonableness applies. Many dangers relate to the use of civil proceedings, such as the lack of protection in several ways.

The Convener: That is because the burden of proof is lower in civil matters.

Susan Matheson: Yes.

Mike Pringle: I had planned to ask the witnesses who should be responsible for imposing ASBOs on under-16s, but it is clear that SACRO thinks that not the courts, but the children's hearings system, should do that.

Susan Matheson: Yes. If properly resourced, a supervision order with conditions from a children's hearing can already have the same impact as an antisocial behaviour order. The positive finding arising from fast-track children's hearings is that when properly resourced and proceeded with quickly, such measures work well. Ordinary children's hearings could be as effective as fast-track hearings are if they were adequately resourced.

Mike Pringle: That was a full answer.

The Convener: I will tease out your attitude to the provisions on dispersal of groups, about which SACRO is uneasy—Mr Simpson just confirmed that. It is unclear whether the objection to the proposed power to disperse groups rests with the fact that, for the first time, dispersal would not follow the commission of a crime. A crime would not have been committed—the crime would be that young people were in a group that merited the deployment of the dispersal remedy. Is that SACRO's principal concern, or do you think that the measure would be ineffective and unnecessary because relevant powers already exist?

Susan Matheson: It is a bit of both. We are concerned about the way in which the bill is written. It says that antisocial behaviour is behaviour that results in, or "is likely to" result in, a member of the public being alarmed or distressed, but that is totally subjective. If a member of the public says that they are alarmed or distressed by the presence of a group, which can be as small as two people, we have to rely purely on the belief of a police officer that that member of the public is distressed. The implications of that are quite frightening as, irrespective of the behaviour of the group and whether or not it is criminal, the police can take action. There is no requirement for the person to prove that their distress is reasonable. We also know that contravention of the provision on dispersal could result in imprisonment: the provision has serious consequences.

Keith Simpson: The provision is a blunt and unnecessary tool. If criminal activity is taking place, existing powers can deal with it, as the police have said. The police should be targeting the people who are engaging in criminal behaviour. It is inappropriate to designate a particular area, as no area is appropriate for criminal behaviour. Let us target the people who are behaving criminally.

The provision may seek to tackle the fact that people are gathering in a place and acting in a way that does not take account of other people's needs, but the way to deal with such situations is through community mediation. We suggested that at the beginning of our evidence today. We are working in partnership with Aberdeen City Council on the setting up of a new project that deals specifically in street mediation with groups of young people in the area.

We know that there has been a decrease in the amount of playing space and in the accessibility and availability of recreational facilities for young people across the country. People are increasingly living in close proximity to one another, yet they do not have access to publicly available resources that cater for their needs. Young people have energy and that should be encouraged, fostered and channelled in positive ways. The danger of the provision on dispersal of groups is that it will increase a feeling of alienation among young people. In turn, that will lead to more antisocial and, indeed, criminal behaviour.

If a young person, or any person, is engaging in criminal behaviour, let us deal with that behaviour. If they are just gathering and behaving in a way that does not take sufficient account of their

neighbours or other members of the community, let us deal with that through mediation. If mediation is used, the needs of young people to have space and places to gather and meet can be taken into account. Mediation also gives young people the opportunity to identify their needs and to contribute to the meeting of those needs.

The Executive's initial consultation acknowledged that in order to tackle antisocial behaviour we have to engage the community. We find it particularly disappointing therefore that the emphasis of the bill seems to be on orders and action by the courts. I see nothing in the bill about an engagement with the community, which would include an engagement with young people themselves. We agree with the Executive that engaging with the community and involving people in the process is key to tackling antisocial behaviour. An engagement with the community would include mediation and participation by young people not only in recognising their duties in relation to their neighbours and others in the community but in identifying and articulating their needs as young people who require positive ways to use their energy and to engage in recreation.

I have been involved in working with young people for a long while and there is no doubt in my mind that the availability of and access to recreational opportunities has reduced. That was also identified in a recent YouthLink Scotland survey. We need to tackle the lack of youth facilities in our communities and we need to involve young people in that work.

The Convener: In evidence to the committee about the dispersal powers, the Executive suggested that a

"test of significant and persistent distress"—[*Official Report, Justice 2 Committee*, 25 November 2003; c 242.]

would require to be met before an area could be designated. Does that reassure you?

Keith Simpson: It is a question of how distress would be measured. Any such test would be subjective and I have no doubt that it would vary around the country. What is an acceptable level of distress will vary according to individuals and the locality, which makes legislation difficult. The real way to deal with distress is to bring parties together so that one person can understand how their behaviour impacts on another person and how it creates distress.

In order for the courts to be able to judge distress, an inappropriate element of subjectivity would be involved, which would vary around the country, too. What distresses me is not necessarily the same thing that would distress a member of the committee, for example. It is inappropriate for the police and the courts to be put in the position of judging what is distressing. If the behaviour is not covered by the criminal law, the courts are not the place where that behaviour should be dealt with.

Susan Matheson: I would like to add a small point—that said, I do not know how small it is. We are afraid that the provision on dispersal of groups could contravene article 15 of the United Nations Convention on the Rights of the Child, under which young people are given the right of association.

Maureen Macmillan (Highlands and Islands) (Lab): Is it not possible that an order to disperse a group could stop youngsters gathering in an area where there has been trouble and where the community and the young people are at loggerheads? Would the granting of the order not give time for community mediation to kick in?

The police in my local area tell me that there are fashions in these things. All of a sudden it will be the fashion for kids to gather at a particular place where they might shout at and intimidate passers-by. The situation can be defused if the behaviour is stopped. Is there not a role for the dispersal provision to lead to mediation?

Susan Matheson: Our understanding is that existing powers can be used to disperse troublesome groups. An area does not need to be designated for that to happen.

Maureen Macmillan: Yes, but there is no power to prevent the youngsters from gathering again in the same place on the next evening. Although the police can disperse them, the youngsters can return the following day. If the police could serve an order to disperse, the youngsters would be prevented from gathering until such time that community mediation took place.

The Convener: I think that the point is made. Let the witness respond.

Susan Matheson: The mediation to which Keith Simpson referred, which we are pioneering in Aberdeen, has a lot of promise. The mediators will get to know people in communities at an early stage, and they will also come to recognise the hot spots. They can try to deal with young people's behaviour before it becomes troublesome. We prefer to look at it that way round. We should not wait until young people's behaviour becomes troublesome before mediation is used.

The Convener: To pursue Maureen Macmillan's point, if the measure could be used to defuse a situation, do you anticipate that a group would congregate elsewhere on the next night?

Keith Simpson: That is the danger. Mediation can take effect very quickly. Indeed, it is probable that we could intervene in a situation more quickly than the time that it would take for an area to be designated. The purpose of mediation is to foster

mutual understanding. However, as the convener said, if understanding is not fostered the behaviour that caused distress will be replicated in the area to which a group moves.

It is necessary for people to understand the distress that their behaviour and gathering causes, as that allows them to deal with their behaviour. The dispersal provision deals only with the area in which the behaviour is manifested. If the issue is about how quickly mediators can respond, I confirm that mediation can respond very quickly indeed.

Unfortunately, at the present time, community mediation schemes are not available throughout the country. Entire areas of the country, including major areas such as Glasgow, do not have access to mediation. Even where schemes exist they are restricted. In many cases, they deal only with disputes between neighbours in council houses, as local authorities perceive that to be their prime responsibility in respect of antisocial behaviour.

The concept of the need to develop mediation as a means within the community to foster dialogue and understanding when conflicts arise between different members of a community, or between different age groups in a community, is still in its infancy. The necessary focus on antisocial behaviour in the community gives us an ideal opportunity to say that mediation should be developed further, as it can counter antisocial behaviour. We very much regret that, at present, that opportunity does not seem to have been taken. Increased dialogue between young people and adults in our community offers widespread benefits for the future, which we should be concentrating on.

Given what is going on in the media, members will know as well as I do that, unfortunately, there is a perception that the present proposals are anti-young people and that, rather than improve or increase dialogue, they will increase alienation and in some ways make the situation worse.

10:30

The Convener: Maureen Macmillan wants to ask about parenting orders.

Maureen Macmillan: Parenting orders are another controversial area. We have received evidence on both sides: it has been suggested both that such orders would be beneficial in ensuring that children are properly parented and that they would simply put unnecessary strain on families that are already under pressure.

Susan Matheson: I am sorry; could you repeat the question?

Maureen Macmillan: It was about the controversial issue of parenting orders. Some people think that they will be beneficial because they will focus parents' minds on the welfare of their children, while others think that something as legalistic as a parenting order will put more strain on families.

Susan Matheson: Our view is that, if parenting orders are to be introduced, they must focus on parents' behaviour rather than on the child's. The welfare of the child must be paramount and, if parents are fined or imprisoned, that might not be in the child's best interests. If a parent is being neglectful or abusive, that is criminal behaviour and there are existing powers to deal with that.

Obviously, parents have an important role to play and, in our restorative justice conferencing, we find that it is important for parents to be present and to be challenged by the victim on what they will do to ensure that their child's behaviour improves in future and on the responsibility that they will take for that. The restorative justice conference has a long preparation phase during which some parental education can be undertaken.

It is also important that there is support for parents in society before a problem arises. It is my understanding from speaking to someone at a conference that the health visitor service is under much greater strain than it used to be. All parents should have prenatal visits and should get support during their child's early infancy, and there should be more support of other kinds for parents, particularly parents of teenagers, as we all know that parenting teenagers can be challenging and that any of us might need support. There should be opportunities for parents to go voluntarily to parenting groups, before a situation is reached that requires an order. Many parents would welcome that.

Maureen Macmillan: You do not think that parents have sufficient opportunities to learn parenting skills.

The Convener: I ask you to focus on questions, because we are tight for time and other members want to ask questions.

Maureen Macmillan: You would say that investment in parenting classes is a better alternative—

Susan Matheson: It is not just a question of providing parenting classes. We need to find out from parents what support they need. Such support could take a variety of forms at different stages of their child's development, including classes and visits from health visitors. Parents should be able to get support voluntarily, which would mean that orders might never be necessary.

Maureen Macmillan: If that voluntary option was not taken up, would parenting orders be appropriate?

Susan Matheson: There might be cases in which a children's hearing wants the parents to ensure that their child does something. At the moment, the reporter cannot impose such a condition, so it might be desirable for the reporter to be able to impose particular conditions on the parents as well as on the child.

Maureen Macmillan: I was going to ask whether parenting orders ought to be imposed by the children's hearings rather than by the courts.

Susan Matheson: That is very important, because there could be confusion if the child was going through one system while the parents were going through another.

Maureen Macmillan: Would you like the bill to be improved as regards parenting orders?

Susan Matheson: We would like the bill to spell out the fact that parenting orders should relate to the behaviour of the parent, that they should be obtained through the children's hearings system and that the child's welfare is paramount.

Maureen Macmillan: Do you consider that there are enough resources for the support services that would be needed alongside parenting orders?

Susan Matheson: Such services should be available for the reporter to refer people to as he or she thinks fit.

Jackie Baillie (Dumbarton) (Lab): Before I ask a specific question, I want to ask a general question, because it is important to set the bill in a much wider policy context. I think that the witnesses would acknowledge that, in past years—irrespective of how the media portray matters—considerable attention has been paid to youth development in the context of a broad community development approach, which is about realising individual potential and providing people with opportunity. Some people would say that the bill is one strand in that wider policy context and that it is about a strategy that, as I understand it, would involve communities, agencies and young people. I would welcome your view on that.

The bill also seeks to provide what some people have described as a toolbox that contains a variety of tools. You might disagree with the use of some of those tools, but they form part of a broad range of responses within a much wider policy context. I would be interested in hearing your view on that perspective.

Keith Simpson: Before the Executive's consultation document was issued, we were almost 100 per cent delighted with the progress that the Executive and the Parliament were making in developing a strategy on community development, youth crime and other measures. All of a sudden, there was a blip—the focus seemed to change. That seemed to coincide with the period just before the last election—I do not know whether that was coincidental. Since then, the emphasis has seemed to be much more negative.

Many of the initiatives that the Executive has supported since its inception—including some of the work that we have been doing—are in their early stages and have hardly had time to bear fruit or to demonstrate their full potential. Other initiatives have been implemented only partially and still require financial support, support from the Executive and from politicians and support in public statements in the press. Members will know that many people's perceptions of what is going on are coloured by the press as well as by what is going on outside their front door. We feel that there has been a change of direction, which has shifted the emphasis and has altered the public perception of what is happening. As I have said, in some respects, that change of direction has detracted from the good work that had been started and has distracted us from focusing attention on what requires to be done.

I acknowledge that much useful work is going on, which in some respects is trying to repair damage that has occurred in previous years. I have said that I feel that there was a long period of death by a thousand cuts in the youth service, for example. In some ways, that started in the early 1970s with the implementation of the Alexander report on community education and the loss of focus on youth services that resulted from that. I know from my involvement in youth work, both professionally and in a voluntary capacity, that resources, activities and availability for young people have decreased. I am not someone who feels that resurrecting the old-style youth service would solve all the problems, but there is an issue that needs to be addressed and insufficient attention is being paid to it. Some of what is being said detracts from that task, which is where we should be focusing our attention.

Susan Matheson: Much of the focus seems to be on negative measures, such as punishment. At a conference, I heard Alan Miller, the Scottish Children's Reporter Administration's principal reporter say that there is no evidence that punishment alone works and that there is evidence that it does not work. We are anxious that such a negative focus will alienate young people and will be counterproductive.

Jackie Baillie: I do not think that anyone here would disagree with that. However, I am picking up that you think that earlier policies have not been reneged on, that much good work continues, some of which needs further development and resourcing, and that perhaps we are dealing with a perception, rather than the reality.

I move on to ask a specific question. You refer in your submission to evidence of the use of

community reparation orders in England. What is the experience down there and can we learn from it in Scotland?

Keith Simpson: As we said in our response to the consultation document, I understand that in England and Wales people have resented the enforcement of community reparation orders. There is a lot of merit in the proposals for CROs and we support their use and implementation for offenders aged over 16, although there should not be an upper age limit of 22—I have to say that I do not understand the reason for having an upper age limit. There is merit in introducing an order that is available as a first disposal, unlike community service orders, which are used just as an alternative to imprisonment.

SACRO is committed to the use of reparation as a means of addressing offending behaviour, to repair the damage that such behaviour causes and to instil in the people who engage in reparative activity a feeling of pride in what they do. That can turn round people's perceptions of themselves so that they feel positive about what they have done, rather than have a negative image of themselves as offenders who have caused damage. The best way to achieve that positive result among under-16s is to involve them voluntarily, so that they are not forced against their will to engage in the process.

We are engaged in such work with young people and we find that they respond positively. There are a number of positive spin-offs from voluntary reparation, not least of which is the involvement of the young people's parents. For example, in a number of situations, young people have taken part in identifying a task that they could do to make reparation to their community, such as repairing damage to local parks and recreation spaces, and their parents have worked with us to supervise the young people's work. That has not happened because an order has been made, and I doubt that an order could compel parents to take part, but when the process is voluntary, parents want their children to put things right and they want to be part of the process.

We have experienced positive results in our work and it would be premature, at the very least, to use reparation orders when the process can be engaged in voluntarily. With young people under 16 in particular, far more can be gained from engaging young people in participating on a voluntary basis than from seeking to compel them. Instead of bringing in orders, let us continue to work with young people on a voluntary basis—that is one of the initiatives that I mentioned as being fairly new in Scotland. We should use orders only for people aged over 16, with no cut-off point at 22.

Jackie Baillie: Let me tease that out to ensure that I have understood your position correctly. You acknowledge that reparation can take place voluntarily and that such work is productive. Are you saying that compulsion does not work, or are you saying that you would need more evidence before you went down the road of supporting orders?

Keith Simpson: Compulsion can be counterproductive. If someone is forced to engage in reparative activity against their will, it is likely that they will be resentful, which does not bode well for their future behaviour. However, if a person is persuaded to engage in such activity voluntarily, on the basis that they recognise that they have done something wrong and have caused damage that has had an impact on another person, not only does something positive happen—they might even suggest how they might put things right—but the person's perception of what they have done is changed. That is more likely to have a lasting impact on their behaviour, which is significant, particularly for young people who are developing their social attitudes. We should not damage that development.

10:45

Susan Matheson: The victim should also have a role in coming to an agreement about the reparative work that is to be undertaken. That is important, not only from the victim's perspective, but for the future behaviour of the young person, who will understand the impact of their behaviour on the victim.

Jackie Baillie: Let me take the point one step further. The nature of reparation programmes has excited some debate. Your approach is predominantly based on education to address offending behaviour, whereas the emphasis of a community reparation order is ultimately on reparation rather than education. Has the right balance been struck? Is there an educative aspect to the process of undertaking reparation work that addresses the victim's needs?

Keith Simpson: I am sure that there can be. As I said, compulsion is likely to create resentment, but there might well be individuals who will be educated as a result of going through the process. However, the same effect could be achieved if they took part voluntarily.

I do not know whether members have had a chance to consider our comments about this in our response to the consultation document, but we find that there is not always a wide range of opportunities for reparative activity by young people—certainly for community reparation as opposed to individual reparation—that meets, for example, the legislative requirements in relation to

health and safety. Such requirements do not allow for the removal of graffiti, for example, which is the example that is often shown on television. Graffiti removal involves dangerous chemicals and requires people to wear protective clothing—although the people that we see on television do not seem to do so.

Rather than adopt the approach that is taken in the consultation document and the bill, we should encourage the notion that we must foster opportunities for community improvement that deal with the damage caused by vandalism, that improve public facilities and, in particular, that involve young people. The Executive should help to sponsor and encourage the involvement of youth groups in such work through the youth service or community organisations.

Schemes such as ours could develop opportunities for young people who engage in vandalism and offending to link in with such activities so that, rather than being seen as a chain gang of offenders who are there to put something right as a result of their past behaviour, they are seen as a group of young people who engage in positive behaviour in the community. I noticed the reference in the consultation document to "visible reparation", but it is unclear whether that means that the work should create visible improvements or that the people who carry out the work should be visible.

The approach that we suggest would help to foster useful work in the community and positive attitudes, both in the community towards young people and among young people themselves, who would feel more positive about their role in the community. It would provide an opportunity for young people who become involved in antisocial behaviour to engage in more social behaviour with a group of their peers instead of pushing young people down a more coercive, punitive route.

Jackie Baillie: My final question requires only a yes or no response, as I think that I already know what your view is. Should community reparation orders be a matter for the children's hearings system rather than for the courts?

Keith Simpson: Yes.

Karen Whitefield (Airdrie and Shotts) (Lab): I noticed that restriction of liberty orders were not on the list of issues about which SACRO is concerned, but you are likely to have a view on them. Should they be used for young people under 16?

Susan Matheson: We are quite anxious about them, as you might have expected. RLOs should be used strictly as an alternative to custody and with support, which would need to be resourced. If they are to be used as an alternative to secure accommodation, they should be used only when the young people pose a risk to others. If they pose a risk to themselves, they might well need to be in safe accommodation, away from their homes. There must be careful assessment of the home that a young person comes from before they are restricted to it, to ensure that they are safe there. The orders should be used strictly as an alternative to custody—which we would always see as a benefit—and there must be good assessment and properly resourced support for anyone who is tagged.

In England and Wales, breach of tagging orders is at quite a high level and, according to Andrew Coyle, has increased the young prison population by as much as 20 per cent. Therefore, we are quite anxious about such a measure.

Karen Whitefield: Based on what you say, I take it that you think that the use of tagging orders should be explored and that, in some cases, tagging might be more desirable than having a young person go into secure accommodation—if their needs are such, it might be a better alternative—as long as its use is judged on the individual circumstances rather than seen as a solution that fits everybody's needs.

Susan Matheson: Possibly, as long as the one-to-one engagement, commitment and support that children need are available and the tag reassures people more than putting the child into custody would. However, that point is a bit marginal. The emphasis must be on support and meeting children's needs rather than on the tag. A tag will not, by itself, change attitudes or behaviour; other work must be done, perhaps involving cognitive skills programmes as well as support. The challenge to criminal behaviour must be there, but tagging should be used with caution and should not put children in a more risky situation or give them a badge of honour that they can parade among unsuitable peers.

Karen Whitefield: Let us move on to fixed-penalty notices. Your submission mentions your concerns about the way in which the new powers will work and how effective they will be. North Lanarkshire Council has a very effective antisocial behaviour task force, which uses all sorts of methods to engage with the community and to address antisocial behaviour. The task force believes that the proposals for new powers in relation to fixed-penalty notices are positive and that such notices might be a useful tool to have in the local authority's toolbox. Why do you think that the proposals will not be helpful?

Susan Matheson: The task force in North Lanarkshire also works with mediation, which we see as a better way forward.

Keith Simpson: Our main comment on fixed-penalty notices is that we feel that they would be

inappropriate for under-16s. I understand that that was accepted in drafting the bill, and we are delighted with that.

The Convener: I have two final questions. I know that you have an unease about closure notices and feel that they simply move a problem on rather than address its symptoms. Does your unease stem from the fact that you think that the existing legislation is not being deployed, or do you have a broader concern?

Keith Simpson: No, I would not say that our concern is broader. There might be cases in which closure notices would be useful. Our concern is that they do not deal with the principal cause of the problem, but skirt around the edge. However, we do not have a strong objection to the proposals in the bill.

The Convener: Much of the bill depends on someone somewhere being able to define antisocial behaviour, which does not appear to be defined in the bill. Do you regard that as a serious difficulty?

Keith Simpson: It is a fundamental difficulty that antisocial behaviour and criminal behaviour are confused in the present proposals. Some criminal behaviour is antisocial and should be dealt with by criminal law. Some antisocial behaviour is not criminal and—as we have said before—should be dealt with by measures other than the law, including mediation. I do not think that those distinctions are well spelt-out in the proposals, and that is at the heart of our concerns.

The Convener: There was a desire to discuss with you the whole question of community mediation, but that has been fully covered and you have made your views clear on that. Do members have any further questions for our witnesses?

Members: No.

The Convener: Do our witnesses have any concluding remarks to make? That is not to say that you have to make any concluding remarks.

Susan Matheson: We have covered the main issues that we wanted to address. If anything occurs to us later, we will put it in a written submission. I have left some additional papers with the clerk, which the committee may find interesting. I picked them up at conferences.

The Convener: That is helpful. Thank you for that. I thank you both for what we all agree has been an extremely fruitful session.

I shall allow a break of five minutes for comfort, coffee, tea and shortbread.

10:56

Meeting suspended.

11:04

On resuming—

The Convener: It is now my pleasant task to welcome to the meeting representatives of Apex Scotland. Bernadette Monaghan is the director and Patricia Bowerbank is the service manager. Thank you very much for making yourselves available. We have had the benefit of your submission and committee members now want to explore a number of areas with you.

Jackie Baillie: I want to ask about community reparation orders and to find out how successful you feel that supervised attendance orders have been.

Bernadette Monaghan (Apex Scotland): In our experience, supervised attendance orders have been very successful. One reason for that is that supervised attendance is a constructive penalty. I was struck by what the witnesses from SACRO said about community reparation. When something is purely a punishment, with the purpose of making an example of young people, it can be counterproductive and lead to entrenched attitudes and hostility. In our experience, sheriffs are keen to use supervised attendance orders. They will probably be more in favour of them once they become a first sentencing option, which will happen in two pilot areas. As members can see from our written submission, our results have been pretty good—not only in the number of people who complete supervised attendance orders, but in the number who subsequently move on to positive outcomes.

Jackie Baillie: Supervision orders are, in effect, for fine defaulters, and community service orders are at the other end of the spectrum. Is there a place for community reparation orders?

Bernadette Monaghan: To be honest, I am not sure. One of my major concerns is that the distinction between supervised attendance, community reparation and community service becomes blurred in practice. People are moving further along the tariff and further into the system for what could have been relatively minor behaviour. We have to be clear about the criteria and we have to ask where community reparation sits and whether it is used only for people who fit those criteria and not for people for whom supervised attendance might be more appropriate.

Jackie Baillie: A number of people have suggested that the community reparation orders that will be available for 12 to 21-year-olds should be put in place for eight-year-olds and that there should be no upper age limit. What is your view?

Bernadette Monaghan: I am not sure about the use of community reparation orders for under-16s. The hearings system already has many powers

and I would like more emphasis to be put on the education and needs of under-16s, rather than on purely punitive responses.

I am also not sure about the upper age limit. The average age of the people we work with on supervised attendance orders is around 26, but we have worked with 16-year-olds and 57-year-olds. Age has nothing to do with the benefit to the person of being on the order or with the work that can be done to help to turn their life around.

Jackie Baillie: Should community reparation orders be a matter for the courts or the children's hearings system?

Bernadette Monaghan: I would say that they should be a matter for the courts. I would caution against bringing measures that are geared towards adults—by which I mean over-16s—into the children's hearings system. Most young people do not come to the attention of the formal systems; the ones who do represent just 1.5 per cent of young people. They tend to offend once and then not come back into the system again. Only a very small proportion of children go on to offend in any sort of persistent way and they have a whole raft of issues and needs that set them apart from young people who engage in minor offending and minor behaviours.

The children's hearings system is very good at taking an holistic approach. Such an approach is just as relevant to over-16s, but I would not want the children's hearings system to become more of a punitive forum. We have to acknowledge that the children who come into the system on care and protection grounds are likely to be the same people who come back when they are older because of offending.

Jackie Baillie: In your submission, you say that you would be happy to engage formally with the Executive on the nature of reparation work. Has the Executive been in touch?

Bernadette Monaghan: No—but that is not to say that it will not be in touch. People respond to supervised attendance because it is constructive; they can work on their issues and needs and can get something from the order. Because of our experience of that, I feel that we could have something to offer in shaping the form that community reparation orders might take.

Jackie Baillie: The emphasis of the Executive's reparation orders is on the work and restorative justice element rather than on education and training. Has the Executive got the balance right? Further, should compulsion be of concern?

Bernadette Monaghan: I believe that people are more willing to engage in anything if they can do it voluntarily first. Compulsion can be counterproductive. I want more emphasis on considering needs and issues, and on education and training. Rather than address offending behaviour by doing offending-behaviour work, our role is to add value to continuing work by considering a young person's wider needs and issues so that they can sustain any positive benefits that they may get from offending-behaviour work.

Unless we have those two components in any intervention, there are only limited chances of someone sustaining in the longer term what they may have learned, or sustaining the benefits of something, or learning something from a punitive response. I want to bring in my colleague Patricia Bowerbank at this point, because she has nine years' experience as a youth worker and is probably better qualified than I am to comment on how young people might respond, and on whether a purely punitive community reparation order would be as effective as people hope.

Patricia Bowerbank (Apex Scotland): I find that strong persuasion and encouragement pays off with young people far better than telling them what to do. If an idea is planted in a young person's mind, they take it forward as their own. We get far more positive results that way and there is more likelihood of our sustaining something.

Jackie Baillie: Does that kind of positive enforcement have 100 per cent success for the minority of young people who are responsible for persistent antisocial behaviour?

Patricia Bowerbank: In my experience, it does. Strong support and encouragement leads people through the process successfully.

Mike Pringle: I want to pick up on Jackie Baillie's point about the minority. Somebody told me that in Lothian, for example, there are fewer than 30 persistent young offenders. Do you believe that the approach that you just outlined would address that small minority? Do you not feel that you must take a stronger line?

Patricia Bowerbank: If we took a stronger line, we could, for example, introduce supervision to ensure that there was continuing support. The key is consistency and, in my opinion, strong relationships built on equality and respect. I do not have contact with the 30 people to whom Mike Pringle referred—well, perhaps I do. However, I would be inclined to try the way that I outlined before I dismissed it.

Mike Pringle: One of the bill's major proposals is to extend ASBOs to under-16s. The bill suggests 12 as the lower age limit. Do you have a view on that? Some people have suggested that, as the age of criminal responsibility is eight, the lower age limit for ASBOs should be eight. I believe that the Communities Committee first

suggested that. Should we extend ASBOs to under-16s? Was the proposed lower age limit of 12 just plucked out of the air?

Bernadette Monaghan: I do not believe that we should extend ASBOs to under-16s because the children's hearings system adopts an holistic approach for under-16s. It would not be productive to go down the road of having ASBOs for under-16s because the hearings system already has powers to impose many conditions on supervision requirements while, it is hoped, ensuring that a young person's needs are addressed.

One of the problems at the moment is that much of the spend on criminal justice and youth justice is on processing young people. If one introduces a raft of new measures, including antisocial behaviour orders, there will be process costs. The spend—and the emphasis—needs to shift towards the fact that it does not matter what decision one makes in a hearing; the important measure, which must be strengthened, is the quality of the intervention that a young person and their family receive thereafter. We already have provision in the existing system for supervision requirements to address many of the issues that we hope to address. We do not, however, currently have the range of services in the community to build on that.

11:15

The Convener: Is that a matter of resource?

Bernadette Monaghan: It is not only a matter of resource. We cannot sit here and say, "Let's have more money so we can do more of the same." We have to be more imaginative in what we are doing. There needs to be more clarity about the role of youth justice teams, for example. Is it simply to co-ordinate better the use of resources for a more persistent, hardcore group of offenders? Or is it to take a much wider, more holistic approach to the needs of young people in a particular community? The Executive is to be commended for the steps that it has taken to address all levels of offending by young people—some £33 million will be spent on youth justice by next year. It is not a case of saying, "Let's have more resources". It is a case of saying, "What are we missing at the moment? Are there ways in which agencies could work together more imaginatively?"

The Convener: Do you refer to things such as community mediation, as the earlier witnesses mentioned?

Bernadette Monaghan: All those things have their place and they are important. Youth justice teams have a crucial role in case managing a young person because somebody has to ensure that a young person is plugged into the right service at the right time. It is not enough to have lots of resources in the community; we must ensure that young people can access them. For example, are they available at weekends? Patricia Bowerbank's work is largely at weekends and on Friday nights, when it is needed, and not Monday to Friday.

We have to consider case management and access to those services, co-ordination and ensuring that it happens at a community level. That is far more important than having a raft of new measures that require resources to implement and process. Those demands are bound to take resources away from services that are needed on the ground.

Patrick Harvie (Glasgow) (Green): I point out that, although the suggestion about antisocial behaviour orders for 8-year-olds might have been made at the Communities Committee, it is not a suggestion that the committee has decided to endorse at this stage.

Mike Pringle: I understand that.

The Convener: It was a statement made by a witness.

Mike Pringle: I think I know the answer to my question, but let us clear it up anyway. If the bill is passed and we extend ASBOs to under-16s, should such cases be dealt with by a court disposal or should they come under the children's hearings system?

Bernadette Monaghan: It would not be my preferred option to reduce the age at which ASBOs can be served, but having said that, I would not want such cases to be the subject of a court disposal. We must remember that overall levels of offending by young people have been static since about 1991. It is only since about 1999 that it has become a political issue with a lot of media attention. The issue has become focused in people's minds.

Although we have the children's hearings system, it does not mean that our young people are any more likely to offend than young people in other jurisdictions where such a system does not exist. We have heard about the situation in England this morning and what tends to happen there is that young people are pulled into a formal system to address minor behaviours and then they work their way through that system once they are in it. I would not like to see that happening in Scotland.

I have a problem with the age of 16 because, up to that age, young people get help and support through the hearings system, however limited. At the age of 16, however, if they have not turned their lives around, they become the responsibility of a new court system.

Mike Pringle: We have already heard evidence on that. Some people would say that the age should be 18 and not 16. That is perhaps what you are indicating.

Bernadette Monaghan: Yes.

The Convener: Turning to slightly more technical matters, I notice that, in your response to the consultation, you were slightly concerned about the broad definition of antisocial behaviour. Does the bill adequately define the phrase?

Bernadette Monaghan: The definition is wide. My general comment would be that the bill is trying to address a whole raft of behaviour, ranging from what would appear to be very minor behaviour to more serious behaviour. Having said that, I do not live in a community that is plagued by such behaviour. We have to acknowledge that there are communities out there that feel under stress, and that that we need to do something about that.

The definition is too wide as far as I am concerned, and it is quite subjective. It depends on what other people view as antisocial behaviour. What is normal behaviour among young people? They tend to hang about in groups. They reach an age when they do not want to be organised in youth clubs and so on, so they will want to hang about the streets. To what extent is that normal behaviour and to what extent does it become antisocial? That is an issue as far as the bill is concerned.

The Convener: I will move on to the power to disperse groups, which I noted from your response you were concerned about. Is it your specific concern that, because of what you have just explained about the definition of antisocial behaviour apparently being principally subjective, young people might be stigmatised if the power is deployed. Is that your principal anxiety?

Bernadette Monaghan: Yes, it is. I ask Patricia Bowerbank to comment further on that, because I know that there have been incidents of that in the youth club where she works.

Patricia Bowerbank: That is true. I can give you some examples of meetings that I have attended with young people and of young people being represented by police at community meetings. Police have commented on the fact that a majority of complaints and calls that they get from members of the community in question are about people playing football in the park. That takes up a lot of police time, and the young people feel that they have nowhere to go. If they cannot play in the park, where can they go?

I had a recent experience standing outside a youth club with a group of young people waiting to go into the club. Two very upper-middle-class, middle-age ladies ran towards them, screaming and shouting and calling them all sorts of names, because they felt that the young people were being intimidating by standing at the doorway that they were waiting to go through. Those young people feel isolated and feel that the relationships between them and adults have completely broken down. They really have no one else to turn to.

The Convener: Given your experience, it might be helpful to ask you about your assessment of what the proposed measures will do for relationships between the police and young people. The deployment of the facility to disperse people will rest with senior police officers.

Patricia Bowerbank: It will probably depend on the area in question and on the existing relationships between the police and young people there. In the area where I currently work, police come to the youth club every fortnight. Their visits are informal, and they talk about their jobs. The young people ask questions about what would happen if they got caught doing something or what happened to a certain person when they were caught doing something. They are learning about the criminal justice system and about the consequences of their possible actions.

If any issues have arisen between the police and one of the young people between the fortnightly visits, that is never mentioned when the police are at the youth club. As I said earlier, the relationships are strong and are based on equality and respect. If those relationships currently exist, I do not think that the bill will make much difference to them. However, the bill could compound bad relationships or a lack of relations between police and young people in other areas.

The Convener: Do you think that it would be preferable to delete the power?

Patricia Bowerbank: Yes.

Mike Pringle: I am interested in what you say about that. We heard in previous evidence that:

> "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."—[*Official Report, Justice 2 Committee*, 16 December 2003; c 320.]

You would say that that does not apply in your area.

Patricia Bowerbank: That does not apply in my area, in my experience. When informally chatting to youth workers, young people tell us good points about the police in a personal way, mentioning them by name. They might, for example, say that a policeman is "a good lad" and give reasons for that.

Maureen Macmillan: I have a question.

The Convener: I was going to invite you to ask about parenting orders, but you are welcome to

precede those questions with a question on the dispersal of groups.

Maureen Macmillan: In your youth work, have you come across cases in which young people have been intimidated by other groups of young people?

Patricia Bowerbank: Yes.

Maureen Macmillan: How do you resolve that? I thought that the powers to disperse groups might help to deal with a situation in which a group of young people was intimidating other young people.

Patricia Bowerbank: That is a huge issue in the area in which I work. There is a long road that runs through three villages and there is always some sort of problem. To overcome that, we opened an under-18s night club in the central village and invited everyone. That meant that, if issues had arisen, the youth workers, who had a relationship with all the young people, would speak to the young people who might have felt intimidated by another group and, as a result, would obtain their trust second-hand. The fact that those young people would then come into the group and start talking helped to resolve such problems.

People come to our youth club to cause trouble from villages within a radius of 12 or 13 miles. As youth workers, we make contact with and talk to them and our young people stand around with them and end up talking to them. Relationships are built that way. It is not all blue sky—there have been skirmishes, but we have managed to work through such situations.

The Convener: You are saying that the sort of situation that Maureen Macmillan outlined can be resolved at the moment.

Patricia Bowerbank: Yes.

Maureen Macmillan: I notice that, in your submission, you suggest that parenting orders might be counterproductive in that they could result in the

"family unit being split up"

or could mean that single working parents would have to give up work to supervise their child. You seem to imply that parenting orders would put an unnecessary strain on families, rather than benefit the children concerned. Are you totally opposed to parenting orders or do you think that there is a place for them in a very small minority of cases?

Bernadette Monaghan: We have to make it easy for parents to admit that they need help and support and to come forward to receive it. I was a children's panel member for nine years and, in many cases, it was the parents who needed help, because they were simply replicating their experience. My worry is that parenting orders would stigmatise people further and make them feel that they were bad parents and failures, which is counterproductive. I am not convinced that the order is necessary, although I accept that obtaining such an order would be the last step in a long process—a process that would involve costs. I would ask whether we have the services in the community to offer support to parents—rather than just the children.

When I sat on children's panels, it was always frustrating that we were providing services that were geared towards children, even though we recognised that parents needed support as well. Sometimes they were able to get it through children's centres and support groups. If we formalise the process and introduce parenting orders, that could be highly counterproductive. I do not have a clear picture of how they would work. The issues that we flagged up jumped out at us as being potential problems if we were to go down the road of adopting parenting orders.

My main concern is to avoid stigmatising families who are already under stress and who need help and support and need to know how to get it. Sometimes it was frustrating to have children on supervision, when we knew the difficulties that parents had in accessing support. We need to have resources in communities, such as groups and classes, to enable people to admit that they need help and to take the necessary steps. As I said, parents are often replicating a pattern that has been going on for years. They cannot meet their children's needs because they have so many needs of their own. It is a question of how to frame the measure and, in my view, parenting orders come across as quite punitive. We want to try to give parents the support and help that they need so that they are better able to be aware of their needs and to respond to the needs of their children.

Maureen Macmillan: You seem to think that there should be more investment in parenting classes. I am not sure to what extent such classes happen at the moment. How do you get parents to engage voluntarily? I presume that the orders would be made only if you could not get parents to engage voluntarily.

11:30

Bernadette Monaghan: We get parents to engage through things such as children's centres. Many years ago, I worked in a large area in Edinburgh where there were children's centres. I do not know whether they are still there or what has happened to them, but that seemed to be a good model. Ostensibly, we were looking at the child's behaviour, but at the same time parents were invited in. Parents could meet other parents, share experiences and give one another support,

which made them realise that they were not alone and were not the only ones with such problems.

We need to try those sorts of measures before we go down the road of introducing another order. Orders might not be used very much and they might be the last resort, but I do not think that it would be productive to try to impose an order on parents and to say, "You have failed." That will only make matters worse and there is a danger that it could have an impact on the children. We should try the support route and voluntary measures before going down that route.

Maureen Macmillan: I think that everybody would agree with that. You mentioned your experience of the children's hearings system and said that there was no way of addressing the problem of parenting. Do you think that a new court order is the best way of tackling that problem or would you like the children's hearings to be able to impose parenting orders?

The Convener: I think that our witnesses gave their view on that in an answer to Jackie Baillie earlier.

Jackie Baillie: No, that was about community reparation orders.

The Convener: Right. I am sorry.

Maureen Macmillan: What about parenting orders?

Bernadette Monaghan: I would not call the order a parenting order. We should consider the remit of the children's hearings system and its decision-making powers, which are designed to work in the best interests of the child. We recognise that a child grows up in the context of a parent or two parents and a community.

The hearings system probably already has powers to address such needs. What I am not so sure about is whether the services are out there. To be honest, it does not matter what decision the hearing makes; what is important is what happens thereafter. The same applies with a court. For me, the most important part is the quality of the intervention that comes next. For many of us who have been involved in the hearings system or who work in the field, the frustration is that, although we know what service a child or a family needs, that service is not always available. That, rather than the order or the decision, is the crucial issue.

The Convener: I know that Karen Whitefield wants to ask about restriction of liberty orders, but I would like to clarify something. I am interested in the evidence that you are giving. Do you sympathise with SACRO's view that there is a blurring of criminal law and social measures in the bill and that that could be counterproductive?

Bernadette Monaghan: Yes, we share that view. We and NCH are members of the Scottish Consortium on Crime and Criminal Justice; through the consortium, we have submitted written evidence. The difficulty is that the bill is trying to deal with a whole range of measures, some of which fit neatly into a community safety framework and some of which do not. Youth justice and offending by young people should perhaps fit into the community safety framework, but that goes back to the issue of clarity about the role of the youth justice teams.

I believe that the whole social education approach—the original approach of the hearings system—is crucial. We must recognise that even the young people who go on to offend most persistently have a whole raft of problems and experiences that I, as an adult, would find extremely difficult to deal with. We therefore agree with SACRO's view.

The Convener: What would your advice be, then? Would you recommend that the bill should be piloted?

Bernadette Monaghan: My fundamental point is that we need to strengthen what we already have on the ground. We must look again at the hearings system and consider rebranding it. That is happening through the children's hearings forum, an expert reference group that was set up specifically to redesign the hearings system. The group is considering whether the hearings system should prioritise and target particular groups of young people and children and families. It is considering what the hearings system should concentrate on and what it needs in order to do its work properly. The group is doing a rebranding and remarketing exercise on the hearings system.

Good systems are already in place—for example, youth justice teams and the investment of resources in addressing young people's offending behaviour. We must consider not only the areas where the system is working well, but the areas where it is not working. We must ascertain how the system can be made to work better. As my colleague from SACRO said, the developments that we are discussing are relatively new and have not had much time to demonstrate results.

There is a perception that we can put people through programmes and interventions and that they will somehow be cured at the end of that. However, many young people's problems are so entrenched that we will never achieve that. We must be clear about what we are trying to achieve. There will never be a one-off, immediate transformation. We seek a change in parents' or children's lifestyles over time.

My view is that we should consider what we already have on the ground and strengthen existing frameworks. We should consider what services and resources are out there and what gaps must be plugged before we go down the line of having more orders and legislation. More money would have to be spent on implementing and processing those orders and more police time would be taken up with the dispersing of groups. As Patricia Bowerbank demonstrated, there are already informal ways at community level of building up relationships and resolving issues. We must strengthen such ways.

Karen Whitefield: Before I ask about restriction of liberty orders, I beg the convener's indulgence, as I want to ask Patricia Bowerbank a quick question about the dispersal of groups. She said succinctly that that proposal should not be in the bill. Without that measure, however, how would she deal with the situation that happens nightly in my constituency? Every night, between 40 and 50 young people congregate in a village in my constituency. Two hundred yards up the road there is a youth centre with a drop-in service that is run by young people for young people. That is a good community project that provides a valuable service. Furthermore, many young people from the community and neighbouring villages qualify for free access to the local sports centre. A good, healthy-living centre operates in the community.

Despite the fact that young people have those opportunities, every night a group insists on congregating in one village, causing concern not only to the local residents but to many of the young people who want to access the youth project that is 200yd up the road. The police tell me that there is nothing that they can do. However, the bill would allow them to disperse such a group and to prevent it from going back to where it was. How would we deal with that problem without the proposed powers?

Patricia Bowerbank: The situation that you described sounds to me like an excellent opportunity to do some really good youth work. If 50 young people are congregating in the same place, I would send in youth workers to talk to them to work out what else they want to do.

Karen Whitefield: North Lanarkshire Council has done that. Young people are running a youth project 200yd up the road. The situation is not for a minute about an older generation suggesting that it has all the solutions for what young people want. It is about a community project that is run by young people for young people. However, young people in the community are prevented from accessing the service by other young people from the community and neighbouring communities who choose to congregate and intimidate. Someone has to take responsibility for those actions. The local authority has introduced youth workers, a service is being delivered and there are all sorts of alternatives to such behaviour. However, I am not convinced that we have sufficient powers to address the problem.

Patricia Bowerbank: I understand that that is an intimidating situation for young people who want to use the facility. However, as an adult, I choose not to go to some places because I prefer others or because I have different relationships with different groups of people. Still, you are right to say that something has to be done. If intimidation is going on and is putting people off, I would send in youth workers to work with the people and help them to set up a place that is appropriate to them and to question why they are doing what they are doing, what they are getting from it, what their long-term goals are and what the purpose of it is. I cannot comment further, as I would have to do the work first. I cannot see the benefit of police dispersal. Where would the young people go? They would just go somewhere else and carry out the same sort of aggravation.

Karen Whitefield: I accept that they may well go somewhere else, but perhaps they would not be able to congregate in the one community. They would be dispersed back into their own communities and, we hope, take up some of the opportunities and activities that are on offer there. We should engage with those young people, but I am not convinced that, if we do not have the proposed powers, we will be able to deal with the problem.

Jackie Baillie: I would love to live in the village that you work in, Patricia. Because I am older than you—unfortunately—I probably have considerably more experience of working in communities and I recognise that all individuals are just that: they are individual and different, irrespective of whether they are young, middle aged or old. They require different responses because of their different circumstances. Some responses will work, some will not work; it is not true to say that everything works. Your solution to Karen Whitefield's problem is what North Lanarkshire Council has tried and failed to deliver. Therefore, do you not think that there should be more in the toolbox for people to use, recognising that different people in different locations will be in different circumstances?

Patricia Bowerbank: I recognise that. However, I do not know what the young people would learn from police dispersal.

Jackie Baillie: We are driving at the need for a variety of responses.

Karen Whitefield: Perhaps we can move on to restriction of liberty orders. The bill proposes that young people under 16 will, in some circumstances, be tagged. Do you believe that the

use of restriction of liberty orders will be helpful or useful in addressing the offending behaviour of under-16s?

Bernadette Monaghan: I do not think that restriction of liberty orders, whether for under-16s or over-16s, are useful by themselves. All that they do is contain somebody; they do not address why that person is doing what they are doing and they do not help them to move on from that. I would not be in favour of their use for under-16s because they may become a kind of status symbol. For young people, negative attention is sometimes better than no attention. I would worry about that.

The use of restriction of liberty orders as an alternative to secure accommodation contains young people in the situation that may be a contributory factor to why they would otherwise end up in secure accommodation. We must remember that most young people end up in secure accommodation for a range of reasons, not necessarily just for offending. Offending is not the first and foremost reason why they are there. I would, therefore, be cautious about that proposal.

Karen Whitefield: I accept that if restriction of liberty orders are used in isolation—if somebody has committed an offence and the solution is to tag them—that will not address the problem at all. However, if the use of restriction of liberty orders involves engaging with the young person and the reasons for their offending behaviour, as well as addressing the causes of their offending behaviour and trying to help them to change their behaviour, that might be preferable. Allowing that to happen in the community instead of in secure accommodation might also be preferable.

11:45

Bernadette Monaghan: It might be preferable. Secure accommodation is sometimes needed for a small number of young people for a short period of time, largely when those young people are a danger to themselves. In such cases, it is crucial that we get them in one place long enough so that they can begin to address certain issues. Although that could be done though a restriction of liberty order, one would have to be very clear that a young person would be in a certain place for a certain period of time in order to begin to carry out the work that was needed.

I do not see the value in using restriction of liberty orders on their own, because one would simply contain those young people without addressing any of the reasons why they ended up in such a situation. Very often the young people who end up in secure accommodation have extremely chaotic lifestyles and, as I have said, are more of a danger to themselves than to the community. Part of the purpose of such an approach is to put them into some reasonably stable situation where we can get them down off the walls and try to carry out the work with them. If you are saying that we could do that in the community as part of a package of measures, I would cautiously support you.

The Convener: Have the witnesses any final points that they would like to make?

Bernadette Monaghan: I should mention that we will leave some information packs about Apex Scotland, which will give members an idea of the whole range of activities in which we are involved. If you want to visit any of our services, you are more than welcome to do so.

The Convener: Thank you for that information, which I am sure committee members will welcome. We have also noted your invitation.

I thank both witnesses for attending this morning's meeting. We have found the session genuinely interesting.

I now welcome to the meeting Helen Hunter, the west region assistant director of Children 1st, and Maggie Mellon, the head of public policy for NCH Scotland. I hope that you have been able to listen to some of the evidence this morning, which I think you will agree has been instructive. I know that committee members want to investigate a number of issues with you.

Karen Whitefield: The committee would be interested to find out whether the witnesses believe that the bill has enough of a youth focus or whether its proposals fail to recognise young people's needs.

Helen Hunter (Children 1st): That is a very general and difficult question. As a lot of existing legislation already has a youth focus, my gut response is that the bill's balance is probably right. That said, I disagree with some of the proposals, because I think that the children's hearings system and the legislation associated with it are already adequate. Indeed, some parenting programmes could be introduced without resorting to the criminal justice system.

Maggie Mellon (NCH Scotland): We feel that the bill has a youth focus. However, we also feel that the proposed measures are inappropriate for children and young people and do not chime with existing domestic or international legislation.

Karen Whitefield: You have concerns about specific proposals, but there is general recognition of the need to respond to some of the antisocial behaviour issues that communities face, particularly in relation to young people. All MSPs realise that not all antisocial Scots are young people. Existing legislation allows us to respond to and deal with the antisocial behaviour of adults, but we do not appear to have the right legislative

powers to address concerns about the antisocial behaviour of young people. That is what my local authority and the local police tell me.

Maggie Mellon: I do not think that we do not have the right legislative framework. Apex Scotland and SACRO made the point well: we have the right legislative framework, but we do not have sufficient resources to back up interventions under the legislation and we have problems with the courts in processing cases.

The main point is that the existing legislation is okay. As SACRO said, not one example has been given in relation to the proposals of any behaviour of any child or adult that is not already criminal behaviour. We have a jewel of a system in the children's hearings system, to which children and young people can be referred for behaviour that is non-criminal but that is beyond parental control or gives rise to concern that the child or young person might need compulsory measures of care. We already have a flexible system that allows adults with care and concern to take action in relation to the non-criminal behaviour of children and young people. The bill is a completely new layer, which would involve children appearing in adult courts in a way that Scotland decided was counterproductive and ineffective 30-odd years ago.

Karen Whitefield: If we do not need the legislative proposals, why do the views of communities throughout Scotland appear to chime with the Executive's view? Why is it that every month at my surgeries my constituents tell me that they want antisocial behaviour addressed? I raised with the witnesses from Apex Scotland the issue about groups congregating. It appears to me that we do not have a solution to that problem. How would you address it?

The Convener: It is fair to say that there are two good questions there. The first is about why Karen Whitefield is dealing with problem after problem at her surgeries and whether we need new legislation. Her second point is about the congregation of a large group of people in her constituency, about which the police appear powerless. Your views on those two issues would be helpful.

Helen Hunter: It is difficult to answer points about the specifics of a problem in a community. At our annual general meeting, a speaker from Portsmouth proposed a strategic approach to communities in which the communities would identify the leaders of groups who caused trouble and so withdraw the power that those leaders had within the groups. We will pass you the transcript of her presentation.

In the main, our work in Children 1st is preventive and supportive. We work from a welfare base. It is helpful to view the delivery of services at three different levels. The first is a universal level, the second is a targeted level and the third is a much more intensive level. In that way we maximise the provision of the most expensive resources to the neediest groups of children.

Maggie Mellon: We share the concern about constituencies and their problems. Both of our organisations work with children and young people and we have experienced 20 years of growing frustration about the lack of services and resources.

We have moved from a situation in the early 1970s in which one in 10 young people lived in poverty to a situation in which one in three young people now lives in poverty. There is certainly a need for services and for massive public action in relation to children and young people in communities that suffer serious disorder. However, it is a mistake to say that the problem is to do with legislation: the problem lies with services and resources and, perhaps, with our attitudes to children and young people and their rights.

On congregation, other people have given answers that are better than, or as good as, mine. One issue is that the problem might be moved along and displaced from one place to another. We must address directly the young people who cause the problem, unless there is criminal behaviour, in which case they should be charged. If they are throwing implements, fouling the road, or if they are insulting, frightening and threatening other people, they should be charged and told that their behaviour is not acceptable. Such behaviour is already criminal. However, when young people's behaviour creates a general air of menace and threat, we should go out and do some work with them. It is counterproductive simply to move the problem around.

I work with a lot of teenagers in my work, in the community and in my family, and the suggestion that two or more young people might, in themselves, be threatening is bad for young people. We have begun to create a straw man that people react to—in terms of young people's attitudes towards adults—which is counterproductive. One hopes that one could intervene in a friendly and helpful way if a group of young people is doing something dangerous. We should not create a confrontational situation in which adults say that two or more young people have no right to stand in a shop doorway, outside a chip shop or wherever.

The Convener: I have questioned previous witnesses on the definition of antisocial behaviour. The bill hangs upon that definition being understood by the individuals who will seek to

enforce the law. Are you concerned about the breadth of the definition? Antisocial behaviour is not specifically defined anywhere.

Maggie Mellon: Absolutely. We said we were concerned in our response to the consultation and we made a point about criminal sanctions and other strong action in relation to behaviour that will be tested so subjectively. Because there is no definition of a reasonable person in the bill, behaviour that would make a reasonable person alarmed or distressed will be interpreted in a wide range of ways, so there will be different outcomes and different justice for different people.

Jackie Baillie: I will make a brief point, which follows on from Karen Whitefield's comments. I recently had the privilege of visiting an NCH project in Alexandria where I met several positive young people. Their view, and their experience, was that they were victims of antisocial behaviour. They thought that a minority in the community were impacting on the rest, and they endorsed the measures that are proposed in the bill. On the basis of their endorsement, is your objection that part of this is a matter for the adult courts? Would your objections be addressed if the measures that are suggested were disposals for the children's hearings system or the youth courts, as long as they were kept out of the adult courts?

Maggie Mellon: We do not have an issue with people saying that there is a problem. It cannot be denied that there is a problem; young people would be the first to say that because many of them are scared to go out because of other young people, particularly in poorer areas. There might be a lot of misconceptions in that fear, and there are issues around gangs and around the reasons why young people carry knives.

We are not saying that there is not a problem. The question is, however, what are the right solutions? I do not think that the dispersal of groups and large numbers of young people who have gathered together is an issue for children's hearings and we are not saying that the matter should be dealt with by children's hearings. Equally, the issue is not for the adult courts. The police have said that they do not really want to have to act just because one neighbour says something, and they do not want to be stuck between adults and young people. Therefore, we favour solving such problems through community mediation. Groups should be brought together to discuss their different needs and problems and how they can respect one another.

12:00

Jackie Baillie: I want to push my question because I have not received an answer to it. I received an answer about the dispersal of groups, but I am kind of saying—

The Convener: Do not "kind of" say something—just say it.

Jackie Baillie: Okay. Is the problem with adult courts? If the majority of the measures became children's hearings system disposals, would your opposition disperse?

Maggie Mellon: We would propose that children or young people whose behaviour gives rise to the assessment, feeling or concern that compulsory intervention measures are needed should be dealt with in the children's hearings system. Much behaviour that is discussed in the antisocial behaviour strategy falls into that category. However, we do not think that some measures that have been proposed, such as eviction orders on whole families if an antisocial behaviour order has been breached, are appropriate or will be productive in solving problems relating to children and young people.

The Convener: I want to be clear about the matter. If we were to adopt what Jackie Baillie proposed, would the children's hearings system have adequate powers to deal with such situations?

Maggie Mellon: Yes, but the system does not have adequate resources. Many cases would not even need to go to a hearing if families were offered support.

The Convener: So intervention should come early.

Maggie Mellon: Intervention should happen before a hearing: a hearing should happen only when a child or young person needs compulsory measures of care. However, children's hearings are increasingly being turned to in order to compel some agency to provide a solution or a service. That must be stopped. Services should be available beforehand and compulsion and intervention should happen where services are not—

The Convener: So resources are an issue, in your judgment.

Maggie Mellon: Absolutely.

The Convener: Thank you.

We have covered some issues, but if Mike Pringle wants to ask a question about ASBOs that has not been explored, he may do so.

Mike Pringle: I do not think that we have covered antisocial behaviour orders, as such. Like us, the witnesses have been here all morning, so they will have heard my questions to the other witnesses. I want to ask them the same questions. Should antisocial behaviour orders be used for those who are eight, 12, or 16, or only for over-16s?

Helen Hunter: We would be concerned about antisocial behaviour orders being used for eight-year-olds. It might be helpful if I use a case to illustrate what I am saying.

We have a project that is funded through the youth crime prevention fund. A family has been referred to that project. I will call the young man Frank. Frank is 10 and is the third child in a family of six. There are four boys and two girls in the family, whose ages range from four to 16. When Frank was seven, he was referred to the reporter as being outwith parental control. He has a long history of behavioural problems and his relationship with his mother is strained. All the children live with their mother—the father left the home last year, but Frank maintains contact with him. The family lives in overcrowded and impoverished conditions and is one of the few families left in an isolated block of flats that is about to be demolished. No concerns have been identified about the other children in the family. Frank has been excluded from school several times as a result of his disruptive and aggressive behaviour, which includes having wrecked a classroom. The children's hearings system is good at dealing with such situations, but it has not to date had the resources to deal with that situation.

Our project has researched what works: what works in situations such as the one that I described is an intensive programme of support. The focus is not solely on Frank; rather, the focus is on the parent working with Frank and his school. The solution looks at specific techniques to assist Frank's parent in managing his behaviour because she has managed her other five children well. An antisocial behaviour order or a parenting order would further stigmatise that family.

Extraneous conditions might also result in unmanageable behaviour in the child. We do not agree with punitive measures such as ASBOs for children from the age of eight.

Mike Pringle: Would the cut-off point be at the age of 16 or at 12? At the moment, antisocial behaviour orders apply to children of 16 years and over, but the bill proposes to extend that to children who are aged 12.

Helen Hunter: We do not think that ASBOs should be extended to children below the age of 16. There must be a holistic and welfare-supportive approach that considers the meaning of a young person's behaviour. Adolescents rebel against and challenge punitive measures. We have found that examining the meaning of behaviour and adopting specific tailored resources is an approach that has been successful.

Maggie Mellon: The current legislation and the hearings system have the powers that the bill seeks to give to the courts. A children's hearing can already, after due consideration, impose a supervision order with any number of requirements on a child under 16 as long as those requirements are within legislative limits. A new power is not being proposed in the bill: the problem is that it is proposed that that will happen through a criminal court, which cannot consider the wider circumstances of the child, nor can it order any other services or health requirements that the child or family might need. The point of the hearings system was that it was to be a multidisciplinary, multi-agency and holistic response to children and young people. The system already has the power to impose what would be an antisocial behaviour order, but it also has a battery of other responses. We would be moving away from that if the process was taken into courts, and we would be creating an inadequate response to children's needs and behaviour.

Mike Pringle: I think that you have answered my next question already. Do you not want courts to be used at all to impose antisocial behaviour orders? Do you want the children's hearings system to be used exclusively?

Maggie Mellon: Absolutely. That was what the children's hearings system was developed for, although we believe that it has the powers but not the resources. The process is right, but we have not resourced it. It would be a shame to waste resources that are desperately needed in children's services on courts and lawyers, which are incredibly expensive and not very productive.

Mike Pringle: It will be interesting to see how people feel about that this afternoon because that point has been agreed by everybody this morning.

The Convener: In defence of courts and lawyers, I say that they are productive sometimes. [*Laughter.*]

Maggie Mellon: I referred to them in relation to the problems that we are addressing.

The Convener: Thank you for that explanatory qualification.

Maureen Macmillan: My question is about parenting orders. I notice that Children 1st has a large number of family support services and parent-focused services. I agree thoroughly that that is the way to deal with parenting problems. I presume that parenting orders are intended to catch the people who will not engage with organisations such as yours. Do you agree that parenting orders should be used as a last stop when a parent such as Frank's mother—if she absolutely refused to have anything to do with you—could be compelled to engage your services?

Helen Hunter: Our approach and our view is that having to compel a person alienates, and creates feelings of resistance in, parents. I have been involved in delivery of parenting programmes for more than 20 years and am now involved in supervision of projects that deliver parenting programmes. I know that the programmes are successful.

The Youth Justice Board for England and Wales undertook an evaluation of its parenting programmes. One of the findings was that a punitive approach taints a programme. I hope that I am not being repetitive, but I want to say that our children's hearings system can, as a condition of a supervision order, ask parents to attend a parenting programme. The difficulty is in co-ordination and resourcing of programmes.

I repeat my earlier comment that parenting programmes have been around for a long time. All parents find it difficult to manage their children's behaviour. There is a need for people to have access to programmes at a universal level. If we take the staged approach, however, one of the issues that we face in the programmes that we offer is the difficulty in getting fathers to come along. If we can get access to the fathers, we can usually encourage them to come along by a process of persuasion.

We also need to address the issue of the sins of the sons being visited on their mothers. We need programmes for people who would not normally attend them. That said, there is no need to address the problem using punitive means because, given the resources, it is possible to address it through persuasion. We need to engage the parents who object to being sent on such programmes.

Maureen Macmillan: Are you saying that although until now some people have refused to engage with your courses, you would be able to draw everybody into the programmes if more resources were available?

Helen Hunter: We have not had people refuse to engage in our parenting programmes; rather, the problem is that mainly mothers attend them. We have found that we need to address the non-attendance of fathers differently. For example, we might offer them a slightly different programme. One of the projects designed a programme that focused on sport, through which we managed to engage fathers, but we need more resources to engage fathers in parenting programmes.

Maureen Macmillan: If it were the case that you had more resources, the orders would not need to be used: everyone would engage voluntarily in the programmes, which is what people want.

Helen Hunter: That is what we want.

The Convener: Does Maggie Mellon have a view on the point that was raised by Maureen Macmillan?

Maggie Mellon: Yes.

We do not talk about people being "referred" to the family centres that we run; we talk about parents—or anyone—being "introduced" to the centres. Research in England and in Scotland has borne out that centres that try to target services by compelling poor parents to attend are not as successful as they would be if they took an open-door approach. If centres do the latter, they can end up working with some of the most difficult and needy families without the need for compulsion.

If it was felt that a parent required compulsion and the threat of jail, most social workers would have real concerns about that person's ability to parent a child. In our experience, most parents want to parent their children well and they appreciate support in doing that. If a person does not want to parent their child, the child's safety and welfare are paramount. The key principle of our legislation is the paramouncy of the child's welfare. If a person was manifestly dangerous, we would not make a parenting order in order to compel them to stop being dangerous.

That said, there might be cause for the children's hearings system to have the power to impose a condition on parents. That might be a reasonable addition to the powers of hearings, because conditions can currently be imposed that require a child to attend a day centre or perhaps to be home by 9 o'clock every evening. However, I understand that a hearing cannot legally require a parent to take a child to school every morning or to remain at home, for example. We would have to be careful about how we operated such powers; the last thing that we want is for families to be propelled through the criminal justice system and for parents to end up in jail for something over which they do not have much control. However, it might be reasonable to give hearings the power to impose some conditions about what parents must contribute to the process.

12:15

Helen Hunter: Can I add something?

The Convener: Yes, but please be brief, because we are trying to get through the preliminary stages.

Helen Hunter: Very briefly, the rationale for using the children's hearings system is that there should be a proper assessment of the situation, so that resources such as parenting programmes, or even education for an individual parent, can be utilised if they are recommended.

Jackie Baillie: Some of my points have been covered but—for the record—am I right that you would prefer community reparation orders, if they were introduced, to be a matter for the children's hearings system rather than for the courts, and that you would prefer them to be used for the over-16s?

Helen Hunter: Yes.

Maggie Mellon: Yes.

Jackie Baillie: Fine. You will be pleased to hear that that leaves me with a small number of questions.

In your original evidence to the Executive, you said that there was no need to create a new reparation order. Is there a need for community reparation orders?

Helen Hunter: We and our projects work closely with community police, who tell us that they have developed a slightly different approach and a good rapport with communities over the years. I do not think that we need community reparation orders; the police have existing powers in relation to dispersal of groups and reparation. Other resources, such as mediation, can offer a different way of dealing with the sorts of problems that arise in communities.

Jackie Baillie: I understand that there is currently no order that is comparable to the proposed community reparation order. At one end of the scale there are supervised attendance orders for fine defaulters and, at the other end, there are community service orders. Is there a need for something in the middle?

Maggie Mellon: We must distinguish between different age groups. The imposition of a community reparation order might be reasonable in the case of an adult offender, but we support restorative and reparative approaches to children and young people who offend and who have been offended against—children should receive reparation as well as orders to carry it out—but, again, such approaches are matters for the children's hearings system. Indeed, we would prefer reparation to take place earlier, without the need for a hearing. If a child is able in some way to redress a wrong that they have done to someone, they should do so as soon as possible. Good parents ask their children to address and rectify their behaviour and if that kind of reparation can happen on a wider scale, it should do so.

Children's hearings have powers to compel in cases where such reparation has not already taken place. However a child cannot be compelled to feel remorse; they can only be led.

The Convener: Will you clarify your response to an earlier question? Are you saying that the community reparation orders that the bill proposes are not appropriate for children and should be the province of the courts for adults or young people over 16? Are you also saying that where some kind of community response is required in relation to offenders aged 16 or under, that could be provided for under an attendance order or other existing powers in the children's hearings system? As far as you are concerned, are community reparation orders for the under-16s out of the question?

Maggie Mellon: Yes.

Helen Hunter: Yes. There are approaches that can offer restorative justice—

The Convener: Under the existing law?

Helen Hunter: Yes.

Jackie Baillie: I am clear about your views on compulsion, but if you were to design a community reparation order work programme, what would be the balance of its content?

Maggie Mellon: I very much agree with SACRO's standpoint, which is that reparative work should not be a stigmatising ghetto activity. We should encourage all young people to give something back to their communities and we should facilitate such activity.

People love to do that. Even the most reprobate young people feel good when they have done something good, but they rarely get a chance to do something good in their lives. We are in favour of there being lots of opportunities for young people to contribute to their communities in whatever way they can. Some young people might need to be compelled, pushed, encouraged or made to do something, but that should happen as part of a broader and more positive programme. If doing community work is something that is done only when a person has been bad, that will put young people off because those who have not been in trouble will not want to be seen painting walls, building, working with young people with disabilities or whatever is envisaged. Community work has to be positive work for which young people are rewarded. If necessary, those who need it should be compelled to take part, but that compulsion should be positive.

Helen Hunter: I agree, with the caveat that there should be a more welfare-based approach to younger children. After all, the younger a child is, the more he or she depends on parents, so the approach should be more holistic. It is about being creative in using existing resources and it is about making additional resources available to implement the more intensive work that might be needed.

Karen Whitefield: Are the proposals on restriction of liberty orders necessary?

Maggie Mellon: No. However, there is a small caveat to that answer. A retired, but eminent, psychiatrist said that she could see the usefulness of voluntary agreements in cases in which young people need help in controlling themselves. I can see the force of that argument, but such an arrangement would have to be voluntary.

Several difficulties arise in relation to tagging under-16s, or even under-18s. One is that they are children; we acknowledge that their understanding of the world and the ways in which they learn are different to those of adults. A 30-year-old man with a tag can look towards Saturday, to going to the match, to having a pint and to getting home. He will appreciate his liberty. Many children tend to be impulsive and immature and cannot think beyond tomorrow. A 13-year-old boy whose behaviour is impulsive will break the rules: he will not be able to think ahead, but can only think of the moment.

We are also talking about a group of young people who, at the moment, cause trouble by calling out ambulances or fire brigades. They set fires so that the fire brigade will come, because the only attention that they have ever had has been negative and they are past masters at getting attention for themselves through negative behaviour. A tag would be a tool in their toolbox rather than one in ours. You can imagine the mayhem that such young people could cause by running around watching adults frantically searching for them while their pals hide them. Tagging would not work for children at all. If any child really needs to be tagged, he or she should be getting adult care and control.

If tagging is to be a serious alternative to custody, we will be able to put all the money that we spend on secure care at the moment into the community. However, I understand that there are proposals to increase the number of secure places. I fear that if we tag children and tell them that the penalty for breaking the rules of the tag is that they will be put into care, we will create more offenders because being taken into care is often an occasion for offending. A child should never be told that it will be more painful to us to carry out the punishment than the punishment will be to them.

Karen Whitefield: I do not believe that the bill seeks to use tagging to replace secure accommodation. Many children require secure accommodation as much for their own safety as for that of the community. For those young people, tagging is not necessarily the right option and it would not be desirable. I do not believe that that is what the bill intends. If it was, many members would have serious concerns.

Maggie Mellon: It is sad that we have been reduced to trying to control children's behaviour by technical means rather than by what they really need, which is concerned adults in their lives. If those children do not have such people, it is our job to supply them, rather than electronic controls that will never take the place of good parenting.

The Convener: As there are no more questions from members, do either of you have any concluding remarks?

Helen Hunter: Parenting is one of the hardest jobs that an adult will ever undertake. There are few resources for training and little help is available to parents. We are all challenged to engage parents who are hard to reach, but we are certainly against using punitive measures to do so.

The Convener: Thank you. We have found your evidence to be interesting and helpful.

I suspend the meeting until 2.00 pm.

12:25

Meeting suspended.

13:59

On resuming—

The Convener: On behalf of the committee, I welcome Dr Lesley McAra and Professor David Smith from the centre for law and society at the University of Edinburgh. We are grateful to you both for joining us this afternoon. I understand that you wish to make a PowerPoint presentation of about 10 minutes' duration. Is that correct?

Professor David Smith (University of Edinburgh): Yes. We will keep it to 10 minutes. We could perhaps go back to the slides in response to your questions if there are some matters that we pass over.

The Convener: The committee would find it helpful simply to let you make your presentation and then proceed with what I know to be particular areas of interest to individual committee members. Without further ado, please proceed.

Mike Pringle: Do you have copies of the presentation?

The Convener: You should have one beside you, Mike.

Dr Lesley McAra (University of Edinburgh): You should have one, but we have more copies with us.

Mike Pringle: Sorry—there was not a copy on my desk, but I have one now.

Dr McAra: In our presentation, we will give some research-based advice relating to the first of the questions that the committee set out in its letter, on the need for, and likely effectiveness of, the new enforcement powers and sanctions that

are created under the bill. We will consider research-based advice on the context in which the bill will be implemented, in terms of trends in crime and the fear of crime. We will then give the committee an overview of some of the research findings that came from the Edinburgh study of youth transitions and crime and the implications of those findings for the likely effectiveness of the bill. I was not sure whether committee members would have a handout of the slides, but I have created another handout, on the back of which I have given an overview of that study. I have passed that to one of the clerks, who will be able to give you a photocopy of it later—you do not have it in front of you at the moment. The handout describes the aims of the programme.

In essence, the Edinburgh study of youth transitions and crime is a longitudinal study of pathways into and out of offending for a cohort of about 4,300 young people, who started secondary school in the City of Edinburgh in 1998. We will look first at the findings as they relate to delinquency and antisocial behaviour and at what those findings suggest about the likely efficacy of antisocial behaviour orders. We will also consider the findings as they relate to hanging about and their implications for police dispersal powers. Finally, if we have time, we will consider the findings of the study that relate to parenting and what they imply with regard to the proposed parenting orders.

We have quite a lot to say, but we will try to go as quickly as we can. We will do this as a double act. David Smith will begin with the context and antisocial behaviour patterns within the cohort. I will then consider the contact that the cohort has with criminal justice agencies and what that implies for antisocial behaviour and dispersal orders. Finally, David Smith will consider parenting issues.

Professor Smith: Most of the context is supplied in the summary points on the chart, "Crimes and offences 1993-2002". In a way, the context for the Executive's proposals, which is one of falling crime in Scotland, is paradoxical. Crime is falling in most other western countries as well, including the United States. The rate is falling according to both the statistics of police-recorded crime and the Scottish crime survey. There is, however, a small rise in the level of violent crime, both absolutely and as a proportion of the total. Violent crime accounts for only 3 per cent of the total figure for police-recorded crime.

Fear of crime has been declining over the same period. As is summarised on the slide, only 8 per cent of Scottish crime survey respondents perceived crime to be an extremely serious problem in 2000, compared with 44 per cent in 1996. Similarly, there has been a decline in the extent to which people in the Scottish crime survey perceive young people hanging about to be a big problem. More detailed information from the Scottish crime survey on the perception of what criminologists call incivilities, such as drunks in the streets, groups hanging about, rubbish and litter, stray dogs, vandalism and abandoned cars, shows that the Scottish public view those things as having declined between 1996 and 2000.

On referrals and convictions of young people, offence referrals remained stable over the long period between 1998 and 2001, while convictions of children aged 16 and 17 declined over that period, as did convictions of children aged under 16. The next three charts in the presentation back up those statements with some statistics that are drawn from the Scottish Executive website. The general situation is one of falling actual crime rates and falling perception of the problem of crime in Scotland, not the opposite.

As Dr McAra said, the Edinburgh study concerning delinquency and antisocial behaviour involved more than 4,000 young people. It is a robust source of data about delinquency based on people's own reports and contains lots of other information. The next four charts show that many or most of the various kinds of delinquency and annoying antisocial behaviour, such as vandalism, carrying a weapon, joy-riding, being rowdy and rude in public, shoplifting and fare dodging, are common among young people in Edinburgh. That means that any steps that are taken to combat those activities cannot be said to be targeting a small section of the population. Even if we limit the numbers to those who have engaged in delinquent acts four or more times in the past 12 months—frequent offenders—we still find that quite substantial proportions of the population are engaging in a number of those activities. Of course, however, the more serious activities such as breaking into cars, robbery or housebreaking are much rarer.

Our research, and a stream of other research on young people and crime, comes up with a body of findings about what people sometimes call the causes of crime and what psychologists might call the risk factors that make it more likely that one person rather than another will become involved in crime. There is a bewildering array of those factors. The most obvious point to make is that the vast majority of the risk factors for offending and antisocial behaviour have nothing whatever to do with the operations of the criminal justice system, the police or social workers. Most of the causes are much broader, deep rooted and difficult to address than that. For example, there are personality factors such as risk taking or impulsivity that might even have genetic causes. Other factors include parenting and moral beliefs. One factor that was highlighted by our study was

being a victim of crime. Victims of crime are much more likely to be offenders than people who have not been victims of crime. Further factors include having delinquent friends and lifestyle factors such as hanging about in groups and being in risky environments such as clubs and amusement arcades.

The picture is complex. Most of the factors are ones that the criminal justice system is not even attempting to deal with. A useful perspective and way of understanding the pattern of findings is the theory, suggested by the criminologist and psychologist Terrie Moffitt about 10 years ago, that there are two highly distinct types of young offender. One is the life-course persistent offender who is difficult as a child and continues to be difficult and criminally involved throughout their life, although that bad behaviour is expressed in different ways at different stages of the life cycle. The other is the adolescence-limited offender who offends only during adolescence; there is not a problem when they are a child and their offending drops off when they reach adulthood.

Terrie Moffitt suggests that the causes of offending in those two groups are completely different. In the case of life-course persistent offenders, the causes are constitutional and relate particularly to the operations of the brain. They relate to personality and early influences and, for some, offending is a pathology; it is like a disease. Adolescence-limited offending is normal and is part of the growing-up process. It arises from the autonomy wars that are associated with moving from being a child to becoming an adult. Offending is a way of demonstrating maturity. Once people become mature, they have no need to go on demonstrating that they are mature and they stop offending.

The relevance of that powerful distinction to the proposals—our findings fit the theory—is that we would want to see different interventions for the two different types of offender. In the case of adolescence-limited offenders, the classic Kilbrandon approach of avoiding punitive intervention looks like the best policy, because those offenders will stop offending anyway and intervention is likely to do more harm than good. In the case of life-course persistent offenders, the best response is prevention as early as possible. Failing that—unfortunately, there has been failure historically because of the absence of effective early-intervention policies—holistic programmes might be needed that involve control and re-education and include an array of interventions to change people fundamentally. We have to ask whether the proposals will make it more likely that we will have programmes that intervene holistically to change people fundamentally. I am not sure that I know the answer to that.

Dr McAra: I will look at some of the implications of our findings on offending and contact with criminal youth justice systems and the likely effectiveness of antisocial behaviour orders in particular. One of the key assumptions that underpins the bill is that the young people who are most likely to become the subject of an antisocial behaviour order will be well known to the children's hearings system and that they might end up getting a hearing. Our findings show, conversely, that many young offenders have little or no formal contact—I stress the word "formal"—with the agencies of youth justice. For example at sweep 4 of the study, when the young people were aged 15, 80 per cent of those who said that they had offended in the past year had not been warned or charged by the police. Moreover, many high-level offenders had had little or no contact with formal agencies of control. At sweep 4, of those who admitted to 30 episodes of offending in the previous year, only around a third had been charged by the police and only 17 per cent of that group were referred on to the reporter, so not many of those young offenders are known to the agencies.

14:15

It is true, however, that the more a young person offends the more likely they are to come into contact with the criminal justice system for the first time. At sweep 4, when the young people were 15, the best predictor of onset or first experience of adversarial police contact is a high-volume of serious offending. The more that young people offend, the more likely they are to risk adversarial police contact.

Subsequent police contact among young people is determined largely by previous form or by having had previous contact with the police. Thus, those at sweep 4 who have had experience of police contact at an earlier sweep of the study are four times more likely to experience police contact again than those who have had no contact in previous sweeps; that is true even when one controls for serious offending. Similarly, those with a history of previous warning and charges at sweep 4 were five times more likely to be warned or charged again at sweep 4 than those with no experience of warning or charges, even when one controls for serious offending.

What that means is that the police have created a group of usual suspects, who are not always the worst offenders. Importantly, there is also some evidence from the study that the policing may fall disproportionately harshly on certain groups, particularly on working-class kids who hang out on the street. Children who come from a background where parents are either both unemployed or are employed in manual occupations are almost twice

as likely to experience adversarial contact with the police when they hang out as those from more affluent social backgrounds are when they hang out.

What do all the findings imply for the efficacy of antisocial behaviour orders? First, because many of the people who are committing high volumes of antisocial behaviour in our study are not known to the agencies at all, antisocial behaviour orders may well target only a small proportion of young delinquents, and not necessarily the most active ones. Secondly—and slightly paradoxically, as I have just said that the focus might be on a small number of people—there is serious potential for net widening within the system, thus increasing the number of children who become captured by the system. That is problematic because antisocial behaviour is not always criminal behaviour and large numbers of people are involved in it, so more people might end up being brought into a system that is already overloaded.

Finally, the choice of targets for the orders is likely to be highly discretionary and will probably not reflect actual levels of offending. Given that there may be a focus on the usual suspects, who have become well known to the police, and on working-class kids who hang out, the targeting of orders will not necessarily always reflect levels of offending.

I want to look briefly at our findings on hanging about and at their relevance to the bill's proposals on the dispersal of groups. Hanging about the streets is a commonplace leisure activity for a majority of our cohort. As the current slide shows, a high proportion of the cohort hangs out at least once a week and around a third of the cohort hangs out most days.

At sweep 3, when the children were about 14, we asked them about witnessing antisocial behaviour and about their own experience of doing antisocial behaviour when they hung out. We found that young people who hang out witness quite a high level of antisocial behaviour, but it is mostly shouting and swearing. Around 40 per cent of them have witnessed people making trouble and around 40 per cent have seen people drinking alcohol, but far fewer have witnessed people taking drugs. Although a lot of young people witness such behaviour, very few of them become involved in it. Around 35 per cent of the cohort said that they shouted and swore when they were hanging out. A small proportion—around 18 per cent—took alcohol. About 14 per cent said that they made trouble and a much smaller percentage—4 per cent—said that they took drugs. So, although young people are witnessing quite a lot of antisocial behaviour, only a small number of them are getting into trouble.

Let us look at the implications of that for the dispersal of groups. Hanging out is very common behaviour, which is often perceived by other people as threatening although it may not necessarily be intended to be threatening. As many of the young people are not getting into trouble, it may be that groups of young people are perceived as threatening only by older ladies and gentlemen in the community. They are not necessarily threatening in their behaviour. Sometimes their behaviour can be a bit ambivalent—they may shout and swear at passers by—but they do not necessarily intend to be threatening.

It is certainly true that the youngsters who hang out the most are the ones who get into trouble; however, hanging out is not, in itself, a delinquent activity. The dispersal powers of the police will be highly discretionary and are likely to impact most severely on the usual suspects—those who have previous form, in the eyes of the police—and the working-class youngsters who are hanging out. They may not be focused on those who hang out and get involved in quite high volumes of antisocial behaviour but who come from more affluent backgrounds.

The dispersal powers involve expulsion from a community. It is almost as if young people are not being seen as part of their community—as people who need to be integrated within that community. The use of the powers may also result in the displacement of antisocial behaviour activity to other locations, rather than a diminishing of it.

I now hand over to David Smith.

Professor Smith: I am sorry about the length of the presentation, but I can finish in two minutes.

The Convener: Do not feel hassled.

Professor Smith: Like the vast body of other research, the Edinburgh study shows—and demonstrates because of its longitudinal nature—that parenting styles help to predict whether young people will become delinquent in the future. Because we follow the same young people over a period of time, we can show that convincingly. In broad terms, the findings fit with a social learning theory of parenting, which says that children learn from the way in which their parents behave towards them. Depending on how their parents behave, they learn different things. What is important is not so much what their parents say to them or how their parents tell them that they should behave, but what the children observe to be the consequences for them of behaving in one way or another.

The social learning theory holds that effective parents track and monitor their children's behaviour. They are attentive and sensitive to what is going on, and they have good information.

Effective parents are consistent: they consistently reward desired behaviour and, equally important, consistently ensure that undesired behaviour is not rewarded, so that the children learn consistently a certain message from their parents' responses. By contrast, ineffective parents are typically arbitrary and unpredictable. At the same time, they are authoritarian and harsh—sometimes in a physical way, sometimes in a verbal way. One can immediately recognise that sketch of what an ineffective parent is typically like.

Quite a lot of research has been done into trying to change the way in which people parent and into measuring and assessing whether that change is brought about effectively. That research shows that effective parenting skills are very hard to learn. They are not a superficial thing that can be picked up quickly. Dismally, in a way, they are particularly hard to learn for those people who need them most. It is relatively easy to be an effective parent in affluent circumstances in a nice area where there is not a great deal of stress; it is much more difficult to maintain consistency and calm if one is financially and materially stressed, or in other ways up against it.

The Edinburgh study uncovered a new finding that is not shown in other research. The good parenting that I have described unfortunately works less well in bad neighbourhoods than in good ones, partly because an important part of parenting is how a parent's behaviour towards their child does or does not fit in with the behaviour of other adults in the neighbourhood. In other words, if what a parent expects is discordant with the expectations of other adults—for example, if one's child goes to play in another child's home and finds that something completely different is expected of them—their parenting will be less effective. That underlines the difficulty of trying to improve poorer parenting.

As far as policy is concerned, I draw from the study the conclusion that parenting orders are likely to work only if they are part of an holistic programme—again, I use the word "holistic" advisedly—that also involves many different methods of giving people better skills, more power and more capacity to control their children and to create the kind of home environment that they want. We should not have a simply punitive approach; indeed, any approach should be much broader than that. That said, such orders will be much more difficult to apply in bad neighbourhoods than in good ones, even though it will be the bad neighbourhoods that will need them.

The Convener: I thank both witnesses for managing to condense a fascinating presentation into such a short time. Certainly, the print-outs of your slides will be immensely helpful to us all.

Individual committee members will want to question you on various areas, but I want to concentrate on the context section of your presentation and the data on crime trends, in particular the statistic for the fall in police-recorded crime between 1988 and 2002. I presume that that fall might be explained partly by the fact that people are no longer bothering to report crime.

Professor Smith: On the whole, the evidence suggests that the trend has been the opposite. The crime survey statistics now give us a line on whether people are more or less inclined to report crime, because the survey itself gives us a much larger coverage of crime. When people report an incident of victimisation in the survey, they are asked whether it has been reported to the police. As a result, there are data about the proportion of incidents that are reported to the police and it appears that the general trend in the proportion of such incidents has been upward, not downward.

Indeed, one would expect such a trend. After all, we live in a society in which expectations in every field are rising. For example, not only are our expectations rising in areas such as education and performance at work, but in this and in every developed country—indeed, even in less developed countries—demand for security is increasing. Because people expect more, they are more rather than less likely to report incidents to the police. That probably explains why although some specific kinds of offence—for example, less serious offences such as vandalism—have risen in the police-recorded crime statistics, the figures almost certainly do not reflect real rises.

The Convener: In that case, would you be surprised to hear that a major retailer recently informed me that it can no longer be bothered with the hassle of reporting crimes that happen in its outlets?

Professor Smith: Retail outlets are an interesting and rather specialised case. I am not entirely surprised by your comment, although I agree that it goes against the trend that I have just described. I was thinking of ordinary members of the public rather than institutions. What you have described is indicative of a trend for some organisations to control things themselves instead of involving the criminal justice system. That is a different matter. After all, just because they do not report an incident does not mean to say that they are giving up on the system; they are simply dealing with the problem through other means that they think are more effective.

The Convener: On crime statistics generally, it is the case that since 1997 the number of serious crimes, such as drug-related crimes, has escalated sharply—by 37 per cent, if I remember correctly.

14:30

Professor Smith: Not all drug-related crimes are serious. We can debate what is and what is not serious. As I have said, I agree that, within the overall trend of a decline in crime, there has been a rise in certain kinds of violent crime in Scotland, including the most serious violent crimes, such as homicide. It is particularly worrying that the level of homicide is more than twice as high as it is in England; the reasons for that are not easy to understand. Violent crime is increasing within a general context of a decline in crime overall, not only in Scotland, but in England and many western countries. In the United States, there has been a big decline in serious violent crime as well as in crime overall, but that has not happened to such an extent elsewhere.

The Convener: I know that Nicola Sturgeon wants to pursue matters in that area in further detail. We have quite a lot to get through, so I will ask questioners to be as concise as possible and witnesses to co-operate by providing succinct answers. That would be most helpful.

Professor Smith: We will try.

Nicola Sturgeon (Glasgow) (SNP): I have a couple of factual points. I am interested in getting behind some of the statistics. It is the accepted wisdom that antisocial behaviour is on the increase. From a cursory glance at the figures in your presentation, they do not appear to bear that out. That said, the slides on the percentage of young people who say that they have engaged in certain types of offending are interesting. Are there comparative figures for previous years, which would give an insight into whether that type of delinquent and antisocial behaviour is on the increase?

Professor Smith: Unfortunately, there are no data of that kind in Scotland, as far as I know. As our study follows through a single group of young people as they grow up, by definition it cannot tell us whether there is a change over time in the general population. There have been three youth lifestyle surveys that have examined self-reported offending among young people in England and they have not particularly shown an increase. I am afraid that I cannot give you a figure for Scotland.

Nicola Sturgeon: The only trends that you can examine are those in convictions or referrals to the children's panel but if, as you say, only a tiny minority of offenders ever comes into contact with the relevant agencies, the trends in those figures do not really give a very accurate picture of the level of antisocial behaviour.

Professor Smith: That is true. No one can say whether there has been a decline or an increase in antisocial behaviour among young people specifically. Although there has been an increase in media concern about the issue, I do not think that an increase in public concern has been demonstrated.

Nicola Sturgeon: I have a final question. If it is the case that a tiny minority of offenders comes into contact with the police or the hearings system, what percentage of under-16s, for example, are referred to the children's panel on offence grounds?

Dr McAra: In our cohort, the figure is about 10 per cent—in other words, about 10 per cent of those in our cohort have been referred to the hearings system on offence or on care and protection grounds. The proportion of those who have been referred on offence grounds only is slightly smaller, but many children get joint referrals or are referred on care and protection grounds at an earlier stage and are subsequently referred on offence grounds. Very few of that 10 per cent who have had contact with the hearings system go on to have a hearing. The proportion is tiny. At one stage, we had only about 22 youngsters at sweep 1—when they were aged about 11—who had gone on to have a hearing.

Nicola Sturgeon: Can you break down that figure further? Do you know how many of that 10 per cent are persistent offenders who have been referred on several occasions?

Dr McAra: Are you asking how many of those who are referred on offence grounds are persistent offenders?

Nicola Sturgeon: I am asking how many of them are what you would describe as persistent offenders, regardless of the definition of that term.

Dr McAra: Many of those who are referred on offence grounds are persistent offenders. I cannot give you the exact figures, because I do not have them with me. There are many persistent offenders who have not been captured by the system at all. The highest level offenders that we have in the cohort—when we talk about high-level offenders, we mean offenders who have been involved in more than 120 incidents a year—are known to the agencies. Only a very small proportion of offenders offend at that high level. The sweep 4 findings show that only 17 per cent of the 400 children of that age who had committed more than 30 offences were referred on to the hearings system. The proportion is tiny.

Karen Whitefield: We took evidence this morning from several agencies that work with offenders throughout Scotland and from agencies that represent young people. The agencies said that there is no need for a legislative solution to address antisocial behaviour and that what is needed is additional resources. I am interested to learn whether you agree that what is required is increased resources, rather than a legislative response from the Executive.

Dr McAra: The bill's policy memorandum assumes that youngsters who get ASBOs will be well known to the system and that existing interventions will have failed for them. Therefore, there is a question over whether an ASBO in itself would be a sufficient deterrent to young people's antisocial behaviour. One of the main findings of Siobhan Campbell's research for the Home Office on ASBOs in England and Wales is that they work best when agencies take a holistic approach to a child and when other interventions go on at the same time.

My general feeling is that there is a lot of resource out there already that will possibly be very effective—for example, the raft of different things that are going on in youth justice and social inclusion policy, community schooling and neighbourhood projects. However, we do not know how effective those are. The Scottish system has been vastly under-researched. There is not a lot of hard evidence that the children's hearings system of supervision actually reduces offending, even though we believe that it probably does and that our youth offending rates are no worse than those of other countries. However, we have no hard evidence for that. It will be helpful when we have the findings of the research that is going on. However, to return to your main question, I believe that there is a lot of resource out there that is likely to work.

Karen Whitefield: So you suggest that perhaps the legislative response is about providing an additional tool for a toolbox of existing responses that can be used depending on the situation and on communities' experiences of ASBOs. Is that what you are saying?

Dr McAra: The ASBO can be regarded as an extra tool in the box, but I am not sure how effective it would be. It is useful for communities whose lives are blighted by antisocial behaviour to feel that something is being done and that their concerns are being taken seriously. However, as I said earlier in my bit of our presentation, I believe that there is a slight concern that focusing on antisocial behaviour, particularly on kids hanging out in certain areas and on dispersal orders, may make young people feel that they are not part of a community and that they are being excluded from communities. One of the most important ways in which one can address much of the offending behaviour that goes on is to make people feel that they have a stake in society and in their own communities.

Mike Pringle: I will ask you a question about ASBOs, but before I do that I want to clear up something that we considered earlier. You said in your presentation:

"Furthermore, many high-level offenders have little or no contact with"

the criminal justice system. Tom Wood, who is the deputy chief constable of Lothian and Borders police, would tell you that he knows 27 persistent offenders in the Lothian and Borders area and that if he could eliminate those 27 people, he would solve 30 per cent of youth crime in the area. I presume that you were not referring to such offenders in your presentation.

Professor Smith: I will try to clear that up. There are always problems with definitions when people talk about high-level or persistent offenders. I was involved in getting a project off the ground some years ago that tried a number of different definitions of serious, persistent offenders and tried to ascertain whether we had identified the same group of individuals. We found that similar but different definitions of what was meant by serious, or persistent, or high-level offenders identified almost completely different groups of people. Therefore, definition becomes a problem when we look at the detail.

What we were roughly saying in our presentation is that there is a group of very, very high-level offenders who have all been captured by the system, but that below them is a group of offenders who do an awful lot—for example, commit 40 offences in a year—but only 17 per cent of them are captured by the system.

Mike Pringle: I will turn to a particular aspect of antisocial behaviour orders. The bill suggests that we reduce the age at which an antisocial behaviour order may be imposed from 16 to 12. Some people have suggested that, given the fact that the age of criminal responsibility is eight, we could lower the age limit for antisocial behaviour orders to that. Do you have a view on that?

Secondly, do you have a view as to whether antisocial behaviour orders should be imposed through the courts, or only through the children's hearings system?

Professor Smith: I will comment first on the bit of your question relating to the extraordinarily low age of criminal responsibility in Scotland. In practice, it has only been possible to maintain it at eight because there has been a de facto policy of not taking that seriously. Lesley McAra will correct me if I am wrong, as she knows far more about these things than I do, but, in practice, there have been hardly any prosecutions of children aged eight, nine or even 10 for many years. Even if there were any such prosecutions, we would probably have huge problems with the European convention on human rights and so on. The idea of extending the age limit for antisocial behaviour orders below 12 is, in my view, an extraordinary proposal. In a way, I am neutral about the suggestion of extending it from 16 down to 12.

I will return to the main point that we were making on this subject in our presentation: it seems very unlikely that a specific measure or power directed at young people, such as the antisocial behaviour order, will in itself make any measurable difference to anything. If we are referring to the very persistent people who are likely, in Moffitt's terms, to be life-course persistent offenders, with deep-rooted problems of one kind or another, then the application of a particular criminal justice measure to that group is extremely unlikely to change them in a fundamental way. Clearly, a whole basket or programme of measures is required in order to work with those young people. To me, the question of whether or not to extend the age limit for antisocial behaviour orders down from 16 to 12 is secondary to the issue of whether the orders make much difference at all in the general scheme of things.

Mike Pringle: If the age limit were to be reduced, should the orders be administered through the courts or through the children's hearings system?

Dr McAra: There is an assumption that, when a court makes an antisocial behaviour order, it is likely to consult a reporter, and that there is likely to be a hearing. That is what I understand to be the case from the policy memorandum.

There are some lessons to be drawn from England and Wales, where such orders are enforced through the courts. I was surprised to note from the research that has been carried out there that there are major variations across the country in the type of disposal that is given following breaches of antisocial behaviour orders. Those disposals range from nine months in custody to one year's probation to a £50 fine. There is an element of criminalisation, in that a breach of an antisocial behaviour order is to be viewed as a criminal offence. That could be problematic for young people. We have discussed the net-widening capacity of the system in expanding the number of children who are captured by it. However, if someone is subject to an antisocial behaviour order for some very minor offence and breaches it through a further very minor offence, they might end up with a criminal record.

To summarise, the experience of England and Wales, with the possible criminalisation of young people when there are breaches of orders, is problematic. If antisocial behaviour orders are going to be used, it might be better to use the armoury of the children's hearings system and the things that they can do with young people.

Mike Pringle: In view of what you said about the criminal age of responsibility being 8, will you comment on an opinion that someone gave us in their evidence? They thought that the reason why 12 was picked is that that is the age at which someone is entitled to consult a solicitor. I do not know whether that is correct.

14:45

Dr McAra: It is true that youngsters are expected to have legal capacity at 12, but in Europe it is common for the age of criminal responsibility to be higher. It is 14 or even 18 in some countries and ours, at 8, is extraordinarily low.

Mike Pringle: The comment that was made to us was that 12 was chosen because that is the age at which someone may consult a solicitor.

Dr McAra: That is all that I have to say on the point.

The Convener: Can I move on to the part of your presentation that is entitled "Hanging Out"? Does that phrase refer to the congregation of groups, which the bill tries to address by providing for dispersal? Does it refer to a group of individuals?

Professor Smith: That is the phrase that we used in the questionnaire, and the young people that we asked understand it well.

The Convener: Does it mean a group of young people?

Professor Smith: In practice, hanging out is always done in groups.

The Convener: I am looking at the slide that defines what some individuals get up to—some shout and swear, some consume alcohol, some are involved with drugs and some make trouble. Could all those categories be dealt with by existing procedures and facilities?

Professor Smith: I think so, yes.

Dr McAra: Are you saying that all those kinds of behaviour are already covered? I cannot hear you very well.

The Convener: I am looking at your presentation. In the analysis of the percentage of those hanging out who engage in antisocial behaviour, four categories of antisocial behaviour are given. Are those activities not covered by existing law?

Professor Smith: The phrase "making trouble" is vague, but many aspects of common law are vague in their very essence. Breach of the peace provisions are extremely vague, and they intentionally leave a lot of scope for discretion and interpretation in enforcement. I think that you are quite right; the behaviour that is described as "making trouble" could probably be brought within the scope of the law as it is at the moment.

The Convener: Activities that are related to drugs could also come within the law.

Professor Smith: Well, obviously, and so could under-age drinking.

The Convener: And shouting and swearing. The beauties of the common law crime of breach of the peace are its flexibility and its breadth of application.

Professor Smith: Absolutely. That is what I was saying, but you put it much better than I did. I picked out the "making trouble" category because that is the one about which I am most dubious, but it probably could be covered by breach of the peace.

The Convener: What I am getting at is that everything that is detailed in your study could be dealt with under existing procedures.

Professor Smith: Yes, but it is hard to think of things that could not be dealt with under existing procedures.

The Convener: The bill provides for a power of dispersal, which is a dramatic proposal. I am trying to tease out your attitude to the situation as you have ascertained it to be according to your study. I want you to comment on the bill's proposal to make it an offence to congregate—in effect, that is what the bill will do. What is your attitude to the bill's provision on the dispersal of groups?

Professor Smith: As your question implies, I do not see why the present law cannot be used to address the kinds of behaviour that are described in the presentation. Those are the main kinds of difficult, annoying behaviour that young people get up to when they hang out in groups on the streets. It is difficult to understand why it is necessary to introduce a new power. I assume that the intention is to make it easier to undertake proceedings against young people than it is at the moment. Does the bill simplify the process? I do not know.

The Convener: Do you think that the power of dispersal, as defined in the bill, is a solution to anything?

Professor Smith: The answer to that is probably in the answer that I just gave. In so far as it does not seem to add a power that is needed on top of the powers that exist, it cannot really be a solution to a problem.

Dr McAra: As I was saying, a power of dispersal might make young people more aware that they should not be hanging out in large groups. It is not necessarily an effective deterrent, but it is explicit and it says to young people that if they hang out in areas, they might be dispersed and moved on. It might therefore become transparent to young people that that type of behaviour might not be tolerated by communities. Most crime prevention initiatives, such as surveillance cameras or target hardening, often just displace the behaviour to somewhere else. They do not necessarily tackle the root cause of why it is that so many young people hang out together. It is often a way of socialising with large numbers of people, but it is also often to do with a lack of resources or things for young people to do in an area. Such problem behaviour should be tackled at the community level, and things are being done in many community areas.

Maureen Macmillan: Before I ask about parenting orders, I would like to clarify something that I am not sure about. The existing law means that measures have to be taken against individuals. For example, if there were 50 youngsters drinking, or whatever, the police would have to charge them individually under the existing law. However, if we can just tell a group that it is no longer allowed to gather in a certain place, it might be a less traumatic way of dealing with the situation. Other means, such as community mediation, could also be used to sort the problem out.

Professor Smith: You have probably thought more deeply than I have about the specific provisions that are envisaged. It might be that that would be an advantage of the power of dispersal. I had not thought of that when I was answering the earlier question.

Maureen Macmillan: Thank you.

To move on to parenting orders, I was interested in your analysis, particularly when you talked about the difficulties of parenting and said that the environment in which a family lives impacts on people's ability to be good parents or to reinforce the messages that they are trying to give to their children.

The organisations that gave evidence this morning suggested that there was voluntary engagement in the parenting programmes that are offered to parents, that the places are always taken up and that they are always successful. I have doubts about that, particularly after seeing your slides. As I understood it, those witnesses thought that parenting orders were unnecessary because the job could always be done through voluntary engagement with the parents. Is there a place for parenting orders where parents refuse to engage in a voluntary way with organisations that are offering to teach parenting skills?

Professor Smith: I agree that there are going to be parents who have problems and who will not seek help or go to parenting classes of their own free will or without a lot of persuasion. I do not know how it will fall out, but I worry that parenting orders would be a largely disciplinary measure rather than one that was being used to offer

something constructive that would help parents to address their problems. That is the issue as far as I am concerned. I do not know enough about the detail of the proposals to know how constructive the outcome is likely to be.

Maureen Macmillan: If the measure was for child welfare rather than a punishment for parents, would you be happier?

Professor Smith: Yes, broadly. However, to go back to the point that I tried to make earlier, a variety of different things must be done to help parents and children in those families where there are bad relationships and parenting has broken down, including helping parents to improve how they behave towards their children, addressing the children's behaviour problems, and dealing with the resource problems that mean that the environment in which the family lives makes it difficult to improve how they behave towards each other. A variety of things might need to be done; it is crucial that there is a package of measures and that we do not simply regard punitive intervention as the central issue.

Maureen Macmillan: Do you think that parenting orders should be handed out by the courts or should they be a matter for the children's hearings system?

Professor Smith: I think—and I am thinking back to the answer that I gave rather haltingly to an earlier question that related to a similar point—that that should probably be decided in relation to a very broad view about the direction of juvenile justice policy in Scotland, rather than in relation to one specific issue that is considered in isolation. The broad issue is, does Scotland want to continue to try to develop a juvenile justice system on the welfare model that was first set up by Kilbrandon—perhaps adapting that model, but in essence retaining its philosophy—or does Scotland want to move to something different? A broad policy decision has to be made before decisions are made about whether specific matters are for the children's hearings or for the courts. Such specific decisions would fall into place within the context of the broader policy decision.

Jackie Baillie: I want to make a number of general points. I have to say that hanging about is extremely common, not just among young people, but among politicians in the run-up to elections, so I am surprised that the convener needed a definition.

I was fascinated by your presentation about the two different groups of young offenders—the adolescence-limited offender as opposed to the life-course persistent offender. You make the point that the life-course persistent offender can be caught, if intervention takes place early enough. Do you have evidence about what stage is early enough and when it is too late?

In relation to how to frame intervention for adolescence-limited offenders, you make the point that such offenders can stop offending but that that does not necessarily mean that they will stop. Would any of the measures that are proposed in the bill encourage that particular cohort of offenders to stop offending?

Professor Smith: In answer to your first question, I do not think that anyone has evidence that it is ever too late to intervene, but there is evidence that the earlier interventions take place, the more effective they are likely to be. Also, a number of different interventions that take place at different ages have a cumulative effect that is greater than that of a single intervention.

There is strong evidence that by the time children are four or five, fairly good predictions can be made about whether they will become life-course persistent offenders or at least offend into early adulthood.

I am sorry; I have forgotten the second part of your question. It was about adolescence-limited offenders, but what was your specific question?

Jackie Baillie: You made the point that some adolescents stop offending when they reach maturity whereas others clearly do not. Is there anything in the range of measures in the bill that might assist in stopping the offending behaviour of adolescents, given that they do not all stop offending when they reach maturity?

Professor Smith: That is true—they do not. I made a clear-cut distinction between adolescence-limited offenders and life-course persistent offenders, but in fact the distinction is not so clear cut and there is more of a continuum. Nonetheless, a lot of work is going on in criminology on why some people give up offending whereas others do not—indeed, that will be the central issue that we will try to tackle when our cohort in the Edinburgh study reaches later ages. The answer will be to do with some people drawing the conclusion that the criminal way of life is not worth it anymore and that the costs of continuing with it are too high. It will also be to do with their ability to see an alternative—an escape route. Recent research suggests that people need to be able to see alternative ways of life that are viable and other ways of thinking well of themselves.

I am not going to give a clear-cut answer to the question because I do not think that it is my position to do so. The question that the committee has to ask is whether any of the measures will help people to conclude that there is another way of life. People need to be able to see another way in which to be happy and successful—or at least less unhappy.

15:00

Jackie Baillie: That leads me neatly on to a measure that I want to test with you. I take the point that no one individual measure will work in isolation and that we need to put in place a package of support measures. Restorative justice has been welcomed by practitioners and policy makers as something that works. One of the measures that is included in the bill is the community reparation order in which unpaid work is undertaken in the community. Do you have a view as to the efficacy of that approach?

Dr McAra: I think that CROs, under which the youngster has to pay back something to the community, could be a valuable tool in the toolbox for dealing with certain young people. Evidence from a number of other countries that have major reparation and mediation programmes, including New Zealand and Australia, shows that such programmes are very effective, even for quite serious offenders. However, reparation and mediation programmes are most often effective when the youngster sees the consequences of their behaviour for the individual involved. Given the more general focus of the CRO, I am not sure how strong the evidence is that such a measure would be effective in dealing with offending behaviour.

We have seen a mushrooming of the reparation and mediation services that are available for youngsters. The services include the SACRO initiative to which youngsters can be referred when they offend. Our findings show that there is a very strong relationship between victimisation and offending. One of the things about mediation and reparation is that it tends to separate those involved into the categories of offender and victim. The holistic approach to the child sees an offender as someone who is equally as vulnerable as someone who is victimised; the offender is often a victim themselves. I am strongly supportive of the Kilbrandon philosophy, which is something that should not be lost.

Karen Whitefield: I will move on to the bill's proposals on restriction of liberty orders. You work with young people who hang about. If some of them who had engaged in antisocial behaviour were unable to hang about, would that help them to address their offending behaviour or would an RLO be seen as a badge of honour, as some of the organisations that represent young people claim?

Dr McAra: A restriction of liberty order on its own is not going to address effectively the offending behaviour; other measures also have to be put in place. If someone's liberty is restricted and they are sent home with an electronic tag, they might reflect on why they cannot go out and they might also see the restriction on their liberty as a punishment. If they are to address their offending behaviour, however, they will have to work with social workers and get involved in programmes. A restriction of liberty order can be a good way of getting a kid out of circulation and keeping them out of the way for a bit. It is an alternative to putting them into secure care, which has its own problems.

Karen Whitefield: So as long as the extension of restriction of liberty orders to under-16s comes with the support that will allow the young person to address their offending behaviour, you would not have any objections to the provision.

Did you ask the young people whether they see the restriction of liberty orders as a positive alternative to secure care? Some young people will need to go into secure care for their own safety as much as for the safety of the community. For others, however, a better alternative is for them to stay in their own community and be given the necessary support while they address their offending behaviour.

Dr McAra: All the research evidence on what works, which is now informing criminal justice social work in Scotland and will increasingly inform youth justice interventions, suggests that community-based interventions are much more effective and that they facilitate what is referred to as real-life learning. An institution is not necessarily one of the best contexts in which to get youngsters who have been locked up in it to address their offending behaviour and to reintegrate them into their community. A restriction of liberty order or tagging of a youngster is one way in which a person who is seen as risky can be kept in a community-based setting, and the research suggests that that is the most likely environment within which they will be able to change their behaviour. In that sense, such things might be useful, but on their own they will not necessarily change behaviour. Other things must be put in place.

Karen Whitefield: I want to ask about your research into the dispersal of groups. You believe that the dispersal of groups expels people from communities. In my constituency, when we have a problem with up to 50 or 60 young people gathering, they do not always come from the community in which they gather and their antisocial behaviour does not affect the communities in which they live. Often, their parents bring them in to the community and drop them off. Did your research consider whether the young people came from the communities in which they gathered? Did you carry out any research into their socioeconomic backgrounds? I do not believe that only kids from working-class backgrounds cause antisocial behaviour problems. Often, kids from much more affluent backgrounds cause problems in communities other than their own.

Dr McAra: The questions on hanging about that we asked and which I have presented relate to children who hang about in streets and public places in the areas in which they live. In certain sweeps of the study, we also asked whether they hang about in other areas. A small but quite significant proportion of them hang about in other areas, but the finding relates specifically to those who hang about in the areas in which they live. Antisocial behaviour is widespread across the cohort—it is not class related in any way—and happens in many areas in Edinburgh.

The Convener: Would you like to make any concluding points?

Professor Smith: I do not think so.

Dr McAra: No.

The Convener: On behalf of the committee, I thank Dr McAra and Professor Smith for attending the meeting and for the full and extremely helpful presentation. We are pleased that you have been able to join us.

I now welcome Chief Constable David Strang, who is chief constable of Dumfries and Galloway constabulary and who is also representing the Association of Chief Police Officers in Scotland. [*Interruption.*] We seem to have an echo on the microphones—it is as if we were in a big cave. Let us tone that down. Thank you for joining us this afternoon, Chief Constable. I am glad that you were able to hear some of the earlier evidence.

I start with some general questions. The view has emerged consistently from various witnesses that existing laws are sufficient, that existing facilities are adequate and that the measures in the bill are unnecessary—the issue is perhaps more one of resource for existing procedures. Do you have a view on that in relation to the general proposed application of the bill?

Chief Constable David Strang (Association of Chief Police Officers in Scotland): Yes. There is no magic wand that will eradicate antisocial behaviour so it depends on the question that we are trying to answer and the problem that we are trying to solve. If we are asking whether the bill, if enacted, will mean that there will be no antisocial behaviour in Scotland, then the answer is of course not. If the question is whether the bill will improve our response to antisocial behaviour and whether the introduction of antisocial behaviour strategies will go some way to improving communities, the answer is clearly yes. The measures that are proposed in the bill will be an improvement rather than a hindrance.

The Convener: As far as existing powers that are available to police forces in Scotland are concerned and, perhaps as pertinent, as far as numbers of police officers are concerned, do you consider that there are sufficient police officers in Scotland to enforce existing legal powers in relation to antisocial behaviour?

Chief Constable Strang: The question of police numbers is almost impossible to answer. If you said to me, "I will give you an extra 10 per cent on your budget so you can have more police officers", I would be able to deliver a better service—all forces in Scotland would be able to deliver a higher quality of service. I cannot answer that question in absolute terms—it is a question of quality and of what the people of Scotland are willing to pay for the police service that they want to receive.

At the moment, there are high satisfaction rates with the police service that is delivered in Scotland, so one could answer the question by saying that there are adequate numbers because we deliver a well-regarded and highly respected service. If we had more police officers, it is undoubtedly the case that we would deliver a better service.

The Convener: Without going into the technical details of the matter, a poll has suggested that a large majority of people in Scotland want police officers to be more visible in their communities. Is that a reasonable aspiration?

Chief Constable Strang: You are absolutely right. Research by Her Majesty's inspectorate of constabulary in Scotland, in the "Narrowing the Gap" report, showed that, if members of the public were asked whether they wanted to see more police officers, they said yes almost universally.

A correlation between reduced crime and increased visibility is less clear, as is a correlation between increased visibility and public reassurance. That research showed that, irrespective of how frequent police patrols were, the levels of satisfaction were the same. "Would you like to see more police officers on the street?" is the sort of question to which people answer, "Yes, of course we would." As members know, we have competing demands between all sorts of specialisms—we have some people in vehicles, some in plain clothes and some on foot in uniform.

The Convener: Members of the committee will return to specific issues on which we would welcome your opinion.

I have a final, general question. Given your answer to that last question and the implications of the bill for police forces in Scotland, do you consider that sufficient resources are available to Scottish police forces to cope adequately with the consequences of the bill if it is enacted as it stands?

Chief Constable Strang: The question of resources is separate from the proposed

measures in the bill. The way in which police funding works is that there is an allocation of funds that we manage within the budget that we have, whatever the demands—whether they are new offences, particular disasters or major crimes.

One of the key measures in the bill is joint working with community planning partners to state that antisocial behaviour on the streets is not simply a police problem. I welcome particularly that notion of looking at the causes rather than at the symptoms alone. We are already engaging with partners, which does not use much more in the way of resources.

15:15

Mike Pringle: Welcome, David. It is nice to see you again. Before we get on to the antisocial behaviour orders, I would like you to comment on something that came up earlier. I am not sure whether you heard the previous two witnesses talking about crime trends. Basically, they said that there is less crime, but that more people are reporting crime. I am not entirely sure about that and I wonder what you think. So many people say to me these days, "Och, I can't be bothered."

Chief Constable Strang: The evidence is that there is a narrowing gap between police-recorded crime statistics and the figures in the British crime survey. That suggests that a higher proportion of crime is reported to the police. We are going down the road of increased accessibility and visibility, we have improved ways for people to contact us—they can now report crime on the internet—and lots of community constables are holding police surgeries. The more opportunities there are for people to report to us, the more they will do so. There is a bit of a frustration for us. We want to engage constructively with communities, but we recognise that our doing so will probably lead to an increase in recorded crime as more people report what is happening.

One of the frustrations in all this is the notion of perception, which you have just touched on. I am not sure that the public are hugely convinced by crime statistics. Their experience may be that there is a lot of crime in their area, and if the chief constable says that the police have reduced recorded crime by 5 per cent this year, they do not necessarily believe that. The level of recorded crime has gone down over the past 10 years, yet many people's perception is that we live in a more lawless society than we did 10 years ago.

Mike Pringle: I turn to antisocial behaviour orders. In the bill there is a suggestion that the age limit at which someone can have an antisocial behaviour order imposed on them should be reduced from 16 to 12. There is also the suggestion that the courts should be involved in that. Do you think that the age limit should be reduced and do you have a view as to whether the courts or the children's hearings system should be responsible?

Chief Constable Strang: I do not have a particular view on whether the ASBO should originate from the courts or the children's hearings system—I suppose that it should originate from wherever the case is heard. It would probably be useful to allow an antisocial behaviour order to be imposed on someone aged 15. If it is useful for a 16-year-old, it is probably useful for a 15-year-old. I can see the reason for a logical extension of the orders for 12 to 16-year-olds. There are circumstances in which that provision could be useful and I welcome its inclusion.

Mike Pringle: You have probably answered this, because you talked about it earlier, but do the police have enough resources to cope with getting involved in imposing more antisocial behaviour orders?

Chief Constable Strang: That depends on what time scale you are talking about. In the long term, our hope is that the demand will reduce. If we can reduce offending, particularly among younger and younger people, the knock-on benefit in two, three, five or 10 years' time will be a reduction in offending. If the orders are effective and prevent lots of offending behaviour, that should reduce the demand and the number of calls that we have to attend. The investment in time and people up-front would be well worth while.

The Convener: I note from the ACPOS response that there is unhappiness with the provision on the dispersal of groups. I want to explore with you the root of that concern. Is it that, fundamentally, the police forces of Scotland do not wish to be the subject of ministerial control or is it that the power is likely to be of no practical use? I want to tease out the reason for the lack of contentment with the provision.

Chief Constable Strang: You are absolutely right. There are two distinct positions. Section 21 provides for the Scottish ministers to give directions to police officers. However, I do not see the circumstances in which that would be applied. There are a couple of points. First, section 20 allows for guidance. We think that that is sensible and ACPOS would work with the Scottish Executive to produce that guidance. However, while section 18 says that a constable "may give" directions to people to disperse and so on, section 21 says that the Scottish Ministers would issue directions in the exercise of powers. I do not see how a Scottish minister could give such directions.

There are practical difficulties with the bill and, as the ACPOS response says, there are constitutional difficulties as well, as it is chief

constables who are operationally responsible for their officers and it would not be appropriate for the Scottish ministers to issue directions to police officers. That might not be what the Executive has in mind, but it could be read into the section.

On the wider question of the power to disperse, the reality of dealing with troublesome youngsters on the streets is that, often, they have already gone by the time the police arrive. Dispersing them simply is not an issue. In terms of dealing with antisocial behaviour, the difficulty is gathering the evidence. For example, if there is some disorderly behaviour and a member of the public telephones the police, it is unlikely that there will be a car just around the corner and it might be five minutes or so before one arrives. By that time, the behaviour will often have stopped and the youngsters will have moved on. The proposal is not a practical solution to the problem. Further, the exercising of the powers could create conflict and alienation. When we deal with young people, our objective is to engage with them constructively if possible.

The Convener: The Scottish Executive clearly thinks that the powers are necessary. If 50 or so young people were still around when the police arrived, how would the police deal with the situation?

Chief Constable Strang: It depends what the young people were doing. As Professor Smith said, under-age drinking, drug-taking, shouting and swearing and so on would all be considered to be breaches of the peace, so the officers would deal with the behaviour that was in front of them. The provision in part 3 of the bill—which is a power to arrest people who do not disperse—extends police action to people who are present in a place and committing no offence other than being there. Clearly, if their behaviour was intimidatory or was causing alarm or distress, it would be viewed as a breach of the peace in any case. We think that it is inappropriate for police to move people on from a place where they are committing no offence.

The Convener: Section 16 of the bill empowers a police officer of the rank of police superintendent or above to take action. Are you satisfied with the definitions in section 16 that relate to the police officer having to determine whether

"any members of the public have been alarmed or distressed as a result of the presence or behaviour of groups of two or more persons in public places in any locality in the officer's police area"

and whether the

"antisocial behaviour is a significant and persistent problem in the relevant locality"?

Are those phrases ones that a serving police officer can readily interpret?

Chief Constable Strang: You ask me whether I am satisfied with the language, but I have already said that we do not feel that the power is necessary. If there is a persistent and significant problem of antisocial behaviour in a relevant locality, action would need to be taken. However, that action would be along the lines of a problem-solving approach, working in partnership with others. We will do that through the antisocial behaviour strategy and community planning.

Of course we understand the phrases, but we do not accept that a power to disperse is the solution to the problem.

Nicola Sturgeon: We keep hearing that the police do not need to be given the power of dispersal because they already have it. For absolute clarity, if an officer who is out on the beat tonight comes across a group of youngsters who are making a nuisance of themselves, does that police officer have the ability to move them on?

Chief Constable Strang: It depends what you mean by "making a nuisance of themselves". Are they committing offences?

Nicola Sturgeon: Breach of the peace is a pretty wide-ranging, how-long-is-a-piece-of-string offence.

Chief Constable Strang: Indeed. The officer would have powers to deal with that. The vast majority of police officers use common sense and their discretion in dealing with such people. If a complaint is made, the likely response is that the police officer will speak to the young people and explain the situation. The officer will probably tell the young people to go away and give them a warning, saying that if the police are called back they will deal with them more severely. In most cases, young people understand that and move on. If they start shouting and swearing, they are likely to be arrested and reported for that substantive offence, but they will not be reported simply for being in a place and committing no other offence.

Nicola Sturgeon: I have heard two concerns expressed about the new provisions. First, the bill in effect creates the offence of hanging about the streets. A group of young people could be behaving impeccably, just standing chatting and passing the time of day, but the fact that their community did not like their being there would be grounds for moving them on. Secondly, the bill seems to create a very bureaucratic procedure to enable the police to do something that they can do anyway. The chief constable has to go through the rigmarole of designating an area and notifying it in a local newspaper, blah, blah, blah. However, an officer who is on the beat tonight can deal with the problem as you have described, using a bit of discretion and common sense.

Chief Constable Strang: Yes. The offence is not hanging about—to use your term—but failing to disperse. The officer has a power of arrest for failing to disperse. The offence is not standing there, but failing to leave.

Nicola Sturgeon: Yes, but the young people can be obliged to disperse although no offence has been committed.

Chief Constable Strang: Sorry?

Nicola Sturgeon: Under the bill, the group can be obliged to disperse even if it is not causing any trouble or committing any offences.

Chief Constable Strang: It is not as arbitrary as that. There has to have been a persistent and significant problem of antisocial behaviour in that place.

Nicola Sturgeon: But that could be entirely subjective. Many communities have serious, credible and legitimate problems, but the persistent nature of the problem could be entirely subjective. It could just be that a community has decided that it does not like young people hanging around street corners.

Chief Constable Strang: You mentioned the quite complicated process of implementing the provisions, and those conditions are imposed to prevent the decision from being arbitrary. There has to be full consultation with the community and the local authority. An advert has to appear in the local newspaper and the designation has to be authorised by a superintendent. Those safeguards are in place in response to your fear of the provision being arbitrarily administered. It is not something that is done simply on the whim of a constable who thinks that he will move people on; it is about persistent behaviour in a certain location, and it is the community response to the problem in that area.

Nicola Sturgeon: In your view, does what the bill is trying to do add anything of worth to the powers that the police already have?

Chief Constable Strang: No.

Mike Pringle: I want to pursue two points on dispersal, which is quite an important provision in the bill.

Section 19 states:

"A person who, without reasonable excuse, knowingly contravenes a direction given to

the person under section 18 shall be guilty of an offence and liable on summary conviction to—

(a) a fine not exceeding level 4 on the standard scale;"

and/or

"imprisonment for ... 3 months".

Is it fair comment to say that that will mostly apply to people under the age of 16?

15:30

Chief Constable Strang: No, I do not think that that is fair comment at all. A lot of what people would describe as antisocial behaviour is linked to licensed premises and people who are more than 18 years old.

Mike Pringle: I am talking specifically about dispersing the groups of youngsters whom we have already mentioned who hang around street corners. I entirely agree with your comment about pubs, but what about a group of young people who hang about a street corner chatting to one another? If the community does not like that kind of behaviour, those youngsters, most of whom will be under 16, could end up with a fine or getting imprisoned. Is such a response appropriate?

Chief Constable Strang: I do not think that that is likely. You describe the situation as young people hanging about a street corner, chatting. The measure is not aimed at that kind of incident. Instead, it is aimed at people who congregate in areas where there are persistent, serious and significant problems with antisocial behaviour and applies only to those who refuse to move on. It is not that people who are chatting on a street corner are liable to be sent to prison for three months. The offence would apply only to people who refuse to move on when a police officer turns up, points out that they are in a designated area and asks them to leave. There would have to be a wilful disregard not only of the section in question but of the constable's instruction.

Mike Pringle: It has been suggested to me that—

The Convener: Can you keep this brief, Mike? We are running behind time.

Mike Pringle: Sorry. A number of people have suggested to me that the police will never use this part of the bill because they do not need it. As we have already pointed out, they have all the tools they need in their toolbox to cover all instances.

Chief Constable Strang: That is possible.

Jackie Baillie: I was initially seeking some clarity on how we would go about designating a particular area, because we would all have a legitimate problem with the bill if it was simply intended to move on young people who were chatting on street corners. However, that is clearly not the bill's intention. As you have rightly pointed out, it is intended to designate areas where there have been persistent problems and contains a formal and robust process for doing that.

That said, although I acknowledge your opposition in principle to the new power, I wonder whether it would provide a better focus for your resources by ensuring that the police did not simultaneously show up to several areas where

young people have already moved on. It would also allow the police to take a proactive approach to policing, which I think is what communities want.

Moreover, would not designating an area that is clearly a hotspot and letting young people there know the consequences of not dispersing when instructed to do so by the police act as an additional safeguard and have a deterrent effect on some—though not all—young people who persist with antisocial behaviour?

Chief Constable Strang: I am entirely at one with your comments on the need for proactive policing and community action to deal with antisocial behaviour. Members will know that we are taking an intelligence-led approach, which follows the national intelligence model and focuses on gathering intelligence from the community to identify hotspots of drug dealing, antisocial behaviour or road crashes and to target specific action at them.

I am entirely in favour of identifying what are significant problem areas, of putting police resources in and of working with others to resolve the problems, but I would not say that we need a power to disperse as part of that response. We do need to respond robustly and proactively, predicting where the problems are likely to be, ensuring that we have a police presence, working with youth workers and investigating what other facilities are available, taking much more of a long-term, problem-solving approach. I do not think that giving police the power to tell people to move on and to arrest those who do not will significantly add to our response.

The Convener: I have a technical question. Is the crime of breach of the peace still defined with reference to causing alarm to the lieges?

Chief Constable Strang: Among other things, yes.

The Convener: The lieges could be the inhabitants or residents of an area where a group of youngsters may be congregating.

Chief Constable Strang: One of the flaws in the bill's provisions for the dispersal of groups is that they do not apply to people who reside in the area. One of the challenges for the implementation of the provisions is how narrowly designated the area is to be. Those who reside in the area could be dispersed in any event.

Maureen Macmillan: You have not had much to say about parenting orders in your most recent evidence, although you mentioned them in your evidence to the Executive. You said:

"It remains to be seen, given the factors prevailing upon disadvantaged groups, what weight they will place on complying with such a Parenting Order."

Could you expand on your views on parenting orders and on whether you think they will be effective?

Chief Constable Strang: This is an area where the police will be less involved than the reporter and the local authority. We are generally supportive of parenting orders—and I recall what Dr McAra and Professor Smith said about this in evidence earlier. The bill is full of measures ranging from prevention through to enforcement. For us, the parenting order is somewhere in the middle: it is not quite a big stick, although there is some form of compulsion for people to attend counselling and guidance sessions. To answer your question, I think that it is possible that parenting orders will be helpful. Therefore, we are happy to support that measure.

Jackie Baillie: Restorative justice has been welcomed by policy makers and practitioners alike. I believe that your original suggestion was that there should be no upper age limit to community reparation orders. Is that still the case?

Chief Constable Strang: Yes. I am not quite sure why an upper age limit of 22 is applied to them. We are very keen on restorative justice. Processes for restorative cautions for young people are being rolled out across Scotland at the moment. We think that the community reparation order would be a good way of getting a message across to young people under 22 or 23 that there is a consequence to their behaviour, and that their crimes are not victimless. Such orders are a not inappropriate response by society to those people's offending behaviour. If they need to try to put some of those consequences right, they might think twice about offending in the future.

Karen Whitefield: The committee has heard diverse views on the use of restriction of liberty orders. Some witnesses believe that those orders might play a part in addressing offending behaviour; others believe that the tags could be seen as a badge of honour. In your response to the Executive's consultation, you expressed concerns that communities might view the use of tagging as a soft option. Your response to the committee's consultation did not include that point. What is ACPOS's view on the use of restriction of liberty orders? Might they have a role to play?

Chief Constable Strang: Restriction of liberty orders may have a role to play. It is a difficult question to answer, because we have not seen any evidence of the extent to which the tags could be seen as a badge of honour or the extent to which they constitute a helpful restriction on behaviour. As far as adults and the disposals that are currently available from the court are concerned, we have found that restriction of liberty orders have been effective in keeping people indoors. If someone has been out on the street

offending persistently, and if the restriction of liberty order keeps them indoors and prevents that offending from taking place, we think that that option is worth pursuing. It is possible that the orders could be a useful measure.

Karen Whitefield: If restriction of liberty orders become used, are there likely to be resource implications for the police in ensuring that orders are used and monitored effectively, without breaches taking place?

Chief Constable Strang: As I understand it, the monitoring will be done in the same way as it is done at the moment, by a private company. The police will not be responsible for monitoring compliance with the order. If the net result is that offending behaviour is reduced, demand on the police will be reduced and we would welcome that.

Nicola Sturgeon: Do you have a view on fixed-penalty notices? Two views have been expressed to the committee. One is that fixed-penalty notices might involve confusion between the police's responsibility to enforce the law and the responsibility to dispense justice, which properly lies elsewhere. The second view is that where fixed-penalty notices are already used, in motoring offences for example, there might be little dispute about whether an offence has been committed, whereas areas such as noise or nuisance are much more subjective, so fixed-penalty notices might be less appropriate. Do you have a view on those points?

Chief Constable Strang: On the separation of disposal from reporting, police officers use their discretion at the moment and they can sometimes warn people and move them on. The police officer is already involved in making a decision about what happens. If the fixed-penalty notice replaces having to do a full standard prosecution report, it will cut down on bureaucracy and paperwork and be much more effective.

If the person who has received the notice disputes that their behaviour is wrong, it will always be open to them to be heard in court, as is the case with traffic offences at the moment. We are not denying anyone the right to dispute or challenge that their behaviour is wrong. For those who accept that their behaviour is wrong, the fixed-penalty notice means a speedy disposal in which they do not have to go to court and will not get a criminal conviction.

Nicola Sturgeon: On the same subject, did I understand you correctly when you said or implied that fixed-penalty notices might save police time rather than add to it?

Chief Constable Strang: Earlier I heard the phrase "net widening". We must ensure that we do not start issuing fixed-penalty notices for behaviour for which we simply caution or warn people at the moment. The fixed-penalty notice is an alternative to full reporting to the procurator fiscal. If it stays at that high level, that should save time and bureaucracy.

Nicola Sturgeon: What are your views on the provisions on closure of premises? SACRO expressed the view that closing premises does not necessarily solve a problem but just moves it elsewhere.

Chief Constable Strang: SACRO might be right, but it might not be. The provision does not apply to residential areas, but if a disused shop is being used for antisocial behaviour, closing it down might well be part of the solution. It will not be the only solution, but it might be part.

The Convener: Are there any other questions?

Mike Pringle: I have one brief question. You are saying—

The Convener: Will you please make it brief?

Mike Pringle: It is.

Chief Constable, your submission states:

"The prohibition on the sale of spray paint to under 16 year olds may assist in the prevention of crime."

Why do you say "may" and not "will"?

Chief Constable Strang: Because I cannot predict the future with certainty. However, it is likely that such a prohibition will assist, and we support the measure.

The Convener: Chief Constable, do you want to make any concluding points?

Chief Constable Strang: No, you have given me a fair hearing.

The Convener: On behalf of the committee, I thank you for being here. It has been a helpful session.

We will take a five-minute comfort break.

15:44

Meeting suspended.

15:50

On resuming—

The Convener: I welcome Douglas Keil, who is the general secretary of the Scottish Police Federation—we are glad to have you with us, Douglas. You will be familiar with the format. Members want to explore various issues. As I have said to previous witnesses, I am glad that you have been able to listen to the earlier evidence, which may have given you an indication of the issues that are coming forth.

We have the Scottish Police Federation's response to the Executive's consultation paper. I assume that your general views have not changed greatly from those in that response, but I have some broad questions to pose. In that original submission, the federation said that it was satisfied that additional powers such as the power to disperse groups were not required and that almost all its members thought that the answer to unruly behaviour in communities was to have more police officers on the street. We will park the dispersal of groups issue for a moment—we will come to it later—but is it your view that at present there are insufficient police officers to apply the existing law?

Douglas Keil (Scottish Police Federation): Yes, that is our clear view. To explain the point graphically, in 1997 we had 15,050 police officers in Scotland, but in the two years to 1999 there was a drop of 374, which took us down to 14,676. Since 1999, largely because the federation has campaigned for extra officers, the number has increased and at present the figure is 15,560. However, around 380 of those officers are part time, which means that, if we express the total as a full-time equivalent, we have not many more officers than we had in 1997. If you consider the new duties that have been placed on police officers in the six years since 1997, you will understand why we think that we are short of officers.

The Convener: You feel that you have inadequate numbers of police officers at present. Implicit in that is the point that, if the bill is enacted, the number of officers will be more inadequate because a greater responsibility will fall on the police as a result of certain provisions in the bill.

Douglas Keil: One or two of the provisions will have a minor impact on police resources, but, to be frank, I do not think that there is much in the bill that will create a great deal of extra work for the police. In part, that is because I believe that the power of dispersal will hardly ever, if ever, be used.

The Convener: So your main point is that the existing law covers the situations that the Executive is trying to address, but that the law is not being adequately enforced because of an inadequate number of police officers in communities.

Douglas Keil: We agree with the Executive that antisocial behaviour is a big problem, but we think that the situation would improve if we had more police officers to use the existing powers.

Mike Pringle: The federation is in favour of the extension of antisocial behaviour orders to under-16s. The bill suggests that the minimum age should be 12. Should the courts or the children's hearings system be responsible for making the orders?

Douglas Keil: We did not take a strong view about antisocial behaviour orders for under-16s. We are quite relaxed about that proposal and tend to think that it is for others to decide on. I can understand why the age of 12 has been mooted—we would not object at all to that being the age.

Mike Pringle: Should ASBOs be made by the court or by the children's hearings system?

Douglas Keil: There needs to be co-ordination. We felt that, if antisocial behaviour orders were extended to those below 16, the process could become circuitous unless the roles of the court and children's hearings were co-ordinated properly.

Mike Pringle: Will dealing with breaches of ASBOs have a resource implication?

Douglas Keil: The resource implication will be minimal. At the moment, the police act when an offence is committed. Whether that offence is an original offence or a breach of an antisocial behaviour order will not make much difference. Breaches will not greatly increase the number of offences with which we have to deal.

The Convener: I know that the federation is opposed to the provision on the dispersal of groups—you have explained the reasons why. However, Karen Whitefield has a specific instance to which she referred earlier and on which it would be helpful to get your opinion.

Karen Whitefield: I appreciate why you hold your view, but, every couple of nights, one village in my constituency comes under siege from between 40 and 50 young people, who regularly congregate there—some are from the village, but others are from neighbouring villages—and hang out together. The group prevents other young people who live in that village from attending the local youth club that they organise because they feel intimidated and threatened. Local residents are concerned about the group's behaviour, which often causes an obstruction in simple ways, such as preventing people from getting in and out of their drives. The situation causes general unease in the village.

The local community police officer has told me that he is concerned about that regular occurrence and that he shares my and my constituents' concerns but finds it difficult to address the problem with the powers that he has at the moment. He tells me that the proposals on the dispersal of groups will allow him to do his job better and to address the problem. Do you agree with him?

Douglas Keil: No, not at all. I represent all police officers from chief inspectors down the

way—that is about 98 per cent of Scottish police officers. We have consulted them two or three times specifically on whether they need such additional powers and the unequivocal answer has been that they do not. Think about the powers that already exist under breach of the peace—which can include disorderly conduct, conduct that is calculated to provoke a breach of the peace, causing alarm and annoyance and, in the most serious of circumstances, mobbing and rioting—and take the statutory powers under the Civic Government (Scotland) Act 1982. Every police officer to whom I have spoken has said that there are more than enough powers; the problem is that they do not have time and resources to dedicate to the issue.

The example about which you are talking is a regular or persistent problem. It is common for police offices to hold what are called lists of standing complaints—in other words, issues that need to be addressed regularly, for example, on a Friday night between 6 pm and 7 pm. I suspect that the officer about whom you are talking is more likely to be working with a small number of colleagues and that, if he chose to arrest the first five or six people who were committing an offence, he would be taken off the street for a sufficiently long period of time for a real problem to be left behind. That is the difficulty.

I have tried to read the provisions in the bill inside out and upside down and I cannot envisage a set of circumstances in which the current powers would be insufficient or the proposed new powers would be of any benefit.

Karen Whitefield: Might there not be a case in which it is not appropriate to arrest one or two people but in which we need to stop large numbers of people congregating in one community regularly? That is the problem. The local community has no problem with the local young people who live in the community meeting up and hanging out at the end of their street. What people object to is the impact of having such large numbers of young people, many of whom do not even live within the community—they come in by public transport from another village and sometimes they may even be dropped off by their parents.

The difficulty is that the young people may not be causing an offence. As far as I can see, those young people cannot be charged with breach of the peace, but they are affecting the quality of life of the people in the village. That is why the local community officer, who is doing his job and is trying to be responsive, has told me that he thinks that the powers are not sufficient.

16:00

Douglas Keil: Before the powers could be exercised, a senior police officer at superintendent rank or above would have to go through an extremely bureaucratic process to give an authorisation for the area. One of the first things that would need to be done would be to establish that the public were alarmed, disturbed or distressed by the actions of the group. Once that was done, the local authority would need to be consulted. The authorisation would then need to be publicised by being stuck up in various prominent places in the area. To get to that point would require so much police work from officers on the ground and from the superintendent that it would be far better to dedicate that effort to dealing with the problem itself. There are so many hurdles to overcome before the authorisation for an area could be given that a great waste of police time would be involved.

The other difficulty is that there is a risk that the newspaper articles and posters will stigmatise the area. It is not inconceivable that certain other young people—and, indeed, others who may not be young people at all—might think that it was worth travelling to the area to be chased around by the police. There is some evidence that that happened when the Hamilton curfew was operating. We need to be careful before we describe an area in those terms. To make it an offence just to be in the area is a very dramatic proposal.

Karen Whitefield: I suppose that the community could argue that it is already being stigmatised and victimised. That community might see the authorisation not as stigmatisation but as sending out a message to the wider community that such behaviour will not be tolerated from young people or, for that matter, from older people. It is not always just the under-16s who cause the problem. Sometimes the disturbances in the community are caused by people as old as 30 who hang about the streets. Although a police officer who comes along will not have the power to decide that hanging about should not be allowed in an area, the measure will give communities the power and back-up from local authorities and the police to be able to say, "Enough is enough. We are not going to accept this." The measure sends out a signal that those communities have the support of all agencies in addressing the problem.

Douglas Keil: To put it simply, those whom I represent think that that can be done now.

Nicola Sturgeon: I have immense sympathy with your views. I think that you are right to say that the powers already exist and that the problem is that the police have neither the time nor the resources to use those powers. However, if I may just play devil's advocate for a moment, I want to ask how you would respond to the argument that prevention is better than cure. Rather than having police officers dealing with the problem as it arises night after night and weekend after weekend,

would it not be better to designate an area and to prevent, or at least to try to prevent, the problem from occurring in the first place? Would that not be a better use of time, which might free up the police to do other things? How would you respond to that argument?

Douglas Keil: I certainly do not think that police actions should be confined to arresting people or to chasing them around the street. That is not the point at all. If we had sufficient community beat officers, we could begin to build relationships not just with young people but with all people. That would develop trust and might lead to the return of a degree of respect for authority. Where there are community beat officers, that is precisely what happens—they develop relationships and it is then easier to explain to young people why their presence on a particular street corner might not be best for all concerned and why they might be better moving on elsewhere. That is the best way of dealing with such problems, if there are the time and resources to do so.

Mike Pringle: I will ask you what I asked David Strang. It has been suggested to me that part 3 of the bill, if indeed it remained in the bill, would not be used. What is your view on that?

Douglas Keil: I find it hard to envisage a set of circumstances in which it would be used.

Mike Pringle: You think that the police would simply not use part 3 of the bill.

Douglas Keil: I cannot see when it would be used. I must pick up something that Mr Strang said. The provision in the bill that I am most concerned about is section 21. The power of direction that it proposes is probably the most important issue in relation to the police that the Justice 2 Committee is ever likely to deal with. We are talking about the chief constables' operational autonomy, which is an issue that goes way beyond the terms of the Antisocial Behaviour etc (Scotland) Bill.

In a Home Office paper that was published in November last year, David Blunkett wrote:

> "the Government … is not seeking to interfere in operational policing decisions which are the right and duty of chief officers to take—a position which is enshrined in law. Police forces are under the direction and control of their chief officer—not politicians. The political impartiality of the police is absolutely vital for public confidence."

I could not agree more with that and I would go so far as to include section 20, which is on guidance on operational matters, in my concerns. I do not think that giving directions is the function of ministers. Section 21 would destroy a long-held policing principle. Public confidence in and support for the police are the very foundation of our system. That principle is heavily rooted in the knowledge that policing decisions are taken for policing, rather than political, reasons. I urge the committee to do whatever it can to have section 21 removed from the bill.

Jackie Baillie: I want to clarify two points. I might have misread section 21, but I understood that it related to the designation of an area and that, because that is a serious step to take, the suggestion was that the Scottish ministers should do that. Have I picked that up entirely wrongly? You are suggesting that the proposed power of direction is far greater than that.

Douglas Keil: Section 21 says that the power of direction relates to part 4 of the bill. To me, that means the whole of that part. If we take the interpretation of section 21 to its extreme, it suggests that the Scottish ministers could designate a particular area as suffering from an unacceptable level of antisocial behaviour simply by lifting the telephone and directing the chief constable to put a number of men there, to have the area authorised and to get the situation sorted out. That flies in the face of everything that we know and understand about the democratic position of the police in this country.

The Convener: For the sake of clarity, I point out that section 21 refers to part 3 of the bill, but it appears that the powers that are given to the Scottish ministers embrace all the sections in that part of the bill.

Jackie Baillie: I want to pursue the point so that it is clear in my mind. If it were clearly defined that the ministerial power was to be exercised simply in relation to the designation of an area—which, in itself, is quite significant—and that that was to be done at the end of the process rather than at the beginning, as you suggested in your example of a minister simply lifting the phone to speak to the relevant chief constable, would you have the same reservations? That is the issue that I am struggling with, so I will make you struggle with it, too.

Douglas Keil: I understand that the police must come under the direction and control of the Government; in my mind, there is no question but that that must be the case. However, there must be a separation in relation to operational matters.

Jackie Baillie: Okay, we will leave it at that for now.

I have another question that develops the point that Nicola Sturgeon was making. Do you think that designating an area might lead to a better focus for resources, which would mean that the chief constable or whoever was operationally responsible could identify where community beat officers might be required to do the kind of prevention work that you say works effectively? Might not such designation act as a deterrent to young people who were hanging about in a particular area?

Douglas Keil: It is not for me to interpret how the Scottish ministers intend that the bill will apply. I find it extremely difficult to envisage a set of circumstances in which a superintendent would say that a problem was significant enough to authorise the designation of a particular area. If there are persistent problems and there are sufficient police resources, the two will meet. There is no doubt that a beat officer knows precisely where the difficulties in his area are; it is simply a question of whether he has the time and resources to deal with them.

The Convener: If the power is enacted, it is foreseeable—for the reasons that Karen Whitefield outlined in relation to the community that she described—that there will be significant pressure on police forces from communities. I suspect that in the first instance pressure may not be applied by the Scottish ministers. However, I understand that residents groups, community councils, community activists, shopkeepers and residents will phone local divisional officers to say that there is an act that gives them power to do something and they should do it, because a large number of youngsters or others are congregating at a location. It will be very difficult for senior police officers to resist that pressure. I am concerned about what will happen if they cannot resist it—it is foreseeable that it will be difficult for them to do so—and an area is declared a no-go area for individuals. In any community, there is a predictable number of known havens where people can congregate. The difficulty is that those people will become peripatetic and go on a journey that ends only when every area has been designated.

Douglas Keil: That is a possibility. We have expressed concerns about raising levels of public expectation. The circumstances that you have outlined are definitely possible. Everything depends on the time and resources that we have and on the view that we take of the seriousness of the type of call that you have described, as compared with a call about housebreaking or a stolen vehicle. How should we respond to such calls? Do we appreciate the negative impact that antisocial behaviour has on people?

The power to designate an area would work only in relation to people who do not live in that area. In my mind the question arises of what dispersal means. How far do we have to move people before they are dispersed? How far apart do two people have to be before they are not a group? In reality, that type of issue can become almost a game, especially in some areas. My worry is that the provision would become an unwieldy piece of legislation that we would not use and that better results could be achieved if we had the time and resources to implement existing measures.

The Convener: So you anticipate that, even if an area were designated and hurdles 2, 3 and 4 had been safely crossed, designation could be counterproductive. You anticipate a series of phone calls to the police from people saying, "They are back in that park. Get out here at once."

Douglas Keil: Absolutely. For very good reason, we cannot always attend an incident, either at all or as fast as we would like to. That is the subject of complaints from the public. I agree that it is terrible when someone telephones the police and, because of the work load in other areas, officers cannot attend. That is extremely disappointing. There is a danger that the bill will raise the levels of public expectation and lead to an increase in the number of complaints.

The Convener: If the provision is implemented and is to work, it must have a resource implication for the police force, or the police will not be able to attend to all the calls demanding that miscreant individuals who have been found in a banned location be dealt with.

Douglas Keil: Given the conditions that must exist for the power to be exercised, the police resources that are required to create an authorised area could better be deployed in dealing with the problem in the first place.

Maureen Macmillan: I have one brief question to which you may be able to give a very brief answer. In your written evidence, you say nothing about parenting orders, so I assume that you are in favour of the Executive's proposals in that area.

Douglas Keil: The Scottish Police Federation did not take a position either for or against parenting orders.

Jackie Baillie: I have a similar question about community reparation orders. I know that the police are in favour of restorative justice. Are you equally in favour of community reparation orders?

Douglas Keil: In response to Scottish Executive proposals other than the bill, we have expressed our support for community reparation orders.

Karen Whitefield: I have a question about the extension of restriction of liberty orders to those under 16. Does the federation think that such orders might have a positive effect in addressing offending behaviour?

16:15

Douglas Keil: I will quickly mention that an excellent pilot is taking place at Hamilton youth court, in which RLOs are being used as an alternative to remand. We are extremely happy about how that pilot is going. I must say that it is 100 per cent funded by the Scottish Executive, so it is easy on this occasion for us to apply resources to the initiative. However, as I

understand it, and as Mr Strang said, the RLOs that are proposed in the bill would have no policing implications because the monitoring firm, rather than the police, would deal with breaches of the orders.

Karen Whitefield: So you would have no objection to the use of RLOs.

Douglas Keil: No.

Nicola Sturgeon: Very briefly, we would like you finally to comment on the parts of the bill that relate to fixed penalties and to the closure of premises. You have dealt with both parts extensively in your submission, but this is an opportunity to add anything or to put anything on the record about either part if you want to do so.

Douglas Keil: We think that powers to close premises might well be useful on occasions.

I will make one or two comments about fixed penalties, as there has been a change in approach between the consultation exercise and the bill. There are certainly circumstances in which fixed penalties would save police time. If someone were to accept a fixed penalty and pay it within 28 days, we would not have to send a report to the court, which would represent a direct time saving for the police.

We are not so certain that police time would be saved—in fact we do not think that any would be saved—at the locus of the offence. We would not know at that point whether the fixed-penalty notice would be offered, accepted or paid, so the same level of inquiry into any incident would have to take place at the location of the offence. Similarly, if a person were to be taken to the police office, the custody procedures would be exactly the same, so no time would be saved there.

Fixed penalties might also have a negative effect. If someone were to accept a fixed penalty and we believed that it would be paid, but at some later stage it transpired that the penalty had not been paid, we would have to submit a report to the court. There would therefore be a slight duplication of work and a slightly negative impact on police time. However, we think that the Executive is absolutely right to propose a pilot on fixed penalties and we support that.

The Convener: If members have no final questions, do you want to make any concluding comments?

Douglas Keil: No, I am satisfied, thank you.

The Convener: Thank you very much for joining us this afternoon in a very helpful session.

In conclusion, I remind members that this was our final evidence-taking session—I beg your pardon, I am being reminded that our final evidence-taking session will take place next week. If I put on my specs we might get on better. We will take our final evidence from the Law Society of Scotland and the Deputy Minister for Justice at next week's meeting. After that we will have an opportunity to consider any additional written evidence at our meeting on 20 January, before we draft our stage 1 report.

I thank members of the committee for their attendance—it has been a long day but it has been very interesting and I am grateful to members for their support during the meeting.

Meeting closed at 16:18.

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