

JUSTICE COMMITTEE

Tuesday 11 September 2007

Session 3

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JUSTICE COMMITTEE

4th Meeting 2007, Session 3

CONVENER

*Bill Aitken (Glasgow) (Con)

DEPUTY CONVENER

*Bill Butler (Glasgow Anniesland) (Lab)

COMMITTEE MEMBERS

*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

*Nigel Don (North East Scotland) (SNP)

*Paul Martin (Glasgow Springburn) (Lab)

*Stuart McMillan (West of Scotland) (SNP)

*Margaret Smith (Edinburgh West) (LD)

*John Wilson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Aileen Campbell (South of Scotland) (SNP)

John Lamont (Roxburgh and Berwickshire) (Con)

Mary Mulligan (Linlithgow) (Lab)

Mike Pringle (Edinburgh South) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Kenny MacAskill (Cabinet Secretary for Justice)

THE FOLLOWING GAVE EVIDENCE:

Bill Howat (Budget Review Group)

Bill Matthews (Budget Review Group)

George Thorley (Budget Review Group)

CLERK TO THE COMMITTEE

Douglas Wands

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Euan Donald

LOCATION

Committee Room 2

Scottish Parliament

Justice Committee

Tuesday 11 September 2007

[THE CONVENER *opened the meeting at 10:16*]

Decision on Taking Business in Private

The Convener (Bill Aitken): Good morning, ladies and gentlemen. I remind members to switch off mobile phones. We have a full turnout of members and thus no apologies.

The first agenda item is a decision on whether to take items 6 to 8 in private. Item 6 concerns the committee's work programme, and committees' usual practice is to consider work programmes in private. Item 7 is the committee's approach to the budget process and item 8 relates to candidates to be an adviser on the budget. The practice of committees has been to consider such items in private. Do we agree to take those items in private?

Members *indicated agreement.*

Subordinate Legislation

Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 2007 (draft)

10:17

The Convener: I welcome our visitors. Kenny MacAskill MSP is the Cabinet Secretary for Justice; and from the Scottish Government we have Anna Rogerson, who is from the police division; Andrew Henderson, who works on police operations, violence reduction and anti-sectarian policy; and Fiona McClean, who is from legal and parliamentary services.

I refer members to the clerk's note—paper J/S3/07/4/1—which was issued with the committee papers last week. I invite the cabinet secretary to speak to the draft order and to move motion S3M-280.

The Cabinet Secretary for Justice (Kenny MacAskill): The order is being made under sections 30(3) and 63 of the Scotland Act 1998. Section 63 allows for the transfer to the Scottish ministers of any statutory or non-statutory functions of a United Kingdom minister

"so far as they are exercisable ... in or as regards Scotland".

The Scottish ministers can exercise such functions instead of or concurrently with the UK minister. In this instance, the Scottish ministers will exercise the functions instead of the UK minister.

To support the transfer of functions, it is necessary to specify which functions are exercisable in or as regards Scotland. Section 30(3) of the 1998 act provides for that procedure. The order will make a technical amendment to functions that the Scottish ministers can exercise in relation to international mutual assistance in interception matters under section 5 of the Regulation of Investigatory Powers Act 2000—otherwise known as RIPA. Those functions were transferred to the Scottish ministers in 2003 by a similar order to the draft order that is before us.

The 2003 order provided for the Scottish ministers to issue interception warrants to enable Scottish forces or HM Revenue and Customs to make requests for assistance with the interception of telecommunications elsewhere in Europe, in furtherance of an investigation that is being conducted in Scotland. However, since 2003, the Scottish Crime and Drug Enforcement Agency and the Serious Organised Crime Agency have become operational. Currently, if the SCDEA or SOCA wishes to seek assistance in interception matters from counterparts in European Union

member states, the application to the Scottish ministers must be made on the organisation's behalf by another organisation. For example, if the SCDEA was investigating a drug-dealing network based in Glasgow and wished to intercept the communications of one of the network's major suppliers in the Netherlands, Strathclyde Police would make the application, even though the SCDEA would most probably have collected and analysed the majority of the intelligence that supported the application. That is clearly an unnecessary duplication of effort and resources.

The order will enable the SCDEA and SOCA to apply directly to the Scottish ministers to authorise interception warrants, in accordance with international mutual legal assistance agreements, when the warrants relate to the prevention or detection of serious crime in, or with regard to, Scotland. Committee members should be in no doubt that the Scottish Government does not take its role in relation to interception lightly. Interception warrants are issued only when their use is absolutely justified and only in cases that fall squarely within the definition of serious crime. That has been acknowledged by the interception of communications commissioner, who provides independent statutory oversight of the activity.

By enabling applications from the two agencies to be made directly to the Scottish ministers without an extra layer of bureaucracy, we are making a practical and technical amendment to the powers that the Scottish ministers can already exercise for the police and HM Revenue and Customs. I commend the order to the committee.

I move,

That the Justice Committee recommends that the draft Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2007 be approved.

Motion agreed to.

Licensing (Mandatory Conditions) (Scotland) Regulations 2007 (draft)

The Convener: The cabinet secretary's team has changed for the draft regulations—I welcome Gary Cox from the Scottish Government's alcohol licensing and civic government team. I refer members to the clerk's note—paper J/S3/07/4/2. I invite the cabinet secretary to speak to the regulations and to move motion S3M-279.

Kenny MacAskill: The regulations will place two mandatory conditions on licensed premises. The first will require all on-sales premises to place a notice that is no smaller than A4 size, in a place that is reasonably visible to customers as they enter the premises, stating that persons who are under 18 are not permitted on the premises, or that such persons are permitted on the premises or in such parts of the premises as set out in the

sign. The Licensing (Scotland) Act 2005 sets out signage requirements for points where alcohol is sold—for example, behind the bar—but it makes no requirements for signage at entrances to ensure that customers are aware of the premises' policy on children before they enter.

The second condition will require baby changing facilities to be provided in any on-sales premises to which children under the age of five are admitted. The condition is intended to ensure that premises that wish to be family friendly by allowing children into the premises or certain parts of them have adequate facilities in place to provide for that.

The conditions are sensible and practical measures that the previous Government proposed, and I am happy to endorse and implement them. I will be happy to deal with any questions from members.

I move,

That the Justice Committee recommends that the draft Licensing (Mandatory Conditions) (Scotland) Regulations 2007 be approved.

Nigel Don (North East Scotland) (SNP): The size of the piece of paper is specified, but the font size is not. In theory, the font could be 8 point, so anybody who was more than 2ft away would not be able to see it. Clearly, that is not the intention, but why do the regulations not specify the font size?

Kenny MacAskill: I assume that we are taking the industry on trust. If we discover that people are being disingenuous and putting up notices in a font size that requires customers to have a telescope to investigate, we will address that.

The regulations were discussed with the trade by Tom McCabe when he was in charge and, indeed, they were debated as part of the Nicholson review. We should accept them in the right spirit. If recalcitrants deliberately cock a snook at the regulations we will address that, but my experience is that the trade will welcome them because it signed up to them at the time. It is an opportunity to make the situation clear before someone goes into an establishment so that stewards or other staff do not have to eject someone or refuse admittance.

People might be prepared to display the rules in such microscopic print that the A4 size or larger poster would be undermined, but we should accept the spirit of the legislation and the spirit in which the trade has entered into it. I do not envisage any problems, but I assure Nigel Don and his colleagues that if people seek to abuse the law, further regulation can and will be considered.

Paul Martin (Glasgow Springburn) (Lab): New paragraph 11(2)(b) of schedule 3 to the Licensing (Scotland) Act 2005 says that

“such persons are permitted on the premises or on such parts of the premises as are specified on the sign.”

Does that mean that children are allowed on the premises on the basis that they are accompanied by an adult?

Kenny MacAskill: That applies when there are areas of a pub where children can be with their parents. Pubs are getting bigger and they can be subdivided, so the intention is to allow some flexibility for those pubs that are making a particular effort. However, to avoid difficulties, it must be made clear that certain parts of the establishment are not suitable for children.

As an Edinburgh constituency representative, I remember anecdotal evidence that a major bar—frequented by many members of this institution when the Parliament was located on the Mound—used to turn away more tourists than it allowed to come in because it was not able to let in children. The situation was not clear and it was inconvenient for the staff to have to tell tourists that they could not come in for a coffee and a juice.

Paul Martin: Would the adult have to identify themselves as the person who was accompanying the child? I ask because concerns have been raised in my constituency about under-18s frequenting certain licensed premises on the basis that they are accompanied by an adult, whereas that adult sometimes cannot be identified.

Kenny MacAskill: Paul Martin is correct to raise that point. Obviously we expect the adult to be with the child. A child or under-18 will not be able to go into premises just because an adult had gone in in front of them. We will not allow the child to be lifted over the turnstile, as might happen at a stadium, nor will we allow the establishment to take in any waif or stray. If an adult takes a minor into a pub, we expect that that minor will be with the adult, whether they are biologically related or the adult is simply looking after a friend's child. I understand where Paul Martin is coming from and we are seeking to address that.

John Wilson (Central Scotland) (SNP): The cabinet secretary referred to under-18s, but the regulations also mention under-fives. Does separate signage need to be put in place to say that children under the age of 18 but over the age of five are allowed into the premises, so that there is a clear distinction between those premises that do and those that do not have the baby changing facilities that are required under the proposed regulations?

Kenny MacAskill: The baby changing facilities regulation will be used much less because far fewer establishments are in that category. We want it to be clear when those facilities are available. If an establishment does not have those

facilities, it should not get the licence, and we want that to be specified at the outset, especially in the type of pubs that Mr Martin was commenting on earlier. Only a limited number of establishments are seeking to be family friendly and to meet the requisite conditions. In other establishments, we are trying to ensure that it is drawn to people's attention before they even enter the premises—not simply at the bar when they try to buy a drink—who can get in.

There are two distinct intentions. In pubs that are looking to be family friendly we must ensure that there are baby changing facilities. In all pubs, we must ensure that the rules about who can be served and who is allowed in are displayed.

The Convener: Do members have any other questions?

Members: No.

The Convener: Do you wish to make any concluding remarks, Mr MacAskill?

Kenny MacAskill: No, thank you.

Motion agreed to.

That the Justice Committee recommends that the draft Licensing (Mandatory Conditions) (Scotland) Regulations 2007 be approved.

10:30

Meeting suspended.

10:31

On resuming—

Budget Review Group

The Convener: I am pleased to welcome Bill Howat, who was the lead reviewer on the budget review group. Will you introduce your two colleagues, please?

Bill Howat (Budget Review Group): Thank you for the opportunity to come before the committee today. We will introduce ourselves and then, with the convener's blessing, I will make a few introductory remarks.

A few years back, I retired as chief executive of Comhairle nan Eilean Siar. I was privileged to lead the budget review group. The committee should know that I chair a voluntary organisation called Volunteer Development Scotland and that I am advising the Association of Chief Police Officers in Scotland on the spending review. I do not think that my holding those positions constitutes a conflict of interests but, as a courtesy, I thought that I should alert the committee to it.

George Thorley (Budget Review Group): I am a former chief executive of South Ayrshire Council; I retired from the council in 2004. As part of my little portfolio of activities, I run in Scotland an organisation called SOLACE Enterprises, which is the commercial company of the Society of Local Authority Chief Executives and Senior Managers. Bill Howat is doing work for ACPOS as one of the associates of SOLACE Enterprises. I just wanted to make the committee aware of that link, but I do not think that it affects anything that I will say today or anything to do with the relevant chapter of the report. I was one of three people who concentrated on the justice and communities elements of Scottish Executive expenditure.

Bill Matthews (Budget Review Group): I am the managing director of M2M2, which is a business consultancy. Before that, I worked for Motorola for 15 years, in a variety of positions. To continue the spirit of completeness, I was at the time of the review and am still chair of audit with the management board of the Crown Office and Procurator Fiscal Service. Because of that, I did not participate in the COPFS section of chapter 6, as I did not think that that would be appropriate. Since the completion of the review, I have become a lay member of the board of the Scottish Police Services Authority. I also sit on the justice department's audit committee three times a year.

The Convener: Thank you for that. I invite Mr Howat to make a brief introductory statement, after which the committee will ask questions.

Bill Howat: There are two main areas of background that I would like to cover for the

benefit of the committee. I will say a few words about the remit and the context of the review and will make some brief points about the generic issues, which are dealt with in the executive summary and chapters 4 and 5 in particular.

As regards remit and context, the committee will be aware that the review was commissioned by the previous Administration, so it focused heavily on the priorities under the old partnership agreement. Members will know that it was part of several work streams that were being prepared for the current spending review, all of which were based on the assumption that the settlement would be extremely tight, fiscally.

Our main objective was to identify where resources could be used more effectively to achieve priorities or aims—"headroom" was the term that we used as shorthand for that. I should emphasise that we were not asked to identify waste; our focus was on making better use of available resources. Our approach, which is explained in the report, was to use available evidence. In the timescale that we had, we decided that we did not have time to take new evidence, so we held discussions with ministers, senior civil servants and stakeholders. I should also emphasise that we sometimes took a view that was based on our own experience.

My final point on the remit and context of the report is that it was completed, by and large, by May last year, so it is a bit out of date. Most of the work was done between November 2005 and April 2006.

On the generic issues, I highlight the key points that are raised in the executive summary. I appreciate that the committee is interested in the chapter on justice, but some of the generic points are important. Our main findings included the need for any Government to look for clear outcome-based priorities and targets. In our work, we found a mixed bag of targets, aims and aspirations. We emphasised the need for a best-value culture throughout the Scottish Executive, including a robust and rigorous challenge function throughout all spending—not just new spending, but existing spending. In particular, we highlighted the need for the Scottish Executive to move to a risk-management approach rather than having a risk-averse one. We also highlighted the need to review Scotland's "crowded landscape".

I know that the committee will examine the specific issues in the chapter on justice, but members need to bear in mind the report's wider context and our main message: by taking a more holistic view throughout spending and the various portfolios, it is possible to create headroom, to get better use of public resources and to create choices for whatever purpose for whatever set of ministers happens to be in power at the time.

The Convener: Your paper contains a lot of sound ideas on how savings could be achieved. Is there a need for joint approaches, perhaps with civilianisation and joint-purpose arrangements between police boards overall rather than just within particular local authority areas?

Bill Howat: I invite George Thorley to answer that. I know that Bill Matthews has views on the matter as well.

George Thorley: We undertook the interviews for the work some time ago. Our view was that a joint approach and the combination of police boards' activities could generate substantial savings. We made a rough estimate of the savings that could be achieved. However, we went a bit further. We said not only that the Executive should encourage police boards to merge their back-office functions but that similar services such as the fire and ambulance services should be encouraged to embrace the same principle. The aim was to save some cash.

We mention in the report that, at the time, there were eight different information technology systems, with the police boards, the Crown Office and the courts having different systems. The courts and Crown Office were working to standardise their systems, but without a standardised system throughout the police forces, we will be unable to gain operational efficiencies of throughput from the courts to the justice department, the Crown Office and the police. The principle that we enunciated and confirmed was that back-office functions should be merged.

At the time, there was a great deal of activity on the merging of police forces in England. Our view was, "Don't bother with that. It will consume so much time and effort." There was talk of a national police force for Scotland, but our view was that policing is a local authority function and that it should be kept at that level. As a result of the abolition of the regional councils, policing is now operated through joint boards. It remains a local authority function, and there are gains to be had from that. We said that we were not interested in thinking about the merging of police forces as a way in which to save money, but back-office functions should certainly be merged. As many shared services as is technically feasible should be gathered in a common services agency.

The Convener: I recollect from my days on Strathclyde police board that there was a vexed question about who paid for the Strathclyde helicopter. It strikes me that, to some extent, police boards have already moved in the direction that has been suggested. However, on the supply of equipment, there seem to be some indications that people are still going their own way.

George Thorley: Our view was that efficiency savings could be made by encouraging police

boards to recognise the opportunities that exist for shared services. Generating joint activities is now a main issue not just for local authorities but for health boards as well. Our view was that that discipline should also apply to police and fire boards.

Bill Matthews: Since the report was completed 18 months ago, things have moved on and the shared services agenda is progressing. The formation of the Scottish Police Services Authority has taken that forward.

On the issue of civilianisation that the convener asked about in his original question, I think that that agenda was being addressed as we were completing our report, and it has continued to progress subsequently. As the lead reviewer said, we need to look at things holistically. I think that there are opportunities for us to look at how we can best share tasks and activities across the whole criminal justice spectrum. As a good example of that, the report highlights the Bonomy reforms to the High Court, whereby citations are no longer delivered by the police but by other parts of the criminal justice service. We need to expand such opportunities in looking at how we can best use resources in the different parts of the criminal justice system.

Paul Martin: The report suggests that the process of funding police services is "cumbersome". Can I have a more detailed explanation of what is meant by that?

George Thorley: That point was put to us by the people whom we interviewed. As the report states, we interviewed all the senior civil servants and Government ministers as well as people from the inspectorates and from ACPOS.

We went round in a bit of a circle on the issue, and I think that the paragraph that deals with the issue reflects that. One view was that we should just tidy it all up by giving the money from central Government straight to police boards, but there are some other technical bits—which are very complicated—that mean that we could not even do that.

However, having gone through the funding route, we quite liked the idea of continuing the present system, under which almost half the money goes straight to local authorities, which then decide to give it to boards. That retains the link between local government and the police service. Policing is a local authority function. Its authority comes through police legislation, which is local authority legislation. As members know, half of police funding comes from central Government and half comes via local authorities. We went around in a circle on the issue and concluded that we should keep the system as it is because it reinforces the nature and importance of policing as

a local authority—that is, local—service. That is not to deny that the police are involved in national, and sometimes international, services.

We moved on from the issue of how policing is funded and into governance, or how that money is controlled and spent by police boards. We started off the paragraph saying, “It has been put to us that things should be changed”, but we concluded by saying, “Keep it as it is.”

Paul Martin: How balanced was that view? ACPOS, the civil servants and the Scottish Executive were asked for their views, but were views sought from the local government officers and councillors who are involved in the process? Could their views not also be part of this commentary?

George Thorley: Yes, I am sure that they could. I suspect that their view would be that they like the present system, under which money comes to them.

Paul Martin: You are suggesting that if we ask people in local government, they might say that they are happy with the present system. However, you have asked different interest groups. Police officers have said that they would like money to come directly to the boards, and civil servants at the centre have said that they want the process to be simplified. Do you accept that, with democratic systems at various levels of government, the process will always be cumbersome, whatever accounting system is in place?

10:45

George Thorley: I do not think that the process is cumbersome. It reflects the fact that policing is a local authority function with some national duties. The group moved away from debating the financing route and turned to governance and money. One billion pounds is spent on the police service in Scotland, but who takes control of that? Who follows the public pound? I have a local authority background, and I know what happens to local authority money and how elected members feel about their control over how it is spent. We started with the idea of making things much simpler, with a direct line between central Government and police boards, but we instead concluded that the link with local authorities is important and that it should be kept.

Paul Martin: Paragraph 6.1.8 of the review says:

“We can see the benefits of some centrally funded initiatives.”

What do you mean by that? Do you have any examples of where you might see the benefits?

George Thorley: I cannot remember any specific examples. However, Government has the

advantage of being Government. It can take a national and international view—it can take policy decisions about which issue to focus on, create a fund and allocate money to it accordingly. We saw nothing wrong with that approach. Government is Government, and it can respond to what is happening in the community. I am trying to think of some examples. We liked the idea of having the freedom to make such decisions. It has not been the case that everything had to be channelled through an annualised allocation of funds.

Paul Martin: Let us suppose, for example, that an initiative to increase resources for community policing is centrally funded. Would that take away the rights of chief constables to make decisions on where those resources were allocated? How do Government initiatives work in that respect?

George Thorley: Government responds to Parliament and to public opinion. Let us suppose that Government is willing to allocate more funds for a certain purpose—you suggested community policing. I do not think that there would be any concerns among police boards or chief constables about such an initiative. We did not want to take away the role of Government in following its own initiatives. However, in paragraph 6.1.8, we wanted to underline the recognition that policing is a local authority-based activity.

Paul Martin: You said that you do not think that chief constables would be concerned about the Government explicitly prescribing how funds should be spent locally.

George Thorley: On that particular issue.

Paul Martin: Therefore, you think that chief constables would be quite happy for the Cabinet Secretary for Justice to say that he is providing resources specifically for police officers to be placed on the streets of communities.

George Thorley: We would not want to take away the Government’s freedom to act in the way that it thinks appropriate. If the Government says that it wants to give more money to a local authority activity, no one with a local authority background would want to stand in the way of that. The question is how that particular objective is achieved. I think that, if the objective is to reduce crime or to tackle a particular problem, allocating funds and identifying which objectives or outcomes should be achieved using those funds is a more appropriate route. There might be a debate about the level of detail to be given out by a justice minister on how the money is to be spent, but local authorities would not stand against the principle of spending extra money.

We made a recommendation that, aside from providing half the funds, the role of Government should be to set out its objectives for policing. That has now been taken on board. National objectives

for policing should be complemented by the priorities of police boards in each area, where there are different pressures. Chief constables and their staff will then work towards those operational objectives.

I would not stand in the way of a minister allocating more funds for policing activities, if that was a Government objective. The problem lies with the level of prescription underlying that. I do not think that people would have an objection to the example that you gave, but they would have a problem with the level of detailed control. We recommended that the Scottish Government should set national policing targets and objectives and leave scope for local targets and objectives to be set.

The Convener: I am comfortable with that.

Bill Howat: Earlier, I referred to the need to view the justice chapter in the context of the whole report. For example, section 5.4 contains two paragraphs that deal with the generality of initiatives. Our presumption was against the use of initiatives, for some of the reasons that George Thorley outlined. We do not think that they are a particularly effective way—in a general sense—of focusing resources; we believe that they add complexity. Such general issues are raised in the generic chapters and relate to the specifics of the justice chapter.

Bill Matthews: I should point out that when we talk about national programmes in the report, we mean, for example, the Scottish Crime and Drug Enforcement Agency, which is centrally funded, and other programmes in the shared services agenda that are more sensibly co-ordinated centrally rather than locally.

Bill Butler (Glasgow Anniesland) (Lab): Mr Thorley, in answer to the convener's questions, you talked about ways in which performance could be improved and resources better deployed in terms of back-office functions, a standardised approach to information technology and so on, although you were clear that policing should be kept as a local authority function. Following on from that, Mr Matthews said that the Scottish police service had moved that agenda on. I do not think that anyone would disagree with that. However, I would like to explore ways in which existing police boards, or joint boards, would be able to focus on improving performance. Paragraph 6.1.12 of the report says that you are in favour of

"the setting of national targets ... that should apply to all Joint Boards",

and that improvements should focus on

"systems for finance, audit, risk and performance."

Do you still hold to that view?

George Thorley: Very much so. If we can just use the word governance now to cover all those issues—

Bill Butler: Indeed.

George Thorley: I keep harping on about policing being a local authority function because, as the convener knows, if we were to skip back a few years, there would be no ambiguity about whether policing is a local authority activity, as we would be talking about Strathclyde Police for Strathclyde Region, Lothian and Borders Police for Lothian and Borders Regions, Tayside Police for Tayside Region and so on. As a former local authority chief officer, I am in no doubt about the role of elected members in discharging the governance function. There is no ambiguity about that at all; indeed, their role is much clearer now, having developed over time. Elected members take responsibility for the services that they are elected to deal with. Chief officers and all the other staff are there to support the elected members and advise on and implement policies.

Interestingly, the Fire (Scotland) Act 2005, which was just being implemented when we were working on our report, made clear the role of joint fire boards. It says:

"A Chief Officer shall be responsible to the relevant authority for the discharge of the functions conferred on the authority by virtue of this Act".

That makes it clear that fire boards have responsibility for everything. I do not think that that situation applies with regard to the police. There is a different set of relationships.

We wondered how such a creative tension could be reintroduced into the relationship between police boards and the staff for whom they are responsible. It is a challenging area because we place enormous responsibilities on the shoulders of chief constables, who collectively spend £1 billion of public money. The question is how we can create a system in which they feel accountable both to joint boards and to Government.

Bill Butler: How would you do that?

George Thorley: As I said in response to a question from Paul Martin, Government must set clear objectives about what it wants to be done, and it has now done that. The "Scottish Policing Performance Framework" sets out national objectives. Similarly, police boards should set out local objectives. We came across good examples of that, without searching for them, in which local politicians on police boards declared what they wanted to be delivered in their localities.

Bill Butler: Basically, you are talking about the importance of setting targets. You said that Tayside's establishment of performance targets

was a good example of that. Can you say a little bit more about that?

George Thorley: Without being prompted, the chief constable of Tayside Police and the chair of the police board got together to start identifying where they were performing well and where they needed to improve. Such good practice needs to take place more generally in police boards. Local authorities, for example, have statutory performance indicators that are made public. Each authority has a set of policies and criteria against which it measures its performance. Police boards should operate similarly.

Bill Butler: I agree with that in theory, but what if, in practice, the creative tension between a chief constable and a joint police board became destructive, such that they could not agree on certain areas and targets? What would happen then?

George Thorley: I think that there would then be a debate, as would happen in similar situations in local government. Let us transpose the situation to one in which a local authority said that it wanted its chief executive to do certain things, but he said no.

Bill Butler: With respect, a chief executive is not allowed to say no, but a chief constable is, in terms of operational matters. How would you get over that difficulty? If a chief constable said, "Sorry. In theory, that's a good target, but actually it doesn't match with what I see as the operational objectives," what would happen?

George Thorley: The dialogue would continue. I appreciate that the position of a chief constable is to an extent different from that of a local authority chief executive. However, I believe that the dialogue should continue because of who is answerable for the expenditure of £1 billion of public funds, what it is spent on and how efficiently it is spent.

Bill Butler: I am grateful for that response. I think that the committee will have to continue that dialogue in its discussion of the issue. Few people would disagree with much of the theory of what you have said, but things might be a wee bit more difficult in practice. However, that is life.

Paragraph 6.1.13 of the report states:

"We also believe there is scope to augment the capacity of Police Boards by considering the involvement of non-executive (non-voting) members".

Why do you regard that as a positive proposal, given that you are so keen to declare—you are right to do so—that policing is a local authority function? Why would you bring in non-voting members, who would be accountable to no one?

George Thorley: The idea behind that is to give additional support to police boards and, if necessary, to fire boards as well.

Bill Butler: So you are saying that they would not be additional officers; they would really just give advice. As non-voting members, they would have the same function as do similar members of health boards, although the latter perhaps have a greater influence.

George Thorley: The suggestion is clouded by the fact that a number of us are non-executive directors. We were appointed through open competition to sit on the boards of civil service departments, for which we provide a support-and-challenge function. We do not vote or anything like that; we just serve as critical friends of the management teams. The proposal is just to repeat that exercise for police boards.

11:00

Bill Butler: Do you think that the inclusion of such non-voting members will help the voting members—the directly elected members—to adopt a support-and-challenge approach, which you say is critical in meeting targets?

George Thorley: The objective is to encourage boards to discharge their governance role, to get them from wherever they are just now to wherever they need to be. There might be other ways of giving them additional support—it could come from the local authorities. The inclusion of non-voting members—who do not cost a lot of money—was just one suggested way of supporting boards as they move from where they are now into a much more rigorous governance role.

Stuart McMillan (West of Scotland) (SNP): Scotland's internal boundaries are diverse. We have eight police boards, 32 local authorities, seven Scottish parliamentary regions and various health boards. Do you think that if boundaries were standardised, more savings could be made and services could be delivered more efficiently?

Bill Howat: I do not want to be too light-hearted about this, but the obvious answer is that if we wanted to get there, we would not have started from where we are now. If you take a blank map of Scotland and overlay it with all the administrative boundaries that you mentioned, you can see that it is inevitable that things are difficult. That is why the report refers to a "crowded landscape". We included a table—I cannot remember which page it is on—which lists 203 bodies in Scotland, including the councils, health boards and so on.

However, we are where we are. As George Thorley said, we in the local government sector have had some pretty bitter experiences of what reorganisation can do. The loss of impetus and corporate memory, the build-up of costs and the sheer disruption that can occur mean that it is a costly process. Our view, which is reflected in the generic chapters of the report, is that one should

be cautious about deciding to restructure the whole map of Scotland. However, one should certainly consider the issues that the committee has teased out in relation to shared services and back-office functions.

The message that came across to us as council chief executives was that most people do not really care who is delivering their public services, as long as they are getting good-quality services. They do not care whether there is a single IT system for the whole police service. All they want to know is that the police are doing a good job, that the bins will be emptied and so on.

The short answer to your question is yes, but we are where we are and I suspect that to move to the ideal—the setting of standardised boundaries—would be a long and painful road.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): Good morning, gentlemen. The theme that runs through your report is the potential to share services. Paragraph 6.1.14 of the report states:

“We also encourage further development of this trend to include sharing specialist services as a way of both saving money”—

and

“improving performance”.

What was in your mind when you wrote, or signed off, that text?

George Thorley: In our minds was the creation of the Scottish Police Services Authority, which did not exist when we wrote the report. We were giving every encouragement to a process that was having a rocky time—it was being challenged. Our view was that it made sense to share services, not just for the police but for the other blue-light services, and that there should be common back-office functions.

Cathie Craigie: You referred to sharing specialist services. Of what services were you thinking?

Bill Matthews: In the short term, the direction of travel of the SPSA has been towards sharing forensic services, so rather than there being separate forensic labs throughout the country, we now have one forensic service.

The SPSA is also moving towards common information technology services across the police forces. We have travelled a long way in the 18 months since we wrote the report and services such as we had in mind are now being put in place.

Cathie Craigie: Is that a way of being more efficient and of saving the public money?

George Thorley: Yes. A range of other obvious services—purchase of energy and fuel, fleet

maintenance and purchase of uniforms—are common to the blue-light services, so why do we have many purchasing agencies for those? We should have agreement on the colour code for black uniforms and we should purchase however many thousand uniforms are needed because that will yield economies of scale. It is not rocket science. We thought that it was important to make that point when we wrote the report because it was not at the time generally accepted that that was a sensible route to take.

Cathie Craigie: I know that at least two members of the panel have experience of local government. In the days of Strathclyde Regional Council, there was a consortium that local authorities bought in to. Are you suggesting a similar, but wider, arrangement?

George Thorley: We now have the Scottish Police Services Authority, so let us use it.

Bill Howat: Members will know that many changes have been made over the past three or four years. E-procurement has been a big issue in councils and the health service. I am sure that members know what is happening in NHS National Services Scotland; the police are going down the same road. At some point in the future, there will be tensions about scale. Why is police procurement separate from procurement in the national health service, given that staff in both services have uniforms? At some point we may want to have a Scottish public sector procurement service. However, as a former chief executive of an islands council, I know that councils may feel that such an approach would mean putting all their eggs into a national basket and that it would impact on jobs in their communities. It is not an easy process, but the police are heading in the same direction as most of the public sector.

Cathie Craigie: You suggest that savings could be made if the police and the fire service had a common radio communications system. Can you provide the committee with more information on that? I imagine that there could be tensions between the two organisations.

George Thorley: When we wrote the report, the police, the fire service and the ambulance service did not have a common radio system, so we asked why they did not have a standardised system that would enable them to communicate with one another. I think that such a system is now in place. We said that that was fine for starters. However, during the firemen's strike, the big requirement was to ensure that fire appliances were deployed to fires and emergencies, rather than in response to bogus calls. For that reason, we combined police and fire in the same operations room and had local authorities, the police and the fire and ambulance services work together. Our experience was that the system worked extremely

well. It operated on a regional basis; in each fire board area, one control room managed all three services, with local authority back-up acting as a fourth service.

Why cannot we replicate the system throughout Scotland? It is just a matter of technology. If you have a Marks and Spencer charge card, you will be happy to phone another part of the world because you get instantaneous service. Why not rationalise all our contact centres in one centre? I am not suggesting that it should go offshore, but there is no technological barrier to our thinking along those lines. We were not thinking just about communications and the basic point about ensuring that services can speak to one another—I think that that is happening, because systems have been purchased. Now that the services use the same technology and can communicate with one another, let us go further and ascertain whether we can have a more efficient and logical system for the blue-light services. I am not suggesting that there should be just one centre, because a back-up is always needed.

Cathie Craigie: That is interesting. The committee might consider that during the coming months and years.

You said that services can co-operate by sharing technology and buying power. One of your controversial suggestions is that facilities for the Scottish Police College and the Scottish Fire Services College be merged at Tulliallan. You also mentioned the Scottish Ambulance Service College at Peebles. How would that work? What discussions did you have with the police, fire and ambulance services about that idea?

George Thorley: We did not discuss the idea. Our task was to come up with ideas, not to take forward initiatives. The idea seems obvious: there is a large estate at Tulliallan, valuable real estate in East Lothian and a facility in Peebles. Why not ascertain whether merging facilities would be sensible? Residential training facilities need hotel-like accommodation and space in which to tutor people. We have a very large estate near Alloa; why not use it and gain some advantage by rationalising facilities? We did not take the idea further.

Throughout the budget review process, we came up with similar ideas. In every chapter of the report, we say, "Surely this approach should be considered, because it seems to make sense."

Cathie Craigie: What cost savings could be made by merging training facilities?

George Thorley: I think that the estimated savings were about 10 per cent—I am talking about a marginal saving.

Cathie Craigie: Training would still take place—

George Thorley: Gains would be made by selling the Gullane estate, which is potentially very valuable. The estate is a public asset and could be sold or used for another purpose. There should be synergies between areas of activity.

Bill Matthews: Joint training of our blue-light services could bring non-financial as well as financial gains. The services would be able to work together and train to the same standard, using the same course content. A discussion about the issue is probably taking place as a result of our suggestion.

Bill Butler: The report contains interesting and imaginative recommendations about how to make financial and non-financial savings, which could improve performance. However, Mr Thorley said that although rationalisation of the Scottish Ambulance Service College's facilities at Peebles with those of the Scottish Police College at Tulliallan seems to be a good idea, he had not asked anyone what they thought of the idea in practice. Could the report be criticised on the ground that it is just a desk-top exercise that takes no account of the politics of implementing its recommendations? Is that a deficiency in the report?

Bill Howat: I have no doubt that some people will see that as a deficiency.

Bill Butler: What do you think?

11:15

Bill Howat: It would have been nice to have had the time and resources to conduct a full-scale evidence-based inquiry, but we were not given such resources. As I said in my opening remarks, as part of a wide spread of work streams in the Scottish Executive, we had a very tight timescale; indeed, our group had a very interesting discussion about whether we wanted to carry out work on this matter, because we could envisage the criticisms that would be made further down the line.

However, after discussing the matter with relevant ministers at the time, we felt that we could contribute by identifying the areas that future Governments—of whatever political complexity, shape or colour—might want to examine in order to make better use of public resources. Bill Butler has highlighted a deficiency but, given what we were asked to do and the timescale in which we were asked to do it, that was inevitable. We do not seek to shy away from the issue or to defend the situation in any other way.

George Thorley: We did not take existing policies, politics or organisations as givens. Our brief was to ignore the rules and contexts and to come up with ideas. That is what we did.

Bill Butler: There is no doubt about that. I am not carping; I am simply playing *advocatus diaboli*. I thank you for your honesty and for making it clear that, from the very start, when you discussed the matter—with, I believe, Mr Tom McCabe—you realised that this criticism would be made.

Bill Howat: When the current Cabinet Secretary for Finance and Sustainable Growth, Mr Swinney, was kind enough to advise me that he was about to publish the report, he said that although he was interested in much of what it had to say, not all of it was palatable. I told him that we were not asked to provide a palatable report, but to provide ideas. All we can hope for is that the report is taken in that spirit.

Bill Butler: We will just have to wait and see how the body politic digests it.

Bill Howat: The fact is that the body administrative, as opposed to the body politic, has had more than a year to consider the report. I would like to think that the three of us are sufficiently well trained and have enough experience to ensure that if we put our minds to it we could probably come up with a lot of arguments against some of our recommendations. However, that does not alter the fact that, although my two colleagues led on the report's justice element, we collectively debated the whole issue and felt that our points were worth consideration. That, I think, is the main issue.

Bill Butler: There is no doubt about that.

Margaret Smith (Edinburgh West) (LD): The report calls police and fire grants "anachronisms" and floats the idea of phasing them out. Last year, during evidence-taking sessions, the previous justice committees were advised that ACPOS had proposed the consolidation of police grant capital within grant-aided expenditure to fund prudential borrowing. That suggestion is also made in your report. You might well think that it is a good idea, but would it provide real benefits to services or would it simply move something from central Government books to local authority books? In your response, you should, perhaps, bear it in mind that neither I nor most of my colleagues are accountants.

Bill Howat: First, I should emphasise that that is a specific example of the general issue of the extension of prudential borrowing that we highlight in the report. Although George Thorley and I are happy to elaborate a bit on that, it is more a matter for the Finance Committee—when we move into the theology of public sector accounting, particularly with resource accounting and budgeting, things can get very technical and complex. I accept your request that we keep our comments simple, so I will raise two main points and George will elaborate on the issue with regard to the police.

First, prudential borrowing was introduced for local government as part of a pretty wide-ranging package of measures, which includes three-year budgeting. Generally speaking, in our view, as chief executives—I think that Bill Matthews, from what he has seen of our review, would agree—prudential borrowing has led to a major improvement in the way in which councils in particular operate. There is a much greater sense of financial stability and security. In essence, prudential borrowing means that councils can borrow as long as they can demonstrate that they have a sound revenue stream: in other words, that the borrowing is sustainable. It is a fairly simple rule. The system was not, however, extended to the police. As George Thorley has argued eloquently, we very much view the police as local authority services. We see this first of all as a matter of consistency and principle. Why should police boards not be put in the same position as councils? That is question number 1.

Question number 2 is about what benefits prudential borrowing produces. Without going into the complexities, the short answer is that it produces only short-term headroom. There comes a balancing point in time when the borrowing is being paid back. We were asked to find headroom and to find where, in a very tight spending review, we could find additional resources. Prudential borrowing was one general way in which we thought that that could be done. We can give examples if members wish.

Margaret Smith: What do you mean by "short-term"?

Bill Howat: The definition would depend on the amount of borrowing and the state of the markets. By and large, however, we reckoned that for the kind of money we are talking about, what I call the tipping point would be reached some time between years 9 and 12, when the money that had been created by the headroom was spent and all the interest and so on was paid back. Does that make sense?

Margaret Smith: Yes.

George Thorley: I shall reinforce that point. If we had been sitting here in 1994, we would have been talking about police as part of Strathclyde Regional Council. They needed a new headquarters so we would borrow the money. For a long time, local authorities were not allowed to use prudential borrowing. The rules then changed, and the basic rule, as Bill Howat said, is that if you can demonstrate that you can afford it, you can borrow it. You can borrow £100 million or £500 million, so long as you can demonstrate to yourself, and ultimately to the Scottish Government, that you can pay it back. That is okay.

Why exclude police boards and fire boards from that? Currently, the Government gives police boards £50-odd million a year to spend on bricks and mortar. People who own their own houses do not pay for those houses out of cash; they borrow money and pay it back. Why not allow police boards and fire boards to do the same? There is enormous pressure for new capital buildings in police and fire services that cannot be met through the present regime. The example that we have tried to work out, in paragraph 6.1.18, is that spending of £4 million a year would allow borrowing of £50-odd million—borrowing £50 million of expenditure for £4 million is a good deal. It has to be paid back, and eventually the £4 million grows as the capital is eaten into. If there is a short-term requirement to save money—say, £50 million a year for a few years—and to get a big dollop of capital expenditure dealt with by police and fire services, that is the mechanism that should be used.

We were told consistently by the Scottish Government finance team that we cannot do that and that it breaks the rules. We said, “The rules must have been changed to allow local authorities to do it. Just get the rules changed.” The response was: “We don’t change rules”, to which we said, “Well, change them.” That is part of the answer to Mr Butler’s question. We did not take the current rules as a constraint. We were not given that brief. We were given a lovely brief to think quite radically and differently. That certainly applies to what we did in this case.

We in the report have said the same on other issues, such as housing: we have a huge housing crisis in Scotland and we cannot afford to build enough houses. Our suggestion is that different mechanisms should be used. We have used the same argument in the justice chapter. We think that the figures are right, although they might be slightly out. It would be possible to spend £8 million a year and to borrow £100 million, which would be good—a load of the capital building problems could be tackled that way. Bill Howat said that this is an issue for the Finance Committee, which I am sure would be interested in the Justice Committee’s view. Why cannot the rules on police and fire be changed? They are local authority functions and they happen to be done on a joint-board basis.

Margaret Smith: I will ask a couple of questions on a different matter. It is, this morning, rather surprising to read paragraph 6.2.8 of the report, which states:

“The Crown Office and Procurator Fiscal Service are exemplars for the Scottish Executive in effective management of change”.

I will ask a general question about the management of change. George Thorley referred

to the response that was received from Scottish Executive civil servants, who are not renowned for their radicalism. The witnesses have said that they were coming up with ideas, but did they genuinely think that what they came up with would be doable in the context of the civil servants and spheres of Scottish government that we have?

The paragraph that I read out highlights the fact that some services seem to embrace change and do a good job of taking it forward—in dealing with the Bonomy reforms or whatever. However, we all know that people in other services are quite resistant to change and that changes that could be made fairly easily are not made. Some of what we are discussing is about people, as well as about structures: it is about the training that people have and the back-up that they have. That relates to the point about non-executive directors. Is what is proposed achievable by the personnel and the services that are involved?

Bill Howat: I know that my colleagues have views—they are leaning forward to speak already—so I will try to be brief. We set out most of our views clearly, particularly in chapter 4, which deals with political, corporate and governance issues. As I said in my opening statement, we recommend that officials in the Scottish Executive need to move towards a best-value culture, which embraces all the good points that you outlined.

George Thorley and Bill Matthews will tell the committee more about why the Crown Office and Procurator Fiscal Service impressed us, although I appreciate that there are sensitivities on a morning such as this, as Margaret Smith suggests. Chapter 6 was written in the context that the organisation had undergone dramatic changes over three or four years. In our view, it did that by embracing good business practices. For example, it considered how the business case is managed and streamlined. As Bill Matthews suggested, that involves considering how to stop having two policemen deliver citations when they can be posted by recorded delivery or whatever. The Crown Office and Procurator Fiscal Service embraced that change and demonstrated willingness to move forward.

I will hand over to Bill Matthews, who will describe areas in which that approach could be driven further forward. We are talking about only one end of a much bigger process in the justice system and the whole social system. At that end, big collective issues are raised for us in considering how we prevent people from getting into the circle of crime and poverty. Where is public money best spent? If we can spread across the Scottish Executive the thinking of the Crown Office and Procurator Fiscal Service and think more holistically by seeing issues in a more

rounded way, we can make better use of the substantial budget, to the benefit of society generally.

The Convener: I ask Bill Matthews to talk only about the justice portfolio, not only because of time strictures, but because we do not wish to tread on the ground of other spending departments.

11:30

Bill Matthews: Absolutely. As I have worked mostly in the private sector, I find the mechanism of government fascinating because it has complexities that would not be tolerated by, and which would be unfamiliar to, the private sector. We encountered a mixed bag of people on our journey through the civil service and other organisations. I recall a quote: "I'm sorry, we don't do radical here," although it is fair to say that some of the people whom we met were keen to espouse radical ideas and perhaps saw us as a platform for putting some of those ideas in the public domain.

Overall, I found it encouraging that, as we went through the process, there was enough positive language and thought about how we can improve things. If we rewind the clock, we state in various parts of the report that, 18 months ago, we were not getting the benefit of looking across government and considering holistically how we do things. Criminal justice is a great example. We could debate how we could more effectively spend the £50,000 a year that it costs to keep somebody in prison. Could we spend that money more effectively further down the line?

Our visit to the Scottish Prison Service showed that it is good at working in its silo and doing the job that it is asked to do, but it is also good at being able to tell us which postcode areas its clients come from and what health and education issues they are likely to have. The Prison Service could tell us the situations that suit their customers as they leave and will prevent them from reoffending. It could see the horizontal view. It might be that, 18 months ago, there was less of a culture of looking at things horizontally than there is now. Things have perhaps moved on.

The Convener: I ask members to start moving things along. Nigel Don has a question on the prisons account.

Nigel Don: I want to discuss the prisons account, but I would like to go back. It is wonderful to have two chief executives here—it is so much better than having one. You talked eloquently about the police being a local authority function. I am with you on that. You talked about the local chief constable's accountability to the joint board, but also about the Government's involvement and the two funding streams. I do not yet have in my

mind an answer to the question of how you keep the two funding streams and accountabilities straight with each other.

George Thorley: The same situation applies in local authorities. The Government gives local government 60 to 70 per cent of its money and local authorities find the rest from council tax and local charges. The debate with local government is about outcome agreements. Central Government says, "These are the things that we want you to do, and these are the outcomes that we want from you because we're giving you public money." Through outcome agreements, we can follow the public pound. However, local authorities say, "There are loads of things we want to do locally and we have our own outcome agreements." There has to be some sort of meshing of the two approaches. That is a good challenge and it is good to have that debate.

The same applies to police boards. The policing performance framework sets out for the first time the national policing priorities. That is what Governments should do, having debated the matter in Parliament and reached their conclusions. However, local boards should say, "We also have our own priorities." I suspect that Northern Constabulary's priorities are different from those of Strathclyde Police. That is fine; their concerns need to be reflected in their local priorities. The meshing of the local and the national is a political challenge for the joint boards. They are responsible for discharging £1 billion of public money, so that is where the issue should lie. The expectation should be placed on boards that they will deal with the matter.

The national policing performance framework goes not to chief constables but to the boards. They are the public element and the element of accountability in the process. The process is not easy. It leads to challenges and different priorities, but that is what we should have.

Nigel Don: I see where you are coming from.

Paragraph 6.1.35 of your report contains five suggestions on prisons, but I am conscious that, 18 months later, lots of things have moved on, at least conceptually. Will you give us the benefit of your thinking and observations on what is not yet being done that should be done? Are there any constraints or hold-ups in thinking and activity that we might be able to nudge forward?

Bill Matthews: During our visit to the Scottish Prison Service, we were struck by the amount of data that it presented to us. It had a tight handle on the people who pass through its establishments. We were struck by the continuing growth in the number of short-term prisoners who were passing through the prison population. The view of the justice team was that we might still not

have put enough time and effort into considering suitable alternatives for dealing with the short-term prisoner population, whose growth is causing the growth in prisoner numbers. We can still travel further down that road. We have talked about realpolitik, and public opinion is an issue when we are deciding how to deal with such matters, but there is still work to be done.

George Thorley: One of the ideas that we thought needed to be examined was the tyranny of prisoner numbers, whereby the more prisons we have, the more prisons we will need. Not all that long ago, we had between 2,000 and 3,000 people in prisons; we now have 7,000. If the recidivism rate is between 50 and 60 per cent, we will need a prisoner capacity of 10,000. If the prison population increases to 10,000, 5,000 or 6,000 prisoners will come back to prison. We will never break that cycle unless we put in place mechanisms to break it. If we do not do so, we will go on spending £50,000—the figure will continue to increase—per prisoner for ever and nothing will be solved.

We are not experts in criminal justice or the prison system—we are not experts in anything, I suppose—but what struck us was the high number of people in prisons who have mental health or drug and alcohol addiction problems. How can we help them? When we were doing our work, the prison health service rather than the national health service applied in prisons. Making the NHS available in prisons was a positive step, but much greater attention needs to be paid to dealing with people with such problems when they come into prison.

When we examined the expenditure on the communities portfolio, we found that a lot of money—not quite billions of pounds—was being spent on dealing with problems of poverty. It is as if we keep painting people's doors—we go into an area and do up the gardens, redo the windows and paint the doors; in other words, we address the outside of people's problems—but we need to get in behind the doors to deal with the people, who have a complex variety of problems, which would probably defeat me.

We need to produce what we called family support plans and to bag all the money together to focus it on the people who need the most help. People in prisons are in prison not because they are necessarily very nice, but they may be there for a variety of reasons. Some of them are there because of short-term prison sentencing, which has led to the big problem, as members will appreciate. There is a throughcare system for prisoners who leave prison, but it stops suddenly. Between 80 and 90 per cent of people in prison have alcohol, drug or mental health problems. They will have the same problems when they

leave prison. They get throughcare for several months, but then it just ends. Guess what? We have a recidivism rate of 60 per cent.

We saw the same issues coming out at the other end, in the communities budget. We need to break that cycle and we thought that the way to do so was to adopt a comprehensive Scottish Government approach of getting money to the families who need support. I am not saying that that does not happen at the moment, but I am talking about a reorientation of a great deal of money for those people. We must think differently about prisoners, in particular, given their lifestyle and their medical issues.

Bill Matthews: Can I add—

The Convener: If you are brief.

Bill Matthews: At the time, the frustration was that we seemed to have all the data to answer the question, but we did not have the momentum to make progress. I think that the new justice and communities programme board is one mechanism by which we will be able to adopt a cross-slice view.

Nigel Don: I would like to pursue that. It is wonderful to have chief executives of local authorities as witnesses because I can ask them a question that I know they can answer. Local authorities would have the primary responsibility for delivering the social work aspects of dealing with prisoners that you have just mentioned. Can local authorities deliver what you propose simply by reorganising their forces and resources, or will they need significantly more trained people if they are to break the cycle and achieve the outcome that you want?

George Thorley: I honestly do not think that it is a question of extra money; it is about how we spend the billions of pounds that we currently spend. We need to think differently if we are to tackle the issue. If our current approach means that everyone ends up in prison at a cost of £50,000 per head per year, which in turn means that we need more prisons, we should be saying, "Hold on. Is this the way we want to go?" We are already nearly at the top of the European league in the number of people per head of population who are put away. We can think differently.

We said in the section on communities—and in the one on justice, I think—that if we want a family-support-plan approach, we will need to ensure that more people have the skills to help families, because there would be a vacuum if we suddenly implemented such an approach. The approach needs to be thought through and planned for. We have loads of experience of dealing with such issues in a local authority context and we suggest that pilot projects could be established in our most desperate areas, where

problems are insurmountable, to ascertain whether a different solution works. Perhaps after a few years we will be closing prisons because we do not need them.

Nigel Don: I want to ensure that I have understood you correctly. Are you suggesting that currently local authorities probably do not have enough trained people to be able to implement family support planning everywhere? The total bill might not be different—

George Thorley: We did not carry out an empirical analysis. We said that if we want to change the emphasis and put more focus on soft skills, we need to ensure that there is the capacity to deliver that. We should not launch into a brand new initiative throughout the country until we are sure that we can populate it. Let us start by running a pilot, to ascertain whether the approach works. It seems sensible—we tried it in South Ayrshire and it seemed to help. It seemed to take away a number of the problems that hit the education and health services, the prisons and the justice system.

Stuart McMillan: How can community orders and community offender services in general contribute to savings in the overall justice budget?

George Thorley: When we wrote the report, community offender services were relatively new and we thought that they should be expanded as an alternative to incarceration. There are technological solutions that we can take advantage of. For example, we can tag people or control their movements in other ways, which is much more sensible than putting them in prison. When people who have broken the law and damaged people or property need to be punished, we should seek community-based solutions rather than incarceration. Our prisons are full of people who are serving short sentences. In the graphs, the line that shows the number of people serving short prison sentences is going up and up, whereas the line that shows long-term prisoner numbers is flat. Is prison the only option?

Stuart McMillan: Can the effectiveness of community-based solutions be properly measured?

George Thorley: In a sense, that is for the committee to determine. We simply suggested that such solutions should be considered as an alternative in the short term. Many people in prison have behavioural and health problems that need to be tackled. Is a short sentence the most appropriate route for such people? We should explore emerging technology that seems to offer alternatives. Before we can pass judgment on how well an approach has worked, we must ascertain how it is going. The convener is in an ideal position to call for evidence on such matters.

John Wilson: In your report, you made interesting suggestions about legal aid. You said:

“recent changes to the High Court system could lead to a downward movement, or at worst, a flat trend in Legal Aid.”

You suggested that there could be a 10 per cent cut in the legal aid budget. How did you arrive at that figure, given that it might be argued that many of your suggestions might lead to an increase in legal aid expenditure? For example, you talked about the provision of legal advice via community law centres and employing public defenders.

11:45

Bill Matthews: Private sector reviewers struggle with the concept of anything that is called a demand-led budget, so eyebrows were raised by private sector members of the group when we discussed legal aid. We understand the importance of the issue and took the view that sufficient reforms are taking place in the criminal justice system in its totality to make the process more efficient; that means that there must be an opportunity for savings in the legal aid budget. The public defender approach introduces a bit of competition into the market and may make it more efficient. However, we concluded that more work needs to be done to quantify potential savings.

Bill Howat: I declare an interest—I worked in the civil service and, 20 years ago, I helped to set up the Scottish Legal Aid Board. When I read this part of the report and spoke to my colleagues about it, much of it resonated with me, as we had the same arguments 20 years ago. The difference on this occasion is that, as Bill Matthews said, a number of reforms have been driven through the High Court. We know that a number of similar reforms are being driven through the summary justice system. George Thorley has highlighted a number of different approaches. If we take the more holistic approach to which I referred earlier, there is nothing to stop us pushing down or, at least, capping the legal aid budget.

John Wilson: The other suggestion that has been made is that legal aid should be examined through the formation of a joint working group. You have named a number of agencies that could be involved. Why do you think that it would be best for those agencies to come together to examine the overall budget?

Bill Matthews: The agencies to which we referred are involved in the totality of justice reform—either the Bonomy reforms or the reforms to the summary justice system. Although we express the desire for different groups to work together in paragraph 6.1.42, the point is relevant to the entire chapter. There is a strong argument for bringing together the groups that are involved in this area.

George Thorley: As members know, a great deal is happening in the High Court to make the system much more efficient, so that we are not paying for defence lawyers to sit around only for cases to be cancelled. The sheriff courts, too, are becoming more efficient. We wanted to ensure that those changes were reflected in legal aid. We suggested that a working group be established to consider the issue and to look at making savings.

Changes in the High Court and sheriff courts and the creation of public defenders should reduce legal aid expenditure. We did not want to cap it, because legal aid is demand led, but we wanted to create some tension in the situation. Our aim was that the Justice Department should say to the Legal Aid Board, "We were expecting you to make savings. Why are they not happening?" We wanted to create an organisation framework that takes away the freedom of an uncapped budget and links justice reform with legal aid. We wanted the Justice Department to take the lead on that, although I am not saying that it has not done so. At the beginning of the chapter, we say that we were very impressed with the department, that it was well led and that it was interested in change. The Crown Office is an exemplar for the Executive in its wish to embrace change. The Justice Department was up there with it.

The Convener: This has been a most valuable session. The committee is appreciative of the fact that you have taken the time and trouble to attend. This has been a pioneering experience for you, because I understand that it is the first time that you have been asked and have agreed to appear before a parliamentary committee. The Justice Committee is very grateful to you for your full and frank answers. You have given us much food for thought and much useful information for our further deliberations on the budget and other issues.

11:49

Meeting suspended.

11:51

On resuming—

Petitions

Fatal Accident and Sudden Deaths Inquiry (Scotland) Act 1976 (PE767)

The Convener: Now that everybody is refuelled, the meeting will recommence.

We will consider three petitions, the first of which is PE767, from Norman Dunning, on behalf of Enable, which calls on the Scottish Parliament to urge the Scottish Executive to review the operation and effectiveness of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976. I refer members to paper J/S3/07/4/4.

Members will recollect that we have thought about whether we might want to consider in greater detail the subject that has been raised. The paper contains a recommendation that seems to be reasonable and which I suggest we follow. We should write to the Cabinet Secretary for Justice to ask the various questions that are detailed in the paper. When we receive a response, we can consider whether we wish to hold a fuller inquiry into the matter.

Margaret Smith: I do not disagree with what has been recommended, but I would like to pick up on the points that were made about the petition in the Public Petitions Committee, which are included in paragraph 7 of the paper, and to put on the record my experience as a constituency member of dealing with families who have had to deal with the fatal accident inquiry system. Great strains are put on those families in all sorts of ways. A great deal of pressure is put on them one way or another in respect of timing when a loved one dies. They are often asked questions about whether they want to press for action, but they may be reluctant to do so, and officials may see them as being unable to cope with the strain. From my experience, such matters are brought to bear in considering whether inquiries should go ahead rather than just the question being asked whether an inquiry is judicially required. Our letter to the cabinet secretary should take on board the concerns and issues that the Public Petitions Committee has highlighted. From my experience, I think that the impact on families is important. In his response to the committee, I would like the cabinet secretary to address that issue as well as provide the more obvious legal answers to our questions.

The Convener: When we discussed the matter informally, I got the impression that all committee members held a similar view. Let us see what the cabinet secretary's response is; thereafter, we can reconsider the matter. If it is necessary, we can, at a suitable point in our work programme, conduct a

brief inquiry into the operation of the legislation, which is, after all, around 30 years old. Do members agree to that approach?

Members *indicated agreement.*

Abusive Parents (PE997)

The Convener: Petition PE997, from Peter Cox, on behalf of the Mothers for Justice Campaign, calls on the Scottish Parliament to urge the Scottish Executive to provide greater protection to the children and partners of abusive parents. I invite members to consider paper J/S3/07/4/5 and I draw members' attention to the recommendations in paragraphs 14 to 17 of that paper. Are there any comments?

Cathie Craigie: I hope that the committee will want to consider family law at a later date and, therefore, I seek guidance from the clerks on the recommendation that we write to the Judicial Studies Committee and then close the petition. Is there a timescale for dealing with the petition, or can we leave it open?

The Convener: There are no time constraints on the matter and the petition can remain open.

Paul Martin: I feel strongly about the need for sheriffs to receive training in dealing with child custody cases. The situation is already sensitive for the children and, in a modern era, it should unequivocally be compulsory for all the staff who are involved in the process, not just the sheriffs, to have the appropriate training to ensure that we protect the children as best we can during the process.

We need to interrogate further the proposal that all access hearings should be held in open court. We must consider the circumstances. Perhaps the committee could consider taking evidence on the issue from people who are involved in the system to ensure that we make appropriate recommendations.

I feel strongly about the need for training for sheriffs, but we could take further evidence on the other proposals to ensure that we take appropriate action on them.

Bill Butler: I agree with the recommendation that we should write to the Judicial Studies Committee—I do not think that anybody disagrees with that—but I think that we should keep the petition open. If we close it, it will be difficult to reconsider it whereas, if we keep it open, we keep our options open. I suggest that we write to the Judicial Studies Committee and keep the petition open.

Margaret Smith: I do not disagree with anything that colleagues have said. I want to put on the record something that might be considered a side

issue: in my experience, certain parents abuse the systems that are in place to try to provide access to children. That includes parents who have criminal records of abuse using the children's hearings system to make allegations about other parents and trying to make a case about how the other parent is treating a child. An abusive parent who has been charged and found guilty of abuse can use judicial or quasi-judicial organisations to continue the abuse of children and families who are going on with their lives. I am interested in whether there is any way in which we might take on board that issue with children's hearings and get a bit more information about it.

In this day and age, there should certainly be compulsory training on such issues. In my view, the need for such training strengthens the argument for having family courts. That would be in the best interests not only—although primarily—of the children and families but of the members of the judiciary, who would be able to feel that they were on solid ground by building up experience in what is an important and growing field.

12:00

Nigel Don: Forgive me for pushing the point, but I think that the general point about the need for mandatory training for legal staff and court staff should be pushed a fraction further. If keeping the petition open is one way of doing that, that is good. I can think of no other profession on the planet in which people would be allowed not to have mandatory training.

The Convener: I think that when we consider the judiciary bill—as we are almost certainly bound to do—that aspect will be dealt with.

If I gauge the mood of the committee properly, we are agreed that we should enter into the correspondence that is mentioned in the recommendation to ensure that judicial training is in place. We will keep the petition open with a view to further consideration of the response to that correspondence and with a view to reconsidering the issue some way down the road. Is that agreed?

John Wilson: As Margaret Smith indicated, the training needs to be widened out. Therefore, our recommendation should be that the training should apply across the board rather than just to sheriffs. As the Justice Committee, we want to make that point not just by keeping the petition open but by asking the Judicial Studies Committee to require such training across the board rather than just for sheriffs.

The Convener: Do you have in mind specific people to whom the training should apply?

John Wilson: No, I am not sure about that.

Paul Martin: A number of different personnel are involved in dealing with children during the process. Therefore, as I pointed out, mandatory training needs to be put in place across the board to ensure that anyone in the process who comes into contact with children has the appropriate training and certification. It must be quality training—although I would take that as read.

The Convener: Should the training apply, for example, to reporters to the children's hearings system?

Paul Martin: Yes.

The Convener: The point is well made. We will follow up that aspect.

Are members agreed that we should do as has been suggested?

Members *indicated agreement.*

Cheap Alcohol (Health) (PE1000)

The Convener: Petition PE 1000, from All Saints secondary school, calls on the Scottish Parliament to urge the Scottish Executive to investigate the public health implications of cheaply available alcohol. I refer members to paper J/S3/07/4/6 and the recommendations contained therein.

This was an exceptionally praiseworthy petition from the pupils, who have shown an interest in a matter that clearly affects their community. However, matters have moved on to some extent. I suggest that we should follow the recommendation that is contained in the clerk's paper. Is that agreed?

Members *indicated agreement.*

The Convener: The next items will be taken in private, in accordance with what we agreed at the beginning of the meeting, so we have now reached the end of the public part of the committee's meeting. I thank the press and public for their attendance.

12:03

Meeting continued in private until 12:37.

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