# JUSTICE 2 COMMITTEE

Tuesday 22 November 2005

Session 2

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## JUSTICE 2 COMMITTEE
**32nd 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**

*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Carolyn Leckie (Central Scotland) (SSP)
Mr Kenny MacAskill (Lothians) (SNP)
Margaret Mitchell (Central Scotland) (Con)
Mike Pringle (Edinburgh South) (LD)

*attended

**THE FOLLOWING GAVE EVIDENCE:**

Detective Chief Superintendent John Carnochan (Strathclyde Police)
Mary Hepburn (Princess Royal Maternity Hospital)
David McKenna (Victim Support Scotland)
Andrew Murday (Glasgow Royal Infirmary)
Neil Paterson (Victim Support Scotland)
John Scott (Scottish Human Rights Centre)

**CLERK TO THE COMMITTEE**

Gillian Baxendine
Tracey Hawe

**SENIOR ASSISTANT CLERK**

Anne Peat

**ASSISTANT CLERK**

Steven Tallach

**LOCATION**

Committee Room 6

# Scottish Parliament

## Justice 2 Committee

*Tuesday 22 November 2005*

[THE CONVENER *opened the meeting at 14:05*]

## Police, Public Order and Criminal Justice (Scotland) Bill: Stage 1

**The Convener (Miss Annabel Goldie):** Good afternoon everyone. I welcome you to the 32nd meeting in 2005 of the Justice 2 Committee. Papers have been circulated to members. Our main function this afternoon is to continue our scrutiny of the Police, Public Order and Criminal Justice (Scotland) Bill. I have apologies from Colin Fox, and I am pleased to welcome Carolyn Leckie in his place. I also have apologies from Bill Butler, and I welcome Cathie Craigie in his place.

I now welcome Mr John Scott, who is chairman of the Scottish Human Rights Centre. On behalf of the committee, Mr Scott, I thank you for making time to see us this afternoon. I know that members have a raft of questions that they want to ask, so without further ado I shall start that process.

**Jackie Baillie (Dumbarton) (Lab):** Good afternoon Mr Scott. In your organisation's response to the Scottish Executive's consultation, you expressed concerns about the proposed role of ministers in setting the Scottish police services authority's strategic priorities and in relation to the appointment process. Do you still have those concerns and, if so, why?

**John Scott (Scottish Human Rights Centre):** We would probably always express concerns along those lines, perhaps for reasons of undue cynicism on our part. I do not see why it has to be, and increasingly seems to be, that way.

**Jackie Baillie:** How would you do it differently?

**John Scott:** The Parliament, rather than ministers, should have a role in such matters.

**Jackie Baillie:** There are concerns about the make-up of the police services authority board, such as the inclusion of a lay convener and lay members. Do you have concerns about that or about lines of accountability between the board, ministers and the director of the Scottish crime and drug enforcement agency?

**John Scott:** I saw the evidence about the concern that there may be too many people on the board. I have no particular concerns so far as that is concerned.

**Jackie Baillie:** Nothing about lines of accountability between the board and the others mentioned?

**John Scott:** No.

**Maureen Macmillan (Highlands and Islands) (Lab):** I notice that you think that the bill does not go far enough on police complaints and misconduct. The bill will provide for a police complaints commissioner who will oversee non-criminal complaints, but the police will still carry out those investigations. It seems that you would like to see that commissioner with a much-strengthened role. Is there an issue here? Is there something wrong with the current complaints procedure? Do you have evidence that the police are not doing this properly?

**John Scott:** A significant number of people contact the human rights centre to complain about police misconduct or other police-related matters. We obviously encourage them to either come forward to the police themselves or to report through third parties. However, some people still will not do that. The answer is yes—there is still a problem. What is suggested in the bill is not much more than a rebranding of the current system. It is not terribly different from HM inspectorate of constabulary for Scotland's role—it does not involve any investigation, and it is not entirely clear that the new commissioner would routinely be the first point of contact when people have a complaint. I do not think that what is proposed lives up to advance billing. In the various consultations on the matter, we suggested that, despite having an independent Crown Office and Procurator Fiscal Service in Scotland, we should have something that is similar to the English Independent Police Complaints Commission, including powers in relation to criminal matters. It should be simplified; there should be an independent police complaints commission that deals with all civil and criminal matters. That would obviously have to be in co-ordination with the Crown Office and Procurator Fiscal Service. My understanding is that, when the Executive gave evidence to the United Nations Committee against Torture, it was suggested that the sort of commissioner that we would get would be more akin to the proposals that we made than to what is in the bill.

**Maureen Macmillan:** So you are looking for a gateway that is independent of the police and the Procurator Fiscal Service.

**John Scott:** Yes.

**Maureen Macmillan:** I do not know whether the Procurator Fiscal Service would agree with you, because of the separate legal systems that exist.

**John Scott:** It probably would not.

**Maureen Macmillan:** I want to ensure that you think that there is a real issue here and that it is not just a question of perception.

**John Scott:** There is a real issue. One of the acknowledgements in introducing a bill that includes an independent commissioner is that there is a difficulty of perception on the part of people who have complaints against the police, whether they are genuine or not. I do not think that what is in the bill will do anything to change that.

**Maureen Macmillan:** Do you think that the public realise that there is a role for the procurator fiscal in the present system and that there would be such a role in the new system? Do people distinguish between a criminal complaint and a complaint about bad manners and so on?

**John Scott:** No, they do not and, in any event, there might be an overlap. I am a solicitor and, often, it is clients of mine who are charged with criminal offences who have complaints against the police, some of which are groundless and some of which are genuine. That is the sort of constituency that you are dealing with and such people see no difference between the police and the Procurator Fiscal Service. One of the reasons why we would like there to be an independent commissioner is that, at present, there is an extent to which the police act as gatekeepers for the information that is passed to the Crown Office and Procurator Fiscal Service.

**Maureen Macmillan:** That is interesting. Some police forces say that they pass everything to the fiscals, so that they become the gatekeepers, rather than the police.

**John Scott:** I have heard that said on a number of occasions about other things. However, that has not always proved to be correct.

**The Convener:** Is it your view that, under the current system, there is not a robust way of proceeding with alleged criminal complaints against the police?

**John Scott:** In practice, the system is robust much of the time. However, that is not the perception of the people who make the complaints. As far as I know, there are concerns on the part not only of the people making complaints but also on the part of police officers about how complaints are dealt with. I believe that there is some support in policing circles for the issue being removed completely from the police and the Crown Office and Procurator Fiscal Service.

**The Convener:** Earlier, you outlined the model that you would like to be in place. Is there any structure in Scotland, in any area of activity, that is analogous to what you want?

**John Scott:** Not that I can immediately think of. The structure is similar to that which is in place in England and Wales. Although there is no Crown Office and Procurator Fiscal Service south of the border, there is the Crown Prosecution Service. Obviously, therefore, the various responsibilities have to be juggled in that system as well.

**The Convener:** However, in England and Wales, the police have a much more prominent role in prosecution than they do in Scotland.

**John Scott:** Yes.

**Carolyn Leckie (Central Scotland) (SSP):** Football banning orders are being proposed as a means of reducing football-related violence through a conviction or a civil order. Do you have any human rights concerns about the orders, given that they would restrict someone's movements on certain days, at certain times and in certain places?

**John Scott:** Obviously, there are human rights issues, which are identified in the policy memorandum.

It is suggested that the available sentences be increased to enable a banning order to be part of or instead of another sentence that the court could impose. I do not see that there would be a difficulty with that because it would be something that would be dealt with in court after sufficient evidence had been led in a trial or someone had accepted their guilt and there would be a right of appeal against the order in the same way as it is possible to appeal any sentence.

However, we have concerns about summary applications to the sheriff. Our concerns are the same as those that have been expressed in relation to a number of other combined civil and criminal matters whereby someone can start off in the civil courts but end up in the criminal courts if they breach an order. There are deep concerns about that. I do not think that I am exaggerating to say that that now seems to be the norm. The attempt to widen the net is made not through better policing or by requiring the police to produce better evidence but by making it easier to put people in court. If someone breaches an order, they can be sent to prison even though they were made subject to the order on a lesser standard of evidence—that is, on the balance of probabilities rather than beyond reasonable doubt. Football banning orders will be similar in that respect.

A conviction from a foreign court might be a different matter—in that situation, a civil order might be appropriate, and that is obviously part of what is being considered. However, we are entering a realm in which evidence that is of far lower quality than evidence that would result in a conviction in a Scottish court will result in the same net effect. The powers are stringent. They include restrictions on movement for a period of 10 years and the possibility of a prison sentence of up

to three months if the order is breached. There is concern.

14:15

**Carolyn Leckie:** For clarity, your position is that you have no difficulty with restrictions—such as of the ability to move in certain areas around a football ground—as long as they are attached to a conviction.

**John Scott:** Yes.

**Carolyn Leckie:** It is the absence of a conviction that you have a problem with.

**John Scott:** Yes. The conviction brings in the other side of the European convention on human rights, which gets the blame for far more than it is responsible for. In relation to most rights, the convention contains an opportunity for the state to say, "You have lost that right because of the balance of other people's rights." When someone is convicted due to a serious football-related disturbance or violent incident, the state is entitled to say, with the full backing of the European convention, "You have gone too far, so other people's rights come into play." If we use civil orders to get the same end result, we have to be far more careful. It will be much easier for people wrongly to be caught up in such orders. We can see that from some of the language in the bill. Civil orders will take into account whether someone has

"contributed to … violence or disorder".

As a lawyer, I think that that is too woolly.

**Carolyn Leckie:** Thank you. That helps.

**Mr Stewart Maxwell (West of Scotland) (SNP):** I have a supplementary question on that. You used the phrase "football-related disturbance". Do you think that football banning orders should be tied only to football matches or should courts be able to use football banning orders in football-related cases—for example, if a fight is football related but it takes place in the middle of July, away from the football season?

**John Scott:** It is a difficult question. Numerous words are used in the bill to try to pin down "football-related disturbance", but it is like wrestling with jelly. That particularly applies to the suggestion that people who watch a football game on television, perhaps in a different part of the country, might get caught up. The bill represents a reasonable attempt to pin the question down, but the further we get from something that happens at a football match or on the way to or from it, the more difficult it should be to obtain a football banning order because the court will be less certain that the incident was football related.

**Mr Maxwell:** Do you have any concerns about the removal of a person's passport? Banning orders may require people to surrender their passport so that they are unable to travel during the period around international matches or matches that club teams play abroad. Do you have any views on that?

**John Scott:** That is unnecessary. A reporting condition on the day of a game would be sufficient.

**Mr Maxwell:** Why do you say that? The measure seems to have been fairly effective in reducing the amount of violence abroad from certain sections of the England supporters.

**John Scott:** Removing someone's passport does not prevent their leaving the country, but if there is a reporting condition that requires them to turn up at the police station at kick-off time, it will be difficult for them to be in two places at one time. The removal of passports is not the only approach, nor does it seem the most effective one.

**Mr Maxwell:** Surely people need a passport to travel abroad.

**John Scott:** They would need some form of identification, but there would be the possibility of their obtaining another passport. Courts regularly impose a bail condition these days that involves someone not only surrendering their passport but accepting the condition not to apply for a duplicate.

**Mr Maxwell:** Do you think that this is effectively a loophole? Do you think that more stringent conditions should be applied?

**John Scott:** I do not regard it as a loophole, but I am not convinced that it is the most effective way of doing what is intended.

**Mr Maxwell:** Do you not think that it is reasonable and proportionate that, perhaps because of an incident at a ground, a person should have their passport removed to prevent them from travelling abroad?

**John Scott:** That is one way of doing it. I am not saying that I would object to that under any circumstances, but doing it that way probably gives rise to a bit more difficulty. Obviously, it would be possible for someone to apply for a restriction on that if they could demonstrate that they were going on holiday and that their travel was entirely unrelated to football.

**The Convener:** You talked earlier about your concerns about the definition of the behaviour criteria that a sheriff would have to have before him before making a football banning order. Section 48(4) gives the two criteria that must be proved:

"A sheriff may make a football banning order if satisfied that—

(a) the person against whom the order is sought has at any time contributed to any violence or disorder in the United Kingdom or elsewhere; and

(b) there are reasonable grounds to believe that making the order would help to prevent violence or disorder at or in connection with any football matches."

I am trying to establish with which bit of the criteria you are unhappy. Do you think that the link is too tenuous?

**John Scott:** Obviously, the second part of the definition is absolutely essential, but to say that someone has

"contributed to any violence or disorder"

is, I think, a bit too woolly.

**The Convener:** So it is the text of section 48(4)(a) that you are concerned about. You think that it is perhaps too vague to allow for meaningful legal enforcement.

**John Scott:** Yes.

**The Convener:** Thank you for that. On the question of the standard of proof and evidence, non-conviction information, including video evidence, could be used to justify an application for a football banning order under civil procedure. Is it purely and simply the standard of evidence that would allow an FBO under civil procedure that is giving you concern?

**John Scott:** Yes, it is. Obviously, if there is video evidence of someone perpetrating serious violence at a football match abroad that, for whatever reason, has not resulted in a conviction, it is difficult to say that that person should not be subject to the same requirements. However, on the test of evidence, my view is that we should do everything possible in the first place to explore the possibility of getting a criminal conviction and have the availability of a civil order only as a last resort.

The danger with, for example, antisocial behaviour orders—albeit not so much in Scotland—is that there has been a rush towards the civil courts first, then breach proceedings have been dealt with in the criminal courts. That has been done, rather than attempt the admittedly more onerous task of trying to get decent evidence to justify a criminal conviction in the first place.

**The Convener:** Modern policing methods, which committee members have seen in action first-hand at a big football match, depend on technology, particularly the photographic facilities that are available through video links and the placement of cameras outwith and within stadia. Given that the bill's purpose is to try to stop or restrict unacceptable behaviour, do you accept that video evidence of such behaviour should be acceptable for placing before a court for a banning order?

**John Scott:** Yes, it should. It would be difficult to say that there would be anything terribly wrong with doing that. However, in terms of the bill, we would be faced with situations in which the evidence would be much less good. Video evidence is one possible source of evidence, but not the only one. If a matter was sufficiently serious to justify an attempt to get a banning order, questions might arise as to why there had not been a prosecution.

**The Convener:** Okay, but you accept in principle that, in certain circumstances, the procedure that I described might be appropriate.

**John Scott:** Yes.

**The Convener:** Thank you for that.

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** I have a brief question that follows on from the convener's line of questioning. When someone has a history of violence—associated or not with football matches—is it reasonable to take that into consideration if the police believe that that person is likely to be involved in violence at a football ground?

**John Scott:** If that history is not football related, I do not see why it should come into the realm of a football banning order.

**Jeremy Purvis:** I ask because, as you know, section 48(4)(b) refers to

"reasonable grounds to believe that making the order would help to prevent violence or disorder at or in connection with any football matches."

For some people, that provision is sufficient. However, in addition, section 48(4)(a) requires a sheriff to satisfy herself or himself that

"the person against whom the order is sought has at any time contributed to any violence or disorder in the United Kingdom or elsewhere".

So a sheriff must be satisfied that a person is likely to be involved in violence and that person must have a record of violence; otherwise, civil proceedings cannot start. The bill takes a far more rounded view. Arguably, the section has an additional safeguard.

**John Scott:** I imagine that the two requirements are very much related, but I take your point that the provision could be seen as an additional safeguard. I prefer having paragraph (a) as well as paragraph (b) to having paragraph (b) on its own.

**Jeremy Purvis:** Notwithstanding the merits of the civil and criminal options—we are grateful for your comments about that, which are on the record—do you have any comments about the periods of the bans?

**John Scott:** Yes. I am not entirely sure why the periods were selected. In general, I am against any fixed periods. If a matter must go through the criminal courts or the summary courts on a civil application, I do not see why the sheriff should not determine the length of the ban on the basis of the information that is placed before him or her.

**Jeremy Purvis:** On the content of orders, section 49(4) provides for orders to make additional requirements. The bill does not say this, but I presume that that opens up the possibility that such requirements could, for example, concern undertaking orderly behaviour programmes to deal with violent conduct, whether or not it is alcohol related. Requirements on top of orders could make them more rehabilitative of conduct. Those requirements could be consistent with the length of a ban, especially if it was a three-year ban under the civil process.

**John Scott:** That is true. The other point that struck me about the length of an order is that two thirds of it must be served before an application can even be made to the court. If orders have a rehabilitative aspect, which one hopes for, having to wait for two thirds of a 10-year order to elapse might in some circumstances be excessive, so perhaps more flexibility is needed. For example, if someone is banned from driving for 10 years, they can apply to the court after five years. In general, an application can be made after half the period of a ban has passed. I am not entirely sure where the two thirds came from.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** We will move on to the provisions on public processions. In its response to the Scottish Executive's consultation document, the Scottish Human Rights Centre highlighted the importance of having regard to human rights considerations when local authorities seek communities' views. It also said that the presumption in favour of the right to march and assemble should be protected. We must grapple with that, because some of the evidence that the committee has received raises concerns that ECHR guarantees of the right to march or assemble could place local authorities in a difficult position when balancing the views of communities that have been consulted with people's right to peaceful protest. How could we resolve that?

14:30

**John Scott:** This is not something that I find myself saying terribly often, but what is in the bill covers the situation. My colleagues and I at the Scottish Human Rights Centre were slightly worried by the evidence that was given. The ECHR is being blamed by everyone for everything these days. The fact that the convention is, for the most part, a balancing exercise—including in relation to the right to freedom of assembly—is properly recognised in the bill.

The increase in the notice period from seven days to 28 days seems reasonable. Consultation with the community seems to be a more important part of this legislation than was necessarily the case before now. Communities should not view consultation under the bill as an opportunity to ban peaceful assemblies. If we had to come up with something that struck the sort of balances that the ECHR requires, we would have done well to come up with something like the bill.

**Cathie Craigie:** The information that the committee heard last week from the local authority representatives was that they could not deliver the kind of consultation and involvement of the public that the bill calls for to address public concern. I should think that they would find it very difficult—although I should not put words into their mouths—to address the concerns of communities while allowing applicants, whoever they may be, to hold their parade or march. Your response is that the bill covers that.

**John Scott:** I think that it does. I tried to read last week's evidence, but it was not on the website last night. Therefore, I am going by the newspaper coverage of what the local authorities said. I am not sure where they got their advice about the ECHR problems, but our view is similar to the advice that the Executive received: it is a balancing exercise. The right to freedom of assembly is not unqualified and the rights of the community have to come into play. If the sort of consultation provided for in the bill causes practical problems for local authorities, that could be a separate issue. However, local authorities should not be able to say, "We can't stop the marches or the processions because of the ECHR." That is not right, and it should not be the case if all the factors are taken into account.

**Cathie Craigie:** One of the other issues raised with the committee was who would be required by the bill to notify a local authority of a proposal to hold a public procession. The bill includes everybody, with the exception of funeral directors. It was suggested that perhaps uniformed organisations should be exempt. Does your organisation have a view on that suggestion? The brownies were mentioned specifically.

**John Scott:** I am not sure how much trouble the brownies have caused recently; I presume it was the hangers-on rather than the brownies themselves. I am not sure about that suggestion. If we are to have a system, it may be better to start by having all organisations subject to the notification process. Eventually, the track record of an organisation and its compliance with any code of conduct would make it much easier to present a case for saying that that organisation should have a dispensation from having to apply.

**Cathie Craigie:** Thank you.

**Jackie Baillie:** Fascinating though this is, may I move us on to immunity from prosecution? One of the provisions in the bill allows for immunity from prosecution to be revoked. Does that proposal

give you any cause for concern on human rights grounds?

**John Scott:** It does. The Law Society of Scotland and the Faculty of Advocates have submitted written evidence on the issue. As a solicitor, I deal with criminal cases and appear in the High Court. Under the current system, the factors that the bill deals with are taken into account. I am not entirely sure that, in attempting to do the right thing, the bill improves on the situation.

As for immunity or an assistance agreement, it would be unlikely that a person would be sentenced until after they had given their evidence. In cases in which one of a number of accused people tenders a plea and agrees to give evidence as a witness—I am surprised that the Executive has suggested that that happens infrequently—the High Court judge often leaves the question of the sentence hanging over the person until after they have given their evidence, although if there is immunity from prosecution the considerations might be slightly different.

The present process is much more transparent, because the person who is on trial and against whom the evidence is given is aware of such agreements and the matter can be canvassed in front of the jury. We cannot allow a situation to develop in which an agreement or deal is undertaken, but the person against whom evidence is to be given does not know about it. That would guarantee an appearance in the appeal court at the end of the process, when the person will say that the jury did not get to hear that the witness had been given immunity from prosecution or had cut a deal to get a third off their sentence.

In attempting to deal with sensitive matters that cannot always be aired publicly, we must be clear that doing so does not prejudice the right to a fair trial, which is part of the underlying ethos of the criminal justice system.

**The Convener:** I hope that Jackie Baillie will not mind if I ask for clarification on a supplementary point. I presume that, if the bill was enacted as proposed, there would be a fair degree of uncertainty if an accused person who was promised immunity from prosecution fell short of the job when giving evidence and was then prosecuted, because that person might well have made admissions at an earlier stage that could prejudice the trial. Is what the bill seeks to achieve likely to happen in practice?

**John Scott:** Sorry, I meant to cover that point, which is one of our main concerns. In effect, the Crown would be barred from subsequently prosecuting someone from whom there had been any significant degree of co-operation, because as that person would have shown their entire deck of cards to the Crown, they would not be able to get a fair trial. All sorts of complications could result if a person's evidence did not live up to expectations. For example, issues might arise about whether the person understood properly what they were asked during the precognition process. Further pressure would inevitably be brought to bear on the person, so they might need a forum to explain why their evidence did not appear to live up to expectations. To give somebody immunity and then to try to change that would be a can of worms for the prosecution. That cannot happen, at least not if there is to be a fair trial at the end of it.

**The Convener:** Sorry to interrupt, Jackie.

**Jackie Baillie:** That is okay. You elegantly pre-empted my question, convener, but I have thought of another one. Mr Scott, you say that the situation will be difficult. I understand where you are coming from, but is it not the case that the system operates successfully elsewhere?

**John Scott:** I do not have much knowledge of the experience in other countries, but, as I understand it, the system indeed operates successfully elsewhere. However, our present system works well, too. Under our system, everyone has a better idea of where they stand. There is a danger that some matters that are open at present might move behind closed doors or into sealed envelopes. One practical difficulty is that an advocate or a solicitor advocate who appears for someone in the High Court might not know that such an agreement has been reached, which would make the situation almost impossible. When they spoke to the person afterwards about the sentence that had been imposed, how would they know whether that sentence was appropriate if they did not know whether a deal had been struck that might have resulted in anything up to a third being taken off?

**Jackie Baillie:** I presume from your comments that, if a means of disclosing such information existed, some of your concerns would evaporate.

**John Scott:** Yes, they would. The disclosure would have to be to the person who was defending. Apart from anything else, giving somebody a letter of agreement to be taken back to prison with them would not necessarily be the safest approach.

**Maureen Macmillan:** My question relates to the provisions in the bill to give the police the power to require suspects who are arrested for certain drug-related offences to take a drug test and to require those who test positive for certain class A drugs to attend a drugs assessment, although they will in no way be forced into treatment—access to treatment would be voluntary. Do you have concerns about those provisions?

**John Scott:** Yes. I saw the evidence that was given about those provisions and share the concerns. The provisions are well meant—everyone can see that they represent an attempt to tackle the difficult underlying problem of significant drug use in most offending. However, I do not think that the bill takes the right approach.

It would be invidious if someone who was charged with something that they were later acquitted of were tested and ended up getting a three-month prison sentence because of some breakdown in the period between being released from the police station and the assessment. Inevitably, a significant number of the people who appear in court every day have a drug problem. Many of them turn up at court under the influence of some substance or other, whether prescribed or not. It is not always easy to tell whether someone is on a heavy methadone prescription and it is not always easy to get coherent instructions from them.

I worry that, in trying to tackle the problem, we might end up making it worse. There is also the possibility that the drug test could be fed into the bail process. Someone who is ultimately acquitted might be remanded in custody because they have tested positive for cocaine or heroin. There are implications for the remand population, which might increase without the drug problem having been tackled. I do not think that the prisons are able to cope with the drug problems that they have even at the moment, because of the numbers.

There are also implications for those who have been convicted and sent to prison for failing to take part in the assessment process without a reasonable excuse. In that situation, the excuse would have to be unreasonable—otherwise, one would hope, they would not have been convicted—but there might be complications in the particular case.

I do not think that the bill sets out the right way of tackling the problem. It seems to me that the provisions relate to a health matter, which the bill will criminalise. We might think that that approach represents a way of ensuring co-operation, but I do not know that we have yet done everything else that we could do. Currently, the arrest referral scheme is voluntary. Perhaps more work could be done through that scheme before we get to the stage of criminalising people who fail to turn up to be tested.

**Maureen Macmillan:** So you believe that there are too many imponderables.

**John Scott:** Yes.

**Jeremy Purvis:** The evidence that the committee received from the arrest referral scheme in Glasgow indicated that, at times, a balance was needed between enforcement and a voluntary approach. Such a balance could well be needed in relation to the human rights elements of the provisions.

**John Scott:** Yes.

**Jeremy Purvis:** Sections 73 and 74 outline new powers. Section 73 is headed, "Power to require giving of certain information in addition to name and address", such as date and place of birth and other associated information, for identification purposes. Section 74 is on taking fingerprints. Do you have views about those measures?

**John Scott:** Yes. Perhaps I am unduly cynical, but I do not believe that the answer to everything is to give the police more powers. I do not know where those provisions came from; I was not aware that the police had particular problems and the policy memorandum does not really suggest that the police regularly encounter serious difficulty. If people are giving the police their names and address, they are probably volunteering the other information, whereas those who refuse to give the other information would probably not give their name and address to start with. I am wary of giving the police any more powers, particularly where it appears that there is an absence of need.

**Jeremy Purvis:** Are you making the same point about fingerprints?

**John Scott:** The issue of fingerprints worries me a wee bit more. The evidence from the Scottish Criminal Record Office said that the relevant technology is not yet available, which means that we are legislating slightly ahead of ourselves. However, I am not aware that, even in England, the technology is reliable enough to do within seconds what we cannot do after several years in the Shirley McKie case. I do not believe that machinery is yet available anywhere that can conclusively determine the identity of someone from their fingerprint.

14:45

**Jeremy Purvis:** The policy memorandum indicates that the measures in the bill will make the process of identification easier for SCRO. Obviously, that will help with regards to the process that the police must go through, as will the ability to take fingerprints outwith a police station. Am I correct in thinking that you are not against the two powers in themselves but that, as a matter of principle, you are wary about giving police more powers?

**John Scott:** Yes. There might be particular objections to particular powers in particular circumstances, but the starting point is that the police have adequate powers to do everything that we expect them to do. The act of giving them more

powers often stems from a wish to be seen to be doing something rather than from a wish to do something.

**Maureen Macmillan:** However, if you were a suspect, surely you would rather be able to use some technology to clear yourself in situ than have to go back to the police station to sort everything out.

**John Scott:** Yes. Inevitably, the police will not always use any extra powers that they are given in the way that I am suspicious of. However, the more powers the police have, the greater the possibility that those powers will be abused. The more requirements that the police can make of, for example, a young person—and it would tend to be young people who would be on the receiving end of the requirements—the more scope there will be for those young people to be the subject of unnecessary requirements in situations in which the police do not have reasonable cause. In that sort of situation, the young person will quickly be dragged into the criminal justice system and could be facing a prison sentence because of something that might have started off as an abuse of power.

**Maureen Macmillan:** You are talking about an abuse of power rather than about the power itself. The proposed power is probably neutral. You are talking about the way in which the police might misuse a power.

**John Scott:** Yes. One must always ensure that safeguards are built in any time powers are increased, just to ensure that there is a degree of accountability. In relation to a power that is given to a police constable on the beat, it is difficult to see how there would be sufficient accountability, especially in the absence of a proper independent police complaints commission to ensure that the police did not abuse their powers.

**Maureen Macmillan:** Well, if we get the one, perhaps you will be satisfied with the other.

**John Scott:** Perhaps I will come back and recant my objections.

**The Convener:** In principle, you are not disputing the perhaps wise pragmatism of the proposal; you are simply expressing a concern about how, in practice, the power might be used.

**John Scott:** Yes.

**Mr Maxwell:** Are you saying that the only problem with the power is that the police might abuse it? Is it not the case that people who are just wandering about have a right not to give their details to the police or to be fingerprinted in the street? What level of suspicion must a police officer have to determine that he has the right to fingerprint someone?

**John Scott:** The two issues feed into each other. Whenever there is an increase in police powers, my concern is the possible abuse of those powers. It used to be that the police needed reasonable belief before they exercised certain powers, but I think that that situation has been watered down over the years. If we get to a situation in which the police have the power to do something without having a reasonable belief or a reasonable cause for doing it, we will be in difficulty, because there will be no question of accountability to anyone other than themselves and their consciences. That relates to my concern about the abuse of power.

**Mr Maxwell:** Are there enough safeguards in relation to the powers that we are discussing?

**John Scott:** I do not think that there are any safeguards in relation to those powers.

**Mr Maxwell:** I do not think that there are, either.

**John Scott:** As I say, the fingerprint side of the proposals still baffles me a wee bit.

**Jeremy Purvis:** There is a clear caveat relating to a police constable's power to be able to request or require someone's fingerprint. For example, the constable could be suspicious that false information had been given and might want to clarify the situation quickly on the spot. Currently, the person would have to be detained at a police station. Arguably, it is more efficient for the police constable to use not only the well-established power that they have to ask for someone's name and address but a power to clarify the situation on the spot. By and large, that could mean that many people who would be detained currently would no longer need to be detained.

**John Scott:** If anyone were able to give me a guarantee that those were the only situations in which the power would be used, I would keep quiet. However, I think that, realistically, the powers are likely to be targeted at particular sections of the community. There are already grounds for suspicion that there has been unfair targeting. I am thinking in particular of the police's targeting of young people.

**Jeremy Purvis:** Yes, but they still have to have a suspicion. This is not over and above what the existing—

**John Scott:** I cannot remember whether the phrase "reasonable suspicion" is used in the section.

**Jeremy Purvis:** Section 73(6) amends the Criminal Procedure (Scotland) Act 1995 by replacing "his name and address" with

"(a) the person's name;

(b) the person's address;

(c) the person's date of birth; and

(d) such information about the person's place of birth and nationality as a constable considers necessary or expedient for the purpose of establishing the person's identity."

If the police officer is suspicious that false information has been given, they will have the power to take the person's fingerprint on the spot rather than detaining them at a police station for identification purposes, which is what would happen at the moment.

**The Convener:** Okay. There are no further questions. Thank you for joining us today, Mr Scott. It has been helpful to the committee to be able to hear your views directly.

Before we introduce our next witnesses, we will suspend for five minutes to allow the witnesses to get cups of tea and coffee and to allow members to attend to their miscellaneous needs.

14:52

*Meeting suspended.*

14:57

*On resuming—*

**The Convener:** I welcome our second panel of witnesses: Detective Chief Superintendent John Carnochan from the violence reduction unit of Strathclyde police; his intelligence analyst, Will Linden; Andrew Murray, a consultant cardiothoracic surgeon from Glasgow royal infirmary; David McKenna, chief executive of Victim Support Scotland; his operations manager, Neil Paterson; and Mary Hepburn, a consultant obstetrician and gynaecologist from the Princess Royal maternity hospital in Glasgow.

Thank you all for joining us this afternoon. As you probably all know, the bill seeks to legislate in quite a diverse set of areas, so there will be questions to which one or two of you will wish to respond while others will not have any particular view. I shall try to ensure that the questions are directed to those who desire to express opinions to the committee.

I shall start with a general question for Detective Chief Superintendent Carnochan about the violence reduction unit. Could you outline the work and current priorities of the unit?

**Detective Chief Superintendent John Carnochan (Strathclyde Police):** We started off at the tail end of last year, taking a hard look at the amount of violence and the levels of violence in Strathclyde, and we realised that violence had been chronic and at a high level for some considerable time. We decided that we had to do something different, because the situation had been like that for 40-odd years. The only assumption we made was that what we had done so far had not made any sustainable difference.

We also decided that we must consider violence—which we understood to be anything from bullying to self-directed violence, such as suicide, domestic abuse and, at the other end, murder—from beginning to end. Doing so is a big task, so we decided to concentrate on one issue in Glasgow: young men and knives. The murder rate involving knives is three and a half times higher in Strathclyde that it is anywhere else in the United Kingdom. There is nothing comparable anywhere else. The figures are dreadful.

We decided that there must be a two-tier approach. We had to contain and manage what is happening now and ensure that we are committed to the longer term. We believe that education and early years education are the problem and that the only sin of many of the young men who are involved is ignorance. Such people do not know how to negotiate life—some lack the necessary skills to empathise, communicate and solve problems. That is the long-term issue. I am talking about education in the widest sense—I am not saying that people should have the very good technical skills that our schools impart. We had to contain, manage and be clever about what we were doing, and we have started to do things that appear to be having an effect.

The commitment to the long term is absolute. Strathclyde has some of the most experienced homicide investigators in western Europe, but I would prefer it to have some of the most experienced murder prevention officers in western Europe in 30 years' time. It may take generations to change things, but I firmly believe that we must make a start on doing so. Certainly, we must contain and manage the current problem, which is the thrust behind the work of the violence reduction unit.

**The Convener:** That is helpful.

You alluded to the general nature of the problem, which is significant. Can you share any more specific information with members about the number and nature of knife wounds that you come across in your work?

**Detective Chief Superintendent Carnochan:** Certainly. Perhaps statistics that I have—particularly those relating to knives and young people, which are relevant to the bill—will put matters in context.

Some 84 per cent of the 1,053 serious assaults that occurred in 2004-05 in which the primary weapon was a knife occurred in a public place and 69 per cent of the serious assaults that occurred in a private place involved a domestic knife. We should dispel the notion that people should be worried when the kitchen drawer rattles. A person

should be worried about that if they are at home, but if they are walking down the street they should be worried about a locking knife down the front of a person's shorts. The issue is portabililty—a person would not put a steak knife down the front of their shorts. Some 68 per cent of the serious assaults that took place in public places involved non-domestic knives.

We have a murder database for the period 1996 to 2005 and we have looked at the males on it who were convicted during that time, of whom there are 588. Some 19 per cent of the males who were convicted of murder—around 109 or 110—were under 18 years old; 10 per cent were under 18 and used a knife; and 17 per cent of all knife murderers were under 18. Sixteen is shown on the database as the most common age for carrying a knife. I do not think that those young men left home to murder anyone or that their ambition when they were at school was to murder someone; they simply happened to have a venue at which they could murder someone. I think that we can do something about that, and I welcome the legislation in that respect.

We took an interesting snapshot. I have been talking about recorded crime, but others may speak about the phenomenal difference between recorded crime, particularly violence, and actual crime or violence. I have given reported crime figures, but the figures will be worse if the percentages that others speak about are added to them.

There is little incentive to report violence if a person lives in an area in which it has become the norm or is legitimised. As a result, it is not reported. Young men do not report it because reporting it is not the thing to do and women do not report it because it has happened at home. Therefore, the level of violence will be much higher than the level that we have recorded. That context is very important. If violence goes up by 3 per cent or 5 per cent or down by 5 per cent or 10 per cent, it makes very little difference in the great scheme of things. That is not the real issue.

We took a snapshot of a division—it was not a Glasgow division—that recorded the number of people who were stopped in a five-week period and the sort of weapons that were recovered. We are talking about offensive weapons that were being carried in the street. I stress that the division in question was not a Glasgow division. I think that a total of 40 people were stopped and that 60-odd per cent of the weapons that were recovered were non-domestic. Among those weapons were four items that were described as Samurai swords. They were not purists' Samurai swords, which are worth several thousand pounds, but ones that someone would be likely to buy in a shop for £40 as part of a set of three. That is the context for the scale of the problem.

When the committee hears the figures, I ask it to bear in mind that they relate to reported crime. It is important that account is taken of actual crimes and instances of violence; if that is done, the figures turn out to be much higher.

**The Convener:** I know that Jackie Baillie has an interest in swords.

**Jackie Baillie:** It is not a personal interest, I hasten to add. My question relates to a matter that came up at a meeting of the Public Petitions Committee and on which I know the Executive is consulting separately. I am interested in your take on the prevalence of the use of swords. We have heard from elsewhere that, increasingly, swords are the weapon of choice among some of the young men whom you describe. Is that picture accurate? Should we be getting more worried about the damage that swords can inflict?

**Detective Chief Superintendent Carnochan:** The long-term issue is that it is people, not weapons who kill people. The short-term issue is that in 2004-05 there has been only one murder involving a sword. That is one too many, but we must put the situation in context. There have been four attempted murders and 23 serious assaults involving swords. Those are the crimes that have been reported, although the numbers from the snapshot perhaps give us a clearer picture of what is happening.

Our experience indicates that the main consideration in public places is portability. Razor gangs would use razors because gang members could close them and put them in their pocket without injuring themselves. Young men are likely to carry a locking knife and if they carry something that is described as a Samurai sword, it will probably be a short one because they are relatively straight, do not have a great big hilt and come in a scabbard. That means that anyone who carries such a sword will not hurt themselves and will be able to put it down their trousers. When it comes to portability, that may be the choice of many.

For some people, there will be some notion of style or kudos attached to the type of weapon they use. I expect that there is an element of, "My blade is bigger than yours," but it is difficult to generalise. That is the problem. Our experience is that there has been one murder with a sword.

**The Convener:** Can you make your question very brief, Carolyn?

**Carolyn Leckie:** Yes. Following on from your point about the number of very young men who are involved in carrying knives—we are talking about 16-year-olds—what mechanism can prevent

them from carrying knives and ending up in the situation that the bill will address by increasing the maximum sentence for such offences? A jail sentence would not be an attractive proposition for a 16-year-old, regardless of how long it was. How will the proposed increase in the sentence have an impact?

**The Convener:** We will come to that later on, so I will let the chief superintendent reflect on your question.

In the meantime, I turn to Mr Murday, to whom I must apologise. I think I misnamed you Mr Murray in my introduction. I am sorry about that. I will switch to the medical dimension. The chief superintendent was asked how many knife wounds he comes across during his work and of what nature they are. I now put the same question to you.

**Andrew Murday (Glasgow Royal Infirmary):** A study that the committee may know about was conducted by my colleagues in the Glasgow accident and emergency departments in April of last year. It involved an audit of the display of violent attendances in those departments that took the form of a violent assault. As it included only three of the four accident and emergency departments in Glasgow, it represents an underestimate of what happens there.

During the month for which the study lasted, there were 484 attendances of violent crime, which means that the number of such cases in Glasgow as a whole was probably about 550. Of those, 23 per cent involved an assault with a sharp instrument. In other words, there are about 130 incidents of stabbing-related injury in Glasgow each month.

Bear in mind that when you stab somebody you give them either a minor or a severe injury. Whether you kill that person or they end up with just a minor cut is a chance occurrence. I believe, as I am sure does John Carnochan, that the perpetrators of such crimes do not realise the danger that they put their victim in or the risk to themselves of their crime. As he says, these kids do not go out to end up a murderer at the end of the evening.

I have some more data: 43 per cent of the victims are between the ages of 15 and 24. If you add on those who are between 25 and 35, you have 75 per cent of all victims of violent crime. The victims and the perpetrators are largely the same group of folk with a degree of social deprivation. A confidential survey of the victims found that drugs and alcohol played a substantial part in the attacks, with 73 per cent of violent incidents having some relation to alcohol or substance abuse.

We have a picture of a huge number of injuries being sustained. In 2003, there were 55 murders with sharp instruments. The figure runs at around 50 to 60. For every murder there are something like 30 other violent crimes involving sharp instruments. In effect, that means that every time somebody is stabbed there is a one in 30 chance of it ending up as a murder. It is a horrendously difficult and problematical area of violent crime in Glasgow and other parts of Scotland.

**The Convener:** That is immensely helpful. The committee has seen a submission from your colleague, Mr Rudy Crawford, in which he refers to "other sharp instruments". You mentioned them, too. Are these other instruments a significant dimension in the figures you quoted?

**Andrew Murday:** The figures are for all crimes perpetrated with sharp instruments. They do not differentiate between swords and knives, nor do they differentiate what might be described as fighting knives. The issue for us is that if you go out on Friday and Saturday night armed with a knife, you put yourself at risk of committing a knife crime. By chance, that could be the crime of murder. Of course, at the end of the knife is a victim. In the long term we need to tackle knife carrying; in the short term we need to reduce the level of violence in our society.

**Mr Maxwell:** Mr Murday, I have the same question for you as I had for a number of people, but I come at it from a different angle. Could you explain current hospital practice on reporting knife crime? When might the police be informed? Would they be informed at all? What impact does that have on statistics?

**Andrew Murday:** I am not in a position to say. I am not an accident and emergency doctor and I do not know what current practice is across accident and emergency departments. We are looking to co-operate with the violence reduction unit to provide more data. There are data already. In Cardiff, there is a scheme whereby, without divulging confidential information about the victim—because we are dealing with the victim rather than the perpetrator—certain information can be passed on to the police, which can direct their efforts to particular areas. We are hoping to be able to do that. It requires rather more information technology than we currently have in the accident and emergency department, but that is another issue.

15.15

**Mr Maxwell:** From my own investigations, it seems that most health boards think that it would be a direct breach of patient confidentiality to report that information to the police. Do you support that view?

**Mr Murday:** Without the victim's consent, I would have difficulty reporting an incident to the police, yes.

**Mr Maxwell:** Is that a generally held view?

**Mr Murday:** Yes.

**Mr Maxwell:** Bearing in mind the research that I have just mentioned and Mr Murday's response, would it help the police if they got general information about the incident, as happens in Cardiff, so that they could direct resources? Should they also get detailed incident-by-incident information?

**Detective Chief Superintendent Carnochan:** Absolutely. However, we do not need to address third-party reporting and the confidentiality issues because we already recognise them. We had a very effective exchange of information with Professor Jonathon Shepherd in Cardiff, who devised a questionnaire with 10 questions asking where and when the incident happened, the postcode of the area and whether drink was involved. That information helps to direct resources. Mr Murday quoted from a study: it is interesting to note that we reckon we record just over a third of the violent incidents that turn up in accident and emergency departments.

If you think about this as a public health issue rather than as a criminal justice issue, you could identify and scope the scale of the problem. To do that, we would need information about such incidents. We have made starts, and we have spoken to several consultants, including Rudy Crawford, and we are exploring the notion of setting up some sort of a pilot injury surveillance. Plan A would see that done across Scotland.

It is helpful to note that the police do not see a serious increase in reported violence during old firm games, but accident and emergency consultants do. They employ more doctors and nurses on those days. If, however, you had measles, your GP would record and report it.

**Mr Maxwell:** Dr Crawford has said that the true prevalence of knife crime is two to three times what the statistics show. I think that that is the figure you mentioned. Evidence from another health board suggests that they believe that the Data Protection Act 1998 means that hospitals cannot legally report any medical information to the police, including that on gunshot and knife injuries. Is that the case?

**Detective Chief Superintendent Carnochan:** No, absolutely not. Hospitals report firearms injuries; that is a public safety issue. We must deal with the context of 21st century Scotland and the problems that exist therein. In speaking to doctors and health professionals at all levels, I sense a willingness to get around the problem and an understanding that we have to do something about it.

**Mr Maxwell:** From my own research, I was surprised to find out that it is not mandatory for hospitals to report gunshot wounds—that is a General Medical Council guideline. That organisation has a working protocol with the Association of Chief Police Officers in England, which is where the idea of such reporting comes from. Would the police—and medical staff—support the mandatory reporting of gunshot and knife wounds?

**Detective Chief Superintendent Carnochan:** That would be desirable, but we have to get past a few milestones first. The first is that we must have some of the information from the contain and manage section of the strategy so that we can deal with things now and direct resources. That would contribute to identifying exactly what we need to do in the longer term. If we base strategies on one-third knowledge, we could be wrong. We spend a lot of money on strategies that are based on one-third knowledge.

**Mr Murday:** To make it clear, the information that the police require to direct resources does not need a divulgence of patient confidentiality or a breaching of patient confidentiality. The police need to know that a crime has occurred, where it has occurred, the connected circumstances and a name.

There is a risk that with some violent incidents the victim will not attend for necessary care. I am a little anxious that that might be the case with knife wounds, which can lead to complications. However, gunshot wounds are a different matter.

**Mr Maxwell:** Does Victim Support Scotland hold a counter view? Obviously the individuals in question would be victims of crime. Would forcing them to divulge information be against their rights, or would you support the claim that a broader issue is involved?

**David McKenna (Victim Support Scotland):** For a start, there should be support mechanisms to allow a victim to report a crime. After all, if victims do not do so, they must feel that they have very good reasons for that. We should seek to provide them with information in emergency rooms, police stations or any other location in the community to assist them in making their decision. When a crime is reported, it is often a case not only of investigating what happened but of seeking to reduce the potential for another crime to take place.

Simply passing on a victim's personal details to the police might not move the process forward that much, because if the victim's co-operation has not been secured it is difficult to see what the police can do. However, it is very important for hospitals

to pass general information to the police service, because it allows the police to pinpoint where knife activity has taken place.

We have had much discussion of the range of people who commit these kinds of offences. However, we should bear in mind that knives are used to intimidate and to murder people; in incidents of rape and sexual assault; and in robberies. The mere presentation of a knife has a devastating effect on people, because they are immediately put in fear of their life. Moreover, even if a victim's injury is not serious, they are left wondering what will happen to them if they report the crime to the police and whether they will get the necessary help, support and protection, or whether they will face the same threat in their community in two or three days' time. The major point is that we must support people to come forward, give evidence and participate safely and securely in the criminal justice system.

We heard that only 30 to 50 per cent of knife-related crimes are reported to the police, but I think that those figures are still too high; I suspect that the true figure is more like one in four. We should not ignore the fact that we do not know about a lot of the crime that is happening, and one important element of reducing knife crime is to give communities and individual victims the confidence to report crime and the help that they need.

**The Convener:** I must move on now.

**Cathie Craigie:** I thank the witnesses for their evidence so far. It demonstrates the need for the Parliament and the Scottish Executive to tackle the knife-crime culture in so many communities, particularly in the west of Scotland.

I think that my question is perhaps directed to— [*Interruption.*]

**The Convener:** If you ask the question, Mrs Craigie, I will direct it to the right witness.

**Cathie Craigie:** Thank you, convener.

What impact are the bill's proposals likely to have on knife crime?

**The Convener:** I ask Mr McKenna to lead off the response to that question.

**David McKenna:** I suppose that, if this were 1905, we would not be discussing the need to change the legislation. However, this is the 21st century. There should be very few circumstances in which ordinary people need knives in their pockets to go about their lawful business. Similarly, I can think of very few cases in which 16 to 18-year-olds should have the right to carry knives. As a result, we certainly welcome the proposal to raise the age limit for purchasing a knife.

Last week, in the centre of Glasgow, I saw four youths who were clearly under 16 looking in a shop window and pointing out which large knife they were going to purchase at the end of the week. There must be a correlation between availability of and access to knives and their use. If we can reduce the opportunity for people to have knives for the wrong reasons, that must be a positive benefit.

**The Convener:** Does the bill go far enough?

**David McKenna:** It is a difficult area. The bill goes far enough for the moment, but we will need to see what impact the legislation has. John Carnochan and Andrew Murday asked whether we have enough information to know the extent of knife crime in Scotland. We are not sure that we have that information, so we might not have the answers. However, there is common sense in the proposals and the people of Scotland will support them.

**The Convener:** Chief Superintendent, what is the likely impact of the proposals in the bill?

**Detective Chief Superintendent Carnochan:** There is no single solution to the challenge that we face. We say that it is a case of 1,000 small victories. I think that we have about five under our belt so we are halfway there.

We must be clear about the bill's aims. It seeks to do two things. First, it seeks to limit people's access to knives. If we prevent one family from having to visit a grave and another family from having to go to Barlinnie or Polmont for the next 10 years to visit their teenage son, the bill will have been a success. The Parliament will not pass many pieces of legislation that will save a life, but this bill has the potential to do that.

Secondly, the bill sends out a signal that we acknowledge the problem and are starting to do something about it. It is true that we need more information and that we need to understand more clearly what we need to do, but that is no reason to stand still and ponder the moon. We can do things to contain and manage the problem and that is what the legislation will do.

The bill will send a signal and it will limit access to knives in the same way as we limit access to firearms, fireworks, cigarettes and alcohol.

**Cathie Craigie:** In terms of the—

Sorry, did anyone else want to respond?

**The Convener:** I want Mr Murday to give the medical view.

**Andrew Murday:** I agree with John Carnochan. The fewer knives are available, the better. I leave it to others to decide whether the legislation goes far enough, but there are shops around Glasgow Central station that sell knives that have no

purpose other than to threaten people. If it was possible to legislate to close such shops, I would support that.

**Cathie Craigie:** John Carnochan supplied the committee with a note on the issues that he wanted to draw out. Will he explain what other measures he would like to see in the bill and will he comment on whether 18 is the right age limit and on the proposed increase to four years of the sentence for carrying a knife or an offensive weapon?

**Detective Chief Superintendent Carnochan:** I will take the last part first. The increase in the sentence to four years will send out a signal but first it must be used. We must think about the notion of visible justice—I think someone mentioned that earlier. If there is no visible justice, there is no reward for obeying the rules in society—one does not get an extra library card. We promise that, if people do not obey the rules, there will be punitive action. If people do not obey the rules but no punitive action is seen to be taken, we are reinforcing the negative and violence becomes the norm. People think, "That is what happens in our community. That's why we don't report it. That's why we carry knives. That's why we assault people," and resorting to violence is seen as a legitimate way of resolving business.

We must get past that notion. Justice must be seen to be done. The increase in the sentence to four years falls into that category. The vast majority of people who are sentenced for carrying knives will go to either a district court or a sheriff court. They are likely to get six months at the most; and really, they are likely to get a deferred sentence and some other disposal. It is for judges to consider each case on its merits. We need to direct some energy at encouraging the wider criminal justice fraternity to understand the effect on communities. That is why we introduced district courts all those years ago and why we have children's hearings. They were all connected and justice was centred in the community. Perhaps we have lost that a little.

I would like there to be legislation similar to the firearms legislation, whereby, if someone has been caught carrying a knife or has used a knife, they will be banned under all circumstances from ever carrying one again—they will have given up the right. The person would be prohibited from carrying a knife just as, under the firearms legislation, a person is prohibited from carrying a firearm. If they were caught with a knife, it would be important to impose a mandatory sentence.

15:30

**The Convener:** So, would you like the bill to be toughened a bit in that respect?

**Detective Chief Superintendent Carnochan:** It would be helpful if that was built into the bill. We accept that the offender may be a young man who has been led the wrong way—such things happen. However, the second time that the offence is committed, we have a duty towards not only that individual, but everyone else who has a right to live in society without the fear of being stabbed.

In considering the different legislation, even John Scott needs piles of books and references. We need to make things a bit simpler. I do not know how difficult this would be, but I would like it all to be thrown out of the window and to start again with one piece of legislation that states what the position is.

**The Convener:** Carnochan's charter.

**Detective Chief Superintendent Carnochan:** It is great that we are doing something, but there is a notion that the bill is an add-on—that it is piecemeal in its definitions and so on—which makes things difficult. We appear to be challenging things around the edges. I am realistic. I would like people who have been caught carrying or using a knife to be prohibited from ever carrying a knife again, with a mandatory sentence attached.

**The Convener:** You make an important point, and the committee is not unsympathetic to the idea that we should keep the law as clear as possible. You say that you would like the legislation to be shuffled and redealt. Do you think that the bill is peripheral in dealing with the issue or, given the reality of the complexity of the law as it stands, are you saying that we should get on with the bill?

**Detective Chief Superintendent Carnochan:** I think that we should get on with the bill. It is of its time—it is a contemporary bill that suits 21st century Scotland and it is welcome. Some may say that we are tinkering around the edges, but it is one of the 1,000 victories that we need. It is a start.

**The Convener:** Okay. Have you finished, Cathie?

**Cathie Craigie:** I have finished. I am conscious of the time, convener.

**Mr Maxwell:** I have a quick question for Mr Murday about the recording system. There was obviously a problem with the recording system in A and E—I think that you said earlier that you worked in A and E. I understand that a new recording system was introduced in May. Do you think that it will help or hinder the recording of statistics for A and E? I have received contradictory evidence from different health boards.

**Andrew Murday:** I think that the new system will help, when it is working properly. My understanding from Dr Rudy Crawford is that the system at Glasgow royal infirmary is not yet quite as good operationally as it might be; nevertheless, it will help. The data from April were recorded by hand by the clerks at the start of the triage. At the moment, it would not be possible to run the system that we talked about as part of the violence reduction unit's programme—it would not be easy to give it that information. However, when the IT systems are up and running—and I am reasonably confident that they will be, as is Rudy Crawford—it will be relatively easy to download information about patients in a way that avoids breaching confidentiality but provides the police with the information that they need.

**Carolyn Leckie:** I repeat my earlier question. Our jails are bursting at the seams and it is not clear to me that the mechanism of increasing the maximum sentence will affect the people that you have described, who do not set out to be murderers. How do you see that mechanism working to reduce knife crime and the number of incidents that you encounter in hospitals?

**The Convener:** Is that more a question for Detective Chief Superintendent Carnochan, Mr Paterson and Mr McKenna?

**Carolyn Leckie:** I am interested in Mr Murday's view.

**Andrew Murday:** Increased sentencing is one small part of the process, and it brings to the fore the fact that knife crime is a serious issue. There are huge issues around social deprivation, alcohol and drug abuse, and educational opportunities. These folk are spiritually deprived. The victims and the perpetrators are much the same bunch: they are tragically deprived, and those issues need to be tackled. Increased sentences are one way of bringing the issue to the fore.

**Neil Paterson (Victim Support Scotland):** Prior to working for Victim Support, I was a social worker and spent time working in Greenock prison. I have fairly extensive experience of working with the type of young men we have been talking about.

I concur with Carolyn Leckie that although increasing sentencing tariffs is a useful part of a strategy to reduce violence, it will certainly not resolve the problems on its own. One observation that came to me as a result of something that Andrew Murday said is about young men's lack of awareness of the impact of carrying a knife and of what a knife can do when it is used in practice in a fight that can develop in a car park on a Saturday night.

I clearly recollect interviewing young guys on remand in Greenock prison who could describe how they had gone out at night with no intention of getting involved and who did not understand that a small cut to what I would know is the femoral artery would kill somebody. All they thought they were doing was cutting somebody's leg. If we are to achieve the policy objectives that I think we all agree with, we need to think about what else needs to happen over and above the bill.

**Detective Chief Superintendent Carnochan:** If I may hedge my bets, the answer is never either/or. The most recent stats from the Executive show that 41 per cent of the prison population is in prison for violent crime. The debate is not about violent crime but about whether the people who are in prison need to be there. The argument is that there are lots and lots of young men whom we can save and that we should try to do that. However, the ones whom we cannot save need to go to jail—it is as simple as that.

It is not an either/or situation. As Mr Scott would have said, the distinction will be between intervention and interference. There is the rub. We did not say that it would be easy. On the maximum sentence, I do not think that someone will get four years simply for carrying a knife—I am not really a betting man, but I would be prepared to bet my pension on that. Such a sentence is very unlikely to be passed; someone would get four years for other things that accompany carrying a knife.

**The Convener:** Mary Hepburn has been sitting waiting patiently to speak—you deal with another expertise. Do you want to make a general comment?

**Mary Hepburn (Princess Royal Maternity Hospital):** No. I am aware that I am here for a specific bit. I do not need to comment on any of the other issues.

**The Convener:** That is fine—I did not wish you to feel silenced before all these gentlemen.

**Mary Hepburn:** Thank you for your consideration. I know my place.

**The Convener:** We will move on to football banning orders.

**Jeremy Purvis:** I will have to keep Mary Hepburn waiting a little longer.

I was interested in Chief Superintendent Carnochan's comment that increased levels of violent crime might be witnessed not during old firm games, or football games in general, but in hospital admissions. I am aware that Andrew Murday's department is not A and E, but I would be interested to know whether he concurs with that observation. Will the provisions in the bill to create football banning orders make a difference?

**Detective Chief Superintendent Carnochan:** I think that they will. We must consider the wider

context. Right now, we risk assess. We are getting used to and becoming better at collaborative working and joint risk assessment models. Whereas we risk assess paedophiles now, I suspect that it will not be long before we assess dangerousness. That is part of the preventive notion, although it is not the one solution.

It is important to note that someone who is violent at a football match is not only violent there; that just happens to be the venue where they are violent. The venue—where violence manifests itself—might be entirely different for different people. For a 17-year-old who lives on a large housing estate with lots of other 16 and 17-year-olds, the venue for violence may be on the street at night after they have shared some drink—not a lot of drink, but a low, acute dose to disinhibit them and make them take risks that they would not otherwise take. For a person who is in a good job who is violent, their wife, partner or child might be the victim of the violence. The notion that a person is violent only at football matches is difficult to take on. Therefore, the orders will be helpful in restricting someone from engaging in certain activities because of their behaviour; that is perfectly reasonable.

**Jeremy Purvis:** However, a football game could be a catalyst for many people. Throughout the 1980s, those who were behind much of the organised hooliganism at football games were not violent characters, although they had violent mentalities. The bill has a slightly different emphasis in, in effect, removing some people from football matches. Is one of the concerns that there could be displacement? If your judgment is that they are violent characters, the concern is that if they are not at a football game, the violence will be displaced.

**Detective Chief Superintendent Carnochan:** But you could probably use that argument against most things. We are saying that if alcohol facilitates violence, we will limit that; if knives facilitate more serious violence, we will limit that; and if the venue is likely to be a football match, we will limit that. Those measures will not solve the whole problem, but they will start to limit the problems.

The context is important. I often read arguments in the media—I do not think that they are particularly well founded—that suggest that if we do not have the solution to everything, we should not do anything. That is absurd. We must start to make a difference incrementally. Every one of those measures sends out the signal that we have identified issues and are doing something about them. In two years' time, if we establish an injury surveillance programme in Scotland, we may well have to revisit matters based on what we learn, but who knows?

**The Convener:** Would Mr McKenna or Mr Paterson like to respond to Mr Purvis's question?

**David McKenna:** Could Mr Purvis remind me of his first question?

**Jeremy Purvis:** The first question is whether football banning orders will make a difference in reducing violence.

**The Convener:** Let us keep it that simple. We will ask one question at a time, because I am slightly losing the thread.

**David McKenna:** People who go to football matches to enjoy themselves have a right to do that. If other people are determined to disrupt their enjoyment and to commit offences and crime at football matches, it is legitimate to address that. The bill is complex. I cannot comment on whether the provision will work in entirely the way in which it is set out in the bill, but it is justifiable for the bill to provide that people who demonstrate that they cannot behave in an environment will be excluded from it.

**The Convener:** You may put your second question, Mr Purvis.

**Jeremy Purvis:** Is there the potential for displacement, if we are talking about violent characters?

**David McKenna:** I agree with John Carnochan. It is difficult to track displacement and to establish whether it is imaginary or real. Currently, there is a challenge for us at football games, and we should try to address that issue.

**Jeremy Purvis:** That was straightforward.

With regard to a football banning order following conviction, a longer ban will be available, which will relate to an offence carried out within the period 24 hours before and 24 hours after a game. Can you see that element being effective or irrelevant? Where on the scale would you place it?

**Detective Chief Superintendent Carnochan:** I do not think that anything is irrelevant. Anything that takes us in the right direction is worth while. We must then consider the proportionality of how we implement the measure and get into the long grass of how it will work. Football matches are now so well policed and are so well legislated for that there are seldom issues at football matches themselves. Invariably, problems arise around the match—outside or in pubs and houses not far away. The displacement issue could also be raised there. However, nothing is irrelevant; the issue is the proportionality of how we make the banning order work.

**Mr Maxwell:** On the 24-hour period before and after a football match, is it necessary to have that boundary in place given that football-related violence can happen not only around a football

match but at other times when football happens to be on television? Such violence might not relate to a live game. There could be a football-related dispute in a pub. Where would you draw the line?

**Detective Chief Superintendent Carnochan:** The banning order may have a rehabilitative effect. I am sure that the fan would rather be at the ground watching the football with his mates. The banning order is specific to that and states that they cannot go to the match. The notion would be that they could go back to a football match again if they behaved.

**The Convener:** Is the 24-hour proviso restrictive? Will it impede the ability of the police to act?

**Detective Chief Superintendent Carnochan:** I have not given enough thought to that specific issue to say exactly how we would oversee the banning order and how we would ensure that it was effective. There may an opportunity for someone to say, "I have a 24-hour ban, but I will manage to go to the match anyway."

**Mr Maxwell:** The provision is that the offence must take place within a 24-hour period before or after a match. If an offence takes place 25 hours before the game, the crime will not be related to the game.

**The Convener:** Hang on. I think that the questioning has not been clear. Under the bill, if an FBO is sought following a conviction, the offence to which the proposed FBO relates must have been committed no more than 24 hours before or after a football match. Is that too restrictive?

15:45

**Detective Chief Superintendent Carnochan:** It would be difficult to prove otherwise. The 24-hour time limit is one way of making it easy to prove that a particular bit of violence that happens many hours before a football match is related to football. If the timescale was made wider than that, we would need to think about how we could relate the offence to the football match. I think that such offences could be related to football, because I know that violent people are violent people, but that is the reason for the 24-hour limit.

**The Convener:** Does Victim Support Scotland have a view on the matter?

**David McKenna:** People's behaviour in the lead-up to and wind-down from football matches can be an issue. I suspect that most offenders will be caught in the four or five hours—rather than 24 hours—before and after a match. The 24-hour limit is just a determination of the period within which the majority of people will be caught.

**The Convener:** As there are no more questions on that issue, we will move on to consider the provisions concerning mandatory drug testing and assessment.

**Carolyn Leckie:** The bill provides that people who are arrested on suspicion of drugs offences may be required to undergo a mandatory drugs test and assessment, although participation in treatment would be voluntary. Do you have any concerns about those proposals? In particular, does Mary Hepburn have any concerns, given some of the cross-over between the client group that might be affected and the people whom she deals with?

**The Convener:** In the first instance, we will ask the Detective Chief Superintendent Carnochan for his view before asking Mary Hepburn.

**Detective Chief Superintendent Carnochan:** I think that, as Mr Scott alluded to earlier, the question is about interference versus intervention. It is right that we have the notion of wanting to do something good, but the question is whether the proposal constitutes too much of an interference—that notion needs to be taken into account as well. I believe that anything that directs people away from drugs and serves as a trigger—other than a criminal justice trigger—to get them into rehabilitation or to alter their behaviour has to be a good thing. I recognise that there is a need for balance and proportion, but the proposal has to be a good thing.

**The Convener:** If the measure is created as intended by the bill, will it pose practical challenges for police officers?

**Detective Chief Superintendent Carnochan:** I think that the practical challenges are more likely to be about whether we have sufficient capacity in the support that we give to people who go through the process. The question will be whether we have enough people in place who can provide drug treatment and testing. The issue will be about capacity, but I am sure that we will able to deal with that if the measure is passed.

**Mary Hepburn:** Drug use during pregnancy is harmful for mothers and babies, but it really just adds to the more important underlying effects of poverty and deprivation that have an impact on mothers and babies. We know that poverty increases the maternal mortality rate between twentyfold and thirtyfold. It is also responsible for many pre-term and low birth-weight deliveries. Such a delivery may not only result in ill health and death for a baby but contribute to ill health in adulthood and so perpetuate the effects. It is important for us to identify any factor that will affect pregnancy, including drug or alcohol use.

When I started working with these women 20 years ago, none of them—or only a few—

disclosed drug use because disclosure provided no benefit to them or their babies. Today, the situation is completely different, as appropriate services for pregnant women who use drugs are pretty widespread throughout the United Kingdom, including in most areas in Scotland. For example, in our hospital, we no longer have babies who at birth are significantly ill from undisclosed maternal drug use. In other words, pregnant women who use drugs already disclose that fact because they are routinely asked, and they receive appropriate treatment. Therefore, I would be very surprised if pregnant drug-using women who commit such offences were not already known to have a significant drug problem.

A knee-jerk reaction that required that everyone be tested and be required to attend assessment elsewhere would simply disrupt the treatment that we already provide. Usually, a pregnant drug user will already be receiving treatment from within maternity services. Testing would be a bit of a waste of time and money; it would be far better to give the money to us to spend on the maternity services. Also, if drug use was identified, it would be pointless to start people off on a parallel system of investigation and care; it would be much better to refer people back to the maternity services where they can receive appropriate care.

**The Convener:** I do not know whether you will be able to answer this question as it goes outwith your patient group. From a practical and medical standpoint, can we cope with the bill's general proposals on what the police should do when they intercept anybody who is suspected of using or possessing drugs? I pose that question to Mr Murday as well. The bill creates a structure that will oblige the police to take action in certain circumstances. That action will include assessment and referral. Can we cope with that? Are the practical medical facilities there?

**Mary Hepburn:** One of the difficulties of testing everyone is that that will not really tell you much about their drug use. It will simply tell you that people have used the substance within a given period of time. It will not distinguish between low-level recreational users and people with a significant problem. To oblige everyone to go on to some kind of conveyor belt for treatment would not be helpful. The services would be flooded. It would be much better to target treatment at those who really need it.

**Andrew Murday:** I do not claim any expertise but I will comment on the principle of action and reward. There would have to be some passage out of testing and some sort of assessment. People should not automatically go on to some vast drug-rehabilitation programme; the next stage would have to be some sort of assessment of their drug use.

**Mary Hepburn:** But if you have to assess everybody who has used any kind of illegal drug, it would swamp every service. On the health side, we try to help people to change their behaviour. It is more appropriate to do that with people's co-operation, rather than take a punitive approach.

**Carolyn Leckie:** Previous witnesses have talked about the resources that will be available to allow the police to carry out the obligations that will be placed on them. There is a fear that resources will be sucked away from existing programmes in order to deliver the legislation.

**Mary Hepburn:** As I have said, resources should be aimed at helping people who have major problems. Resources may not get rid of a problem, because lots of health conditions cannot be cured, but we should be trying to limit the damage that unhealthy lifestyles causes people. We need all the resources we can get for that.

**Carolyn Leckie:** I have a question for Detective Chief Superintendent Carnochan. The response to a question that I put to earlier witnesses was that, when you come into contact with people who are suspected of drug-related offences, you find that you already know most of them. How many new people will testing allow you to pick up and help?

**Detective Chief Superintendent Carnochan:** The thing about criminal justice radar is that we wait until people are broke until we try to fix them. The notion behind mandatory drug testing was that we would be able to divert people into a different lifestyle.

I agree that capacity is an issue. If the testing went ahead, there could be loads and loads of people queuing up, and we might raise expectations that could never be met. However, once we have identified people, we should ask what else we can do and what further assessment is required. That is a capacity issue—not just criminal justice capacity but health capacity and social work capacity. The word "swamp" was used and I think that it is pretty accurate.

**Maureen Macmillan:** Drug testing will not hit the whole country at first; it will be piloted in four areas. What would you like to see in the pilots? Which of the witnesses wants to put their head above the parapet first?

**Detective Chief Superintendent Carnochan:** We will be involved in the first stage of the process. The parameters of work in the pilot areas—age groups, offences and so on—will need to be very clear. I am sure that there will be great support for the pilots, in terms of resources and capacity, so there needs to be robust evaluation before anything is rolled out. There are many pilots, and they do not often fail—that is just a view.

We need to be careful. In the first instance, we must ask exactly what the parameters will be. They must be locally relevant to the four areas concerned, and I am sure that they will be. Resources must also be locally relevant. We must take account of existing resources. Often we invent new stuff, when the resources are already out there. Sometimes it is a case of scoping what is there and realising that we are in danger of reinventing the wheel. We need to build on structures and processes that are already in place. As Mary Hepburn suggested, if structures are already in place, we should use them. Why do we not find ways of channelling existing resources?

**Mary Hepburn:** Aims and objectives depend on circumstances. Initiatives that are carried out through the criminal justice system tend to be about ensuring that people are totally abstinent. In health care, we do not have a good track record of getting people to give up their unhealthy lifestyles completely. In fact, we have a 100 per cent failure rate. In the maternity setting, we do not look to ensure that women are absolutely abstinent; we are trying to get a healthy outcome. If the whole focus is on urine screening and detecting every bit of illicit drug use, we will alienate a population that is already highly motivated to work with us and towards behavioural change. Confusing that outcome with the alternative approach—trying to achieve total abstinence—would be unhelpful. In the maternity setting, I do not think that it is necessarily a criminal justice issue.

**Maureen Macmillan:** That is interesting, as I was about to ask you how the health service and the criminal justice system can dovetail on the issue. Clearly, you have different perceptions of how drug or substance misuse should be dealt with. How can the two sectors come together?

**The Convener:** Mary Hepburn is the obvious person to respond.

**Mary Hepburn:** I can speak only with reference to our current involvement with the criminal justice sector. There are times when what may appear to be a helpful intervention or route—for example, DTTOs—is not necessarily helpful, because such interventions are aimed at ensuring abstinence and preventing people from doing whatever illegal thing they are doing, whereas we are trying to minimise harm. We have a great deal of evidence that people change their behaviour only when the time is right for them, they feel good about themselves and they can do it. We have shown that we cannot stop women smoking during pregnancy, although everyone knows about the harm that that does, and that we cannot get them to eat properly—they just carry on with their bad behaviours. I am not sure where the criminal justice system can assist us in that. In my specific setting of maternity care, such an approach disrupts care more often that it offers us something positive. I am sure that in other settings it would be quite different.

**The Convener:** I want to clarify something. You are confronted with a clinical situation and a professional obligation in which the primary imperative does not relate to drug addiction. However, drug addiction may be relevant to how you deal with your primary clinical obligation.

**Mary Hepburn:** We see drug addiction as another factor that will adversely affect people's health. My professional responsibility is to try to get the best possible outcome to pregnancy. We deal with drug use in that context. It is not helpful for us to deal with it as an illegal activity in that setting; indeed, that can be counterproductive.

**Maureen Macmillan:** In your view, the criminal justice system should take more cognisance of what the health service is trying to do in such circumstances, rather than the other way round.

**Mary Hepburn:** I think so. My concern about drug use is that it is killing people and making them ill. We want to minimise those effects.

16:00

**Maureen Macmillan:** You are saying that what is proposed in the bill might not be helpful.

**Mary Hepburn:** It might not.

**The Convener:** Jeremy, you will have to be very quick.

**Jeremy Purvis:** I will try. The assessments will be for people who have been arrested for an offence as laid out in the bill—assault, robbery, theft, fraud, embezzlement and so on. A drugs assessment will be mandatory. However, section 76(3)(c) refers to

"a document which sets out the nature of assistance or treatment (or both) which may be most appropriate for the person in connection with any dependency on, or propensity to misuse, a relevant Class A drug".

That is not contradictory to the work that is already being done—arguably, section 76 gives a statutory structure to the work that is being done for somebody who has a dependency that not only endangers their health but has led directly or indirectly to their being arrested for an offence.

**The Convener:** First, Mr Purvis, the measure relates not to any offence, but to drugs-related offences.

**Jeremy Purvis:** It is a trigger offence. The new section 20A(8) under section 75 refers to "a relevant offence".

**The Convener:** Which is drugs-related.

**Jeremy Purvis:** A relevant offence as defined under section 75 means any of the following: theft,

assault, robbery, fraud, reset, uttering a forged document and so on. That is outlined in paragraphs (a) to (k) of the new section that section 75 will insert into the 1995 act.

**Mary Hepburn:** Irrespective of what the offence is, it would be helpful—or, rather, it would be not counterproductive—to redirect the women back to the counselling and addiction services that are part of their multidisciplinary care. It would not be helpful to put them into separate abstinence-based or abstinence-seeking services that operate under the criminal justice umbrella. The best thing to do is to check that the woman's drugs use is known to the maternity services and to ensure that she is getting assistance with it. It would not be helpful for the woman to go into another channel as well as ours.

**The Convener:** We are nearing the final furlong. Section 88 sets out a system whereby a person might receive a reduced sentence or immunity from prosecution in return for co-operating with the prosecuting authorities. I suspect that that is not an area on which all our witnesses will have a view. However, has the chief superintendent any concerns about that proposal?

**Detective Chief Superintendent Carnochan:** I do not know whether this will bother John Scott, but I agreed with much of what he said on the matter. It is important that there is openness and transparency in the system and in the prosecution and defence.

I have not been involved in the operational side for a couple of years, but I know that the more difficult a case, the greater the need to be a bit more lawfully scrupulous in how we gather and present evidence. Not only would that often be of benefit to the prosecution of a case, but it is necessary. I echo what John Scott said, although he probably should not know that—there needs to be transparency in the system. We should have none of those sealed envelopes that perhaps were the case in the past.

Our system of dealing with evidence and intelligence gathering is now much more sophisticated. In the past four or five years, there have been many developments relating to covert human intelligence sources, surveillance commissioners and the Regulation of Investigatory Powers (Scotland) Act 2000. All those things will make the framework much more robust.

**The Convener:** Does Victim Support Scotland have a view about how the measure might be viewed by victims in particular or by the public in general as they look at the criminal justice system?

**David McKenna:** Neil Paterson will probably want to say something, but the starting point is that, when participating in the criminal justice system, victims want a conviction; they want the person who committed an offence against them to be found guilty. Immunity has wider implications. John Carnochan and John Scott both talked about openness and transparency, but where is the openness and transparency for the victim of crime? The case is all about them.

**Neil Paterson:** It might be helpful for the committee to bear in mind two principles in thinking about that provision in the bill. One relates to transparency and consistency; the other to proportionality.

The transparency and consistency argument is straightforward: victims do not find the current sentencing system comprehensible. It is not clear and transparent—indeed, it is not particularly clear and transparent to me and I work in criminal justice all the time. The provision on immunity has the potential to move us towards having a more transparent system, as it will place the sentencing discount on a statutory footing. My only concern is how transparent its operation will be when it is applied in public, as John Scott said.

The proportionality consideration relates to the fact that sentencing discount must not mean that the disposal becomes disproportionate to the severity of the offence to which it applies. From a victim's perspective, there is nothing wrong in principle with seeing the discounting process taking place. However, the discount has to be viewed through the prism of proportionality; it has to be proportionate to the severity of the crime. If the measure undermines the principle of proportionality, it will have the opposite effect to that which the bill intends.

**The Convener:** As there are no further questions, I thank all our witnesses for being with us and for their patience. I apologise for the fact that you have been through a diverse session. However, you have been very helpful in informing us on different aspects of the bill. We appreciate your making time to join us this afternoon.

16:06

*Meeting continued in private until 16:45.*

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