

JUSTICE AND HOME AFFAIRS COMMITTEE

Monday 20 November 2000
(*Afternoon*)

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JUSTICE AND HOME AFFAIRS COMMITTEE

34th Meeting 2000, Session 1

CONVENER

*Alasdair Morgan (Galloway and Upper Nithsdale) (SNP)

DEPUTY CONVENER

Gordon Jackson (Glasgow Govan) (Lab)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)

*Phil Gallie (South of Scotland) (Con)

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*Mrs Lyndsay McIntosh (Central Scotland) (Con)

Kate MacLean (Dundee West) (Lab)

Maureen Macmillan (Highlands and Islands) (Lab)

*Pauline McNeill (Glasgow Kelvin) (Lab)

*Michael Matheson (Central Scotland) (SNP)

*Euan Robson (Roxburgh and Berwickshire) (LD)

*attended

WITNESSES

Dr David Colvin (Safeguarding Communities Reducing Offending)

Janice Hewitt (Apex Trust Scotland)

David McKenna (Victim Support Scotland)

Ms Susan Matheson (Safeguarding Communities Reducing Offending)

Dr Jackie Tombs (Howard League Scotland)

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Alison Taylor

ASSISTANT CLERK

Fiona Groves

LOCATION

Glasgow City Chambers

Scottish Parliament

Justice and Home Affairs Committee

Monday 20 November 2000

(Afternoon)

[THE CONVENER opened the meeting at 14:04]

The Convener (Alasdair Morgan): I call the committee to order and ask members to agree to take item 6 of the agenda in private.

Members indicated agreement.

Restorative Justice

The Convener: We now move on to item 2.

We are delighted that representatives of the Scottish Consortium on Crime and Criminal Justice were able to come along at fairly short notice to give us a presentation and to answer some questions on its recent publication, "Rethinking Criminal Justice in Scotland".

Dr David Colvin is the chairman of Safeguarding Communities Reducing Offending; Janice Hewitt is the director of Apex Scotland; David McKenna is the assistant director of Victim Support Scotland; Susan Matheson is also from SACRO; and Dr Jackie Tombs is a member of the Howard League Scotland and a research consultant to the consortium.

Would you like to start with a few introductory remarks, Dr Colvin?

Dr David Colvin (Safeguarding Communities Reducing Offending): Thank you, convener. I thank the committee for inviting us so quickly to come along to talk about our report. We will try to keep our introduction fairly brisk and to the point. I apologise on behalf of Russell Hillhouse, the consortium's chairman, who has not been able to get out of a previous engagement. I am here today as deputy chairman of the consortium. Sue Matheson will speak on behalf of SACRO, but it was decided that I should present the consortium's evidence.

Jackie Tombs, our researcher, is also a member and representative of the Howard League Scotland. She will speak on behalf of both the consortium and the Howard League.

We will beg your indulgence by presenting some general comments, using overheads, on the conclusions and recommendations of the report and on some of the arguments behind it. Then, the

agencies that are represented here will speak briefly on the immediate impact of the report and its implications for their agencies. We hope that that will work out all right—it should take 20 minutes at the most.

First, I would like to make an introductory statement. The consortium's view is that Scotland does not get proper value from its criminal justice system and that new approaches are needed. Instead of the present depressing cycle of repeat offending and stereotyped responses, which often do little to change human behaviour and which certainly do not lead to increased safety for the public, we need institutions and penalties that are constructive, appropriate and can be demonstrated to be effective. I emphasise "appropriate" and "effective".

We want a new approach that takes into account victims' rights and needs and that gives us an opportunity to make wider use of restorative justice. Above all, we need to convince the general public to look beyond the short-term punitive approach to a more constructive, restorative approach, which would be of more value in creating and sustaining a just and safer society in Scotland. That distils the consortium's views.

We hope all our recommendations are realistic. They are all based on evidence—a major part of our platform was that our recommendations should be evidence based.

I will hand over to Jackie Tombs, our consultant researcher, who is an eminent researcher in her own right. Jackie put together the research background for Nancy Loucks and herself, and is the author of the full report.

Dr Jackie Tombs (Howard League Scotland): As David Colvin has stressed, the consortium report is based on the best available research evidence that we have and deals with the best ways in which to reduce offending, increase community safety, ensure fair treatment for the victims of crime, enhance civil liberties and increase the effectiveness of the juvenile and criminal justice systems.

Because I am speaking to the Justice and Home Affairs Committee, I will concentrate on the issues of the report that are relevant to this committee. I should say, however, that some of the issues contained in the report go much wider than the remit of this committee.

The consortium's main conclusion is that the key to making significant reductions in the level and impact of crime lies in changing the way in which potential and known offenders relate to their communities, including victims and the wider society. The report stresses that those changes require the development and implementation of social and economic policies much wider than

criminal or juvenile justice but that the justice systems can, as part of a broader, integrated social justice approach, contribute to reducing levels of crime.

One of the key findings from the available evidence is that criminal and juvenile justice interventions must help to give people the chance to make peace with, be accepted by and be included in the community. Justice interventions can promote acceptance and inclusion through processes that encourage offenders to accept responsibility for their actions, accept the need to change, express contrition and, where possible, make amends to the victim and the community.

Restorative justice is one of the key ideas that the consortium wants to promote to get something effective done about reducing the levels of crime. The impact on victims is central to many of the ideas in the report, which concentrates on repairing the harm done by crime. At the heart of the approach are consideration and security for victims, rehabilitation and reintegration into the community of offenders, which involves the offenders making amends to victims, and the healing of divisions in communities through, for example, mediation of neighbourhood disputes.

Those principles reflect the increasing recognition of the role and rights of the victim. We recognise the fact that the available international evidence shows that the restorative sanctions work best towards the reduction of offending. In the mid-1990s, Thames Valley police piloted the use of family group conferences for young offenders as part of a cautioning scheme. After two years of the scheme's operation, only 4 per cent of the young offenders who had been involved in the scheme had reoffended. Re-offending for young offenders who have been held in custody runs at 80 per cent. I am not suggesting that the offenders involved in those two statistics are the same kind of offender, but that is a dramatic difference, nevertheless.

The ideas that we talk about in the report are not new; they are part of an established tradition in Scottish culture that goes back to the 16th century. Under the system of assythment, the victim was much more at the heart of the criminal justice process and making good was thought to be the best way forward. The ideas are not new, which is why the title of the report contains the word, "rethinking". We want to think again about the subject with a view to change for the better.

We are saying that the rethinking involves how best to think again about crime and criminal justice. We are not getting the best value for money and we must consider the social damage that the system is causing. We must ask what changes in the use of resources are required and how sentencing policies and practices need to

change. We believe that there needs to be a redirection of thinking, resources and sentencing policies. Those three things are crucial to developing the approach that the evidence suggests is most beneficial in reducing crime and preventing victimisation.

14:15

Our preferred approach is a whole problem approach. The evidence conclusively demonstrates that whole problems require whole responses. Integrated responses to crime will maximise the overall impact; the whole is greater than the sum of its parts. The whole problem approach is based on evidence that demonstrates that many offenders have also been victims and that the prevention of offending must be accompanied by the prevention of victimisation, particularly among the young. Most offenders have the capacity to change. I stress that that applies to most offenders—some will not have the capacity to change and they require different solutions.

Custodial sanctions tend to be disproportionately harmful and do not make people into better citizens. The evidence shows that community sanctions with a rehabilitative orientation are more effective in the reduction of offending than are custodial sanctions. Victims have legitimate needs for protection, information, compensation, consultation and fair treatment. Juvenile and criminal justice responses can contribute to reducing offending and victimisation.

On the basis of that evidence, the kind of rethinking that we would like to be promoted is an approach based on "appropriateness", rather than "alternatives to". We need appropriate criminal and juvenile justice responses and appropriate penal sanctions, rather than alternatives to prosecution and custody. We want to focus people's thinking and actions on the need to select appropriate responses and sanctions—ones that are effective in particular cases in reducing reoffending and giving something back to the victims if at all possible.

That requires a redirection of resources away from custodial sanctions towards community-based programmes for offenders and the expansion of services for victims, based on the best available evidence of what works. Speaking with my Howard League Scotland hat on, we would like some of the resources that are saved by reducing prison numbers—our targets are fine defaulters, prisoners on remand and those with short sentences—to be used to develop personal change programmes for all prisoners remaining in custody. People in such programmes might be less likely to offend when they come out of prison. There is evidence that personal change programmes in other jurisdictions work.

As I said earlier, none of this can be achieved without involving other areas of public policy—social work, education, housing and so on—because the key to major change is to prevent victimisation of young people early in their lives. All the evidence we have shows that young people who are persistent young offenders and who develop criminal careers have themselves been victims in their earlier lives. That is why all areas of policy and all social justice agencies must be involved.

The Convener: Thank you Dr Tombs.

Ms Susan Matheson (Safeguarding Communities Reducing Offending): I will talk briefly about the short, medium and long-term action that SACRO intends to take in light of the consortium's report. First, of course, we will consider the report more fully—none of us has had it for very long—and we will develop a SACRO action plan.

We are already expanding rapidly the provision of services to contribute to giving all courts a full range of appropriate sentences. We are negotiating new restorative justice and personal change programmes for 11 to 16-year-olds in some parts of the country. We will also continue to work with the media to try to get across to the public the effectiveness of community sentences as compared to custodial sentences and the relevance and benefits of restorative justice to victims, offenders and the community.

We will continue to press for implementation of section 235 of the Criminal Procedure (Scotland) Act 1995, because fines are inappropriate sanctions for people in severe economic circumstances. Ten per cent of people who are fined are imprisoned for default. Research shows that the vast majority of them have failed to pay because they cannot. We would like that section to be implemented to prevent the imprisonment of fine defaulters for fines of less than £500.

In the medium term, SACRO will seek to increase the availability of restorative justice services because, as Jackie Tombs said, they give victims a better deal and there is increasing international evidence that restorative justice reduces offending. Currently, mediation and reparation are available only for adults in Edinburgh, North and South Lanarkshire and Aberdeen. We need to address that postcode justice. The Scottish Executive is sympathetic to restorative justice being made available at all stages of the criminal justice process, but resources are required to make mediation and reparation available throughout the country. We also aim to provide more of the other services that meet the objectives of the report, including, for example, bail rollout, personal change programmes and alcohol and drug services that

address offending behaviour. SACRO runs unique courses in that area.

In the long term, we will press for legislative change. SACRO is not just about service provision; it is a criminal justice reform organisation. We will, I hope, be returning to the committee. Our list will be circulated, but I will pick out some examples. In addition to implementation of section 235 of the Criminal Procedure (Scotland) Act 1995, we would like no women or young people to be imprisoned, except for very serious offences, as advocated by Professor Pat Carlen. We can return to why we focus on those groups later. There should be no short sentences and the length of sentences should be restricted for some offences. Community service orders should be made more flexible and should be more allied to restorative tasks. Supervised attendance orders need to be looked at again; research on that is coming out soon.

We also want to help to improve public perception, which is a key to getting such things accepted, by ensuring that there is information, advice and guidance for the judiciary on the range of sentences, to ensure consistency and fairness. We would like the judiciary to be required to elaborate to the public the reasons for the sentence imposed, the outcome that it expects and the cost. There need, perhaps, to be court press officers.

Finally, SACRO will press for evaluation of the effectiveness of the whole system, including an examination of the effectiveness of prison sentences. When people talk about having monitoring and evaluation, that tends to relate only to the other sanctions; we need also to include consideration of the effect of prison.

David McKenna (Victim Support Scotland): Victim Support Scotland has been delighted to participate in the work of the Scottish Consortium on Crime and Criminal Justice. We are committed to the promotion of access to justice in Scotland, to effective strategies for delivering social inclusion and to developing services for victims of crime.

We are not immune from common sense: if a better result can be delivered for the offender and for the victim by alternative means, and if that can be done for one tenth of the cost of sending someone to prison, that has to be a realistic alternative. That has to be considered, because resources in Scotland are short—there is not enough money for us to do everything that we all want. Despite the best efforts of the Justice and Home Affairs Committee, the funding for victim support in Scotland remains at about £1.5 million, the same that was spent on victims last year and the year before. There are no signs that the core expenditure or grant will increase in the next financial year or in future financial years. If

services to victims of crime are to begin to meet any of the basic minimum standards that you or the Scottish public would expect of us, we need to begin to invest in the development of services to victims of crime.

There are 50 local victim support offices in communities throughout Scotland. Three of them, at most, operate a full-time, Monday-to-Friday service. Victim Support Scotland remains a part-time organisation. That is not good enough for the victims of crime.

We support the consortium's recommendations and its commitment to continue to work in Scotland with other agencies and with the Parliament to develop the strategies and recommendations that are set out in "Rethinking Criminal Justice in Scotland".

Janice Hewitt (Apex Trust Scotland): I concur with my colleagues. It may seem surprising for an organisation that deals with offenders to be sitting with an organisation that deals with victims. The fact that both sides need to be addressed holistically has sometimes been ignored in the past.

Apex is the specialist organisation that is working to increase access to employment and to widen employment-related opportunities for individuals with criminal records. Approximately 4,000 individuals with a criminal record access Apex's services every year, either while they are serving custodial or community-based sentences or on completion of their sentences.

The majority—about 81 per cent—of Apex's service users are male, 63 per cent of whom tend to be between the ages of 15 and 24. That figure concurs with the need to review the juvenile justice system and early interventions for first-time and young offenders. Apex has sustained an annual achievement rate of 40 per cent for those people who complete our service and move on to employment, while 28 per cent move on to vocational training. The reoffending rate for those who use our service is only 5 per cent.

Our organisation also provides a direct service to employers—another group that is sometimes missed out when criminal justice and reintegration are discussed. We work directly with employers to assist in developing approaches for the recruitment of employees with a criminal background.

In effect, Apex works to reduce offending, and I concur with Dr Colvin's view about the appropriateness and effectiveness of sentences and services.

We see a lot of barriers to employment for people with backgrounds of offending, and Apex would like more work to be done with employers

on how to roll out programmes of community-based intervention. That would not just cover offenders' resettlement back into communities, but would address their deeds with the victims.

For Apex and my colleagues, the holistic view of the offender and the victim is important. We look at the victim, the offender, the employer and the community. Apex played an integral part in developing joined-up through care. The united front that the report represents shows that all the organisations want to get the best for the victim, offender and the community.

14:30

The Convener: Thank you. The report is fairly detailed, and I am sure that there is a vast number of issues on which members may wish to ask questions.

I will start the ball rolling. You talked about the redirection of resources, in particular away from the prison sector. That is quite interesting. The Scottish Prison Service is undertaking an estates review, so, presumably, it would like to know what its prison population will be in future. You say that, at present, 118 people per 100,000 of the population are in prison. What targets should we aim at, and over what period of time?

Dr Colvin: As you can imagine, this is a complicated matter. It is difficult to model the effect on the prison population of certain interventions. The long-term prison population keeps the numbers high. The short-term population rotates quickly, but does not involve the same number of beds. What is done for one group does not necessarily affect the other. We would like the short-term group to be dealt with rapidly, as what happens at present is ineffective. The prison authorities say that they can do nothing with offenders whose sentences are shorter than six months. It is an appalling waste of public resources if we cannot find a better way of dealing with those cases.

There are problems with imprisonment for the non-payment of fines. Members may think that people who are imprisoned for non-payment of fines comprise a small group, but in fact it is large. Each year, 626 women are admitted to Cornton Vale for non-payment of fines, while a total of 8,500 people are imprisoned for such offences. As David McKenna said, the evidence shows that people in severe economic circumstances who have the choice of paying their fine or paying the electricity bill or the rent do not give priority to the payment of fines. We would like better community penalties rather than financial penalties for such offences.

Application of better community penalties might reduce the short-term prisoner population by 1,000

or perhaps 1,500. Of course, that cannot be done until the alternatives are in place. We cannot blame the sheriffs for doing what they can with what they have. Unless we have community programmes to replace the fines and other penalties, sheriffs are constrained in their options.

Another group of prisoners consists of remands in custody. Members know the arguments about remands and custody and the numbers that are involved.

A further group of prisoners consists of those in long-term imprisonment. We recognise that some people will not respond to methods we know about now. However, the Scottish Prison Service has introduced something like 40 personal change programmes, with quite impressive results—we await the results of the research. The Prison Service takes the view that its job is to have people leaving prison as better people than they were when they went into prison. The Prison Service should be allowed to concentrate on that. We are not knocking the prisons. We want to give them the opportunity to concentrate on long-term prisoners without having to deal with the astonishing business of short-term imprisonment, particularly as it can be demonstrated that community sentences are more effective. That is a fairly radical change, but I think that it is sustainable.

On the reduction in the prison population, a figure of between 2,000 and 2,700 is gaining currency among criminal justice agencies—that figure is not just picked out of the air, but depends on how the sums are calculated. An initial reduction by 1,500 within a few years would be reasonable, with the hope that the prison population could be reduced by a further 1,000. The prison population is currently 6,000—it is appalling that Scotland is so high in the league—but we believe that that figure can be reduced with reasonable effort.

The Convener: You said that we need to invest in various programmes before we can begin to reduce the prison population. At the same time, the Prison Service needs to spend extra money to improve the Dickensian conditions that exist in some prisons.

Dr Colvin: Precisely.

The Convener: Would it be fair to say that, in the short term, we are looking not for a transfer of resources, but for a significant increase?

Dr Colvin: It is our impression that the Government's thinking is going in the direction of increasing community sanctions and that more money will be made available. Money has been made available for the drug programme, and we suspect that the Executive intends to increase the resources for community programmes across the

board. We hope that that is the case, and we are reasonably optimistic that it is so.

David McKenna: It does not necessarily follow that we are proposing an increase in resources; we are saying that we can use the existing resources far more effectively. Implementation of section 235 of the Criminal Proceedings (Scotland) Act 1995 would immediately prevent anyone who was fined less than £500 from going to prison as a result of fine default. That immediate action could save millions of pounds each year and would probably enable offenders and victims to get a better deal from the justice system. That money could be better used from the day on which that section was implemented.

Ms Matheson: Yes. The costs of reception and release by prisons—the revolving door situation—are disproportionately expensive. Some immediate savings could also be made through mediation and reparation. Procurators fiscal ask us to take far more cases than we can deal with at any one time. If those other cases could be taken, there would be immediate savings for the Scottish Legal Aid Board of around £1,000 a case. Our dealing with those cases through mediation and reparation costs about £350 a case. That immediate saving could be made.

Scott Barrie (Dunfermline West) (Lab): At the beginning of the meeting, the convener said that our discussion might jump about a bit. Forgive us if that is what happens.

You talked about people being held on remand. Do you have evidence to show how many people are remanded in custody and do not receive a custodial sentence but may have been kept in the worst conditions in our prisons? That is what we have been hearing about.

Ms Matheson: A high proportion of inmates are in that position—I think around 40 per cent. We could return to you with an accurate figure.

Dr Tombs: The latest study shows that there is very little reoffending while people are on bail; the study gives a figure of 45 per cent.

Scott Barrie: The committee members who visited Barlinnie told us that remand prisoners are held in by far the worst conditions in that prison. I believe that that situation is replicated throughout the prison estate. Is any accurate research available to show that people who have been remanded but have not received a custodial sentence go on to reoffend after they have been in prison?

Dr Colvin: That is the \$64,000 question concerning remand. No such evidence exists at the moment, but that research needs to be done.

Ms Matheson: People on our bail support and supervision schemes, whom the court might have

been afraid would not turn up, return to court. Those people have been worked with in the community, so a report can be made to the court on whether they can comply with a community sanction. Those people are less likely to get a custodial sentence. Evidence exists on the effectiveness of bail support and supervision schemes for remand prisoners.

Dr Colvin: The usual argument is that people are remanded in custody to ensure that they appear in court. Economically speaking, that is sensible, because if a court cannot meet when it is intended to, that is an awful waste of all sorts of people's time. However, the experience with the SACRO bail scheme is that very few people on bail reoffend. We would like bail programmes, rather than just bail hostels, to be used extensively for that group—who, after all, are innocent until it is proven otherwise.

Scott Barrie: I was not able to go through all of your report; for some reason, I was able to download only the first 31 pages. That may say something about my information technology skills. I was especially interested in the section on "Formal or Social Justice"—Susan Matheson has already touched on some of the issues in that section. Could you expand on what you said about custodial options and your organisation's eventual aims for women and young offenders? I also want to ask about another subject that has come up—the age of criminal responsibility.

Ms Matheson: Women offenders are an especially vulnerable group. Nancy Loucks's research on the women in Cornton Vale shows that the vast majority of them have a history of physical, emotional or sexual abuse. Most have been victims themselves. Kate Donegan, the governor of Cornton Vale, emphasises that the people she receives are very damaged. She believes that only about 30 of her 200 or more inmates are of any danger to society.

Women are less likely to get probation or a community service order than men who have committed the same sort of offence. Women who get a custodial sentence are more likely to be first offenders, and to have fewer previous convictions. Four times as many women as men will get a custodial sentence for shoplifting.

Dr Colvin: It is appalling that women are discriminated against in that way.

Ms Matheson: Between 1988 and 1998, there was a 79 per cent increase in the number of women in custody in Scotland. Those are the very damaged people that I was talking about, which is one reason why we are saying that we should focus on women. Another reason is the public response to the suicides in Cornton Vale: people can understand the damage that prison does to

people. The damage is no less for men, but we could begin with the women and learn from that experience.

I spoke about young people because early intervention will help. Research tells us that if young people are put into custody, they are likely, as are adults, to come out worse rather than better. We need to prevent that by working with young people in the community at the earliest possible stage. We should not incarcerate them.

Scott Barrie: You say in your report that the age of criminal responsibility is low in Scotland, and that the Executive is consulting on raising it—and quite right too. All of us were sent a paper some months ago by the Association of Scottish Police Superintendents, which I thought was grossly misleading and pejorative on that issue. It is important to acknowledge the difficulties.

If I have understood correctly—as I say, I was able only to skim through your report—you are looking at increasing the age of criminal responsibility so that it is the same as the age at which young people would enter the adult court system.

Dr Tombs: No, we do not say that. We say that consideration should be given to doing that. There is an important distinction.

Scott Barrie: I also wanted to ask whether our unique system for dealing with juvenile justice in Scotland through the children's hearing system influenced your thinking. Should we consider seriously extending the age range of the children's hearing system to 18 or beyond? At present, people may continue in the children's hearing system only if they happen to be in the system at the age of 16.

14:45

Dr Colvin: We would recommend that the children's hearing system should cover people to the age of 18.

The age of criminal responsibility is peculiar. Frankly, it may not be as important as it seems, because children's hearings deal with almost all young children's offences. Twenty years ago, the Lord Advocate decided not to prosecute children under the age of 13, following the case of Mary Cairns in Glasgow, which had an effect on the prosecution of very young children.

Children under 13 can be prosecuted in the High Court or before the sheriff under, I think, section 413 of the Criminal Justice (Scotland) Act 1970. Please forgive me if that is the wrong section; it has been a while since I practised in that field. Such cases, of which there are only 200 to 300 a year, go to the reporter and to the fiscal. The evidence is that the background and criminal

history of most of those children are identical to those of children who are dealt with by children's hearings, which have the advantage of oversight of the children for as long as those involved, who may change their minds, think appropriate, up to the age of 18.

Under section 413, the High Court or the sheriff may impose partly residential sentences of, I think, up to two years. That is a very rigid system for dealing with children, who can change so much over that time. Apart from those children who go to the High Court—which has a good record on dealing with children—for schedule 1 offences, there is little good reason for keeping section 413.

We also recommend a much tougher approach in the children's hearing system, which would make children face up to the consequences of what they have done under restorative justice principles. As is the case with SACRO's project in Fife, those who are involved in children's hearings could also discuss agreed reparation with the victim, which would make a big difference.

The general public's view may be that, far too often, they hear that children who get into trouble are charged and then nothing happens—the common phrase is, "Nothing is done". That is partly because the general public are not informed about what is going on and partly because nothing very much is done for a good proportion of those children. The hearings, rightly, concentrate on the 25 per cent of exceedingly damaged children who come before them.

Proceeding in the direction that we recommend would be a common-sense approach. We expect kids from our own families to understand what they have done and why it was wrong, and that principle is just as important for children outside our families who have committed offences. They should be encouraged to face up to their responsibilities—not in a cruel or oppressive way, but in a sensible way.

In addition, those children should be encouraged to make reparation, where they can, for the damage that they have caused. As a general principle, that would take care of those kids who are not likely to have criminal careers; most of them give up crime by the time they are 18. As one of them said to me, "You cannae go on daeing that once you're merrit"; another expression that was used was, "You've got tae screw the heid". That approach would deal with the more casual offenders in a way that the general public would appreciate. They would be more understanding of crime if they were given the full facts about the person who committed it.

The Convener: Before I bring in Michael Matheson, I want to point out that one of the strengths of your report is that it involves various

organisations, some of which work with offenders and some of which represent victims.

In paragraph 13, you say that the consortium

"would like to see the case considered for raising the age of criminal responsibility . . . which we believe should be 18 years."

You also say:

"Victim Support would, however, wish to further consider the implications in detail of what such a change would mean for victims."

You may call me a cynic but—I speak as somebody who has been used to fudging committee reports—that sounds like a fudge over something on which you could not agree.

Dr Colvin: I hope that Victim Support was simply saying that it would like the consortium to go a lot further.

David McKenna: Victim Support Scotland is concerned that the consortium has given insufficient consideration to the proposal to raise the age of criminal responsibility to 18. We are not against it in principle, but we think that the proposal needs to be considered carefully. As Roseanna Cunningham pointed out on Saturday at the Scottish Association for the Study of Delinquency conference, we live in a society where at 16 someone can get married and two men can have a gay relationship yet, under the proposal, we would not be held responsible for a crime that we had committed. There are real issues with the public about how far we can go. We are not ruling out the proposal, but we think that more consideration has to be given to it. It is more important that the other, valuable areas on which we agree are furthered than that the whole ship is holed over one recommendation.

The Convener: Phil Gallie has a supplementary.

Phil Gallie (South of Scotland) (Con): David McKenna has just answered it.

Scott Barrie: Briefly, for the committee's benefit—

The Convener: Is it on that point?

Scott Barrie: No.

The Convener: You have had a fair kick at the ball.

Michael Matheson (Central Scotland) (SNP): I have not had an opportunity to go through the whole report—I left it in the office this morning. However, what struck me was that it did not contain much on the public perception of changes to the criminal justice system. We all have to accept that the public already think that we are soft on crime and that we do not deal with things appropriately. They think that people who commit

minor crimes receive sentences that are too long and that people who commit serious crimes receive sentences that do not reflect the nature of their crime.

David McKenna mentioned fine defaulting. How do you sell to the public the idea that someone who fails to pay a fine of £500 for committing an offence should have no action taken against them? I am conscious as a politician that you could throw that back in our faces and say that it is for politicians to lead on such issues. However, we have to consider the issue. We can talk about all the different mechanisms that have to be put in place, but we have to recognise the real public concern about how we deal with crime. I did not feel that the report picked up on that.

Someone said that public perception is key. We can lay as much information in the public domain as we like, but it will not necessarily persuade people that this is the best way forward. I must say before we go any further that I broadly support much of the report. However, if we raise the age of criminal responsibility to 18, how do I explain to someone who comes to one of my surgeries having been attacked by someone who is 17 that their attacker is no longer criminally responsible but can get married? That is the sort of problem that will be created if we do not do this properly. It is not just that we should talk about the alternatives; we should talk about ensuring that society is ready to accept the alternatives. I would like to hear more on that.

David McKenna: Like you, I spend a lot of time talking to the public, but I do so from a perhaps different perspective. I talk to them as victims—or potential victims—and as people who are in fear of crime. When we talk about offenders and prisons, people automatically think of rapists and murderers—people committing serious offences. They do not think about people going to jail for not paying a £200 fine. When you tell people that someone has not paid a £200 fine and that £1,500 will be spent on sending them to prison, they think that that is scandalous. If you tell any pensioner that we spend five times more on prisoners than on them, they will soon tell you that someone should not go to prison for non-payment of a £200 fine.

There are issues about people's perceptions of what should happen in cases of serious crime. However, I believe that the vast majority of the public would be perfectly happy to find alternatives to sending people to prison for non-payment of fines, which in general are not paid because people cannot afford to pay them. You and I may be able to get the money together, but for a lot of people that is a major problem.

Dr Colvin: Jackie Tombs has some evidence to support that view.

Dr Tombs: Yes. David McKenna is absolutely right. We have quite a lot of research on public perceptions. We avoided the issue in the report, although it was included at one stage, because it is key—

Michael Matheson: It may be key, but the report does not address it.

Dr Tombs: We thought that it should be addressed in depth rather than in a few throwaway lines. I understand what you say, but the evidence supports what David McKenna says. The Scottish crime survey, which is sound and rigorous and has been done over a number of years, shows that the public are not anything like as punitive as the media portray them and that victims of crime are the most likely to be willing to consider alternative sentences for their offender. In general, victims of crime strongly support reparative sentences, which involve them more directly in the process than happens under the state process, in which they feel anonymous.

However, we accept Michael Matheson's point. This area needs a great deal more thought. The Howard League—if I may plug it—is doing a lot of work in its lecture series this autumn and in the spring on the portrayal of crime in the media and the fear of crime. We believe that the subject is worthy of being addressed in its own right.

As has been well said, there is a lack of consistency between the age of criminal responsibility and, for example, the age at which somebody can get married. The law of Scotland is haywire on all sort of things. The age at which people can make a will is different from the age at which people can get married. As David McKenna said, we need to think about the issue a lot more deeply, but the consortium raised it because we wanted to stimulate public debate. The Scottish Executive's review of youth crime considered raising the age of criminal responsibility to 12. That did not make much sense to us, because the children's hearing system can apply to young people up to the age of 18. Our suggestion was that we should consider making the breakpoint age the same as for the adult and juvenile system.

I accept the point about the inconsistency with the legal age for marriage. A major case is pending under the Human Rights Act 1998, and the 1989 United Nations Convention on the Rights of the Child says that we are not protecting our children properly by having such a low age of criminal responsibility. The convention recommended that the United Kingdom should bring itself into line with its European partners by raising the age of criminal responsibility. That was some 10 years ago, yet we have done nothing. There is no reason why we should not.

Michael Matheson: I am all for—

The Convener: This will be your second point, Michael, so please be as quick as you can, as we have a lot to get through.

Michael Matheson: It is all very well to initiate a debate on the age of criminal responsibility, but it could backfire and set back your broader case, because of issues of public perception.

My second point relates to the number of female prisoners, which we have touched on. We were meant to have halved the number by 1998. My understanding is that the figures are up by 10 per cent. Last year, there were 10 young prisoners in Cornton Vale alone. That was meant to have ended. You have mentioned resources and the lack of alternatives. There may be a medium-term to long-term saving if people do not go to prison, but in the short term the resources will have to come from somewhere—either they will be new or they will have to be taken out of another budget. That must be recognised.

Are judges and sheriffs reluctant to use alternatives to prison? How far can we push reforms on judges who may be reluctant to use community or alternative disposals when they are meant to be making independent decisions? Is there a genuine reluctance?

15:00

Dr Colvin: Most community programmes are pretty busy. It is not as if there is slack because the sheriffs and judges are not using the community programmes. Indeed, for many years, the complaint was that there were not nearly enough community programmes and that the conditions were far too strict. Some judges would use community programmes more often if spaces were available. As I said, I cannot blame them for having a penal approach and using imprisonment when there are no alternatives. We must recognise the extent of judges' discretion.

Public perception and press reporting are a major issue. The consortium's report was drafted with the Parliament rather than the press in mind, in the hope that the Parliament could tackle these issues at long last. That was impossible under the previous arrangements.

The key is to continue to point to the effectiveness of alternatives to custody. The prison statistics may satisfy the short-term revenge motive. If my child or I were seriously assaulted, I would feel vengeful, too, although I might not have the best judgment at that stage. The whole programme should be subject to revaluation and we should try to persuade the public that what we are suggesting is a better approach. As Jackie Tombs says, the public are much less punitive than we imagine and we have solid evidence in our favour. How we convince the press is a rather

different matter.

David McKenna: Some sheriffs will tell you that some among their number do not understand what community disposals are about. The judiciary and sheriffs are given very little training. The training on sentencing primarily revolves around avoiding the appeal courts. On wider sentencing issues and the options available, little attention is paid to community measures. The number of sheriffs willing to use such measures may be reduced simply because the measures are not understood. The judiciary needs more training on alternatives.

Janice Hewitt: We do not do enough to raise awareness about the disposals that are available. For example, there is a reluctance to impose supervised attendance orders, because supervised attendance is a fine on a person's time. If a person breaches a supervised attendance order, they go to prison for longer than they would have done had they been given a condition of sentence straight away. Some prisoners request the 14-day sentence rather than the community disposal. That is a catch-22 situation. I understand that the Executive and the University of Stirling are carrying out research on that, which is due to be published in early December. There are sentencing anomalies.

Apex gives presentations to the judiciary on community disposals, which has increased the use of such disposals. Similarly, a programme of public awareness raising about community disposals would be valuable. Public perception is key, but the way in which we give the message to the public is important. We must think of alternative ways in which to communicate the message to the public. For example, we must put across the cost and effectiveness of community disposals compared with the cost and effectiveness of incarceration.

Pauline McNeill (Glasgow Kelvin) (Lab): The report is lengthy and I do not think that I could do it justice in one discussion. What is the definition of a short-term sentence?

Dr Colvin: I would say six months or under.

Pauline McNeill: Does that mean that anything over six months is a long-term sentence, or is that a medium-term sentence?

Dr Colvin: The language is not that precise, but a short-term offence usually means an offence with a sentence of less than six months. You must remember that there is remission, so the time served is not six months.

Ms Matheson: It should be remembered that 63 per cent of young offenders and 62 per cent of adult offenders served sentences of less than six months in 1998 and that the average stay on remand was 11 days.

Pauline McNeill: I do not feel that you convincingly answered Michael Matheson's question on the age of criminal responsibility. I have concerns about what you are saying. I represent Glasgow Kelvin, so I cover the city centre of Glasgow. David McKenna will know as well as I do the violence that goes on in the city. I know that I cannot speak about details of cases that have yet to come to court, but this weekend we had violent scenes in the city centre involving people of 16 years and under. Are you saying that a murder or an attempted murder case would go—

Dr Colvin: No.

Pauline McNeill: So how do you categorise the crimes, given that you say that the criminal age of responsibility should be changed to 18?

Dr Colvin: The offenders that you are talking about are dealt with by the High Court. The numbers that I referred to, which are a little different from the children's hearings population, are the ones that go to the sheriff court. As I said, there are only 200 to 300 a year. That is why, in a sense, the question is a bit marginal.

Pauline McNeill: So what does that really mean? If you are saying that the age of criminal responsibility should be 18, what is the dividing line for categories of crime? Which crimes would be heard by the children's hearing system as opposed to the courts?

Dr Colvin: As I said, we would not regard schedule 1 offenders—offenders who go to the High Court—as being within this category. We want to change the age of criminal responsibility for those who might go to lower courts.

Pauline McNeill: So that excludes those who would go to the High Court.

Dr Colvin: We are talking about those who would go to sheriff and district courts.

Pauline McNeill: You are right about community disposal. People do not understand what that means; unless they have had direct experience of it, they do not know what an onerous obligation it is. You are also right to point out that there is discrimination against women. The reason why women do not get community disposals is that the schemes do not exist, which is why they end up in prison. How will you manufacture those community schemes if they are to be an alternative for any group of offenders? We have difficulty in persuading people to put schemes together for women, even though we are crying out for them, so where will the schemes come from?

Ms Matheson: Over the past three years, SACRO has increased the number of community services that it provides by about 30 per cent—most of the increase has occurred recently. If

resources are available, they can be built up incrementally; people are available to be appointed to provide the services. SACRO has an alcohol education programme, but we found that it was not working for women. We are now running it for pairs of women, because waiting too long for a group is not effective; we need to work quickly. We do not have the sufficient resources but, because we recognise the desperate need, we have stretched our resources at least to provide the programme when we have two women referred to us.

You are right to say that we have to look differently at services for women. More resources are needed, because the number of women coming through the system is small, so one has to tailor services to them. Often, we have to consider providing child care or changing the timing of programmes to make it possible for them to attend. It is possible to do those things if resources are available.

David McKenna: The reason people do not know about community disposals is that no one tells them. If you are the victim of crime, no one tells you that the person who committed the offence against you is going to have a community disposal. Victim Support believes that the victim's views should always be taken into account in sentencing, that they should be informed and advised about community service and that they should be able to have an input into the decision on that.

I am here representing the victims of crime, but where is the imagination? I need only walk around the city of Glasgow to point out 20,000 things that those on community service could be doing for the people of the city. Whoever is responsible for organising community service orders and placements needs a bit of imagination. We could do it in this city; we could do it in Scotland.

Ms Matheson: It is important to explain to the public and to the press the nature of the alternatives to prison and to get across the fact that, from an offender's perspective, it is much harder to go on an intensive probation group work course than it is to sit in prison for a shorter term. The time scale will be longer, conditions will have to be met and offenders will have to face up to the impact of their offence and take responsibility for their actions. That is hard for some offenders, who say, "No, I'd rather sit in prison for a couple of weeks, thank you very much."

Pauline McNeill: I have concerns about targets. If people meet their targets, that is fine, but it is more important to set criteria. Targets can be dangerous. In your response to Scott Barrie, you mentioned the number of people who are remanded compared with the number of people who get convicted. I put it to you that, in cases of

rape, we will remand people who are innocent, but, related to that, we are concerned that we are not getting the convictions because the law is not right. I would not be happy for that figure to sit without comment, as other factors come into play.

Dr Colvin: I agree that criteria are more important than speculating on hard numbers. For such offences of violence—and I wish that we paid more attention to how we respond to offences of violence than to the preponderance of property offences—whether the victim is being exposed to further harassment is a major consideration. I think that it is reasonable to expect someone to serve an almost automatic remand in custody in such cases.

However, many more people are no danger to the public—that is the group that we would like to be out of prison. The consortium's report refers to New Zealand's Criminal Justice Act 1995, which was the first criminal justice legislation in that country not to be based on British or English legislation. The goalposts were moved in that the presumption would always be that a man or woman convicted of violence against a person would go to prison; if the judge decided otherwise, they would have to supply reasons in writing. The presumption was the other way round for property offences; people would not go to prison, and if the judge decided to send them there, they had to give written reasons. We are not certain about the outcome of those changes in New Zealand, but the value system and the priorities in the criminal justice system seem to have been changed in a way that the general public there accept.

We are not the only people discussing these issues. They are being addressed in New Zealand, America, Canada and England, and there are now extensive programmes of restorative justice and mediation in Europe.

Phil Gallie: You seem to believe that danger to the public is a criterion for imprisonment. What is your understanding of danger to the public?

Dr Colvin: I would relate it to violence, rather than to property offences. It also relates to the protection of the victim.

Phil Gallie: I think that danger to the public can be apparent in more ways than just violence. Would you agree?

Dr Colvin: A considerable record of persistent offending or house-breaking could be a justifiable reason for imprisonment. We have tried to make the point that appropriateness is one of the tests, by which we mean that we should take a commonsense approach.

Phil Gallie: I think that that came out but, given Michael Matheson's comments on public perceptions, could it be argued that

appropriateness will lead at times to inconsistencies in court judgments, which could in turn cause disillusionment? Sadly, we hear all too often these days of people taking the law into their own hands. Would that be a danger in future?

Dr Colvin: I know that the sheriffs and the courts have thought about this. At some conferences that I have attended, it has been suggested that press officers should be attached to each court to explain to the public the rationale behind court decisions. That would help to get away from the automatic response that is often made to those decisions. Judges are interested in that idea, but I do not know of any who have done anything about implementing it. They are anxious to be seen as sensible people.

15:15

Phil Gallie: That would be a helpful suggestion.

I have a brief question about community service. Did you do any research into the success of community service, in terms of application, deterrence and how the service is run?

Dr Tombs: A good deal of research has been done on community service. That research shows that, as an alternative to custody, it has a better record in reducing reoffending and reconviction. A classic study of community service in Scotland, conducted by Gill McIvor at the University of Stirling, goes into all the details of a sample of community service order offenders.

It is also worth stressing the importance of other aspects of community service. The committee has expressed concern about public perceptions, but we tend not to tell the public enough about all the good, constructive work that is done by offenders on community service programmes, such as redecorating old people's homes or delivering meals. An amazing amount of work is done on community service, but the positive contribution that those offenders—who would otherwise be in prison—are making to the community is not publicised. The number of breaches of community service orders is much less than one might expect.

Phil Gallie: How many young offenders who have been involved in offences such as house-breaking, car theft, vandalism or general breach of the peace end up going to prison, as opposed to serving at least couple of periods doing community service?

Dr Tombs: I am afraid that we do not have figures on that. The Gill McIvor study showed that young people who had done community service for such offences were much less likely to end up in prison.

Phil Gallie: Virtually all the sheriffs to whom I have spoken seem to favour a community service

sentence rather than a prison sentence, particularly for first-time offenders. Given that preference, how could you come to the conclusion that community service is a better deterrent than prison sentences are?

Dr Colvin: We are not basing our conclusion on deterrence; we are basing it on effectiveness and on whether the people concerned offend more after their sentence. Whether the reconviction rate goes up or down shows the effectiveness of that type of sentence. Deterrence is an interesting aspect of criminal justice and we would be happy to spend a couple of minutes discussing it, as it is important in relation to prison sentences.

Dr Tombs: The only deterrent effect that imprisonment has is the fact that, while somebody is locked up, they cannot commit offences outside the prison. However, they can still commit offences inside prison.

Phil Gallie: I am not sure that I agree with that. I think that prison sentences have several purposes. There is the punitive element, which you mentioned. There is also the protective element—the public are protected. Deterrence is another aspect—people do not like going to prison, so they will not reoffend. There are several elements to the deterrent effect of prisons.

Dr Tombs: I understand what you are saying. I must make it clear that the consortium is not arguing that people should not be punished. Any penal sanction is a punishment. We are saying that the penal sanctioning should be separated from what works and is more effective at reducing reoffending and victimisation. The reduction in reoffending is not measured through reconviction alone. Several studies have shown that after a community service order has been issued, for example, people still offend, but the reoffending is less serious. The people do not go up the tariff—they show improvement, which is what we are looking for.

Phil Gallie: You referred to the cyclic effect of people going backwards and forwards between prisons. You also mentioned the 6,000 in prison. Have you any thoughts on the present sentencing policy, whereby individuals sentenced to six months serve only three months? How does that affect your suggestion that, if individuals must be sent to prison, they should be sent for longer, so that staff can work with them?

Dr Colvin: You are right to say that the six months becomes three months. That short time shows how little we can do with such prisoners. The costs are astronomical, and admission and discharge are among the highest elements. We would rather concentrate on the prisoners who are there for longer, and I am sure that the prison authorities would too.

Ms Matheson: But we do not want the length of the sentences to be increased.

Dr Colvin: That would not be appropriate. As we roll out the alternative programmes, we may find that they introduce measures that are more effective than short terms of imprisonment, even over six months. However, that is still to be shown evidentially. As I said, we would like every programme to be evaluated. If one does not work, it should not be run. We do not believe in getting into a hole and digging it deeper, but I am afraid that that is what is happening with prisons.

David Smith in Edinburgh has done some interesting research on the relationship of sentence terms to rates of crime, and has shown that there is no link. It can be shown that as the rate of imprisonment goes up and up, it has no effect on the rate of crime. I think that it was David Smith who suggested that the prison population would have to be doubled to reduce the rate of crime by 1 per cent. The deterrence element is complicated and is not what it seems on the surface.

Phil Gallie: I will return to the problem of women in prisons. A comment was made that they are treated to some degree worse than men. If so, why are there only 300 women in prison at any time, compared with about 5,700 men? You suggested that people could be absolved from paying fines. If that were done, what other sanctions would be imposed?

Dr Tombs: The number of women in prison is so low because women offend less than men. The rate of offending of young men to young women is 10:1. Young men offend not just more, but differently. Men are responsible for violent crimes, whereas when women are done for crime, it is usually for shoplifting or similar offences. That is the simple and short answer to that question. I could go into a host of other reasons, but I will not.

Phil Gallie: I appreciate that.

Dr Colvin: The other point is that women are four times more likely than men to be detained for the same offence, as we said.

The Convener: The other question that Phil Gallie asked was about alternatives to fining. What else will you do with fine defaulters?

Dr Tombs: About 92 per cent of people pay their fines without enforcement procedures being used. All the research that has been carried out demonstrates that, of those who do not pay their fines, only a few are what one would call recalcitrant. The vast majority of the remaining non-payers cannot pay their fines because they do not have the means to do so. The point is that they should not be fined in the first place. We should not fine them or set any alternative for non-

payment, because an alternative should be imposed if they cannot afford to pay in the first place.

In our report, we recommend that the Scottish Executive and the Scottish Parliament should reconsider the introduction of a unit fine system, in which people are fined in accordance with their resources. Earnings or benefits of £50 a week are translated into units, with a fine of five units, or whatever, imposed for breach of the peace. A unit for someone whose income is £50 could be £5, whereas for someone who earns £500 a week, the unit would be entirely different.

The other approach is that of imposing a community or reparative sanction in the first place, such as some kind of mediation, to make the person face up to the fact that while what they did might seem trivial to them, it is not trivial to the person—

Phil Gallie: You are talking about means-tested fines, which is an interesting approach.

Dr Tombs: Means inquiry courts exist at present, but the procedure that one must go through before reaching the stage of the means inquiry is expensive, and we could save on that procedure.

Dr Colvin: There are various ways of getting people to pay money that often they do not have. Our point is that the sentence should be appropriate to the circumstances of the offender. We should start by imposing a community sentence, if that the best way for an offender to make some reparation for the damage that they have caused. We should not go down the road of imposing unrealistic penalties that involve a lot of people chasing the impossible. Those penalties result in people going to prison because they have been unable to comply with a sentence that it was obvious they could not comply with in the first place. Penalties should be imposed all right, but they should be realistic.

Ms Matheson: Otherwise, you are fining poverty.

Mrs Lyndsay McIntosh (Central Scotland) (Con): Thank goodness that I have joined the discussion so late that almost everything that I wanted to address has been said. The witnesses will leave with the message that they will have to reconsider the issue of the criminal age of responsibility. We are all looking for better answers than those we have heard so far.

I want to return to the issue of women in jail. The reason that so many women end up in jail is because they challenge people's perception of how women should behave—we do not expect women to commit crime. As has been described so often before, we need to consider the mad, sad

and bad aspects of women who offend.

On the availability of alternative sentences, part of the reason that women and youngsters are in prison is because the short-term sentences are imposed by those who sit on the edges of the court system, right down at the district court level. I think that Phil Gallie picked up on that point earlier. The people who sit on district courts dish out the short sentences—they cannot impose greater sentences and must refer cases further up the tree for such sentences. On short-term sentences of six months and under, district courts are allowed to dish out only 60 days in any event. The difficulty is that those who sit at the edge of the big picture do not have access to alternative sentences.

Ms Matheson: It would take little effort to provide supported accommodation in, say, Glasgow, where the majority of women offenders come from, and to encourage all the agencies to pull together to provide tailored support for each woman, not in secure accommodation but in accommodation where they could feel safe and where they could be given appropriate support. It would be relatively easy and quick to provide such accommodation.

Mrs McIntosh: I will return briefly to the means inquiry, which Dr Tombs mentioned. Part of the difficulty with means inquiry courts, on which I sat before I became an MSP, is that people will sign up to anything, just to get out the door. I recall women, young men and older people being marched in by the accompanying officer and giving me all their details. Occasionally, when I asked them what they thought they would be able to pay, I had to make their fines smaller, simply because they would not face up to what was within their means to pay. The system must be re-examined.

Dr Tombs: I want to clarify the use of the unit fine in Scandinavian countries. The court is not a means inquiry court; it decides on the appropriate sentence, for example, a one-day fine. Assessing the extent of the one-day fine in the case of a particular offender is a separate clerical task. In some Scandinavian countries a day fine might involve helping to deliver meals on wheels—it is not just a financial penalty. However, I accept your point.

15:30

Mrs McIntosh: I have a final question, which I hesitate to ask. How do you answer the charge that, through community disposals and all the things that we expect people who have been convicted of crime to do, offenders are putting other people out of jobs?

Janice Hewitt: That is an issue for Apex

Scotland because we are always asked why employers should give offenders jobs when there are people coming out of schools and universities who want jobs. We are aware of the employment opportunities for offenders and we are not talking about jobs at Marks and Spencer or Ikea. Many of the offenders that we deal with take up jobs such as storesman, warehouseman, builder and labourer. We know that employers find such jobs difficult to fill.

There is an employment market for offenders, but there are many barriers to employment. That is what Apex tries to address. Sometimes employers are not aware of the implication of the criminal conviction for the task in hand. There is a surplus of jobs that are not being filled because people are supposedly overqualified and offenders are a group that could fill those important posts. Awareness among employers sometimes presents a barrier to that.

A second point relates to the ability of offenders to carry out such jobs: they may not have literacy or numeracy skills. Those skills might not be appropriate to the job in question, but employers feel that employees should have those skills. We are looking at the requirements of the offender and the requirements of the employer. With a little help and assistance, offenders can take up those surplus jobs that would otherwise not be filled.

Mrs McIntosh: Earlier, we spoke about having the press on your side. I have a horrible feeling that that approach might not come across in the way that you would want.

Euan Robson (Roxburgh and Berwickshire) (LD): I agree with Janice Hewitt's last point. There are certain skills shortages, sometimes geographically based, and it would be interesting to investigate whether offenders could help to fill those gaps. Earlier, we were talking about some offenders choosing to take 14 days in prison rather than a community disposal. Are you saying that on certain occasions we should not give the offender a choice?

Janice Hewitt: Possibly. The 14-day sentence does not give us an opportunity to work with the offender. By the time that they are settled into the hall, we have no time to put an appropriate programme in place and therefore no one addresses the offending behaviour or the need for anger management. There may be scope for some people being told that they must accept a community disposal rather than incarceration.

Euan Robson: That is primarily a matter for sheriffs. They might be in a better position, perhaps as a result of increased training, to decide that it is not sensible to offer an option in certain cases.

Janice Hewitt: Yes. We need to take a holistic

view of victim, offender and community in order to decide where we can make a difference. The difference will be where the offender changes his or her behaviour in the future and contributes to society positively rather than negatively. Putting an offender in jail for 14 days does not give us the opportunity to make a difference in the behaviour of that individual.

Euan Robson: From the evidence today, I have gained a strong sense that we do not know enough about the success of community service orders. Is it fair to say that we are short of comprehensive research in the area? You talked about certain pieces of work that had been done, but I get the impression that we all believe that we need to know a lot more about what happens at the tail-end of the process—not just after six months, but after a considerable number of months.

Janice Hewitt: This morning, I had a meeting with academics at Stirling University. With regard to the question that you ask, a problem is that practitioner and academic do not often meet. We need to have more practitioner-based research about what works and a means of sharing the "what works" agenda. That would inform the judiciary and the Scottish Prison Service. At the moment, however, we do not have a joined-up idea of what works.

Euan Robson: It is quite concerning if we have only impressions rather than soundly based research on what works with regard to reoffending.

Dr Tombs: That is not the case. Extensive, thorough and rigorous studies have been conducted in many countries over many years and conclusively demonstrate what works. The national standards for the criminal justice system in Scotland and all the programmes in the communities are based on the "what works" principles that have been rigorously assessed and developed.

We do not have the answer to the question of what ingredients contribute to the success of particular examples. That is a complex matter. In Scotland, we could do with having a systematic information system that follows offenders right through the process. Such systems exist elsewhere. Mr Robson, you are asking for general statements about effectiveness, but I cannot give you those. I can speak only about specific studies in Scotland. I cannot tell you about other jurisdictions.

I do not want to bore people with this piece of information, but we have a technique that is known as meta-analysis. The meta-analytic technique goes across all the studies that have been done and has provided us with conclusive evidence about the "what works" principles. They are

community based and are focused on criminogenic factors. We know what works and the report is based upon what we know. That is why we are trying to report the ideas.

Euan Robson: The element that is missing is research into the long-term impact on reoffending.

Ms Matheson: We know the long-term impact of sending people to prison: they will reoffend.

Dr Tombs: We have studies that have followed people for five years. We have cohort studies that have followed people through the system, such as the Cambridge study of delinquent development, which has been going on for 40 years. We know what works.

David McKenna: Speaking from the point of view of Victim Support Scotland, I would say that we need to get real about this matter. The criminal justice process and everything that interfaces with that has little impact on crime and offending behaviour. We have a choice between a course of action that costs, say, £10 and is relatively ineffective and another course of action that costs, say, £1 and is slightly more effective. That is what the issue boils down to.

Most people stop offending once they enter their late 20s, no matter what we do. All that the programmes can do is reduce the level of criminal behaviour at the margins and slow down the rate at which it happens. However, that is better than paying 10 times more for a worse outcome.

Janice Hewitt: The reason that we have come together as a consortium is because, as the committee will be aware, the offender often presents with a number of problems: housing difficulties, drug difficulties, relationship difficulties, unemployment difficulties. The consortium demonstrates the need not only for community programmes but for joined-up programmes that address individual needs. Solutions that work change from individual to individual.

One individual might need only to attend a drugs prevention programme to address their behaviour, while another might need to follow that with an employment programme and anger management training. The needs assessment needs to be done on a proactive basis with the person who presents. There are parallel interventions based on the needs of the victim and the needs of the offender.

Pauline McNeill: Michael Matheson and others have been pressing all of you about your attitude to raising the age of criminal responsibility. I keep reading paragraph 13 of the report but I do not see that you qualify what you mean. It is clear that you would like the age of criminal responsibility raised to the same age at which young people move into the adult criminal justice system. You believe that that should be 18.

The age of criminal responsibility relates to criminal intent. If the age is raised to 18, people who—

Dr Colvin: You are talking about serious offences going to the High Court. I agree that the report does not go into great detail on the matter. That is partly because it deals with a small group of people and the effective system of children's hearings that we have deals with nearly all the cases involved. As you know, the problem has been the 16 to 18-year-old group in the children's hearing system, and whether adult courts should deal with them. That has been the subject of a good deal of debate.

We are sure that the age when children should no longer be dealt with by children's hearings should be 18. At the same time, we want children's hearings themselves to be much more effective in relation to the offender facing up to the consequences of their action. In other words—

Pauline McNeill: I will put on record that I am not happy that the committee has not been able to talk in detail about your view. You said earlier that you would not be including offences that went to the High Court, but now you are saying something different. I would have pursued my line of questioning much more strongly—

Dr Colvin: No, I am not.

The Convener: Are you saying that you want a different age of criminal responsibility for different offences?

Dr Tombs: No.

David McKenna: My colleagues have heard the Justice and Home Affairs Committee's concerns about this proposal, and it would be sensible for us to review that.

The Convener: It might be helpful if you consider that among yourselves, and then write to the committee with a considered explanation of your views on this point.

Ms Matheson: I would not like the other recommendations to be overshadowed by this point.

The Convener: Indeed. We should clarify that point.

Scott, do you have a question?

Scott Barrie: It is not a question, more a thought that might help the committee. When he answered one of my questions, David McKenna mentioned the SACRO scheme in Fife. I assume that he meant the mediation and reparation scheme that is operated by the reporters and SACRO and which is based in Kirkcaldy. If it is that, it might be useful for people to know a bit about the scheme. Could Susan Matheson give us

some material on that?

Ms Matheson: I would be delighted to do that. When Henry McLeish visited the service, he was impressed and felt that it should be made available to all local authorities in Scotland.

Dr Colvin: As a footnote to that, 70 per cent of the children who have gone through that scheme have not reoffended within a year, and they are all children who have committed a good number of offences.

Scott Barrie: One of the pilot areas for the scheme was Cowdenbeath, so I am well aware of it.

The Convener: I have two further points, one of which is the astonishing statistic that you have in paragraph 59:

“Around 40% of all crime in Scotland is suffered by 4% of all victims.”

I take it that there are social and locational reasons for that.

Dr Tombs: Yes. Where people live is a large factor in their exposure to the phenomenon of multiple victimisation. South of the border and in France, projects have successfully used multiple victimisation to target crime prevention efforts. Shifting the focus on to multiple victimisation has led to significant reductions in crime in certain communities. The Kirkholt burglary project is a famous example down south, and there are others. We should develop such ideas as part of the crime prevention agenda in Scotland.

15:45

David McKenna: This is a key issue for the Parliament, for this committee and for all our communities. The statistic that the convener gave tells us that tens of thousands of people in Scotland have their homes broken into not once in a blue moon but once or twice a week. Men, women and children are being attacked and assaulted not just once in two years but every other week. People are frightened to go out at night, frightened to go out during the day and, even worse, sometimes frightened to stay in their own homes during the day.

We can tackle this problem. We have the information. We know the areas in which people are suffering. They are areas of social deprivation and high crime, and areas of high unemployment with many single-parent families. We know where the crimes are being committed and we know where the people who are suffering are. We should focus our efforts on alleviating the distress, pain and suffering that is being caused to those people. We have—or rather you have—the power to do that now.

The Convener: I have one other point, which may be especially relevant when we are talking about victims. I do not know what the police clear-up rate for offences is. Is it as much as 50 per cent? Let us say that it is 50 per cent. Of the 50 per cent of offences that are cleared up, some are not referred to the procurator fiscal. Of those that are referred, 40 per cent are marked “No proceedings” and another 20 per cent result only in warnings. In talking about sanctions as we are doing today, it seems that we are focusing on a very small number of offences. What about all the people who suffer as a result of the other 80 per cent or 90 per cent of offences?

David McKenna: Victim Support Scotland makes that point continually. For all that has been done to change the criminal justice process—making it more victim-friendly and providing information and support—the process addresses the needs of only 4 per cent of all victims of crime in Scotland. Very little is being done for the other 96 per cent. That is where Victim Support comes into its own. It is the only service that is available to those 96 per cent of victims; they get no help or support from anywhere else. Half the crime in Scotland goes unreported, for a whole host of reasons. No service, apart from Victim Support, provides any kind of help. That is why we believe that our service has to be better funded and more adequately supported by central Government, to ensure that we can provide people with our service. At the moment, those people are getting very little service.

Dr Colvin: This is a big problem, and one that affects the general public's view of the criminal justice system. If the principles of restorative justice were applied throughout the system—and I include in that the actions of the police—one might find that the situation was rather different. My impression is that people are not prosecuted because the fiscal decides that it is not in the public interest to do so. I rather suspect that they feel that it is not worth court time.

The effectiveness of the police warning system that Jackie Tombs referred to earlier increased significantly when warnings were accompanied by some form of restorative justice. That made an enormous difference. Perhaps the police should use such methods more often. Thames Valley police is piloting the way; it is worth while considering whether its experience could be of use here in Scotland. Victims could benefit rather more than they do just now, when cases are not prosecuted.

The Convener: I think that we have had a fair kick of the ball today. I thank Dr Colvin and his colleagues for answering all our questions.

Dr Colvin: Thank you. We would just like to add a few things that we did not want to leave without

emphasising: first, that we regard section 235 of the Criminal Procedure (Scotland) Act 1995 as a very important short-term measure that could make a difference to the prison population.

Secondly, we need to roll out a programme of community penalties across Scotland, so that they are available for each court. I am optimistic about that.

Thirdly, we need sustainable funding for victim support services throughout Scotland. We are all agreed that victims get a bad deal under the present arrangements. We would also hope that an implementation group will be set up at some point, including representatives of education, housing, health, social inclusion and social work, to consider pushing this whole initiative forward. That is an ambitious request, convener, but we regard the methods that we have discussed to be worth considering in such detail.

The Convener: I dare say that we will be speaking to the Minister for Justice in this connection at some stage.

Colleagues, we clearly have various options for taking this matter of restorative justice forward. Unless there are contrary views, I suggest that we—if the Parliamentary Bureau agrees—proceed with our work on public attitudes to sentencing and so on. That seems relevant to what has been said. Once that is under way, we can consider this matter further. Do members consider that to be appropriate?

Members indicated agreement.

Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) (No 2) Order 2000 (SI 2000/draft)

The Convener: Item 3 on the agenda deals with subordinate legislation—the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) (No 2) Order 2000. It is bound to be front-page news tomorrow. [*Laughter.*] We are not the lead committee on this item. Only part of this statutory instrument comes under our committee's purview—the bit about the Fire Services Examinations Board, which was part-funded by the old Scottish Office. The SI simply allows the Scottish Executive to continue with that part funding. Do members have any comments?

Members indicated disagreement.

The Convener: We therefore have no comments to make on this draft statutory instrument.

European Documents

The Convener: The next agenda item concerns two European documents: 972, on protection against fraudulent or unfair anti-competitive conduct in relation to the award of public contracts; and 1190, on the standing of victims in criminal procedure.

We will deal with document 972 first. Does anyone wish to make any comments? The opinion on this one is that it is unlikely that Scottish legislation needs to be adjusted at all to take account of this initiative, because our definition of fraud is wider than that used south of the border.

Phil Gallie: We could write to the Germans, suggesting that they change their law to match Scots law. The matters that are dealt with under the documents are for the United Kingdom and Scottish Parliaments. Document 1190 certainly covers a reserved matter. I therefore cannot see the point of our being asked to consider it.

The Convener: The relevance is that while, under current arrangements, the UK Government has a vote on this matter in the Council of Ministers, the result of the initiatives might require changes in our domestic criminal law—which is a matter for this committee.

Phil Gallie: I should have thought that it was up to the Scottish Parliament to determine whether any changes were required in this area. We should not have to consider the matter at the instigation of external bodies.

Michael Matheson: Whether we like it or not, Phil, the UK is a member of the European Union. Decisions will be made in Europe that could have an impact on the Scottish legal system.

Phil Gallie: I would hate to think that we have already gone so far down the line that that would be the case on an issue such as this.

The Convener: I am not too sure of the point that you are making, Phil.

Phil Gallie: The point that I am making is that this is a matter of Scottish law. I am not aware that we are obliged to comply with European law to the extent that this paper suggests. If we wish to determine the way we treat our victims of crime, that is our wish. I am not aware that there is any European influence in this area.

The Convener: Let us deal with document 972 first. Are there any comments on that document, which concerns the award of contracts?

Pauline McNeill: I do not understand what is meant by

"Initiative by the Federal Republic of Germany".

Can we say that we do not want to support that initiative? What is our role?

The Convener: An initiative is a way of putting a proposal for new community legislation before the Council of Ministers and the Parliament. If we think that that initiative would be detrimental to Scotland in some way, we have a duty to make representations either to the European Committee or to ministers, so that they can put forward those views in any negotiations that take place in Brussels.

Pauline McNeill: Although it may seem a minor matter on the face of it, I think it might be quite a major matter. I feel that it goes somewhat beyond the scope of what we might want to get into in terms of making the law on competition uniform across Europe. I would not want to go that far, but I certainly think that we need to take evidence to find out how our laws compare with those of other countries.

Michael Matheson: I was looking at the information about the European documents that have been put before the European Committee. Some parts of those documents have a direct effect on our criminal justice system. I must admit that I have not looked at the documents themselves, but the committee paper refers to:

"1224: Note from the incoming Presidency on a programme of measures to implement the principle of mutual recognition of decisions in criminal matters".

There is another item on the list, on Eurojust 8, which concerns

"reinforcing the fight against serious organised crime".

I would imagine that those measures would have an impact on the Scottish criminal justice system.

Pauline McNeill has raised the issue of anti-competitive legislation. Maybe we need to examine some of those European documents in detail and consider what impact they will have on the Scottish criminal justice system or, when it comes to competition matters, on the civil law. Inviting the committee to examine European documents may be a bad move, but I am aware that there may be important issues to consider and we should probably take time to consider them.

The Convener: We have two of those documents in front of us at the moment and there are another six or seven on the supplementary list. I would hate to have to examine all of them in detail or to take evidence on each one. It has been suggested that the implications for Scots law of document 972 are pretty much non-existent.

Scott Barrie: Given the concerns that Pauline McNeill has raised, I wonder whether, rather than simply accepting the documents, we could ask the Executive to write to us outlining its position. After that, we could decide whether we need to take further evidence.

The Convener: We already have the Executive's view. The Scottish covering note, document SP972E, is attached to the European document. Each of these European documents has an attached document from the Scottish Executive called the Scottish covering note and a memorandum from the Home Office.

Do we have the option to carry this forward to the next meeting?

Alison Taylor (Clerk): Yes.

The Convener: Some members are obviously reading the detail of the documents for the first time. Would it be sensible to carry over these two documents to the next meeting?

16:00

Euan Robson: The concern about the German proposal is that rather than say to member states where the criminal law is perhaps inadequate, "Bring yours up to standard," the Germans are saying that we should have a European standard. I am not sure that that approach is sensible as member states must continue to have control over their own criminal law.

There is a fundamental point about which approach is the most appropriate. The Germans are suggesting one approach. The alternative is to say to other member states, "Your sanctions are far less and your law is less adequate. Why do you not do something to come up to best practice?"

We should examine this matter in more detail.

The Convener: That is a general principle. You are not referring to a specific document. All of these documents potentially have that effect.

Euan Robson: Yes.

Pauline McNeill: This has serious ramifications. It depends on your view of the European Community. I support the European Community, but I do not support making criminal law uniform across Europe. The competition rules in the European Union should be sufficient to enable prosecutions to take place, as they regularly do, in member states that do not abide by competition rules. We must take a political view on this issue.

If we believe that criminal law across Europe should be uniform, we should take part in this initiative; if we take the view that it is not necessary, perhaps the convener should raise the political aspect of this with Jim Wallace and ask whether we should be engaging in it.

Michael Matheson: I am aware that this discussion is about document 972 on competition in relation to contracts, but looking at the brief descriptions of the other European documents, which are listed in the European documents section of the papers that have been circulated for information, it seems that we are touching on an issue that the committee must take time to consider.

If we are going to take time at another meeting to examine the two documents that are on the agenda today, it would be helpful if we received a briefing note at the same meeting on those other Europe documents. We can then decide whether we should examine this matter in more detail.

I can only read between the lines that this is going to have an impact on our judicial process. What will that impact be? The committee has a responsibility to protect the Scottish judicial process if we think that that is in the interests of Scotland. We must take time to examine the documents—not only the two that are on the agenda, but these other documents.

The Convener: I suggest that we postpone further consideration of the two documents that we have in front of us today until the next meeting. I will ask for a briefing note on the ones that are listed under papers that have been circulated for information. I will also have a word with Jim Wallace, or his officials, about the general approach on those documents. We will discuss this further at our next meeting.

Barlinnie Prison (Visit)

The Convener: Item 5 is on the visit to Her Majesty's prison at Barlinnie. Members will recall that at our previous meeting we were awaiting a draft letter to the minister. Christine Grahame submitted a draft to us, to which the clerk and I made some changes, but it is substantially as Christine wrote it. I have a couple of changes to suggest as a result of something else that has happened.

Are there any comments on the current draft? As there are none, I will suggest a couple of changes.

At a previous meeting, the committee asked whether prisons are covered by health and safety legislation. The clerks spoke to Clive Fairweather about that. Apparently the situation is a bit like a catch-22. Prisons are covered by relevant statutory requirements, but the Scottish Prison Service has Crown immunity, so it cannot be prosecuted if it breaches the requirements to which it is subject, which is nice. As a result, I have two suggestions to make. B hall at Barlinnie has been out of action for about 18 months, awaiting refurbishment, and no decision will be taken on that until the outcome of the estates review is known.

I suggest that we insert another paragraph between paragraphs 3 and 4, to read, "Other expenditure which appears to have been stalled by the lateness of the estates review is the refurbishment of B hall at Barlinnie. As we understand it, the hall has been lying empty for more than 18 months, pending the outcome of the review. The committee does not consider it acceptable that some prisoners should be forced to live in cramped conditions while one hall has been out of use for such a long time."

Are we happy with that?

Members indicated agreement.

The Convener: It might be as well to include a reference to Clive Fairweather's report "Punishment First—Verdict Later?: A Review of Conditions for Remand Prisoners at the End of the 20th Century". In paragraph 4, where we say

"based on the report from the above three members"

we could add "and HM chief inspector of prisons' report "Punishment First – Verdict Later?" That would show that not only the committee, but the chief inspector of prisons for Scotland, has concerns.

Are we otherwise happy with the letter?

Pauline McNeill: Also on slopping out, is
"Sanitation was clearly inadequate"

the right way to express it? It is obvious that sanitation is inadequate—it is non-existent.

The Convener: I am not sure whether running water might be classed as sanitation. Do you suggest that we say something else or that we remove the sentence?

Pauline McNeill: We do not need the sentence. The letter already makes the point that slopping out is unhealthy and breaches the European convention on human rights.

Michael Matheson: If there were any doubt that sanitation is inadequate, I would be concerned.

The Convener: The sentence is not strong. Are we happy to delete it?

Members indicated agreement.

Mrs McIntosh: I would like some scope for mentioning the effect of the estates review on the morale of prison officers, which has been mentioned to me.

Pauline McNeill: I attended the meeting of prison officers, along with Clive Fairweather. I was alarmed by what I heard from young prison officers, who were committed when they joined the service. They were talking about a change of career because they feel that the future is so uncertain. The stability of the service is at stake.

The Convener: I wonder whether we could add to paragraph 3, which talks about the estates review. After the sentence on priority expenditure, we could say that the committee is also concerned about the detrimental effects that the review process is having on prison officers' morale.

Mrs McIntosh: That will do for me. I will be happy as long as we get something in the letter.

The Convener: Are we agreed?

Members indicated agreement.

The Convener: Great stuff. That item is concluded.

In accordance with our previous decision, we will now move into private session to consider the report on the proposed bill on protection from abuse.

16:09

Meeting continued in private until 16:19.

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