

# **LOCAL GOVERNMENT AND TRANSPORT COMMITTEE**

Tuesday 1 March 2005

Session 2

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## LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

8<sup>th</sup> Meeting 2005, Session 2

### CONVENER

\*Bristow Muldoon (Livingston) (Lab)

### DEPUTY CONVENER

\*Bruce Crawford (Mid Scotland and Fife) (SNP)

### COMMITTEE MEMBERS

\*Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)

\*Dr Sylvia Jackson (Stirling) (Lab)

\*Michael McMahon (Hamilton North and Bellshill) (Lab)

\*Paul Martin (Glasgow Springburn) (Lab)

David Mundell (South of Scotland) (Con)

\*Tommy Sheridan (Glasgow) (SSP)

Margaret Smith (Edinburgh West) (LD)

### COMMITTEE SUBSTITUTES

Bill Butler (Glasgow Anniesland) (Lab)

Colin Fox (Lothians) (SSP)

Mr Bruce McFee (West of Scotland) (SNP)

Mr Brian Monteith (Mid Scotland and Fife) (Con)

John Farquhar Munro (Ross, Skye and Inverness West) (LD)

\*attended

### THE FOLLOWING GAVE EVIDENCE:

Hugh Henry (Deputy Minister for Justice)

Sandra Hood (Expert Group on Prostitution in Scotland)

Margo MacDonald (Lothians) (Ind)

### CLERK TO THE COMMITTEE

Eugene Windsor

### SENIOR ASSISTANT CLERK

Alastair Macfie

### ASSISTANT CLERK

Euan Donald

### LOCATION

Committee Room 6



## Scottish Parliament

### Local Government and Transport Committee

*Tuesday 1 March 2005*

[THE CONVENER *opened the meeting at 14:04*]

### Subordinate Legislation

#### **Parking Attendants (Wearing of Uniforms) (South Lanarkshire Council Parking Area) (No 2) Regulations 2005 (SSI 2005/35)**

**The Convener (Bristow Muldoon):** I welcome members to the eighth meeting of the Local Government and Transport Committee in 2005. Before we move on to the agenda item for which the minister is here, we will deal with item 1, which concerns subordinate legislation. We have two Scottish statutory instruments to consider, the first of which is the Parking Attendants (Wearing of Uniforms) (South Lanarkshire Council Parking Area) (No 2) Regulations 2005 (SSI 2005/35). No points on the regulations have been raised by members or by the Subordinate Legislation Committee and no motion to annul has been lodged, so I ask the committee to confirm that we have nothing to report.

**Members indicated agreement.**

#### **Valuation for Rating (Decapitalisation Rate) (Scotland) Regulations 2005 (SSI 2005/41)**

**The Convener:** As with the other regulations, no motion to annul has been lodged and no points have been raised by members or by the Subordinate Legislation Committee, so I ask the committee to confirm that we have nothing to report.

**Members indicated agreement.**

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

14:05

**The Convener:** The second item on our agenda is further stage 1 consideration of the Prostitution Tolerance Zones (Scotland) Bill. Committee members will recall that we postponed further consideration of the bill prior to the publication of the report of the expert group that was examining the issues surrounding prostitution in Scotland. That information is now available to us, and we will hear from three lots of witnesses this afternoon.

The first panel is with us now. I welcome to the meeting Hugh Henry, the Deputy Minister for Justice, and Micheline Brannan, who is the head of the criminal justice group in the Scottish Executive Justice Department. Later on, we will welcome Sandra Hood and Kirsten Davidson to report on the expert group and, finally, the member in charge of the bill, Margo MacDonald MSP.

I give the minister the opportunity to make some introductory remarks to the committee on the Executive's reaction to the report of the expert group on prostitution in Scotland and how it relates to the Executive's stance on the Prostitution Tolerance Zones (Scotland) Bill promoted by Margo MacDonald.

**The Deputy Minister for Justice (Hugh Henry):** Thank you, convener. When I last gave evidence on the bill, I said that the issues surrounding prostitution were complex and sometimes competing, so it was not possible to consider the problems and arguments in isolation. We gave a commitment to the committee and to the Parliament that we would establish an expert group on prostitution to consider all the issues objectively and independently. We asked that group to come up with recommendations based on its findings, and we thought that it was proper to do that before we decided how to take things forward. I gave the group the task of reviewing the legal, policing, health and social justice issues surrounding prostitution in Scotland and asked it to consider options for the future. That was the first major review of such issues for nearly 50 years, so it was a significant task.

It is clear from the group's report that it has not shied away from the complex issues that are involved. The report proposes some innovative responses, and Sandra Hood will tell you in more detail about the group's conclusions. I put on record my thanks to her and the other members of the expert group for their hard work, commitment and dedication to finding responses on difficult issues. They took their work seriously and spent a

considerable amount of time informing themselves by visiting groups in different parts of Scotland and talking to them in detail at all hours of the day and night. They considered carefully some of the evidence from abroad, which they felt was important to advise their considerations. There is a professional response and a professional report.

The Scottish Executive issued the report for consultation in December last year, and that consultation will continue until 18 March. Following the conclusion of the consultation, we will consider the responses carefully before we reach any firm conclusion about what we will do. So far, we have received six responses, but we expect more to come in before the closing date. The responses that we have received so far are generally very much in favour of the proposals, but they are from councils or organisations whose areas are not directly affected by street prostitution. We will wait and see what we get from some of the directly affected organisations and councils, but I hope that they will make similar responses.

As it would be wrong of me to pre-empt the consultation process by coming to any conclusion now, I find it somewhat difficult to say anything specific about Margo MacDonald's bill. When we have had an opportunity to reflect on the responses and decide whether we are capable of supporting the proposals from Sandra Hood's group—[*Interruption.*] I am very sorry about that, convener. I very rarely have my phone on. That has taken me somewhat by surprise.

As I was saying, when we have had the opportunity to reflect on all these matters, we will come to a conclusion about Margo MacDonald's bill. Indeed, Sandra Hood herself might well point out that any conclusion about Margo MacDonald's bill will depend on conclusions drawn from the working group's recommendations.

**The Convener:** The minister will be aware that the committee's stage 1 report on the bill is likely to go before Parliament before the end of April. However, the Executive's consultation will not be completed until 18 March. It quite often takes longer than the six weeks between that date and the end of April for the Executive to respond to consultations. Do you intend to ensure that the Executive reaches a conclusion on the consultation and makes it clear to Parliament before the stage 1 debate on the bill?

**Hugh Henry:** Although it would be useful to reach a conclusion on the consultation, there will not be a significant amount of time in which to do so. As a result, I cannot give you any certainty that we will be able to reach a definitive conclusion before the stage 1 debate. We have to adhere to certain internal processes, but I acknowledge the benefit of being able to give Parliament some indication ahead of such a debate. That said, it

would be wrong of me to commit to something that I might not be able to deliver.

**The Convener:** I will now take questions from other members. The fact that the minister is reserving his position until after the consultation might make discussion difficult, but we will see where we can go.

**Tommy Sheridan (Glasgow) (SSP):** Minister, you have said that you do not want to make any specific comments about Margo MacDonald's bill. That makes our consideration of the bill a bit difficult; after all, that is why you have been invited to give evidence this afternoon. That said, do you accept that the bill will enable the development of local strategies, rather than serve as a prescriptive instruction that will apply to the whole of Scotland?

**Hugh Henry:** Yes. We recognised that the first time that we debated the matter in Parliament. However, it is arguable whether that is the correct thing to do. We sought to establish the expert group partly because we were not convinced that it would be right to create such zones without having regard to the wider issues and wanted to consider the consequences of such an approach within that context. The group, led by Sandra Hood, has come up with a wider analysis and list of recommendations. Indeed, Tommy Sheridan and the other committee members will see that the group has concluded that, if its recommendation were accepted, there would be no need for such an approach. We have noted that and will reach a conclusion on the matter in due course.

**Tommy Sheridan:** I am sorry, minister, but will you point me to the part in the report that says that there is no need for the bill? The executive summary of chapter 11 points out that the proposed approach

"would also amend the case for 'managed zones' as a possible useful local strategy for focusing service delivery and managing nuisance arising from street prostitution."

If you mean that "amend the case" means that there is no need for the bill, I would be pleased to hear that conclusion.

**Hugh Henry:** The group points out in paragraph 11.28 that

"If the Group's proposal for a new approach to the criminal law is accepted ... the case for a 'managed area' significantly changes in its nature. It does not necessarily remove the case for a locality approach."

Each area could still adopt an approach pertinent to itself. The report continues:

"The setting up of an area could be seen as unnecessary if the act of soliciting is not itself against the law because it is not necessary to create an area of immunity from prosecution for soliciting."

We could argue about what that means exactly, but I understand it clearly. We have an open mind

about whether we will accept that approach, but we note what the group said.

14:15

**Tommy Sheridan:** I do not want to be pedantic, but I hope that you recognise that suggesting that the report concludes that there is now no need for the bill is not my reading of what it proposes. As you said earlier, the report deserves recognition as a full, robust and combative report that does not avoid the issues. However, the group has said that the bill's approach could be part of a strategy, either at national or local level. Do you at least accept that?

**Hugh Henry:** It would be more relevant to press Sandra Hood on exactly what the report says, rather than looking at my interpretation of it. I repeat for the record what the report says in paragraph 11.28 on page 69:

"The setting up of an area could be seen as unnecessary if the act of soliciting is not itself against the law because it is not necessary to create an area of immunity from prosecution for soliciting."

Acceptance is predicated on whether one accepts the proposal in relation to soliciting and those words are clear. My interpretation of them is that there would be no need for a statutory zone if we were to accept the proposals made by Sandra Hood's group. Sandra Hood also refers to other ways of adopting the locality approach. Indeed, I note that Margo MacDonald supports the report's conclusions. As I said, we will keep an open mind on the matter.

**Tommy Sheridan:** I have two final points before other members question the minister. You said that a statutory approach might not be necessary. That is why I asked the first question. I understood that the bill would allow local authorities to apply for managed zones; in other words, there would be nothing prescriptive in the bill to require local authorities to do something. Do you accept that the bill would provide another tool, but that it would not force anybody to use that tool?

**Hugh Henry:** I look at the bill in a different way—it would create the statutory authority to establish a zone in a particular area in a way that is not currently available. Whether one would then describe that as a statutory zone, the authority or enabling power for the creation of such a zone would be given by statute. How that would be defined would be a matter for individual authorities.

**Tommy Sheridan:** My final question relates to the convener's earlier comments. Is it the Executive's position that we might have to have a stage 1 debate on the bill without prior notice of the Executive's position on the expert group's report?

**Hugh Henry:** That may happen. As I said earlier, that is not a particularly desirable situation. I recognise that the Parliament would be much better informed if, in the very short period between the end of the consultation and the stage 1 debate, we were able to come to a conclusion. I repeat, however, that although I accept the desirability of that I cannot give you an absolute guarantee that that will be the case.

**Dr Sylvia Jackson (Stirling) (Lab):** Paragraph 12.5 sums up the report. Paragraph 12.5.7 refers to how the law might be reviewed and changed. Having considered the recommendations on how it might be changed, I wonder whether existing legislation would be able to deal with the issue or whether we would need new legislation. If the Executive goes down the route of new legislation, what might the timetable be?

**Hugh Henry:** I will take the second point first. I cannot give you an indication of a parliamentary timetable. We would need to bid for time against other issues in the legislative programme. A number of options might be open to us. On page 64, there is a suggestion that section 46 of the Civic Government (Scotland) Act 1982 could be repealed and that we could then rely on breach of the peace. I cannot give you a precise timetable.

In existing legislation prostitution is not a criminal offence: soliciting is the criminal offence. The group's report suggests that we try to take a more equitable approach, because although prostitution is not a criminal offence and soliciting is, the burden still falls on the women. The report tries to take a dual approach so that men who seek to purchase sex would be liable if a nuisance were being caused. That would require changes to the law, because I am not persuaded that the current law would enable the police to enforce that aspiration.

**Dr Jackson:** How much might the Antisocial Behaviour etc (Scotland) Act 2004 be able to take the issues on board?

**Hugh Henry:** That would be a matter first for local determination as to whether councils felt it appropriate and, secondly, for the courts in deciding whether to grant an order. I do not have the full details, but you will be aware that there has been at least one application for an antisocial behaviour order in relation to prostitution. I do not know whether that could be more widely applicable. First, councils would have to decide that it is appropriate for them to pursue that course of action and, secondly, the courts would need to decide in each case whether an antisocial behaviour order should be granted.

**Dr Jackson:** You can perhaps see the difficulty. We are trying to get answers to those questions within a timescale and that is obviously going to be

difficult. Can you give us information about the timetable for new legislation or about how the Antisocial Behaviour etc (Scotland) Act 2004 might be applied to the situations that are mentioned in the report?

**Hugh Henry:** I can only repeat what I said to the convener earlier. I cannot give any precise commitment about when legislation might be brought forward.

In relation to antisocial behaviour orders, all that the Executive can do over the next year or two is to report to Parliament examples of situations in which the orders are used. We delivered the legislation and the resources, but it is very much for local authorities and the courts to determine whether orders should be applied for and made. We have no influence over the process.

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** I want to pursue the minister's remarks in relation to the double standards whereby a female prostitute commits an offence by soliciting but the male punter commits no offence, which has always seemed absurd. As I understand it, the report does not recommend that paying for or offering to pay for sex should be a criminal offence, as it is in Sweden, but instead proposes a legal focus on "offensive behaviour or conduct". Does the minister favour making it a criminal offence to pay for or offer to pay for sex? Surely that would be a massive deterrent to males who would know that they would be liable for prosecution, with all the publicity that would ensue—[*Interruption.*]

**Hugh Henry:** Sorry. I thought that I had switched off my phone.

**Fergus Ewing:** I was making the point that if paying for or offering to pay for sex was an offence and the punter became a criminal, a huge number of men would be deterred from seeking sex, which would surely have a considerable beneficial impact in reducing the misery that prostitution causes and in deterring young women from going into prostitution.

**Hugh Henry:** When I talked about the expert group's approach I indicated that the group's report included a caveat about offensive behaviour—I think I used the word "nuisance"—that causes problems for individuals or communities. The group suggests that there should be an offence, not of purchasing sex but in relation to problems that are associated with attempts to purchase or sell sex, which is a different approach. I will not give a view at this stage, because that would pre-empt our conclusions on the group's work when the consultation has been concluded. Sandra Hood can discuss the group's work in more detail, but suffice it to say that the report states:

"The social policy context in Sweden differs from this country and there may not, therefore, be ready transferability of experience."

Fergus Ewing identifies a point of principle about culpability and responsibility, which can be considered in due course and does not necessarily have to be considered in the context of Margo MacDonald's bill. Consideration of the issue might well form part of the debate that follows on the heels of the report.

**Paul Martin (Glasgow Springburn) (Lab):** I accept that you are awaiting the outcome of the consultation. However, in the context of the Scottish Executive's overall strategy for tackling antisocial behaviour, will it be difficult to deliver a strategy that accepts that in certain areas we will tolerate a form of antisocial behaviour? That is how the public will regard the approach.

**Hugh Henry:** Are you talking about Margo MacDonald's bill or Sandra Hood's report?

**Paul Martin:** Both approaches are relevant.

14:30

**Hugh Henry:** There are differences of emphasis, and it would be wrong of me to use a reply that covered both circumstances. Sandra Hood's report probably recognises that, if what Paul Martin describes as antisocial behaviour took place in a certain area, there would be powers to take action against those responsible for it. I think that the creation of an offence applying to either party in instances where there was a nuisance or offensive behaviour would meet the test that Paul Martin has put forward.

Margo MacDonald's proposal is different. It focuses, as Tommy Sheridan has described, on a locality issue, identifying areas where certain activities would be managed or tolerated, albeit with certain support put in. It would be wrong to make a definitive response on the best way forward for dealing with prostitution before properly reflecting on all the responses to the consultation. There are broad issues here, and I accept that some people may have moral issues. There are also economic, health, social and community issues.

We want to address the problem of kerb-crawling in certain communities where a significant problem is caused by the activities of men seeking to buy sex. In that respect, we are committed to taking action against what is widely perceived as a form of antisocial behaviour. As for the two different approaches that are being proposed, although Sandra Hood's group would subsume some of the issues proposed by Margo MacDonald, Margo MacDonald's proposals do not encompass all the proposals put forward by Sandra Hood's group.



**Paul Martin:** Let us deal with dual responsibility. The mass public opinion is probably that there should be dual responsibility for the man and the woman. Would it be difficult for the Executive to promote such dual responsibility if we were to put in place tolerance zones, where there would be no responsibility on either party? How could the Executive promote the principle that, in some areas, the activity is completely unacceptable, whereas it will be acceptable in the tolerance zones?

**Hugh Henry:** I am trying to think through that debating point but, in theory, there could be identified zones in particular areas that were acceptable to the local council. Areas in which certain activities might be tolerated might be acceptable to some communities. However, the approach that Paul Martin describes might still apply anywhere outside those areas. In theory, that might be possible. The argument would centre on whether to adopt an approach that was merely about zones or one that involved dual responsibility.

As is indicated in Sandra Hood's report, there is recognition that where no offensive behaviour was taking place, where no nuisance was being caused and where there were no grounds for complaint, offences might not be being committed. In theory, people could be buying and selling sex in some areas if no offence was being caused. That might not lead to any offence being committed.

**Paul Martin:** My question is how the Executive could get that point across. There have been successful Executive initiatives to address concerns about antisocial behaviour, but how can the Executive say that it will tolerate the behaviour that we are discussing in certain zones in Scotland but not in other areas? Would we have done the same with the Antisocial Behaviour etc (Scotland) Bill, and said that we were going to accept that sort of behaviour in certain tolerance zones? How could the Executive possibly be consistent in its approach if it were to do that?

**Hugh Henry:** We would obviously have to reflect on whether any ambiguities or inconsistencies would be caused by adopting either approach, or both. The proposals by Sandra Hood's working group take a slightly different approach from Margo MacDonald's bill and would, if implemented and exercised, allow people and communities to make complaints about types of behaviour that would lead to action.

**Bruce Crawford (Mid Scotland and Fife) (SNP):** Thank you for coming along and presenting us with the evidence today—it is an incredibly powerful piece of work. If nothing else, Margo MacDonald's bill has allowed the environment to be created in which that work

could be presented to us. It was fascinating to read through some of the details.

I understand your difficulty with the legislative process, but there are issues in the report that go beyond just the legislative processes. I was struck by the strong correlation that is highlighted in the report between drug misuse and prostitution, and I would like to read out a couple of short excerpts that explain that. Paragraph 5.4 on page 27 states:

"In the past 15 years in the UK the contribution of drug use in particular has grown to the extent that it is now unusual to find a woman involved in street prostitution who does not have a problem of serious drug misuse, sometimes allied to alcohol misuse ... Impacting on drug misuse would therefore be an essential part of reducing the likelihood of becoming involved in prostitution, reducing the risk of harm once involved and facilitating an exit route away from prostitution."

You have explained why you cannot talk about legislation, and I understand that. Do you accept the premise, on which the report lays out the facts, about the link between drug use and prostitution, and would you therefore accept that tackling drug misuse must play an essential part in reducing the likelihood of women entering prostitution?

**Hugh Henry:** Yes, I accept that. The matter has influenced, and continues to influence, our thinking and our approach to women offenders. We recognise that many women end up being criminalised as the end process of an addiction habit. Other members can speak of their experiences, but I have constituents who have ended up working on the streets in Glasgow to pay for their drug habits. It is heartbreaking and desperate and it is one of the reasons why we have put substantially more money into drug treatment and rehabilitation, why we continue to review the effectiveness of our policies, and why we are insisting that those responsible for service delivery at local level are able to demonstrate to us exactly what has been achieved for the record investment that has been made. There is a clear link between drug misuse and prostitution; I do not think that anyone could deny that. Sandra Hood's group has set out very clearly what the problems are.

**Bruce Crawford:** The report goes on to draw some conclusions about how you might break the link between drug misuse and prostitution. Paragraph 9.4.2 states:

"This operational experience has raised significant concerns regarding women's general health, and their lack of access to mainstream health care services. Women seen through these services frequently have multiple health needs, which include ... problems arising from drug ... use".

Paragraph 9.4.3 refers to the outcomes and symptoms that can flow from that drug misuse, and which can lead some people who are involved

in drug misuse into prostitution. What are your views on paragraph 9.4.2, which refers to

“significant concerns regarding women’s general health”?

It might be that more work needs to be done on that, with a response from the Health Department about how it will reflect on the report.

There are substantial issues in that report that the committee must consider. If we are properly to consider the impact of the bill, we must consider whether we can tackle prostitution earlier in the process, for example, by dealing with drugs issues, which would mean that the legislative element would not be as necessary.

**Hugh Henry:** I understand Bruce Crawford’s point, but I would pause before reaching the conclusion that, simply by following his suggestion, we would make legislation unnecessary. We have yet to come to a conclusion about the need for legislation or about the form that it might take if it is needed. We should put the comments in the report into context. Good work is being done in some areas, through agencies working together to try to improve services for women. However, it is clear that there is significant room for improvement. The question is what improvement should be dictated from the centre through identifying the services that should be delivered and what should remain the responsibility of local service providers, within the broader policy parameters.

My argument is that it is for health boards and local authorities to identify the most appropriate ways in which to provide services to the women. For example, the problem in Glasgow is significantly different from the problem in Dundee or Aberdeen in terms of scale and social context, so different responses might be needed in different areas. It is for others who are more knowledgeable than I am to argue about whether there are sufficient differences between sizeable cities such as Glasgow and Edinburgh. We need to review and improve services, but our view is that local service delivery should continue to be dealt with by local agencies.

**Bruce Crawford:** I accept that legislation may be required at some stage, although I will not comment on what that legislation might be. However, it is important that we get a response from the centre—the Health Department—even though it may be up to people locally to deliver services that suit their area. We need a response to the comment that the general

“lack of access to mainstream health care services”

causes a problem, and to the comment at paragraph 9.5, that

“An effective dedicated health service has to be able to deal with this range of needs, with a single door approach,

located within the area which women frequent and open at the hours they are there.”

Those are powerful comments. At some stage, the Health Department should have an input, because the issue is within its responsibility, together with the local authorities. That would allow us to understand what services will be supplied to help people before we decide what legislative framework might be required.

**Hugh Henry:** I am not sure that that is the order in which we should consider the issue. If, after consultation and as a result of our reflections, we decided to introduce legislation, it would be critical to have policy input from the Health Department on the construction of the proposals. Bruce Crawford is absolutely right that legislation should not be seen in isolation from other measures. We hope to move on those measures together. Equally, if we decide that legislation is not necessary or that it is inappropriate, it would be incumbent on us to give a policy indication of the parameters and broad framework for how local problems should be dealt with.

The problem is not only a justice issue but a health matter. My colleagues in the Health Department are already considering the broader issues of addiction and health problems and their input into the work that follows on from our analysis of the consultation will be critical.

14:45

**Bruce Crawford:** I have another question on a different, but related, matter. In Sandra Hood’s foreword, the final sentence in the first paragraph states:

“Subsequent stages will examine other important issues including indoor prostitution, trafficking and male prostitution, each of which requires its own focused attention.”

The third paragraph states:

“Tolerance Zones should be viewed not in isolation, but in a broader context of strategies aimed at making the problem more manageable.”

I think that all members of the committee support that holistic approach.

Do you think that that further work on indoor prostitution, trafficking and male prostitution is necessary? If so, at what stage will the information become available? Will it be available before we consider the bill so that we can understand what impact the bill might have on other areas of prostitution? There might be spin-off effects and I would need to understand them a bit more before I could be sure about voting for the bill.

**Hugh Henry:** I suggest that the two are separate issues. Stage 2 of our work was always going to be on indoor prostitution and trafficking,

which is a related issue. Margo MacDonald's bill addresses the specific problem of street prostitution and Sandra Hood's report, which was the first stage of our consideration of the issue, was also to deal specifically with street prostitution. She stuck to her remit closely and very well. In the near future we will move on to stage 2 of that work. Moving to stage 2 should not be dependent on the conclusions that are reached about either Margo MacDonald's bill or the recommendations in Sandra Hood's report.

There is a significant range of issues to be considered at stage 2. Those include: massage parlours and saunas; trafficking, which may or may not be as much of a problem in Scotland as elsewhere in the United Kingdom; and the many links between such activities and other organisations and individuals that may or may not be associated with other activities that could or could not be construed as criminal. There is a complicated range of issues to be considered, but that does not prejudice us against acting on either Margo MacDonald's proposals or the expert group's recommendations.

**Bruce Crawford:** That might lead us to a situation in which we vote for Margo MacDonald's bill because not doing so would leave the situation as it is, which might increase prostitution in other areas, such as saunas and flats. There must be a correlation between what we decide in relation to the bill and the impact on other parts of the prostitution scene. I do not see how we can advance the legislation without understanding its impact on other areas of prostitution. I do not think that Margo MacDonald's bill would create a different problem somewhere else—in fact, it might help. However, some of the solutions that are suggested in the report might, if taken in isolation, increase the amount of prostitution that goes on behind closed doors in saunas and so on.

**Hugh Henry:** Bruce Crawford is right to say that the acceptance or rejection of Margo MacDonald's bill, which the committee is considering, would not have any impact on indoor prostitution, because she is seeking a solution to a specific problem on the streets. I do not see why implementing her proposed solution would lead to any increase in indoor prostitution or why, conversely, rejecting her solution would lead to more women moving indoors rather than staying on the streets.

It would be wrong for me to speculate on whether Sandra Hood's working group's proposals might lead to an increase in indoor prostitution. We do not have any evidence on that one way or the other, so all I could give is a personal opinion. Sandra Hood's working group attempts to address a problem on the streets in certain communities. I do not know whether the proposals would mean that people would move indoors, but we will start

to consider the whole nature of indoor prostitution and recommendations might flow from that. That is one of the reasons why I am not able to give a definitive answer about when we will move to legislate. We might want to include broader issues in a bill.

**Michael McMahon (Hamilton North and Bellshill) (Lab):** This follows on from what Paul Martin said earlier. On the Prostitution Tolerance Zones (Scotland) Bill that was considered in session 1, the former Local Government Committee concluded in its stage 1 report:

"implicit in the Bill is an acceptance that local authorities should manage services in a way that would support prostitution within a designated zone. The Committee considers that whilst this is not the intention, it is an outcome that has to be addressed".

The concern was that a mixed message was being sent out.

In the light of other legislation that we have passed and the Executive's attitude—which I have supported—on the non-acceptance of certain behaviour, do you think that we would exacerbate that sense that there is a mixed message if we accepted either the working group's report or tolerance zones? I hope that there is not such a benighted community in Scotland that would be both a dispersal zone and a prostitution tolerance zone. The police would say to young people, "If you're going to take Buckfast or drugs, don't put on a Burberry cap; what you should do is become a prostitute and we'll manage you." Is not there a danger that we are contradicting everything that we are saying about toleration of antisocial behaviour?

**Hugh Henry:** Michael McMahon's questions cause a certain degree of difficulty, because at the moment we have an open mind on what our conclusions should be—other than that we will take action to address kerb-crawling.

Without prejudicing our conclusions about Sandra Hood's working group report, the recommendations do not implicitly create or condone the type of areas that Michael McMahon describes. That goes back to the questions that Paul Martin asked earlier. If we were to implement the recommendations, a man or woman who was engaged in a type of activity that was causing concern and generating complaints in an area would be committing an offence. The only circumstances in which there would be no offence would be if there were no individual complaints or problems within the community. If that activity caused nobody any bother, it would not necessarily constitute an offence.

I suppose that the next logical step would be to ask in what kind of area absolutely no one would complain. That is a slightly different approach from

the one that Margo MacDonald takes: she proposes, as Tommy Sheridan suggested, that local authorities be given the power to permit certain types of activity to be tolerated in particular areas. It is a moot point whether the councils that cover areas where prostitution takes place would use such powers if the bill were to be passed. We can draw conclusions from reading about Glasgow City Council's attitude. In the past, the City of Edinburgh Council appeared to take the view that prostitution should be tolerated in some areas, but the council seems to have moved away from that position and I do not know whether it would seek to establish a tolerance zone. Aberdeen City Council takes a slightly different approach.

If the bill were passed, local authorities would have the power to decide whether to set up tolerance zones. The powers in the Antisocial Behaviour etc (Scotland) Act 2004 are slightly different. Under the 2004 act the police, if they have attempted to address the problems and nuisance that a defined activity is causing and think that there is no other way of dealing with the problems, can exercise the power to disperse groups and arrest anyone who ignores the direction to disperse. Offenders would be subject to a penalty of up to three months' imprisonment or a £2,500 fine. The situation in a tolerance zone would be slightly different.

The Executive will not do anything that signals that antisocial behaviour in any form is acceptable. However, it is fair to say that in dealing with prostitution, we must address not only nuisance and inconvenience, but profound problems such as drug addiction—which Bruce Crawford mentioned—mental illness and other health problems. An enforcing and punitive approach might be necessary sometimes, but we must also adopt a much broader approach that tries to deal with the other issues. Sensitivity is also required in dealing with the underlying problems of antisocial behaviour, but the more immediate issue must be dealt with.

**Michael McMahon:** I accept your point. The issue is very complex and we have considered it in great detail—we will continue to do so. However, I still think that you are sending out a mixed message. If the police are aware that a prostitute is involved with drugs, they can act against that person, even if no one has made a complaint. However, if a prostitute solicits on the street, which is also an offence, and no complaint is made, the police will manage the zone and tolerate the offence. Is it not inconsistent to take an attitude whereby we say, "We know that an offence is taking place but we will tolerate it"? Whatever the offence, we would be saying, "In some circumstances we will tolerate an offence but in others we will classify the offender as a ned and come after him."

**Hugh Henry:** That is not accurate or consistent with the Executive's approach. Currently the Executive has no view—

**Michael McMahon:** If the Executive were to take the line that I described, would not that be inconsistent?

**Hugh Henry:** We will wait and see what conclusion we reach at the end of the process. The logic of your argument suggests that if Sandra Hood's proposals were accepted, offences would be ignored in some situations and not ignored in others. The way in which the proposal is constructed is that the offence comes as a result of complaints, not as a result of the activity in and of itself; if the activity leads to complaints that would lead to action. A range of things would have to happen before something became an offence. That is the working group's recommendation. I was trying to explain what I thought was behind the expert group's report and Margo MacDonald's bill, but neither of them is endorsed by the Scottish Executive. We will come forward with a view in due course.

15:00

**Michael McMahon:** In your second response to the points that I made you touched on the question of who does the managing and who does the tolerating. If local authorities make a decision, how confident can we be that local communities will not have those management zones, management areas or tolerance zones imposed on them? The people who make the decision to impose such a zone may not be the people who are best placed to understand the complexities of living in a tolerance zone.

**Hugh Henry:** You are talking specifically about Margo MacDonald's bill.

**Michael McMahon:** Whether it is decided to manage prostitution under the working group's proposals or tolerate it under Margo MacDonald's bill, someone will have to make a decision at some point about what will be managed and what will be tolerated, but the decision is not likely to be made by the people who will be impacted on in the communities that will be managed or tolerated.

**Hugh Henry:** The situation is difficult, given that we currently do not have a view on either of the proposals. There is a difference in emphasis and approach between the two proposals. Sandra Hood's expert group thinks that the zones may not be necessary if the recommendations that are made by her group are implemented. Margo MacDonald's bill addresses specifically the need for a zone. That raises the other point that Michael McMahon mentions about who will accept responsibility and who will be accountable. In those circumstances, as with a range of other

matters that are delegated to local decision makers, the local authority would be held to account. The issue would be no different, in many respects, from other decisions that the local authority has to make, such as an unpopular planning decision or the decision to close a school. Anything that impacts adversely on a community will create a degree of anxiety and agitation. The same happens with health services.

We are not recommending the creation of a zone. You are asking me a theoretical question about who would be held accountable. The theory is that if the bill were to go through, it would be the local authority. It would be a matter for local authorities as to how they communicate with their local communities.

**Tommy Sheridan:** One of the poorest aspects of prostitution is the criminalisation of prostitutes, particularly via fine defaulting. Do you have figures for the past three years on the number of women who have been imprisoned for defaulting on fines relating to prostitution? Has the figure increased or decreased or is it roughly the same?

**Hugh Henry:** I do not have the figures to hand, but I can give members of the committee such information as we have.

**Tommy Sheridan:** I would appreciate that, because in "A Better Way: The report of the ministerial group on women's offending", which was published in 2002, addressing that issue was the key objective. I want to know whether the Executive's key objective has been achieved. I would appreciate it if you could furnish the committee with that statistic as soon as possible.

**The Convener:** That brings us to the end of our questions. I thank the minister very much for his evidence. I am sure that we will come back to the issue in due course in the chamber.

I welcome back to the committee Sandra Hood, the chair of the expert group on prostitution in Scotland, and Kirsten Davidson from the criminal justice division of the Scottish Executive Justice Department. I invite Sandra to make some introductory remarks on her report, after which we will move to questions.

**Sandra Hood (Expert Group on Prostitution in Scotland):** I am pleased to be here again today to provide an update on the work of the expert group on prostitution in Scotland. As the minister has explained, the expert group's stage 1 report, "Being Outside: Constructing a Response to Street Prostitution", has been published and is now out for consultation. I know that members have received copies of it. As the report makes clear, the group decided that street-based prostitution involving women should be its initial priority. As a result, the issue was the focus of the first part of our work and forms the subject of our first report.

To inform its work, the group gathered information and research findings from the UK, Europe and other parts of the world and examined the current position in the four largest Scottish cities, Aberdeen, Dundee, Edinburgh and Glasgow. We found that although each city had its own characteristics and particular problems, there are a number of key common factors. Street prostitution is overwhelmingly a survival behaviour for the women involved, and poverty, drug misuse and, to a lesser extent, alcohol misuse are intrinsically linked to most street prostitution in Scotland. Redevelopment is affecting the context of street prostitution and complicating the capacity to respond effectively to it. Moreover, if service responses are to work, they must be specific to the task of tackling street prostitution.

Despite the differences between the cities, a number of common challenges have emerged. We must safeguard the women who are involved in prostitution, reduce the harm that they experience, tackle concurrent behaviours such as drug misuse and help them towards exiting prostitution. We must also protect residential and commercial communities from the effects of soliciting and prostitution; prevent vulnerable children and young people from becoming involved in prostitution; and influence the attitudes that lead to the sexual and physical abuse of women through street prostitution. Because such challenges face in several directions simultaneously, any response to them must be multifaceted.

How do we meet such challenges? For a start, the group's conclusions are underpinned by proposals for reforming the criminal law. As we know, prostitution itself is not an offence in Scotland and, historically, Scotland has taken a pragmatic approach of partial criminalisation. Under Scots law, only section 46 of the Civic Government (Scotland) Act 1982 applies specifically to prostitution; it criminalises soliciting in a public place for the purposes of prostitution.

The group concluded that it was difficult to see consistency in the law and that, indeed, it could be criticised in a number of ways. For example, we were not clear whether the current law criminalised loitering, soliciting or importuning on any basis other than moral condemnation, with all its associated negative connotations. Is it the mere fact of carrying out the activity in public or in places that are visible to the public that creates the offence, even if no offensive behaviour or conduct takes place? The law appears to criminalise on a moral basis.

The expert group noted that section 46 is gender neutral in its language. However, it is applied predominantly to women, as street prostitutes are mainly female and are much more likely than men to become involved in loitering, soliciting or

importuning. Men involved in sexual transactions are not routinely criminalised in that way. By criminalising the behaviour, the offence encourages women to avoid apprehension. That can lead to their displacement to other areas, which heightens the risk. Displacement also makes it more difficult for services to engage with women to provide support and routes out of prostitution.

The structures and penalties on conviction encourage the use of fines solely, rather than encouraging the use of a platform to find a route out of prostitution. The criminalisation of soliciting does not of itself contribute to the protection of vulnerable people, nor does it address the concerns of communities affected by street prostitution. The group's view is that the current law is unsuitable in terms of fairness, equity and its capacity to contribute helpfully to the operational objectives of tackling street prostitution.

How, then, should the law be amended to improve the situation? The group concluded that offensive behaviour or conduct arising out of street prostitution should be criminalised, rather than the street prostitution itself. The group's view was that the offence of soliciting per se should be replaced with a legal focus on offensive behaviour or conduct arising from the prostitution-related transaction, whether that behaviour or conduct has been caused by the buyer or by the seller.

The report provides three options for improving the law. The first is to replace section 46 with the offence of breach of the peace for dealing with offensive conduct or behaviour in relation to prostitution-related transactions. The second is to replace section 46 with a new offence that is based on selling or purchasing sex in a way that causes alarm or offence to the wider public. The third is replacing section 46 with the wording of section 105 of the Scottish Law Commission's draft criminal code. That codifies the provisions of section 46 in such a way that the offence of soliciting is retained and the offence of purchasing is added but—importantly—only if those actions cause alarm or offence.

Police and public confidence is critical. For the reasons that are outlined in the report, the use of breach of the peace might get an ambivalent reception. By contrast, the enactment of a statutory offence might be felt to have a deterrent effect against offending and would have the advantage of clarity in law. The precise terms of any new legislation would be a matter for consultation and for parliamentary draftsmen. New legislation that penalised the offensive behaviour or conduct that is involved in sexual transactions, whether on the part of the seller or on the part of the purchaser, would give the police sufficient

powers to tackle drivers whose conduct while they are in pursuit of sexual transactions creates a nuisance and annoyance to others.

If the group's proposals for a new legal approach are accepted, the case for tolerance zones significantly changes. The purpose of tolerance zones is to have an area in which there is a discretionary suspension of the criminal law on soliciting. By focusing on offensive behaviour or conduct, we avoid the need for the statutory tolerance zone. If the act of soliciting is not itself against the law, it will not be necessary to create an area of immunity from prosecution for soliciting.

15:15

However, the changes in the law do not stand alone. In addition, the group concluded that there was a need for a national strategic framework to respond to street prostitution. The framework would be drawn up by the Executive and the task of implementing it would be co-ordinated by the local authorities where problems exist. The plan would include local strategies to respond to a wide range of issues involved in street prostitution and would consider the women as well as the wider community. Arising from the national framework would be a range of national and local initiatives to influence and educate public opinion on street prostitution.

The group does not advocate tolerance zones, but changes to the criminal law would not necessarily remove the case for taking a locality approach. The group considered that it may be in the best interests of local authorities to focus the conduct of street prostitution in specific areas. We can see a number of benefits in that: the public nuisance would be confined to a specific area; the women would be concentrated in one area, and so would feel safer; and it would make it easier to provide vital services to the women and to assist them in exiting prostitution. Crucially, however, there would be no element of selective non-application of the law. All aspects of the law would be entirely applicable to the area and no illegal behaviour would be tolerated.

The group's intention is that by adopting the various policy, strategy, service and legislative adjustment strands that are outlined in the report, consideration could move forward from the debate on the merits and demerits of tolerance zones and provide a broader strategic obligation to tackle prostitution in Scotland.

That concludes my statement. I apologise that it was a bit long, but I thought that I should summarise the report.

**The Convener:** Not at all. The report is a comprehensive and powerful piece of work that will help Parliament and the Executive

considerably in reaching a conclusion on the issues. Your introductory statement to explain the conclusions has been very helpful for the committee.

**Paul Martin:** I congratulate you on a powerful piece of work, Sandra. When you were gathering evidence on setting up tolerance zones, was it recognised that that would also mean setting up exclusion zones for people who were not involved in prostitution, particularly women?

**Sandra Hood:** It was not a case of suggesting that women should be excluded from a particular area. You will be aware that the group went out to all the areas in the main cities, and also further afield to Manchester and other cities with comparable problems. We saw evidence of women operating in isolation and the risks to which they were subjected. In fact, on the evening that we visited Bolton, there was a dreadful atmosphere following the murder of one of the prostitutes in the area. We focused very much on the safety of the women, but also on the impact on the community. We tried to examine the various strands and bring them together.

**Paul Martin:** Margo MacDonald's proposal is for tolerance zones for prostitutes, but women who are not involved in such activities could also be challenged by kerb-crawlers in such areas. In effect, we are saying to communities that for their own safety it would be best for them not to use those areas.

**Sandra Hood:** No, that is not exactly what we are saying. Margo MacDonald will speak for herself, but I am sure that she would be the first to admit that we have moved on substantially from the time when she introduced the bill and have taken a much wider view of prostitution. We considered tolerance zones, but it is not possible to consider them in isolation. The reality of the situation is that if we disperse the women outside city centres to areas where there are no cameras or where no structure is in place to provide any support services, we are bound to heighten the danger in which they are placed, and there is evidence of that in places in Scotland. We are dealing with a vulnerable group of women. Someone touched on the high incidence of drug addiction among those who are involved in street prostitution; it is well over 90 per cent, according to research that has been carried out throughout the country. The safety of the women is important.

**Paul Martin:** I appreciate that. I ask for your comments on the international position that is set out in your report, which says that the zone that was set up in similar circumstances in the Netherlands has not been a success. Is there any further evidence on that apart from what is in the report?

**Sandra Hood:** Yes. I did not visit the Netherlands, but some members of the group did. A lot of research was carried out on the Dutch approach—we had some academic researchers in the group—and the evidence in the report is factual. As I heard first-hand at a conference in the south of England, the situation is breaking down for the reasons that are given in the report, such as drug trafficking and criminal elements having moved in. The Dutch tolerance zone has become problematic. Although it was initially considered to be a way forward, it is now looked on as being a less successful way forward.

The Dutch approach considers street prostitution in isolation, but we have tried to broaden out from that in our approach. If we had a national framework, it would, I hope, include prevention measures, harm reduction measures for those who are involved in prostitution and a programme of routes out of prostitution. We will never eliminate prostitution, but it must be put into some policy context and managed better.

**Paul Martin:** I will raise some issues on the logistics of identifying tolerance zones. Are proposed zones predominantly industrial rather than residential areas? From a policing point of view, would we be putting the women at more risk by identifying industrial rather than residential areas as tolerance zones, given the layout of many industrial areas?

**Sandra Hood:** The group's view is that street prostitution is driven by economic demand, so some areas are almost self-selecting. Historically, city centres and dock areas are where the women have gathered. Street prostitution is driven by demand and where the business is, so we could set up tolerance zones outwith city centres, but prostitution would not necessarily gravitate to those zones. As we know, women go out of the area to conduct the transaction, but that is after they have made contact with clients. We would have difficulty if we decided to set up a tolerance zone far away from a city centre, because the economic reward will drive the women's actions.

**Paul Martin:** Do you accept that the aspirations of local people are for tolerance zones to be outside residential areas?

**Sandra Hood:** We debated that matter long and hard, and it is the group's view—it is also my own—that it would be difficult to establish a recognised, managed process in a residential area.

**Dr Jackson:** Do you also accept, given everything that you have said, that it will be difficult to identify a tolerance zone that will work?

**Sandra Hood:** It would be extremely difficult to identify a tolerance zone that would work. We should go beyond trying to identify zones and

consider a process that would work, so that, rather than focusing on particular places where transactions take place, we have a policy and strategy for dealing with prostitution in Scotland. Once we have worked out the strategy, we can build in support services, which is the way to manage prostitution better.

**Dr Jackson:** What would the main points of the process be if we are not specifically to consider tolerance zones?

**Sandra Hood:** They would be exactly as I set out in my statement earlier. The proposed change in the law would be helpful, because it would change the focus from presence on the street to complaint-led action when a person causes nuisance or offence. We need a national framework that lays out how to manage prostitution and the services that should be put in place to prevent young and vulnerable people from turning to prostitution and to assist people who are more deeply involved in prostitution with the many health issues, such as drug and mental health issues. Following on from that, we need an exit strategy and, linked to that, a court process. The inevitable result of prosecution under section 46 of the Civic Government (Scotland) Act 1982 is a fine and, as Councillor Sheridan mentioned, the non-payment of a fine results in people going to prison. That is not really managing a process; it is just dealing with an issue.

**Tommy Sheridan:** I should point out for the record that, when I was Councillor Sheridan, I was led away to the cells on breach of the peace charges.

**Sandra Hood:** A thousand apologies, Mr Sheridan.

**Tommy Sheridan:** No apologies are required. The breach of the peace charges were so broad as to be totally indefinable, which is why I hope that you avoid a breach of the peace approach in your firm recommendations—the system is a bit of a dog's breakfast.

Like Paul Martin, I applaud the courage and robustness of the report, which deals with a complex and difficult part of society. You have tried to grapple with reality, rather than with the way that people would like life to be, which is important. Will you confirm for the committee and put it on the record that the *raison d'être* of the report is to work towards the eradication of prostitution and that none of us here takes the *laissez-faire* attitude that as there will always be prostitution, we should just accept it?

**Sandra Hood:** Absolutely. A national framework would for the first time in Scotland provide a framework within which we could operate. It would be designed to support exit from prostitution and, to go further back, to prevent young vulnerable

people from entering prostitution. That is why Councillor Crawford's comments on the health issues were so important.

**Tommy Sheridan:** I am sure that Bruce Crawford will have the same difficulty as I had with the use of the title "Councillor".

**Sandra Hood:** Sorry. I am more accustomed to being before councillors. I beg your pardon.

**Tommy Sheridan:** You are going back to your Strathclyde police board days.

For me, paragraph 8 on page 3 in the executive summary sums up the issue with which we are trying to deal. Paragraph 7 states:

"A change is proposed ... to replace criminalisation of soliciting ... with a legal focus on offensive behaviour or conduct arising from a prostitution related sexual transaction—whether caused by purchaser or seller."

It is vital that we have a gender-equal approach rather than the unequal approach that we have at present. However, paragraph 8 states:

"This approach would remove a need for specific legislative action regarding 'kerb crawling'—which could be policed on a basis of public offence under the new legal approach proposed. It would also amend the case for 'management zones' as a possible useful local strategy for focusing service delivery and managing nuisance arising from street prostitution."

That is the crux of the matter. Although I support your proposal of a change to the legal approach, I find it hard to conceive that that is workable without managed zones. If there is no managed zone within which the transaction is tolerated, it could take place anywhere in Sauchiehall Street, anywhere in Buchanan Street or anywhere in any part of any city centre. As long as no alarm or offence is caused, no crime would be committed. There is a worry about that blanket approach to what is an undesirable behavioural pattern—that is, women having to sell their bodies to exist. We want to move away from that. I suggest that in many respects managed zones go hand in glove with the change to the law that the expert group recommends. Do you accept that?

15:30

**Sandra Hood:** It is easier to manage the process if there are specific locations rather than the dispersal that occurs in many areas. In Scotland, we do not have a forum of all the interested parties. It appears that until the establishment of the expert group people in most areas grappled with the problem as they saw it and managed it as best they could. The group thought that if there was a framework for people to operate within and a clearly defined objective, people would have to commit to policy on what services they would provide, how they would provide them and what resources would be



committed. That would help with the exit support for vulnerable women who are involved in prostitution.

**Tommy Sheridan:** Finally, did the expert group have time to study Liverpool City Council's proposal in detail? I know that its proposal is very recent but it is interesting because of the consultation that took place and the high level of support for a managed zone. In relation to Paul Martin's question, I was also interested to read that the majority of respondents believed that such a zone should be in the city centre rather than in an industrial estate. What is your comment on the Liverpool situation?

**Sandra Hood:** It is interesting. Initially, there was huge support for the Liverpool scenario but, when it was decided that it should be taken forward, people from as far as 4 miles away began to complain about the establishment of a zone. When our report went to print, the situation had changed from the council being supportive and wanting to establish a managed zone to the community being up in arms about the location of the zone. It seems that the proposal progressed to a certain stage and then came to a stuttering halt. That is where it was when our report was published.

It is a complex matter. One might ask whether people who live 4 miles away have a legitimate complaint, but their argument was that people would drive to, from and through their area to conduct their business and they objected on that ground. They formed a group that is similar to the one that we had in Edinburgh.

**Margo MacDonald (Lothians) (Ind):** On Tommy Sheridan's penultimate question, when we went to Aberdeen, we were told about the city's sex industry forum. That shows how the process that Sandra Hood talked about is working in Aberdeen.

**Sandra Hood:** It also works in some other places in England. All the main parties sit on a forum to try to manage the process. Represented on that forum are the council, the health authority, the police and the social services. More important, members of the community are on the forum, because they have a stake in the process as well. People have gathered together in an effort to manage the process that has been established in the Aberdeen area.

If there were such forums in the major cities under a national framework, that would help to make progress in reducing the number of women who are involved in street prostitution.

**Bruce Crawford:** As others have said, the report is a powerful piece of work and has done Scotland a favour by bringing to light the state of street prostitution. Margo MacDonald has also

done us a favour by introducing her bill, which allows the discussion to happen in such an open and transparent way.

I will home in on two areas. I return to something that Tommy Sheridan asked about—the proposals for the changes to the criminal law. On page 74 of the report, you say:

"The Group concluded that the law should be changed to repeal the criminalisation of soliciting *per se*, and replace this with an offence targeting offensive behaviour or conduct arising from a prostitution related sexual transaction".

I assume that "targeting offensive behaviour" would be a complaint-generated process. If so, will you give us an example of the type of complaint that might be appropriate, so that I might begin to understand more deeply how the process would work? Also, what would constitute

"conduct arising from a prostitution related sexual transaction"?

**Sandra Hood:** Such an offence might occur if a person who is soliciting causes a disturbance, for example by aggressively soliciting passers-by who have not come to the area for that purpose, or if someone looking to purchase sex stops members of the public in a way that causes alarm and offence. If women are approached on the street and asked how much a service costs, they might legitimately be alarmed or offended. Indeed, there was evidence of that happening in the Edinburgh area.

Those are examples of offensive or annoying behaviour. The people who are affected by it are those who might complain—it could be the individual who is approached or a resident who is aware of all that happening on their very doorstep. The group proposes a change of focus in relation to soliciting away from targeting a person just by virtue of their being on the street.

**Bruce Crawford:** That is useful and helps me to understand. What you describe could lead to a situation in which whether someone finds certain behaviour to be disturbing or aggressive or to cause alarm or offence would depend on the sensitivities of the complainer and in which the outcome would be subject to how the receiver of the behaviour takes it. That would be difficult to manage in law—or at least it could be.

**Sandra Hood:** The situation would not be dissimilar to current breach of the peace law, under which every case turns on its merits and one considers the facts of the individual case. The view of some of the legal experts in the group was that it would be appropriate for each case to turn on its merits—if there were annoyance, for example. Some cases would be obvious and others would be less so.

**Bruce Crawford:** I find that useful. Will you also give some examples of

“conduct arising from a prostitution related sexual transaction”?

Would the examples that you gave of disturbance, aggression, alarm and offence relate to that?

**Sandra Hood:** Yes. The transaction itself could cause offence depending on where the action took place. The debris—the condoms and so on—and litter could also cause annoyance and offence to people.

**Bruce Crawford:** That is useful.

I will take a slightly different tack. Page 27 of the report contains the quotation:

“I was the first one in my family to take drugs, and now I’ve come down here. It’s the drugs that done all the lassies down here.”

The report shows a strong correlation between drug taking and prostitution. That raises the question, what came first—the chicken or the egg? What came first—prostitution or drug taking? Does everything link back to what I assume—although I might be wrong—has been the root cause of much prostitution since time immemorial, which is poverty?

**Sandra Hood:** Absolutely. Poverty is intrinsically linked to street prostitution, as are alcohol abuse and drug misuse. Some women say that they are on the street to obtain money for drugs. Others say that they need to take drugs before they can go on the street. Diverse views are expressed and they depend on who we speak to. However, poverty and family circumstances are certainly underlying factors in street prostitution.

**Bruce Crawford:** You talked about strategy, the policy context, building support services and better management. In a holistic sense, the Executive’s policies to reduce poverty should have an impact on the level of prostitution. Perhaps we should consider the strategic perspective at that level.

Page 44 of your report refers to the

“lack of access to mainstream health care services”,

which I have mentioned, and page 46 highlights

“a single door approach, located within the area which women frequent and open at the hours they are there.”

You make recommendations about the services that are available for women. Will you give us more detail about what you envisage? Such services are vital for the long term.

**Sandra Hood:** On the lack of services, we found as we went from Aberdeen to Edinburgh to Dundee and to Glasgow a wide variance in support services for women. In some areas, the services were very good, but in others they were

sparse or hardly existed. That caused a bit of concern. In some of our cities, fairly significant numbers are involved in street prostitution, so services for health care and the provision of condoms and so on should be available to women. That is important to protect not only individuals, but public health.

The single-door approach is important because women who are involved in street prostitution have chaotic lifestyles. They do not arrange a hospital appointment at 10.30 next week or a doctor’s appointment at 11 the next morning. They are out on the street half the night and they are invariably under the influence of drugs. Their own health care appears to be low on the agenda. When we visited some support services that were available, women asked the doctor to examine abscessed veins, for example. That is the reality for women who are involved in street prostitution.

For public health as well as individuals’ well-being, health service support that is located in the appropriate place must be available to those women. If a support service is located outside the area in which the women work, it will be difficult to encourage them to walk from the area where they work to access services, because of their lifestyle.

15:45

**Michael McMahon:** I thank Sandra Hood for her work on the report, which helped my understanding of many issues of which I was not aware before. Chapter 6, which deals with complex issues such as societal attitudes to prostitution, is especially strong.

I am concerned about the practical implication of some of the strategies that have been tried elsewhere or which could be tried under your proposals. Will you clarify something that you said in your introductory remarks? You said that if someone was operating in a managed area, that would still not negate the criminal activities or the action taken against people who are engaged in criminal activities. In practical terms, does not that undermine the purpose of having a managed area or tolerance zone? How would people be attracted to operate in that area if they were going to be subjected to criminal responses by the police?

**Sandra Hood:** We are not advocating that the law be suspended within an area—that is not what the group is recommending at all. If crime is committed in an area, it must be dealt with. If there is a complaint, it must be addressed.

The whole issue is about managing the problem. I said at the beginning that the problem is economic and is market driven. For example, in Aberdeen, we saw that, when the rigs change over, there are lots of women on every street corner to meet the men when they come onshore,

because they know that there is money and a market, and the economy is a driving factor. Historically, city centres attract prostitution, because there is anonymity in the city centre and a market for prostitution. If someone has a desperate need for their next fix, they will go to where they can get the funds to provide it. We have taken a pragmatic approach in recognising that prostitution is market driven.

**Michael McMahon:** I understood that as well; that is pretty basic. The committee has discussed before research that shows that some countries, having identified that there is a market, rather than going for a balanced approach and removing the gender imbalance against the women involved in prostitution, have gone to the other extreme and criminalised the men who create the market. Obviously, you will have looked into that. Sweden is one country that has done that and the Swedish believe that it has been fairly successful. What are your opinions on the Swedish model? Why not adapt that as a way of addressing the gender imbalance?

**Sandra Hood:** Many good points come out of what has happened in Sweden. Our group was fortunate to have Jane Scoular, who conducted some research there over a period of six months, so we were able to tap into that at first hand. The reality of the situation is that one cannot transport a social policy from one country to another. The Swedish situation has arisen after a long political and social debate over many years. There was a feminist movement in Sweden for the change taking place, but it does not bring a balance in law. It simply moves from penalising the person who sells the sex to penalising the person who buys the sex, so there is no equality there.

We should also consider the Swedish context. The country is about half the size of Scotland and has some different issues. About half the number of women operate on the streets in Sweden and they are operating in a different way. Depending on the research that one considers, one gets a different view of how successful the change has been. Informed by Jane Scoular's good work, it was the group's view that what is happening in Sweden might be good for Sweden, but could not easily be transported to Scotland. In any event, I am not sure that there would be a will simply to move the balance of law from penalising one group to penalising another.

Of course, the good point about the Swedish situation is that women are at the centre of all the activities relating to prostitution, but they now have to conduct their business in a different way. A lot of it is being done over the internet and on the telephone. If the male is penalised, there is a consequence for the women too, as there is an impact on their income and on other factors.

**Michael McMahon:** If we accept that the women who are engaged in prostitution are predominantly drug users or have become involved in alcohol abuse and we want to tackle those problems, is there not an argument for removing the criminalisation of the female's activity in prostitution? The men who buy the service would become the criminals and the drug or alcohol problems that we have discussed would no longer be inherent among the criminals. If the female side of the market were decriminalised, the ones who have the social problems could be helped.

**Sandra Hood:** That would be one way of tackling it, but the law, on its own, will not address the issue; it must be underpinned by social policy and strategy. It is difficult to consider one aspect of the issue in isolation and decide that a different model could operate effectively here. Having debated the Swedish situation and having acknowledged the change in policy and some of the good points about women being at the centre of the process, the group's view was that that model could not work here. We considered the matter in the social context. Different evaluations of the practice are coming out. The timespan has been relatively short.

**Bruce Crawford:** In Sweden, has any work been done on the impact of criminalising the purchaser on prostitutes' habits? Has there been any evidence of prostitutes diverting into other areas of crime to feed their habit, or is there not such a close correlation between drugs and prostitution in Sweden? Have prostitutes there drifted into petty crime and theft to help to feed their habit, given that they might be starved of a bit of their market because the men are no longer buying?

**Sandra Hood:** I do not have first-hand evidence of that. The anecdotal evidence is that the women are finding different ways of conducting their business, be that by internet, telephone or whatever.

**Bruce Crawford:** So they are doing that in a different way.

**Sandra Hood:** Yes.

**Dr Jackson:** I congratulate you on the piece of work that you have produced. It forms a good basis for continuing discussion. Tommy Sheridan spoke about the aim of eradicating prostitution. The first part of the inquiry has been into street prostitution, but I think that you have been talking about prostitution in all its forms. Is that correct?

**Sandra Hood:** Thus far, the group has only considered street prostitution.

**Dr Jackson:** So when you say that you are trying to eradicate prostitution, you actually mean

street prostitution at this stage, and you have not come to a deeper view on the matter.

**Sandra Hood:** We recognised at the start that the various areas are interwoven, but it has taken us 18 months to reach this stage of our work. If we had taken a much wider view and considered every aspect of trafficking, exploitation and so on, we would not have been able to produce a report by now. The decision was taken, based on a number of factors, to concentrate on street prostitution at this stage of our work.

**Dr Jackson:** So you are not necessarily going at prostitution outwith street prostitution at the moment.

**Sandra Hood:** Do you mean that we are not against it?

**Dr Jackson:** Yes: your aim is not to eradicate prostitution in all its forms at the moment. At the moment, you have just been considering street prostitution.

**Sandra Hood:** That is right.

**Dr Jackson:** Therefore, you have not addressed other forms of prostitution.

**Sandra Hood:** No, we have not.

You emphasise the idea of eradication, but we have taken a pragmatic approach. We are hoping that we will manage to help people to exit from prostitution. Personally, I am not convinced that we will ever eradicate prostitution. However, we must ensure that there are measures to help with prevention, harm reduction and exiting from prostitution, in the hope that we can reduce the number of issues that exist around prostitution on the streets.

**Dr Jackson:** I was just trying to clarify the answer that you gave to Tommy Sheridan and to allow you to say that.

I want to follow up the other issue that I asked you about earlier. You seem to be suggesting that managed zones might not offer the way forward and that it is better to consider the process. You went on to identify how the process might work.

One of the thrusts of Margo MacDonald's original bill, with which I had a lot of sympathy, was that she saw the zones as a way of helping and getting support to women. Not every area in Scotland might want to go down that route, but if we had the flexibility to establish tolerance zones in some areas, it would be a good way of focusing support. What are your feelings about that?

**Sandra Hood:** That argument was helpful in opening up the debate to allow us to consider the issues. I think that we have moved on from considering having a zone to considering how we support women who are involved in prostitution.

There are variances throughout the country; it is about finding local solutions to local problems, which are different in different areas. Regeneration is more prevalent today than it was when Margo MacDonald's bill was first introduced. We are seeing evidence of displacement, which is causing major problems. Against that background, it was felt that there needs to be a process or service to help the unfortunate, vulnerable people who are involved in prostitution to exit it or to support them through the tragic situations in which they find themselves.

**Dr Jackson:** It could be argued that your conclusion that the way forward is to take public concern into account might make it difficult to support women in certain areas, because there might be a lot of public concern about establishing a tolerance zone, if an area decided to go for one. Given the redevelopment to which you referred, there might not be suitable areas for women to be managed and supported. How difficult do you think it will be to manage support for women while using the public complaints procedure as the basis for the way forward?

**Sandra Hood:** The issue is not just public concern. That is simply one of a number of strands that need to come together. We are equally concerned about the vulnerable women who use operating on the streets as a survival mechanism. We are concerned about how that activity is managed and the fact that in some areas it is not well managed. It needs to be managed within some kind of policy or strategy. Setting up the group has taken the issue forward, because, although some areas are more advanced than others, some are saying, "We don't have a policy, but we have a statement and here's what we have to do." The group has been helpful in making progress on the issue, even outwith this forum. Our concern is for the women as well as the public.

We need somehow to pull all that together and to stop operating in silos. We need to continue to have the debate about how prostitution can best be managed to protect the women and the community.

**Dr Jackson:** It could be argued that if women are able to operate only where there is not public concern, an out-of-sight, out-of-mind attitude might develop.

**Sandra Hood:** That would not be a way forward.

**Dr Jackson:** I know, but people might say that. How would you counter that argument?

**Sandra Hood:** That is one view. The report pulls together the group's recommendations and proposals so that the debate can take place here and elsewhere. I hope that the report will simply inform the debate and that out of that will grow

something that is more manageable than the current situation. It is healthy that there are different views.

16:00

**The Convener:** One of the expert group's objectives was to consider how to prevent children and vulnerable women from being drawn into prostitution. Point 6 of paragraph 12.5 of the group's report says:

"The law remains the key means to ensure continued protection from exploitation through prostitution to vulnerable groups, including young people and vulnerable adult women."

Is the existing law sufficient to ensure such protection? Will the Protection of Children and Prevention of Sexual Offences (Scotland) Bill add to the protections if it is passed? Should other measures be incorporated in legislation?

**Sandra Hood:** As I said, in the first instance we considered women who are involved in street prostitution, but we also touched on the situation for children. It is wholly appropriate that the law should deal with such matters and any additional measure that protects children and vulnerable people would be most welcome. We did not focus specifically on child abuse, which we regarded as being quite separate from street prostitution. However, measures should be in place that prevent young people from going into street prostitution.

**Tommy Sheridan:** I am concerned that the line of questioning that Michael McMahon pursued should not go unchecked. You said that as many as 90 per cent of the people who are involved in street prostitution are involved in drug abuse and probably addiction. Can you confirm that the drugs that you are talking about are predominantly illegal? Michael McMahon suggests that it is inconsistent of us to try to eradicate prostitution by somehow relaxing the laws that relate to the activity, and that prohibition would be a better approach. I would like to hear your response to that, but my retort would be that the prohibition of drugs does not prevent us from having a huge drug abuse problem. Simply to prohibit prostitution would not be a solution but would drive the activity further underground and lead to more illegality.

**Sandra Hood:** All the research that has been carried out and our first-hand conversations with women indicate that there is a huge amount of drug misuse among women. Some researchers suggest that the proportion of prostitutes who misuse drugs is even higher than 90 per cent—Professor Neil McKeganey carried out work that indicated that the figure might be around 97 per cent. That is the reality of what we see and what the research shows.

**Tommy Sheridan:** We are not talking about alcohol, which is mentioned in your report as an incidental factor; we are talking about illegal drug addiction.

**Sandra Hood:** There is evidence that women travel from the midlands to Aberdeen and we think that they might do so because of the drug link—it is a big problem.

**Bruce Crawford:** It is disturbing that women are coming to Aberdeen from the midlands, but I cannot understand why Dundee does not appear to have similar levels of street prostitution, given the high incidence of illegal drug use in the city. Perhaps there is more flat-based prostitution in Dundee.

**Sandra Hood:** There is a mixture of factors, such as the situation that you describe and the fact that the women travel. We debated long and hard in the group the fact that about 15 to 20 women operate on the streets in Dundee. We asked how that could be given that there is such a high incidence of drug misuse there. Interestingly, we visited the area at a later stage in our work, after we had been provided with that information, and could see no evidence of prostitution. I was there personally. Some residents had complained that women were beginning to appear on the streets, but proactive police action seemed to snuff that out. The women might not enjoy the same anonymity that they enjoy in other places. They seem to operate from premises and to travel to some nearby places, but they do not operate on the streets of Dundee. We could find no good reason for that, other than that they were doing the business in a different style—by telephone and so on.

**Bruce Crawford:** That is what I thought. That is useful.

**The Convener:** That brings us to the end of questions. I thank Sandra Hood very much for coming along to give evidence today. You can take it from all committee members that we see the piece of work that you have carried out as a useful tool to enable us to come to conclusions on how Parliament should respond to the issues that have been raised. I thank you and all the members of your group for the work that you have undertaken and will continue to undertake.

**Sandra Hood:** I am very grateful. Thank you.

**The Convener:** We move on to our last witness this afternoon. Margo MacDonald MSP is the member who is promoting the Prostitution Tolerance Zones (Scotland) Bill. Welcome back to the committee, Margo. I know that you have committed much time to the issue in recent years to try to bring forward solutions to the problems that exist in Scotland. Aside from introducing the bill, I know that you have also been a member of

the expert group, the chair of which we have just heard from. I realise that you have put in a considerable amount of work on the issue.

I ask you to make introductory remarks about how you envisage the bill progressing, particularly in relation to the issues raised in the expert group's report. After your evidence today the committee will try to draw up a report on our stage 1 consideration of the bill.

**Margo MacDonald:** I will keep my fingers crossed for you, because I think that you have been handed a lulu.

I thank the committee for inviting me to attend, although I had hoped that I could give evidence after the working group's report had been assessed by the Executive. That is because I believe that the group's recommendations in total are better than my bill, in that the group suggests a national overview of and strategic approach to street prostitution.

Paragraph 11.29 of the report states:

"it is proposed that the responsibility for impacting beneficially on prostitution and those communities affected by it should become the responsibility of social policy as much as criminal law. Policy should lead the development of appropriate local strategies, with clearly defined multi-agency responsibilities and a requirement on services to tackle this phenomenon together, backed by the criminal law to prevent abuse of the vulnerable and to restrict public nuisance or offence."

I wish that I had said that, because it encapsulates what I seek to do.

Although this happened a long time ago, members might recall that, at the urging of the City of Edinburgh Council and with the backing of Aberdeen City Council and—to some extent—Dundee City Council, I introduced my bill to address a particular problem. As Sandra Hood pointed out, areas where, for a long time, the local community had not necessarily approved of but had tolerated soliciting were being redeveloped and the redevelopment of city centres and so on meant that prostitutes moved to areas that were perhaps not suitable.

The City of Edinburgh Council in particular felt that, by managing prostitution inside what came to be known as a tolerance zone, it had a good grip on what could have been a real problem or nuisance in any locality. In fact, it was less a tolerance zone than a non-harassment zone, in which soliciting would not necessarily attract a criminal prosecution as long as no other laws were broken.

That approach operated pretty successfully for many years. Indeed, the stats, which I am sure members know as well as I do, show that attacks on or instances of gratuitous violence towards women were minimised in Edinburgh. No one is

trying to make out that such a career is worth pursuing or should be promoted—it is a very dangerous way for people to make a living—but, in the tolerance zone's last fully operational year, fewer than 12 attacks were reported to the police. Such attacks now take place at the rate of one a week—and they are only the ones that we hear about. Because the women are dispersed, the police and other interested agencies can collect nothing like the amount of intelligence that they managed to collect before. After all, the women were easily located in the zone.

That is the historical background. My bill sought to address the management of existing areas of street prostitution. However, we must not get the matter out of proportion. Only four cities in Scotland have evidence of street prostitution. In fact, when I checked with police in Dundee two days ago, I found that about half a dozen women in the city work as street prostitutes. I can also answer some of the questions that have been raised about that city.

I do not want to put ideas into anyone's head, but one or two towns in Scotland are now arguably big enough to sustain a market for street prostitution. So far, no evidence of that has emerged in the places that I am thinking of, although a certain publication gives information about the forms of prostitution that are practised, the addresses at which they are practised and the names of women who work as prostitutes in towns and villages throughout Scotland. I have read the publication myself and I have to say, convener, that you would be absolutely amazed by it.

The expert group and I agree that, if the authorities—the council, the police, the local health services and so on—in any of the four cities with street prostitution or, indeed, in any town or city in which street prostitution becomes a feature and has to be dealt with consider it desirable, the services required could be provided through a zonal approach. Sandra Hood's evidence made that clear. If the report's recommendation on the provision of support, health and other services is accepted and if local people believe that to be the best way forward, services will have to be delivered where the women are. That is undeniable.

I will keep my bill in play as a belt-and-braces measure until I see the Executive's response to the consultation and the recommendations. However, I freely concede that I would be content for the report's recommendations to be put into effect.

After all this time, it would be most regrettable if the awareness of and knowledge about street prostitution were to fade into the background without an effort being made to meet the legitimate complaints of residents who feel offended by the

way in which street prostitution impacts on their lives. That is a more likely outcome than is a situation in which prostitutes and prostitution are out of sight and out of mind. For the folk who live around Leith links, prostitution most certainly will not be out of sight or out of mind unless we tackle what the minister agreed should be tackled. The law should be reconsidered sooner rather than later.

16:15

Another urgent issue is that of the women who are involved in prostitution being afforded greater protection against violence and organised crime and supported in efforts that they might be making to exit prostitution. For example, the number and standard of services that SCOT-PEP—the Scottish prostitutes education project—is operating are way below the number and standard that it can provide, because the women are dispersed. Women no longer drop in because there is no drop-in centre beside where they normally work. SCOT-PEP has to use outreach workers and their work is not as effective and is more difficult because the women move around all the time to avoid prosecution. SCOT-PEP could hardly go back to Scottish Enterprise Edinburgh and Lothian to ask for a renewal of its contract for the new opportunities scheme, through which women who were supported in their efforts to exit prostitution undertook pre-employment training. Therefore, the loss has been not only in relation to women's security, but in relation to the sort of services that most members would see as beneficial and as contributing, in the broader picture, to the diminution of prostitution.

Sandra Hood, Tommy Sheridan and Bruce Crawford put the matter absolutely straight: most prostitution arises out of poverty. If we can help women who have no other means of looking after their family and putting bread on the table by offering pre-employment training near where they work as prostitutes, we would do everybody a favour. Unless there is an operational policy and approach to the problem locally, that cannot happen.

I am advised that it would be possible to amend my bill to incorporate the expert group's recommendations and I would be willing to do that. The change would be a wee bit clumsy, but I have taken good legal opinion on the matter and I am assured that, if it had to be done, it could be done. However, if the Executive were to produce a satisfactory bill, I would be just as happy to support it. I will not stand on my bill come what may—I will go for the most pragmatic and quickest solution. As has been mentioned, the interface of street prostitution with indoors work, which involves additional criminality, is a problem. Of

course, if we get to grips with the management of street prostitution, we will not cure everything, but we will start to understand and get into the problem better than we have done.

A third option might be for my bill to be adopted as an interregnum measure, until other parts of the investigation into prostitution are completed. One member—I am not sure who—said that they wanted the whole issue to be deconstructed, analysed and built up again. It would be possible to make my bill an interregnum measure by amending it to introduce a section with the effect that the legislation would have to be reviewed every year. The committee could do that if it felt that it was not going to reach a more satisfactory long-term conclusion.

I would be willing to take such steps because I know what is happening in Edinburgh and Glasgow and I want it to change. The gentrification of the area that was traditionally used in Glasgow is continuing apace; the women are dispersing and agencies are losing touch with them. I hear that Base 75 is thinking about moving its location because it is no longer based where the women are. The women have left the east end and there is less physical protection for them. Members should remember that in Glasgow the incidence of drug taking among women who work as prostitutes is 99.9 per cent. The situation is changing and there is an urgent need to get to grips with it in Edinburgh and Glasgow, although I still propose that both cities should find their own ways of dealing with the situation, as Dundee has done.

Bruce Crawford asked about the situation in Dundee. About half a dozen women work there—at most, about a dozen women have been identified as working in street prostitution off and on. In Dundee, a road realignment made the area in which the woman traditionally worked more obvious. The women drifted away from the area towards an area in which there was housing, but the police pushed them back. The police tell me that there is no problem and that things are back to how they used to be. I asked the police whether they would object to a national strategy for managing street prostitution and they said, "We've nae bother with national guidelines, provided that we can work out how to apply them in Dundee, because we would need to do things differently from Aberdeen." That is the essence of the matter.

I think that Michael McMahon mentioned the Netherlands. The tolerance zone in Amsterdam was discontinued. However, the criminality in the area was less about the street prostitution—and the windows—that was tolerated there than about the fact that people were trafficking and there were all sorts of illegal activity throughout the area,

which is why the zone was closed down. It was a bad area where all sorts of things were happening.

However, in Utrecht the solution is still working, which is interesting because that appears to buck the trend of prostitutes always wanting to work in the town centre. Traditionally, prostitutes worked in the centre of Utrecht, near the railway station. The same sort of situation that we hear about in Scotland happened in Utrecht: the town was looking up and becoming a bit less run down and the good citizens said, "We don't like these lasses standing about here." The solution was to identify an industrial area on the edge of town. People comply with the measure and there is no obvious prostitution in the town centre, although I have no doubt that prostitutes in Utrecht do what prostitutes everywhere else in the world do and use their mobile phones and the wonders of the internet.

Sandra Hood talked about the Swedish experience. The general trend has been for street prostitution to begin to reassert itself in the first year after the total criminalisation of buyers and sellers in prostitution transactions. In Sweden, in the first year there appeared to be a huge reduction in prostitution, but after that the activity began to be evident on the streets again. It is interesting that prostitution shows up slightly differently in the three cities in Sweden in which street prostitution occurs—as is the case in Scotland. That reinforces the point that if there is a national strategy, as the expert group's report recommends, local people should be allowed to decide how to cope with the pattern of prostitution in their area.

Sylvia Jackson suggested that the zonal approach to the delivery of support services and all the rest of it could lead to an out-of-sight, out-of-mind attitude. Paragraph 12.5 in the expert group's report might answer that concern. I remind members that in Aberdeen, prostitution is out of sight to a certain extent, because the zone is right down in the docks area. By and large, the area closes at 6 or 7 o'clock at night, after which few people enter what is more or less a dead area. However, prostitution is certainly not out of mind in the city. As members have heard, Aberdeen has pioneered—in a way, even more than Edinburgh did—an approach of bringing all the interests together to produce a cohesive strategy. A link has been made with drugs. Aberdeen Drugs Action runs a drop-in centre and has undertaken much work on the correlation between drugs and prostitution.

I hope that I have not bored the committee to tears. If you want to ask questions, on you go.

**The Convener:** You have certainly not bored us to tears—nobody could ever accuse you of doing that. It was useful that you were open about your

views on the expert group's report and the fact that your approach depends on the Executive's response to the report. It would be preferable to have the earliest response from the Executive and I certainly hope to have that before the stage 1 debate on your bill, because that would enable committee members and other members to take an overall view of your bill and the expert group's proposals.

**Margo MacDonald:** If you and the committee see the logic in that, will you try to obtain a quick response from the Executive before you are asked to make a recommendation to Parliament? I see no logic in proceeding in any other way. I do not know how the committee can report to Parliament when it has not seen all the collated evidence. If you put a bit of weight behind that, so will I.

**The Convener:** I take your point. It would help all parliamentarians if the committee's report benefited from sight of the Executive's response to the expert group's report.

**Dr Jackson:** I will follow up Margo MacDonald's comments about an out-of-sight, out-of-mind attitude, because a wee bit more was involved than she said. I was a little worried by what Sandra Hood said about moving away from anything like a tolerance zone to the process that the group advocates. That might put the matter out of sight, out of mind, because of issues such as redevelopment and the vulnerable funding for SCOT-PEP and Base 75, which Margo mentioned. The process that Sandra Hood outlines will be based much more on complaints by the public. I would have thought it likely that that would lead to much more prostitution going underground and being dispersed. How will Sandra Hood's process deliver support for women?

**Margo MacDonald:** The process that Sandra Hood described draws heavily on what Aberdeen is doing, on what Edinburgh did and on what Glasgow did and does. We did not reinvent the wheel. We examined good practice.

Glasgow took a different approach because it said that the support services and health services for the women were shot right through all health provision in the city, so that, regardless of where a woman who worked as a prostitute lived or worked, she could access in her local area dental care or health care if she had abscesses caused by drugs or whatever. If I felt that all local areas were the same, I would say, "Bingo—great," but I am not sure. Edinburgh and the Lothians owned up to not having tackled the situation in that way. That area had put services through the funnel of SCOT-PEP, which is a support organisation. That is what Aberdeen is doing, too. Does that help?

**Dr Jackson:** Yes. I think that I was a little confused about whether the process that Sandra



Hood described would encompass the flexibility of the Aberdeen model.

**Bruce Crawford:** I thank Margo MacDonald for being honest about her approach to the report and how her bill sits in relation to it. The bill and much of the report deal with the outputs of prostitution; by that, I mean that they focus on harm reduction or the services that are provided—they deal with measures that can be taken when prostitution already exists.

Given that, in Scotland, we do not have all the levers of power that we would need to enable us to deal with poverty, what other measures could we put in place to enable us to begin to deal with prevention? Given the Scottish Parliament's powers, what can we do to focus on prevention and inputs rather than outputs? I realise that that is a big question, but once we have been through the current learning and discussion phase, we will need to concentrate on that issue.

16:30

**Margo MacDonald:** As you say, we should forget the big issue at the moment, because it is to do with poverty—and voting no to the euro.

**The Convener:** And yes to the re-election of the Labour Government.

**Margo MacDonald:** Let us talk about that—I am sure that negotiations are possible.

We will leave aside the fact that poverty is the main driver of prostitution and concentrate on the area that my bill concerns—street prostitution—which is what the committee has to consider. At the same time, no one should hide behind the belief that poverty is the only driver, because I am sure that, as we get into the later stages of our investigation into what is called the sex industry, we will find that there are grey areas.

Almost without exception, the women who are street prostitutes are in that position because they have had a financial crisis in their lives or they are living through a continuing financial crisis. They have no money because they have no skills. Why do they have no skills? That is the point at which prevention work could be done with some of them.

Perhaps the majority, but certainly a high percentage, of the people who are on the streets have been abused. They are victims of one description or another; either they have been abused as children or they have been in an abusive relationship. Lots of them have been in care. There was a suspicion in Dundee—I hope that I am not miscalling Dundee—that a bit of grooming was going on in care homes there and that that led to young people prostituting themselves.

You would have to identify vulnerable groups and ensure that, as part of your contact with them—whether that contact was in the form of support, psychological care or whatever—you bear in mind the fact that there is a greater possibility that people in those groups might end up in prostitution and that you should try to deter them from that route.

Edinburgh probably proves the argument that, if there are plenty of jobs, there are fewer street prostitutes. Although the wage levels in the city are not that high, there are plenty of jobs and the number of street prostitutes in Edinburgh has declined steadily. That is probably because there is more work in the city. Further, there is a lot more indoor work. There is a lot of money sloshing around the city, so the saunas and so on can be supported. How do we persuade someone who has no skills and is making a bundle working in a sauna that it would be better to work in Tesco? I hope that I have not offended Tesco.

**Bruce Crawford:** Thank you; that was quite thought provoking.

**Paul Martin:** You have talked about a number of examples throughout Scotland of places that have had voluntary tolerance zones. You mentioned the Aberdeen example, which was brought to the attention of the committee previously—

**Margo MacDonald:** They are called informal tolerance zones.

**Paul Martin:** Yes, sorry. If it is possible for places to have informal tolerance zones—some of which, we have been told, have been extremely successful—why do we need to legislate in the way that you suggest?

**Margo MacDonald:** You must forgive me for answering that question by talking about Edinburgh, but that's ma toon—and I hope that you are not too sad about the fact that it could be an all-Edinburgh Scottish cup final this year.

In the case of Edinburgh, the council wanted to regularise the situation. An informal tolerance zone had been operated—in the first instance, it was a public health issue in that it arose from the necessity to contain the spread of disease—and layers of social policy were built on that. Prostitutes were not lifted by the police if they stuck to the agreed area for soliciting.

When the area became gentrified and the police moved the tolerance zone, they did not undertake sufficient consultation with local residents. That was not their fault; they were breaking new ground and the story was splashed in the local paper, so they did not get a chance to consult. People did not get much notice of what was going on and they did not like having the same address—that is, Salamander Street—even if they lived a quarter of

a mile away, on the same side of a long, straight road.

It is likely that if the council and the police had chosen another area they would have encountered the same problem, or other problems. It would have been up to residents or businesses who objected to go to court and argue that the council was aiding and abetting a criminal activity and was using public money to do that.

A tolerance zone is not just a geographical area. It is, supposedly, a locality inside which one implements the strategy that is proposed in the expert group's report. There has to be cleansing, but in some areas the council cannot go in overnight and clean up. There has to be either a permanent drop-in centre or a place for a mobile drop-in centre, and perhaps a place for mobile toilets as well. That means that concrete or tarmac might have to be laid to create a hard-standing area. Not much public money is required, even if security cameras are introduced, but one is still spending public money to make the conduct of an illegal activity more manageable. That is why the bill was introduced and why there is still a need for it. The City of Edinburgh Council will not move without that basis of legality and I think that Glasgow City Council will come up against the same problems. If the women move out of the city centre away from the security cameras, what will the city do in relation to violence and so on?

**Paul Martin:** I have already discussed with you my concerns about the public message that the bill sends out, particularly to young people. In effect, by launching a tolerance zone, we would be saying, "Yes, we are going to support you while you are involved in these activities." There are other ways of providing that support. The Routes Out of prostitution project in Glasgow argues that it provides support without a tolerance zone.

In addition, we would be saying that those who engage with those who are involved in prostitution would not be charged. What message does that send out to the young people who visit the Parliament? You seek to introduce legislation that tells those young people that they will be able to access such areas in the future and that we will not challenge or prohibit the behaviour of prostitutes or of those who seek to engage with them. Many of the prostitutes in the city centres of Edinburgh and Glasgow are young women who are being abused during the process. You talked about abuse earlier, but does not the bill propose to legalise abuse by ensuring that those who abuse these women will not be harassed and that no action will be taken against them?

**Margo MacDonald:** We have the same duty of care towards prostitutes as we have towards other citizens. I am not prepared to think that someone

is different from me in any way or that they are less deserving than me because they work as a prostitute. I hate prostitution and the fact that people must prostitute themselves to keep body and soul together, but I do not necessarily hate prostitutes. There is a difference between prostitution and prostitutes.

Having the right moral framework to encourage children and young people to be less consumerist as they grow up might help, as they might then not have the same attitude towards the amount of money that they must earn. Having parental and social controls as well as such a framework to prevent children and young people from getting into drugs will also help. The messages that we as parliamentarians are trying to give out to younger people are not inconsistent and things cannot be seen in isolation—they are part of a whole fabric. We are falling down in two or three areas rather than in only the area that we are discussing.

**Paul Martin:** With respect, you have not answered my question. I am talking about the consistency of our message. Members are united on many healthy eating, healthy living and effective sex education initiatives that relate to young people, but what kind of message does the bill send out about the consistency and unity of parliamentarians? Are we saying that when young people grow up, tolerance zones could be implemented in their community? You have mentioned, rightly, other ways of supporting people who find themselves in such unfortunate situations, but you did not answer my question. Is not the Routes Out project the most effective way of intervening directly without setting up zones?

**Margo MacDonald:** The objectives and practices of the Routes Out operation are no different from what the objectives and practices have been in Edinburgh—the difference is simply that people refer to a safer-sex area in Glasgow. Some folk think that that is hypocritical, but other folk think that it is diplomatic—I will not say what I think. However, people in Glasgow are worried because safer sexual practice cannot be guaranteed as a result of the gentrification of the area and the women being dispersed.

We should not draw artificial lines between the Routes Out project and what has happened in Edinburgh. There are philosophical differences among the people concerned in both places. Some people believe that women have the right to prostitute themselves if they want to do so, while others believe that no one has such a right and that prostitution is an offence in itself and against humanity. You and I can debate the matter for as long as the convener is willing to put up with us doing so, but that will not get us anywhere or save one prostitute from being murdered or being duffed up. The fact is that there is prostitution now,

and we must manage it in the best interests of prostitutes and the general community. The report seeks to do that and I back it. If the report is somehow not implemented because we decide to wait for the wider picture to be examined and analysed, I will—as I have said—be willing to follow parliamentary processes in whatever way is feasible. I will do so not to encourage prostitution, but because folk in Leith links who are having the life roasted out of them, and women who are being put at greater risk than they need to be, have rights.

**Michael McMahon:** Tommy Sheridan put words in my mouth about prostitution, but I have never said any of the things that he attributed to me. In considering the bill, my interest has been in how to get services to women, which is what Margo MacDonald has focused on.

I take Sandra Hood's point that we should not assume that a model that has been developed in one place can be adapted to work elsewhere. However, the model that has been tried in Sweden has some merit, because it criminalises the purchaser in the marketplace rather than the people who are, essentially, the victims. That might allow services to be provided to the women. As we all know from the evidence that we have received, the women are predominantly affected by drugs—

16:45

**Margo MacDonald:** I am sorry to cut you short, but that approach does not work. It might have worked in the days before cellphones and so on, but it does not work now. The message from Sweden is that, under that model, there is less street prostitution but just as much prostitution.

**Michael McMahon:** Sandra Hood said that Sweden developed that model because a debate had taken place that came to the conclusion that was arrived at. As I emphasised, the most important part of Sandra Hood's report is chapter 6, which highlights the need for

"tackling the attitudes which fuel the persistence of prostitution."

That is where legislation should fit in. Sometimes we introduce laws after debate because legislation is required to meet a change in societal attitudes. However, sometimes we introduce laws to effect a change in societal attitudes. We need something that fits the latter category, so that we can address the attitudes that allow the market to exist. That is the point that I want to make.

**Margo MacDonald:** Take the parallel of how we cope with the drugs trade. Do you agree that the drugs trade is another total destroyer of lives, in which the perpetrators of criminal activities are also victims?

**Michael McMahon:** Yes.

**Margo MacDonald:** At the same time as we set out a strategy that seeks to prevent people from ever taking drugs, we have a harm reduction strategy that tries to persuade drug users not to take drugs. There is a twin-track approach. Similarly, the expert group's report outlines a twin-track strategy that attempts both to deal with the present reality and to effect the necessary societal and attitudinal changes that you mentioned. I do not take issue with the need for societal change, but we cannot simply park all the violence, inconvenience and exploitation that are involved in prostitution until we sort out society.

**Michael McMahon:** That is my point. Sandra Hood's argument was that Sweden managed to do that when it debated the issue and legislated for it. Could not legislation drive the attitudinal change that we want to effect?

**Margo MacDonald:** Sandra Hood said that the measurement of success of the Swedish approach depended on whom you spoke to. When I spoke to the public health authorities in Sweden, they said that street prostitution was re-emerging. In some ways, they were glad about that because it meant that they at least had contact with the women. However, they knew that a huge amount of prostitution was now being carried out over the phone and over the internet.

**Tommy Sheridan:** My concern with some of the questioning so far is that it has not recognised—if I may use Margo MacDonald's word—the hypocrisy of the current situation. The suggestion from Paul Martin was that the current arrangement is working so we do not need legislation that might send out the wrong message to young people. Does Margo MacDonald agree that the message that we currently send out is hypocritical, given that we have non-legal managed zones in which blind eyes are turned? Do we not need a proactive up-front managed zone, in which all the networks and facilities that Sandra Hood mentioned can be concentrated? If those services were brought to bear in a properly managed legal zone, they might provide more effective tactics and strategies for routes out of prostitution.

**Margo MacDonald:** That is what I believe. I was aware of the experience in Edinburgh because, for more than 20 years, I had known and been in contact with some of the people involved. Perhaps I just knew more about that situation. I appreciate that a huge amount is being done in Glasgow too. The more that I got to know about it, the more I realised that there was, in essence, no difference at all between the objectives and the operations—how the objectives were achieved—in both cities. I do not completely understand the apparent difference of opinion between Glasgow and Edinburgh and I do not think that I ever will

understand it, because it involves personalities; I am sure of that. I do not think that there is much difference of opinion at all.

**Tommy Sheridan:** Will you confirm to the committee that, if your bill was passed, it would not impose any obligation on any local authority anywhere in Scotland, but would provide only an option as part of an overall strategy to reduce and, we hope, eradicate prostitution? I tried to get the minister to confirm that point, and I think that he did. Will you confirm that there is no danger that, if your bill is passed, local authorities will somehow or other be forced to accept prostitution tolerance zones?

**Margo MacDonald:** That is right. I am absolutely opposed to local authorities being forced to adopt the management of behaviour in their areas. The idea behind the bill is that the local authorities would be able to do legally what they were already doing and what they considered to be the best way to manage street prostitution in their areas. My bill does not change that approach; it emphasises that that is the way in which I would approach the matter and the way in which the local authorities want to approach it.

**The Convener:** That brings us to the end of the questions. I thank Margo MacDonald for attending and for her introductory remarks and responses to the questions. We will now proceed to draw up our stage 1 report. I accept the point that, as we discussed, it would be enormously beneficial to the committee to have an indication of the Executive's stance on the expert group's report prior to our reaching our conclusions and drawing up our recommendations. I will explore whether that will be possible within the timeframe for the stage 1 report, and it would be much appreciated if you would also make representations in that regard. We will see how we progress on that.

Before we conclude the agenda item, I ask committee members to agree that, when we consider the detail of our report before we complete and publish it, we should hold such discussions in private. Is that agreed?

*Members indicated agreement.*

**Tommy Sheridan:** I make my usual objection.

**The Convener:** That is noted.

**Margo MacDonald:** I thank the committee. We have some current information that we have collected from Sweden; if any of the committee members wants to ask for it, they are welcome to it.

**The Convener:** Thank you.

## Licensing (Scotland) Bill

16:53

**The Convener:** The last agenda item is the Licensing (Scotland) Bill and the draft specification for the post of a committee adviser on the bill.

The clerks have distributed a paper that identifies a proposed person specification and remit for the adviser. Members have suggested previously that we should ensure that the adviser has an understanding not only of the licensing legislation, but of its social implications. That is the only amendment to the paper that I would suggest. The last line of the first bullet point in the person specification reads:

“understanding of the wider relevant policy issues”.

I suggest that we add to that, “including the social, health and community impacts of licensing.” Are members comfortable with that addition?

*Members indicated agreement.*

**The Convener:** If members do not wish to propose any other amendments to the person specification, are we agreed on it and the remit?

*Members indicated agreement.*

**The Convener:** If, as we expect it to, the Parliamentary Bureau sends the Licensing (Scotland) Bill to us, we will make the appropriate application to the Conveners Group.

I thank committee members for their participation. I also thank all members of the press and public who attended.

*Meeting closed at 16:54.*

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