

# **LOCAL GOVERNMENT AND TRANSPORT COMMITTEE**

Tuesday 25 May 2004  
(*Afternoon*)

Session 2

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## LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

14<sup>th</sup> Meeting 2004, Session 2

### CONVENER

\*Bristow Muldoon (Livingston) (Lab)

### DEPUTY CONVENER

\*Mr Andrew Welsh (Angus) (SNP)

### COMMITTEE MEMBERS

\*Dr Sylvia Jackson (Stirling) (Lab)  
Mr Bruce McFee (West of Scotland) (SNP)  
\*Michael McMahon (Hamilton North and Bellshill) (Lab)  
\*Paul Martin (Glasgow Springburn) (Lab)  
\*David Mundell (South of Scotland) (Con)  
Tommy Sheridan (Glasgow) (SSP)  
\*Iain Smith (North East Fife) (LD)

### COMMITTEE SUBSTITUTES

Bill Butler (Glasgow Anniesland) (Lab)  
Colin Fox (Lothians) (SSP)  
Mr Kenny MacAskill (Lothians) (SNP)  
Mr Brian Monteith (Mid Scotland and Fife) (Con)  
John Farquhar Munro (Ross, Skye and Inverness West) (LD)

\*attended

### THE FOLLOWING ALSO ATTENDED:

Rosie Kane (Glasgow) (SSP)  
Margo MacDonald (Lothians) (Ind)

### THE FOLLOWING GAVE EVIDENCE:

Michael Beswick (Office of the Rail Regulator)  
Leslie Brown (Aberdeen City Council)  
Councillor Martin Greig (Aberdeen City Council)  
Ray de Souza (City of Edinburgh Council)  
John Thomas (Office of the Rail Regulator)  
Councillor Kingsley Thomas (City of Edinburgh Council)  
Mark Turley (City of Edinburgh Council)  
Tom Winsor (Rail Regulator)

### CLERK TO THE COMMITTEE

Eugene Windsor

### SENIOR ASSISTANT CLERK

Alastair Macfie

### ASSISTANT CLERK

Euan Donald

### LOCATION

Committee Room 2



## Scottish Parliament

### Local Government and Transport Committee

*Tuesday 25 May 2004*

*(Afternoon)*

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

### Rail Industry

**The Convener (Bristow Muldoon):** I welcome members to today's meeting of the Local Government and Transport Committee. In addition to the regular members of the committee, I welcome Rosie Kane. She is here instead of Tommy Sheridan, who has sent his apologies.

The first item on the agenda is consideration of evidence from the Office of the Rail Regulator. I welcome Tom Winsor, the rail regulator, and Michael Beswick and John Thomas from the Office of the Rail Regulator. The primary reason for inviting you to give evidence is the review of track-access charges. You will know that that process has concluded, but we still want to explore issues. Given the recent announcement by the Secretary of State for Transport and Scotland of a review of the structure of the rail industry, it would also be useful to the committee to hear your views on that and on the submissions that the Office of the Rail Regulator has made as part of that process. I invite you to make an introductory statement if you wish, after which we will proceed to questions.

**Tom Winsor (Rail Regulator):** I thank you, convener, but I have no introductory statement to make.

**David Mundell (South of Scotland) (Con):** In your response to the United Kingdom Government's rail review, you make no mention of the possibility of further devolution of control of the railways to the Scottish Executive or to the Welsh Administration, although that was referred to in the secretary of state's initial statement. Why was no mention made of that?

**Tom Winsor:** One of the principal issues in the Government's rail review—in so far as issues can be discerned at all—is the UK Government's desire to have more control over the costs of the railways. There is a notion abroad in Whitehall and Westminster that an unelected regulator is making public spending decisions for the Treasury, and that that is an offence to democratic principles and constitutionally outrageous. It is also not true. The

second principal focus of the rail review is the future of the Strategic Rail Authority; the third is the issue of where safety should go; and the fourth is the notion that there should be a single directing mind for the railways, which is misunderstood in many quarters.

I believe—I express no opinion on whether this is right or wrong—that the issue of greater accountability for railway services in Scotland and Wales is very much a tacked-on optional extra that was put in as a sop to the National Assembly for Wales and the Scottish Parliament. I do not think that it is a central issue in the review at all, which is why I did not deal with it in my response. I have a view on the matter: I believe that greater local accountability for railway services is an extremely welcome idea, the time for which has come. I also believe that central control of transport planning in the Westminster jungle is highly undesirable, that central state micromanagerial planning of transport services is highly undesirable, and that there should be far greater local accountability for railway services wherever they are.

**David Mundell:** How would such local accountability be manifested within the structures?

**Tom Winsor:** My organisation has regular dialogue with the Scottish Executive. It is a great honour to be asked to appear before a committee of the Scottish Parliament just a few weeks before the end of my five-year term of office—I was rather hoping that I would be invited. We have regular dialogue with the relevant authorities in Scotland, but it would be inappropriate for us to establish a regional structure for our affairs in England and a national structure for Scotland, because we must make decisions on a UK-wide basis.

The Strategic Rail Authority has a different relationship with the Scottish Executive and with Scottish public institutions. Of course, the Scottish Executive has the power to give directions and guidance to the SRA in relation to railway services in Scotland; that should certainly continue. As I said in my response to the rail review, the SRA needs to be much closer to Government, which means that, as far as Scottish affairs are concerned, the SRA should be much closer to the relevant public institutions in Scotland. I cannot speculate on how that might manifest itself, but I believe that the SRA has become far too distant from its true constituents, which are the railway industry and the relevant public institutions.

**David Mundell:** I understand from your opening comments that you do not regard those issues as being at the centre of the outcome of the current review.

**Tom Winsor:** The UK Government will put something in about them, because they are worth while. I do not think that the Government intended

to have the review at all until quite late in the day. I think that the review was born of the Government's frustration with the operation of the public institutions in the railway industry. There was a notion in Westminster that something had to be done—hence the review. The relationship with Scotland and Wales is perhaps more than an afterthought, but it is not a central issue. The Government will do something about it, but that will not be very material.

**Iain Smith (North East Fife) (LD):** Can you provide any information on the financial implications of the new track-access charges regime on the subsidy payments made by the Scottish Executive to the ScotRail franchise holder?

**Tom Winsor:** Mr Thomas will be able to provide detail if we need it. Because of my decisions in December 2003 and on 10 March 2004 in relation to financing of the regulatory settlement, it appears that the Scottish Executive will be better off, because the amount of money that is paid in track-access charges—which is what the Scottish Executive gets from London—will be reduced because higher amounts of grants will be paid and, indeed, some of the income that Network Rail needs to receive has been deferred for two years and will be replaced by borrowing. Paradoxically and counterintuitively, there will also be a better railway service in Scotland, because the amount of money going into Network Rail will go up, which includes the amount for the provision of railway services in Scotland. It is good news all round.

**Iain Smith:** I find that hard to believe. Mr Thomas, will you provide more detail?

14:15

**John Thomas (Office of the Rail Regulator):** I will provide some figures on the ScotRail charges to highlight what Tom Winsor said. In the final conclusions on 12 December last year, the fixed track-access charges for ScotRail were £1.2 billion. As a result of the approval of Network Rail's proposed financing arrangements on 10 March, which resulted in Network Rail recovering a large proportion of its income in direct grants from the Strategic Rail Authority, ScotRail's fixed charges during the next five years will be £500 million. That represents a significant reduction in the charge as derived on 12 December last year.

**Iain Smith:** How does that compare with the current charges, or the charges prior to the start of 2004-05?

**John Thomas:** I am afraid that I do not have the current charges in front of me, but I can provide that information after the meeting. However, there is certainly a reduction in the current level of charges.

**Iain Smith:** Do you have accurate figures on how much is spent on rail infrastructure maintenance and renewal in Scotland? If not, how do you determine appropriate track-access charges?

**John Thomas:** We have estimates from Network Rail of the proposed spend in Scotland. The derivation of the charges is as cost reflective as possible. It is clear that some items cannot be easily allocated to Scotland, so they are jam-spread across operators. We propose shortly to start a review of the structure of charges, as we want to return to the cost-allocation issue.

Let me give an example. Network Rail has a clear idea of proposed expenditure on renewals and maintenance in Scotland, at least for the next few years, so those cost categories are easier to allocate. It is more difficult to develop a cost allocation mechanism for the return that Network Rail earns on the regulatory asset base, which is a considerable sum. However, that is not to say that that is impossible and, as I said, we want to return to the matter in the forthcoming review of the structure of charges.

**Mr Andrew Welsh (Angus) (SNP):** You pressed Network Rail to delay or abandon the upgrade of the west coast main line in Scotland. Why? The SRA and Network Rail appear to have ignored that advice and they are proceeding with the upgrade. How has that happened?

**Tom Winsor:** We did not press Network Rail or anyone else to abandon the west coast main line upgrade or to delay it. It is my responsibility, with my colleagues, to determine what a competent and efficient network operator will need for operation, maintenance, renewal and enhancement of the UK-wide railway network, including the west coast main line. In doing that, we have to assess the work plans that companies propose, in order that we can ensure that the work is necessary and that it will be done at the right time, to the right standard and with the right costings and efficiencies.

The decision that we made in December 2003 was that certain aspects of the west coast main line upgrade should not proceed according to the original timetable—that includes the timetable that was published against our advice by the Strategic Rail Authority in June 2003—because those aspects were not needed in that time. Indeed, if the money had been spent in that timescale, it would have been wasted in some crucial and material respects.

For example, signalling renewal costs on the west coast main line are between 100 and 200 per cent higher, and track renewal costs are 44 per cent higher, than they are elsewhere. That is compared to Network Rail's unit costs elsewhere

on the network, which were already too high. The overall efficiency target that we have set Network Rail is a reduction by about a third over five years. Therefore, if the work did not need to be done according to that timescale, it was better to defer it until unit costs and efficiency were under control, so that the same work could be done to the right standard, but for much less money. On Network Rail's figures, the decision that I made in December 2003 was worth more than £800 million in savings. On our figures—post-efficiency—they were worth £640 million in savings. I do not regard either figure as being trivial. That was why we made the decision.

If Network Rail is able, through reconfiguration of the WCML project, to find those savings, so that it can deliver the outputs faster within the overall financial settlement that I have set, that is up to the company. The company should, of course, be having mature and regular dialogue with the Strategic Rail Authority, which is paying the lion's share of the cost. That is how we arrive at decisions. There was not, however, a decision by my office to delay or abandon the WCML project; rather, the decision was to set funding levels that would have implied a delay unless Network Rail could reconfigure the project—as, indeed, it has in some respects. Perhaps Mr Beswick would like to elaborate.

**Michael Beswick (Office of the Rail Regulator):** As far as Scotland is concerned, Network Rail has been looking hard to find more efficient ways of doing the work between Crewe and Glasgow and it has succeeded in doing so. Within the numbers that we set Network Rail, it will this September achieve significant reductions in the journey time through the work between Euston and Crewe, and there will be further reductions in December 2005 and December 2008. The intention is that the fastest journey time from Euston to Glasgow will by December 2005 be four hours and 27 minutes. We are seeing a lot of effort by Network Rail, in conjunction with the Strategic Rail Authority, to find ways of doing the work more efficiently. They are not doing a lot of premature renewal; instead they are focusing particularly on what needs to be done to achieve the outputs, which is a good result in terms of not wasting money.

**Mr Welsh:** It seems to be a question of timescale and efficiency in finance. In going ahead, have Network Rail got it right? If you had your way, how much extra time would it take to complete the work?

**Michael Beswick:** As far as the work on the Crewe to Glasgow line is concerned, we told Network Rail to consider what it is planning to do, because it looks very inefficient to us. Network Rail responded to us on that, and we put that

response in the final conclusions on the basis that Network Rail would achieve the journey time improvements. Since then, the SRA and Network Rail have identified one or two areas, essentially to do with capacity between Euston and Crewe, where things can be done a bit quicker but much more efficiently. We now have a much more robust plan and our challenge to the scale of the project that was in place a year ago has achieved significant cost savings.

**The Convener:** To explore that a little further, will you explain where the inefficiencies that led to higher costs on the west coast main line, compared to other parts of the network, were coming from? Were those inefficiencies in Network Rail, or were they to do with contractors that Network Rail was working with? Was it to do with the fact that contractors were able to ask for premium rates because of a shortage of competition?

**Michael Beswick:** The major factor was that the programme became very schedule driven. Network Rail was rushing to do the job against what was clearly an impossible timescale, although it did a lot of work to remove that impossibility. We told Network Rail to do the job at a speed at which it could do it efficiently, which is what is happening now. Clearly, there are other issues, such as poor management of contractors—which Network Rail has begun to address—and inappropriate standards. A load of issues built up on one another. The primary issue is that the work was far too schedule driven against tight deadlines without thought being given to how it could be delivered efficiently.

**Mr Welsh:** Do you accept the importance of the project to the Scottish economy? Aberdeen remains the oil capital of Europe, but it still has an inadequate rail service, so will the east coast main line improvements stop at Edinburgh? The east coast main line includes Dundee, Angus and Fife, all of which are important to the Scottish economy. When will the east coast main line improvements cover the whole of that line?

**Tom Winsor:** We certainly understand the importance to the Scottish economy of the improvements to the west coast main line. It is the busiest and most important rail artery in the UK—in some respects it is the busiest in Europe. It is essential that the neglect and wasted years of Railtrack's stewardship and the perpetual capital starvation of the railway by the UK Treasury over many years be reversed. Therefore, the importance of the west coast upgrade is fully appreciated by me and my colleagues.

On improvements to the east coast main line, the decision as to whether the east coast main line should be upgraded is for those who will pay for it—mainly the UK Government and the Scottish

Executive. The importance of the east coast main line to the economy of north-east Scotland—Dundee, Angus, Fife and Aberdeen—is fully appreciated. I come from Dundee, so I understand that well. I have travelled on the line many times. However, it is for those who pay for the railway to decide whether they are prepared to put more into it to enhance its capacity and capability and the condition of the network.

**Michael McMahon (Hamilton North and Bellshill) (Lab):** I will go on to rail safety issues. It has been said that gold plating of the safety standards has increased costs and has been responsible for diminution of improvements in the rail network. Do you accept that? If you do, is it your view that gold plating is a necessary cost that should not be diminished, or do you believe that the safety standards have been set too high?

**Tom Winsor:** It is often alleged that gold plating of safety standards has contributed to significantly increased costs. One of the difficulties that has been encountered—I have the benefit of almost five years in this job—is the way in which the railway industry was demonised, including by public officials and the media, after the Paddington accident on 5 October 1999. That led to a cautious approach to safety matters on the part of everybody involved, including the Health and Safety Executive and certainly the railway companies.

A variety of defensive measures were taken by railway workers to avoid their being faced with serious criminal charges should things go wrong. For example, drivers would engage in a technique called defensive driving: they would, for fear of crossing it, drive particularly slowly—more slowly than they otherwise would—as they approached a red signal. That was because some railway companies have a policy of three strikes and you are out: three signals passed at danger—SPADs—and the driver loses his or her job. Cautious approaches have also been taken in relation to rail maintenance as a result of the Hatfield accident and the criminal prosecutions that resulted from it.

The application of railway safety standards does not have to be as rigid as we have found it to be over the past few years. Nobody gets fired for applying a safety standard at its full flame, yet there are engineering judgments to be made as to whether derogations from strict compliance with a standard are, in particular circumstances, justified. If the process of getting a derogation is lengthy and the judgments that are involved in either seeking the derogation or granting it are hedged around with risks of the kind that I have mentioned, people will be reluctant to do it.

There have been other instances when rigid application of safety standards has been severely

criticised. I will mention one, which is the train protection and warning system. The system was devised and installed after the Paddington accident and will automatically stop trains that are travelling at up to 100mph if they have gone through a red signal.

The original programme for installing the TPWS contemplated that it would be installed at approximately 4,000 locations throughout the network. However, the Health and Safety Executive decided that the system should be placed at the run-ins to stations, even though trains are going slowly at that point and there are significant performance implications because of dwell times at stations, particularly at the peak times, when congestion and intensity of use are at their highest. The HSE's approach led to the installation of the TPWS not at 4,000 locations, but at 14,000, which meant a significant increase in the project's installation cost and a level of TPWS coverage that was not contemplated when the project was first devised. In the opinion of many railway professionals—we are not railway safety professionals; the safety regulator is the HSE—that was unnecessary. That is an example of what is regarded in the railway industry as an over-rigid application of standards.

14:30

The rail review that is taking place now is contemplating a review of rail safety and is considering taking Her Majesty's railway inspectorate out of the HSE and putting it somewhere else. It used to be part of the Department for Transport, but it was put into the Health and Safety Executive in about 1990 or 1992. The Government believes that such a move may contribute to a less rigid approach and has four options in respect of HMRI: to leave it where it is; to give it back to the Department for Transport; to set it up as a separate self-standing independent authority; or to move it to the office of rail regulation, as we will be called from 5 July.

The option to improve HMRI while leaving it where it is should not be dismissed. I am certain that HMRI will not go back to the Department for Transport, because the department does not want it, and I am pretty certain that it will not become a self-standing authority, because the rail review is about reducing—rather than increasing—the number of authorities in the railway industry. I still regard putting HMRI into the office of rail regulation as being the most likely model, but it is fraught with difficulty.

**Michael McMahon:** I appreciate that that is a detailed answer, but the idea of a trade-off between safety standards and improvements in the rail network raises more questions for me. I would have thought—I would argue this with any



member of the public—that to say that safety measures have been introduced at 14,000 places, rather than at the 4,000 that were recommended, is a much better way in which to sell the rail network and public transport than is ignoring the fact that some of the rail operators are trying to get derogations to get out of their safety requirements. I do not see where the trade-off can come or that we are improving the network if, in the wake of the Paddington accident and other disasters, we create the impression that we are trying to circumvent the safety standards that the HSE believes to be important.

**Tom Winsor:** To take an absurd example, it is possible to have a safe network on which no trains run. It is a question of cost. No system of land transport—of any transport—is risk free. We could have the safest system in the world at astronomical cost, so there is a trade-off to be made between absolute safety—or as near as we can get to it, because we will never get 100 per cent safety—and what we are prepared to pay for it. Let us bear it in mind that more than 3,000 people die on the roads of Great Britain every year and that the number of passenger fatalities on the railway in any year can be counted on the fingers of one hand. Indeed, since the Potters Bar accident on 7 May 2002, there has been none.

Where are we going to spend the money to save the most lives? That is a political question for elected representatives. There is a respectable body of opinion that enough money is already spent on rail safety and that more lives will be saved if we spend the money on road improvements, but that is a political matter for members. It is not a question of selling the railway network on the ground of better safety; the railway network is an extremely safe place to be. It is far safer than the roads or, indeed, any other mode of transport. It is not right to characterise what is happening on the railways as being an attempt by the rail operators to get out of their safety obligations. It is a question of sensible application of safety standards in the particular circumstances of a case.

**Michael McMahon:** So you believe that a political decision must be made about whether we want to project public transport in a good light. To get cars off the road to reduce the number of accidents, must we say to the public that there can be a trade-off between safety standards for public transport and those for road travel in private vehicles?

**Tom Winsor:** Yes. Every day every traveller makes a decision about the risks that they are prepared to take when they go out of their front door. No one is being deterred from using the railway network on the ground of its safety record. Quite the contrary—if people think about safety,

they are attracted to rail because it is considerably safer than using the road network. During my time as rail regulator, I was struck by the fact that the media go wild about railway accidents but virtually ignore road accidents.

**Mr Welsh:** Given the importance that you attach to Network Rail having a full understanding of its assets, why has there been such a delay in the completion of the national asset register? When will that be completed?

**Tom Winsor:** I am aware that the committee's counterpart at Westminster has directed unjustified criticisms at us on that score. I welcome the opportunity to put the record straight before I publish my formal response to the Transport Select Committee's report of April 2004.

Railtrack was a dreadful company, in almost every respect. One of the principal reasons why the company failed was that it did not have adequate knowledge of the conditions, the capacity and the capability of its assets. When I took office, I immediately took action in relation to the company's asset management and asset maintenance policies and practices. We were dissatisfied on a range of issues relating to those. Regulatory pressure was applied. The company told us that it was getting on with preparing a register of the condition, capacity and capability of its assets and that no regulatory intervention was needed in that respect. It made three failed attempts to establish an asset register. We were profoundly dissatisfied with progress and took action to introduce a network licence condition binding on the company and enforceable under the Railways Act 1993 to establish such a register.

However, an asset register cannot be established overnight—it takes time. Network Rail has knowledge of its assets, but that knowledge is diffuse—the information is not collected in an accessible, systematic way. When Railtrack was established, one of its first executive acts was to get rid of large swathes of the company's expertise, especially in engineering. Many people left the company with its asset knowledge in their heads. The information was either not written down at all or not written down in a systematic, accessible format. The company did not do what every other privatised network operator did. British Telecommunications, the electricity companies and the gas companies did not have adequate knowledge of their assets—where they were, their condition, what it takes to look after them, how much that costs, how often they should be looked after and so on—so they compiled asset registers. In asset-intensive industries, it is essential for companies to have that information, which is their life-blood.

Railtrack did not compile such a register. In all the years from the establishment of Railtrack—

from 1994, when it was established, through 1996, when it was privatised, to 1999, when I took office—the company took no adequate steps in this area. As soon as I took office, we applied pressure to Railtrack. In April 2001, we established a network licence obligation to prepare the asset register. However, we knew that, given the company's situation, it would take a number of years for the register to be established. At the time, we projected that the asset register would be fully populated with data by April 2005. Condition 24 of the network licence sets out a staged approach. The company must provide us with six-monthly reports on progress in establishing the asset register, so that we can maintain regulatory pressure to ensure that it is keeping to schedule and that the register is being compiled properly. We have done those things and are on schedule to meet the projected date, so it is not correct to say that the asset register has been delayed—it is on schedule. Your Westminster counterpart got that completely wrong.

**Mr Welsh:** Thank you for that explanation.

**Paul Martin (Glasgow Springburn) (Lab):** Excessive bureaucracy is an issue that has been raised on a number of occasions by various operators. For example, the managing director of ScotRail has claimed that Network Rail has excessive bureaucracy. What is your view on such statements?

**Tom Winsor:** Network Rail has a very poor inheritance from Railtrack. As I have said, Railtrack was a highly unsatisfactory company in many respects. It was certainly bureaucratic; it was also hostile to its customers and had a policy of neglecting its assets. That is why it failed.

When Network Rail took over, it expected to find a mess and it did but, in relation to many of the basic competences that one would expect to find in a national infrastructure operator, the mess was more severe than it had expected. Under regulatory pressure applied where appropriate, Network Rail has taken significant steps to improve its internal organisation and its competences in the key respects.

It may be that the managing director of ScotRail is frustrated by the inability to get a deal out of Network Rail, for example on an enhancement scheme or additional track access rights. In 2001, my organisation established a new network licence condition on the company that required it to establish a code of practice for dealing with dependent persons—basically, anyone who wants to get a deal out of the company, which was then Railtrack and is now Network Rail—and to comply with it. That is binding and enforceable. Under that licence condition, the company must deal with such persons with

“skill, diligence, prudence and foresight”

and must do so competently, efficiently and

“in a timely manner”.

Those are not words that one naturally associates with Railtrack. That is the company's obligation; it must meet that condition. If ScotRail is dissatisfied in that respect, its managing director has a remedy under the present regulatory regime. That is part of the improvements in the company's accountability that we have established over the past five years.

**Paul Martin:** Do you think that excessive bureaucracy is leading to overblown estimates of project costs, which is a claim that ScotRail's managing director has made? Is that a fair claim to make?

**Tom Winsor:** The company's processes for estimating costs, for assessing risks and for projecting the work that really needs to be done still have some way to go before they reach the appropriate standards, but I assure you that my office, in enforcing condition 7 of the company's network licence, which is relevant in that respect, is monitoring the position and will take action, if that is necessary.

The senior management of Network Rail is a completely different body of persons from the one that used to run Railtrack. That is perhaps the most beneficial change to the railway industry that has been made for some years. In the past, the Secretary of State for Transport's predecessors, Mr Prescott and Mr Byers, have asked me what single thing I would change in the railway industry to produce the greatest advantage. I said that they should change the competence of the management of Railtrack. That was achieved through an unsatisfactory and unconstitutional process. We are where we are now. This lot are far better than the last lot.

**Dr Sylvia Jackson (Stirling) (Lab):** Before I ask my question, I will start with a story. I commute on the Edinburgh to Dunblane line. For four successive days—I think—the train has terminated at Stirling, which has obviously caused some inconvenience. In trying to find out why that is happening repeatedly, I have discovered that there might be a charging policy, whereby an amount of money automatically has to be paid—to Network Rail, I assume—for every minute that a ScotRail train is late. You might be able to confirm whether such a policy exists. To stop that happening, passengers must disembark at Stirling.

I have two questions. First, is a review going on of that internal charging, which obviously takes up a lot of time? I gather that ScotRail tries to get the money back by arguing that there is a good reason for the lateness. Secondly, would a

reintegration of the infrastructure and the train operating system into one organisation in Scotland make things easier? Will you explain why you are either for or against the coming together of the infrastructure and the train operations?

14:45

**Tom Winsor:** The charging policy incentivises railway companies to manage their affairs in a way that minimises train delays and the inconvenience for passengers. In the Stirling case, the charging depends on why the train is late and why it is terminated early at Stirling. I am not in a position now to say why. The charging regime is a commercial technique called liquidated damages, which is found in commercial affairs in all aspects of economic life throughout the world. The charging penalises the person responsible for the delay according to a preset tariff, so that the more severe the delay or the breach of contract is, the greater the pain that they will suffer. Therefore, they have a strong incentive not to cause the delay in the first place and to minimise the length of any delay and the severity of its difficulties.

It is for ScotRail to decide whether to terminate the train early at Stirling. The charging regime does not automatically dictate that the train should be terminated there. The company has the discretion to carry on with the train even if that would mean that the overall delay to passengers would be more severe than if the train were terminated early. It depends on the individual circumstances of the case.

You asked whether there is to be a review of the charging regime. My colleagues and I completed such a review—which also covered many other areas—on 12 December 2003. The review set the charging regime for the five years from April 2004 to April 2009. However, there is provision in my conclusions for doing more narrowly focused, smaller-scale reviews in the interim—before 2009—including reviews of the charging regime, if there is a case for that.

Having a charging regime has real advantages because it means that, in any assessment of who is to blame for a particular delay, there is a much more rigorous diagnosis of the cause of the delay and the railway companies are in a much better position to tackle the root causes of delays rather than just the symptoms. The best way of curing a problem is not to treat the symptoms but to correct the cause.

On the question of whether vertical integration would make things easier, I think that it might well obscure the root causes of delays. One of the advantages of the existing system is that it exposes the causes of delays. Vertical integration would not make things easier and it might lead to

higher costs for the railway because inefficiencies and other wastes of money would be concealed.

**Dr Jackson:** I have a supplementary question. If one of my fellow travellers asks me, as a commuter or as an elected representative, about the on-going inconvenience, can I reasonably assure them that not only the Stirling line issue but similar issues on any line will be followed up and that a better way of dealing with the situation will be found, whether that means changing the timetable or whatever? Do such issues get followed through the system? You seemed to suggest that they do and that by stopping the trains early to reduce the charges that must be paid, we can find out what the problem is. Will the Stirling line case be followed through? Can I assure my constituents that you will do something about the problem so that they can continue on to Bridge of Allan and Dunblane and not have to terminate every evening at Stirling?

**Tom Winsor:** The structure of charges, including the performance regime that I have described, is within the jurisdiction of my office. However, the performance of ScotRail in particular and the decisions that it makes in those respects are within the jurisdiction of the SRA. I have every expectation that the SRA will monitor the performance of ScotRail closely, make whatever representations it needs to and, depending on its findings, take enforcement action under the franchise agreement.

**The Convener:** You might be aware that the opening of the new Edinburgh Park station was delayed to a degree. One of the explanations that was given by some of the railway industry organisations was to do with problems in reaching agreement on changes to performance targets in relation to the opening of the new station. You will be aware that, over the next 10 years, the Scottish Executive plans to make a number of enhancements to the network such as reopening lines, building new lines and realigning lines. Do you believe that the performance regime will be able to cope with those enhancements in a way that will avoid delays due to the need to reach agreement on new performance targets?

**Tom Winsor:** I believe that the position is encouraging and that there should not be delays in that respect. I am not familiar with the details of the Edinburgh Park case, but I can look into it.

**John Thomas:** I was involved in examining the performance issues. You are right to say that one of the issues related to the performance aspects of the Edinburgh Park station. That was not the principal issue that delayed the project but it was a factor and ScotRail and Network Rail were in dialogue in relation to it. We had not dealt with the issue in any detail at the ORR, but we facilitated discussions and approved the approach that

ScotRail and Network Rail were taking. Now we have an established process that can be followed in future, so negotiations on the subject of performance impact should be much simpler now.

**The Convener:** I thank Tom Winsor, Michael Beswick and John Thomas for the information that they have given us, which has been useful.

The responses on safety that our witnesses gave highlighted the fact that there seems to be a lack of proportion between road and rail safety. Perhaps our society should question the degree to which we tolerate and accept the number of deaths that occur on our roads every day.

I am pleased that we managed to get Tom Winsor along before he finishes his period in office. I offer him my best wishes for the future.

**Tom Winsor:** Thank you for inviting us.

## Prostitution Tolerance Zones (Scotland) Bill: Stage 1

14:54

**The Convener:** The next item on the agenda is consideration of further evidence on the Prostitution Tolerance Zones (Scotland) Bill. I welcome to the meeting Margo MacDonald, the bill's sponsor, and Councillor Kingsley Thomas, Mark Turley and Ray de Souza from the City of Edinburgh Council. Although we have received a written submission from the council, I ask Kingsley Thomas whether he wishes to make some introductory comments.

**Councillor Kingsley Thomas (City of Edinburgh Council):** I will not keep the committee long and certainly do not intend to repeat the evidence that we gave a year and a half ago, although I know that some different faces have joined the table since then. I gather that all the information from the previous committee's deliberations is available. Instead, I will speak briefly about the council's most recent submission, which stems from our current concerns and the work that we have been carrying out to deal with the present situation in Edinburgh rather than from the period up until 2001 when the non-harassment zone was in operation.

Edinburgh has very much taken a harm-reduction approach to the sex industry and prostitution. For example, in the early 1980s, Lothian Regional Council, Edinburgh District Council, Lothian Health Board, the police and voluntary sector organisations were all keen to get together to minimise the spread and impact of HIV and AIDS, which as members know were a particular problem during the 1980s. I suppose that such an approach was based on partnership, pragmatism and flexibility.

That approach gave rise to the idea of the non-harassment zone, which operated in the Coburg Street area of Leith from 1985 to 2001 and in which it was agreed that a certain number of prostitutes could work. As a result, the situation was easier to manage and there were relatively few complaints from residents. Moreover, through organisations such as SCOT-PEP—the Scottish prostitutes education project—better health protection, support and rehabilitation services were available.

However, the subsequent regeneration of Leith and the Coburg Street area in particular meant that the zone was no longer viable. Since then, activities have become more dispersed and there have been more complaints from local residents and elected members; an increase in public

nuisance incidents and waste and drug problems in the area; and a heightened fear of crime.

Since 2001-02, we have tried to address the situation by establishing a working group of officers from social work, housing, environmental services, the police and NHS Lothian. We have also been keen to engage and involve local communities through local residents associations, community councils, elected members, businesses and SCOT-PEP and other organisations.

As a result, our submission is based on what we have done in recent months to address the dispersal of antisocial activities, the increase in complaints and what might be called a heightened public awareness of what is going on. I am sure that committee members are aware of the issues that have arisen in Leith over the past year or so and of newspaper articles that have highlighted increased public anxiety about the situation.

We have been considering enhancing the policing in the area and working with the procurator fiscal on diversion from prosecution schemes to ensure that women can be diverted into rehabilitation services. We have also been thinking about pursuing the new antisocial behaviour orders against both sides of the coin. Council members have been particularly keen to explore the possibility of imposing ASBOs on clients—by which I mean the men who drive about, looking to pick women up—instead of targeting simply the women.

We have looked into improving cleansing in the area and into establishing more of a profile, which we have done. Mark Turley might be able to give the committee more detail on the way in which officers from our housing investigation teams are now much more available in the area.

We have been considering those kinds of issues over the past year or so. That has been a reaction to the breakdown of the tolerance zone and to the wider issues that that raised. We have felt that there are wider activities that we should be involved in. We are keen to achieve the right balance between minimising inconvenience to local residents because of antisocial behaviour and providing necessary services to vulnerable people. We have to target those services as well as we can to try to improve the situation.

15:00

**The Convener:** Following Margo MacDonald's bill in the previous session of Parliament, the Executive set up an expert group to consider the issues. How involved has the City of Edinburgh Council been with that group?

**Mark Turley (City of Edinburgh Council):** We were invited to give evidence to the group and we answered a range of questions. The questions focused on the thinking behind the use of antisocial behaviour orders, but they also sought our views on alternatives to the creation of some sort of managed zone.

**Dr Jackson:** In evidence to the committee, SCOT-PEP suggested that the use of ASBOs against street prostitutes could disperse prostitution even more widely and that, as a result, there could be less harm reduction and less access to the new future services. Would you comment on that?

**Councillor Thomas:** It is possible to attach something like a bail condition to an antisocial behaviour order, so that a person is not allowed to go to a particular part of town. Such a condition could be used with a person—I hesitate to use the word “offender”—who is causing problems in that area and it could relieve problems for local residents. However, we have never said that antisocial behaviour orders are the be-all and end-all. They are not a panacea. There must also be a route into rehabilitation services. Our ultimate aim is to assist women to make their own choices and to come out of street prostitution. If we are to achieve that aim, antisocial behaviour orders must go along with other support mechanisms.

**David Mundell:** Your submission to the committee discusses the impact of the loss of the non-harassment zone in Edinburgh and the resulting dispersal of prostitutes across the city. Can you provide more information regarding developments in Edinburgh since the previous bill was considered by the old Local Government Committee and Parliament?

**Mark Turley:** That question and the previous one highlight the fact that dispersal is already taking place. I would not go so far as to describe it as dispersal across the city, but it is certainly dispersal across a huge part of Leith. From time to time there are concentrations in the Leith links area. Our interventions—which were simply to gather evidence—have, in themselves, had the effect of dispersing people. If we are successful in securing ASBOs, that will also increase dispersal. From what we have heard from all the stakeholders to whom we have spoken, the scene has become much more violent, the level of drug dependency has become even higher, and the ability of any organisation to engage with prostitutes has diminished.

The police have had little alternative but to chase women out of one area and into another. In other words, we have lost any sense that we are managing the situation and there is a general sense that the situation is getting less controlled, more dangerous and less healthy. What has

happened in the past year has just been an extension of what members heard 18 months ago from my colleagues.

**David Mundell:** I am interested in your use of the expression “managing” the situation. There was a lot of hostility to that expression in the evidence that we received from Glasgow City Council, which believed that the issue was more about trying to achieve zero tolerance. Where do you see the balance lying between zero tolerance and managing the situation?

**Mark Turley:** Edinburgh seeks a more strategic approach to the problem. We believe that we could do more in the areas of prevention and rehabilitation; prevention and rehabilitation happen already, but they need to happen more intensively. A prerequisite to such an approach is a managed environment. One cannot easily engage with women to offer support and routes-out services if one cannot even get hold of them and have a regular means of engagement with them.

Rightly or wrongly, people look to the council and the police to resolve the problem. There is therefore an expectation that we will intervene and manage the situation—or whichever word one wants to use. At the moment, our management of the situation is dreadfully reactive and, as Councillor Thomas said, we do not believe for a minute that ASBOs will solve the problem. However, we have to do something and ASBOs are the only management tool that we have at our disposal in the current environment. A much more constructive set of management tools could be brought to bear if we had a physical environment in which we could seek to engage with women and manage the situation. I do not know whether that information helps you.

**David Mundell:** It was an interesting reply.

**Paul Martin:** You referred to a physical environment. What kind of location are you thinking of? Has work been done on where the proposed tolerance zone should be located? Are we talking about an industrial area or an area where people pay upwards of £250,000 for a detached house?

**Councillor Thomas:** In our submission, we said that we have not minimised the challenges ahead. Should the bill become law and we have the powers to identify a tolerance zone, there will be tremendous challenges in identifying that zone in the first place.

We spoke about the breakdown of the previous non-harassment zone in Leith, which was because of the regeneration of the area. More houses and flats were built there, which is good for Edinburgh and Leith.

We have always said that we would be supportive of local authorities having the powers—if they wished them—to identify zones, but that that would not make it any easier to find a zone and to make it operational. Such a zone would be located in the type of area in which contact with local residents would be minimised, but we have to get the balance right between that and making a zone reasonably safe for women who might want to operate there. Identifying an appropriate area for the zone will be an extremely difficult job.

**Paul Martin:** What you are really saying is that a desirable area will not be proposed for the location of a zone. It will be an out-of-sight, out-of-mind area that developers will not want to develop and regenerate. You are asking us to deliver legislation that you understand will be difficult to implement and you are not clear about where such a zone could be located.

**Councillor Thomas:** The situation at the moment is difficult to manage. We are saying that we might be able to manage it a bit better with the powers that are proposed in the bill.

The other matter that needs to be taken into account is the question of locating a zone in an out-of-sight, out-of-mind area. We need to examine what is happening and where people are going at the moment and try to base something round that. There would be no point creating a zone in a part of town or a part of the countryside that nobody uses. The dispersal problem would get even worse. We will need to weigh up those factors if we take forward creating a zone.

**Mark Turley:** There are areas with few houses and businesses around the docks that may be amenable to a tolerance zone. There are probably no areas left where there would be no objections whatsoever. We face a choice. We can design a zone, provide facilities, consult people on the zone's establishment and management protocols and perhaps face a small number of objections. In contrast, an area such as Leith links would be the last place in the world where we would seek to introduce prostitution. We would face objections from hundreds of people, with no management protocols whatsoever. Neither situation is ideal, but it is clear which is preferable.

**Paul Martin:** The flipside is that a number of people from various backgrounds have raised concerns that I have great sympathy with and support. If the City of Edinburgh Council is so concerned about the issue, it should be delivering those services in areas where communities are already located. Why should we be saying that we should have an out-of-sight policy? Effectively, that is the road that we would be going down if a zone were to be created around the docks, which is an undesirable area in which you might not be able to deliver the best possible support service. In

addition, you are asking us to introduce legislation, which we will have to consider, but we may not be able to pass it because of the opposition that it will face. The alternative is to introduce the projects that have been set up in other parts of Scotland.

**Mark Turley:** I am sorry, as that is not what I intended to say. We would work in an area to ensure that the services and best possible facilities were available. At the moment, we are doing our best to provide services, but realistically we cannot do so when prostitutes are scattered over an area of many square miles. My reading of the bill is that, providing that we go through appropriate consultation and a possible appeals procedure, we do not necessarily need to achieve 100 per cent agreement. Indeed, there was never 100 per cent agreement on the part of residents in the area of Coburg Street, but that situation was manageable. If residents are consulted and involved in the management protocols, we can minimise the potential impact on them. Compared to the hassle that is being caused at the minute, I am absolutely clear which option is preferable.

**The Convener:** Several members have indicated that they wish to ask supplementaries. I ask members to be brief. I will take Margo MacDonald and Iain Smith, then I will come to Rosie Kane. I will give you further chances to come in later, Margo.

**Margo MacDonald (Lothians) (Ind):** I have information for Paul Martin. Freelance research has been done on possible areas. He is wrong to combine an out-of-sight policy with an out-of-mind one. The whole idea is that a policy should try to be out of sight but dare not be out of mind, because councils have to deliver the services. The police would tell you that they can police properly if they know where the zone is and who is involved.

Freelance research has been done by moi, at the dead of night, rattling round parts of Edinburgh that you would never want to go to. We came across one or two areas that have never been publicised. I do not want photographs of those areas on the front page of the paper because, as Mark Turley said, we would be bound to get one or two folk saying, "If I hang out of my top bedroom window, I can see into that area." That is why the areas have not been made public, although work has been done on the issue. Nobody underestimates the difficulty.

**Iain Smith:** Is not that the crux of the problem? The problem is not the legislative framework but identifying an appropriate area. Whether we have the legislative framework that existed when Coburg Street was operating as a non-harassment area or the framework in the bill, it will not work if residents object to an area. Is not that the problem?

**Councillor Thomas:** No, because the difficulty with the previous arrangement was that there was no legal protection. The council did not have the power to identify a zone; there was an operational arrangement by the police and we worked within that arrangement in our role as providers of care services, cleansing services and the other services that councils provide.

I suppose that you are asking why we need the proposed powers, given that in the past we were able to operate a zone, which broke down not because powers were needed but because the area was being developed. Our difficulty is that if there is no legislative backing for the designation of an appropriate area—there might well be such an area—there will be no protection from legal challenges to the council and the various agencies that are involved and we will not be able to push the measure forward. The previous zone was the result of a loose, operational arrangement by the police that broke down, and the current situation is such that we need legislation if we are to operate a zone again.

15:15

**Iain Smith:** I am still not clear why you need additional powers. What power did you have in the past when you operated the zone that no longer exists? The council provided services in the past and it would not need more powers to provide services in another non-harassment area.

**Mark Turley:** The zone worked in the past because there were very few residents in the area and the few that there were tolerated it. There are now no obvious areas where that would be the case. Wherever a zone is sited, there will be some complaints from businesses or residents. I believe that we can find a site where the number of people who would be affected would be very small indeed—I will make it my mission to find such a site. However, the profile of the matter is such that there would be complaints. To answer those complaints, we would need to have complied with the framework of consultation and appeals that the bill sets out.

If we tried to operate a zone in Coburg Street again, we would be flooded with complaints. There is no way that the police could maintain a zone there any more. The world has changed and we need powers to enable us to cope with the new situation.

**Rosie Kane (Glasgow) (SSP):** I am sorry if I go over old ground—I am here to fill in for Tommy Sheridan.

You talked about services and facilities for women who work in a tolerance zone. Is it your experience that only some women are permitted to work in a zone? Is there evidence that vulnerable

women, or even children, work on the periphery of a zone, where they have reduced access to the services that are offered in the zone and where they are vulnerable to the core group of men who always seek out such women or children in order to abuse them?

**Ray de Souza (City of Edinburgh Council):** I am not aware of any such evidence, but we must accept that tolerance zones have not really been evaluated. Most of the research that has been undertaken has been soft and has produced mixed results.

When the tolerance zone in Edinburgh was in operation, the women who used the area policed themselves and a culture of care and vigilance developed in the prostitution community. I am not aware of an outer ring, or sub-culture, if that is what you mean.

**Rosie Kane:** I imagine that women must comply with certain rules in order to be allowed to use a zone and that, for example, women who are involved in drug or alcohol abuse are not permitted to work there. There is a danger that we might end up with several tiers.

Might there be an increase in the use of the zone by traffickers, who would bring in women who were not excluded from the zone? If women were being trafficked, the chances are that they would be regularly lifted by the police as they worked. It might, therefore, be possible to locate the trafficker. If those women are taken into the tolerance zones, there is less likelihood of that happening, and the men controlling them would have a safe investment. It occurred to me, because of my work on asylum, that that is a possibility.

**Ray de Souza:** Given the culture and the sub-culture that exists, what you suggest is certainly possible. Our experience of the tolerance zone is that there is some degree of—dare I say it—regulation among women, to allow them a safer environment in which to operate. There was less likelihood of the effects that we are seeing now, such as violence, a lot of coercion of prostitutes by pimps, a lot of drug trafficking and a lot of high-risk, aggressive behaviour. There is a degree of self-regulation in a tolerance zone that would not be there without one—if that answers your question.

**Rosie Kane:** Thank you.

**Mr Welsh:** A practical problem is involved. The witnesses know Edinburgh and have said that there may well be an appropriate area within Edinburgh. They have also said that they believe that they can find a site that will cause minimal complaint. If the bill becomes law, could it be put into practice?

**Mark Turley:** I would be the person charged with doing that. This is not the only issue where we face such problems. I am reminded of how difficult it is to find sites for Travellers. We do not shy away from that and tend to crack it eventually. It is difficult to say too much publicly when these are relatively early days, but if the bill goes through, I am confident that we will commit totally to using it, because all stakeholders in Edinburgh agree that it is the best possible way of managing the situation.

**Mr Welsh:** Without naming them, are you saying that you know of sites that would work and where there would be a minimal number of complaints?

**Mark Turley:** I believe that we will be able to identify sites that will work.

**Mr Welsh:** You say “believe”—do you not know?

**Mark Turley:** I believe that we will identify sites that will be made to work.

**Mr Welsh:** But do you not know right now? Without stating them—I do not wish to press you that far—do you know of sites that would work?

**Mark Turley:** I am not trying to avoid the question, but the bill requires councils to go through a fairly substantial consultation process. It is only when they have been through that process that they can say whether sites are suitable. If I were to say to you that I know of sites, would I not be prejudging the outcome of the consultation process? There will be sites that will work, but we have to go through that due process.

**Mr Welsh:** So how would you envisage the City of Edinburgh Council utilising the proposed powers? What would the process be?

**Mark Turley:** We would draw up a shortlist of sites that have been identified as potentially suitable. We would have to address issues of ownership, because it might well be that the potentially most suitable sites are not always entirely in our ownership. There might be a process of negotiation, but once that was resolved, we would simply follow the procedures that are laid down in the act for establishing protocols and the consultation process.

**Michael McMahon:** I suggest that the zone will not be located in Morningside. We have discussed the issue previously, and what concerns me is that we are getting hung up about whether it is called a tolerance zone, a management zone or a non-harassment zone. We have looked elsewhere for models for the management—for want of a better word—of prostitution, and we have discussed the Swedish model, in which those who purchase sex have been criminalised. Have you considered that model? What are your views on it?



**Councillor Thomas:** I tried to make that point in my introductory remarks on the use of antisocial behaviour orders. The council was keen that we should consider trying to apply that sanction to men as well. There would not be a supply of prostitutes if there was no demand in the first place. The balanced programme and strategy that we are trying to put in place must address that; it may be that that is an issue for the committee to examine. It is not a criminal offence to pick up a prostitute—to get the balance right, perhaps there needs to be a stronger law on that side, too.

**Michael McMahon:** I have been trying to get my head around the logic of the matter, but perhaps logic does not apply to it. We are talking about a criminal act, whether it is a man purchasing sex or a woman selling herself as a prostitute. You say that we should put in place harm reduction, identify service needs and deliver services to people who are involved. However, if we follow the logic of what you are saying, we would apply that to other illegal behaviour, such as drugs offences. Taking drugs creates problems; we need harm reduction and we need to deliver services, but we have never talked about drug-taking tolerance zones. Young people who drink in the streets create problems, both for themselves and for their neighbours, but we are not talking about drinking-in-the-street tolerance zones, nor are we talking about tolerance zones for illegal parking. If behaviour is illegal, we should surely try to eradicate that behaviour. Is that not the flaw in the tolerance and non-harassment management project? We are talking about an essentially illegal behaviour.

**Councillor Thomas:** I agree with you—ultimately, that is what we should all try to achieve, but we also have to recognise the situation. Prostitution is the world's oldest profession, as the saying goes, and it will never go away. It certainly will not go away if we bury our heads in the sand and fail to address the issues. The analogies that you draw with drug taking and drinking in the street do not hold out. On the solutions that work for prostitution, evidence shows that having better management control can ease the problems for other people who are affected, such as local residents. We have to find the best course of action for the particular problem and deal with it, as we have said, by using ASBOs and, perhaps, stronger legislative powers. We have to use all the clubs in the bag and all the tools that are at our disposal.

**Michael McMahon:** I understand that, but the point that Mark Turley made earlier in response to Iain Smith, which also defied logic, was that you operated a tolerance zone because you found an area in which it was acceptable. What you now want is the power to impose such a zone on an area that might not find it acceptable, and I think

that we have real difficulty in following your logic on that.

**Mark Turley:** First, the council has never had a tolerance zone. The so-called tolerance zone that we have been talking about is the non-harassment zone that was operated by the police. The council has no powers whatsoever in relation to prostitution, other than general powers and duties for the well-being of people who are affected. What existed was a default—it did not cause a major problem and, in effect, the police turned a blind eye. However, people will no longer turn a blind eye.

It would be nice if there was no such thing as prostitution. That would be an ideal outcome, but while the women who wander the streets are dispersed and are not engaged with services, prostitution will become more harmful and there will probably be more prostitutes. If there is a managed environment, we can at least try to apply our efforts to help women out of prostitution rather than their becoming more dependent on the money that goes with it and on drugs.

**Michael McMahon:** Therefore we should have drug users in the same area using their drugs—

**The Convener:** I think that you are getting into a debate with the witnesses.

**Michael McMahon:** I just cannot understand the logic behind the argument and I wish that someone would give me an answer to the point that I am trying to make. If one applies the provision to one set of circumstances of antisocial behaviour, why is it not being sought and applied in others? Why does the council need the power to do something that it could manage before?

**Mark Turley:** There are many examples. If we were to lock up everybody who commits a criminal offence, society would break down and jails would be full. The job of the police day in, day out is to manage people's criminal behaviour and not simply to arrest people when they commit a criminal act. The police's attitude is that they increasingly want prevention, management and problem solving. We are talking about trying to apply such approaches to the difficult problem of prostitution. It would be nice if we did not have to do so, but arguments about what should not be done or what did not have to be done are irrelevant when something has existed for so long and will clearly continue to exist unless we begin to try to manage it properly.

15:30

**Paul Martin:** I want to come back in briefly. I think that Mark Turley said that he thought that there will be areas in which there will be a minimum of opposition. I take it that there will be

small populations in those areas. Is it unfair for residents to be told that they are in such a position because they live in an area in which there are not many people who can oppose the creation of a zone? I am elaborating on the point that Michael McMahon raised. I ask Kingsley Thomas whether the City of Edinburgh Council would take the same view if someone wanted to build a waste plant in such an area, for example. They might say, "We'll just build this plant here because we know that only six or a dozen people will be able to oppose it." I want to deal with the issue of people being given the opportunity to oppose. You are saying that you are proposing such an approach because the residents will be in a minority.

**Mark Turley:** I will use the example of unofficial encampments for Travellers. We could take the view that we could simply let people camp unofficially wherever they want to camp, but from our experience in Edinburgh, such an approach would, typically, bring serious disruption to many communities. Alternatively, we could seek to set up a well-managed site, which would undoubtedly be controversial in the local community in which it is sited, but it could then be proved to people that, with good management, a managed site for Travellers does not have to be disruptive. There is definitely an analogy in that respect. How fair is what is now happening in Leith links?

**Paul Martin:** To be fair, a managed Travellers site is a different situation. A completely different application is being proposed. We are talking about street activity, and many issues are related to such activity. The impact of traffic and activities other than those of the women themselves will be involved. I want to consider ways in which we can support women and would argue that there are much better examples. People will travel into such zones in a way that does not happen for a Travellers site. The situation in your analogy is completely different.

**Mark Turley:** I do not think that it is.

**Paul Martin:** I think that it is.

**Mark Turley:** With respect, the sort of site that I envisage would not be a residential street. We envisage areas that are off normal streets and in which few—if any—residents would be affected. There might be businesses that could be affected to a small extent, but if the management of hours, for example, that is talked about in the bill was applied properly and there was consultation, the impact could be far less than the impact of the current situation.

**The Convener:** I think that we have explored the issue as much as we can.

**Dr Jackson:** Mark Turley makes a serious point. Previously, there was a managed system, but there has been a move to a system in which

management of the situation has basically been lost. When we previously discussed the matter, Margo MacDonald talked about the danger that more serious drug taking and child prostitution and trafficking would result if we did not have some form of management. You might not have concrete evidence of such things because dispersal will obviously prevent you from finding out too much about what is going on. However, do you have any evidence that there has been an escalation in the seriousness of what is going on in relation to prostitution?

**Ray de Souza:** We have evidence that drug taking has increased. There have been increases in the availability of drugs and a certain type of drug taking has escalated—there is more high-risk drug taking, if I can put it that way. A related issue is that more aggressive pimping has developed. We are not aware of evidence that trafficking of young people or children, which has been referred to, takes place and there is no evidence of an influx of young people under 16 into prostitution—the number is small.

**The Convener:** I am conscious that Margo MacDonald will give evidence next week, but if she has any further questions, she can ask them now.

**Margo MacDonald:** There was some anecdotal evidence about under-age girls appearing in the area for the first time. Nobody questions that—it is a matter of record that it was reported. Also, I think that the rise in reported attacks on women has been about 1,000 per cent. The police can confirm that.

I have heard off the record from police officers that they wonder whether they can make antisocial behaviour orders stick. If a woman lives in the area in which she is being a nuisance, how can we enforce an antisocial behaviour order? Have the witnesses come across concerns of that nature? It is a while since the council said that it would use the orders, but it has not used any yet.

**Mark Turley:** We are likely to be in court in June to seek an ASBO against one individual. It took us much longer than we expected to gather the evidence, but if that case is successful, we have built up significant evidence against other people and could pursue orders against them. However, as the measure is experimental, we do not want to dive in; we would rather see the impact on a small scale before we consider expanding the use of the orders if the feeling is that they work. The person against whom we are seeking an ASBO does not live in the Leith links area, but if someone lived there, we could get round that by seeking a different type of order in which the condition might be to restrict the person's behaviour rather than their presence.

**Margo MacDonald:** If the council has to take that sticking-plaster approach, how much more will it cost in manpower resources? I presume that you will have to have people to monitor the situation.

**Mark Turley:** We have staff out at night, which costs a heck of a lot of money. As you will know from another bill that is being considered, getting an ASBO is an expensive business. For the group of people whom we are discussing, it is doubly difficult because of the typical hours that they work. The approach is certainly expensive.

**The Convener:** That brings us to the end of our questions. I thank Kingsley Thomas, Ray de Souza and Mark Turley for their evidence.

We will have a brief break before we hear from today's final group of witnesses.

15:37

*Meeting suspended.*

15:40

*On resuming—*

**The Convener:** I welcome our final group of witnesses this afternoon, who are Councillor Martin Greig and Leslie Brown from Aberdeen City Council. We have received written evidence on the bill from Aberdeen City Council. I offer Martin Greig the opportunity to make any introductory remarks.

**Councillor Martin Greig (Aberdeen City Council):** Our written evidence speaks for itself, but I want to fill in some details of the amendments to the evidence that we gave to the Local Government Committee in December 2002. We have submitted a two-page document on the amendments and additions, but I will give a little more information on the community planning approach that we are taking to the problem of prostitution in Aberdeen. Our community plan includes a challenge forum called the community safety partnership, which I chair. It involves a number of partners, including the council, Grampian police, the NHS, the fire and rescue service and Drugs Action. The community safety partnership has a fairly pragmatic approach to the problems with which it deals, one of which is prostitution.

We have set up a sub-committee called the sex industry forum to try to deal with prostitution in the city of Aberdeen. We use our community safety problem-solving approach to address the problems of prostitution. Responsibility is shared among the police, the council, the NHS, Drugs Action, the joint alcohol and drug action team and PHACE Scotland. The aim of the sex industry forum is to co-ordinate the actions of the various

partners in tackling the problem of prostitution. So far, the forum has been successful; it is a good way of sharing responsibility and of working together.

Our approach has two aspects. First, we are concerned with the welfare of the women involved in prostitution, who are almost all drug-dependent, vulnerable women. Many of them are victims of abuse from partners and have been victims of child abuse, so it is important that we work together to focus health care, drugs advice and other services to the benefit of the women. The second aspect is that we are concerned about the effects on the general community in relation to public order and community safety in the city. Those are our two main prongs of attack.

15:45

Our approach in the sex industry forum is concrete, but it is evolving and will continue to evolve. Twenty or 30 years ago, women who were involved in prostitution were mainly trying to pay household bills; now, they are trying to sustain their drug habits and are locked in a vicious cycle of drug dependence and misuse.

There are two key aspects to our work. One is a drop-in centre, which we were keen to set up, for the women near the zone where they work. Drugs Action has co-ordinated the centre, which provides health advice, drugs advice and information on homelessness; it also contains a needle exchange and provides condoms. The centre is open for one night a week and is a positive outcome of our work, but it was quite difficult to secure funding for it and we hope that we will be able to extend its work in time.

We are also involved in maintaining a management zone. We call it a management zone rather than a tolerance zone and we try to co-ordinate our actions to manage the problem by containing it within an area near the harbour, which is historically where prostitution has taken place. The zone is a non-harassment area. I have been there with the police on night patrols and have seen their responsible approach. They gather intelligence from the women and hear any complaints about violence towards or danger to them from particular individuals—there is a good relationship between the police and the women.

Those are the two main outcomes of our work and we look forward to the expert group's findings, which we hope will inform us how we can continue to develop our work to help the women involved and to ensure public order and community safety and in the area of town where the management zone is. That is all that I want to say. I wanted to update the committee on developments over the past year, so I hope that that has been useful.

**The Convener:** Thank you for those helpful introductory remarks.

**David Mundell:** Will you briefly outline to the committee the developments that have taken place in the non-harassment zone in Aberdeen since the previous Prostitution Tolerance Zones (Scotland) Bill was considered? I think that you heard the similar discussion that we had with our witnesses from the City of Edinburgh Council.

**Councillor Greig:** I am not aware of any changes.

**Leslie Brown (Aberdeen City Council):** If anything, the situation has improved slightly since we gave evidence on the previous Prostitution Tolerance Zones (Scotland) Bill. There is a general feeling that services such as the council and the police have got their act together a bit more. We have been working with businesses that, when we consulted on the previous bill, expressed concerns about the effects that the zone was having on them and the police have taken a number of successful actions to dispel the problems and perceived problems. Cleansing is quite a bit better now than it used to be and the council is not getting anything like the volume of correspondence on the issue that it received when the previous bill was introduced in the first session.

**David Mundell:** Where do you stand on the spectrum between management and zero tolerance of illegal activity?

**Councillor Greig:** We call the zone a management zone and we manage the problem. The council has a policy of zero tolerance and the work of the sex industry forum is informed by the policies of the various partners in the forum. Relevant policies that support the council's work on the management zone include the zero-tolerance policy and our policies on, for example, homelessness, crime reduction and drug abuse.

**The Convener:** I note that the Edinburgh non-harassment zone broke down because of the increasingly residential nature of the area, but that the management zone in Aberdeen still operates. Is it correct to presume that that zone is in an area that has a low level of residential property?

**Councillor Greig:** Yes. The zone is in an industrial area near the harbour, although there is housing on the periphery of the zone. Footdee is on one side and Market Street and the city centre are on the other. The police work hard to ensure that the problem is contained and managed within the zone and they follow up or prosecute activity outside the zone in the usual way. I understand that cards are issued to the women to indicate where the zone is, to encourage them to work there. All necessary enforcement action is taken in the peripheral area.

**Margo MacDonald:** I was a guest of Aberdeen City Council as part of the expert group—I wish people would not call us the expert group; I call it the working group—on prostitution. The visit was very interesting and I will tell you about it. It is almost right to say, "It ain't broke, why fix it?" in relation to Aberdeen. Do our witnesses object to the bill?

**Councillor Greig:** I do not. Prostitution is an evolving problem and our approach evolves as we try to respond to the contours of the problem. In the meantime, there is no major difference between what the bill proposes and what we currently do in Aberdeen.

**Mr Welsh:** You said that almost all the people involved in prostitution are drug dependent. Your submission says:

"there needs to be work to support sex industry workers out of prostitution".

Therefore, you must tackle drug dependency. What success have you had in taking people out of prostitution?

**Councillor Greig:** We set up a drop-in centre fairly recently, although we had a lot of funding problems. It might be too early to say whether there is concrete evidence that people are being taken out of prostitution.

**Leslie Brown:** It is very early days, as Councillor Greig said. The drop-in centre has been open only for a matter of weeks, but we hope that it will provide a focus that enables us to build sufficient relationships with women who have fairly chaotic lifestyles to address the wider issues around moving them out of prostitution. We do not pretend that that will be easy—if it was easy, everyone would have done it by now—and we are aware that the work will require tremendous resources. We went to observe the situation in Glasgow and we are well aware that Aberdeen will not qualify for a lot of the funding that Glasgow uses for those services. We will have to be more creative. I hope that the additional funding for drugs treatment, which was announced yesterday, might help us to get into that issue a bit more in Aberdeen.

**Mr Welsh:** Is the real problem drug use and abuse?

**Leslie Brown:** That is certainly the problem of the moment. However, prostitution has been around for a long time, so the drug problem cannot be the only one.

**Mr Welsh:** If the bill became law, what practical difference would it make to your management approach?

**Leslie Brown:** I suspect that it would not make much difference, because we have a tolerance

zone with which everybody co-operates to one degree or another. The bill might come in handy if we found ourselves in the situation in which Edinburgh found itself, in which the zone's area changed and it became more developed. It is not without the bounds of possibility that more people could be living in the area or that the nature of the businesses there changed and they operated 24/7. In that case, we might have to think about managing the zone differently and having it in a different location. The bill might give us a framework for doing that and for having a dialogue with the community about finding a way forward.

**Mr Welsh:** What about the location? You say that you have a suitable location, which is under your management system. The zone would have legal status if the bill was passed. Would the bill make no other difference to you?

**Councillor Greig:** The issue is the degree of formality. The management zone that currently exists has been formalised to a certain degree. The bill, if passed, would take things a step further and give more forceful recognition to the zone's existence.

**Margo MacDonald:** For Andrew Welsh's information, I should explain that the bill is an enabling one, so that, if Aberdeen City Council already had a satisfactory arrangement, it would not have to use the bill's provisions.

**Mr Welsh:** I was just wondering about the situation.

**Margo MacDonald:** Aberdeen might or might not decide to use the bill's provisions.

**Mr Welsh:** I take the point, but I wonder what practical difference the bill would make, if it became law. That was my question.

**Iain Smith:** I want to pursue that point. I understand why the bill was introduced, but I am not entirely convinced of the need for legislation. Given that Aberdeen City Council seems effectively to have done what the bill proposes to do, are the bill's provisions needed to enable other councils to do the same? Are there limitations to what has been done in Aberdeen—for example, in the provision of certain services—that the bill would address?

**Councillor Greig:** I do not think that, if the bill were passed, it would inhibit anything that we do. However, it is up to the Parliament to decide whether the bill's provisions would benefit cities such as Aberdeen.

**Leslie Brown:** We are currently in the position in which Edinburgh was a while ago, in that we have a zone in an area that has traditionally had prostitution. If that area changes—as happened in Edinburgh—the bill's provisions would probably come into their own.

**Iain Smith:** I understand what you are saying, but is it the case that, if the nature of the tolerance zone area changed, the problem would not be the legislative framework but finding an alternative area? Is that not the big issue that you face?

**Leslie Brown:** Yes. Finding another area would be the big issue, if or when we had to do that. The feeling is that the bill would provide us with a much more robust process for finding another area.

**Iain Smith:** I will ask the same question in a slightly different way. With the agreement of the various agencies and the community safety partnership, you currently have an informal tolerance zone. If the bill became law, is there a danger that you could be challenged legally on the ground that you had created a tolerance zone without going through the formal framework of the legislation? I know that Margo MacDonald said that the bill is an enabling one. However, is there a danger that your informal arrangement could be legally changed because it did not follow the legislation's requirements?

**Margo MacDonald:** Sorry—

**The Convener:** Let the witnesses answer the question, Margo.

**Iain Smith:** It is not for us to decide.

**Leslie Brown:** I am not a lawyer, so I hesitate to get into too much legalese, but my understanding is that the bill is an enabling one and that we could be challenged only if we used the legislation in some way. Anyway, councils are always subject to judicial review for anything that they do. It is worth making a similar point to the one that the City of Edinburgh Council made: Grampian police, not Aberdeen City Council, formed the zone.

**Margo MacDonald:** If Aberdeen City Council were breaking the law, it would most certainly be subject to legal action. However, if it was not breaking the law, how could it be subject to legal action?

**Iain Smith:** Well, the point is—

**The Convener:** I do not want us to get into a debate between MSPs. Margo MacDonald will be giving evidence next week and we can address those issues then. I think that the point that Iain Smith wants to make is that, if a council has not followed the consultation procedures that are specified in the bill, it might not be seen to be acting within the law. However, it would be better to leave that issue until next week.

**Margo MacDonald:** I will bring the Lord Advocate with me.

16:00

**Dr Jackson:** Can the witnesses remind me of the difference in scale between the sex industries in Aberdeen and Edinburgh?

**Leslie Brown:** Although there will have been changes on the periphery, I do not think that the situation has changed materially since we submitted our evidence. We suggested then that the police knew of around 170 women in street prostitution—not other forms of prostitution, but street prostitution. The police have good relationships with the women in and around the zone.

**Dr Jackson:** Is that figure lower than the figure for Edinburgh?

**Leslie Brown:** I do not know, to be honest.

**Margo MacDonald:** I will tell you next week. I would tell you now, but I am not allowed to.

**The Convener:** Okay, Margo—we will let you make one brief intervention, to answer Sylvia Jackson's question.

**Margo MacDonald:** When the Edinburgh tolerance zone moved to Salamander Street, around 20 women were working at any one time. That figure was agreed and the women complied with it because their representatives had negotiated it.

It is difficult to say how many women work only in street prostitution. The sex industry—I do not like calling it that, but that is what it is—is changing a great deal. In Edinburgh, women are moving between the saunas and the streets; in Aberdeen, women are moving between private houses, usually, and the streets. It is therefore difficult to quantify the number of street prostitutes at any one time. Edinburgh has a surprisingly low number of women working on the streets, but that is probably because of the arrangement with the saunas. Glasgow has easily the highest number—it is very much higher than anywhere else.

**Paul Martin:** Is there an exit strategy? Are we saying that the women will be there in perpetuity? Are we saying that Edinburgh will have a tolerance zone for ever? Alternatively, are we saying that one day we will not need a tolerance zone—which I think is what we all want? I appreciate that there will always be some challenges.

I am particularly concerned about the drug addiction problems—Margo MacDonald has given us statistics on that. If the measures that are being taken are so effective, are we saying that there is now an exit strategy? Will we support women who have drug addiction problems and then, once we have dealt with those problems—as a number of projects have succeeded in doing—have an exit strategy?

**Councillor Greig:** No. The services are not exclusive to those women. I keep emphasising the word “evolving”. We have an evolving attitude. We are working within existing law and trying to improve service delivery where it is needed. The community planning approach has been successful because the agencies know where the problems are. Getting together and talking about those problems helps us to share knowledge and to take joint action as part of a more strategic approach to solving the problems. Drug abuse and prostitution are problems that will continue to evolve—the situation is not static. By working together, we will continue to find ways of responding to the changing culture and the social contours of those interrelated problems.

**Paul Martin:** I do not think that the question has been dealt with. You are saying that the situation will continue to evolve, so there will always be zones. I argue that the street is not the best place in which to provide support mechanisms—it is probably the most dangerous place in which to do so. Earlier, Margo MacDonald referred to the indoor sex industry. Why should we not create a support mechanism for that industry, rather than an external zone? Why are you taking this approach?

**Councillor Greig:** We look forward to finding out what the expert group has investigated and what its conclusions are. We are aware that the problem is multifaceted. We can only deal with what we know, move forward in a pragmatic way and tackle the problem as it confronts us. We are limited in what we can do.

**Paul Martin:** What kind of work has Aberdeen City Council done on alternatives to the lifestyle that we are discussing? Some of the evidence that we have received from other organisations has focused on providing such alternatives, rather than sending out a message to young people that prostitution is tolerated because we have created a tolerance zone. Talking about tolerance is not the same as talking about alternatives.

**Councillor Greig:** Glasgow has the Routes Out partnership. Leslie Brown can fill us in on what is happening in Aberdeen.

**Leslie Brown:** As I said earlier, the work of the sex industry forum is in its infancy. The drop-in centre has been open only for a few weeks and only a couple of nights a week. We are looking to expand the service and to make it the kick-off point for work to get women out of prostitution. We emphasise that what we have is not a tolerance zone, but a management zone—we are managing the effects of prostitution, rather than prostitution itself. That may be a matter of semantics, but I am not convinced that it is. We do not want to suggest that we are tolerating prostitution as a lifestyle choice—none of those involved in the forum sees

the issue in that way. As partners, we will do everything that we can to reduce the likelihood of other people falling into prostitution.

**Paul Martin:** So you are doing work on that.

**Leslie Brown:** Now that we have established the drop-in centre and sorted out its funding, the next step is to look forward. We will plan a more specific approach to getting women out of prostitution.

**Rosie Kane:** That relates to what you were saying a moment ago and to the issue that Paul Martin raised. You said that the majority of women in prostitution are victims or survivors of child sexual abuse, abuse by partners and so on. This may be a question for the Scottish Executive, rather than for you, but are we doing enough to locate and catch vulnerable people who may end up in prostitution before that happens? It is to be hoped that we can prevent people from ending up in that situation.

**Leslie Brown:** The easy answer to the question is that we are clearly not doing enough—if we were, the problem would not exist. Earlier, Councillor Greig referred to zero tolerance. Aberdeen City Council is a long-standing supporter of zero tolerance of violence towards women. We have done a lot of work on improving services to women who are vulnerable to domestic abuse and rape. We have also received considerable funding support from the Scottish Executive. We will talk to those services to see what they can offer to the developing approach to prostitution that Aberdeen City Council is putting together in order to deal with precisely the issues that you raise.

**Rosie Kane:** Michael McMahon mentioned the Swedish model. I understand that, in Sweden, if a man approaches a woman, she agrees to supply a service to him and he is abusive to her in any way, she can report what has happened. That shifts the balance of power a wee bit towards women who are prostitutes. Do you think that we should consider such an approach?

**Councillor Greig:** We can always improve the delivery of our services, where needed. The council is doing its best, with limited resources, to help those who are most in need. As you suggest, it is for the Scottish Executive to start to take this agenda on board. We are doing what we can within the bounds of the existing law.

**The Convener:** That brings us to the end of questions. I thank Martin Greig and Leslie Brown for their evidence and thank members for their attendance. Next week, there will be a further evidence-taking session on the bill, at which the star turn will be Margo MacDonald.

*Meeting closed at 16:10.*





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