JUSTICE 2 COMMITTEE

Tuesday 14 November 2006

Session 2

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JUSTICE 2 COMMITTEE
30th 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:

Donald Dickie (Scottish Consortium on Crime and Criminal Justice)
Susan Matheson (Scottish Consortium on Crime and Criminal Justice)
Neil Paterson (Victim Support Scotland)
Richard Sparks (University of Edinburgh)
Cyrus Tata (University of Strathclyde)
Bill Whyte (Criminal Justice Social Work Development Centre for Scotland)

CLERKS TO THE COMMITTEE

Tracey Hawe
Alison Walker

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Steven Tallach

LOCATION

Committee Room 6

Scottish Parliament

Justice 2 Committee

Tuesday 14 November 2006

[THE CONVENER *opened the meeting at 14:06*]

Items in Private

The Convener (Mr David Davidson): Good afternoon, ladies and gentlemen. Welcome to the 30th meeting in 2006 of the Justice 2 Committee. I ask everyone present to switch off mobile phones, pagers, BlackBerrys and anything that goes bleep.

Apologies have been received from Bill Butler and from Michael Matheson, who has been appointed as a committee member but has not yet managed to take up his place on the committee due to illness. I hope that he recovers soon.

I welcome the committee's advisers, Fergus McNeill and Susan Wiltshire, and its researchers from the Scottish Parliament information centre, Graham Ross and Frazer McCallum.

Due to the illness of Michael Matheson, agenda item 1 will be deferred.

Item 2 is to ask the committee to agree to take items 4 and 5 in private. Item 4 is consideration of the written evidence that we have received on the Custodial Sentences and Weapons (Scotland) Bill and item 5 is consideration of the main themes arising from today's evidence session on the bill. Is it agreed that we take those items in private?

Members *indicated agreement*.

The Convener: The committee is also asked to agree to consider the main themes that arise in future evidence sessions on the bill in private. Is that agreed?

Members *indicated agreement*.

Custodial Sentences and Weapons (Scotland) Bill: Stage 1

14:07

The Convener: Agenda item 3 is our third evidence session on the Custodial Sentences and Weapons (Scotland) Bill.

I welcome our first panel: Neil Paterson, who is director of operations for Victim Support Scotland; and Susan Matheson and Donald Dickie, who are from the Scottish Consortium on Crime and Criminal Justice. We have received an apology from the chief executive of Victim Support Scotland, David McKenna, who is unwell. In his absence, I advise Neil Paterson that, if questions are asked that he feels he cannot answer appropriately, he may provide further written evidence to the committee as quickly as possible after the meeting.

I will start the questions, the first of which is primarily for Victim Support Scotland. One of the bill's main aims is to increase transparency in the sentencing process and to make sentencing more intelligible to the wider public, offenders and victims. Do the proposed measures represent significant progress from the current position?

Neil Paterson (Victim Support Scotland): There is a short answer and a long answer to that question. The short answer is that it might. The long answer is that such progress will be contingent on the way in which the bill is put into practice, as the issue is not so much the content, nature and principles of the bill as how it is operated if it becomes law.

Let me make two observations. On measures to increase transparency in sentencing, the bill contains a number of positive developments, not least of which is the combination of custodial sentences with community sentences. That is provided within the context of a set of principles that I think the public will find easier to comprehend than those under which the present system operates. However, if victims are to understand how the system works, the sentencer will have to give in court an appropriate and clear explanation of how the custody and community components of the sentence will work.

My other observation relates to broader areas of Government policy, and is on the way in which sentencing decisions are communicated to victims and whether victims can choose to receive information on the progress of the offender's sentence throughout their time in custody. The committee might be aware that the victim notification scheme was placed on a statutory footing by previous criminal justice legislation. It

enables victims in cases where the offender is sentenced to more than four years in custody to opt to receive certain pieces of critical information throughout the offender's sentence. That information includes, for example, how long a period of custody they are expected to serve and whether they are being considered for parole. If they are considered for parole, the victim can make a submission to the Parole Board for Scotland for its consideration.

The victim notification scheme applies where the offender is sentenced to four years or more. Given that the Custodial Sentences and Weapons (Scotland) Bill will fundamentally alter the sentencing regime, it would have been prudent for the Executive to equalise the time periods in the bill and the victim notification scheme. However, the Executive omitted to do that. If the time periods were equalised, victims would have more confidence in the system and the system would have the transparency that is mentioned in the policy memorandum.

The Convener: I ask you to expand on a couple of points. Your last point was clear—victims wish to be involved in the process. However, you mentioned the form of the information that they receive. Will you share your thoughts on that?

Neil Paterson: This morning, I tried to find out how the information is delivered at present, but the details were not available to me, nor was I able to glean from those who work for me or my colleagues any details about how well the information is received. However, people talk all the time about the need for information. They want to receive information about the progress of the case after disposal and particularly in the run-up to the prisoner's release. The thing about which people complain to us more than anything else is meeting the offender in the community after their release. Often, the victim has not had the opportunity to prepare themselves for that.

The Convener: I take it that your organisation is seeking clarity from the Executive about how the process will operate.

Neil Paterson: Yes. We want the Executive to extend the entry point for the victim notification scheme downwards from four years, so that it is equivalent to the sentencing proposals in the bill. The entry points should be the same.

Susan Matheson (Scottish Consortium on Crime and Criminal Justice): We agree that it is a positive step for sentences to have a custody part and a community part and for the courts to explain that, but we think that the explanation will be too complex. Donald Dickie tried to work out what the court might have to say—the information has been circulated to committee members—and there is so much information that it will be impossible. We are concerned that, when the sentence is delivered, the victim will not know what is going to happen to the offender. The bill aims to make the system clearer, but it will not achieve that.

Jackie Baillie (Dumbarton) (Lab): I ask Neil Paterson to clarify what he said about entry points. What are they, precisely?

14:15

Neil Paterson: At present, when someone is given a custodial sentence of four years or more their victim is entitled to opt into a process whereby they receive key pieces of information about the offender as they progress through their sentence. At present, the bar is set very high. The committee might be interested to know that the equivalent entry point in England and Wales is a sentence of 12 months or more.

The Criminal Justice (Scotland) Act 2003 makes provision for the Scottish ministers to alter the entry point without resort to primary legislation. That provision has been lying fallow on the statute book. This is an appropriate time to bring the entry point down from four years to something like 12 months or more. That is particularly important if the Executive wants to fulfil its objective of putting in place a transparent sentencing system. That would address some of the concerns that Sue Matheson raised about the ability of victims to understand how a disposal is reached in open court. They would get the information at a later point.

Jackie Baillie: You mentioned entry points in the context of the bill and picked a figure of 12 months from the English legislation. Is that an arbitrary figure in the context of the bill, or do you have a particular hook in mind when it comes to the timeframes?

Neil Paterson: If Parliament is minded to pass the bill unamended and introduce a new community-based, custody-based sentencing regime for sentences of 15 days or more, that will be the appropriate point at which to set the entry point for victim notification. The two processes should be aligned.

The Convener: Will the bill enhance victims' sense that their needs, wishes and views are being taken more seriously in sentencing and managing offenders?

Neil Paterson: One of the bill's specific proposals is to extend the membership of the Parole Board to include a representative who can bring experience of the extent to which people released on parole might offend and of the impact of reoffending on victims. I have not been party to any of the Parole Board's decisions, except in a

previous life, when I was a social worker. It seems axiomatic that including such a perspective in the Parole Board's deliberations is positive and will be welcomed by victims and witnesses.

That aside, there are few specific policy commitments in the bill that I can confidently say will increase victims' confidence. There are a number of related policy initiatives. For example, there is the work of community justice authorities, which might, in tandem with the bill, have an impact further down the line in increasing victims' and witnesses' confidence in the system. However, the bill itself is relatively mute in that respect.

The Convener: Will the bill better protect victims and potential victims?

Neil Paterson: Potentially. We welcome the more robust set of mechanisms that are anticipated to be used to undertake risk assessments of prisoners before they are released into the community, which will be reassuring to victims and witnesses. The bill is a step forward in that respect, certainly compared with the previous system, under which many people were released into the community after serving 50 per cent of their sentence without any supervision or conditions attached.

The Convener: Do you have any thoughts about how the victims can be informed without the risk of a vigilante approach developing, as has happened in the past? You feel that there should be a better process, which links to your initial response.

Neil Paterson: That is one component, which relates specifically to victims' cases. The system needs to do more to build confidence among victims and witnesses generally.

I am not prone to bringing evidence from south of the border to Scottish justice committees, but a lot more innovative work has been done to demystify the workings of criminal justice in England and Wales. This week is inside justice week there, during which a whole range of imaginative initiatives are taking place. Communities are being allowed to see how courts work, how the Crown Prosecution Service works and so on. There has not been anything of that nature in Scotland. There is a need for the system as a whole to be more transparent in engaging with communities to build confidence in how the system works. It is not just sentencing information that is required, but a wider process of engagement.

The Convener: Does your organisation believe that that process should take place concurrently with consideration of the bill?

Neil Paterson: Yes, that would be helpful.

Jackie Baillie: I have a follow-up question. I hate to push you on timescales, but I will do so. Do you regard it as proportionate in terms of both resources and practicality to have victim notification for sentences of 15 days or more, for example, given that they may spend only 11 days in custody?

Neil Paterson: I am not competent to comment on the resource implications of such a measure. However, if resources are available for custody and community sentences, it is not unreasonable to expect that they could also be made available to ensure that victims and witnesses are informed of the outcomes of court cases that involve them.

Jackie Baillie: That is interesting.

Maureen Macmillan (Highlands and Islands) (Lab): Does victim notification happen only if victims request it?

Neil Paterson *indicated agreement*.

Maureen Macmillan: Presumably there is no problem if the offence is not terribly serious. Your concern is with more serious offences.

Neil Paterson: That is a good point. I was not around when the four-year threshold was introduced, but I think that it was designed to address some of Jackie Baillie's observations on proportionality. Our experience is that the threshold is too high and that more people need to be included in the system. Maureen Macmillan is right to say that not everyone will choose to avail themselves of victim notification. I would like to have a sense of how many people who are potentially eligible to make use of victim notification have done so but, unfortunately, no such figures are available from the Executive, as far as I am aware. If we had that information, we might be able to make a better-informed set of decisions about the level of uptake that might ensue from an extension of victim notification.

Jackie Baillie: Part 1 of the bill proposes significant changes to the workings of the Parole Board, including reducing the number of Parole Board members who are involved in decision making from three to two. What are your views on those changes?

Susan Matheson: We are not happy with the proposal to drop the number to two. If three people are involved, a broader range of experience is brought to the table. At the moment, decisions do not have to be unanimous, but they will have to be if only two Parole Board members are involved. We do not think that the proposal will lead to better decisions.

Neil Paterson: We concur.

Jackie Baillie: My next question is directed at Neil Paterson. Are there particular types of

victim—for example, children or victims of domestic abuse—whom the bill will assist or frustrate?

Neil Paterson: It is difficult to say, but potentially the answer is yes. It is probably helpful to focus on the risk assessment process and putting in place robust arrangements to support and supervise offenders after they are released back into the community. Most people will welcome the fact that arrangements are in place to capture most people who are released from prison, but in order to make those arrangements work appropriate resources must be made available to the people who undertake assessments. The organisation that I represent will take an interest in that as the legislation unfolds. It seems that, potentially, the risk assessment net will be cast far more widely than has been the case to date. If the processes are to work properly, it is important that the necessary resources are made available.

Those issues apply to children and victims of domestic abuse. It is necessary to ensure that conditions relating to non-harassment and other aspects of behaviour that will reassure victims in such cases are attached to offenders' supervision requirements.

Colin Fox (Lothians) (SSP): It has been suggested that, if the bill is enacted, it could increase the prison population by up to 1,100 people, at a cost of £40 million to £45 million a year. The overarching policy objective of the bill is to protect the public in communities. Does the evidence suggest that the investment is likely to produce significant improvements for victims and communities?

Susan Matheson: We are concerned about the possible rise in the prison population. It has been suggested that there will be a rise up to eastern European levels at a time when the crime rate is falling. Risk assessments and the larger number of people who will be incarcerated will use up resources that could be used much more effectively and give much better value for money. They could be spent on supervision programmes, throughcare, work in the community and essential work in the criminal justice system to reduce reoffending. The bill will lead to resources being absorbed when they could be spent more effectively elsewhere in the system.

Colin Fox: Do the other panellists concur?

Donald Dickie (Scottish Consortium on Crime and Criminal Justice): Yes, absolutely. We support the principle that risk assessment should be at the heart of the strategy, but things have gone wrong. Risk assessment for people on licence or for people who might be recalled is disproportionate. There could also be an increase in the length of sentences—and sentences have already been getting longer for many years. Taken together, all such factors would increase the prison population, and nobody has ever established a strong correlation, let alone a causal link, between increasing the prison population and reducing crime. There may be some tentative links, but there is nothing firm.

Colin Fox: I have further questions but I wonder whether Mr Paterson would like a bite at the first one.

Neil Paterson: Our position does not differ markedly from Sue Matheson's or Donald Dickie's. I am not suggesting that this is happening, but we should be cautious about suggesting that victims will automatically want longer and more severe sentences. Most research tells us that what victims want is for offenders not to reoffend. We should divert resources towards the measures that are most likely to achieve that. However, we also have to acknowledge that, in certain cases, periods of custody are appropriate for the purposes of deterrence and punishment. The balance has to be appropriate.

Colin Fox: Is the figure of 1,100 people about right? I was interested in your answer, Mr Dickie. Do you expect that, if longer custodial sentences are available, they will be handed out? In other words, do you expect that people will indeed spend 75 per cent of their sentence behind bars, or is that court disposal just a possible disposal rather than a likely disposal?

Donald Dickie: That could be another problem with the bill. With any criminal justice legislation, it is difficult to predict what will happen.

The Sentencing Commission for Scotland thinks that, whatever happens, changes to statute law should be introduced in such a way as to avoid an increase in the number of offenders going to prison. The commission has suggested that some form of recalibration should be built into statute or regulations to guide sentencers. In the new system, sentencers will be confined to considerations of punishment and deterrence. In the present system, they can take account of early-release arrangements, but they will be considered by the Parole Board.

It is difficult to know what will happen, but there is certainly a risk that more people will go to prison. As I am sure you know, the Executive's accompanying documentation anticipates that more people will be recalled and that more people will serve longer sentences. The figure that you gave is not a shot in the dark, but quite how high the figure will be I do not know.

Another possible factor in the risk assessment process is false positives. In other words, when people are asked to assess risk they sometimes

overestimate it through a fear of underestimating it, so not many people are classed as low risk. Some are classed as medium risk, but there is a temptation to classify people as high risk. Given the effort and resources required to carry out the risk assessment of thousands of people serving sentences of 15 days or more, we are not convinced that it can be done in any meaningful way. It will certainly not be the kind of risk assessment of high-risk offenders that we carry out currently.

14:30

Colin Fox: What could we get for £44 million if we took the path of supervision, community orders and non-custodial disposals? What impact will a proposal that could increase prisoner numbers by 1,100 have on prison figures, which are currently at record levels?

Susan Matheson: Having a lot more investment in throughcare and making available to everyone coming out of prison the model of the pathfinder community links centre here in Edinburgh would have a big impact on reducing reoffending rates, because it would be possible to work with people and challenge them and assist them to get accommodation, rebuild relationships, take positive opportunities for learning and employment, and take responsibility and make amends—all the things that we know lead to people eventually stopping reoffending. It would be positive if more resources could be put into that, as well as drug and alcohol treatment programmes.

Colin Fox: What pressure will be put on the prison estate if we add 1,100 prisoners to the current prison population?

Susan Matheson: That is a good question. We saw in the recent annual report of HM chief inspector of prisons for Scotland how damaging overcrowding is. We are overcrowded now, so if the 15-day threshold is introduced there will be substantial overcrowding, which will have serious consequences for prisons' ability to manage and absorb resources that would provide far better value for money if they were spent elsewhere.

Colin Fox: I take it that the changes will have a deleterious effect on programmes that are aimed at rehabilitating prisoners, given that we will be keeping people in custody and doing little else. Is that a fair comment?

Donald Dickie: Yes. Given that we are a community safety organisation, we believe that a considerable number of prisoners need to remain in prison for lengthy periods and, during their sentence, need to receive focused and targeted interventions that have some chance of reducing the likelihood of their reoffending on release. The more churn or throughput of prisoners there is—with people serving 30 or 60 days then being recalled—the fewer of them will benefit from the sentence and the more resources will be diverted from focusing on those who should get the attention in the interests of the wider community.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): My question is along the same lines. What are your thoughts on the alternative approach that we should phase out sentencing individuals to less than three months, other than on public safety grounds or where there is no alternative?

Susan Matheson: We have said previously that we would like sentences of less than six months to be phased out, but that would have to be written tightly into legislation so that people would not just be given longer sentences. We see little value in short sentences, and there is consensus in the community that they do not represent good use of resources. The Scottish Prison Service itself says not to send it people for less than a year, because it cannot do anything constructive with them in that time. However, that does not mean that it wants people to be given longer sentences.

Jeremy Purvis: I put the same question to Victim Support Scotland. How would victims respond to the proposal, given that it might be considered to be soft on crime?

Neil Paterson: There are some dangers in assuming that they would respond in the same way. Research experience and our practice tell us that people want folk to have prison sentences where appropriate. However, victims' views are often far less punitive than people in the media assume they are. There is also a consistent theme about people getting help to stop reoffending and creating more victims. It is not that community disposals cannot be sold to people, but that doing so requires someone to engage actively and go out and explain how things work, in a way that does not happen currently. Such communications tend to happen through the media, which inevitably means that there is a degree of distortion. However, I do not think that it is inimical to victims' interest.

Jeremy Purvis: Convener, I would like to ask about victim notification, although it is not part of the bill.

The Convener: Please keep it very brief.

Jeremy Purvis: It strikes me that victim notification applies only to the victims of those who have received a custodial sentence. Following on from Mr Paterson's response, would there not also be circumstances in which, although the offender is given a community sentence, the victim should get information about any programme that the offender might be part of? For example, an alcohol

programme could be a compulsory part of a community sentence. Would victims benefit from knowledge not just about the punishment that the offender has received but about any programme that they might attend to reduce their offending behaviour?

Neil Paterson: We tend to find that people's understanding of how community disposals work in practice is remarkably limited. That is not surprising because no one takes the trouble to explain the system to the world at large. You are right: extending the notification procedure is one component of practice that could be enhanced. People would welcome that, and it would be good for the credibility and legitimacy of the system.

Maureen Macmillan: Do sheriffs think that community disposals are robust enough? In the end, the sheriff does the sentencing, and I am aware that sheriffs seem to be disinclined to use community disposals.

Donald Dickie: There are peaks and troughs, but overall statistics suggest that sheriffs have confidence in community disposals. They might have criticisms about places where an offender's community service does not start soon enough, but overall the levels of use of community service and probation do not suggest that sheriffs do not have confidence in those disposals. The Social Work Inspection Agency interviews stakeholders in the criminal justice system, and when the agency inspects a local authority social work service, it asks sheriffs what they think of that service. The vast majority of the responses, which one can read in the agency's reports, are positive, by and large.

Maureen Macmillan: So why are all these people in prison for short sentences when they could have been given a community disposal?

Donald Dickie: That is more to do with the culture of this country and the expectation that it is somehow not a punishment if the offender does not actually go to prison. If we think about it, that is not very rational. Someone who is given probation for six months or a year has a lot of expectations placed on them. They are deprived of some of their free time and they are expected to do things and to turn up for work—they might never have worked before—when they are on community service. A short term of imprisonment might be unpleasant, but only for a short time, as the offender will be out again shortly and nothing will have been achieved. A short sentence is over in a short time, whereas a community disposal lasts longer and is also much less expensive.

Maureen Macmillan: That is interesting. I want to go on to ask about proportionality—

Susan Matheson: Could I add something first?

Maureen Macmillan: Of course.

Susan Matheson: Sheriffs get frustrated with the people who come before them time and again and wonder what they can do other than put those offenders in prison—and that is what they do, time and again. That does not work, but the sheriffs keep doing it. We would like sheriffs to use community sentences repeatedly, because we know from the drugs court and research by people around this table that a process has to be gone through before people desist from reoffending. We need to put in resources for throughcare and key workers, for example, to help people get over the initial period when they come out of prison so that they do not constantly appear before the sheriffs and take them to the point of frustration.

Maureen Macmillan: Presumably resources will be put into programmes for the supervision of prisoners following custodial sentences. Could those same programmes be used as alternatives to custody, or are you talking about something different?

Susan Matheson: Programmes have a place, but it is about more than that. It is about having somebody who can build a strong, professional relationship with the person, stick with them in a way that perhaps has not happened for them before and key them into other agencies that will help to ensure that all the basic issues that may underlie their offending, such as accommodation problems or not having a job, are addressed.

Maureen Macmillan: I want to ask about the difference between supervision and support. Someone who comes out of custody after a month will need different supervision or support from someone who comes out after three years. I presume that it would be inappropriate for someone who has served a short sentence for a fairly minor offence to receive a high level of supervision. Is there a concern about the proportionality of the response to such offenders?

Susan Matheson: The response depends on an offender's circumstances. Even those who have spent only a very short time in prison may have dislocated all their community connections. If they have lost their accommodation or if their relationship has broken up, they may be very likely to reoffend. Donald Dickie might want to add to that.

Donald Dickie: Sue Matheson is right about support. Supervision is where the proportionality aspect comes in. By and large, people who serve shorter sentences have committed less serious offences and are less likely to pose a serious risk of harm to the community on their release. Supervision is about holding the offender to account in the community and trying to ensure that they keep to the conditions that have been

imposed to attend drug rehabilitation programmes or whatever. Supervision is important, but a lot of offenders need the support that we have talked about to stay out of trouble. For example, they may need to do something about their drug habit.

Support and supervision go hand in hand, but the balance between them depends on the individual. A long-term offender might need a bit of supervision because of their history, but they might not necessarily need a lot of support. Some people seem to reintegrate easier than others, depending on their social skills and the support provided by their family. Each person must be assessed individually.

Maureen Macmillan: So it depends on the individual, but we could see support as a continuum, with supervision at the more serious end.

Donald Dickie: It would be reasonable to suggest that the more serious the offender and the greater the risk of harm suggested by the circumstances of the offence—which is what the bill is largely about—the more likely it is that intensive supervision will be required.

Maureen Macmillan: So you would focus your resources at the more serious end of the scale to protect the public from risk.

Donald Dickie: Yes. We are not against the principle of risk assessment—far from it—but we feel that the threshold could screw it all up, to put it bluntly, by putting resources in the wrong places and thereby depriving people who need more resources. For example, a threshold of six months would immediately take away from prison officers and social workers the burden of conducting risk assessments for several thousand offenders. We think that the figure is 7,000 or 8,000, although for statistical reasons we are not certain; the committee's advisers could probably give a more accurate figure than we can. It does not seem sensible to spend a lot of resources on people who are, almost by definition, not serious offenders and not likely to pose serious risk.

Maureen Macmillan: Are the offenders on short-term sentences not the ones who keep going in and out of prison?

Donald Dickie: There is a high risk of reoffending but not necessarily a high risk of harm—we distinguish between the two. I am sure that you are well aware that there is certainly no connection between short prison sentences and an immediate reduction in the rate of reoffending. The number of shorter-term offenders who are back in prison within two years is high.

Maureen Macmillan: So we should really be looking for community disposals for sentences of six months.

Donald Dickie: Or for even longer sentences. The situation depends on the individual, but if community disposals were used rather than custody for sentences of up to six months, there would certainly be an impact.

Maureen Macmillan: I am aware that criminal justice social workers currently supervise about 600 released prisoners in Scotland. The financial memorandum to the bill estimates that the number will increase to around 3,700. We have talked about the figures already. Do you think that criminal justice social workers and their voluntary sector partners will cope with that huge increase?

14:45

Donald Dickie: It is a huge increase. Even if the money was made available, there would still be the problem of recruiting suitable staff to do that work. There is a shortage of social workers, including criminal justice social workers. Social workers already struggle to fulfil all their statutory responsibilities. The reports of the Social Work Inspection Agency show that the situation is better in some places than in others, but all social workers have to work hard to achieve the national standards for regularity of contact, compliance and the numbers of people who are given the opportunity to go through a programme. Even without increasing the numbers under supervision, we could do better against those standards if there were more resources.

We in the voluntary sector play a supporting role. We are not responsible for supervision but, if there were suddenly a lot more people under supervision who needed the ancillary programmes that we provide, we would need more resources as well.

Maureen Macmillan: Does the bill sit well with the Management of Offenders etc (Scotland) Act 2005? Do the two pieces of legislation mesh together quite well?

Susan Matheson: I do not think that they do because, as we said earlier, resources will be diverted into assessing risk for almost all prisoners. The increase in prisoner numbers will also absorb huge amounts of resources in a way that will not lead to a reduction in reoffending.

Jeremy Purvis: I want to move on to the issue of offenders who are released on licence. If I understand the submission correctly—this question is addressed primarily to Mr Paterson—Victim Support Scotland believes that, when an offender is serving the community part of a sentence, there should be a zero-tolerance approach in relation to the revocation of the licence. What sort of behaviour would an offender have to display for the licence to be revoked and the person returned to custody?

Neil Paterson: That is difficult. I do not claim to have particular competency in that area, but the bill basically sets out that it will be possible to revoke the licence if the offender causes serious harm to members of the public. Clearly, reoffending is one aspect that needs to be taken into account, but there are others.

For us, the issue is how a community or victim is made aware of the conditions attached to the licence. If the person on licence displays threatening behaviour, the community or victim needs to be able to communicate with the authorities so that the potential for the licence to be revoked can be activated. That will not happen unless people are aware of what the licence conditions are. For us, the issue is less about zero tolerance and more about ensuring that people are aware of the conditions that are attached to a person's release—if, indeed, it is appropriate for them to know that.

Jeremy Purvis: Do other members of the panel have a view about when licences should be revoked and the conditions under which offenders should be released? If the conditions for an offender's release include compulsory attendance on a programme—for example, the throughcare programme that we discussed previously—should there be some flexibility, such as a warning system, if the person does not fulfil the conditions, or should recall to custody be automatic?

Donald Dickie: I think that making return to custody automatic would create a lot of problems. As I remember, when we had young offender licences a few years ago, automatic recall proved to be impossible to implement because the numbers were too great. Many short-term offenders are repeat offenders who go through the revolving door. To revoke the licence and recall the offender to custody on every occasion would be pretty unproductive. The recall would be purely punitive and would not reduce reoffending. However, I think that the bill suggests that the offender should be recalled to custody if there is a breach of licence conditions and it is thought to be in the public interest to recall them.

Jeremy Purvis: I think that the bill provides for recall to custody if there is concern about reoffending or risk of harm to the public.

Donald Dickie: If there is evidence that serious harm to the public will occur, a person should be recalled, but automatic recall should not happen for minor breaches. Let us face it: to be of good behaviour is likely to be a standard condition. Any criminal offence is, by definition, not good behaviour. If someone who committed an assault went on to commit a road traffic offence, it would not be proportionate to recall them on that basis.

Jeremy Purvis: My other question has been answered. I am satisfied with that.

Jackie Baillie: My questions are to Susan Matheson and Donald Dickie. The Scottish Executive has said that local authorities may choose to commission from voluntary organisations all or part of the supervision of an offender's licence. Should local authorities come knocking at your door, does the voluntary sector have the capacity to deal with that? Do you have enough suitably qualified and skilled staff? If that is a problem, can you recruit staff in the short to medium term?

Susan Matheson: It is difficult to answer that. We certainly do not have enough staff. When we recruit, we have a strong pool of candidates from which we can select. We rarely look for people with social work qualifications. Some people have them, but people can come to us with a broad range of experience and qualifications. In that sense, we may have more choice than statutory local authority departments.

The volume is so huge that it is difficult to know whether we could cope with the numbers, although we can cope with the nature of the work. At present, the voluntary sector manages some of the most serious high-risk people in the community. We can do what needs to be done at all levels. However, we are not sure whether we can recruit enough staff. That is one reason why we think that raising the threshold from 15 days to six, 12 or 24 months is key to making the whole bill work. The huge numbers that are intended to be dealt with and the amount of money that will be spent on bricks and mortar will mean that resources are not available to give the voluntary sector the money to recruit people.

Donald Dickie: We must do much of the training of our recruits ourselves. They are not qualified social workers, because they do not undertake statutory functions. We take people who may come from other welfare or health backgrounds or people such as ex-prison officers and ex-police officers. A wide variety of people comes forward, but we always struggle to have enough resources for training, so we would need a lot of help.

Jackie Baillie: That is helpful to know.

We talked about the efficacy of the approach to risk assessment, which would be continuous throughout the sentencing process. I will ask a slightly different question. How confident are you that current risk assessment tools and professional skills are sufficiently developed to allow properly informed decision making?

Susan Matheson: I ask Donald Dickie to answer, as he has experience of those tools.

Donald Dickie: Progress is being made all the time. In fairness, a lot of effort and resources have been put in. However, from a practice point of view—perhaps other experts who have more knowledge than I have could comment on this—I think from seeing social workers conduct risk assessments that there is still a long way to go. Some of the tools are static measures—they depend entirely on what has gone before. We are less clever at reliably predicting what individuals will do. I doubt whether we will ever have something that is 100 per cent sure. However, the tools are improving.

Doing risk assessment properly is time consuming. Even a relatively unsophisticated assessment takes up social workers' time, and social workers need to be trained in it. Risk assessment is resource hungry. That is behind our concern that an attempt will be made to risk assess too many people. Within existing resources, improvement has been made with the Risk Management Authority's help. A lot of people are putting a lot of effort into that. We may obtain tools that are better at assessing the dynamic features, but doing that will take time and resources. However good the tools become, we will still need people who can use them well.

Maureen Macmillan: Will the provision to regulate knife and sword sales be effective in reducing violent crime, or can you suggest any alternatives that would help to prevent people—mostly young males—from carrying knives and using them for violence?

Susan Matheson: That is a crucial issue, but as the consortium has focused more on part 2 of the bill, we do not have a view on it.

Neil Paterson: We have limited experience on the issue, but we welcome the proposal for a more robust registration system. I will confine our comments to that.

The Convener: I thank the witnesses for coming and for their evidence. As I said, if you have any short comments to add, I ask you to give them directly to the clerks in the next few days.

I welcome our next panel of witnesses: Cyrus Tata, the co-director of the centre for sentencing research at the University of Strathclyde's law school; Richard Sparks, the professor of criminology at the University of Edinburgh's school of law; and Bill Whyte, the director of the criminal justice social work development centre. I thank them for coming.

I will begin the questioning on the custodial sentences provisions. My first question is primarily for Mr Tata. One of the bill's main aims is to enhance transparency in and public understanding of the sentencing process. Will the bill improve public confidence in the criminal justice system, in either the short or the long term?

Cyrus Tata (University of Strathclyde): On balance, no, although one or two aspects will be helpful with regard to transparency. The issue is crucial, because research into public attitudes and knowledge highlights the transparency issue, within which the apparent disjuncture between the sentences that are announced and the time served is one of the key areas and sources of public cynicism. For sure, we have to do something about that. The one plus point in the bill is that the courts will be asked to state, if they can, what practical effect a sentence will have, including information such as the earliest point of release. However, we do not need a bill to do that; that could be done now through a sentence guideline judgment. We certainly do not need the rest of the bill to ensure that statements are given in open court on exactly how sentences will be served and the earliest date of release.

At the broadest point, we must consider the ultimate source of the disjuncture and the driver behind the lack of transparency. Although there are good, principled reasons to do with public safety for having supervision after a period of custody, historically, the main driver for release has been pragmatic—it has been a way in which to try to relieve the pressure on the prison population.

Officials have sought to expand and tinker with back-door arrangements about who is released from custody while regarding what goes into prison through the front door as taboo. To use an analogy, the bath is overflowing. What are we trying to do? We are trying to fiddle around with the size of the overflow system; we are not looking at what goes into the bath in the first place. Does everyone who is there need to be there? Why are we still sending fine defaulters to prison? More than half the daily admissions to prison are fine defaulters. Do they need to be there? Is a public safety issue involved? The same questions could be asked about a range of offenders in the context of our concerns about repeat but low-level offending—not violent or sexual offending, but repeat offending—which you have just heard about. That is the main issue.

15:00

I will turn to some more detailed points, but if you want to do something about clarity and transparency, you must think about sentencing. The bill does not deal with sentencing; it deals with the management of sentences. It regards the structure of sentencing as taboo, for some reason. Of course, Parliaments should not tell individual sentencers what sentences to pass in individual cases—that is quite right. Nevertheless, it is for

the Parliament to think about the structure of sentencing and to think rationally about how we can use the precious resource of custody and whether we are using it wisely.

Overall, the bill will not assist in creating transparency and clarity; in fact, it will do the reverse. We are reinventing the mistakes of the past in that respect. The advocates of the bill claim that everyone who is sentenced to a period of 15 or more days in custody—why we have that cut-off point beats me—will be subject to restriction and licence. The public is being told that we are going to get tough on everyone now, and that when people come out of prison they will be watched and under restriction. However, as you have heard, that simply is not possible in practice—that is a fantasy with regard to the vast bulk of prisoners who are released from prison.

You will have noted that, in the policy memorandum, officials have quietly recognised that and have said that, in practice, it will not be possible to do any kind of meaningful licence work with people who are sentenced to periods of six months or less. I suggest that six months is an underestimate; I think that, in practice, the sentences involved will be longer than that. It will be difficult to do meaningful work in the community with people who are sentenced to short periods. In practice, therefore, they will be paper licences, not meaningful licences. I suggest that we are setting expectations that simply cannot be fulfilled and that the bill is, in fact, exacerbating the issue of dishonesty.

There is a real public confidence issue. The proponents of the bill claim that public confidence is paramount. However, specific, crucial arrangements in the bill—which I would like to talk about, if you would like to ask me about them—will have serious detrimental effects and will work in contradictory ways.

The Convener: In essence, you are saying that restricting certain offenders from going to prison would create the capacity to deal with the more serious offenders. You also seem to be saying that there is no capacity to deal with the community sentences aspect of the bill and the control and management of offenders who receive such sentences. Do other panel members agree or disagree with any of that?

Richard Sparks (University of Edinburgh): I am slightly more optimistic than Cyrus Tata about the overall shape of the bill, although I share some of the anxieties about its feasibility. Returning to the question that you originally posed, about public confidence and transparency, it seems to me that many of the problems that arise in explaining what is going on to an observant and indignant public come from the fact that the system set up an expectation that has not been realised and that supervision has become merely nominal. Problems also arise from situations in which something has happened that cannot be defended, explained or accounted for adequately. Explaining when and how prisoners are to be released is, clearly, an advance, as that is less likely to produce hostages of the kind that make it difficult to explain practice to people; the bill gives greater scope for adequate explanation of the integrity of the sentence as a whole at the starting point. Nevertheless, failed or nominal supervision is a huge problem for the reputation of the criminal justice system, and setting up an unmanageable expectation that more and more supervision will instantly be provided may create another problem.

Bill Whyte (Criminal Justice Social Work Development Centre for Scotland): I am glad that Cyrus Tata set the tone. The risk is that the bill will finish up being neither fish nor fowl, as my granny would have said. It sits somewhere in between and does not resolve the problem.

When I was a manager, I did not meet anybody coming out of custody who did not need supervision and help. Custody is a very disruptive experience. We know that short-term offenders are among the most vulnerable, needy and dangerous offenders, but, as has been said, the risk of harm that they pose will be below the radar of any risk assessment. They are the people whom we describe as serving life sentences by instalment—they are constantly in and out of prison.

To me, what is important about the bill is the fact that it gives a message to the public, which, if it succeeds, will be very helpful: someone who goes to prison must serve a period in the community as part of their sentence. In other words, the two parts of the sentence are not separate. It is rather unfortunate that the bill suggests that, for the purposes of punishment, a judge can extend the custody part but not the community part of a sentence. That gives a message to the public that the community part is the soft part. However, there is value in the bill saying, for the first time, that the community part is the essential part for community safety.

There is little evidence that custody—certainly, short-term custody—protects the community. The Scottish Prison Service is on record as saying, "Don't send us anybody for less than 12 months. We can't work with them." Even in the recent report on Peterhead prison, it is noted that there are serious offenders who are not subject to programmes.

There is some clarity in the bill, so I share some of Richard Sparks's optimism for its potential. However, the Kincraig committee's recommendations, which led to the existing provisions, were pragmatically honest and

scrapped supervision for short-term sentences because we could not deliver it. The situation has not changed; indeed, it is worse. Such supervision will not be delivered through existing social work capacity. As has been said, the risk is that the bill will bureaucratise a form of risk assessment—which is a problematic art at the moment—and will not connect short-term prisoners to real services. The knock-on consequence of that, which has been described, is that the serious offenders will not get the resources that they need.

The bill is well intentioned and has some potential to help to clarify for the public the important elements in a sentence. However, it does not address the question why people serving sentences of less than 12 months—or less than 18 months, I would say—are being taken into custody at a cost of £1,500 a week. We are told that supervision costs £1,800 a year. That is not a cost benefit value; that is cheap supervision. If we want to do things for people in the community, we must spend the money.

The Convener: What about the public confidence aspects of what you have just said?

Bill Whyte: As has been said by previous witnesses, research suggests that victims want offenders to stop their offending behaviour and change. The bill must convey the right message to the public. If we want to punish people, we lock them up. That is a perfectly valid policy objective and community aspiration. However, custody will not help those people to change—we have no evidence that it will do so. Only through our not putting those people into custody or through our returning them to the community can evidence of change be generated. I think that public confidence will increase if the public seriously believe that what we are doing gives people a fighting chance to change.

The public are not stupid. They know that supervision at the moment is too cheap and that we are not achieving what we want to achieve. They recognise that punishment in prison does something symbolically, but they see offenders coming out and then going round the system again. The bill has a chance to increase confidence if it does what the Executive says that it is trying to do, but I do not think that the bill tackles the fundamental problem.

Jeremy Purvis: You said that the criminal justice social work system could not cope if the bill were passed. Have you calculated what additional resources would be needed to make it cope?

Bill Whyte: Social work capacity has grown over a number of years, but the committee will know better than me that the concept of throughcare was virtually abandoned in the 1980s and 1990s. In many ways it is a new service, and its capacity remains limited, but the expectations of the multi-agency public protection arrangements and of the violent offender and sex offender register, which covers the serious offenders, are drawing more and more time. We expect workers to do standardised assessments that can make a contribution. Tasks such as that have to be processed.

Somebody asked about the definition of supervision. The heart of supervision is about change—as opposed to the management and administrative elements. It takes time to change people's attitudes and their understanding of criminality, its consequences and how they might change their lives. It cannot be done quickly or cheaply.

The skills exist, but we are far short on capacity. I do not know the exact figures, but I know that the budget is sitting at about £80 million. I would say that the system would need about half that again, but I am speculating.

Jeremy Purvis: I want to ask Professor Sparks about licensing conditions. Will offenders perceive the new sentencing system, with custody and community parts, as legitimate? Do you think that there could be a positive impact on offenders? Not just the public might understand that there are separate requirements; sentencing could be more transparent to offenders too.

Richard Sparks: That would be a great benefit if it was the result. Much has been said about the advantages of focusing attention on risk and need, but offenders will lose confidence in the system if they see that supervision is unreal or, at best, a turning-up process. For the community parts of the new sentences to work effectively, the co-operation and compliance of offenders will be fundamental. Given the number of offenders who are being managed, the system cannot simply be imposed on people who do not adhere. Just as people may choose whether to take their medicines, offenders may choose whether to comply with a process of supervision. They need to see both benefits to themselves and that the system is being administered fairly. That could be accomplished, but probably not on an industrial scale.

Jeremy Purvis: I want to mention the effectiveness of post-release supervision. There are two problems with throughcare: first, it frequently does not exist; secondly, when it does, there is no compulsion. For example, when someone is released automatically on licence, they are not compelled to attend interviews or programmes. Under the bill, the element of compulsion will be explicit. When throughcare begins in a prison setting, it is more effective because a prison officer is the liaison and compulsion is involved—that was made clear to

me when I visited Edinburgh prison. The bill will extend compulsion into the community setting.

15:15

Richard Sparks: I am not nervous about compulsion. The benefit of establishing, explaining and robustly asserting the dual nature of the sentence is that it allows us to affirm a certain degree of compulsion as a legitimate requirement on people. In principle, I have no problem with that. Nevertheless, even processes that are compulsory, such as going to school, can be more or less successful, depending on how they are administered and on the degree of advantage to the individual concerned and of consistency in their relationship with the practitioner. All the processes that condition whether people are more or less likely to apply will obtain even when there is a higher quotient of compulsion.

Colin Fox: I have two questions. The first is about breaches and recalls to custody. You seem to be suggesting that some of the bill's provisions will lead to more breaches of licences and therefore more recalls to custody, and that there is a danger that they may raise the public's expectations of the criminal justice system's ability to manage offenders effectively. Is that a fair summary of the message that you have given out so far?

Bill Whyte: That is our fear. The evidence suggests that short-term offenders in particular, and young offenders, offend at quite a high rate. As both Richard Sparks and Cyrus Tata said, if we move to a system that turns out to be a hoop-jumping, box-ticking exercise, there will be cynicism from those people, there will not be meaningful help and, inevitably, the current revolving-door syndrome will continue. It may even increase. That is a real risk. As you say, the possible consequence is that the public's confidence will be reduced.

Richard Sparks: We should not assume that the public has a limitless appetite for seeing people breached, irrespective of the gravity of the offence. That is an empirical question. There is a danger of disproportionality in both directions. It is just as possible to damage perception of the system by taking sledgehammers to nuts and crushing butterflies on wheels as by under-enforcement.

Bill Whyte: That is correct. Practitioners say that if they have discretion in dealing with breaches, they can use the leverage to reconnect. If people are reconnecting not with anything meaningful but only with more hoops, that leverage will become counterproductive. The issue is not breach per se, but whether it is used in the context of a meaningful relationship and whether there is really access to the kind of assistance that will give people a fighting chance to turn their lives around.

Colin Fox: I turn to the consequences for our prisons. When I read Mr Tata's submission, a number of points jumped out at me. It states:

> "The overall consequences on the prison population of this Bill … should be expected to be very large."

Reference is made to overcrowding in our prisons. What effect will keeping more people in prison for longer have on the Scottish Prison Service's ability to work on rehabilitation of the people in its custody?

Cyrus Tata: I will restrict myself to the first part of your question; my colleagues can respond to the second part. The Executive's financial memorandum notes some of the bill's effects on the prison population but seems to ignore some of the other unintended consequences. There will be some perverse incentives. To my mind, section 6 is one of the most problematic provisions in the bill. The policy memorandum states that it will normally be possible for an offender to be released after they have served 50 per cent of their sentence, but the sentencer will be able to increase that to 75 per cent if they wish. Despite asking officials and others associated with the bill about that provision, I have been unable to find a clear explanation of why a sentencer would use it, given that they can simply increase the nominal sentence if they want to keep someone in custody for longer. Section 6 is a major point of contention.

The bill would also result in inflationary pressures on sentences. We have already heard from officials that serious supervision of people with sentences of six months or less—in practice, probably 18 months or less—is not possible. Members will be aware that the Parliament is considering legislation to raise the limit on summary sentences from six months to 12 months. In practice, if a sentencer thinks that a person deserves to spend four months in custody but would like them to have some supervision afterwards, so that they can be reintegrated, they will increase the custodial sentence to ensure that the person gets supervision. That is one of the unintended consequences of the bill that does not seem to have been considered in the financial memorandum. The bill must be considered alongside other changes that the Parliament is considering at the moment.

I will mention briefly the issue of the 15-day cut-off point—I know that the committee is aware of the perverse results it can produce. Someone who is serving a sentence of 21 days will serve less than someone who is sentenced to 14 days in prison. That must result in a breach of public confidence. People will ask how it can happen.

Colin Fox: That point struck us previously. Do you think that in practice sentences of 15 days or less will disappear?

Cyrus Tata: No.

Colin Fox: Do you not think that people will ask for more?

Cyrus Tata: That is one possibility. Other research that has been done suggests that there will be a knock-on effect in terms of delay and judge shopping. Judge shopping is the practice of defence solicitors seeking more favourable sentencers. We all know that inconsistency exists. It is perfectly legitimate—it is probably a professional obligation—for a defence solicitor to try to bring their case before a more favourable sentencer. That involves postponement and delay.

The 15-day cut-off point also raises an issue of comparative justice. A sentencer will realise that, if they give someone 21 days, that person will serve less than someone to whom they have given 14 days, and that they therefore need to increase the sentence. Such inflationary pressures do not seem to have been considered at all in the financial memorandum.

Colin Fox: Would your colleagues like to add anything?

Richard Sparks: A lot has been said about short prison sentences and I do not want to take up too much of the committee's time by returning to the topic unduly, but I have brought with me some data that members may find interesting. For the benefit of the committee's researchers, I note that the data come from the *Penological Information Bulletin* of the Council of Europe, which is a gold mine of comparative material.

All comparative international prison figures are a few years out of date, so they should be taken only as indicative. In the year to which the data relate, an average of 1.9 months of imprisonment were served by prisoners in Scotland, which is much less than the period served by prisoners in a number of European countries in which the prison population is much smaller pro rata. That suggests that in Scotland there is a great preponderance of short sentences, which is anomalous not only in the UK but on a European level. In Finland, for example, the average length of imprisonment is nearly six months, but the prison population there is significantly lower and more stable than that in Scotland.

If the committee is interested primarily in the effects of the bill on the prison population, it will find that the lengthening of sentences that are already long will not have as drastic an impact as the high volume of shorter sentences. If the high volume of shorter sentences is compounded by a ratcheting-up of breach processes, it is more likely to be the motor of growth.

Such sentences are of a nature that makes the prison population less manageable because of all the business that is involved in taking people from the courts, receiving them into prison, allocating them to places and so on. That is a big problem on a throughput, system-management level. At some point, the issue will have to be addressed in some way.

Colin Fox: You mentioned an average sentence of 1.9 months, but I was driving at the effect that sending more people to jail for longer would have on the entire prison population as regards rehabilitation programmes and so on.

Bill Whyte: The turnover is what counts. A much higher proportion of the daily population are long-term prisoners, but the annual turnover of prisoners is the same. It is the churn that clogs up the system. I do not know what the outcome will be; colleagues have said that the system is highly adaptive.

Judges are not represented at today's meeting, although the committee might interview them. A gamble is being taken. Judges might indeed say, "What is the point of short sentences?" and stop using them, although I know far too many judges who still believe that sending someone to prison for a few days teaches them a lesson. Despite all the research on what prison teaches people, judges still think that that is the thing to do.

Judges will recalibrate sentences. That is what they did after the passing of the Prisoners and Criminal Proceedings (Scotland) Act 1993. Despite the provision on automatic release halfway through a sentence, the time spent in prison went up. Sentences were recalibrated and judges may do that again—they may do so in such a way as to ensure that prisoners spend exactly the same length of time in prison. As Cyrus Tata suggested, there is the risk that the very short sentences will create complications and that we will get more churn. In the long term, I do not know whether serious offenders will get longer sentences, but I agree with Richard Sparks that that will not make much difference one way or t'other.

Cyrus Tata: We should bear in mind that when the Sentencing Commission made its proposals—which were slightly different from those in the bill—its intention was to increase transparency and clarity. It had no intention of drastically expanding the prison population, but that is exactly what the bill would do. The commission strongly recommended that there should be recalibration; indeed, it recommended that the Parliament should lay down in statute that there should be recalibration, but that requirement has been

dropped. There should be recalibration downwards, because the main pressures on sentences will be upwards. As well as the pressures that are mentioned in the financial memorandum, there are a number of unintended ones.

Colin Fox: I look forward to the day when judges appear before us as witnesses. That might happen one day, but in the meantime we must satisfy ourselves and hope that judge hopping becomes an Olympic sport.

Jackie Baillie: I thought "judge shopping" was the phrase that was used.

Cyrus Tata: Judge hopping sounds quite interesting.

Jackie Baillie: Shopping is more my kind of sport.

Cyrus Tata: It was "judge shopping".

Jackie Baillie: My questions have largely been asked and answered, but I want to be absolutely clear about what you are saying. You appear to be suggesting that it is not simply a case of increasing capacity for risk assessment and the supervision or management of offenders because little will be achieved with prisoners on short-term sentences, that regardless of whether there is an increase in capacity we just do not have these guys for long enough, which means that we need to focus on prisoners on longer sentences.

You all said that 15 days is not an appropriate threshold. A range of appropriate periods have been mentioned. What would be an appropriate threshold—six months, a year or 18 months? I want to tie you down on that point.

Bill Whyte: I would go along with the model that is used in Finland, where there is a cap at two years. As far as I know, there is no evidence that Finland is overrun with offenders. Finland was extremely imaginative in continuing to allow the judiciary to put custodial weight on what the sentence was worth. Prisoners on sentences of less than two years are supervised in the community, with safeguards. An appropriate period would be 12 months or 15 months. People who would otherwise serve custodial sentences could be subject to longer community disposals, which would mean that they could be taken out of the system altogether. There is no rationale for a period of six months or nine months. A substantial period is necessary.

Jackie Baillie: Is that view common?

Cyrus Tata: I will keep my comments brief because I have spoken for long enough about other matters. I agree with Bill Whyte.

15:30

Richard Sparks: I tend to agree with what has been said, primarily because a redirection of resources seems to be necessary. If we want the bill to succeed and to have a robust, defensible and readily explicable structure, it seems to me that the new investment must go primarily into community parts of sentences. From a pragmatic point of view, the bill will work better if it does not result in additional expectations on or demand additional resources for the prison system, and I cannot see how that can be avoided without setting a relatively high threshold. Therefore, I think that I agree with Bill Whyte.

Jackie Baillie: If a judge issued a short sentence to be served under supervision in the community, would you argue that that supervision will not work unless it is long enough?

Bill Whyte: The issue of resources in the community still needs to be addressed. It seems to me that people have had a vision for many years when they have passed legislation. Section 12 of the Social Work (Scotland) Act 1968 put a duty on local authorities to promote social welfare and communities' safety. That is still the law, but I do not see leisure and recreation, housing, education and drug services having visions that they have a duty to promote the well-being of communities. A range of service providers has not even engaged in the dialogue. We are talking about criminal justice social work services and associated voluntary agencies, but we need to bring in a range of other players if we are serious about long-term desistance. There is a resource question either way. Why valuable money should be spent on a certain resource is a relative question.

Richard Sparks: A penalty such as community service need not be of great duration to have an impact on public perception or to benefit an offender. Not all penalties have to be very extended to satisfy penologically meaningful criteria.

Jackie Baillie: Okay. So there can be forms of supervision over a shorter timeframe in certain circumstances. I am trying to remove capacity issues from the discussion, which we agreed to do. I am interested in what works if the capacity issues are removed. You seem to be saying that there can be different interventions for people in short periods of time, so perhaps something can be done even when a short-term custodial sentence has been imposed or when a person is being supervised in the community. I see the witnesses agreeing.

The Convener: I want to ask Mr Whyte a question. You referred to Finland. Is there a cultural difference there? Are community

sentences perceived differently by the community there? Do such sentences result in social stigma?

Bill Whyte: There is a major cultural difference. What I described was driven by the executive and the judiciary, but I do not see our judiciary driving for such things at all. Furthermore, Finland does not have our media, which hound the judiciary and the Executive. However, I must assume that the cultural differences that you have raised exist and that people in our society accept that people should be subject to meaningful accountability in the system. We seem to have created cynicism. Somebody said, "If you don't get put in jail, you don't get dealt with." That is a strange mindset.

Maureen Macmillan: I am trying to dredge up what I know about Finland's prisons. The Justice 1 Committee looked at the Finnish system ages ago. I had the impression that if someone went to prison there, nothing was done for them—there were no anger management courses, for example.

What evidence exists about reoffending? Does it show differences between the reoffending rates of people who are supervised when they come out of prison and of people who are not supervised at all when they come out of prison? Has any research been done on the efficacy of supervision?

Bill Whyte: The Executive recently published data that are averaged over a two-year period. The advisers probably know more about the data than I do, but there are no huge differences in the reoffending rates. Reoffending rates among people who have come out of custody are slightly higher than the rates among those who have not. We are left with an argument. It can be said that probation or community supervision does not improve matters much and that it achieves much the same as prison, but such supervision is much cheaper than prison and I suspect that it is not as effective as it should be. Community supervision is so much less damaging in the short term. If we are getting no worse results at the moment, there is room for optimism in the data.

The data need to be refined. A figure of 60 per cent reoffending or whatever was publicised. The latest data suggest that the average reoffending rate, once quasi-convictions are taken into account, is 36 per cent. I think that that is a good figure. If two out of three offenders are turned around, that is pretty good. There is no cure. We need to build some confidence into the data, and we must have meaningful supervision and help. I would not wish to sell Finland as a model of service as such, although society did not fall apart when the Finns stopped sending people to prison for a certain amount of time.

Maureen Macmillan: You mentioned good supervision. What do prisoners need when they are released? What should we be giving them? What would you consider to be good supervision?

Richard Sparks: I think that Bill Whyte should answer all those questions. There is reasonably robust information. The key variables that determine whether people are more or less likely to reoffend persistently are not purely internal to the person. The person's overall situation includes such factors as whether they have access to employment or meaningful training; whether they have reconstructed or can reconstruct their relationship; and whether they will be able to come off their addictions. Those three factors should be considered in the foreground and focused on, although there will be numerous other things that might have a greater or lesser effect in particular cases.

Bill Whyte: We expect three elements to be important. First, there is a management dimension. People have to be held to account. If a relationship or working alliance is really purposeful, offenders value that and think that the person is there for them to give them a fighting chance to change. Most offenders want to change at some point. Some will not—there are professional criminals.

The supervisory part has two elements. One involves building people's individual capacity to understand what they have been part of, to begin to take control and to develop a sense of self-efficacy. A lot of offenders do not have control of their lives before they go into prison. Coming out of prison can be very difficult. The offence-focused work that we have come to know is very helpful, but it tends to deal with thinking, feeling and doing. We suspect that none of that work really comes to fruition unless there are social resources. Offenders need to be wrapped around with people, not police or social workers.

The word "support" has been used. Professionals should indeed be supportive, but I would not want a professional to provide me with support; I want friends, family and colleagues. Those groups are not easy to build. They are built through people's educational capacity, employment, leisure and associations.

Whether or not we use the jargon of social capital, we have to build something that gives people a stake in the community where they belong. That is not easy by any means, but we can do it for many people. That is where we move beyond a model of simply having a supervisor. Part of their role is to link individuals to a range of people. Some of the work has to be planned strategically by local authorities. I do not want social workers to do it all. There are educationists, leisure and recreation people, employment people, family members, volunteers and mentors, but we do not yet have the comprehensive packages. In

recent years, we have focused on the offence and management dimensions. We have not really taken seriously how to build social capacity in the community through employment.

We have a fair idea of the kind of things many people will need. There are some people who have been hugely victimised in their lives. I do not put that forward as an excuse, but it is a reality. Many of them will carry trauma throughout their lives, and some will need mental health services or trauma services, which I do not think are readily available.

Maureen Macmillan: It occurs to me that there is a gap between getting out of prison and getting support. I hope that things might be better under the Management of Offenders etc (Scotland) Act 2005. When I have visited prisons, I have met prisoners who got out of prison a year previously but went straight into the pub, got into a fight, assaulted somebody and came back in again. It probably happened within a day. Where was the supervision and support?

Prisoners need to live somewhere but do not know where they will live—which is a different kind of need—and drug dealers hang about outside prisons waiting for prisoners to come out. How are we going to catch that?

Bill Whyte: You have partly answered your question. The literature and practical experience show that whatever benefits prisoners acquire from programmes in prison wash out quickly when they go back to the same world and the same circumstances, because nothing in that world has changed. To some extent, we need to bridge people back into the community, which is the concept of throughcare. That is why I value the bill's recognition that a period in the community should be part of the sentence. It is really important that that be implemented, because that is what is likely to give us a chance to connect.

The model of throughcare is changing and the prison service is getting better at it. In the model that is opening up, rather than inviting people in to do a bit for a prisoner and then letting the prisoner out, the prison service holds the prisoner and, because the community is responsible for taking the prisoner back, the prison service asks people to come in and start the work long before they are due to return to the community. We must begin to address housing, leisure and recreation, literacy and employment before prisoners get out.

Maureen Macmillan: So there should be a seamless transition.

Bill Whyte: That is the ideal, but it raises all the practical issues such as numbers. How many people is it realistic to do that with?

Cyrus Tata: Can we do it with the vast bulk of prisoners, who are sentenced to three months or less? Prison is enormously corrosive. Some people say that offenders can be sent to prison for detoxification—sometimes sentencers believe that—but, unfortunately, as you may have seen reported in the papers at the weekend, the research does not bear that view out at all. In fact, it shows the reverse: people are more likely to use drugs in prison than they were before. Likewise, it is sometimes said that offenders can develop literacy skills while they are in prison. That is all very well, but we must not send people to prison to assist their education when that could be done in the community if we began to spend a bit more of the money that is devoted to prisons on community services.

The Convener: Could you turn to weapons, Maureen?

Maureen Macmillan: Yes. I am the person who asks the weapons question.

Jackie Baillie: I wonder why.

Maureen Macmillan: So do I.

Why are knife crime and other violent crime so commonplace among young men in Scotland? Will the bill help to reduce knife crime?

Bill Whyte: If somebody who has a knife in their pocket bumps out of a night club and starts to fight with somebody else, they are more likely to use it, so there must be some value in the bill's attempt to get knives out of circulation, but it will not solve the problem. We have an endemic culture of violence, but we have not addressed how we socialise our boys. We have put a lot of emphasis on women in recent years—and rightly so—but the question is, what is it to be a man or a boy? In a recent study in Glasgow, University of Bristol researchers interviewed young men and women. Conceptually, the interviewees were very new people but, when the researchers gave them illustrations of a man giving a woman a hard time, they wanted her man to stand up for her and go and give the other man a doing.

There are all kinds of ambivalences about violence in our society and we have not addressed that fact. We are beginning to consider circle time and restorative practice in schools. We are beginning to consider how we make good our relationships. Thirty years ago, the broken home would have been the predictor of crime but we are not overrun by crime—it might feel like we are, but we are not—even though family disruption is a norm for our young people. They do amazingly well, but they do not get the adult attention that they used to and we live in a much more complex world.

The bill deals with one element but, in a culture of macho violence, if somebody has a knife in their pocket they will use it. If we can get the knives out of circulation, that will help and, we hope, people will only punch one another—but we are not really addressing how we socialise boys. Moreover, with the freedom that young women have, they rightly realise that they are equally entitled to thump somebody, and they are emerging as just as violent.

Maureen Macmillan: Yes, they are emerging as knife carriers.

Colin Fox: That is a hopeful note.

The Convener: Yes: it reminds me of Frankie Vaughan and his work with boys clubs and boxing clubs in the past.

I thank the witnesses for their evidence. We will now move into private session.

15:44

Meeting continued in private until 16:13.

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