

# **JUSTICE 2 COMMITTEE**

Tuesday 21 November 2006

Session 2

£5.00

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## **JUSTICE 2 COMMITTEE**

**†32<sup>nd</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)

\*Michael Matheson (Central Scotland) (SNP)

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

### **COMMITTEE SUBSTITUTES**

Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

Mr Kenny MacAskill (Lothians) (SNP)

Margaret Mitchell (Central Scotland) (Con)

Mike Pringle (Edinburgh South) (LD)

\*attended

### **THE FOLLOWING GAVE EVIDENCE:**

Professor Alexander Cameron (Parole Board for Scotland)

Niall Campbell (Parole Board for Scotland)

Professor Roisin Hall (Risk Management Authority)

Dr Andrew McLellan (HM Chief Inspector of Prisons for Scotland)

Fiona Moriarty (Scottish Retail Consortium)

Robert Winter (Risk Management Authority)

### **CLERKS TO THE COMMITTEE**

Tracey Haw e

### **SENIOR ASSISTANT CLERK**

Anne Peat

### **ASSISTANT CLERK**

Steven Tallach

### **LOCATION**

Committee Room 4

**† 31<sup>st</sup> Meeting 2006, Session 2—joint meeting with Justice 1 Committee.**



## Scottish Parliament

### Justice 2 Committee

*Tuesday 21 November 2006*

[THE CONVENER *opened the meeting at 14:17*]

### Interests

**The Convener (Mr David Davidson):** Good afternoon, ladies and gentlemen, and welcome to the 32<sup>nd</sup> meeting in 2006 of the Justice 2 Committee. I remind everyone present to switch off their mobile phones, pagers, BlackBerrys and anything else that might interfere with the sound and recording system.

I welcome our advisers to the committee, Fergus McNeill and Susan Wiltshire, and say how welcome it is that pupils from Greenfaulds high school who are doing an advanced higher on justice matters are here to observe our proceedings. We are delighted that young people are coming to watch the Parliament in action. I apologise for the slight delay in starting—we had some matters of business to attend to.

I turn to agenda item 1. Michael Matheson has been appointed to the committee in place of Stewart Maxwell. As this is the first meeting that he has attended, I invite Michael Matheson to declare any interests.

**Michael Matheson (Central Scotland) (SNP):** I have nothing to declare.

**The Convener:** I welcome you to the committee and hope that you will carry on the work of your predecessor, who played a valuable role.

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

14:18

**The Convener:** Item 2 is our fourth evidence session on the Custodial Sentences and Weapons (Scotland) Bill, for which Graham Ross and Frazer McCallum from the Scottish Parliament information centre are here to assist us. I welcome back to the committee our first witness, Fiona Moriarty, who is director of the Scottish Retail Consortium; she has previously given evidence on other pieces of legislation.

Is it likely that the proposed licensing scheme will help retailers to prevent non-domestic knives from getting into the hands of the wrong people?

**Fiona Moriarty (Scottish Retail Consortium):** As you know, convener, I came to the committee about a year ago to talk about licensing of the sale of knives, which was being debated under a different guise. At that point, we were very nervous about how constraining and restraining on retailers the proposed licensing scheme could be. However, many of our concerns have been allayed, specifically in relation to sections 43 to 46 of the bill, and we believe that the provisions will not be relevant to the vast majority of retailers that operate in Scotland.

**The Convener:** Could the licensing scheme create any problems for responsible retailers that sell not just non-domestic knives but, for example, sporting knives?

**Fiona Moriarty:** A few issues of definition remain. We have had some productive meetings with Scottish Executive officials in the past few months, and we have cleared up a few queries about the definition, which is a bit tighter. As I said, the provisions will not be relevant to the vast majority of what we would understand to be high street retailers that sell domestic or do-it-yourself knives. However, there may be a few grey areas, which will be seen only with the passage of time.

**Bill Butler (Glasgow Anniesland) (Lab):** You talk about grey areas. As you know, the need for a licence would not apply to the sale of knives that are designed for domestic use, but the bill does not contain any definition to clarify the differences between domestic and non-domestic knives, nor does it define what constitutes a sword. Are those grey areas likely to cause difficulties for retailers?

**Fiona Moriarty:** They are more likely to cause difficulties for trading standards officers. To take a couple of examples of Scottish Retail Consortium members, John Lewis and B&Q are not the sort of retailers that sell push daggers, death stars, butterfly knives or swords—those are nowhere

near the products that they sell. They sell Stanley knives, camping knives, food preparation knives, pen knives, craft knives and carpet knives. If the knives on that second list are classed as domestic or for use in the home or in a DIY environment, we will not be too concerned about the definition of a non-domestic knife. Unless trading standards officers are given additional resources and clear prescriptive detail in regulations, they may give you a different answer.

**Bill Butler:** Is more guidance needed and would it be helpful to retailers? You said that trading standards officers may have difficulties. If more guidance is needed, should it be provided in legislation or in non-statutory guidance for retailers?

**Fiona Moriarty:** Probably in non-statutory guidance. As a trade association we could play a part in that, and I have canvassed all our members. Trade associations are odd bodies. The SRC directly represents retailers but, as a large association, we also represent other retail trade associations. We represent the British Hardware Federation, which represents a plethora of other trade associations and includes a cook shop division. I know that those retailers were nervous about the products that they sell, which takes us back to the convener's point about hunting and fishing.

My advice to my members will be that they should do a thorough cost benefit analysis and decide whether, in a modern retail environment, they should in fact be selling knives that fall into the grey areas.

**Bill Butler:** If they continue to sell those knives, would non-statutory guidance help?

**Fiona Moriarty:** I think so. This takes us back to trading standards. Most retailers have good relationships with their local trading standards officers, and there needs to be a consistent approach to the licensing scheme, which needs to be transparent. We will need plenty of notice so that I can notify my members by running workshops, for example. When I travel round Scotland, I can ensure that if they sell what would be regarded as non-domestic knives, they know what is expected of them and that they should be talking to their trading standards officers. I would give advice and guidance as necessary.

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** If there is to be a licensing scheme, which types of licence condition would be appropriate and which would you seek to avoid?

**Fiona Moriarty:** We just want consistency. If the regulations prescribe 10 different conditions, they should apply in every one of the 32 local authority areas in Scotland. My members, especially those who trade in more than one local authority area,

tell me that if there are different conditions in different areas things become more expensive and it is far harder for them to manage. Local trading standards services can prescribe additional conditions to the licence as they see fit. I do not want to make too big a deal of that, because it will be virtually insignificant for the vast majority of my members.

**Jeremy Purvis:** What would be the significance of having additional licence conditions? A particular council or ministers might wish to place restrictions on marketing or to introduce requirements for identification over and above what is in the bill. What would be sensible? Where should the limit be set? At what point would things get difficult for the retailers?

**Fiona Moriarty:** The two key areas are costs and training. Anything that adds cost and requires a lot of additional training would concern the small number of our members to whom the provisions would be relevant.

**Colin Fox (Lothians) (SSP):** The witnesses from the Convention of Scottish Local Authorities estimated that local authorities would probably consider charging £50 or so for a licence. What consideration did the Scottish Retail Consortium give to the impact that that cost, along with training costs, would have on retailers? Does that concern you?

**Fiona Moriarty:** Some of my members would probably not thank me for saying this, but the larger retailers could absorb the cost of the licence, although onerous extra conditions would be a different matter. The ballpark figure of £50 for a licence for one store is neither here nor there. Smaller retailers, some of which will be trading on the margin, will have to think seriously about any additional cost.

In response to a question from Bill Butler I said that if retailers are selling non-domestic knives, they will have to do a cost benefit analysis. From the conversations that I have had with my members, I know that they will not be selling many knives, so the additional cost of paying for the licence and meeting the licence conditions will not be worth it and they will stop selling them.

**Colin Fox:** I take it that the cost of complying with the licence conditions will be higher than the £50 cost of the licence.

**Fiona Moriarty:** Yes, it will be considerably higher.

**Colin Fox:** Therefore, retailers will consider what they make annually against that cost to decide whether they will continue to trade in non-domestic knives.

**Fiona Moriarty:** If retailers have to install new or different closed-circuit television cameras; new till

prompts; new auditing systems, whether computer or paper based; new cabinets; and new security measures in store to ensure that the knives cannot be accessed by members of the public—as well as paying for the associated training—my best guess is that quite a few of them that sell only 10 or 15 such items a year will say that it is not worth while for them to continue to do so.

**Colin Fox:** Do you have an idea how many retailers are in that category?

**Fiona Moriarty:** I would have to go away and think about that. We have done an initial trawl, which showed that roughly 3,000 retailers in Scotland sell a form of knife, which can be a camping knife, a bread knife or meat cleaver. I provided Scottish Executive officials with that information. Given the minutiae of the definition of a non-domestic knife, such as a camping or fishing knife, only a handful of retailers are affected.

**Colin Fox:** This is an interesting line of inquiry. We are worried about the preponderance of people getting knives from abroad, or ordering them by e-mail. If the current outlets consider that the cost of complying with the licence will be too high for them to continue to trade in these items, we might find that outlets decide not to supply small stores and that people are more likely to buy knives abroad or order them by e-mail.

14:30

**Fiona Moriarty:** I am not too concerned about that. Reputable retailers will do a cost benefit analysis and decide whether to get a licence to sell such items. Responsible retailers will sell only to members of the public who can demonstrate, within the conditions of the licence, that they require the knife. There is a balance; a reputable customer will explain what they intend to use the product for.

**Colin Fox:** I am concerned that, if people are determined to get these knives but they cannot get them from licensed retailers, the trade will be driven underground.

**The Convener:** Following on from Colin Fox's concern about alternative suppliers, I know from when I was farming that many hardware stalls at agricultural shows and markets sell sporting knives. Does your organisation cover such suppliers? Some of them are based in England but they carry out transactions in Scotland. How will the bill affect them?

**Fiona Moriarty:** A number of rural suppliers sell—for legitimate leisure and rural use—non-domestic knives that will fall under sections 43 to 46 of the bill, but they are not members of the Scottish Retail Consortium. Some of them might be members of the hardware and garden retail

association and a couple of other associations that I mentioned earlier. I could ask the British Hardware Federation how many stores will be affected. My best guess is that, if they sell a substantial number of products, they will apply for a licence and manage it, as retailers do for many other restricted products.

**The Convener:** If you could write to the clerks about that at your earliest convenience, that would be helpful.

**Maureen Macmillan (Highlands and Islands) (Lab):** Swords might be sold at sporting events that include sword fencing competitions. Because such competitions are held throughout the country, dealers turn up at various venues. They will have a problem in complying with the licensing conditions because their sales are not made from a permanent shop. They might not even have a permanent shop. They might make their living by selling products through the post—for example, to school fencing clubs—or by selling products at competitions. If they have to apply for a licence in every local authority area in which there is a fencing competition, they will be out of pocket. Will that be an extensive problem? People have written to us about the matter, but I wonder how extensive the problem will be.

**Fiona Moriarty:** I am not sure. It will be a problem, given the number of markets, fairs and other activities that are held throughout Scotland in any 12-month period and the number of agricultural shows with stalls that sell swords or other non-domestic knives. I notice that there is no evidence from the Society of Chief Officers of Trading Standards in Scotland, but I would be interested to know its views. I work with trading standards officers a lot and they are the guys who have to manage things day in, day out. I do not want to speak on their behalf, but I think they would say that they are underresourced and that the bill will place extra pressure on them.

**Maureen Macmillan:** Do you think that dealers will stop having stalls?

**Fiona Moriarty:** I imagine so.

**Maureen Macmillan:** If that source dries up, it will pose a difficulty for people who genuinely want to get hold of swords for fencing, highland dancing or whatever.

**Fiona Moriarty:** I think so. The committee will have some interesting times wrestling with Mr Fox's valid point that the illegitimate trade might be driven underground and the legitimate trade might be driven overseas or on to the internet.

**Maureen Macmillan:** Let us hope that somebody who is listening to this discussion will write to us and tell us about that.

**Fiona Moriarty:** I am due to meet SCOTSS on another matter in the next few weeks, so I will raise it with them myself.

**Bill Butler:** I return to swords, Miss Moriarty. The Executive has indicated that people who sell swords commercially will be required to take reasonable steps to confirm that a sword is being bought for a legitimate purpose. What steps can and should sellers take to achieve that aim?

**Fiona Moriarty:** Mr Butler, I will give a bit of a non-answer because, hand on heart, I can tell you that none of my members sells swords, so I have happily left the issue to one side.

**Bill Butler:** I will not indulge in any verbal fencing. Perhaps we will get some information from another source.

**The Convener:** I thank Miss Moriarty for making herself available and for the offer that she made to contact the clerks with further evidence for us.

I welcome the next panel of witnesses to the table. We are aware of the difficulties with the sunlight. We tend to put the ministers where the light shines in their eyes.

**Professor Roisin Hall (Risk Management Authority):** That is a good technique.

**The Convener:** The sun will move round, obviously, but if the witnesses would like to wriggle their chairs to more comfortable positions, they should feel free to do so, as long as they do not end up too far away from the microphones.

I welcome Professor Alexander Cameron, who is the chairman of the Parole Board for Scotland, and Niall Campbell, who is a member of the board. I also welcome Professor Roisin Hall, who is the chief executive of the Risk Management Authority—and the dazzled person at the moment—and Robert Winter, who is the RMA's convener. I thank them for coming along and hope that they will not be inconvenienced too much by the sun.

The bill aims to achieve greater clarity in sentencing along with better protection of the public and to contribute to a reduction in reoffending. Will it achieve those aims?

**Professor Alexander Cameron (Parole Board for Scotland):** The Parole Board knows from experience that good assessment of risk and consideration by a body such as the board are effective and that good supervision of offenders is an important part of protecting communities and helping offenders to avoid reoffending.

Broadly speaking, we would say that the bill will be welcomed. However, we have concerns about the enormous range of offenders who are encompassed in the bill, and we have laid out questions in our submission about the

effectiveness of the potential of assessment for people on very short sentences. There are serious concerns about whether the bill can be applied to people on such sentences.

**The Convener:** Thank you for your written submission. I have no doubt that my colleagues will cover most aspects of it.

**Professor Hall:** We welcome the aims of the bill, but there are reservations about the way in which it is drafted that may get in the way of clearer sentencing, public protection and reduction in reoffending. The real issue is whether we can sufficiently target the offenders who present a risk of harm to the public. As it stands, that may not be possible.

The most important aspect of the potential of the bill is the concept of having some supported and supervised community provision in a sentence, so that any work that has been done in prison is followed up by a period of enabling the person to readjust to being back at home and, hopefully, to moving towards not reoffending.

**The Convener:** How will the bill improve public protection?

**Professor Cameron:** As offenders return to the community, there will be proper support for them and monitoring of their behaviour. There will be a focus on the things that are likely to return people to offending behaviour. That has been the benefit of people who are on sentences of four years and longer being on licence. Provided that the support is of adequate quantity and quality, extending its range should assist in protecting communities. Our concern is whether that will be feasible in terms of the entire scope of the bill.

**Professor Hall:** Better public protection requires resources. The committee should remember that risk assessment and risk management are opposite sides of a coin—they are inextricably linked. If you are going to consider following the assessment of risk by the management of that risk, you need to target the resources at the people who represent a risk of serious harm. The bill's current provisions spread the resources too thinly.

**The Convener:** I note in the Parole Board's written evidence that you feel that the bill has not been drafted correctly. Will you expand on that?

**Professor Cameron:** It concerns matters of technical detail in the bill. The way in which some of the sections are numbered and the sequence of the sections mean that they are slightly at odds with what is intended. Those are drafting matters. We also have concerns about whether the Parole Board can conclude its considerations and make a determination within the timescales. We suggest that the bill's wording could be reconsidered to



ensure that it does not create a cul-de-sac for the board.

**The Convener:** That is helpful. The bill proposes to reduce the number of Parole Board members who are involved in a tribunal from three to two. The committee is aware that your organisation has expressed concern about the way in which that might limit breadth of expertise, which is one of the Parole Board's strengths. You have made it very clear that the chair or convener must have a legal background, which limits the tribunal to one other member. Will you elaborate on that? It seems a particularly important part of your evidence.

**Professor Cameron:** The board is concerned about an intention in the financial memorandum to make what we consider to be a significant change to the way in which the board operates when it sits as a tribunal. It currently involves three members of the board and is chaired by one of our legal members. In terms of European law, that is important for our judge-like function. It is important that we are fair and impartial when we deliberate over cases and that we give them the fullest consideration.

The board values the range of experience and expertise that its members bring in taking extremely important decisions. Our concern is that narrowing down the tribunals from three members to two seems to be at odds with schedule 1, under which the range of interests that are represented on the board will be extended. On the one hand, the representation on the totality of the board will increase but, in the detail of what will be expected of the board operationally, there will be a reduction in that representation. We urge reconsideration of that point.

14:45

An allied point, which is equally concerning, is the suggestion that tribunal decisions will have to be unanimous. With only two members, it is almost inevitable that there would have to be a unanimous agreement. The issue is that, if the two members did not agree, it would be improper for one member to have a casting vote. A membership of three allows for a majority decision. The board reaches a majority decision relatively rarely—decisions are usually unanimous—but, to provide clarity about the consideration and the range of views that we take into account in reaching decisions, it is nonetheless important that that process is sometimes reflected in a decision that is made by a majority.

Our concerns are twofold—we are concerned about the reduction of expertise that will be available in any single tribunal and about the

apparent intended move to unanimity as a requirement in decision making.

**The Convener:** I presume from what you say that the Parole Board would like tribunals to have more members and for there to be an uneven number of members, to allow tribunals to come to a decision when there is a spread of views.

**Professor Cameron:** We do not argue for more members on tribunals. One issue for the board will be the increased demand under the bill. To be honest, at present, we have to work hard and are struggling to keep pace with demand. An increase in the required number of members on tribunals would add to that issue. Membership of three is a fairly consistent position for tribunals—indeed, the name suggests that number. We certainly think that it is valuable to have an uneven number of members to allow for a majority decision.

**The Convener:** Basically, you feel that the number should continue to be three, as is the case at present.

**Professor Cameron:** Yes.

**The Convener:** You commented on European legislation. Will you explain clearly your position in relation to fair trials under article 6 of the European convention on human rights?

**Professor Cameron:** Everything that the board does must comply with European regulations and legislation, so we are bound in our decision making to act in compliance with article 6 of the ECHR. If we do not, we would most certainly be liable to judicial review, in which our position would be difficult to defend. We must ensure that the board's decision making complies absolutely with the right to a fair trial.

**Bill Butler:** My questions are for Professor Hall and Bob Winter of the Risk Management Authority. The RMA has expressed concerns about the proposed requirement to conduct a risk assessment of every offender who receives a sentence of 15 days or more. You say that that is not in line with best practice. As you know, the bill would make risk assessment crucial to release decisions on all prisoners who are sentenced to more than 15 days. For the record, will you set out your concerns in a little more detail and clarify the exact difference between the terms "risk assessment" and "risk management"?

**Professor Hall:** The field of risk assessment is complex, with terms that tend to be used without careful definition on occasion. We need to be clear about whether we are talking about the risk of reoffending, the risk of harm or the risk of serious harm. Those are three fundamental definitions that need to be considered in examining the proposed legislation. We welcome the recognition that risk assessment is incredibly important as a basis for

action plans on how to manage offenders to prevent serious harm. That, however, is at one end of a continuum—it is probably important to see risk assessment as a continuum.

It is true that we can screen offenders at a basic level and decide how we should allocate police resources according to the number on the sex offenders register, for example. The type of assessment that we would do at that stage is qualitatively and quantitatively different from an assessment of someone being considered for an order for lifelong restriction, for which, as members know, a full week of work is needed to work up the case.

My other point about the bill is that if we wish to assess people who serve sentences as short as 15 days, there is no way that we will be able to do anything that I would recognise as a risk assessment. As we said in our written submission, although we might be able to do some blunt needs assessment because people's needs are associated with offending, we have to be clear that they are not risk factors per se.

Managing an individual's needs is just as important as managing their risk, but we have to be clear about what we are talking about and trying to achieve. I use the analogy of going to see the doctor—the first time someone goes to see the doctor they describe what is wrong, he yawns and says, "There's a lot of it about today", but the patient has to have a lot of tests before they find themselves having a full body scan.

**Bill Butler:** So you are saying that if sentences are as short as 15 days, or even under six months, you cannot go into the necessary detail that would qualify for the definition of a serious risk assessment and the risk management assessment that flows from that?

**Professor Hall:** I think that I am saying more than that. We would probably not get much information even about the risk of harm posed by an offender who was serving a sentence of less than a year. If we are talking about risk of serious harm, we need more opportunities for gathering the information on which we make our analysis.

**Bill Butler:** Does the bill as currently drafted give the public a false sense of security because they might perceive that all prisoners have been risk-assessed and risk-managed and therefore everything is fine?

**Professor Hall:** It might give the public a sense of security, but it would probably give the rest of us the absolute heebie-jeebies because we know that the water would fall through the bottom. That is important in the light of your earlier point about the aims and objectives of the bill.

**Bill Butler:** Does the threshold of 15 days or more need to be changed?

**Professor Hall:** Yes. Like many other agencies that have made submissions to the committee, the Risk Management Authority feels that if you are interested in risk assessment, the cut-off point should be a one-year sentence. The aim of the bill is not just to assess; it is to manage. It takes time to manage actions in the custodial setting as well as in the community setting and to gather the information that flows from each to make everything make sense.

**Bill Butler:** As you said, it is a continuum, so the timeframe cannot be abbreviated as the bill proposes.

**Professor Hall:** If you abbreviate it, you make it a nonsense. Our concern is that talking about risk assessment as the bill does might lower the whole credibility of risk assessment. As one of the submissions to the committee said, we would then have another quango talking nonsense.

**Bill Butler:** I will not comment on that, but I hear what you are saying.

**Robert Winter (Risk Management Authority):** The profile of the prison population who are in for shorter sentences is significantly different from the profile of the others. There must be a sense of where the priority lies when protecting the public from harm, and it does not lie at the lower end of the offending scale.

It is true that the risk of reoffending is very high at the lower end of the offending scale. Such offenders often lead chaotic lifestyles and have great difficulty just managing their own lives. We are not saying that the range of agencies do not have a job to do to help such people be better in society. We need to minimise the reoffending of many of those vulnerable people in our society. Such offenders do not require a risk assessment process with all that that involves. If we could afford that, I would say from my broader experience that they would benefit from a needs assessment and some support, but that would come at significant cost, which would need to be considered.

**Professor Cameron:** The Parole Board is charged with determining whether there would be a risk to the public if someone were released. We are significant consumers of risk assessments, which are undertaken not by the board but by a variety of professionals we make use of. Risk assessments are included in the dossier that helps us to reach our conclusion on the matter. We also have a role in risk management, which is exercised through the conditions that we apply to a licence. Those conditions enable and assist supervising officers in the community to manage the risk as effectively as they can. Our concern

with the bill is that if people who have been in prison for a very short time are referred to us to decide whether the period in custody should be extended, we might not have information about how that view about risk was taken that would enable us to take a fair and reasonable decision. We have real questions about the quality of that information.

Another important resourcing issue is that, as a starting point, the board relies heavily on the trial judge's report, which describes in some detail what happened in court, what the circumstances of the offence were, what the judge's view is on the matters that the board should take into account and why the decision on the sentence was reached. If we are to deal with short sentences without something similar from sheriffs, we will find it difficult to know, frankly, what we are dealing with and what we are being asked to make a judgment on.

**Bill Butler:** The Parole Board made that point clearly in its written submission, but it is good that Professor Cameron has aired the issue today. There seems to be a difficulty on that issue.

**Niall Campbell (Parole Board for Scotland):** Another problem is getting through the process in the time that is available at the lower end of the sentence level. If we have just over 15 days, we will have very little time to obtain an assessment and, if the judgment is to be done fairly, have it considered properly by the board. By that time, the offender will have gone through the sentence and the matter will cease to have relevance.

**Bill Butler:** The bill will provide not just an added burden but, in a sense, a burden that the board will not be able to deal with because, if the information the board receives is lacking in quality and relevance, the board's involvement will, frankly, be useless or of little use. Is that what you are saying?

**Professor Cameron:** In most cases, it will be difficult to found a judgment on that very thin information and to be seen to demonstrate that we have reached a reasonable and fair decision.

**Jeremy Purvis:** I want to develop that line of questioning on resources. On the capacity to carry out assessments, the Parole Board's evidence takes a slightly different angle from that of the other organisations from which we have received evidence. I was quite struck by the Parole Board's written submission, which states:

"Experience over the years has taught the Board that a number of reports may be submitted late".

I have been trying to work out what would happen under the bill if the Parole Board was unable to complete its report on time at the end of the custodial part of a sentence. Can you help me out

by saying what you would expect to happen in that situation?

**Professor Cameron:** In that situation, I think the sentence would have ended. Our concern is that we will need, in a very short time, reports from a variety of sources, not least of which will be a home background report from social workers in the community so that we know where the person will go and whether it will be suitable.

We frequently have difficulty getting reports in the timescales in which we need them. We occasionally have to defer cases because of that. If there were a larger volume of parole applications, the question whether services in the community, in particular, could keep pace with the demand would have to be asked.

15:00

**Jeremy Purvis:** What proportion of reports are late for one reason or another, often because of circumstances beyond your control?

**Professor Cameron:** I would find it difficult to give you a percentage figure for that. Social workers in the community are working very close to the wire turning reports around in time for our meetings. In the great majority of cases, we have the report to hand when we consider a case, but it is not infrequent that a report will arrive in what we call our second bag, which arrives only a few days before the meeting at which the case is to be considered.

**Niall Campbell:** The other risk is that the situation could be open to challenge if a decision is not reached within the required timescale—in the future, by the end of a custody part of the sentence; at present, by the end of a particular stage in a sentence.

**Jeremy Purvis:** Let us be clear. It is your view that, under the bill, the person would, nevertheless, be released?

**Professor Cameron:** Our view is that if the custody period had ended, they would be released.

**Jeremy Purvis:** So, simply because of the number of people involved and the short timescales involved in sentences of less than six months, a fair number of individuals could be released at the end of the custody part of their sentences without risk assessments of them having been carried out.

**Professor Cameron:** That would be the danger in complying with the provisions in the bill.

**Niall Campbell:** It depends on what the bill says about what happens when someone reaches the end of the custody part of their sentence and something has not happened.

**Professor Cameron:** As the bill is currently drafted, the Parole Board would have to reach its determination prior to the end of the custodial part of the sentence. If that were changed so that the board had only to commence consideration of the case by then—there would be debate about the appropriateness of that—the situation might be different. If we have to reach our determination before the end of the custodial part of the sentence, the process will have to begin very early so that we can ensure that all the information is available to allow the board to meet and conclude its consideration in time.

**Jeremy Purvis:** Thankfully, we have advisers who will be able to get the information to help the committee with that practical question.

Let us move on to another area in which you might be able to help me. How does the bill sit with the current procedure, whereby halfway through a sentence the Parole Board will consider whether to issue parole to a prisoner? Would that procedure be replaced, or would someone still be able to approach the board after they have served half the custody part of their sentence?

**Niall Campbell:** What you describe applies, at the moment, to sentences of over four years. When someone who is serving less than four years reaches the halfway point, they are automatically released. If someone is serving a sentence of over four years, they may be released at the halfway point if the Parole Board decides that that is an acceptable risk. If it decides that it is not, the person will be released at the two-thirds point, but still on licence.

Under the proposals in the bill, the release date would depend on the length of the custodial part of the sentence, which as we understand it would not need to be set at 50 per cent, but could be set at another figure depending on the view at which the judge arrived. As the end of the custodial part of the sentence approached, the board would have to consider whether to release the person, as Professor Cameron has described.

Under the present proposals, whatever happened, the person would be released at the 75 per cent point. That means that they would serve a period in the community on licence and under supervision. We consider that important.

**Professor Cameron:** There is nothing in the bill that would allow someone who was sentenced to spend more than 50 per cent of the sentence in custody to ask to be considered for release at the halfway point. The custodial part would be set at the point of sentence by the judge.

**Jeremy Purvis:** I have a final question, on a slightly different point. It concerns the setting of conditions. As I understand it, if the custodial part of a prisoner's sentence is set at 75 per cent, the

Parole Board has a duty to set conditions when the prisoner is released, but there is no comparable duty if the sheriff sets the custodial part at any proportion other than 75 per cent. If someone were released from custody after serving 50 per cent of their sentence, no conditions might be set. How would that operate in practice?

**Professor Cameron:** I think that my understanding is the same as yours. We are not sure what is intended. It seems that people sentenced to six months or less could be released on a very simple licence—to be of good behaviour and to keep the peace. That is a licence for any honest citizen, but how meaningful will it be when there is no supervision? We have to help the offender to understand what the licence means. Simply issuing a licence without setting any other conditions would, we think, be of dubious value.

When conditions are applied, we regard them as tools for the supervising officer in the management of risk for that offender. As long as they are proportionate, we can apply any conditions to a licence. For instance, we can exclude someone from particular areas if there is a risk to the people there, and we can exclude sex offenders from parks and playgrounds. We can decide what is best. I describe the conditions as levers that supervising officers can pull when they are trying to ensure compliance by an offender. In the bill, it is not sufficiently clear how conditions will be applied.

**Professor Hall:** The conditions are crucial to good risk management. Risk management is about helping people to get their act together. We do not want to confuse that purpose with that of bringing people back because of nuisance behaviour. I accept that such behaviour is an example of reoffending, but it will not necessarily cause serious harm. That is where definitions come into play.

**Jeremy Purvis:** The formal definition of a short-term sentence is anything less than four years, if I understand correctly, but we have been talking about sentences that are considerably shorter than that. Whether in this bill or elsewhere, there might be scope to change the terminology so that we all know what we are talking about when we talk about short-term prison sentences. What do the Risk Management Authority and the Parole Board think the definitions should be? Is a short-term sentence 15 days, as the bill says? Is it three months? Is it six months with a supervision element?

**Professor Hall:** It depends on what you are trying to achieve, but we should all be using the same definitions.

From a consideration of evidence that other people have submitted on the issue of not looking

only at exit points from custody but at entry points, the Risk Management Authority feels that some short-term sentences could usefully be turned into community sentences rather than custodial sentences. That would have an effect on the prison population. If instead of talking about people on long-term or short-term sentences we were talking about people who might or might not cause serious harm or reoffend, we would be talking about different populations. That might be a more useful way of considering things.

However, we have to say that short-term sentences of under a year pose enormous problems for us in assessment and management.

**Professor Cameron:** I largely concur with that. Bear in mind that someone who, in accordance with the principles of the bill, was sentenced to a year would, in most cases, serve six months in prison. That is about the minimum length of time needed for any meaningful conclusions to be reached. Sentences shorter than that can make forming a view about risk inordinately difficult.

**The Convener:** Professor Hall, I thought I saw you nodding at that. Could you say, for the record, whether you agree with Professor Cameron's comment about a six-month period?

**Professor Hall:** Yes. With a sentence of a year, it is important for the judge to decide how long the person should be in custody.

**Maureen Macmillan:** What I am picking up from you is that you think that even a year might be too short a time to do a risk assessment and that there might not be the resources to do a needs assessment for everybody. What, then, is our view on combined sentences? Are we saying that we should not be considering such sentences for people who are being sentenced for a year or less and that they should get sentences in the community—or should they just be put in jail with no provision for supervision afterwards?

**Professor Hall:** No. The principle of risk management is important and is inextricably linked with risk assessment. We feel that the combined sentences are important and that there should be a period in the community. My background is in psychology. If you are trying to change behaviour, you do not do it only in laboratory conditions; you have to let the person generalise it into the outside world. Helping somebody to talk about their alcohol behaviour in prison is one thing; it is quite another when they go back down the road to the pub.

**Maureen Macmillan:** Even though it may be difficult and we may need a lot of resources to back it up, do you still believe that that is the right way to go?

**Professor Hall:** It is the most important part of the bill.

**Maureen Macmillan:** What discussions have you had with the Scottish Prison Service about how the Risk Management Authority could contribute to constructing the risk-of-harm assessments required by the bill, with regard to validation, training and setting guidelines, for instance? Is there any methodology for doing that?

**Professor Hall:** Yes. We are in close touch. As you know, I came from the Scottish Prison Service and I have retained a lot of contacts there. The arrangements that are already in place in the Scottish Prison Service for risk assessment and management are quite well developed—certainly as far as risk management groups for the risk-of-serious-harm people are concerned. Integrated case management is now used and the sentence management process has been developed into a process whose remit includes a wider range of individuals. We have discussed that in quite some detail with the Scottish Prison Service in relation to the bill, in relation to our own arrangements and in relation to the plans for the implementation of multi-agency public protection arrangements, because we obviously all need to work closely together on those issues.

As I said, risk management is a continuum. The types of tools you might use at different stages are rather different and they have their own strengths and limitations. If you are looking at the sort of needs that are sometimes associated with offending behaviour, you do not necessarily use a risk assessment tool, but you might use one that looks at, for example, substance misuse or medical problems.

If you are looking at screening in terms of resource allocation, your first port of call would be an actuarial instrument that looks at historical information to predict the probability of reoffending. It does not tell you anything of interest about an individual—like the instruments that are used for life insurance, the actuarial scale tells you what group the person belongs to, not what they will actually do—but it is of use because it could throw up something that needs further investigation.

Risk matrix 2000 should not be used to tell you how to manage an individual, but it will tell you if you need to look for more information. It is widely used by the police and by social work for that purpose.

When a little bit more information is required, the Risk Management Authority is working with the Scottish Executive Justice Department and with other agencies to introduce a dynamic supervision tool that looks not only at historical information but

at things that might change. That helps with contingency planning.

15:15

We have sponsored a Scottish version of a Canadian supervision tool called the level of service case management inventory. The level of service inventory revised is in current social work practice and the LSCMI is a revision to include case management principles.

We are working with the Justice Department on how to provide similar screening and supervision tools for the in some ways much more complex area of violent offending. A great deal of work has been done on sex offenders, and a number of tools are available in that area. There is a long way to go on violence, perhaps because it is an even bigger basket of related problems. We have undertaken to do some scoping with researchers who are working in the area, to see whether we can create a tool.

Once we move beyond screening and supervision tools to trying to manage a person who has the potential to be of very serious harm, we need a much more comprehensive holistic assessment that looks not only at the person's offending behaviour but at characteristics of the way in which they approach their life and at their personality characteristics. The unfortunate term psychopathy that is often bandied about refers to nothing more than a combination of particular characteristics. Those are the issues that must be examined if we are looking at someone's propensity to cause serious harm. It is an intensive process, on which a great deal of research has been done recently.

The concept of structured professional judgment, which involves not just looking at a clinician's impressions or historical prediction but taking the person in the whole, is important. From that, we can move to looking not just at what is wrong with a person but at what the protective factors are—the good things that are happening with the person and on which we can build. When we have some understanding or formulation of that, we can start to identify the situations in which the person is likely to cause problems of a serious nature. We can then get into detailed risk management—not just keeping an eye on the person or ensuring that they do not drink, but identifying the type of loitering around a playground that the police need to ensure is known about by everyone involved in the case and the action that needs to be taken. There is an intensification of the process all the way up.

We are trying not only to address our attempts at structured processes to the order for lifelong restriction, which we hope will apply to a fairly

small proportion of our offenders, but to ensure that the standards and guidelines that we are publishing for risk assessment and risk management will be applicable across the range of assessment of offenders. Our role in supporting general best practice is as important as anything else.

**Maureen Macmillan:** Thank you for your helpful answer.

**The Convener:** You talked clearly about developing stages. One issue that is emerging at this point in the evidence-taking session is the prison population, which you said we need to examine. Did you mean that there should be evaluation of risk management prior to sentencing, when someone is not at risk of causing harm to the public but is likely to be given a prison sentence?

**Professor Hall:** I do not remember using the phrase to which you refer. A great deal of information is available around pre-sentencing, and it is often of considerable use to people who carry out assessments to assist the courts to decide on sentences. However, that is not an issue for prisons to consider.

**Colin Fox:** Earlier, you talked about an area that would give us the heebie-jeebies. Both organisations seem keen to stress the point that risk management is not and never will be an exact science. Given the levels of reoffending, I would like to know how accurate risk assessment is at the moment. How realistic is it for us and the general public to expect the Prison Service and criminal justice social work to accurately assess the likelihood that an individual will cause harm to the public?

**Professor Hall:** In any field—be it weather, cancer survival rates or reoffending—risk assessment is not much better than chance. That is why, when you are seriously concerned about the matter, you have to go beyond a probability estimate to much more detailed consideration of the particular situation. You cannot put numbers on those situations. They involve factors such as the age of a child who is in a certain situation with a person who is drunk. You have to get into real-life areas of risk management.

**Colin Fox:** When you assess offenders, what follow-up do you do to estimate or record the accuracy of that assessment? Do you keep records of how accurate your assessments were or how appropriate and effective the warning that you gave to the community was?

**Professor Hall:** In our directory of risk assessment tools and techniques, we say that we will approve only tests that have been done using validated tools that have been shown to have a better-than-chance rate of predicting reoffending.

I am trying to get across the fact that risk is not only a continuum in terms of where you start from; it is a dynamic process itself. You expect risk to change if you carry out effective risk management. Your criteria for what is going to change and—in terms of the guidelines that we are writing for the risk management plans—the monitoring of change and how you assess what is actually changing are important. You are looking at changes in the person's behaviour, in the way in which they see themselves and in how confident they are that things will work out.

**Colin Fox:** You are saying, quite rightly, that there is an element of chance, and that the environment that the offender is going back into and their preparedness to address their behaviour are also important. However, does the bill put too much expectation on the likelihood of the person's behaviour being changed?

**Professor Hall:** That is an important point. The public would like the issue to be black and white and for us to be able to say that someone is either a risk or is not, in the same way that we would all like to know whether we are healthy or not or whether it is going to be a good or a nasty day. Expectation management is incredibly important. The bill's intentions are good, but they could lead the public to think that the situation is a lot easier than it is.

**Colin Fox:** I am interested in your use of the phrase "expectation management", given that we are talking about managing the risk of offending.

The committee is only too aware of the increase in reoffending levels. We must assume that there is already some assessment of risk before prisoners are released back into the community. However, reoffending levels are rising. To what extent are we entitled to expect that that will be corrected by the bill?

**Niall Campbell:** Would it be helpful if I gave you the figures from research that the Parole Board did recently?

**Colin Fox:** You tell me what they are and I will tell you if they are helpful.

**Niall Campbell:** Okay; that is fair enough.

This research was reported in the Parole Board's 2002 report. It found that of those who were released on parole—that is, at the halfway point of their sentence, if their sentence was for four years or more—21 per cent failed their licence period. That means that they broke the terms of their licence or they reoffended. However, of that 21 per cent, only 7 per cent failed within the period that they were out on special parole, which is the period between halfway and two thirds of the way through their sentence. The remaining 14 per cent who failed did so during the time that they would

have been out anyway—after they had served two thirds of their sentence.

Of those who were released automatically without parole, when they were two thirds of the way through their sentences, 35 per cent failed their licence period. That does not necessarily mean that they did something very dangerous or serious; they might have failed to abide by the conditions of their release or they might have offended in some way. We could look at it the other way around—65 per cent of those who were released on licence did not fail.

That is the most recent research that has been done on parole. The Parole Board takes the situation seriously and investigates what has happened.

**Colin Fox:** I am interested in the research; it is important. Can I take it that since you have focused on longer sentences—

**Niall Campbell:** We did so because the Parole Board is currently involved only when sentences are four years or longer.

**Colin Fox:** I am anxious to stress that we are well aware that reoffending rates are much higher among people who have served shorter sentences than they are among those—

**Niall Campbell:** Yes, and the offences are almost certainly less serious. As Mr Winter said, we are talking about people who are in for three months, then they get out and end up reoffending, but some of it is not desperately serious.

**Colin Fox:** I understand that. Not only are there lower levels of reoffending among people who have served longer sentences—if that is the way to put it—but, as you have made clear, reassessment is likely to have a greater effect with longer sentences than shorter sentences. At what intervals is the risk that offenders pose reassessed?

**Niall Campbell:** Professor Cameron is a former social worker and will be able to tell you that.

**Professor Cameron:** One issue is that, once someone is out on licence, the supervising officer effectively needs to keep the situation under review. Is the individual complying with the licence? Do they need to go into another programme, because they are finding some things difficult? Do other resources have to be brought to bear?

If the supervising officer is concerned about any of those questions, they can refer the matter back to the Parole Board via the Justice Department. We might then consider whether we need to issue a warning, to add conditions to the licence that would help to clarify what is expected of the offender, or to recall them to custody because

more work needs to be done and they pose an unacceptable risk.

However, when thinking about the question that you are asking, Mr Fox, I always say to people that we need to hold on to the fact that, by definition, risk means that sometimes something will happen. There would be no risk otherwise and the world would be straightforward. We are in the business of assessing risk and making the best judgment we can. Our skills in that area are improving all the time, and our colleagues in the RMA will have a significant impact on validating the various risk assessment tools that are being used. However, they are only tools. I constantly say to social workers and other colleagues that risk assessment is only a tool that has to be used alongside their knowledge, skill and experience to form a view of what is likely to happen and the resources that need to be brought to bear to reduce risk. The danger is that we all live in a world where the public and the media have expectations that a tool can be applied, the figures added up and the right answer reached, so there is no longer a problem. We know that the situation is much more complex than that.

Offenders frequently make good progress in prison and their representations to the Parole Board almost invariably assure us that they have turned the corner, that their life has changed and that things are going to be different when they get out. From experience, I believe that when people write that, that is what they believe and that is where they are at that point in their lives. However, when they return to the same environment and pressures that they came from, it becomes much more difficult for them to resist the things that led them into offending. The issue is complex. We can apply some tools to the offender, but there is a whole community of other pressures that we, as the Parole Board, cannot do very much about, although others do have responsibilities in that respect.

15:30

**Robert Winter:** A thought arose in the context of Mr Fox's questions. The position that we are in with respect to risk assessment and risk management is that the Risk Management Authority was established essentially as an acknowledgement that we did not have an adequate body of research. Different professions used different tools and courts received inconsistent reports, which were sometimes produced by highly idiosyncratic professionals doing their own thing.

We have made huge steps forward on assessment and have put in place a system for orders for lifelong restriction, which we want to be rolled out in suitable form. We have set out to

ensure that a number of consistent, validated assessment tools are available and that professionals can talk a common language and present consistent information across boundaries.

However, the fact that the field of risk management is much less researched means that we are having to do original work. It is not that there is no international research, but there is no cohesive view. The area is much less developed, and we are working on that intensively. For OLR purposes, we will have to put out our first operational working draft next month. Over the coming years, we will do more work on that area to refine and develop our knowledge. In the light of Mr Fox's questions about the efficacy of risk management methods, I felt that it was worth while mentioning that.

**Colin Fox:** Sure.

I have two quick points about efficacy. I am probably thinking of longer-term prisoners. Is more than one risk assessment done during a sentence or is an assessment done only when a prisoner is being prepared for release?

**Professor Hall:** As you know, the preparation of a risk management plan is a statutory part of an order for lifelong restriction. The plan must be drawn up within nine months of the sentence being given and must be approved by the Risk Management Authority. Typically, it is prepared by the Prison Service or the state hospital, because the sentence is served in a custodial or a secure setting. Each year, there must be a review of how well the plan is working. If it contains any significant changes, such as a lowering of security or a proposal to transfer the prisoner or grant them escorted leave, for example, it must be resubmitted for approval. The plan is worked on continually.

In the guidelines, we have taken a great deal of care to point out the frequency of assessment and to explain how it might be carried out. The Prison Service already has a considerable amount of experience in that area, as does the state hospital, because many of the interventions have assessment processes built into them to determine whether an intervention has been useful. However, as Andy McLellan says, that is only half the answer. The issue is not whether someone can get 10 out of 10 on a programme; it is whether they can apply what they have learned.

In the prison setting, it is hard to identify whether a measure is generalising. We used to use proxy measures. For example, if an anger management programme had been run, we would assess whether there were fewer assaults on other prisoners or on staff. Before there were quite so many drugs around, we used to use the prevalence of drugs as a measure of the success



of work on drug misdemeanours. It is when people get back into the real world that such work becomes much more important.

**Colin Fox:** You spoke of the process as being a continuum. I take it that both now and under the bill there will be opportunities to carry out risk assessments as frequently as is necessary. In other words, assessments will be done at intervals. Even when a prisoner is in custody, it will be possible for another assessment to be done.

**Professor Hall:** The bill does not lay that out, but under our enabling legislation—the Criminal Justice (Scotland) Act 2003—our responsibility to approve risk management plans is not confined to orders for lifelong restriction. Any other risk management plan can come under the same structured format, when that is thought appropriate. In relation to serious offenders, that is an interesting possibility.

**Niall Campbell:** Another aspect of risk assessment is the evidence that we get from home leaves and placements, which are important to the Parole Board. Particularly if the offender is on a longer sentence, they may spend time going out daily from prison to a placement for up to five days a week, and they will also have home leaves. Those provide some of the evidence that Roisin Hall talked about, to determine whether the offender is putting into practice what they have learned from programmes in prison.

**Colin Fox:** I take it that the standard risk assessment includes things like a home background report and reports from the prison and criminal justice social work. Is there a case for using a standard risk assessment for all prisoners or is there a need for a variety of assessments to cover the range of short-term and longer-term prisoners?

**Professor Hall:** It is necessary to have a portfolio of levels of intensity. For prisoners who have complex patterns of offending behaviour, we must accept that we want not only to have a general discussion but to be able to use specialist techniques that examine their particular deviant fantasies or instances of domestic abuse, for example. A number of specialist techniques should kick in when we consider the risk of serious harm.

We took the decision not to go along with the idea that only one or two tools were necessary, but to consider accrediting an approach to risk assessment, as we had a responsibility to do for the OLR. I am still of the mind that that was a sensible decision. We chose to take the structured professional judgment approach for a number of reasons—I will not bore you with them here, but that approach stands up quite well—and then to approve tools on the basis of the research

validation about which I spoke earlier, such as peer review and a tool's ability to do what it says on the tin.

**The Convener:** We have now got into an area on which the committee would love to conduct an investigation and review, but I ask members to focus on the specifics of the bill.

**Jeremy Purvis:** I hope that my question will be focused. What would the witnesses' reaction be if the bill was amended so that there was no requirement for a risk assessment to be carried out on offenders who were sentenced to a custody and community sentence of less than six months? Would that make a substantial difference to the risk of harm to society? I pick up from the witnesses' written submissions that a risk assessment for such prisoners is an unnecessary diversion of resources. Would the bill be better if it did not have that requirement?

**Professor Hall:** That would make a fundamental contribution to some of the problems that we are flagging up, although there are other things that might be quite useful.

**Professor Cameron:** It would certainly take a substantial number of people out of consideration, which would be one way of focusing attention on the areas that most require it.

**Jeremy Purvis:** The RMA indicates that there would be a high level of breach of licence among offenders who are on shorter sentences without a requirement for supervision—that is, those with a custody and community sentence of less than six months. What type of breach could there be? Would it simply be disorderly or bad behaviour, or would something more specific be involved?

**Professor Cameron:** We can speculate that the offending of many people who are on short sentences is often of a relatively minor nature, although I do not want to play down the impact that that can have. It is often repeat offending behaviour. People are given custodial sentences because other disposals have been tried. The most likely condition to be breached is the condition that someone is to be of good behaviour.

**Professor Hall:** I agree. They would be largely nuisance offences—they may be associated with drinking or drug taking. In some cases, such offending is almost incidental, because a person leads a sufficiently chaotic lifestyle. Much of it is not instrumental offending.

**Jeremy Purvis:** For the large majority of such cases, local authorities and the Prison Service will have risk assessment mechanisms. If it is not determined that a case is to be referred to the Parole Board, no conditions will be set on the licence and the prisoner will be released. Will that

make any impact on the cohort of individuals who already receive very short-term prison sentences?

**Professor Cameron:** As I said, being released with a licence that we understand would say simply that a person should be of good behaviour is no different from the situation that applies to us all, although the licence has the slightly added feature that it is part of a sentence. For many offenders who are—sadly—in and out of prison frequently, comprehending and absorbing what a licence means and using it as a tool that makes them say, “I really mustn’t go back to prison,” will be inordinately difficult, given the pressures that many of them face. As Roisin Hall says, drugs and, in particular, alcohol are often a significant factor in people’s offending behaviour.

**Colin Fox:** I will ask about recall and revoking licences. Will you help us with apparently contradictory sections of the bill? Section 21 talks about recalling people to prison for any breach if they are out on licence, but section 33 requires the Parole Board to rerelease someone unless they pose a risk of serious harm. Will that lead to a revolving door whereby people who are released because they do not pose a risk of harm are then brought in because, strictly speaking, they have breached their licences?

**The Convener:** I say for the record that section 31, not 21, concerns recall to prison.

**Colin Fox:** I beg your pardon.

**Professor Cameron:** Colin Fox is right. A concern is that although the bill applies a single test to all situations of serious harm to the public, the test for recall is that a licence has been breached and that the Scottish ministers consider that revoking the licence would be in the public interest. Those tests are not necessarily at odds with each other, but they are different. The potential exists for people to go to prison on the application of one test, after which the board has no alternative but to release them because the serious harm test is not met. The serious harm test is higher than the tests that we currently apply—other than for people with life sentences—when an offence has been committed and there may be risk.

**Colin Fox:** So you think that the provisions appear to be at odds with each other.

**Professor Cameron:** Yes, they create the risk of people going in and out of prison.

**Colin Fox:** If the provisions are left as they are and you simply have to say, “This person is not a serious risk,” so that the person goes back out of prison, is there a danger that resources could be diverted? Your time and effort would be better used on other cases.

**Professor Cameron:** That is a danger. Such decisions are important, as they are about people’s liberty, so they would require full and proper consideration by the board. That would be another demand on the board’s time. As things stand, we have considerable pressure on our time. We estimate considerable additional demand on the board, as the financial memorandum says. I know that members always hear people say that they need more resources, but if we are to deliver what Parliament determines, the resource implications will certainly need to be examined carefully. Within that, we will need to consider the best use of the resources that we have.

**Bill Butler:** My question is for Professor Cameron and Mr Campbell of the Parole Board. What role do you envisage victims playing in the board’s decisions on whether prisoners who have been referred by the Scottish ministers should be released before three quarters of their sentences have been served and on whether to rerelease prisoners recalled for breach?

15:45

**Professor Cameron:** The board currently receives written victim statements in cases in which people have entered into the victim notification scheme, and we envisage that that will continue. The board always takes those statements seriously but, in reaching our decisions, we must be seen to be fair and impartial. That is a requirement under article 6 of the ECHR. The statements form part of the decision making, but we must weigh up all the factors.

On the basis of representations from victims, we sometimes include in a licence a condition that the offender must not approach the victim or members of the victim’s family. Not infrequently, victims say that they do not want to bump into the person again in the village or small town in which they live, in which case we apply a condition that excludes the person from the area for the duration of their licence. The difficulty is that that condition applies only for the duration of the licence, so there is a danger that we mislead the victim into thinking that the condition will apply for good. In applying conditions, we are always concerned about whether they are proportionate and whether they would stand up to proper tests if they were reviewed.

Those are the kind of measures that we take. We take the victim statements seriously and we take into account the impact on victims.

**Bill Butler:** Mr Campbell, do you want to add to that?

**Niall Campbell:** The only way in which we can take victims’ views into account is in considering

the question of risk, but there is sometimes a misunderstanding about that. Understandably, some victims think that an offender should never get out, but we have to consider whether the risk is acceptable.

**Maureen Macmillan:** Is it not the case that a victim could seek an interdict of some kind, such as a protection from abuse interdict? For example, if the case was one of domestic violence in which we wanted the offender to keep away from a particular person, it would be open to that person to seek an interdict.

**Niall Campbell:** Yes—under the appropriate legislation.

**Professor Cameron:** The person could not seek an interdict that would change the board's decision, but they could look to other legal remedies to protect themselves.

**Maureen Macmillan:** Yes—there are other legal remedies.

**Professor Cameron:** Absolutely. The great majority of victim statements that we receive, many of which are extremely touching, say that we should not let the offender out. We must balance that view with the advantage that there may be in releasing someone before the very end of their sentence, so that their re-entry into the community is supervised. That may be difficult for victims to understand, but for their longer-term protection and that of other people, it could well be the best action to take.

**The Convener:** Will the Parole Board write to the committee to explain what controls and support systems it thinks should apply in cases in which a victim says that they do not want the person to be released but you decide that it is better to get them back into the community under supervision? It would be helpful to have a statement of what you consider supervision should be.

**Professor Cameron:** We can write to you on that. The question covers a wide range of circumstances. Every case is different and the experience of every victim is different, other than that they have been a victim.

**The Convener:** You talked about, and mentioned in your written submission, the need for a definition of supervision. I think that the RMA mentioned the issue, too. I am turning the tables and asking you to give us a few suggestions on that.

Does the Parole Board envisage having to convene a large number of oral hearings in light of the decision in the Smith and West case on the entitlement to an oral hearing in certain circumstances? What would be the associated

resource implications? In that case, there was a reference up to the House of Lords.

**Professor Cameron:** Our legal advice is that a growing number of oral hearings are likely to be required. Eventually, oral hearings could be required in the great majority of cases. We need to determine whether those oral hearings will be heard by three members or in different circumstances and how we will construct the process, but it is likely that there will be significant resource implications for us.

**Niall Campbell:** We already hold oral hearings for recalled prisoners as a result of the Smith and West decision. Of course, the tribunals that we hold for life prisoners are also oral hearings. That situation remains unchanged.

**The Convener:** The point of the question is that every bill requires a financial memorandum and the committee is charged with the duty of finding out whether it covers all the costs that a piece of legislation might incur. Perhaps you could send us a short note on the matter.

**Jeremy Purvis:** I wonder whether the panel can say something about curfew licences, which, as I understand it, will come into operation for any prisoner who is sentenced to three months or more. Might they also give rise to the risks that Colin Fox highlighted? For example, if an offender breaches a licence after their four weeks of custody, the matter will come back to the board, which will have to carry out a risk of harm test. Theoretically, someone sentenced to a year can serve four weeks in custody and then be subject to quite a normal licence, even though other conditions might well be set.

**Professor Cameron:** Curfew licences are useful in bringing a degree of control and order into people's lives, and the board will, from time to time, apply curfew and electronic monitoring measures. However, the feeling is that their effect can diminish the longer that they are sustained and the longer that people have to abide by their conditions.

**The Convener:** I thank Professors Hall and Cameron, Mr Campbell and Mr Winter for their full evidence. If the RMA wants to send us a brief note on any matters of relevance to the bill, the clerks will be happy to receive it.

15:52

*Meeting suspended.*

15:59

*On resuming—*

**The Convener:** I welcome the final panel of the afternoon, who are Dr Andrew McLellan, Her

Majesty's chief inspector of prisons for Scotland, and John McCaig, Her Majesty's deputy chief inspector of prisons for Scotland. You will understand the slight delay because of the interest in the evidence that we have received this afternoon. We look forward to receiving your evidence.

In your recent annual report, you state that overcrowding, along with slopping out, is one of the

"tw in curses of Scotland's prisons".

The bill could lead to an increase in the prison population of between 700 and 1,100 prisoners. What is the likely impact of such an increase on the prison estate, prison staff and prisoners themselves?

**Dr Andrew McLellan (HM Chief Inspector of Prisons for Scotland):** The impact would be enormous. I am grateful that you started on overcrowding—whatever you wanted to ask me about, I was going to talk about it.

Overcrowding is a hidden pain. Because of that, people do not recognise the damage that it does. It is important to recognise that although the bill has significant merits, which I hope to talk about later, it will also incur a significant cost—increased overcrowding. You quoted the Scottish Prison Service's estimate that there would be between 700 and 1,100 additional prisoners. When we add that increase to the equation with the number of prison places being built and the normal increase of prisoners that we have seen every year since I took up office—although there is no connection between the two—it represents an immensely damaging impact on Scotland's prisons.

I have often said that overcrowding in prisons makes things worse for everyone. In "everyone", I include the Scottish public. Overcrowding significantly diminishes the opportunity that a prison has while people are in its care to make any change in their behaviour. Indeed, as I said in my annual report, it is not just that overcrowding makes prisons less effective; it also makes prisons worse. It makes it easier to get drugs into prison and it means that prisoners find themselves locked up for long hours, day after day and, worst of all, weekend after weekend. It makes it harder for prisoners to access the work that the law says they should do and which I think they should do. Overcrowding also makes it harder for them to access the education that they should have and which prison can provide. Whatever the merits of the bill, the increase in overcrowding that the Scottish Prison Service estimates will be a significant cost. There may also be a cost in public safety.

**The Convener:** Thank you. I also asked about the impact on prison governors and officers in the

front line. Have you any views about how the increases could affect them and their ability to perform their duties?

**Dr McLellan:** In my annual report, which was published last month, I laid out nine evils of overcrowding. Significant among those are the pressures that it puts on all prison staff, especially when it is combined with what seems to be the inexorable increase in the duties that prison staff at all levels must perform, and with what appears to be a reduction in the number of prison staff. It is clear to me from what prison staff, prison managers and prisoners have told me that overcrowding makes the daily work of prison staff much more difficult. In particular, it makes extremely difficult the personal engagement between staff and prisoners that could be a real strength of the prison system but which is impossible as long as prisoners are locked behind their doors for hour after hour.

For prison governors, the difficulty is not that they do not have individual interaction with prisoners, but that they are spending a huge amount of time dealing with prison staff who are feeling stress and in addressing the almost arithmetical problem of how they are to find, if not enough work for all the prisoners, at least some work for enough prisoners. If they cannot find all the laundry arrangements that they should provide for prisoners, can they find adequate laundry arrangements for the large number of prisoners that they have? If they cannot provide progression through their system such that prisoners get a sense that they are moving to more privileged conditions, what incentives can they provide to help prisoners feel that they can move forward and that their achievements will, in some sense, be rewarded?

**The Convener:** I presume that your response is based on interviews that you have had with prison governors and prison staff throughout Scotland.

**Dr McLellan:** Yes.

**Jeremy Purvis:** I think that you understand the duties that will be placed on the Prison Service and local authorities to risk-assess every prisoner who serves a custodial sentence of more than 15 days.

However, first, I would like to ask about overcrowding. I do not know whether you have seen the submission that the Prison Service has provided to the committee on design capacity versus average prisoner population over the next five financial years. I think that it has been presented to both justice committees. The Prison Service estimates that, if no new build has been completed by the end of the fifth year, there will be a design capacity versus average prisoner population shortfall of 910 places. What impact will

that have not only on the requirements of the bill, but on the ability to provide any assessment of prisoners' needs?

**Dr McLellan:** If everything else stays the same, there will be a huge impact through the increase in the number of prisoners who share cells. At the moment, the Scottish Prison Service tries, as far as possible, to give prisoners who are serving long sentences cells of their own. However, increasingly, it is not able to do that. The figure that you have just cited would make it impossible for the Prison Service to provide prisoners with cells of their own.

That would have three impacts. First, given the effects on prisoners of sharing cells and the anxieties that prison officers feel about long-term prisoners sharing cells, it would not be foolish to talk about there being increased safety risks in prisons. Secondly, unless the increase in the number of long-term prisoners were accompanied by a significant increase in the number of places that were available in the open estate, it would be much more difficult for long-term prisoners to receive the opportunities to be tested in the community, to which Mr Campbell referred earlier. Community placements and home leave would not be available to them if there were no places for them in the open estate.

Thirdly, as far as short-term prisoners are concerned, in addition to the many other disadvantages that I have mentioned, it seems almost inevitable that they would increasingly be detained in prisons that were further away from their families, social workers and other agencies that might seek to engage with them in prison.

It is not a case of new difficulties arising; it is a case of the nine evils of overcrowding getting worse, which needs to be addressed.

**Jeremy Purvis:** Is there anything positive in the bill with regard to the situation? You hinted that there may be some positives in the bill; this is your opportunity to say what they are.

**Dr McLellan:** There is in the bill terrific merit that I welcome unreservedly, although I have reservations about overcrowding. That merit relates to the opportunity that the bill provides for supervision in the community for prisoners on release. I have often reflected that the most important time in a prison sentence is the moment when a prisoner leaves the prison gate. Under the bill, short-term and long-term prisoners—as they are now described—will not be released into nothingness, which is an extremely important gain.

The possibility that there might be some supervision of people being released who have homelessness problems, problems with addiction, problems with their families or problems with health is a very significant gain. In Holland there is

no drug treatment programme in detention because of the belief—at which Professor Hall hinted—that such programmes are best undertaken in the community. In our present circumstances that is impossible, but the bill may offer opportunities not only for drug addiction programmes in prison but for continuation of such programmes outside. In my view, that continuity and supervision is the best part of the bill.

**Jeremy Purvis:** I do not want to put a dampener on your enthusiasm, but I draw your attention to the supervision requirements for which the bill provides. Section 27 states that supervision will be in place only for a prisoner who has received

“a custody and community sentence of 6 months or more”.

Currently, such sentences are being served by 48 per cent of the prison population. The element of continuity and supervision will be missing for the remaining half.

The previous panel indicated that, if the number of offenders who go to prison to serve short-term sentences of less than six months is ratcheted up, the statutory requirement for risk assessments will not be effective in reducing reoffending and risk. Because there is a statutory duty to carry out risk assessments, the Scottish Prison Service may consider transferring its resources away from providing rehabilitation services for longer-term offenders. Although the intention is progressive, the bill will mean that there is a net negative outcome in both areas. Supervision will not be available to half of those who will be released from prison this week.

**Dr McLellan:** I accept that and will say a little about risk assessments in a moment. The possibility of supervision for half of prisoners is a great deal better than the present situation. I would be grudging if were to say that, because the bill does not make provision for everyone, it is not to be welcomed. Later there may be discussion of the value of supervision for offenders who have received sentences of less than six months.

I want to say a little about risk assessments for people who are serving very short sentences. I recognise the ineffectiveness to which both the Parole Board for Scotland and the Risk Management Authority drew attention. I also want to draw attention to the frustration that is likely to develop in prisons if there are repeated assessments of people who are serving very short sentences, the net result of which may be only three or four prison days or, often, no difference. If prison officers have to carry out such assessments regularly, although they and prisoners accept that they have no impact, it will lead at least to annoyance and, perhaps to contempt for the system, especially among prisoners.

16:15

**Colin Fox:** I want to look at the connection between rehabilitation in prisons and overcrowding. Over the weekend, I was struck by a news report about staff on duty at Barlinnie prison in Glasgow on Saturday night. I know that weekend evenings in prisons are long, starting at 4 or 5 in the afternoon. The report reminded me of two things: the evidence from the Prison Officers Association and something positive that your annual report flagged up—that 97 per cent of prisoners or offenders rated relationships with staff in their prisons as “ok or better”. It seems to me that a great deal of attention is focused on and a lot of time is taken up by developing professional skills to be brought to bear for the benefit of offenders, which is a part of the Prison Service’s work that works.

Did the Prison Officers Association’s evidence strike a chord with you? It is worried because it has lost 700 staff in the past five years as a result of a standstill budget. It thinks that less prison officers’ time is being taken up with interaction with prisoners during rehabilitative work and that prison officers are becoming more and more simply “turnkeys”, to use its description. Do you recognise that picture? Given that the bill could add another 20 per cent or so to the prison population, should we examine such matters?

**Dr McLellan:** I am glad that you singled out that astonishing statistic from my annual report. It shows that prisoners acknowledge the good relationships that exist between prison staff and prisoners.

In my rather discursive first answer to the convener, I drew attention to an inevitable consequence of overcrowding: prisoners will spend more time in their cells with the door locked and they will often share cells with strangers. That consequence has been inevitable in the past and I am confident that it will be inevitable in the future. It is difficult to see such experiences as being significantly rehabilitative.

The Prison Officers Association spoke about its concern about prison officers’ inability to do the work for which they have been trained—to which I referred earlier—and the stress that prison officers feel themselves to be under. It is for prison officers to speak about that stress rather than for me, but I will say that since I started in my post, it has been observable that prisoners have been less engaged in rehabilitative activities than they were previously. That is a direct consequence of overcrowding.

**Colin Fox:** Would it be fair to say that against such a background and taking into account the relevant facts and figures, it would be somewhat

utopian to expect a turnaround in reoffending behaviour or better rehabilitative care?

**Dr McLellan:** That would be the case if there were no intention to provide additional resources to cope with the additional prisoners. I do not know whether there will be additional resources, so I do not know whether it would be utopian to expect such a turnaround.

I hope that I have spoken strongly about the damage that overcrowding causes. However, the introduction of supervision in the community for prisoners is a positive step. For reasons that I mentioned earlier to do with addiction, unemployment and housing problems, such supervision might significantly contribute to reducing reoffending.

**Maureen Macmillan:** I want to follow up on what Colin Fox said. I am concerned about prisoners with very short sentences who repeatedly go through the revolving door. Earlier, we heard how such prisoners can be released on licence, break their conditions and end up back in prison. The Parole Board can say that such people do not pose much of a risk, so they will be let out of prison again and so on. Prisoners on very short-term sentences of under 15 days are not supervised or supported in the community after prison. In that context, I am concerned that there is a disproportionate impact on women prisoners, who often go to prison for fine defaulting. Perhaps we are failing that section of the prison population with the proposals that have been made.

**Dr McLellan:** I have always tried to draw attention to the different circumstances of women offenders and to the different provision that the Scottish Prison Service attempts to make for them. Overcrowding is as damaging for women as it is for men. New accommodation has been built at Cornton Vale and nearly all convicted women and most women offenders are now detained in Cornton Vale—although, as members know, there is still a unit in Inverness and another in Aberdeen.

I do not mean to be impertinent, but I am not sure that the proportion of women who are imprisoned as fine defaulters is as high as the proportion of men. Many men are in prison because they have failed to pay fines and one of the most depressing parts of my most recent report on Cornton Vale concerned the significant increase in the number of women who had been convicted of violent offences.

**Maureen Macmillan:** I fully accept what you say about the change in what many women are being sentenced for.

Is it a problem for women as well as men that, during very short sentences, they will not receive the support that they need, because the 15-day rule excludes them?

**Dr McLellan:** If people are imprisoned for 15 days or less, they might get—apart from a deprivation of their liberty—a health assessment and a bit of advice on how to improve their health when they leave prison. That will be it. That will not be because of any unwillingness on the part of the Scottish Prison Service; it will be because of the kind of thing that Roisin Hall mentioned earlier. The assessment of needs and the delivery of what might be needed take a great deal longer than 15 days. It would be naive—no, that would be an impertinent word to use—it would be unreasonable to expect prisons to make a significant difference in the life of a convicted person in 15 days. However, I cannot imagine that people are sent to prison for 15 days with that hope in mind.

**Maureen Macmillan:** I cannot imagine why people are sent to prison for 15 days at all. One would think that other disposals were open to the bench.

**Dr McLellan:** I think that you are allowed to say things that I am not allowed to say.

**Maureen Macmillan:** Okay.

Will the bill reduce reoffending rates? We have heard about the revolving door and we have heard that the rates for short-term prisoners might not reduce, but will there be an overall reduction?

**Dr McLellan:** A little while ago, I agreed with Mr Purvis's suggestion that the bill is unlikely to make a significant difference for people who are sentenced to six months or less in prison. However, if appropriate resources are in place, it could make a significant difference to the reoffending behaviour of people who have the opportunity to engage in the new continuity between prison support and community support that the supervision provisions in the bill will make possible.

I cannot tell you how often I have come across stories of prisoners—often young prisoners—who have been released into nothing. I am glad to pay tribute to the Scottish Prison Service: in the four years that I have been in post, the service has made significant moves to develop much better links with communities, with social work departments, with housing authorities and with jobcentres. There are encouraging signs about a new engagement with social work under what Professor Hall referred to as the integrated case management system.

With proper resourcing, the supervision that the bill will require could make an important contribution to the reduction of reoffending.

**Colin Fox:** Maureen Macmillan has rightly asked about reoffending. The levels of reoffending are highest among people who are serving shorter

sentences. Realistically, what can the Scottish Prison Service achieve with young men and women who are in the care of the service during short sentences?

**Dr McLellan:** You will know that the Scottish Prison Service itself believes that it can achieve nothing for people who are sentenced for less than 12 months. I have seen no evidence to contradict that.

To go back to a point that Maureen Macmillan raised, I have seen evidence of people, especially women, who feel safer in prison. That is a terrible thing to say and it cannot be a reason for the existence of prison. I have certainly seen people whose health has been improved by short sentences in prison but, in an ideal society, prison sentences would not be used to improve people's health.

I also recognise that our system of punishment does not exist solely to provide rehabilitation. People are sent to prison for other reasons as well. It might be possible to justify short sentences for deterrent or punishment purposes, although it is not for me to say that—it is for you. However, it is difficult to justify short sentences on the ground of rehabilitation.

**Colin Fox:** I know that, because when we visited Low Moss the governor made it perfectly clear to me that we expect an awful lot of our Prison Service when we send young men to prison for three months and then send them straight back to where they came from—I think that he mentioned Milton in Glasgow.

What proportion of people in our jails should not be there and would be dealt with better by alternatives to custody?

**Dr McLellan:** I can answer the question on different levels. First, my job is to inspect the treatment and conditions of prisoners. It is not for me to assume that I know more than judges. I say straight away that judges know more than I do about the right results of prison sentences. However, health care professionals in prisons, prison governors and my own eyes draw to my attention the increasing number of prisoners who have some kind of mental illness and are seriously ill. I ask a lot of questions, but there is only one answer to the question, "Will prison make their mental illness better?" If their mental illness is the cause of their offending behaviour, their prison sentence is perhaps not justifiable.

Secondly, we talked about fine defaulters. I do not disagree with Maureen Macmillan on the imprisonment of women in general. There is no doubt that, in the case of some women prisoners, the damage that is caused to their family is disproportionate to the nature of the offence.

Thirdly, I will comment on a matter that has not been mentioned today. In the past six years, there has been a great increase in the number of people who are imprisoned on remand and have not yet been convicted. They contribute significantly to our prison numbers. I understand that 50 per cent of them do not subsequently receive a custodial sentence.

Finally, I believe that nobody under 16 should be imprisoned.

**Colin Fox:** So we are talking about people with mental health conditions, fine defaulters, under-16s and the growing remand population. Those people could be dealt with through alternative means.

**Dr McLellan:** It is difficult to answer the question, "Why should they be in prison?" Addiction is at the centre of most offending. If we were concerned only with addressing their addiction, they would not be in prison, but there are other questions. How do we address the harm and damage that they have done? How do we address the needs of victims? How do we prevent other people from committing offences?

**Colin Fox:** Statistics show that the alternatives to custody have a far greater effect on preventing reoffending. Are you aware of those figures?

16:30

**Dr McLellan:** I questioned something that Maureen Macmillan said, so I hope that I am allowed to question something that you said as well. Your comment about the statistics is true of drug testing and treatment orders and projects that specifically address addiction, such as the 218 project in Glasgow, but I am not certain that the statistics on community service orders and other punishments in the community show as clearly as we would hope that such punishments are more effective at reducing reoffending.

**The Convener:** In conclusion, I take you back to the question that I started with, which was about the increases in prison numbers. Given your remit, can you recommend one thing that would help to reduce overcrowding in prisons?

**Dr McLellan:** We need to find the way to break the cycle. The use of work in the community as a punishment is not adequately funded because there is a sense that there is no public confidence in it. That might be driven by the press, which contributes to the absence of public confidence. Judges decide not to use alternative punishments because they are not properly funded but, in turn, that is because the public do not have confidence in them.

**Jeremy Purvis:** I want to correct myself. This might give you an opportunity to have a go at

something that I say as well, just for neatness. I was incorrect when I said that half the average daily prison population serves less than six months. I refer to Sacro's evidence, which states that 48 per cent serve less than three months and 80 per cent serve less than six months. Only a small proportion of offenders will be subject to supervision in the community when they are released. Does your view that 20 per cent is better than nothing still apply?

**Dr McLellan:** It is for that 20 per cent of offenders that supervision is likely to deliver the best results, so it is valuable. It should not be thrown away.

**The Convener:** Thank you for coming to give evidence this afternoon. I apologise for the slightly delayed start, but obviously the committee goes with the flow when it gets a large volume of evidence, as we had in the previous session.

16:32

*Meeting continued in private until 16:59.*



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