

# **JUSTICE 2 COMMITTEE**

Tuesday 7 November 2006

Session 2

£5.00

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## JUSTICE 2 COMMITTEE

### 29<sup>th</sup> Meeting 2006, Session 2

#### CONVENER

\*Mr David Davidson (North East 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 Michael Matheson (Central 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:

Alan Baird (Association of Directors of Social Work)

Detective Superintendent James Cameron (Association of Chief Police Officers in Scotland)

Detective Chief Superintendent John Carnochan (Strathclyde Police)

Kenny Cassels (Prison Officers Association Scotland)

Councillor Eric Jackson (Convention of Scottish Local Authorities)

Will Linden (Strathclyde Police)

Lindsay Macgregor (Convention of Scottish Local Authorities)

Superintendent William Manson (Association of Chief Police Officers in Scotland)

Chief Superintendent Clive Murray (Association of Scottish Police Superintendents)

Derek Turner (Prison Officers Association Scotland)

#### CLERKS TO THE COMMITTEE

Tracey Haw e

Alison Walker

#### SENIOR ASSISTANT CLERK

Anne Peat

#### ASSISTANT CLERK

Steven Tallach

#### LOCATION

Committee Room 6



## Scottish Parliament

### Justice 2 Committee

*Tuesday 7 November 2006*

[THE CONVENER *opened the meeting at 14:13*]

**The Convener (Mr David Davidson):** Good afternoon, ladies and gentlemen, and welcome to the 29<sup>th</sup> meeting of the Justice 2 Committee in 2006. I remind everyone with a mobile phone, pager or BlackBerry to switch it off, and not merely put it on silent mode.

We have received apologies from the deputy convener, Bill Butler. I welcome Cathie Craigie, who is substituting for him. There has been a change of personnel on the committee since our previous meeting: Michael Matheson has been appointed to replace Stewart Maxwell. As Michael Matheson has had to send his apologies for today's meeting, we will not take item 1 on the agenda. Kenny MacAskill has come as his substitute today, and we welcome him to the meeting.

I place on record my thanks to Stewart Maxwell for his contributions and for his diligence while serving as a member of the Justice 2 Committee. We look forward to Michael Matheson joining us in the near future.

## Custodial Sentences and Weapons (Scotland) Bill: Stage 1

14:14

**The Convener:** Item 2 is our second evidence-taking session on the Custodial Sentences and Weapons (Scotland) Bill at stage 1. I welcome from the Scottish Parliament information centre Graham Ross and Frazer McCallum, who have come along to assist us, and Susan Wiltshire, who is one of the committee's advisers on the bill.

I also welcome our first panel: Alan Baird, convener of the criminal justice standing committee of the Association of Directors of Social Work; Lindsay Macgregor, a policy manager with the Convention of Scottish Local Authorities; and, also from COSLA, Councillor Eric Jackson.

I will start the questions. The bill provides for Scottish ministers—which boils down to the Scottish Prison Service in this instance—and local authorities to establish joint arrangements for the assessment and management of the risks that are posed by all custody and community prisoners. What discussions, if any, have taken place regarding those joint working arrangements? Are you able to provide any detail on how the new arrangements will work in practice and what improvements they will bring?

**Alan Baird (Association of Directors of Social Work):** The speed with which the legislative process has moved has made it difficult for us to have any detailed discussions with colleagues from the Scottish Prison Service. It is important that we strengthen the emerging relationships between local authority social work departments and the Scottish Prison Service in relation to the Management of Offenders etc (Scotland) Act 2005.

Social workers have a long history of working in prisons. Prison social work has been a feature for many years, and we need to strengthen its position if we are to undertake successfully what will amount to a very considerable increase in the number of people who social workers and their Prison Service colleagues will be expected to assess.

**The Convener:** From what you have said, I assume that you are going to set up a working arrangement with the Scottish Prison Service to deal with the bill. Can you highlight to the committee any action that you are taking in that regard?

**Alan Baird:** We have on-going dialogue with the Scottish Prison Service. Councillor Jackson is a member of the SPS board—that has been particularly helpful as we move towards the new

arrangements. The detailed discussions will very much depend on establishing exact roles and responsibilities relative to the risk of harm posed by offenders who are serving sentences of less than four years but more than 15 days. We in social work must be very careful to use our resources in a way that is proportionate to the level of risk of harm that individuals pose.

An implementation group has been doing some work in relation to the bill. The Scottish Prison Service and the ADSW, through me, are involved with the various streams that go from court to custody to the community. The main discussions, which have already started, will take place in that group, which will be chaired by the Scottish Executive.

**Councillor Eric Jackson (Convention of Scottish Local Authorities):** I am a recent addition to the work of the Scottish Prison Service, where my influence has been limited to date. It sends out a wonderful message that the Prison Service has embraced someone joining its board from a local authority background. It clearly wants to build bridges.

We must always bear in mind the locus of the new community justice authorities and the focus to the discussion that they will bring. I will attend an SPS board meeting tomorrow, to which local authority conveners have been invited. The SPS has created liaison officer posts for all the CJAs. Those posts have now been taken up, which will assist greatly in the process.

**The Convener:** Given Mr Baird's opening comment about the speed of the legislative process, the committee would welcome short, focused written communications to keep us in touch with the joint work as it progresses. The work is obviously at an early stage.

**Alan Baird:** I am happy to provide briefings to update the committee.

**The Convener:** That is excellent. Thank you.

Under the new arrangements, how much input will local authorities and social work services have to the risk management process while offenders are in custody? How will that input vary between different categories of offender?

**Councillor Jackson:** It is essential that local authorities, the ADSW and the SPS work together throughout the process. It is not as if, while somebody is a prisoner with the SPS, they should not have access to social workers, and the process should flow from their time in prison to when they come out of prison.

**Alan Baird:** I agree. It is an enormous challenge to sort out exactly where priority should be given. It is clear that the bill gives top priority to those who are likely to cause serious harm and to be

serving longer sentences. However, a word of caution is required. Those who serve short sentences might not have been imprisoned for violent offences, but their past might suggest that there is a risk of their causing harm, so we cannot afford not to be involved in assessing the risk that they represent. Given the nature of human behaviour, there is every possibility that even those who have been assessed as low risk and are serving short sentences could go on to commit fairly serious offences.

**The Convener:** Are you suggesting that all records on the individual should be considered during your assessment?

**Alan Baird:** We must consider all the records. My worry is that, collectively, we will miss something in the risk assessment process, and I am concerned about how we can consider all the records, given the sheer volume of prisoners on whom we will carry out assessments and make recommendations.

**Mr Kenny MacAskill (Lothians) (SNP):** The committee understands that an extra £500,000 will be allocated for social work input to the integrated case management system. Given the increased number of offenders to be assessed, is that sum adequate?

**Alan Baird:** From the ADSW's point of view, the overall cost is more likely to be around £12.5 million; whereas the figure of £7.45 million is given in the financial memorandum.

We take a tiered approach and put the greatest amount of work and supervision into those who pose the highest risk. However, questions arise about how we reduce reoffending. There needs to be a strong connection between the bill and the Management of Offenders etc (Scotland) Act 2005. If we have prisoners who are serving between 15 days and six months, we will continue to have a revolving door, and we propose that a considerable sum of money should be spent to try to break the cycle and reduce reoffending in the community. If we do not do that, prison numbers will rise considerably, as you heard from Rachel Gwyon, who said that the proposals will add 700 to 1,100 extra prisoners to the daily prison population.

We are trying to consider the whole system—from prisoners who serve 15 days right up to those who serve four years. How much money do we need to provide not only the proper risk assessments but the appropriate level of supervision that is proportionate to the risk of harm?

**Councillor Jackson:** There are two types of risk that we must take into account. The first is the risk of harm, and the second is the risk of reoffending. If we are to make a difference to the

revolving-door problem to which Alan Baird referred, we must look seriously at the risk of reoffending.

**Mr MacAskill:** The Executive hopes that the new arrangements under which all offenders who serve a sentence of 15 days or more will be subject to some form of restriction in the community will help to address the problem of reoffending. Is there any evidence that offenders who have been subject to community intervention after a period in custody are less likely to reoffend than those who do not receive any intervention?

**Councillor Jackson:** Alan Baird will say whether there is concrete evidence of that. The experience of professionals who work in the area, including the experience of most of the Scottish Prison Service, suggests that programmes that are delivered for short-term prisoners do not work—they are not particularly effective. The same programmes delivered in the community would have far more chance of success. That reflects the artificiality of short-term sentences. When people who have been in prison for only a few weeks or a couple of months come out, they want to forget about that period in their lives and everything associated with it. If programmes were delivered in the community, they would have far more meaning to people.

**Mr MacAskill:** Is there any empirical evidence to which Alan Baird could refer us, either today or in a written submission?

**Alan Baird:** There are statistics available. I do not want to quote them wrongly this afternoon, but I am happy to try to provide them for the committee. Are members seeking evidence on the difference between the reconviction rates of those who have served a custodial sentence and those who have been subject to some form of supervision?

**Mr MacAskill:** We are seeking evidence on the difference between the reconviction rates of those who served a custodial sentence, followed by some community intervention, and those who have merely served a custodial sentence.

**Alan Baird:** I am happy to provide the committee with that information.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** I thank COSLA and the Association of Directors of Social Work for their joint submission, which I have found useful.

The bill provides for all offenders with a combined sentence of six months or more to have a supervision condition attached to their licence, once they are released. The Executive has estimated that that will result in an additional 3,700 offenders becoming eligible to receive some form of supervision on release. That is slightly different

from the figure that you have provided, but not enough to argue over. How much of an impact will the bill have on resources for criminal justice social work services? Is it possible that any positive effects of supervision may be diluted by the increase in the number of those who require supervision?

**Councillor Jackson:** It is early days and we are still working on costings. We need to be realistic about costings and to have a robust system for estimating them. There is also an issue of capacity. All members of the committee will be aware of the difficulty that we have had in previous years in getting enough social workers.

**Alan Baird:** It is particularly important that we use scarce resources—in this case, qualified social workers—to greatest effect. Our written evidence highlights the importance of having a paraprofessional grade. “Changing Lives: Report of the 21<sup>st</sup> Century Social Work Review” emphasised the need to train staff not to the level of qualified social workers but so that they can work with lower-level offenders. Criminal justice social work has a good history with Scottish vocational qualifications and criminal justice assistants. A number of lower-level offenders need to be directed to a range of services, and it is important that those services are available when they are needed. That will allow qualified social workers to work at what we describe as tier 3—with offenders who pose the highest risk of harm to the community.

14:30

**The Convener:** How many new staff will you need and how quickly will you be able to put them on the park? After all, if the legislation is passed, it will not be that long before it is implemented.

**Alan Baird:** First, I should point out that yesterday’s headline in *The Herald*, which said that 500 new staff would be needed, somewhat misrepresented our position. We think that 100 new staff will be needed, although not all of them will necessarily have to be qualified social workers. However, we still need to break down that figure between qualified social workers and the paraprofessionals I was talking about. If the need is for qualified social workers, we will have a bit of a problem, because we do not have great numbers of them around at the moment.

**The Convener:** How long will it take to train up brand new social workers?

**Alan Baird:** Prospective social workers need to undertake the four-year honours degree course, which was started up only last year. We would certainly need to increase the number of those taking such courses.

**The Convener:** I am sorry to push you, but surely if this four-year degree course was introduced only last year, people on it will not be available for employment for another two or three years.

**Alan Baird:** Before the course was introduced, we had a fast-track system and the social work diploma. We are now moving from the diploma to the degree. Although people are still coming through the system, they are not coming through at the rate that will be required if the bill is passed and its provisions implemented next year.

**Councillor Jackson:** That is why it is important for us to quantify those who need the direct intervention of a qualified social worker and those who can be handled under the supervision of qualified social workers. We need to clarify the term "supervision", because it can cover, at the bottom end, signposting and brokerage and, at the top end, one-to-one sessions with those who pose the most risk.

**Colin Fox (Lothians) (SSP):** I am struck by the figures, which suggest that an additional 3,700 or 3,800 cases will need to be supervised. In your submission, you say that at the moment criminal justice social work in Scotland supervises 600 offenders. Surely that leap from 600 to 3,800 is a bit stark.

**Alan Baird:** Of course, the 600 figure refers to those serving four years or more who would be released on some form of licensed parole. The 3,700 figure refers to the number of people serving sentences of from six months to four years. You are right to say that it represents a massive increase in the work that we will be required to carry out.

**Colin Fox:** So the 3,700 will be additional to the 600 offenders who are supervised at the moment.

**Alan Baird:** Absolutely.

**Colin Fox:** I am not really interested in whether 100 or 500 new staff will be needed to implement the bill, because the convener has already touched on the time lag between the bill's implementation and new social workers coming into the system. Can you outline the difference between paraprofessionals and criminal justice social workers?

**Alan Baird:** A paraprofessional does not have a social work qualification, but is trained in key areas. For example, certain people employed in the Scottish Ambulance Service or the legal profession are able to undertake a variety of duties and responsibilities, but not those set out in the Social Work (Scotland) Act 1968. Although they play a supportive role, they are also able to work independently in some situations with the support and under the supervision of qualified staff such as senior social workers.

**Colin Fox:** Would a paraprofessional be able to intervene in situations or supervise offenders, or do such jobs require four years' training?

**Alan Baird:** They are able to take on brokerage duties and certain low-level jobs that might be termed welfare work. For example, they might deal with some of the chaos surrounding the housing, debt and poverty issues that mark offenders' lives and underpin offending behaviour. Such issues need to be sorted out before the offending behaviour can be dealt with directly. Paraprofessionals might work independently, but they might also work alongside qualified colleagues.

**The Convener:** As the people who are on the front line, how appropriate do you think it is for unqualified staff to supervise released prisoners? I presume that the proposal comes from the Executive.

**Alan Baird:** They would not be unqualified; they would be partly qualified. We have to link that back to the earlier points on risk assessment. It is only once we have done a risk assessment that we can determine what work needs to be undertaken with or by any individual. Until such assessments are undertaken, I will not be sure what the figures will be or how we should respond to any one individual.

**Cathie Craigie:** I am interested in that part of the evidence and that the ADSW is willing to take that work forward. Many people out there in the voluntary sector are doing the job without qualifications. Formal training would be welcome.

In answer to my previous question, Councillor Jackson referred to capacity and said that resources will have to be used to best effect. Will you outline for the committee the different methods of community supervision of offenders? Will you expand further on what changes would be required to take account of the proposals in the bill?

**Councillor Jackson:** We have been talking about social workers and local authorities, but the voluntary sector has a significant role to play, although work by that sector would be commissioned through local authorities and through the newly formed community justice authorities. There are people in the voluntary sector who are delivering services for us at the moment—we see an expanded role for them.

**Alan Baird:** I am not sure exactly what information Cathy Craigie is looking for.

**Cathie Craigie:** In appendix 1 of your briefing, you provided a list of the different tiers of support. Will you paint a picture of that for the committee, so that we can understand more about what is available at the moment and how that might change to take account of the legislation?



**Alan Baird:** It all starts with a social inquiry report. Such reports take up considerable time—perhaps more time than colleagues and I would like them to. We are not sure what the impact on social inquiry reports might be in relation to sheriffs making recommendations on the custodial part of a sentence, which can be between 50 per cent and 75 per cent of the total. That should be borne in mind.

A lot of work is being done on community disposals, community service, probation and the developing through-care scene. Through-care is being done jointly with the Scottish Prison Service and, as Councillor Jackson said, colleagues in the voluntary sector, to prepare people for release from long-term sentences. We must ensure that, under the bill, we are in a position to offer offenders a wide range of services linked to local need.

I am concerned that we might end up doing more breach reports for the Parole Board for Scotland because people end up going back into the prison system—my worry is that that will deflect us from dealing with the needs of offenders.

We have touched on the volume aspect, which is of great concern to me and colleagues. More people will be working in the prisons, but there will also be more in the community too. My concern is that we could dilute some of the services if the changes are not resourced properly. By diluting them, we increase the likelihood of reoffending and of offenders causing harm. Does that answer your question?

**Cathie Craigie:** That is fine.

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** Reference has been made to the issue of the revolving door. The documents accompanying the bill state that social work practice shows that services that are provided in the community for less than three months are not effective in reducing reoffending behaviour. Given that the bill, in its current form, will not change that situation for half the prison population, do you believe that there are any measures in the bill that will actually reduce reoffending?

**Alan Baird:** I do not believe that the bill will have an impact in relation to short-term sentences. By and large, if we want to make an impact, we would be better to take those currently serving short-term sentences—a massive number of people—out of the prison system and work with them in what are known as community link centres, where we can bring together key professionals in an effort to reduce reoffending. I do not see reducing reoffending as a key part of the bill; that is not where its emphasis lies. What I am trying to do is connect the bill with the agenda

for reducing reoffending—the target is a 2 per cent reduction by 2008—and to consider what contribution social work can make to helping Scotland become a safer community.

**Jeremy Purvis:** Does COSLA have a view on that?

**Councillor Jackson:** While the bill might not specifically have such an impact, I am looking at it in the context of everything else that is going on in the criminal justice field and the efforts that are being made to reduce reoffending. The widely held view on short-term sentences is that a lot of the people who are serving such sentences could be better served—for their own sake and as far as the community is concerned—by having a non-prison disposal. That is not to say that there should be an end to short sentences, because there must be some capacity to deal with those people who just will not take the opportunity that is offered to them. However, there is a widely held belief among my colleagues that we could do far more for people on short-term sentences and that we could relieve some of the pressure that is on the Scottish Prison Service to deal with the higher end of risk management.

**Jeremy Purvis:** From the point of view of COSLA and the ADSW, how credible is the proposition that individuals can at least, while they are in prison—even for a short sentence—be signposted to services in the community, so that they could start a number of programmes at that stage?

**Alan Baird:** That is happening to some extent at the moment, through the transitional arrangements, particularly in relation to drugs in prison. Attempts are being made to establish a stronger connection for short-term prisoners during their sentences and to help them to find their way to appropriate resources, bringing continuity to those services both in the prison and in the community. However, those efforts are limited to substance abuse only.

A range of other issues, such as mental health, homelessness, poverty and dysfunctional families, could be dealt with much more effectively if we held on to people within the community. The disruption caused between the community and prison makes it difficult to do much more than signpost the right service. As Councillor Jackson said earlier, the voluntary sector could do a lot more to build services around individuals. There is evidence of that in Edinburgh through the community link centres, but I do not think that it happens enough at the moment.

14:45

**Councillor Jackson:** The point is that work is going on. We have social workers in prison, and

either housing officers visit people in prison or prisoners are allowed out to visit housing officers before they are released. There is a level of continuity at the moment; we just need to boost it.

**Jeremy Purvis:** I want to be clear about the combined position of COSLA and the ADSW, especially in relation to paragraph 6 of the joint submission. Is it your view that part of the increased expenditure attached to the bill would be more effectively spent on services in the community if there was an end to short-term sentences? As I said before, 48 per cent of the average daily prison population are serving sentences of less than three months, so we could use that period as a definition of short-term sentences.

**Councillor Jackson:** I do not think that we would tie the idea to money that might come with the bill, but that is our combined position. I represent a range of views, so some people will not subscribe to what I am saying. However, the majority view is that it is more cost effective to handle many people in the community rather than in prison, because of prison costs and the lack of effect that some of the programmes delivered with short-term sentences have.

**Alan Baird:** I agree with Councillor Jackson.

**Jeremy Purvis:** On the period of time, I gave the example of three months. Is your view that, other than last-resort sentences for persistent low-level offenders, there should be a phasing out of sentences of less than three months?

**Councillor Jackson:** The majority view is that people given short-term sentences could be better served by community disposals.

**Jeremy Purvis:** Is that the same for the ADSW?

**Alan Baird:** Yes.

**Jeremy Purvis:** I want to move on to licence conditions being breached. Do you envisage a situation under the bill in which more offenders are returned to custody for breach of licence? In your evidence, you indicated some alternatives to returning to custody for breach of licence. What are they?

**Alan Baird:** I want first to pick up on short-term sentences, which are linked. Clearly, a high breach rate is likely with short-term sentences. The criteria mention being of good behaviour for up to six months. I guess that we should all be of good behaviour, and because someone is subject to licence it does not mean that they should be any different from those of us sitting around the room today.

On the wider point, which part of the submission are you referring to?

**Jeremy Purvis:** Forgive me for not having the paragraph to hand. I thought that I read that you were looking at alternatives to returning to custody for breach of licence—you might be able to help me out.

It is paragraph 7—the paragraph following the one I mentioned earlier—of the ADSW and COSLA joint submission, which states:

“There are questions around whether breach always warrants custody.”

**Councillor Jackson:** We have arrived at the same issue. Should people who breach automatically be put back in prison, or could another disposal take into account the fact that they have breached their conditions without there being a need for them to go back into custody? We have not thought through to the nth degree what that would mean, but we can come back to you.

**Jeremy Purvis:** That would be welcome.

I have a brief question that follows on from Mr Baird's comment about the social inquiry report. The committee may itself consider the issue, but can you tell us in what proportion of cases a social inquiry report is asked for when sentences are given in courts?

**Alan Baird:** The proportion is likely to be high when prison is being considered, but I do not have the figures in front of me. The number of social inquiry reports has risen considerably over the past few years. Sheriffs like them for many different reasons, for example they give good background information and options for sentencing. I wonder—this is only a thought—whether they will look more to social workers to help them to make recommendations on the percentage of a sentence that is to be served in custody.

**Jeremy Purvis:** Or indeed for recommendations on some of the conditions that should apply.

**Alan Baird:** Yes.

**Jeremy Purvis:** But that would not necessarily be a negative thing. If we put aside the resources issue for a moment, as a point of principle it would be a positive step towards good practice.

**Alan Baird:** You must take account of the number of social inquiry reports that are currently being produced and whether the figure is already higher than it should be. I would like it to be reduced, which might give us more capacity if sheriffs want to seek recommendations or the views of social work staff on whether the custodial part should make up 50 per cent or 75 per cent of the sentence.

**Maureen Macmillan (Highlands and Islands) (Lab):** I will go back to risk assessment and ask

you to clear up a point for me. Perhaps you clarified it in your oral evidence, but if you did I did not pick up on it.

Paragraph 11 of the ADSW and COSLA joint submission states:

"This joint process of risk assessment between Scottish Prison Service and local authority Social Workers raises difficulties related to the contract culture within SPS which would benefit from consideration."

Can you tell us about that contract culture?

**Alan Baird:** From my perspective, the contract culture has been very much part of the way in which the SPS has operated for many years. Currently, the SPS has a contract with each local authority in whose area a prison is situated. In the past, that has caused some difficulty in relation to the extent to which we are able to meet, with the resources that are available, the obligations that attach to the contracts. I would like a discussion to open up on the best way to provide social work services in prisons, particularly given the increased level of joint working that we have talked about today and which should happen under the 2005 act. There is a duty to co-operate. I would like to see a performance framework that covers expectations of both statutory and non-statutory work within prisons. There is now an opportunity, which has not existed in the past, to have a dialogue.

**Maureen Macmillan:** That is helpful.

I want to ask you about the role of the voluntary sector in more detail. I know from the committee's youth justice inquiry that the voluntary sector plays a huge part in delivering youth justice services. There is a lot of expertise in the voluntary sector. I know that there is expertise in the area that we are talking about now. Organisations such as Sacro and Apex Scotland operate programmes in prisons and also do work on the outside.

The Executive has said that it expects that local authorities might commission voluntary organisations to deliver all or part of the supervision aspects of an offender's licence. How much do local authorities rely on the voluntary sector? What is the policy on voluntary sector engagement?

**Councillor Jackson:** Local authorities rely on the voluntary sector significantly, but capacity issues will exist in the voluntary sector. One reason for establishing the criminal justice authorities—I mean community justice authorities; I make that mistake sometimes—was to bring people together to thrash out such issues. The voluntary sector will have a significant role, but we need to talk to it about its capacity to deliver. Given that the CJAs are still in their relative infancy, those discussions continue.

**Maureen Macmillan:** How much do you propose to involve the voluntary sector? One complaint from the voluntary sector about youth justice was that it was never involved in strategic planning or making strategic decisions—it was always brought in at the last minute. Will the voluntary sector have more of a strategic role?

**Alan Baird:** The situation has already changed—the community justice authorities have changed that. I am a member of a scrutiny panel that met last week to consider area management plans. Two members of the five-person panel were from the voluntary sector. It was clear from the management plans that the sector plays an increasingly important and vital role in the development of services, which will strengthen in coming years.

**Maureen Macmillan:** Which voluntary organisations are likely to be partners? I know about Sacro and Apex Scotland. Are there others?

**Alan Baird:** NCH has a good track record of working with offenders and my authority, Dundee City Council, has been an integral part of group work for offenders for some time. Victim Support Scotland is a major player in dealing with victims and that role is strengthening. I am sure that David McKenna, the organisation's chief executive, will be happy that I have made those comments. It is important to note that several smaller, local voluntary organisations are vital to meeting local needs and have identified gaps. Locally and nationally, the voluntary sector will play a significant role.

**Councillor Jackson:** The issue for CJAs will be how we involve all those organisations. It is fairly easy to bring on board bigger organisations, but we must ensure that smaller, local organisations feel that they are part of the scheme that we are operating and the new world that we face.

**Maureen Macmillan:** I presume that you are considering service level agreements and so on locally. How does that fit in with what you said about qualified social workers and paraprofessionals? I am aware that although many voluntary organisations employ qualified social workers, many have people who are not qualified social workers but who have deep expertise in a narrow band. I presume that you would recognise such expertise.

**Alan Baird:** Absolutely. In some respects, that is no different from the situation in criminal justice services in local authorities, which have a mixed bag of people who are qualified in social work and people who are qualified in other areas but who have commitment, passion and great experience. All those aspects need to be harnessed to provide the right services to individuals in the community.

**Maureen Macmillan:** However, you are still anxious that the voluntary sector does not have enough capacity.

**Alan Baird:** The increase in numbers that we have talked about means that it is a challenge for us all to ensure that we find the right resources and train people in the required way. Unfortunately, I do not have an answer to all that this afternoon.

**Maureen Macmillan:** Thank you. That is helpful.

**Councillor Jackson:** The aim is to build capacity in the community.

**The Convener:** Representatives of the voluntary sector will give evidence next week.

**Cathie Craigie:** Community justice authorities have been mentioned. They are in their infancy. Are they ready to take on the additional work that will be generated if the bill is enacted?

15:00

**Councillor Jackson:** They are in their shadow year at the moment, and will go live in April. It is fair to say that some authorities are further ahead than others. We have to ensure that we share best practice and the experiences of the authorities that are further ahead.

**The Convener:** We turn now to weapons. I am conscious of the time, but a lot of vital evidence is emerging this afternoon.

**Jackie Baillie (Dumbarton) (Lab):** I will be swift, convener.

In its response to the Executive's consultation, COSLA suggested that anyone who really wanted to purchase a knife would find a way around the licensing restrictions. A number of business activities are already covered by licensing schemes. Why do you think that a licensing scheme for knife dealers would not be a useful step forward?

**Councillor Jackson:** Lindsay Macgregor has more expertise than I do in this area.

**Lindsay Macgregor (Convention of Scottish Local Authorities):** In itself, the bill will not reduce knife crime, but COSLA believes that it will send out the right messages and that it will be a useful part of a bigger jigsaw.

We are not saying that everybody will automatically divert their purchasing power, but we will have to keep an eye on the situation. The police will have to monitor it closely over the next few years to see whether the locus for sales shifts to internet mail order, for example, or whether the cutting off of local sources reduces knife crime—as we hope it will. COSLA welcomes the bill, but it must be part of a much bigger picture of measures to address knife crime.

**Jackie Baillie:** Does COSLA foresee any problems in enforcing the proposed licensing scheme?

**Lindsay Macgregor:** Not particularly; not in most places. The extent of knife crime is surprising, even in small towns. It is not just an urban issue. However, trading standards officers and other officers in local authorities already have pretty good relations with their business communities, and they know the kind of places that will be licensed, therefore licensing will not be a major issue. However, some little points might have to be ironed out and the definitions will have to be clear. There might be a burden on second-hand dealers that pay other licence fees. How can we ensure that people go along with the scheme voluntarily rather than having to be forced to do so?

In our written submission, we point out the resource issues for local authorities. Pieces of legislation such as the bill are important, but they are not necessarily accompanied by resources that allow there to be a single dedicated post in each local authority. The work might take up one eighth or one twentieth of somebody's time. There will be fees, but we have to ensure that they cover such costs. With more and more small pieces of legislation, the costs accumulate, and can amount to a greater burden on local authorities.

We have warned you about those kinds of issues. We have also pointed out one or two matters that might have to be explored further. How will the legislation be enforced when people sell swords, for example, at sports events? How can we ensure that local licensing arrangements are not a burden on local enterprises that will be captured by the licensing regime? One or two anomalies will have to be sorted out to ensure that the legislation can be fully implemented.

**Jackie Baillie:** That was a helpful response. No doubt we will come back to ironing those issues out.

One issue troubles me: the bill makes no distinction between a domestic knife and a non-domestic knife. Perhaps we do not need one, but I am not sure that some of the cleavers that I have seen in kitchens around Scotland would be regarded as domestic knives. Will the lack of a definition be confusing for retailers as they wonder whether they need to apply for a licence or not?

**Councillor Jackson:** It probably will be.

**Jackie Baillie:** Have you given any thought to a definition?

**Lindsay Macgregor:** We have not as yet. We can simply see that, without a definition, there may be difficulties in enforcing the legislation. We also recognise the pros and cons that are involved. Certainly, the proposal merits further discussion.

**Jackie Baillie:** Is it the place of the Executive to offer guidance to local authorities in this regard?

**Lindsay Macgregor:** Joint responsibility is probably involved, as trading standards officers and others bring a great deal of expertise to the area. They also know what makes sense in the context of their expertise.

**Jackie Baillie:** You spoke of anomalies in the conditions that are applied by authorities throughout Scotland. Obviously, the bill allows for the Scottish ministers to set minimum conditions by way of statutory instrument and for authorities to impose additional conditions. What conditions are likely to be applied to the licensing schemes that the local authorities will run? What additional conditions will authorities seek to impose?

**Lindsay Macgregor:** I cannot give a full answer to the question, but I can get further information for you. Depending on the circumstances, all sorts of things might be relevant, for example showing proof of age in the shop and applying local curfews to knife sales. Trading standards colleagues are best placed to provide further information on the matter.

**Jackie Baillie:** It would be helpful if we could receive that.

**The Convener:** It would be extremely helpful if the COSLA representatives would ask their trading standards colleagues to submit information to the clerks.

**Councillor Jackson:** We will do that.

**The Convener:** Thank you.

**Maureen Macmillan:** Further to Jackie Baillie's question, perhaps it would be an idea to require some sort of identification. I understand that some local authorities require the production of photographic ID when purchasing certain second-hand goods. Would it be a good idea to make that a licence condition for non-domestic knife purchases?

**Lindsay Macgregor:** Trading standards officers are considering that issue at the moment, alongside their consideration of due diligence factors, such as being clear about the purchaser's purpose and intent when buying an item. There are different ways of imposing conditions.

**Maureen Macmillan:** Instead of leaving the decision to individual local authorities, should the Scottish ministers impose the production of photographic ID as a standard licence condition?

**Lindsay Macgregor:** A balance has to be struck in terms of the additional burden that is placed on authorities. In some areas of Scotland, the requirement will be a fairly sensible one, whereas it will be less of an issue in other areas. In the latter areas, it could be seen as an additional burden for no good reason.

**Colin Fox:** I have two relatively straightforward questions. First, have you got to the point in your discussions where you have an idea of the charge that an authority will make for a knife dealer licence?

**Lindsay Macgregor:** I believe that it will be around £50.

**Colin Fox:** Why is it pitched in that way?

**Lindsay Macgregor:** That is the rate for a number of other similar licences. We need to strike a balance between the charge not being too burdensome and having some meaning. The thinking on the matter is not fully developed as yet.

**Colin Fox:** Secondly, was any consideration given to an alternative to a licensing scheme? I am thinking of something that would have the same impact on the availability of knives but that does not go down the licensing route.

**Lindsay Macgregor:** I have no idea whether the Scottish Executive has pursued any other line.

**Colin Fox:** Did COSLA come up with any alternatives in its deliberations?

**Lindsay Macgregor:** Hand in hand with the approach that is being taken on licensing, we are looking at the promotion and marketing of knife sales. We want to see whether anything more needs to be done alongside—but not instead of—the bill. There is room for us to carry on exploring the issue to see how we can maximise the impact of the scheme. The feeling is that knives can be inappropriately promoted and marketed. We want to see whether measures can be included in the bill—or implemented alongside the bill's provisions—to lower the image of knives, as that is part of the issue in terms of knife crime.

**Colin Fox:** As you say in your submission, in addition to clamping down on promotion, you want the bill to place

"a condition on dealers to display a notice stating the offences".

**Lindsay Macgregor:** Yes, absolutely. We want to raise awareness in general. The Scottish Executive and local authorities can work together on that.

**Mr MacAskill:** I am interested in the suggestion that the cost of a licence should be only £50, on the basis that it should not be too burdensome. Surely we want the cost to be burdensome so that a knife is not seen as simply another commodity? If some onus is to be placed on those who engage in the selling of knives, perhaps a significant cash requirement would be one way of filtering out those who are simply trying to make a fast buck.

**Councillor Jackson:** We need to balance that against the fact that some people sell knives for

specific purposes, such as to meet the needs of gamekeepers.

**Lindsay Macgregor:** Our starting point is that the majority of those who currently sell knives probably do so for reasons that are okay. However, the amount of bureaucracy involved in the licensing scheme might put off some retailers but not those who sell fishing knives and so on. We need to strike the right balance.

**The Convener:** I thank the panel for answering our questions this afternoon. We look forward to receiving the documents that were promised would be sent to the clerks. We will now arrange for the second panel of witnesses to sit at the table.

Good afternoon, gentlemen, and welcome to the next part of our evidence taking this afternoon. I welcome our second panel of witnesses: Superintendent William Manson and Detective Superintendent James Cameron, who are both from the Association of Chief Police Officers in Scotland; Chief Superintendent Clive Murray, who is the national president of the Association of Scottish Police Superintendents; and Detective Chief Superintendent John Carnochan and Will Linden, who are both from Strathclyde police's violence reduction unit.

I will start off the questioning. How do police forces in Scotland currently deal with breaches of licence and recall to custody? I will leave it to the witnesses to sort out who should answer that question. I know that they are all bursting with information.

**Chief Superintendent Clive Murray (Association of Scottish Police Superintendents):** The police approach can involve different ways of dealing with that, but it is fairly simple. If we arrest an offender whom it transpires is subject to licence arrangements, we notify the courts or social work and they then intervene. At the moment, it is not that much of a police function.

**The Convener:** In other words, recall to custody is not the province of the police, but the police will act on it.

**Chief Superintendent Murray:** We will act on it and detain the offender. If the offender is recalled to custody, we will facilitate the arrest from the individual's abode or wherever they are, and put them back into the criminal justice system.

**The Convener:** In other words, the police are not the lead on the recall.

**Chief Superintendent Murray:** That is correct.

15:15

**The Convener:** Can you give us an estimate of how much police time is spent on dealing with breaches of licence and recalls to custody?

**Detective Superintendent James Cameron (Association of Chief Police Officers in Scotland):** It is a small part of our business, but it occurs on a daily basis. It is difficult to quantify, because the people who figure in that process become part of the everyday warrants system, and we usually return them to prison as the result of a warrant being issued. It is difficult to quantify what percentage of our business that constitutes, but it is a daily event.

**The Convener:** What are the triggers for recall and how are the police called to deal with it?

**Detective Superintendent Cameron:** There are a number of triggers for recall, mostly through the social work support for individuals in the community. If someone breaches the terms of their licence or whatever order they are subject to, the supervising social worker reports back to the Parole Board for Scotland, asking for a recall to prison. If it is decided that a recall is required, a warrant is granted. There is also some form of recall to prison by the commission of a further offence, although that is less to do with the licensing arrangements at the moment.

**The Convener:** How long does it take from somebody being put into the system to the police being called in to recover them?

**Detective Superintendent Cameron:** That is difficult to quantify. It depends on the nature of the breach of licence for which they are being recalled. I understand that a report is submitted by the social worker to enable the Parole Board to make its decision. There is some concern about the length of time that that takes, but that is a matter for social work. It is not an instant process. The police react as soon as they can, once they have received the arrest warrant for the individual. It is more a question of the social work process.

**The Convener:** Do your organisations have a view on how that process works?

**Detective Superintendent Cameron:** Yes. The quicker it works, the better. If the process is about reducing reoffending, it needs to be speedy. In my view, people should quickly be recalled to courts to answer for the difficulties that they present to the community.

**Mr MacAskill:** I am conscious of the comments that you have made about quantifying time. The Executive estimates that the bill might result in an extra 8,600 offenders a year serving part of their sentence on licence, which could result in 1,290 being recalled. What impact would that have on police resources?

**Detective Superintendent Cameron:** It is not as simple as looking at the process of recalling individuals to prison. As you heard a moment ago from our social work colleagues, it is about the impact that the individuals have on crime and the level of risk in terms of reoffending and causing serious harm to the community. Anything that increases reoffending in the community will create extra work for the police and extra suffering for the community that has to deal with the outcomes of the process. It is not a matter of simply quantifying the time that it takes police officers to arrest individuals and take them back into the system; it is about the effect that the new system will have on offenders' living in the community.

**Mr MacAskill:** The Executive has also stated that allowing the police to return individuals to custody without needing to go through the courts will help to reduce reoffending. Although that may be the case in the short term, is it your experience that individuals who are returned to custody for breaching licence conditions ultimately desist from engaging in criminal activity?

**Detective Superintendent Cameron:** Clearly, there is a need, on occasions, for respite for the community, and the only way to provide that is to place offenders in custody. I was interested in the earlier question and response about three-month sentences. There is no simple equation, as such a sentence may be based on a course of conduct rather than an individual event. Although I might support the view that a three-month sentence is inappropriate, there is a lot more detail than the length of service to be looked into. That is another issue for us to address.

**Chief Superintendent Murray:** In relation to reoffending, we can be clear about one thing: when individuals are in prison, they do not reoffend. It should be no surprise that having record prison attendance has led to reduced levels of crime. Over recent periods, the police have been effective in detecting crime, which has led to more people being presented to the courts and being sent to prison. As a consequence of that, we have a reducing crime rate.

**The Convener:** We do not want to pry into police intelligence. However, while we are considering the bill, the local police forces will want to keep a watching brief on those individuals who, in their opinion, might be a risk. Is that something on which you will seek to input into our evidence taking over the next couple of weeks? I am talking about the role that you have or assume in the community when somebody is out on licence.

**Chief Superintendent Murray:** Our role in the community is fairly clear: we work with partners to make the best-informed decision on the risk that an individual presents. We have gone through the

bill in some detail and we believe that there are areas in which further clarity is required about the police role in risk assessment, such as the input that will be required from the police in relation to information that is provided to the parole board and the information that will be required from the police in the context of a breach of community licence. Particularly in relation to sex offenders, we have built up a strong partnership with criminal justice social work and others in the criminal justice system in transferring relevant information so that the best decisions are made.

**Mr MacAskill:** What is your evidence for the statement that the reduction in some crime figures has been the result of imprisonment as opposed, for example, to there being fewer young males? Throughout the generations in our society—and, indeed, across societies—it is usually young males who perpetrate crime.

**Chief Superintendent Murray:** I cannot give you scientific information. Anecdotally, I can tell you that the feeling among senior police officers who are involved in day-to-day policing in the community is that, once the chronic recidivists are incarcerated, crime levels go down. There is plenty of information on that from on-going analysis in each of the communities—we call them police divisions—across Scotland. There are certain key offenders who commit crime far in excess of other offenders. Invariably, when those offenders are in the community, crime levels go up.

**Mr MacAskill:** How does the fact that we are locking up more of those people square with the increase in the levels of some of the most serious offences?

**Chief Superintendent Murray:** Can you repeat that, please?

**Mr MacAskill:** I do not follow your logic. Some of the more serious aspects of criminality are increasing—statistical evidence shows that they are on the up. How do you square increasing custodial sentences with the fact that the levels of some serious crimes are increasing? Surely, your logic would dictate that they would be coming down.

**Chief Superintendent Murray:** We regularly receive clear detail of the amount of crime that is going on in communities. From the information that we receive, we see a correlation between chronic recidivists—offenders who commit crime within communities regularly—being placed in prison and crime levels going down.

**Detective Superintendent Cameron:** The difficulty in making one law fit all is that there are those who fall outwith the distinct definitions. The recidivist is a fine example of that. The police are just waiting for certain individuals who are in

prison at the moment to come out of prison so that they can catch them and put them back in. That is the harsh reality. We must find a way of treating those people differently from individuals who are in prison for three months when they should not be there. That is the reality. We must take different steps rather than make one size fit all. The start of that process must be to assess an individual's risk when they are in prison, and it should extend to assessing their risk when they come out of prison and before they go in the next time. We need to join up the process a bit more and make it tailored to the individual, which I think it is intended to be.

**Superintendent William Manson (Association of Chief Police Officers in Scotland):** A distinction must be made between reoffending and the risk of harm to the community. All too often, we get wound up with the purely statistical nature of reoffending, whereas the risk of harm is much more important. The development of multi-agency public protection arrangements throughout Scotland as a result of the passing of the Management of Offenders etc (Scotland) Act 2005 will go some way towards assisting us to concentrate on the risk of harm as opposed to purely on statistics.

**Jeremy Purvis:** I want to develop that point. Sheriffs will have decided that some of the 48 per cent of all offenders who are serving prison sentences of less than three months are a danger to society, which is why they are in prison. I presume that those people will not stop being a danger to society once they are released into the community after five and a half weeks. In that context, the bill includes additional conditions on release that can be tailored to individuals.

Probably more than half of the submission from the Association of Scottish Police Superintendents consists of statistical analysis, which leads to one conclusion: imprisonment has not been the right approach for the large majority of those who are serving short-term prison sentences. What are the alternatives to that approach and under what circumstances should those alternatives be used? If there is no desire under any circumstances to abolish prison sentences of less than three months, what criteria should be used for imposing short-term prison sentences? I think that the ASPS submission mentions a number of benefits that would result from increasing the pool of available sentencing options. What are those options?

**Detective Superintendent Cameron:** We would probably agree that short sentencing does not work, but a short sentence can sometimes be the only means of respite for a community. That cannot be ignored. Sometimes there will be respite for a community only when a person is put in prison. That is why we must tailor measures to individuals rather than take a collective view—

otherwise, individuals will be missed and will slip through the system and continue to commit crimes. The issue is not the harm that is caused by individual crimes that are committed, but the cumulative harm that people will cause over the period during which they are outside the prison regime. We must concentrate on that.

**Jeremy Purvis:** I asked specifically about the circumstances under which people should receive prison sentences of less than three months. I want to be clear. Let us consider an individual with four convictions for assault or an individual with five antisocial behaviour orders who is a real nuisance. Would a custodial sentencing option be taken purely so that such people will be out of the community and the community will therefore have relief for five weeks before the person returns to it? The same pattern recurs time and again. What is the alternative to such sentences?

**Detective Superintendent Cameron:** The alternative is taking different approaches with different individuals. It is not simply a matter of saying, "Another five weeks will do it"; we must specify what is planned for an individual on their release after five weeks. Specialised services can be put in place to deal with the points at which there is most need. We should look beyond sentencing and consider criminals' individual needs.

**Superintendent Manson:** We should also consider the difficulties in engaging with certain people. This may sound harsh, but some people who commit crimes live outwith the community. Signposting has been mentioned. How can we engage with such people, point them in the right direction and provide appropriate services? We must ensure that we can provide support for people with drug-related or other needs at the appropriate time. If we cannot get such people to engage in the community, prison-based assistance could be the best way of engaging with them formally over a short time.

**The Convener:** We will now consider part 3 of the bill, which deals with weapons.

**Jackie Baillie:** As the witnesses know, the bill does not seek to ban the sale of non-domestic knives; rather, it simply requires retailers to obtain a knife dealer's licence if they want to sell such items. I direct my question first at the witnesses from Strathclyde police's violence reduction unit, who have been sitting quietly. How much of our problem with knife crime is down to the irresponsible selling of knives and how much is down to their general availability?

15:30

**Detective Chief Superintendent John Carnochan (Strathclyde Police):** I do not think



that there are any statistics on the role that is played by irresponsible selling, but I am sure that we can all provide anecdotal or photographic evidence of some outrageously stupid activities.

I know that we are discussing how to implement the bill, but we must remind ourselves that we are trying to reduce the level of access that young men, in particular, have to knives. Statistics show that, in serious assaults or murders in homes, the weapon is likely to be a knife from the kitchen drawer. However, in assaults on the street, the weapon is likely to be a locking knife. After all, such weapons need to be concealed and, for obvious personal safety reasons, you would not put any other sort of knife down your shorts. We simply have to reduce the availability of such knives.

As the colleague from COSLA pointed out, none of us is suggesting that, on its own, the bill will resolve issues that have been around for decades. However, when taken with the other measures that either exist or are about to come into force, it can contribute significantly to addressing these problems. As I have said before, if legislation can save one life, it can be counted as good legislation, and we think that the bill could be good legislation.

**Jackie Baillie:** One of the committee's reports has quoted you before to that effect, and no doubt your view will find its way into the report on this bill.

I take your point that the bill is one piece of the jigsaw. However, what specific provisions will limit immediacy of access to knives, which is the outcome that we all want?

**Detective Chief Superintendent Carnochan:** Some young men carry these knives as a badge of pride, and I imagine that there is competition over the sort of knife that they have, where they got it, how long they have had it, where they hide it and so on. I certainly think that the bill will place more responsibility on the small minority of individuals who tend not to be so responsible when selling knives. We will have to wait for some of the detail to unfold, but any measures should include requesting the purchaser's name and address and proof of identity before a knife is sold and a ban on displaying or advertising these kinds of knives.

I think that the bill sends out a message to communities in the rest of Scotland that know where the knives are that, although we are not proud of the levels of knife crime in this country, we can perhaps take some pride in the fact that we realise that we have a problem and are trying to do something about it.

Of course, the bill will not solve the problem overnight, because young men who want knives

will get them. However, that is no reason not to try and limit access to them in the same way that we limit and license access to alcohol and firearms.

**Jackie Baillie:** I explored with COSLA the bill's lack of a definition of domestic and non-domestic knives. Does that concern you, or is a knife simply a knife? Is the key point not the kind of knife it is, but its potential to cause damage?

**Detective Chief Superintendent Carnochan:** At one level, it can be argued that a knife is a knife and the question whether it is domestic or non-domestic matters not a jot if it is about to be plunged into someone's chest. However, as far as the bill is concerned, we need to remind ourselves of what we are talking about. The knives that are used on the street are locking knives and, once we can get our heads around what constitutes a non-domestic knife, we will find it easy to reach a definition—although I am sure that, as with all legal definitions, it will be difficult to read.

**The Convener:** You mentioned proof of identity. Are you suggesting that when someone purchases a non-domestic knife they must give proof of who they are and where they live, which will be recorded by the dealer?

**Detective Chief Superintendent Carnochan:** I think that that would be a very wise course of action.

**Chief Superintendent Murray:** It is only reasonable to expect people to provide a good reason for purchasing a non-domestic knife. We feel that public expectation is a factor in that respect. The public expect us to try to control the displays of quite horrific implements that are on general sale in certain shops.

**Jeremy Purvis:** Given that the provisions do not refer explicitly to non-domestic knives, might the bill result in more incidents involving domestic knives?

**Detective Chief Superintendent Carnochan:** As I said earlier, there are practical implications. It is more difficult for someone who is out and about to hide a fixed bladed knife or even a machete. From that perspective, such knives would be difficult to carry but might be easier to detect. We have seen some increases in that regard.

**Jeremy Purvis:** You made the point that even a small cut that is made with a blade less than 3in long could prove to be lethal. The committee heard evidence from officials in the Executive bill team that a licence would not be required for the sale of folding pocket knives with blades of 3in or less. Do you have any comment on that?

**Detective Chief Superintendent Carnochan:** If you spoke to casualty surgeons or to Rudy Crawford, they would tell you that a 3in blade that is thrust into the upper torso is likely to hit a major

structure. However, the point is that what is proposed is a start. If we look at what is happening right now, a penknife or a Swiss army knife is unlikely to be used. A casualty surgeon will tell you that any knife that gets stuck into your upper torso will do you damage. Whether a victim lives or dies comes down to luck—as well as the availability of excellent health services—more than good judgment.

**Will Linden (Strathclyde Police):** Knife carrying is about status and a penknife is a low-status weapon. A penknife could kill if it were to be stabbed into the right area, but it is unlikely to be carried and there is little evidence of penknives being used in knife assaults. People tend to want to use the more high-status weapons.

**The Convener:** A member held an event in the Parliament about weapons and the gentleman who gave the presentation said that surgeons had told him that they are discovering that one of the most offensive weapons is the Philips screwdriver. Should Philips screwdrivers be part of any legislation and control?

**Detective Chief Superintendent Carnochan:** We do not have any statistics on Philips or other screwdrivers. I remember reading something about that in the press, but we do not have the figures. A surgeon might tell you that he has treated someone with such a wound, and I once investigated a murder in which someone had died as a result of being stabbed with a Philips screwdriver. There is anecdotal evidence, but it comes from a small minority of incidents. However, if someone was caught on Sauchiehall Street at 2 o'clock in the morning with a Philips screwdriver in their pocket, reasonable authority and lawful excuse might come into play.

**Chief Superintendent Murray:** Such a person would be dealt with anyway.

I have dealt with a murder in which the weapon was a screwdriver, but not a Philips screwdriver. Where do we draw the line?

**Colin Fox:** I take the point about the bill inhibiting how easy it is for someone to access a knife. Do you have any concerns about the impact that the bill might have on what might be described as illicit trading in knives, whereby people get knives off the internet or by mail order but not from licensed dealers? As your colleague said, young men will go to great lengths to get such a status symbol. Do you worry that there might be an increase in that illicit, unlicensed trade in knives?

**Detective Chief Superintendent Carnochan:** Absolutely. It is like grabbing the soap; if you grab it too tightly, it moves somewhere else.

We have some measures in place. At every airport in Scotland, people who are going on

holiday are handed a leaflet showing the offensive weapons that will be taken from them if they bring them back to the country.

We have contacted one of the biggest internet auction sites, which does not want to be involved in the auctioning of knives. It is therefore keen to demonstrate social responsibility, which is great; that would also afford the site some kudos.

You are absolutely right that it will be difficult. People will get knives from their friends or they will have them stashed. We will not catch everyone who buys knives abroad and brings them in through the airport. Some parents even buy them as gifts for their kids. You can see people, when they are abroad, oohing and aahing at these horrible, dreadful things. In the longer term, we have to change the prevailing attitude.

**Colin Fox:** What intelligence do you have on the knives that young men carry these days? What proportion of them comes from those avenues?

**Detective Chief Superintendent Carnochan:** We do not have statistics on the sources of knives. That said, we have a lot of statistics on knives and even on how we record the information. We are beginning to change and improve on all that. For example, we are introducing briefing and debriefing documents in cases of murder or attempted murder. We ask senior detective officers how we could have prevented the crime and whether any other factors apply. We ask what part was played by poor street lighting or alcohol—the latter is usually involved in such crimes. We also ask what type of knife was involved and whether we know where the accused got the knife.

We are looking to undertake research with the Scottish Executive on 42 people, all of whom were under 21 when they were convicted of murder involving a knife. The research will span an 18-month period, during which all those crimes were committed in the Strathclyde area. It is an absolute shock that, over that period, 42 people under the age of 21 were convicted of murder involving a knife. We want to undertake some proper research into the knives that were used in those crimes, one of which involves a woman.

We want the researchers to consider all the factors including how the accused got the knife; what their previous convictions were; and whether they had any involvement with the services. That links into the other legislation to which members have referred; it is about prevention and protective factors, reducing risks and finding out whether we can learn from the convictions. What has happened in the past is a pretty good predictor of the future. That said—as another witness said—it is hard to make accurate predictions. That is the difficulty with risk assessments.

**Colin Fox:** In relation to the statistics, everyone is shocked at the disparity between the west of Scotland and the rest of the country. Your evidence seems to be that that is largely the result of cultural issues; I do not think that you are saying that access to knives from abroad relates only to Glasgow and not to Dundee or wherever.

**Detective Chief Superintendent Carnochan:** If you speak to accident and emergency surgeons or police officers, you will find that Glasgow has a volume of such crime. However, I do not see a north-south divide or an east-west divide. There were 137 murders in 2004-05, half of which were committed with a knife and 25 of which were committed outwith the Strathclyde area. The issue is Scotland-wide, albeit that the figures will vary. Glasgow and the west may have the volume, but knife crime happens throughout Scotland.

**Chief Superintendent Murray:** Again, the common perception is that there is an east-west divide. However, as John Carnochan said, our information suggests that the problem is national. We need to address that.

**The Convener:** You say that the issue is national and you have spoken of knives being brought into the country from abroad. What about the knives that are brought by land into Scotland from other parts of the United Kingdom?

**Detective Chief Superintendent Carnochan:** We have as yet found no way of putting up anything at the border. I am not sure whether the committee wants to explore that issue.

The convener is right in saying that the problem is national. We liaise with the Association of Chief Police Officers—indeed, people in England and Wales are showing great interest in what we are doing on knife crime. We are talking not only about corner shops or shops in the Royal Mile; some big, national organisations such as B&Q need to think about and pay attention to the issue. It will be difficult for us to close down that avenue. We need first to win hearts and minds.

**Cathie Craigie:** The debate has been interesting. Even if the bill makes only a small step forward, I hope that it will be another step in the right direction. The bill will put in place the requirement for knife dealers to be licensed, although the scheme will not apply to private transactions. Will the bill produce the outcome that we want? Are you satisfied that there is no loophole in it? Should the committee lodge amendments to improve the bill?

**Detective Chief Superintendent Carnochan:** It would be very difficult for the scheme to cover private sales. The analogy that has been made involves second-hand dealers such as car dealers. For those who are involved in the merchandising of knives, the bill serves to send out a signal, and

that is enough. What is important is the availability of the provision—the demonstration that it is in place. We need to undermine the status of knives and challenge those who carry them in every way on why they carry them. That is the longer-term work.

I accept your point, but there is an issue around dealing at the higher end. There are people who collect swords, and it would be difficult for legislation to distinguish between such collectors and others who might acquire weapons.

15:45

**Cathie Craigie:** We spoke about people who were buying from a licensed dealer needing to have a form of ID. Would it be reasonable to require private dealers to have some information about a person to whom they have sold a knife?

**Detective Chief Superintendent Carnochan:** We have been told—I accept that the argument is not particularly robust—that a private collector who wanted to acquire a sword would find the cost prohibitive, and that the cost would bring its own restrictions. If someone was paying several thousand pounds at a private sale for a collector's piece that had some antique or specific other value, we could, if we were to investigate, track the money and find out about the individual in that way. In general, however, I think that it would be difficult to do that.

**The Convener:** That leads us neatly on to our questions on swords.

**Maureen Macmillan:** Are you content with the proposal on the restriction on the sale of swords, whereby the seller must take reasonable steps to confirm that a sword is being bought for a legitimate purpose, such as highland dancing, re-enactment or the like?

**Detective Chief Superintendent Carnochan:** I would like to know that the process will be robust enough to ensure that the individual selling the sword could explain, in the cold light of day, who they sold it to and the circumstances in which it was sold.

**Maureen Macmillan:** What steps would you like to be taken to achieve the aim of ensuring that the seller is selling the sword to a legitimate person or organisation?

**Detective Chief Superintendent Carnochan:** It would be the same as having proof of name and address. We could go from one extreme to the other. The seller could say, "You can come in and buy the sword, and we will post it to you." That would confirm the address and ensure that the goods were paid for. If a member of a highland dance or historical re-enactment organisation wanted to buy a sword, perhaps they could be

asked for the name of the organisation and proof of their membership. I do not have enough knowledge of such organisations to be able to say whether that would be possible, but that would be the ideal.

**Chief Superintendent Murray:** Such a system is not without precedent. It is routine for individuals who are buying shotguns and other firearms to have to produce evidence such as written confirmation of membership of a gun club. It would be reasonably practicable to do that with swords, but perhaps not with knives.

**Maureen Macmillan:** Last week the worry was flagged up to us that, although people might not buy swords costing thousands of pounds, they could go and buy a sword that was supposed to be for highland dancing or re-enactment and then go home and sharpen it. If they had to produce a document to show that they have membership in a bona fide club, would that help?

**Detective Chief Superintendent Carnochan:** Asking people to do that would not be particularly onerous. More important, it would not be onerous on genuine members of such clubs who are genuinely pursuing their hobby or interest. For those who are buying swords for other purposes, we should make the process as onerous as possible.

**The Convener:** Thank you for your evidence, gentlemen. If you feel after the meeting that there is further evidence that the committee could use, please send it to the clerks as soon as possible.

**Jackie Baillie:** The gentleman from the violence reduction unit referred to photographs of some extraordinary displays of knives. It would be helpful for us to see those photographs so that we can appreciate just how daft the situation is.

**The Convener:** I welcome our third panel of witnesses, who are from the Prison Officers Association Scotland. We have with us Derek Turner, the assistant secretary, and Kenny Cassels, the vice-chair. I thank them for coming.

The Scottish Executive has stated that the bill may result in a requirement for an additional 700 to 1,100 prison places. Is that a reasonable estimate? Given that the prison population is at an all-time high, how would such an increase impact on prison staff?

**Derek Turner (Prison Officers Association Scotland):** In our experience, such figures are always underestimates. When the legislation was changed to do away with people having to pay money to bail people out of prison, we were told that the prison population would reduce immensely but, within a few months, it was back to the same as before, because people broke the police bail and then could not pay themselves out,

so the prison population increased. When remission was changed to 50 per cent, we were told that that would empty the prisons but, within six to nine months, we were back in the same situation as before. Now we have fewer prisons than we had before and an all-time high population.

My colleague Kenny Cassels will be able to give you the figures on the reduction in front-line prison staff as a result of us doing our job to make greater efficiency savings for the Scottish Prison Service, which has had an impact on what prison staff can deliver. It has become increasingly difficult to deliver the services with the current number of staff.

**Kenny Cassels (Prison Officers Association Scotland):** If the bill came into force tomorrow, the Prison Service would implode. We are stretching at the seams at the moment, with record prisoner numbers—the figure now runs consistently at more than 7,000. I never thought that I would see the day when Scotland imprisoned 7,000 people, but we are doing so. Derek Turner is perfectly right to say that, in the past six years, as part of the continued drive for efficiencies in the Prison Service and the wider public sector, the service has reduced staffing numbers by 22 per cent. At the same time, prisoner numbers have increased by 29 per cent. We have fewer prisons and fewer staff, but more to do. As I said, if the bill came into force tomorrow, with no phasing in whatever and without our having in place the staffing, proper infrastructure and capital investment to build new prisons, the Prison Service would not cope.

**The Convener:** Given that there may be two new prisons, where will the prison staff come from? I believe that a shortfall in staff is on the horizon because of people retiring.

**Kenny Cassels:** It was decided to build two new prisons in 2002, when Jim Wallace made an announcement in Parliament on the SPS prison estate review. The contract has been awarded for the first prison, which will be at Addiewell. We hope that the second one will be at Low Moss, although that depends on the outcome of a planning appeal. The Scottish Executive and the Parliament set a challenge to the SPS and the trade unions to compete in an open-market competition with the private sector for the second new prison at the Low Moss site. As trade unions, we would have preferred the first prison to have been in the public sector, but we hope to achieve a positive outcome in the bidding process for the second one at Low Moss.

**The Convener:** My question was about where the staff will come from, should those prisons come on stream. Is it likely that quite a large number of prison officers will retire and, if so, how will they be replaced?

**Kenny Cassels:** The private sector will recruit its employees for the first prison directly. If the bid for the bridging the gap project is successful, the employees at the second prison will be public sector employees as enshrined in the civil service management code.

We do not foresee that a significant number of prison staff will retire in the very near future. There is a healthy turnover of staff, which results from retirements and people leaving, but we do not think that filling the vacancies of retirees will be a significant problem.

**Derek Turner:** The SPS assesses the situation regularly and there is about to be a new intake of recruits. In places such as the north-east of Scotland, it can prove difficult to recruit and retain people. The wages that the SPS pays and the presence in the Aberdeen area of the oil industry make it increasingly difficult to retain prison staff in jobs in that part of the country.

In addition, we find that people sometimes want to work in the Prison Service for just a few years so that they can put it on their CV—they might want to be a psychologist, for example. After gaining a few years' practical, hands-on experience in a prison, they move on.

**Maureen Macmillan:** You mentioned the increase in the number of prisoners, overcrowding and the reduction in staff numbers. Does overcrowding have a significant impact on your work on the rehabilitation of prisoners? Perhaps you could tell us about the rehabilitation work that prison officers do and how overcrowding affects it.

**Derek Turner:** We have a number of intervention programmes, including drug reduction and anger management programmes, and a range of regimes to address offending behaviour. I think that Colin Fox was at the launch of the annual report of the chief inspector of prisons, who encapsulated the problems of overcrowding in nine points. He highlighted the fact that when the prison population increases, staff have great difficulty just meeting prisoners' bare needs and ensuring that common decency is upheld. If a prison is overcrowded, a strain is put on the logistics of providing people with showers, clean clothing and adequate meals. If the provision of the basics is strained, the provision of rehabilitation programmes becomes strained, too.

Although we have managed to meet our key performance indicators over the past few years, we have told SPS management that we have found it increasingly difficult to maintain rehabilitation programmes at the same time as ensuring that prisoners get the common decency that we are required to deliver under the European convention on human rights.

**Kenny Cassels:** I will use the term "chronic overcrowding" because we believe that it

describes the present situation. As well as affecting the prisoner group, chronic overcrowding can have a dramatic effect on staff. It increases their workload and the amount of stress that they experience in the workplace and has health and safety implications. More staff members are going off sick from work-related stress as a result of having to deal with record numbers of prisoners, to the extent that the organisation is now working with the trade unions to put in place access to stress treatment. Those are some of the impacts that having to deal with overcrowding can have.

**Maureen Macmillan:** Am I right in thinking that rehabilitation programmes are delivered mainly to long-term prisoners rather than to short-term prisoners?

**Kenny Cassels:** Yes.

**Maureen Macmillan:** Does having to deliver such programmes to short-term prisoners add to the stress?

**Kenny Cassels:** It is difficult to deliver any kind of programme to a very short-term prisoner, by which I mean a prisoner who is on a sentence of less than three months. As Tony Cameron said in his evidence to the joint meeting of the justice committees on 31 October, if someone is sentenced to fewer than three months in prison, we basically patch them up, take care of them and try to get them back on an even keel so that they can go back out on the street. We try to do as much as we can but, as you can imagine, it is difficult to deliver any form of rehabilitation programme in any depth in three months.

**Derek Turner:** One of the accompanying documents to the bill mentions that it would cost £5.5 million to £6.5 million for the extra 17 or 18 officers per thousand prisoners that would be required. That assumption was based on today's rates, but it does not seem to take into account the large number of people who will have to be considered by the Parole Board for Scotland for the part of their sentence for which they will not be in custody. My reading of the bill is that it will mean more work for prison officers in the galleries, because they will have to do reports to the Parole Board that they do not have to do now.

**Mr MacAskill:** The next question has been superseded.

16:00

**Colin Fox:** I met Derek Turner and Kenny Cassels last week at the launch of the annual report by Her Majesty's chief inspector of prisons for Scotland. It has been widely reported that Dr McLellan stated that one of the nine consequences of overcrowding that we are dealing with in prisons is the impact on risk assessment and the assessment of the

vulnerability of prisoners. They will be perhaps even more vulnerable if they spend less time in prison. What do you think of the Executive's estimates of the additional resources that will be necessary to cope with the increased demand? You have said that we already have a prison population of 7,000. A previous witness from the SPS said that the bill could increase that by another 1,100 prisoners.

**Kenny Cassels:** It is difficult to comment on the figures that have been quoted, simply because a whole load of assumptions have been made. The only figures that we take exception to refer to the cost of financing a new establishment. The figures indicate that it would cost £160 million for a public sector procured build and £100 million for a private sector build. As far as we are concerned, those figures emanate from the prison estate review of 2002; they have been lifted directly from that. We question those figures, given our involvement in the bidding process for the Low Moss site. We think that the public sector can go some way towards bridging the gap between those figures.

**Colin Fox:** Let us be clear. Do you think that the figures are too high, too low or not robust?

**Kenny Cassels:** The Executive is quoting £160 million for a new public sector jail, and we do not agree with that.

**Colin Fox:** You question the disparity between the two figures rather than the cost of a new prison being in that ball park.

**Kenny Cassels:** Yes.

**Derek Turner:** The Prison Service has said that phasing in would be important and that the increase in prisoner numbers would have to be taken into consideration. We would hate it if the resources were not made available timeously. We do not want to be in the position of receiving large numbers of prisoners and having to catch up with that by recruiting staff, training them and trying to build additional spaces. The change must take place on a planned, phased basis, and there must be a more cohesive approach—a strategic approach, as my colleague says—to the financing of prisons. We are not saying that we need all the money at once but, if we are going to phase the expansion, we need to have the money when it is required and not have to catch-up to deal with large numbers of prisoners without the resources to do so. Even if the resources have been committed, we need to know that the resources are there and that we are planning for the increase in prisoner numbers.

**Colin Fox:** One big aspect of the bill is the pressure to reduce reoffending—which has been agreed across all parties. I notice that, in the report by Her Majesty's chief inspector of prisons for Scotland, the one piece of good news is the

fact that 92 per cent of prisoners feel that their relationship with prison staff is either okay or better. The jewel in the crown is the one-to-one working relationship between staff and offenders, which reduces the likelihood of prisoners reoffending. You state in your submission that there has been a reduction of around 700 in the number of prison staff.

**Kenny Cassels:** It is more than 800.

**Colin Fox:** We are also talking about a great increase in the prison population. How can we have greater confidence than we have at the moment in the SPS's ability to have a 1:1 or 1:2 ratio of staff to offenders on programme work?

**Derek Turner:** That was one of the key points that Andrew McLellan made during his presentation. As overcrowding continues, our current relationship with prisoners could be destroyed. I would hate to see us go back to the situation that existed in the late 1980s, which we both experienced. Back then, overcrowding was rife and there was mass insurrection in the prisons. I would hate to see the relationship between prison officers and prisoners deteriorate because of overcrowding.

**Colin Fox:** Speak starkly to us. How likely is that, given the pressures of the reduction in staff and the increased number of prisoners?

**Kenny Cassels:** In any society, prisons operate only with the good will of prisoners and staff; their relationships must be good for a prison to operate well. There is no doubt in our minds that if overcrowding continues to increase, those relationships will begin to suffer, as staff will not be able to find the time to deliver a normal day-to-day regime. They will end up chasing their tails and having to leave their residential area to do other duties to cover the additional workload. In our view, there is no doubt that relationships will suffer, although how dramatically they will suffer is another matter. Like Derek Turner, I would not want to go back to the situation of the late 1980s and early 1990s—I am sure that nobody in Scotland would. We are not saying that that will happen, but overcrowding affects more than just the daily prisoner regime—relationships can be affected as well.

**Colin Fox:** You have an anxiety that the bill could add to that.

**Kenny Cassels:** Yes, if the bill is implemented in full from day one without serious consideration being given to the infrastructure that is needed to support it and the additional funds that will be required to fund it. The bill will require an additional 700 to 1,000 spaces. We have no reason to doubt the figures given by the SPS and the Executive in that respect.

**Derek Turner:** Andrew McLellan told me that he is disappointed that the overcrowding is so bad and that there are so many people with mental health issues. I told him that, when I started my job in 1975, we were talking about horrendous overcrowding and many prisoners having mental health issues. In 2006, we are still talking about the same things.

**Jeremy Purvis:** You have questioned the figures that have been provided for the case management system and mentioned the burden that will be placed on staff. Will you outline staff involvement in the processes that will be requested of you under the bill? On a practical level, what will be involved for staff?

**Kenny Cassels:** The move to community justice authorities will bring about a change in how offenders are managed in prisons. The casework that will be undertaken will mean staff getting involved not only with specialists within the prison, but with external agencies in delivering community ethos and putting a prisoner back into the community a better person. Undoubtedly, there will be an increase in workload for staff in meeting the needs of the community justice authorities and managing the transition of offenders from prison back into the community.

We have made the point before—I do not recall whether it was to the Justice 1 Committee or the Justice 2 Committee—that a prison officer can work with a long-term prisoner over four years and, all of a sudden, the minute the prisoner goes out of the gate, that involvement comes to a halt. That will change with the introduction of community justice authorities, so there will be an increase in the workload of individual prison officers who work on casework.

**Jeremy Purvis:** In your written submission, you refrain from commenting on sentencing policy, which you say is a matter for civil servants. I will ask the question anyway, and you can decide how to answer it. You will have heard previous panels respond to a line of questioning about the effectiveness of short-term sentences. As I read the proposals in the bill, the lion's share of the burden on prison staff will be in doing work—which, by and large, could be good, progressive work with individuals—with offenders who are on short-term sentences. If I heard you correctly, you said that you will carry out the assessments of people for whom you currently do not carry out assessments.

My question is in two parts. First, in your view, what proportion of the current prison population should not be in prison? You said that you question whether prison is the most appropriate response and whether, for some people, alternatives to prison should have been considered prior to sentencing. Secondly, in your

professional experience, will the assessments that you will carry out for short-term prisoners be more effective than assessments done at a community level that do not involve your officers? Should an assessment of what programmes are required be done outwith prison from the start?

**Kenny Cassels:** I certainly agree with your last point. It is not productive to send someone to prison to serve a very short sentence. I understand my police colleagues' point about giving communities respite from serious and habitual offenders, but all that the prison environment does for those who serve short sentences is to patch them up, stabilise them if they abuse drugs or alcohol and put them back into the community.

Prison is not suitable for people with short sentences. More can be done for them in the community, but the decision is one for the courts. We just do what the courts ask.

**Jeremy Purvis:** At present, 48 per cent of the prison population serves a sentence of less than three months and about 82 per cent serves less than six months. If I understand correctly, you would like to focus on offenders who serve longer sentences because you think that your involvement will be more effective. Can you say what proportion of the prison population today should not be in prison?

**Derek Turner:** It is difficult for us to assess that. We have sorted out the situation whereby someone who is picked up for a short sentence for a fine default is lifted on the Friday morning and liberated on Friday afternoon with a discharge grant, which is absolutely ridiculous because we still have to put them through the whole process and that is a waste of resources and public money.

**The Convener:** Could your association provide the figure that Jeremy Purvis asked for?

**Derek Turner:** It would be difficult.

**Kenny Cassels:** It would be up to the Scottish Prison Service to provide that.

**Derek Turner:** It is many years since I worked as a prison officer, but we found that we could do little for people who serve short sentences. At one time, we talked about learning packages and whether we could offer modules that people would study while they were in prison and continue outside. That modular training was not further education as such, but it was an attempt to give people a qualification. Otherwise, we were doing absolutely nothing for them. At one time, they would be put in a work shed and they would do inane jobs such as sewing mailbags or sorting out bits of cardboard, but we were doing nothing to address their offending behaviour. The same

person could go back and forth, doing three months or six months repeatedly over a long period of time. If we can do something to address that, we should. It is tragic that some people serve almost a life sentence doing short sentences.

One of the biggest tragedies I saw in the Prison Service when I worked as a prison officer in Barlinnie was the old alcoholic people who spent their lives on the streets and went in and out of prison. Prison kept them alive because they came off the drink for a few weeks and they were given good food, but when they were liberated they went back to their drinking habits and lived rough on the streets. They would go back into prison, dry out and get food and medication, then go back out on the streets again. That seemed to be the pattern of their lives. I worked at Barlinnie for 15 years and I saw the same people coming in and out. Prison was the wrong place for them, but it was the only disposal available. There were no hostels that could take them and do the same job as we were doing.

**Jackie Baillie:** In your written submission, you express concern that the legislation that prohibits the carrying of knives in public places does not apply to prisons because they are not deemed to be public places. What problems does that cause in prisons?

**Kenny Cassels:** We had an example recently at HMP Perth. While a prisoner was out and about in the prison carrying out their work, prison staff found a lock-back knife. The incident was reported to the local police and referred to the procurator fiscal, but he referred it back to the prison, saying that he would not take action as prisons were private places.

Our concern is that in the current legislation there is a lack of direction to procurators fiscal on whether it is a criminal offence to have a dangerous weapon in prison. It is a criminal offence and should be acted upon. On the one hand, we say that prison is a private place and, on the other, the smoking ban that was introduced in March decreed that prisons were a public place. Prisons are a public place, and the law should apply in prisons as it does out in the community.

16:15

**Derek Turner:** We appreciate that that point perhaps does not relate to the terms of the bill, which deals with licensing knives, but it is a point of principle and we thought that we should bring it to the committee's attention.

**Jackie Baillie:** You are right to do so. I assumed that if someone was carrying a knife in prison, there would be regulations or procedures that would deal with it internally.

**Kenny Cassels:** We can place the individual on report but, in our view, the sanctions that are open to an orderly room, for example, would not punish an individual sufficiently for carrying such an item.

**Derek Turner:** I might be digressing a bit, but in Scotland, if someone is found with a mobile phone in prison, which is an offence, it is taken off them and put with their other property. I believe that, in England, if someone is found with a mobile phone in prison, they are taken before a magistrate and given a statutory sentence of about 60 days or three months.

**Jackie Baillie:** That is interesting.

**The Convener:** Thank you for coming along. If there is anything further to your evidence that you want to send us, please send it to the clerks.

**Kenny Cassels:** I will leave a copy of the figures that the Prison Officers Association Scotland has put together.



## Petition

### Limited Companies (Court Representation) (PE863)

16:16

**The Convener:** Item 3 is petition PE863, in the name of Bill Alexander, which urges the Scottish Executive to amend the Solicitors (Scotland) Act 1980 to allow limited companies to be given either the right to apply for legal aid or the right to represent themselves in court. Among the papers that have been circulated, members should have received the recent e-mail from Mr Alexander. Annex E—a letter of 2 November 2006—confirms that the Legal Profession and Legal Aid (Scotland) Bill will not provide the measures that are sought.

The committee is invited to consider how it wishes to proceed. The options are: to note the matters that are raised and the evidence that has been received and to close the petition; to seek further written evidence; to seek further oral evidence from the petitioner, minister or other relevant groups or individuals; or to take other competent action.

**Colin Fox:** According to paragraph 6 of the paper, the Executive may consider

“any ‘significant call’ for legislative change”

on the issue of limited companies being ineligible for legal aid. The Executive seems to have an open mind.

The second part of the petition—in my opinion it has only two parts—is about representation in court. Our discussions with the minister on sections 25 to 29 of the Land Reform (Miscellaneous Provisions) (Scotland) Act 1990 would cover that. Perhaps Anne Peat can advise me, but it is my recollection that the committee received a letter from the Executive saying that it intends to commence the provisions before next March. The petition highlights an anomaly, which is that large companies can afford representation and individuals can seek legal aid. I agree with the Executive that it would not be right for limited companies to have access to legal aid, but there should be some other avenue. Is it possible to put those concerns to the minister with a view to getting a written reply?

**The Convener:** I favour that suggestion.

**Mr MacAskill:** I have always thought that the relationship between the company and liability is a two-way street. As long as company directors can rest behind corporate liability, they should not be able to appear. If and when we change the law so that we can look behind that and hold directors accountable, the converse will apply in a sort of

quid pro quo, which makes me think that the petition is to some extent premature. Should Parliament go down the road of having a corporate homicide bill and being prepared to hold directors responsible, I would support such a move. At that stage it would be legitimate to argue that a director should be able to appear on behalf of a company. However, while it remains the case that they are given protection, they should not necessarily have the right to appear.

**The Convener:** I refer Colin Fox’s question to the clerks.

**Anne Peat (Clerk):** I cannot say more than to refer the committee to the Executive’s letter of 2 November, which states:

“neither section 42 of the Legal Profession and Legal Aid (Scotland) Bill nor any other provision in the Bill would have the effect of allowing limited companies and other non-natural persons to represent themselves in court.”

**Maureen Macmillan:** The petition has two strands: one is representation in court—I do not think we can go down that road—and the other is on accessing legal advice and assistance. I presume that the Legal Profession and Legal Aid (Scotland) Bill, which has just completed stage 2, would allow us to address that point. Not all limited companies are huge corporations; many small charities are limited companies. I assume that they can go for legal advice to a citizens advice bureau and prepare themselves for an appearance in court that way, so that it would not cost them so much.

**Jackie Baillie:** I recollect the point to which Colin Fox referred. Evidence from the minister and his bill team gave us a date for commencement of provisions in the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 in respect of the rights to conduct litigation and rights of audience to be granted to members of professional and other bodies. Paragraph 13 of the clerk’s note helpfully outlines the situation.

As for the rest of the issues that are raised in the petition, I am happy to agree with Kenny MacAskill.

**Jeremy Purvis:** With regard to Mr Alexander’s e-mail, I am not familiar with what the courts have decided. However, there is an anomaly if the courts have decided that companies—limited or otherwise—have human rights, despite there being small limited companies or charitable limited companies that cannot pay solicitors to represent them and therefore cannot be represented in court. I do not think that the term “professional body” would extend to an organisation such as the Federation of Small Businesses, so I do not think that that will be relevant to the point in hand.

The Legal Profession and Legal Aid (Scotland) Bill will provide for advice and assistance to be

given, not on a case-by-case basis but on a grant basis, so I wonder whether there will be some capacity to offer that assistance to limited companies, in particular to small limited companies. We could ask the Executive. That would not address all the petitioner's arguments, but it might address advice and assistance on the process, which would be an important step forward.

There may be consensus that we will look for other legislation to address the second aspect. If companies and individual directors of companies will be culpable for other matters, how they are represented will be a key component. If we can make the point on the first issue, that might represent progress.

**The Convener:** I detect that the committee wishes me to write on its behalf to the Executive to seek clarity on the various points that have been made, particularly the last one—given that the minister talked about changes in the grant system. Of course, stage 3 of the Legal Profession and Legal Aid (Scotland) Bill has not yet taken place. We will write a letter if we get the relevant information quickly and the clerks take from the *Official Report* the comments that have been made. Do I have the committee's permission to write a fairly broad letter to the Executive on behalf of the committee, so that we can get a prompt response and return to the matter?

**Jackie Baillie:** We should by all means ask the minister about the matter. I am not entirely convinced by the argument that legal aid should be given to small businesses, but it is perfectly legitimate to ask about it. The Executive's Legal Profession and Legal Aid (Scotland) Bill is going through the parliamentary process. If we get clarity from the Executive, that would be helpful for the purpose of definition and record.

**Colin Fox:** I do not dissent from the proposal, but I suggest that we again remind the Executive of its commitment on commencement in March next year of sections 25 to 29 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990. If there is any change to the timetable, we would be obliged if the Executive would flag that up for us.

**The Convener:** I will ask the clerks to pull together a letter that we can circulate by e-mail on Thursday to all committee members. We would need to get a response to the clerks by Thursday evening so that the letter could go by hand.

The clerks will want to see the *Official Report* to ensure that they get all the nuances of everything that members have said. I suggest that we leave it at that and defer the matter to the future.

**Members indicated agreement.**

**The Convener:** We now move into private session, as we agreed previously, to discuss a draft report.

16:25

*Meeting continued in private until 16:54.*

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