

JUSTICE 2 COMMITTEE

Tuesday 12 April 2005

Session 2

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JUSTICE 2 COMMITTEE

† 11th Meeting 2005, Session 2

CONVENER

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

DEPUTY CONVENER

*Bill Butler (Glasgow Anniesland) (Lab)

COMMITTEE MEMBERS

Jackie Baillie (Dumbarton) (Lab)

*Colin Fox (Lothians) (SSP)

*Maureen Macmillan (Highlands and Islands) (Lab)

*Mr Stewart Maxwell (West of Scotland) (SNP)

*Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

COMMITTEE SUBSTITUTES

Ms Rosemary Byrne (South of Scotland) (SSP)

Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

Mr Kenny MacAskill (Lothians) (SNP)

Margaret Mitchell (Central Scotland) (Con)

Mrs Margaret Smith (Edinburgh West) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Margaret Anderson (Forth Valley Criminal Justice Grouping)

Alan Baird (Association of Directors of Social Work)

David Crawford (Association of Directors of Social Work)

Jim Dickie (Convention of Scottish Local Authorities)

Harry Garland (Orkney Islands Council)

Councillor Eric Jackson (Convention of Scottish Local Authorities)

Helen Munro (Forth Valley Criminal Justice Grouping)

Anne Ritchie (Argyll, Bute and Dunbartonshire Criminal Justice Partnership)

CLERKS TO THE COMMITTEE

Gillian Baxendine

Tracey Hawe

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Steven Tallach

LOCATION

Committee Room 5

† 10th Meeting 2005, Session 2—joint meeting with Justice 1 Committee.

Scottish Parliament

Justice 2 Committee

Tuesday 12 April 2005

[THE CONVENER *opened the meeting at 15:03*]

Item in Private

The Convener (Miss Annabel Goldie): Good afternoon, everyone, and welcome to the 11th meeting this year of the Justice 2 Committee. Under item 1, I seek the agreement of the committee to take item 5 in private. Is that agreed?

Members *indicated agreement.*

The Convener: As a formality, I should mention that Jackie Baillie has sent her apologies, but otherwise we are complete.

Management of Offenders etc (Scotland) Bill (Witness Expenses)

15:04

The Convener: Item 2 concerns witness expenses for the committee's scrutiny of the Management of Offenders etc (Scotland) Bill. The committee should, it is suggested, decide whether to delegate to me as convener responsibility for arranging with the Scottish Parliamentary Corporate Body to pay under rule 12.4.3 any expenses of witnesses to the inquiry. That is simply to avoid the bureaucratic nightmare of trying to get specific authorisation each time. Is the committee content that I deal with that in conjunction with the SPCB?

Members *indicated agreement.*

Management of Offenders etc (Scotland) Bill: Stage 1

15:05

The Convener: Item 3 concerns our scrutiny of the Management of Offenders etc (Scotland) Bill. It is my pleasure to welcome to the meeting a clearly formidable body of men and women from social work. We are pleased to have Alan Baird and David Crawford from the Association of Directors of Social Work. Anne Ritchie is head of social work operations at West Dunbartonshire Council and is involved in the Argyll, Bute and Dunbartonshire criminal justice grouping. Helen Munro, director of community services with Stirling Council, and Margaret Anderson, head of children and families and criminal justice services with Falkirk Council, are both on the Forth valley criminal justice grouping. Finally, Mr Harry Garland—I am glancing at you all as I read this information out—is the director of community social services for Orkney Islands Council. We very much appreciate such a splendid turnout. It is of great assistance to the committee.

I know that committee members are interested in various areas and wish to ask questions on them. It may be appropriate for one or two of you to respond to questions. If one of you feels able to plough ahead, we will assume that the rest of you agree with what is being said. However, if anyone has a different or contrary view, please feel free to speak up.

I will start the ball rolling with a general question on the background to the bill. The Executive's consultation suggested that there were weaknesses in the way in which offenders are managed and that one of the deficiencies was a lack of shared objectives and accountability and a lack of communication and integration between criminal justice service deliverers. Is that an accurate reflection of the situation? Would one of you like to volunteer a response?

Alan Baird (Association of Directors of Social Work): It is important to recognise the considerable change that criminal justice social work has been through over a number of years. Indeed, in the past two years, we have had, in awaiting the consultation and bill, a feeling of planning blight. Prior to that, criminal justice partnerships were established; they are now only two full financial years into their operation. Some of the work of partnerships is being scrutinised through inspections, so we are getting a sense of how much progress we have made.

A national strategy to underpin all the work that is done not only by local authorities, but by the Scottish Prison Service and voluntary

organisations and in the wider social work areas of responsibility has been lacking in Scotland. Change has not helped us over the past few years, but there is a strong commitment to meeting the objectives of reducing reoffending and reducing the prison population in Scotland.

The Convener: That is helpful. I am aware of the concerns and disquiet in certain quarters about the initial proposal for one big co-ordinated agency. Do the current proposals dispel that disquiet?

Alan Baird: There is a lot to examine in the current proposals. You are absolutely right to reflect our view that local authorities are the best place for criminal justice services to remain. However, it is important that, if that is to be the case, we examine the opportunities and challenges that are ahead of us.

Some provisions in the bill concern us. If I may, I will touch on one or two of them. First, the role of the proposed chief officer within the community justice authority will carry no responsibility in respect of service delivery as a whole, or in relation to decisions made on individual offenders. The post is unnecessary and could bring conflict to councils' chief social work officers, who, as the chief probation officers, clearly have responsibility for criminal justice services.

We are also concerned about the costs that have been attributed to the new infrastructure associated with the community justice authorities. The £200,000 or so that has been identified for each community justice authority might be better used to resource front-line services so that we can make a real impact on reducing reoffending.

It is important to say that we have certainly never shirked responsibility for accountability in the local authorities and that we are more than able to take forward a model in which an existing director of social work or a chief social work officer could have a role in monitoring the work, progress and perhaps the problems that may arise in each community justice authority.

The Convener: Are you suggesting that one of the existing directors of social work could drive CJA activity?

Alan Baird: We think that a monitoring role could be considered. It is difficult for us to see what the real responsibilities of the new chief officer would be. We know that the responsibilities are to do with planning, finance and accountability to the minister, but we think that there are more effective ways of dealing with such things than through creating another layer of bureaucracy and putting considerable public funds into the community justice authorities' infrastructure.

The Convener: That is helpful. My final question follows on from what you have said. Are you apprehensive that there is a slight potential for confusion about your existing obligations—for example, those to do with inspection and audit—and those of the proposed new bodies?

Alan Baird: You make a good point. Scrutiny of social work services has never been greater, and the ADSW certainly welcomes that, but we must be careful that services are not over-scrutinised or over-inspected. The inspection process is under way and we welcome Audit Scotland's performance indicators, but great care must be taken with sorting out specific responsibilities and duties.

The Convener: Thank you. As I have said, anybody else who wants to contribute to the discussion should feel free to do so.

Helen Munro (Forth Valley Criminal Justice Grouping): Alan Baird has given an excellent overview, but Margaret Anderson and I are here to talk more about day-to-day operational matters.

It is important that people understand the criminal justice groupings, which were introduced only around two years ago. The three Forth valley authorities—Stirling Council, Falkirk Council and Clackmannanshire Council—receive one budget, which we manage among us. There is a lot of collaboration and co-operation in offender programmes, but the most important thing is that we are coterminous with the Central Scotland police and NHS Forth Valley areas. We have excellent links with the local sheriffs, with all their idiosyncrasies, and good links with the fiscal service. We have built up a strong local rapport with such services.

The situation in Forth valley is complex because there are three large national prisons there: Cornton Vale in Stirling, which is the national prison for women; a prison for high-tariff offenders at Glenochil in Clackmannanshire; and the national young offenders institution in Falkirk. A small number of prisoners in those institutions come from the Forth valley area, which gives rise to real complexity. Whether restructuring is the answer—it sometimes looks as though it is, but it is not always—has not been completely thought through yet, nor has how we should begin to address the deep problem of people who are in and out of prison with short sentences. I refer to Cornton Vale in particular. Most of the women in question come from the large cities.

Mr Stewart Maxwell (West of Scotland) (SNP): I am interested in what has been said about the possible drawbacks of restructuring. Do the witnesses agree with the Executive that the proposed community justice authorities are likely

to improve strategic direction, particularly on reoffending?

15:15

David Crawford (Association of Directors of Social Work): All the research suggests that structures and the inevitable processes of restructuring will not in themselves address offending or reoffending. Offending is an individualised activity that happens for a host of reasons.

There is a general concern about reoffending by people who have left prison. For many years, most people have left prison without appropriate supervision or support. The number of people who leave prison on parole is small and the number of other licences is relatively small. Our view is that, if we want to address that, although we must have appropriate structures, what is most important is individual services that deal with whether a person's drink or drug problem is being addressed, whether they have somewhere to go that is likely to assist them in keeping out of trouble and whether they have the support to address the issues that they had before they entered prison.

It is important not to create the expectation that establishing the perfect structure will reduce reoffending. All local authorities are committed to providing services and planning them properly. The groupings have operated for only a relatively short time, but we have shown through them that local authorities have a large network of shared and joint services. However, networks and planning will not by themselves reduce reoffending. We must work with offenders and address a range of issues about them and the communities in which they will live.

The Convener: I see some witnesses nodding enthusiastically in support of that. Is there any dissent?

Harry Garland (Orkney Islands Council): I do not dissent from the view that was just expressed, but I point out that the islands' perspective on criminal justice provision is somewhat different from that on the mainland. The three island authorities are not part of the current grouping system. That is particularly relevant to the comments that Alan Baird made about continuity of service. For many years, the island authorities have provided a criminal justice service that is embedded in the wider community, because the authorities are small. The three island authorities are consistently at the top of tables for performance indicators on the number of reports that are made and the number of offenders who are seen within the requisite timescales. We have performed well.

We are at the bottom of the table for the amount of criminal activity. That is relevant. The island authorities welcome the efforts that are being made to consider how we can collectively address offending and reoffending, but in the islands we are keen to ensure that the bill imposes nothing that will have a negative effect on areas that provide a good service to communities by maintaining low levels of crime and of recidivism.

The Convener: Have you identified any such threat?

Harry Garland: Our concern is that the funding for, potential political representation on and overall planning for community justice authorities will detract from the islands' ability to provide planning and integrated services. We are working at a high level with the voluntary sector, the public and the other agencies that are involved in criminal justice. Although we understand the tenor of the bill and the intentions that lie behind it, we—certainly the politicians on my council—are concerned about the potential diminution of services.

If, as the Executive has indicated, funding is to be allocated on the basis of rates of criminality or population, the resources and staffing that my council has at the moment, both of which are thoroughly integrated within our wider services, may well be reduced at some point in future.

Maureen Macmillan (Highlands and Islands) (Lab): When you say that they are thoroughly integrated, are you saying that your criminal justice social worker also undertakes other social work duties?

Harry Garland: The nature and the size of the services in the three island authorities is such that we have to make the best use of all our facilities—we have to make use of all the best bits of best value, if you like.

Although the criminal justice resources are funded 100 per cent by the Scottish Executive, which we welcome, staff in our criminal justice service are also part of our out-of-hours and stand-by services. Because of our geography, we are not in the position to buy into some of the larger groupings that exist in mainland Scotland for out-of-hours service provision. Likewise, our criminal justice staff are involved in much wider managerial and specialist roles, whether those relate to training or support networks.

The loss of the embedded nature of our criminal justice provision would have a major impact on our ability to provide the linked mental health, drugs, community care, police, children's panel and youth justice services—the gamut of services that need to work together to maintain our low criminal justice figures.

Our corporate best-value review was carried out just last year. Service users, members of various agencies and partners were asked to indicate their satisfaction with our criminal justice service. We had a considerable return—98 per cent of those who returned the questionnaire indicated that they were either satisfied or very satisfied with service delivery.

Mr Maxwell: The issues that I want to raise have been touched on by panel members. The Executive's consultation highlighted a number of difficulties in people achieving effective transition between prison and the community. Committee members have heard similar responses from prison officers, prisoners and other agencies during our visits to prisons. What are the key factors for an effective transition from prison into the community? Although the answer may seem obvious, it should have been obvious for years, yet we still seem to be failing, as we keep coming up against the same responses—the transition from prison to the community remains a problem.

David Crawford: Research suggests that two or three factors are important if people are to make a successful transition from prison to the community. They need stable and sensible accommodation. They also need employment, training or something that gives them some purpose—if it is at all possible to arrange that—and some form of appropriate support that deals with the range of issues that they may have. Those issues can include family or mental health difficulties, drugs or alcohol problems. If no attempt is made to address those issues, people's return to the community will run into problems.

The most crucial thing to say is that, over the years, local authorities have not provided generalised support for people leaving prison because we have not been funded to provide that service. The creation of 100 per cent funding for criminal justice services over the years has defined the priorities, which are probation, parole, community service and a range of other initiatives as and when they have been rolled out. Only marginal resources have been made available for the generalised support for people who leave prison.

The situation is beginning to change. The new throughcare arrangements have started in some places and are working their way through. However, it is important that people do not take the view that there has been a system of supports to the average short-term prisoner leaving prison and that that system has somehow broken down. For the vast majority of those people, there has not been a co-ordinated network of support.

Another important factor from our perspective is the need to consider what would assist people. There is undoubtedly an issue about the nature of

the prisons estate. The further away people are from the communities to which they are returning, the harder it is to build up all the appropriate links before someone is discharged. We understand the frustrations that exist from the SPS's point of view, but from a local authority point of view we should point out that there are many large councils, such as Fife Council, that do not have a prison in their area, whereas there are relatively small council areas, such as Clackmannanshire, with huge prisons. That is a mismatch and, if we aspire to do something about it, we need to put resources into generalised support. The issues cannot be fixed overnight, but we need to ensure that the prison estate of the future enables as many people as possible to be discharged from local prisons with the appropriate links in place.

Margaret Anderson (Forth Valley Criminal Justice Grouping): I agree with all that David Crawford has said. In the past couple of years, there have been substantial improvements in relation to the difficulties that have been described. There has been a much more coherent approach through the tripartite group, in which representatives from local authorities, the Scottish Prison Service and the Justice Department, which are the key partners, have begun to iron out some of the problems. That approach is beginning to show signs of success. All of that has been achieved without major structural change.

The extent to which there has been investment in the services is a significant point. Arising from the work of the tripartite group, some additional investment has begun to be made in the services, which has been beneficial. Some of the basics are now beginning to be put in place. For example, we need to know who prisoners are and who is currently in the system and we are beginning to get that information. We know who all the long-term prisoners are who will ultimately come out and require supervision in communities in Scotland. We are also beginning to know who the priority groups of short-term prisoners are. Information sharing is critical and there are encouraging signs that it is beginning to happen. We need continuity in service provision between what is developed in prisons and what can then continue to be developed in the community, so there needs to be collaboration in delivering programmes.

The Convener: Do you agree with Mr Crawford that there is a funding void somewhere?

Margaret Anderson: There certainly has been a funding void. The situation is beginning to get better but the gap is not totally filled yet. The level of unmet need in the prison population is potentially vast, so I would certainly argue that there is a need for greater investment to assist in maintaining continuity of service provision,

particularly for the short-term prison population, who tend to be in and out quite a bit. When they come out of prison, the vast majority of short-term prisoners are currently not in receipt of statutory supervision, and funding for what is referred to as voluntary supervision is low.

Mr Maxwell: I have a question about the distance between the community that a prisoner comes from and the prison that he is in. When I visited Low Moss during the Easter recess, I found that there were a number of prisoners from Dundee there. In fact, there was no communication at all between the local authority in Dundee and the prison until the week when I was there, when I was told that links had just begun to be established. Links were also being made between Low Moss and local authorities in the Lothians. There were problems of overcrowding, changes to the estate and refurbishment of parts of the estate.

Is there funding to deal with the distances involved? It seemed to be a problem that more than one person would have to travel down for a full day at the prison. That meant that it was difficult to resource that part of the process effectively. Do you think that the bill will lead to better integration of prison and community services?

The Convener: Do we have a volunteer to answer that? I know that Anne Ritchie has not had a chance to contribute to the discussion. Would you like to say something?

Anne Ritchie (Argyll, Bute and Dunbartonshire Criminal Justice Partnership): Not on this topic. Alan Baird needs to answer.

15:30

Alan Baird: As the director of social work in Dundee, I know only too well about the problems of prisoners being some distance from the local community. Ideally, we would want short-term prisoners from our area to be placed in Perth prison. However, it is a question of prioritising to whom we provide the services. Under the throughcare arrangements, the priority for us will be to make contact with those prisoners who will come out on a statutory order and to prepare jointly with the prison for their discharge date.

It could be that the prisoners to whom Stewart Maxwell referred were short-term prisoners, for whom we have no statutory responsibility. As David Crawford said, we are not funded to make contact in such cases. I am not sure whether making contact with short-term prisoners in that situation would be a good use of limited resources. That is Dundee City Council's position.

Mr Maxwell: Will the bill lead to better integration of services?

Alan Baird: Margaret Anderson gave a good answer when she said that much had changed and was continuing to change. There are a few more improvements that we can highlight, such as the setting up of a joint accreditation panel, which will ensure consistency between the programmes of the SPS and what happens in the community, which have been too separate. I understand that the panel is in a shadow year and will begin to operate fully next April.

David Crawford and I have been involved in discussions with the SPS on transitional care arrangements for short-term prisoners with drug and alcohol problems. The potential exists for us to grab some of the chaotic drug users who go in and out of prison through a revolving door and get them into services early. Continuity between the internal work of the SPS and what happens in the community will strengthen considerably in the future.

The Convener: In the event that that desirable aspiration is met, is there sufficient capacity in Scotland to deal with such referrals?

Alan Baird: That remains to be seen. In a modest way—with the resources that are currently available—we, along with the SPS and the Executive, are trying to move towards a model that could be rolled out across Scotland, if it works. Of course, much is dependent on the resources being available. Our colleagues in the Executive and the SPS are committed to making the arrangements for short-term prisoners with drug and alcohol problems work.

Margaret Anderson: The bill focuses on integration between prisons and community agencies. It is easy to lose sight of the fact that the vast majority of offenders in Scotland are dealt with in communities rather than in the prison system. Partnerships across community agencies are crucial to reducing reoffending. The bill does not address that aspect to any great extent.

If we focus on local government and the SPS, there is a danger that other agencies, such as the police, the national health service and the voluntary sector, will be excluded. Those bodies are important partners at local level in making an impact on and reducing reoffending among the many offenders who are in our communities.

Bill Butler (Glasgow Anniesland) (Lab): We have talked a great deal about the lack of consistency in provision of offender management throughout Scotland, which was accepted in the Executive's consultation on reoffending. The panel has to some extent talked about gaps in service provision, the reasons for the gaps and the problems that they present. Margaret Anderson

mentioned that the bill does not talk about community agencies as such, which she sees as a possible defect. I want to turn round the issue. How effective will the bill be in addressing the lack of consistency? Are there other defects in the bill, or is the problem only that it does not talk about community agencies? The panel members have talked a little about investment and resourcing, but what else needs to be done alongside legislation?

Anne Ritchie: Argyll, Bute and Dunbartonshire criminal justice partnership has gone a long way towards becoming an effective partnership. We have a joint committee of the three component local authorities with a single manager, through which we have addressed issues about effectiveness and about data sharing among the three local authorities; effectiveness is the key issue. Mr Maxwell asked earlier whether the bill will address problems through the introduction of effective organisation. The issue is what is effective in preventing offending and reoffending. We know what is effective and we know what work needs to be done, so the question is how we set about doing that work structurally and whether the bill will have an impact on that.

Bill Butler: Will you answer your question?

Anne Ritchie: Effectiveness comes from targeted work on offending behaviour. Principally, that means the work that was outlined in the initiative on getting best results—the what works agenda. We have had significant success in delivering such programmes in our partnership area. The key question is whether anything in the bill will build on that.

Bill Butler: Indeed. Will you have a go at that question as well?

Anne Ritchie: That is the serious issue. If something is seen to be lacking in the existing partnerships, we should address and tackle that, rather than look to a structural solution to address the issues.

Bill Butler: Are you saying that the bill does not have potential added value? If you are, you might as well say it here and now.

Anne Ritchie: If the existing partnerships have faults, those are what we should tackle. The existing arrangements may require more work, but the challenge is to work on effectiveness in the partnerships.

Bill Butler: You will tell me if I am wrong, but I think that you are, in effect, saying that there is no need for the legislative course that we are considering.

Alan Baird: I will refer to a couple of sections of the bill. The bill is in part about offenders who may pose serious harm to communities. The work of the Solicitor General for Scotland's information-

sharing steering group, of which I was part, led to sections 9 and 10, which pick up on and strengthen some important risk assessment and risk management systems. At their heart, those sections will mean that the Scottish Prison Service, chief constables and directors of social work must prepare annual reports. I would go further and say that if we are to increase consistency we ought to involve the NHS and a range of other agencies to ensure that assessment and management of offenders who will, potentially, cause serious harm is as tight as it can be. That is one of the important strengths of the bill.

Bill Butler: So, you are saying that aspects of the bill are potentially advantageous, but that the issue is not simply legislative, but is about examining existing structures and working to improve them.

Helen Munro: I agree that the structures exist and that the issue is about making them work. In the Forth valley we have a good track record of working with serious sex offenders and violent offenders when they come out of prison, and we have an excellent relationship with the local police force. As director, I am not as operationally involved as some of my colleagues are, but I know that the criminal justice service has in the past five years been in a state of volatility. There have been many proposals, and people have said, "This might happen, that might happen and that might happen," which is not a good way to embed the excellent services of Anne Ritchie, for example.

I have brought with me a plethora of reports on summary justice, the Sentencing Commission and on this, that and the next thing. They are excellent pieces of work, but somebody needs to stand back and say, "Okay, let's see what we've got," and build on the good bits rather than look endlessly for structural solutions.

The Convener: To be clear, we are getting a strong signal from you all that, although you do not dismiss the bill—in fact, you find aspects of it to be worthy—you question the wisdom of structural change when what is needed is review and improvement of existing structures.

Helen Munro: That is very much the case.

The Convener: The backdrop is the hefty mountain of documents that you held up, but I presume that legislation from this Parliament has also placed on social work departments and local authorities obligations that must all be assimilated.

David Crawford: Under the current arrangements, we were asked to form ourselves into groupings; the vast majority of local authorities in Scotland did so and the arrangements are relatively informal. There are different arrangements in different places, which people

might perceive as inconsistency, but that does not mean that the services are different, although the ways in which they are organised can be different.

During the lifetime of the groupings, which has been only three years, we have developed a far greater range of shared and joint services. We have also dealt with all the legislative changes that we have been asked to deal with, including drug treatment and testing orders and restriction of liberty orders, and we have participated in a range of pilots and initiatives, including youth courts and drugs courts. Local authorities have tried hard to rise to the challenge.

To answer Mr Butler's question, it would be wrong to think that further structural change in itself will reduce offending or reoffending. It is fairly clear that it will not, although it can assist in getting local authorities to work together on planning and service delivery. Alan Baird has already mentioned accreditation and ensuring that programmes are consistently delivered by properly trained staff and in a way that is subject to proper scrutiny. That can all be done, but structural change in itself will not bring about a reduction in offending or reoffending.

The Convener: We are hearing a strong message from you.

Maureen Macmillan: I have questions about community justice authorities, which you have almost answered, although I want to clarify one or two points. CJAs will be responsible for producing area plans to reduce reoffending, and for monitoring the performance of authorities and the Scottish Prison Service in delivering them. Are you saying that that job is already being done by local groupings?

Helen Munro: We produce area job plans and annual reports and there is scrutiny by the Justice Department, the social work services inspectorate and so forth. At the moment, we do not produce an annual plan on an area basis with the Scottish Prison Service. As I said, we would find it inordinately difficult to do that in Forth valley because the three prisons in our area are national prisons and the service that we operate is a local service. Most of the people with whom we deal are Forth valley residents and they are not in the prisons in our area.

The situation is complex. That said, we need closer ways of working with the SPS. However, the nature of the SPS's business and governance means that its structure is very different to ours.

15:45

Maureen Macmillan: I, too, feel that that is at the root of the problem. There must be a better

way of engaging the SPS in working with local authorities.

Although at the moment various groupings deliver criminal justice services, I do not have a handle on the numbers that are involved. I know that the Executive proposal is that there will be either four CJAs based on Scottish Court Service groupings, or six CJAs based on sheriffdoms. The proposal for the area that I represent is that Grampian and the Highlands will be grouped together and the island authorities will have a separate arrangement. Will the proposal for the six areas that are based on the sheriffdoms be unmanageable? What are your thoughts on the size of those CJAs, if that proposal were to go ahead?

Margaret Anderson: If I may, I will give the view from the perspective of the Forth valley criminal justice grouping. Our strong view, which relates to a point that I made earlier, is that the strength of the grouping comes from the strength of the local community partnerships, which are critical to maintaining offenders in the community. Our key local partners in Forth valley are the police and the health service. Our grouping is fortunate to be coterminous with our key partners.

If Forth valley had to move into a larger community justice authority, even if it were to be on the basis of the smaller of the two options, we would have to work with more than one police authority and more than one national health service board. Either of the two proposals has the potential to complicate our present strong and robust information-sharing and partnership arrangements.

The strong view in the Forth valley is that a model that includes coterminosity, particularly for key partners such as the police and health boards, is worth preserving. It is not worth complicating the present arrangements.

The Convener: Is that view shared by the rest of the panel? I am looking for a simple yes or no answer.

Harry Garland: Yes.

Anne Ritchie: Yes.

David Crawford: An important point needs to be made in relation to the sheriffdoms. Clearly, we understand that it is appropriate to consider the boundaries of other criminal justice organisations to see whether a fit can be found, but it is also clear that the sheriffdoms offer a partial fit only in part of Scotland and are not the answer in some areas. In Ayrshire, for example, the three councils form a natural grouping although they are in two different sheriffdoms. It is clear that consistency is required, which can be developed by examining local authority boundaries. We can go only so far,

however. The groupings will need to be sensible from the local authority perspective and changes will need to be made to the boundaries of other organisations.

The example that I gave of Ayrshire is a good one. Whatever the size of the CJA, no one would suggest that it should be broken up in the future. As I said, although people would assume that the three Ayrshire authorities will be in the same CJA, they are in two different sheriffdoms. Although local authority boundaries can of themselves take us so far, we must consider the boundaries of other organisations. Certainly, in the west of Scotland, the sheriffdoms and health boards—both of which are key partner providers—have major problems in respect of the boundaries issue.

Helen Munro: In the colour version of page 26 of the consultation paper—I will hold up a copy to demonstrate my point—we see a good graphic representation of the existing groupings and of what might be in terms of coterminosity. Page 26 of the paper is worth looking at.

Maureen Macmillan: How were the existing groupings come by? Were they imposed on you or did you volunteer for them?

David Crawford: The Convention of Scottish Local Authorities proposed groupings and a compromise solution was found. A number of local authorities agreed to work together in groupings, although some local authorities felt that it was not appropriate for them to be in groupings.

The Convener: There was pragmatic administration rather than legislative change.

David Crawford: There was no legislative change.

The Convener: The process was driven by what worked.

David Crawford: It was done by agreement. It is also important to say that the groupings have worked since then on the basis of local agreement and consensus rather than on the basis of statute.

The Convener: I know that Colin Fox had questions about the chief officer of the CJA, but we have actually covered quite a lot of that. Is there anything you still want to ask, Colin?

Colin Fox (Lothians) (SSP): Do any of the witnesses have further comments? Following what has been said about boundaries, what concerns do you have about membership, support and staffing for the community justice authorities? Are your anxieties the same as those about boundaries and coterminosity?

David Crawford: The Association of Directors of Social Work's position is set out in our submission, and Alan Baird has already explained that we are concerned about the role of the chief

officer and about whether it is a role or a job. We believe that it is a role that could be taken on by existing senior officers and that there are parallels in local government legislation with regard to the existing role of people such as monitoring officers. Monitoring is a statutory responsibility that people have as a part of their job. We know that there will be competition for resources, so we want resources to be spent on services rather than on relatively highly paid posts.

There is an issue about the number of CJAs. The larger they are, the harder it will be to produce common services across the whole area. If there are four, or even six, for Scotland, it will be difficult to provide the services. Merely by dint of geography and the different natures of constituent local authorities, there would need to be quite a complex substructure.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I would like clarification. Are the groupings different from, or the same as, the criminal justice social work units? You are calling yourselves groupings with regard to the local authority areas that currently co-operate but, in so far as they are constituted and recognised by the Executive, are they criminal justice social work units?

David Crawford: Yes.

Jeremy Purvis: The units were determined by Jim Wallace, when he was Minister for Justice, so they are not just a pragmatic evolution of local authorities' co-operation; they are constituted and determined by the Executive as social work units.

Helen Munro: The groupings are not constituted like police or fire boards. In Forth valley, we have elected members and officers who meet regularly, but our grouping is not a formally constituted body like a police board. However, we must remember that the justice budget in local government services is unique in that it is 100 per cent funded from the Executive Justice Department at the centre. Rather than going to the three local authorities, the money comes to the grouping, which must then decide how best to use the resources. Anne Ritchie's grouping is probably the most evolved in respect of how it does that.

Jeremy Purvis: It would be useful to clarify the terminology. You are defining them as groupings. The consultation mentions the CJSW units and the eight partnerships. Are they all one and the same thing?

Anne Ritchie: Yes. In fact, we call our grouping a partnership because of the extent of the minute of agreement that bounds it.

Jeremy Purvis: I am grateful for that clarification.

I have a question relating to serious offenders and sex offenders. I think that it was the Forth valley criminal justice group—or partnership, or unit—that stated that it welcomes the proposals in the bill, but looks for

“development of an agreed national approach to assessing and managing risk”.

Harry Garland commented on VISOR—the violent and sex offenders register—which has already started. Could the witnesses expand on what would be required for a national risk assessment? I know that the ADSW’s evidence referred to the necessity for national training and to the bodies that would need to be involved.

Margaret Anderson: There is now, where sex offenders are concerned, a nationally agreed approach to risk assessment. That approach is underpinned by training, the aim of which is to achieve consistency throughout Scotland geographically and among agencies in Scotland. At present, no parallel work is being done in relation to violent offenders—that is an outstanding issue—nor is parallel work being done on a general approach to assessing the risk of reoffending in Scotland. We require agreed policies about how to approach the difficult issue of assessing offenders, and we require agreed approaches to managing the risks that have been identified. Such policies are being developed. At present, general guidance exists on management of offenders, but with the introduction of the Risk Management Authority that agenda will become much more important.

The point in our submission is that, although the bill’s introduction of clear responsibilities for agencies to co-operate in assessing and managing risks is welcome, there needs to be—because we have the Scottish Prison Service, which is a national organisation that works with local government—an agreed approach to co-operation. That approach must be resourced. It is heartening that training on the approach to assessing sex offenders in Scotland is being resourced, but that has not yet happened in respect of assessment of violent offenders—it is important that that happens. I am sure that all those issues are on the agenda, but our point is that it would be fair to deal with them before we give agencies statutory responsibilities in relation to assessments.

Jeremy Purvis: I seek a comment from the ADSW on that call for an expansion of national provision for risk management and training. At national level, the CJAs would be able to co-ordinate and incorporate the national approach within their local plans and to scrutinise it and work to it. My reading of the ADSW’s written evidence is that the emphasis should be more on the agencies that will be involved at regional or partnership level

with the responsible bodies that are stipulated in the bill.

The Convener: Can we keep this to a question, Mr Purvis?

Jeremy Purvis: The views are not necessarily consistent—one is a call for a national approach and the other is a call for local partners to work together in their areas.

Alan Baird: Our point is that we need a national strategy that we can sign up to with our colleagues in other agencies. That strategy would be applied locally, which is how we will get consistency throughout Scotland.

Maureen Macmillan: I want to clarify a point about the island authorities—Orkney Islands Council, Shetland Islands Council and the Western Isles Council. Is each island group a separate criminal justice unit, or is there an umbrella group?

Harry Garland: The three island authorities are totally separate in that regard. However, we work with the northern criminal justice grouping. Along with any changes in the bill, we would want to continue to have a link with a grouping. We utilise the link to gain access to specialist training and service provision. We have the best of both worlds, because we have links with Edinburgh through auditing and monitoring of our services, which is done not just by the Executive, but by the social work services inspectorate, the Scottish Commission for the Regulation of Care and the Mental Welfare Commission for Scotland. The three island authorities work together fairly closely on strategic plans and on some of the geographical problems. However, the island authority areas have different population spreads, different geography and transport challenges and, at times, different linkages to prisons. We are separate but, as I indicated earlier, we have managed to maintain high levels of performance and low levels of criminality with that separate criminal justice provision through linking appropriately, when necessary, with the northern grouping.

16:00

Maureen Macmillan: So Orkney, Shetland and the Western Isles all have separate, ring-fenced criminal justice money from the Executive.

Harry Garland: That is correct. The funding comes directly to the council. Our strategic plans are approved by our local councillors and we also look to our local partnerships in that regard. We feel a strong sense of achievement about that.

Maureen Macmillan: I presume that you are slightly anxious about the possibility that the

funding might not trickle down to you if you were put in a bigger grouping.

Harry Garland: In our response to the consultation, we made clear our belief that the involvement of elected members on the boards would discriminate against the island authorities in a major way with regard to the population driver and the criminality driver. It would be a perverse way of dealing with authorities that are relatively successful if the money were to go to authorities that have the most criminal activity. We are extremely concerned about that and our local politicians are exercised by the matter.

Bill Butler: I want to talk about the home detention curfew disposal. The panel will know that the SPS, on behalf of Scottish ministers, will be able to release low-risk prisoners early on licence. You will also be aware that prisoners will be considered in two categories: short-term prisoners who are serving a sentence of three months or more; and long-term prisoners who are recommended for release by the Parole Board for Scotland at the halfway point in their sentence. Will home detention curfew orders reduce reoffending? Are there any risks associated with them? Do you agree with the eligibility criteria and the proposals for risk assessment?

Margaret Anderson: It is the view of the Forth valley grouping that home detention curfew orders alone are unlikely to reduce reoffending. More must be done than merely issuing home detention curfew orders.

Bill Butler: To be fair, that is recognised. Do you think that the proposal is a useful adjunct?

Margaret Anderson: It is a useful adjunct, but I would add some caveats. The assessment process must be robust, sound risk assessments must be done to underpin decisions about who would be released from prison and those risk assessments must help to inform decisions on whether there is a need for supervision over and above the requirement for remote electronic monitoring.

Bill Butler: If those caveats were met, would the proposal be useful?

Margaret Anderson: Yes. However, in our submission, I highlighted the fact that there are concerns about the estimates that have underpinned the provisions in the bill. In our view, there cannot be robust risk assessment for the estimate of up to £100 that is contained in the policy memorandum that is attached to the bill, nor can there be robust supervision for the estimate of up to £250. On top of that is £8,400 for the remote monitoring aspect of the orders. It is important that the resource implications of the provision be addressed. That is an important caveat.

Bill Butler: Does anybody have a contrary view or an additional view? I think that the witnesses are all satisfied, convener.

The Convener: I think that they are all worried about the caveats.

Mr Maxwell: I presume that the members of the panel are aware that home detention curfew orders have been used in England. Do you have any views—perhaps based on experience of contacts south of the border—about the success or otherwise of the operation of the system in England?

Margaret Anderson: It is difficult to make a comparison with England because the legislation in England is different. People leaving prison in England are more likely to be subject to other forms of supervision. I understand that in England the provision would run alongside other provisions for supervision, whereas in Scotland, unless there are specific circumstances to warrant it, the proposal would mean that home detention or curfew would act as a stand-alone provision with no automatic condition under which supervision would be required. I understand that that proposal is very different to the way in which offenders are managed south of the border. It is difficult therefore to make a direct comparison; we cannot compare like with like.

Colin Fox: Is the risk assessment process in England and Wales adequate for assessing who is suitable for consideration for home detention?

Margaret Anderson: To be honest, that question is difficult to answer because I do not know how risk assessment is done in England and Wales. I am clear that an approach to risk assessment in Scotland would need to involve the risk that is posed by the prisoner and a household's issues in respect of having an offender on home detention or curfew.

The experience of restriction of liberty orders shows that careful assessment must be done. If a person is to be restricted to their home, consideration must be given to child protection issues that may arise. For example, would the family dynamics be changed to the extent that people in the household were placed at risk? There is also the potential that the conditions of home detention or curfew could place the released prisoner at risk.

A complex and careful risk assessment needs to be undertaken—one that goes beyond the risk that the individual poses to the community and which also examines the implications for the prisoner of being detained in their own home.

The Convener: I call Bill Butler and ask him to be brief.

Bill Butler: I will be brief. Margaret Anderson spoke about risk assessment, which is obviously important, but I understand that the proposal relates specifically to low-risk prisoners. Does that affect your view of the proposal?

Margaret Anderson: It is important that the provision be directed at low-risk prisoners.

Bill Butler: That is exactly what the provision is meant to do. We are talking about sentences of three months or more and about prisoners who are halfway through their sentences. Does that have weight for you?

Margaret Anderson: I certainly find it significant that the proposal applies to low-risk prisoners. We need to be careful about what we mean by low risk. Are we talking about low risk of harm or—

Bill Butler: Do you agree with the eligibility criteria? They specifically mention three months or more and people who are halfway through a sentence and whose release is recommended by the Parole Board for Scotland.

Margaret Anderson: The provisions in respect of the Parole Board are totally sensible. It would be difficult to conceive of a system that did not link into the Parole Board.

The Convener: I would like clarification of something that you said about possible issues in the home. A person who is in prison on a low-risk conviction may be known to the social work department because of issues relating to their home life but which have nothing to do with the conviction. Is that your area of concern?

Margaret Anderson: Yes. That must form part of the assessment. Some impacts of home detention or curfew go beyond the individual offender; I am thinking of the impact on families, neighbours and communities.

The Convener: The panel has been very patient with us. The committee has welcomed the opportunity to question you extensively on the proposals. Does any panel member have a concluding observation or remark to make on a matter that we have not covered in our questioning?

Alan Baird: I have one comment to make. I want to raise the ADSW's concerns about the powers of direction that are set out in sections 5 and 6 of the bill. We are concerned about the reasons under which the Minister for Justice could become involved in the work of community justice authorities. We understand that there is no precedent in local government for such ministerial involvement. In terms of some of the comments that we have made about existing scrutiny and about building services to meet local need, we find it difficult to understand how ministers would use the powers of direction. The ADSW is concerned

that such central involvement in the process of local democracy could interfere with the work of community justice authorities. The scrutiny that inspections and audit give should be enough; the powers of direction under sections 5 and 6 do not need to be included in the bill.

The Convener: On behalf of the committee, I thank the panel for appearing before us today. Some of you have travelled some distance to be with us. As I said, we value your attendance.

16:11

Meeting suspended.

16:15

On resuming—

The Convener: I welcome from the Convention of Scottish Local Authorities Councillor Eric Jackson, who is its social work spokesperson and is from East Ayrshire Council; Jim Dickie, who is director of social work with North Lanarkshire Council; and Stephen Fitzpatrick, who is COSLA's team leader for community resourcing. We are glad to have you with us. I am sorry that you have been slightly delayed in coming before us, but I am sure that you realise that the previous session was interesting and helpful, and that members wanted to take advantage of having social work representatives with us this afternoon.

I understand that Councillor Jackson wants to make some brief introductory comments.

Councillor Eric Jackson (Convention of Scottish Local Authorities): We welcome the opportunity to meet the committee today to put forward the collective view of Scottish local government. We are hugely interested in the bill, particularly in its potential to support the development of safer communities. Before we take questions, I put on the public record our appreciation of the inclusive approach that the Scottish Executive has adopted. We have all welcomed and are grateful for the opportunity to work with the Executive at political and officer levels to develop the bill. We share the dual aims of improving the management of offenders and reducing reoffending. We very much support large parts of the bill. As is clear from our written evidence, there are other sections that we are concerned about. Many of those concerns were expressed in the preceding evidence session, so we might go over some of the same ground.

Mr Maxwell: Given your involvement in developing the bill, do you have any comments on the issues that were raised in the preceding session, most of which I presume you heard? In particular, I am thinking about the comment that changing the structure is not the way to go, and

that we must sort out some of the issues and problems with the partnerships that exist.

Councillor Jackson: We support the view that was expressed that, by themselves, changes in structures will not make a difference, although we support some of the proposed changes. It is particularly important to us that all the partners in the process have ownership of it. Some of the proposed changes are already happening in some areas, so we are already formalising best practice.

Mr Maxwell: What key factors are required for effective transition from prison to the community? We discussed with the first panel not only the transition from prison to community, but how the relationships between different organisations within communities need to be dealt with to prevent reoffending effectively.

Councillor Jackson: Transition has always needed to be examined carefully. Resourcing has already been raised. The process is developing. I can point to many instances of work that is already happening. For example, we now have local authority staff, in particular social workers, working in prisons and there are case meetings between social work and housing.

Jim Dickie (Convention of Scottish Local Authorities): I will roll together responses to the two points that Mr Maxwell has raised. I reiterate the point that structures of themselves will not deliver either improved outcomes or worse outcomes. It is the content of the activity that goes on within those structures that is important. There are issues about the scope of the changes that are taking place, in terms of their being too great in some respects and perhaps not imaginative enough in others. One of the key issues at the heart of the bill, which will influence the effectiveness of its outcome, is the need to adopt a whole-system approach.

Just as it is important to consider what happens to people when they are in prison, when they come out or when they are in the community—if they have not been in prison but have been involved in offending behaviour—it is important to take into account who goes into the criminal justice system and what judgments the police, procurators fiscal, sheriffs and High Court judges make. In effect, those decisions create the customers with which we and the Scottish Prison Service are working, and we have an opportunity in the course of the legislative process to think about some of the wider issues. I do not think that it is enough simply to focus on what we do with people in prison or, indeed, in the community. Systems need to be more inclusive and comprehensive.

Members have already had set out for them some of the elements that would make for

effective work in managing the transition between prison and the community. It is quite clear that the 100 per cent funding arrangement and the national standards and objectives framework within which criminal justice social work is delivered were an important step forward when they were implemented. Arguably, at this stage in the development of criminal justice social work, they have become something of a straitjacket. They set out in fairly simple—some would argue simplistic—terms the work that will be done to justify the spend that the Executive has judged that each grouping or partnership will incur. That stifles creativity to some extent, and I would expect the review of the system to look for a more imaginative and creative approach that truly allows partnerships, groupings or CJAs to examine the criminal justice issues in their territory.

The SPS is an important partner, and it is important to recognise that the prison system is a national system. I am not clear—and I do not think that COSLA is clear—about how that system can be modified or changed to fit comfortably with the notion of community justice authorities at a local level. I would argue that the distribution and functions of individual prisons in the short to medium term would make that difficult to manage. If we are going to address that issue, it will be important to consider the vision that we have for a criminal justice system in Scotland in the round. We must consider all the elements, not just prison and community social work.

Mr Maxwell: I am beginning to suspect that there is concern across a range of organisations about the changes in the structure. Will the bill as a whole, and CJAs in particular, improve matters, add anything or create more difficulties? Elements of the bill have been welcomed, but I wonder about CJAs. Mr Dickie said that the Scottish Prison Service is a national service and that CJAs are regional authorities. Are those structures the correct way to go?

Councillor Jackson: We are saying that the bill is a positive piece of legislation, which we broadly welcome, but it is only part of the answer. That is the caveat that we would put on it.

Bill Butler: You say that the bill is only part of the answer and Mr Dickie talked about systems needing to be more inclusive and about having a more imaginative approach. The Executive consultation identified a lack of consistency in the provision of offender management services throughout Scotland. Even if the bill is only part of the answer, how effective will it be in addressing that lack of consistency? What specific actions need to be taken alongside the bill to make the approach to the multiplicity of challenges that offender management poses more imaginative and creative?

Councillor Jackson: The bill addresses the lack of consistency. Different practices exist, so it will be helpful to have a formal approach to consistency. The big challenge for us is our relationship with the SPS, to which Jim Dickie alluded. The challenge for the SPS will be at least as great.

Jim Dickie: We operate in an imperfect world and there is scope for improvement—no one would deny that, certainly not at this end of the table. However, the committee has heard substantial evidence from our colleagues from the ADSW and from the criminal justice groupings that substantive progress has been made in the past two or three years. As one of the participants in the groupings, I acknowledge the difficulties that people have overcome to achieve a basis on which they can build progress. One of our pleas is that, in making changes, we should recognise the scope for improvement when authorities work together. At this stage, that means principally local authorities working together within the groupings or partnerships. However, the new entities—the CJAs—will bring in new core partners and non-core partners.

Bill Butler: Is that what you meant when you said that systems need to be more inclusive?

Jim Dickie: Yes, absolutely.

Bill Butler: Will you expand on that?

Jim Dickie: At present, major players in the criminal justice system are not identified as core partners in the system. COSLA's view is that, to get the kind of criminal justice system that we want in Scotland, we must recognise the contribution of all the partners in the system, whether they are voluntary organisations, procurators fiscal, the SPS or criminal justice social work departments. We all need to be tied into a system that enables us to work collaboratively and effectively.

Bill Butler: So you are arguing for an holistic approach to the system.

Jim Dickie: Yes—it must be holistic in terms of vision and collaboration. I have no truck with the notion of a single organisation, because the turbulence that would be involved in creating such an organisation would be unhelpful. To some extent, the CJAs will help to build on the positive measures that have been taken. Whatever we do through the bill, we must ensure that we do not discard the progress that has been made, but build on it.

Bill Butler: So you think that we should be after flexible coherence.

Jim Dickie: Absolutely.

Colin Fox: I want to press you on your comment that the bill will address the lack of consistency

throughout Scotland. Is it your view that local authorities working together, whether through four or six CJAs, will introduce consistency within areas and that the national advisory body will ensure that the same standards are set throughout Scotland?

Councillor Jackson: The intention is that the national body will set strategy and policy and that, within that, the local groupings—the CJAs—will work to agreed outcomes. The CJAs must be free to manage in the local context. Clearly, the situation in the islands is not the same as that in Glasgow. The arrangement proposed in the bill will address that issue.

Colin Fox: By and large, given the different requirements of the islands, would the option of four CJAs give a relatively consistent pattern of service provision?

16:30

Councillor Jackson: Further thought must be given to the number of CJAs. We are moving into the issue of boundaries. As the committee knows, we have not yet responded to the consultation, but we will do so within the timescale. We have said that we are prepared to consider six groupings, provided that the review of sheriffdoms takes place in parallel, which we have said should happen within an agreed timescale. Our view is that two to three years would be appropriate; we would not want an extension beyond that.

We have heard that even with six groupings, there would be no coterminosity with current sheriffdoms. The strong feeling in local government is that we might propose more than six, but we would adopt an evidence-based approach. We hope that whatever number is arrived at is chosen on the basis of evidence.

The Convener: Maureen Macmillan has questions about ministerial powers in the bill.

Maureen Macmillan: I notice from COSLA's submission that it has two concerns about powers. The first is about the power to issue directions that ministers will have under section 2(10)(a). Why is that a worry?

Councillor Jackson: The powers of direction are our single greatest concern. The powers are unlimited and could apply even when no failure by a CJA has occurred. We must have a meaningful local democratic role. We know of no precedent for granting such powers in respect of a local government service. As I said, a CJA must be free to manage locally and must not be micromanaged from the centre.

Maureen Macmillan: Does not a role for the minister lie in pointing out unsatisfactory performance or good practice?

Councillor Jackson: We have accepted that if performance is unsatisfactory, the powers of intervention can be used. Our concern is that the powers of direction apply even when no failure by a CJA has occurred.

Maureen Macmillan: I do not understand why a minister would want to interfere if everything was going well.

Councillor Jackson: Neither do we. That is why we object.

Jim Dickie: That is part of our concern. The powers of intervention appear to meet ministers' normal expectations in other settings, such as health and community care and education. However, the powers of direction go beyond that, arguably into an organic arrangement that might allow ministers to direct new organisational arrangements without further consultation. We are concerned about going beyond the framework that we are discussing without following due process. The arrangement is unusual. We do not dispute the proposed powers of intervention, which deal more than adequately with ministers' concerns, but the powers of direction are a new creature.

Maureen Macmillan: You are happy with the powers of intervention, provided that they are applied even-handedly—I note that you want the Scottish Prison Service to be subject to the same accountability as are local authorities. You are most concerned about the powers of direction, which seem to be lesser powers.

Jim Dickie: The powers of direction are vaguer. We need the minister to explain the expectations of having such powers and to justify them. We do not know what they add to the proposed powers of intervention, beyond the view that they open the door to more radical change, because the basis on which ministers can direct is not limited. We are a bit concerned about such an open-ended power, which is inimical to the notion of local democracy.

Maureen Macmillan: You want further explanation from the minister of what is intended. Perhaps we will obtain that when the minister appears before us.

Councillor Jackson: We would welcome that. For the record, we accept ministers' requirement for the powers of intervention, although I am not sure that we would go so far as to say that we are happy with them.

Jim Dickie: We recognise the requirement.

The Convener: The distinction is noted.

Jeremy Purvis: I will ask a brief supplementary question for the purpose of comparison. We heard from the criminal justice social work partnerships, for which there has been national provision of both

funding and a framework. Are ministerial powers connected with those partnerships?

Jim Dickie: There are two strands to the accountability of existing partnerships. In effect, accountability operates through the individual local authorities that are party to the partnership and through directors of social work, or their equivalent, in each authority. There is also a strand of accountability through the funding that goes to the host authority and is exercised through that authority, which binds in the partner authorities in discharging the functions of the partnership. The system is pretty tightly controlled at the moment. There is little scope either to digress from responsibilities or to overlook or fail in those responsibilities. Ministers have a fairly close handle on the current situation.

Jeremy Purvis: A close handle could also be seen as direction.

Jim Dickie: No. I understood that we were talking about powers of intervention. Such powers provide an element of legislative oversight of the functions of local government or other public sector agencies, which we recognise. They are fairly closely defined so that if agencies default on their obligations, the minister has the power to intervene.

What we are seeing with the proposed powers of direction is much vaguer. They are linked not to failure but to other issues that we are not quite clear about. We are not clear why ministers need such additional powers when they already have powers of intervention.

Jeremy Purvis: But the powers do not exist within the social work arena.

Jim Dickie: That is our view.

Colin Fox: In its submission, COSLA, like the ADSW, did not see much attraction in the idea of a chief officer for the community justice authorities. What does COSLA view as the driver for a community justice authority to meet its targets, integrate service and management and take a step forward? If that is not the responsibility of a chief officer, whose responsibility would it be?

Councillor Jackson: There is an issue about such a post and about where the post of chief social work officer would fit in. We are not convinced of the need for a specific post. As the committee heard, the functions of the post could be carried out by someone other than a dedicated person.

Jim Dickie: Our view is that establishing such a post would be unhelpful and an unproductive use of resources. We have had an estimate of approximately £200,000 per authority and we would end up with something like that.

There are a number of problems. As matters stand, in each individual authority, there are senior officers who would have the capacity to discharge the relevant functions, with some modest additional infrastructure to support the work of the community justice authority. We think that that could be achieved more cost effectively.

Mr Fox's point about the driver is an important one. I ask him to consider the performance of the groupings or partnerships, which have been in existence for a relatively short time but which in large part have demonstrated, with some individuality between groupings, their drive to achieve improvements.

For example, the grouping that I work with in Lanarkshire has developed new services specifically for working with sex offenders, for making accommodation arrangements and for managing the three courts in Lanarkshire on a joint basis. It also works in a number of other areas. There are ways in which we have moved forward, and that process has been driven by people such as those whom I suggested could take the lead responsibility for the community justice authorities, without having to spend more money. That money, if it exists, would be better spent on enhancing the programmes that we are delivering. That is a matter on which we have strong views.

Colin Fox: Are you talking about breaking down the lead responsibility into a number of responsibilities instead of having someone with overall responsibility?

Jim Dickie: No. Community justice authorities will consist of a number of local authorities and a number of chief social work officers, and our proposal is that the authority of one of those officers should be designated as the lead authority. That individual would be the lead officer and the other authorities would be tied into the arrangement in a formal way. It would not be a voluntary arrangement; they would be obliged to operate within a framework. I do not think that there would be a great deal of difficulty with such an arrangement. Some difficulty with it might have been found when the groupings were being set up, because people were a wee bit unsure and uncertain, but things have moved on since then.

Councillor Jackson: In certain areas, that is already happening. In Ayrshire, for example, we are about to sign a new minute of agreement, which will create a single manager for the three authorities.

Jim Dickie: We have already heard about the models that exist in Argyll and Bute and Dunbartonshire.

Mr Maxwell: In effect, you are saying that they should be like boards. South Lanarkshire Council

is the lead council for the fire board in Strathclyde, and that is the kind of operation that you are thinking of. A specific statutory board would not be set up, but it would be that kind of operation, in which a single authority takes the lead.

Councillor Jackson: There are parallels with that example, but it is not exactly the same.

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

Councillor Jackson: We have not touched on powers of transfer. We understand that ministers' intention is that the power of transfer should fall to the CJA and should not be directed from outside. It will be up to the CJA whether it transfers staff to the criminal justice authority or whether staff are left with the constituent authorities. We believe that it is important to reinforce that, because it is open to interpretation.

The Convener: On behalf of the committee, I thank you for attending this afternoon. I am sorry that we started a bit later than was indicated, but it was obviously necessary to get as full a representation of views as possible. We are grateful to you for attending this afternoon.

Subordinate Legislation

Antisocial Behaviour (Fixed Penalty Offence) (Prescribed Area) (Scotland) Regulations (SSI 2005/106)

Antisocial Behaviour (Amount of Fixed Penalty) (Scotland) Order 2005 (SSI 2005/110)

Antisocial Behaviour (Fixed Penalty Notice) (Additional Information) (Scotland) Order 2005 (SSI 2005/130)

16:42

The Convener: Agenda item 4 is subordinate legislation. There are three negative instruments to be considered, and committee members should have received copies of them with their papers. They all arise from the Antisocial Behaviour etc (Scotland) Act 2004 and they concern fixed-penalty notices. One is on prescribed areas, one is on the amount of a fixed penalty and one covers the additional information that should be included in a fixed-penalty notice. Do members have any questions on the instruments?

Jeremy Purvis: Is it our duty simply to approve or not approve the instruments rather than to provide a report on them? I have a question on the instrument about additional information. I know that the Subordinate Legislation Committee submitted a note on it, but the point is academic if our duty is only to approve or not approve the instruments.

The Convener: The committee's obligation to consider statutory instruments depends on which procedure is involved. Obviously, if the instruments were subject to the affirmative procedure we would have a minister before us and we could ask questions. If instruments are subject to the negative procedure but the committee has a concern, it is entirely competent for the committee to make a decision about what it wishes to do. I am perfectly happy to hear your concern, which might echo a concern that I noted about the adequacy of the information that is included in the fixed-penalty notice. I am not clear whether there is any right of question by the person who is served with the notice to enable them to refer to the court to challenge it.

Currently, a fixed-penalty notice for parking, for example, can be susceptible of challenge by the individual. The antisocial behaviour fixed-penalty notice includes

"information connected with the administration of a fixed-penalty notice".

The phrase might cover such matters, but I do not know whether it does so. If that concerns Jeremy Purvis, it would be perfectly proper for the committee to pursue the matter by writing to the Deputy Minister for Justice, Hugh Henry, for clarification. We are within the timescale: I understand that the procedure is that a member of the Scottish Parliament may lodge a motion to annul the instrument within 40 days of the date of the instrument's coming into effect.

16:45

Gillian Baxendine (Clerk): The reporting deadline for Scottish statutory instrument 2005/130 is 25 April, so there is an opportunity to do that.

Jeremy Purvis: My first point relates exactly to the point that the convener made. My second point relates to the information that will be recorded on the individual's gender, race and occupation and how that information will be used. My query is about the information on the fixed penalty and whether it could be regarded as relevant for the purposes of an enhanced disclosure certificate. That would be quite a considerable matter if an individual sought to query the information, because I am not sure whether there would be a time limit. Information on an individual could be registered for a long time, especially if there was no criminal offence. I think that we agree on that, so it would be useful to write to the minister for clarification within the timeframe.

The Convener: We have time to do that. The decision is obviously for the committee. We would need to explain to the minister that we were operating within the timescale for reporting on the instrument and seek his or her co-operation in responding. It would then be for the committee to decide what to do in the light of the minister's response.

Bill Butler: Will the convener clarify what we would ask the minister? If it is suggested that we ask the minister to clarify the point about additional information, I draw members' attention to the annex to our papers, which refers to a revised Executive note that clears up the misapprehension about—or at least the less-than-clear phraseology of—article 2(e) and I think clarifies the matter about which Jeremy Purvis asked. However, I think that the convener wants to make another point, and I am not against asking the minister about that.

The Convener: I think that you are referring to the annex to the clerk's note, which contains an extract from the Subordinate Legislation Committee's report. The report says:

"The Executive informed the Committee that the Executive Note that accompanied the Order mistakenly

indicated that the information covered by article 2(e) would also include details about the gender, race and occupation of a person who receives a fixed-penalty notice. The Executive has now lodged a revised Executive Note."

I conclude from those comments that gender, race and occupation will not be included in the information.

Bill Butler: That was my conclusion, too. Obviously, if there is another point of clarification, we have time to ask the Executive about it.

The Convener: My point was quite separate from Jeremy Purvis's point. The phrasing of article 2(e) of SSI 2005/130 was unclear to me. The paragraph says that the notice will include:

"information connected with the administration of the fixed-penalty notice".

My slight concern is that, as far as I am aware, under the existing procedure for fixed-penalty notices, if someone thinks that they have been improperly served with a notice they can write to the court and challenge the decision. The case then proceeds as a prosecution. It is for the individual to decide whether to do that. It is not clear to me whether detail about that course of action is included in the information described in article 2(e) and I would like to find out whether it is.

Bill Butler: That is definitely proper and we should find out about that.

The Convener: The third issue that emerged from Jeremy Purvis's comment was, if I understood him correctly, about the status of information in the fixed-penalty notice.

Jeremy Purvis: I am not clear whether I am referring to the outdated Executive note that the clerk circulated. I read the extract from the Subordinate Legislation Committee's report and I took from it that the first Executive note implied that the information provided for in the statutory instrument would include race, gender and occupation. I understood from that that the police would separately record other information, such as gender, race and occupation. Is that separate information requested at the time of serving a fixed-penalty notice? The police would have that information for no good reason if indeed the fixed-penalty notice was incorrectly given. So I seek clarification on how that separate information will be used.

The Convener: I am not clear about this. At the moment, the committee's remit is simply to look at the four walls of these statutory instruments. The question of what information is in another domain has nothing to do with this. If that is a concern, you are free to write to the Association of Chief Police Officers in Scotland or to a chief constable.

Jeremy Purvis: However, if that information is only being requested because of the issuing of a

fixed-penalty notice, that is relevant to the support of the fixed-penalty notice.

Mr Maxwell: I disagree. How that information is then used is a separate issue. If you have a problem with that, that is fine and it is entirely legitimate. However, it does not affect the fixed-penalty notice.

The Convener: That does not affect whether we have a view on the fixed-penalty notice. The instruments are in force and we have to content ourselves with what they say and whether we have any questions about that. The only concern that I have is the one that I have already expressed.

Bill Butler: We should write on behalf of the committee to express that concern and see what we get back next week.

The Convener: Do we agree to do that?

Members indicated agreement.

Mr Maxwell: It is worth doing although I suspect that the answer will be what we think it will be.

The Convener: Okay, we will write to the minister to seek clarification on that specific point and ask for his co-operation in responding to us as quickly as possible and I hope that we will be able to put it on the agenda, even provisionally, for next week. The answer can be given to us fairly swiftly because it is a purely clerical matter and then the committee can take a further decision next week.

I move the meeting into private session.
[Interruption.]

I rescind that announcement because we need to deal with the other two statutory instruments in relation to fixed-penalty notices.

Can I take it that the committee is content with the Antisocial Behaviour (Fixed Penalty Offence) (Prescribed Area) (Scotland) Regulations (SSI 2005/106)?

Members indicated agreement.

The Convener: Is the committee content with the Antisocial Behaviour (Amount of Fixed Penalty) (Scotland) Order 2005 (SSI 2005/110)?

Members indicated agreement.

The Convener: In that case, as previously discussed in relation to the Antisocial Behaviour (Fixed Penalty Notice) (Additional Information) (Scotland) Order 2005 (SSI 2005/130), I will write to the minister to seek specific clarification on precisely what article 2(e) of that order means about the information that is to be included on the fixed-penalty notice.

We propose to put that item on our agenda for next week and we hope to get a speedy response from the minister.

16:55

Meeting continued in private until 17:19.

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