



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 23 March 2010

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JUSTICE COMMITTEE
11th Meeting 2010, Session 3

CONVENER

*Bill Aitken (Glasgow) (Con)

DEPUTY CONVENER

*Bill Butler (Glasgow Anniesland) (Lab)

COMMITTEE MEMBERS

*Robert Brown (Glasgow) (LD)
*Angela Constance (Livingston) (SNP)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Nigel Don (North East Scotland) (SNP)
*James Kelly (Glasgow Rutherglen) (Lab)
*Stewart Maxwell (West of Scotland) (SNP)

COMMITTEE SUBSTITUTES

Aileen Campbell (South of Scotland) (SNP)
John Lamont (Roxburgh and Berwickshire) (Con)
Mike Pringle (Edinburgh South) (LD)
Dr Richard Simpson (Mid Scotland and Fife) (Lab)

*attended

THE FOLLOWING ALSO ATTENDED:

Richard Baker (North East Scotland) (Lab)
Trish Godman (West Renfrewshire) (Lab)
Rhoda Grant (Highlands and Islands) (Lab)
Margo MacDonald (Lothians) (Ind)

THE FOLLOWING GAVE EVIDENCE:

Ann Hamilton (Glasgow Community and Safety Services)
George Lewis (SCOT-PEP)
Assistant Chief Constable Iain Livingstone (Association of Chief Police Officers in Scotland)
Detective Chief Inspector Peter McPike (Association of Chief Police Officers in Scotland)
Ann Moulds (Action Scotland Against Stalking)
John Muir
Frida Petersson (Victim Support Scotland)
Chief Constable David Strang (Association of Chief Police Officers in Scotland)

CLERK TO THE COMMITTEE

Andrew Mylne

LOCATION

Committee Room 2

Scottish Parliament

Justice Committee

Tuesday 23 March 2010

[The Convener *opened the meeting at 10:05*]

Decisions on Taking Business in Private

The Convener (Bill Aitken): Good morning. I welcome everyone to the meeting and remind you that mobile phones should be switched off. We have a full turnout of the committee—there are no apologies.

The first agenda item is a decision on whether to consider agenda items 5, 6 and 7 in private. Does the committee agree to consider those items in private?

Members *indicated agreement.*

The Convener: The committee is also asked to agree that its consideration of a draft report on the legislative consent memorandum on the Rehabilitation of Offenders (Amendment) Bill be taken in private at future meetings. Is that agreed?

Members *indicated agreement.*

Subordinate Legislation

Police Grant (Scotland) Order 2010 (SSI 2010/64)

10:06

The Convener: We turn now to item 2, which is consideration of three statutory instruments that are subject to negative procedure. I draw members' attention to the first instrument and the cover note, which is paper 1 for today's meeting. The Subordinate Legislation Committee did not draw any matters to the attention of the Parliament in relation to the order. If members have no comments, are we content to note the instrument?

Members *indicated agreement.*

The Convener: That instrument is noted; I can see some signs of relief around the room.

Bankruptcy Fees (Scotland) Amendment Regulations 2010 (SSI 2010/76)

The Convener: I draw members' attention to the second instrument and cover note, which is paper 2. Although the Subordinate Legislation Committee sought clarification from the Scottish Government on the regulations, it was satisfied with the response and is therefore content with the instrument. If members have no comments, are we content to note the instrument?

Members *indicated agreement.*

Police Pensions Amendment (Scotland) Regulations 2010 (SSI 2010/85)

The Convener: I draw members' attention to the third instrument and cover note, which is paper 3. The Subordinate Legislation Committee did not draw any matters to the attention of the Parliament in relation to the regulations. If members have no comments, are we content to note the instrument?

Members *indicated agreement.*

Criminal Justice and Licensing (Scotland) Bill

10:08

The Convener: Item 3 is on the Criminal Justice and Licensing (Scotland) Bill. The committee is invited to delegate to me the responsibility for arranging for the Scottish Parliamentary Corporate Body to pay, under rule 12.4.3 of standing orders, any expenses of witnesses who are invited to give evidence on stage 2 amendments to the bill. Are members content with that delegation?

Members *indicated agreement.*

The Convener: That leads us to item 4, which is the main item on the agenda today and under which the committee will take evidence on stage 2 amendments to the Criminal Justice and Licensing (Scotland) Bill. I particularly welcome Trish Godman MSP and Margo MacDonald MSP, who have a specific interest in the first item to be discussed. It is probable that other members will join us later.

The first evidence session relates to prostitution offences and, specifically, to the offence of engaging in paid-for sexual activity and related new offences. Amendment 8, which has been lodged by Trish Godman, proposes changes to the Sexual Offences (Scotland) Act 2009 to create three new offences: engaging in a paid-for sexual activity; advertising paid-for sexual activities; and facilitating engagement in a paid-for sexual activity. Amendments 8A to 8D, which have been lodged by Margo MacDonald, propose the addition of two further offences: causing alarm etc by engaging in a paid-for sexual activity; and profiting from coerced paid-for sexual activities. Finally, amendment 461, which was recently lodged by Nigel Don, would create the offence of paying for the sexual services of a prostitute subjected to force etc.

I welcome the first panel of witnesses: George Lewis is co-chair of SCOT-PEP, the Scottish prostitutes education project; Ann Hamilton is the head of equalities and women's services at Glasgow Community and Safety Services; and Assistant Chief Constable Iain Livingstone is from the Association of Chief Police Officers in Scotland. I thank you very much for agreeing to come to the meeting. We move straight to questioning, which will be opened by Nigel Don.

Nigel Don (North East Scotland) (SNP): Good morning, and welcome to the cauldron. There is a great deal of public interest in what will be said here this morning, so I am sure that we will be careful in what we do.

My first question might best be addressed to Assistant Chief Constable Livingstone. To what extent is indoor prostitution, provided that it does not involve coercion or children, or cause a public nuisance, currently tolerated by the police?

Assistant Chief Constable Iain Livingstone (Association of Chief Police Officers in Scotland): Our main concern with regard to indoor prostitution is the organised crime that lies behind it. To be frank, our toleration is not overt, and it is not the case that we turn a blind eye.

In recent years, and certainly in the past five years, there has been, from my experience of working in the Leith area of Edinburgh, a move away from the traditional profile of street-based prostitution towards off-street prostitution and—probably uniquely in Edinburgh, through the approach of the City of Edinburgh Council and others—towards the use of off-street licensed premises.

We do not tolerate off-street prostitution as such, because there are significant issues in relation to knowledge gaps in our information and intelligence. Our general assessment is that there is likely to be organised crime behind off-street prostitution, and that a lot of the women who work in off-street premises may well be there under some form of duress. We seek to identify those premises and to find out more about what is going on, but toleration is not a national police policy.

Nigel Don: I was going to ask you about the national context. I am conscious that the issue probably affects big cities more than it does other places; can you comment in any detail on the situation in the other big cities in Scotland?

Assistant Chief Constable Livingstone: The links between prostitution and vulnerable individuals, organised crime, community concern and antisocial behaviour are probably more complex than they are in relation to any other issue.

As we understand the problem—there are gaps in our understanding—the profile of prostitution is different throughout Scotland. In Edinburgh, there are a number of licensed premises, whereas in Aberdeen it appears that there is more of an issue with organised street prostitution. In the west of Scotland—I am speaking in general terms—the profile appears to involve more organised off-street prostitution.

Those different areas of prostitution all have a different profile and demand different levels of response. Our view is that no single approach will be effective: each area needs a tailored approach, and enforcement and support need to be undertaken on an interagency and multi-agency basis.

I have referred to three significant city areas, but our view—again with the caveat that there are gaps in our understanding—is that prostitution permeates beyond the main city areas into some of the other urban areas in Scotland.

Nigel Don: Would Mr Lewis like to comment on the extent to which indoor prostitution is tolerated in Scotland?

10:15

George Lewis (SCOT-PEP): We can really speak only about the Edinburgh experience. Our understanding is that a pragmatic approach exists in Edinburgh, which is supported in part by the police, the local council and service providers such as ourselves, although I take on board what Iain Livingstone said about overall police policy.

In our view, the pragmatic approach works well on a number of levels, particularly with regard to sexual health, HIV and hepatitis C transmission, and the public nuisance issue. Saunas conform to their responsibilities in order to keep their licenses: there have, for example, been cases over the years in which saunas have stepped out of line by employing underage girls and they have, quite rightly, been jumped on from a great height. The majority of saunas toe the line, as it were, which has benefits in a lot of different areas.

It is a small point, but a sauna will pay its rates and taxes just to keep on the right side of the law. We believe that the pragmatic approach has worked well in Edinburgh, but I cannot comment about the situation in the rest of Scotland.

Nigel Don: Perhaps Ms Hamilton can comment on another part of Scotland.

Ann Hamilton (Glasgow Community and Safety Services): We have seen a change in policing by Strathclyde Police, which has stepped up its action on residential and sauna and massage-parlour brothels. We have been involved in supporting victims from a number of operations during the past few months. I think that there is now a recognition of the harm that is done to women who are involved in indoor prostitution, whether they are trafficked or not.

I have brought along some quotations from the work that we have done with women who are involved in indoor and street prostitution, from which we can see that the women suffer isolation, stigma, shame and mental health problems—*[Interruption.]*

The Convener: I am sorry about the noise. We will suspend until we get it sorted out.

10:17

Meeting suspended.

10:18

On resuming—

The Convener: Order appears to have been restored, so we will continue. I am sorry about the interruption, Ms Hamilton.

Ann Hamilton: I trust that it was not anything I said.

Nigel Don: Feel free to go back to the beginning of your sentence so that your thoughts are in the right order.

Ann Hamilton: I was saying that I think that the proactive and strategic interagency approach that we have taken in Glasgow is now paying off. We have examined the nature of both indoor and street prostitution, and we feel that indoor prostitution has not received the type of attention and research that it requires.

Our researchers recently interviewed a number of women who are involved in indoor and street prostitution, and it is evident that in both the harm—in terms of the stigma and shame that women feel, and the isolation and mental health problems that occur—is the same. We also know that there are, as my colleague Assistant Chief Constable Livingstone said, links with organised crime and trafficking.

We know from women's accounts that they are moved around Scotland and to Ireland and England on a regular basis. Indoor prostitution is part of an organised network rather than involving individual women who are prostituting from premises.

I think that we have become much more aware of the various issues, such as the links with organised crime and the harm that has been done to women. In fact, I have brought the committee a little gift—today's *Scottish Daily Sport*—that illustrates the amount of advertising of Scottish and especially foreign women all over Scotland, and which shows that these women are using the same mobile phones and are being moved around. I thought that it might interest the committee.

The Convener: Perhaps you could leave that with us.

Nigel Don: Other members will explore the question whether the law should be changed, but do any of you feel that certain areas of the law are not being used? I appreciate that Mr Livingstone might not want to comment on that, but do the other witnesses feel that a blind eye is being turned to certain legal measures or that certain

measures are not being used or are felt to be impracticable?

Assistant Chief Constable Livingstone: I would like to respond to that question. The Law Society of Scotland and others who have submitted evidence to the committee have suggested that there have been no convictions under the Prostitution in Public Places (Scotland) Act 2007. I was curious about that, because I know for a fact that more than 200 people in the Lothian and Borders area have been charged under the so-called kerb-crawling legislation. When I looked into the matter, I found that, although not all the cases had been prosecuted, a number of them had been disposed of by fiscals under the various summary justice reforms, such as fixed-penalty fines, that MSPs have sponsored. I have not been able to clarify the validity of the claim that has been made by various interested parties that there have been no convictions under the 2007 act—and, indeed, would not dispute the point—but I can say that the police have robustly enforced the legislation, even though the Crown has elected to dispose of such matters by fiscal fine.

Bill Butler (Glasgow Anniesland) (Lab): Good morning, colleagues. Do the police need more powers to deal effectively with prostitution?

Assistant Chief Constable Livingstone: We probably do not. Instead, we need more information, intelligence and awareness of where prostitution takes place, the nature of that prostitution, who is involved in it, whether the women are vulnerable and so on. Ann Hamilton is right to say that there must be robust enforcement against organised and unlicensed off-street premises, although I add that enforcement can take place only against things that we know about. We are concerned about the possibility of driving prostitution further off-street into areas where it is harder to identify vulnerable women and enforcement opportunities. As ever, we need to strike the optimum balance, but I am not sitting before the committee this morning seeking additional powers.

Bill Butler: You are clearly saying that the present powers are sufficient.

Assistant Chief Constable Livingstone: I think that there are sufficient common-law and statutory powers, although I have qualified support for a number of the proposals in some of the amendments because they would allow us to get a clearer picture of what prostitution is. However, when we think about what should be done about prostitution, we should bear in mind its profile: it is not a single entity and does not manifest itself in any single way. It can be very complex and multilayered with regard to whether it occurs on-street or off-street and in the different approaches

that are taken across the country. From a policing perspective, I find it quite difficult to speak on a national basis because there is certainly a lot of robust debate in the police service about how the issue should be taken forward.

Bill Butler: I hear you loud and clear. Other colleagues will explore with you your interesting statement that you “have qualified support for” some “of the proposals” that are before the Parliament.

However, I will stick with my general question and ask Ms Hamilton to comment on whether more powers are needed to deal effectively with prostitution.

Ann Hamilton: We feel that there is a need for additional powers, specifically to address aspects such as advertising and facilitation, and we very much welcome the power in the bill to close premises. We are also seeking a sea change in the general acceptance of prostitution. At the moment, it does not matter what the police find when they go into a licensed or unlicensed brothel; the fact is that the men who buy sex are not subjected to any police action and are often not used as witnesses. We definitely need to step up the powers that are required to control and reduce the level of prostitution in Scotland.

Bill Butler: That was very clear. Do you wish to comment, Mr Lewis?

George Lewis: Yes. We believe that police already have the powers to combat what we see as the important issues: trafficking, actual assault and breaches of the peace.

I echo Mr Livingstone's point that increased legislation will simply drive much of the industry underground, to the fringes or whatever phrase you might wish to use. With the introduction of the kerb-crawling legislation and the loss of the tolerance zone in Edinburgh, we as service providers have found it more difficult to access and provide health and support services to women. Such moves certainly alienate women. I am not saying that this has actually happened—we simply do not know—but those women might, as a result, be driven to the fringes and into the organised crime to which Mr Livingstone referred and begin to see everyone, including service providers such as our organisation, as the establishment and therefore as people to be avoided.

Bill Butler: So, in your view the present police powers are sufficient.

George Lewis: Yes. They are sufficient to deal with what we see as the important issues.

Bill Butler: That is very clear.

The Convener: At this point, I ask Robert Brown to raise the issue of trafficking.

Robert Brown (Glasgow) (LD): Can I first ask a supplementary on another point?

The Convener: Yes.

Robert Brown: On the effects of the kerb-crawling legislation, SCOT-PEP's written evidence refers to an increase in the number of attacks that were reported to the police from 2006 to 2008, after which the organisation has been unable to take statistics. Do the other witnesses wish to make any comment on that? After all, sometimes it is the unintended consequences that have to be dealt with in these matters. I wonder whether Mr Livingstone knows anything about the effects of the legislation with regard to reports to the police.

Assistant Chief Constable Livingstone: I do, but I should qualify my comments by saying that my comments will be a mix of evidence from specific cases and anecdotal observations that I made in preparation for my attendance this morning. Speaking, perhaps, with my Lothian and Borders Police hat on, I point out that, when we had the tolerance zone in the Leith area, the women who worked there knew and would engage with the individuals who would pass through. The police were also present in cars.

Anecdotally, from two or three pretty serious cases—although I would never draw a general conclusion from them—instead of a woman carrying out a risk assessment by thinking, “Who is this individual and have I met him before?” the initial contact is minimal because the individual in the car and the woman are anxious about enforcement of the legislation. So, anecdotally—it is no more than that—from two or three horrendous assaults on women who were picked up in the Leith area, it seems that women are jumping in the car quicker because of the legislation, whereas previously there might have been more engagement and a risk assessment might have been carried out.

10:30

Robert Brown: At a statistical level, can the police confirm or deny—either today or in follow-up evidence if necessary—the general suggestion that there has been an increase in attacks on women since the anti-kerb-crawling legislation came in?

Assistant Chief Constable Livingstone: I cannot give a definitive view now. I could go and find out the statistics, but I would always come back to the point—on which I think we all agree—that we have never known the true nature of attacks on prostitutes. We do not know enough about prostitution. We do not know enough about

who is involved and what happens to the women. That is a critical issue that all of us in society need to deal with. I support Ann Hamilton's point that we need to make it a priority. I could find the figures, but I would not have great faith that they represent the reality.

The Convener: I accept that the information comes with a health warning and a caveat, but it would be useful if you could let us have the statistics in writing reasonably quickly.

Assistant Chief Constable Livingstone: I can certainly do that and perhaps give some context, if that would help.

The Convener: We would be obliged.

Robert Brown: Ann Hamilton was going to say something on the issue.

Ann Hamilton: We are not aware of a rise in the number of attacks. However, we know that prostitution is a dangerous business. In Ipswich, a number of women went with a known punter—somebody whom they trusted—and he murdered them. The idea of a risk assessment can be difficult when we are talking about something that is intrinsically dangerous.

Last week, 80 women who are involved in street prostitution came into our service. In Glasgow and Edinburgh, women have been moving out of some of the traditional areas and it is undoubtedly a challenge for services to engage with those women. We are beginning to do much more outreach work to make contact with women. It is a responsibility of services to change the way in which they provide the service, depending on the nature of prostitution at the time.

Robert Brown: The main issue that I want to raise is trafficking. I am sorry that I diverted us slightly, but that other issue is important. As far as I am aware, there have still been no prosecutions in Scotland for trafficking, despite the suggestion that, in Glasgow, the extent of the problem is proportionately similar to, if not greater than, that in London. From contact that I have had with TARA—the trafficking awareness-raising alliance—I know that Ann Hamilton's service has dealt with quite a number of people who have been trafficked. You mentioned trafficking within the United Kingdom as well as into the UK. What is your knowledge of the extent of trafficking, either within the UK or into the UK, based on your experience of providing support services?

Ann Hamilton: This is one of those issues on which it is difficult to give numbers. However, we had 50 referrals in 2009 and staff are currently working with 31 women. Many of those women came through the national referral mechanism that the UK Government has established as part of the obligations under the European convention on

trafficking. We certainly support women who have been trafficked.

We also run a service twice a week for women who are involved in indoor prostitution. We currently have about 180 women registered for that and about 50 per cent of them are foreign women. I cannot say that all the foreign women have been trafficked, just as I cannot say that the Glasgow or Scottish women have not been trafficked. However, we know that women are being moved around and sexually exploited, so all the indications of trafficking are there. The police have stepped up their activity in relation to premises and we hope that charges will be placed, although they might not be charges of trafficking, which seem particularly difficult to pursue. Charges have been brought of running brothels, living off immoral earnings and similar offences.

Robert Brown: Is it a fair observation that trafficking is much more difficult to track down as it involves indoor premises stuff that is perhaps a bit more individual or isolated?

Ann Hamilton: It is undoubtedly difficult to track down, because it is part of a criminal organisation. Just as drug dealing, money laundering and so on are challenges for the police, so are prostitution and trafficking. Punters need to find the women. They do not ask specifically for trafficked women; they ask for Thai, black or eastern European women. There is a market in bringing in women to provide fresh faces. There is a great market in moving women from Glasgow to Edinburgh and from Edinburgh to Aberdeen. That is the nature of the industry.

Robert Brown: I ask for a comment from the police perspective. Ann Hamilton is from the service or support side, but the prosecution aspect is obviously proving much more difficult. What is the police assessment of the extent of the trafficking problem within the UK and into the UK?

Assistant Chief Constable Livingstone: The problem is growing, but I make no apology for saying again that there is a great dearth of knowledge and intelligence on the issue. We welcome the helpful work that Baroness Kennedy has kicked off on trafficking. Ann Hamilton is entirely right about the issues to do with organised crime. People move around the UK. Traditionally, Aberdeen has had close links with the west midlands; there are links between Edinburgh and Glasgow; and Glasgow has had links with the north-west. That is where some of the crime groups have had associations.

Trafficking is undoubtedly an issue, but the majority of women whom we see involved in prostitution are, if you like, indigenous Scottish women who are vulnerable and have multiple drug use problems as well as significant social and

other factors that influence their lives. Trafficking is an issue, because it is linked to the involvement of organised crime, but the vast majority of vulnerable women whom we see involved in prostitution are local women who often have an array of needs and problems that need assistance.

Robert Brown: Would the criminalisation of paying for sex help or hinder the ability to get stuck into the trafficking problems?

Assistant Chief Constable Livingstone: That is a very good question that goes to the essence of some of the proposed amendments to the bill. We have fears about the potential to prosecute. Ann Hamilton talked about some of the complexities of the trafficking legislation. There are issues to do with getting corroborative evidence of some of the key elements, such as that sex took place, that payment took place and how the payment was made. There are also issues to do with whether the women are unwilling witnesses and whether we would revictimise them by enforcing the proposed legislation. That is our fundamental reservation, although it is a reservation rather than an objection, if that is not too woolly.

We are not sure how the proposed measures would work in practice, or how they would be enforced. Would they cause further harm, and would it be too difficult for us to report the matter to the Crown? Would the Crown be in a position to take the case? If not, would we end up with a piece of legislation on the statute book that was not enforced or utilised, which would undermine our whole approach?

There is consensus and clarity that, although the problem is not an easy one to tackle, we need to commit to doing that, as a lot of vulnerable people are involved and a lot of organised, serious villains are behind it. How do we go about tackling it collectively? We have reservations about whether criminalising the purchase of sex does that, and about how the measures would play out in practice.

Robert Brown: I am conscious of the time, but I would be interested to hear the views of other panel members.

George Lewis: SCOT-PEP was instrumental in setting up protocols in Edinburgh, with an early-warning reporting system for trafficked people—not just women. We worked closely with the police in doing that. Therefore, we are partly seen as the establishment, and we do not necessarily know the extent of the trafficking problem.

We have had some experience of dealing with suspected trafficking. We have good relations with some sauna owners in that regard. Cases have been minimal—at worst, they have involved passport violations and people being sent home.

As Mr Livingstone has pointed out, the complexities of the problem are such that it needs more than just three people sitting here talking for a limited time in order to deal with it.

Trafficking is already illegal. I cannot see that putting another layer of legislation on top will do anything to help trafficked people. It will certainly not help anyone here to identify those people. It might make the situation worse. A trafficker is a trafficker. They are already breaking the law. They will think, "Another law will not make any difference to what I do."

Robert Brown: Ms Hamilton, you are a proponent of the changes to the law that are being suggested, yet you must accept that there is a gap between the number of people you identify and the number of people that the police can prosecute. What are your thoughts on that?

Ann Hamilton: First, we want something that challenges the acceptability of prostitution. At the moment, buying sex is viewed as something that men do, to which there is an entitlement, and which causes no harm. It is an individual transaction. We want there to be a clear message that that is not the case, and that buying sex has an impact: it supports organised crime and brings harm to women and their families. The proposed change sends out a clear message about the kind of Scotland that we want.

Secondly, our biggest problem with identifying trafficking victims is the fact that prostitution is normal. When the police go into premises, women will immediately say—as they have been warned to do—that they want to do it, that they are there freely and that they send money home.

One woman whom we are supporting said that, when she approached us, she felt able to tell her story and talk through the harm that she had experienced in being trafficked all round the world. She said that she never knew that what she had been going through was illegal and that somebody might help her, so she never said anything. The men who bought sex could see when they came in that she did not want to do it, yet they queued up, paid their money and left. There were policemen in and out of the premises who never asked her anything or said anything to her.

Although the situation is changing in Scotland and the police have been great partners in talking to the trafficked women they find in brothels about their experience, we are still not at a point where most women will tell their story when police go in to raid or visit premises. It takes quite a bit of time for women to talk through what they have experienced and to seek help. The more we disrupt the sex industry, the better it is for the women who are harmed.

10:45

Robert Brown: As trafficking is already illegal, will the proposed new legislation make any difference?

Ann Hamilton: The buying of sex is not illegal, and there are some licensed premises where the buying of sex appears to be legal and regulated. That is not the case in Glasgow, but it is in some parts of the country. The fact that it is in Edinburgh has an impact on women in Glasgow. Women in Glasgow tell staff for whom I am responsible that they do not like going through to Edinburgh, because there are more rules and regulations there, and more harmful practices. That is anecdotal, but it is what women are telling those who work in the relevant services.

The Convener: I am anxious to move on. Stewart Maxwell has a point to raise.

Stewart Maxwell (West of Scotland) (SNP): We have spoken about trafficking and the involvement of organised crime in prostitution. That is not denied by anybody. As a number of people have said, prostitution is a complex, multifaceted, multilayered issue. I presume that you are not suggesting that all women or men who are working in the sex industry are the victims of organised crime or trafficking. There might well be individuals who work on their own, and not in licensed premises, brothels or saunas. My question refers back to Nigel Don's earlier question. What difficulties do individuals working in those circumstances cause the police? Do other panel members feel that it is right, or even enforceable, to criminalise such activity between consenting adults behind closed doors in cases where the women or men involved are working on their own?

Assistant Chief Constable Livingstone: There are indeed licensed saunas in Edinburgh, which is to do with the City of Edinburgh Council's partnership approach. There is a history of such an approach in the east, including an emphasis on harm reduction. Rightly or wrongly, it is an historical fact. We recently visited all licensed premises—and there are a number of gay saunas in Edinburgh—with a view to engaging with people working in those establishments. They were not enforcement visits, but welfare visits.

We spoke to a number of people, and we were told by the majority—bearing in mind Ann Hamilton's point about what they say to us and what might actually be going on—that they were economic migrants. If they were not United Kingdom nationals, they said that they were over in the UK, Scotland and Edinburgh because they needed to make money. They did not wish any assistance or referrals from us, and they felt that they were entirely in charge of their own destiny.

That covers the policing element. However, it is our perception or feeling that there will be some element of coercion for anybody working in that environment, even if it is economic coercion.

Stewart Maxwell: I accept that. However, I was specifically asking about people who are not working in such premises, but who are working on their own. We have received written evidence from a number of individuals who say that they work by themselves, using a receptionist or maid, to use the usual expression. They feel that the proposed new section headed “Facilitating engagement in paid-for sexual activity” would result in the individual receptionist or maid, who is part of the protection, being criminalised, which would make the work more dangerous for those individuals, and so they object most strongly. What would the impact of the proposed legislation be on individuals in that situation?

Assistant Chief Constable Livingstone: We rarely come upon such individuals, unless a specific complaint is made. I return to my earlier observation that we are discussing an issue where there are as many gaps in our knowledge as areas of awareness. There is a lot of anecdotal experience, and we have had a lot of personal experience in various ways and in different roles, but the points that you have made about the impact on the sole traders that you describe underline some of the reservations that have been expressed about criminalising the purchase of sex. Establishing it would be difficult and might revictimise others but, in policing terms, we rarely come upon the sole traders that you describe.

Ann Hamilton: Similarly, we do not tend to come into contact with individual women who have made a choice to be involved in prostitution. The women whom we engage with and the men with whom the open road project engages in Glasgow tend to work in flats where there are two or three people—it could be only one but, in that case, it is being facilitated by somebody.

Obviously, there has been a lot of chat on punternet, which is one of the websites that provide an opportunity for men to review women and talk about their experience in prostitution. You might be interested to hear that they have been encouraging as many individual women as possible to write in and respond to the committee on the matters that are being considered. We do not tend to come into contact with individual women who say that they have made a choice. I doubt very much, given police resources, that that would be a priority.

Stewart Maxwell: Absolutely but, as I understand it, the amendments would also criminalise that behaviour.

Ann Hamilton: Yes. Rightly, I think, because we are talking about the buying and selling of people and attitudes generally—

Stewart Maxwell: They are working by themselves. That is the crucial difference.

Ann Hamilton: Yes, that is right, but the issue is also to do with gender inequality and why women end up selling sex because of economic necessity or for other reasons. We do not know enough about those women, but there must be a general strategic approach to the issue, which involves tackling demand and tackling the general attitude that prostitution is inevitable and acceptable.

George Lewis: Unlike my two colleagues on the panel, we come into contact with many of those women and men. As you rightly say, there are a lot of submissions to the committee from women who work on their own. Some of them are extremely articulate and others are less so, but there is an underlying theme that they do what they do out of choice and with consent. There is anger and frustration that the proposed amendments take away that choice and that consent. You will have read the submissions yourselves. You have had 90-odd submissions from all shades of opinion but, for me, those from the women who are working in the industry are perhaps the most valid when it comes to how the proposals will affect lives.

The Convener: I now ask James Kelly to ask a question on the amendments, which might provide the opportunity, if they so wish, for Margo MacDonald and Trish Godman to ask any questions that they feel are relevant.

James Kelly (Glasgow Rutherglen) (Lab): This has been a wide-ranging discussion, some of which has focused on current experiences and the way in which the law operates now. I am interested, first, in Mr Livingstone’s views on what the four amendments that are before us would mean for the policing of prostitution, particularly indoor prostitution.

Assistant Chief Constable Livingstone: I expressed my reservation about the enforceability of the proposed legislation on paid-for sexual activity. I do not disagree with what Ann Hamilton says about sending a clear message nationally about the dangers of prostitution. Our reservation is about whether proposed new section 11A would assist with that or take away from it. Establishing that the main parts of sexual activity had taken place and evidencing payment would give investigative challenges. If required, those challenges would be met, but the Crown would have a view on the sufficiency of evidence required to establish that. Our main reservation is about how the proposal would play out in practice,

regardless of the debate about its utility or the potential human rights conflicts that rest behind it.

Do you want me to take the proposals in the amendments one by one?

James Kelly: Yes, that would be helpful.

Assistant Chief Constable Livingstone: In principle, we support proposed new section 11B, which deals with advertising. We take Ann Hamilton's point about its impact. We think that the proposals in amendment 8 are quite narrowly worded—that is just an observation. We know from colleagues in the Republic of Ireland who have introduced such an offence that it has had an impact. We would again qualify our support by saying that there is always the danger that the more enforcement and overt legislation you have, the further you drive the issue away. I still have anxiety about legislating on a social problem and a social phenomenon when we do not have a clear understanding of prostitution and the scale and extent of the problem—as the lead on behalf of the police service in Scotland, I certainly do not feel confident that we do. However, I think that we would support the principle behind new section 11B, which Ann Hamilton has graphically evidenced with the papers that she has provided this morning.

Our reservations about proposed new section 11C, on facilitation, are similar to those that we have about section 11A in respect of establishing that sexual activity took place, that payment was made and that it was knowingly facilitated. We again feel that prostitution is, in itself, already an offence in a public place and that sufficient legislation is in place.

In respect of amendment 8B, on coercion, we again feel that any level of sexual coercion is criminalised. Under section 4 of the Sexual Offences (Scotland) Act 2009, which will, hopefully, be given force at the end of the year, any level of sexual coercion—whether for payment or otherwise—is criminal. We feel that that is sufficient to deal with that mischief and that amendment 8B, by narrowing the issue down to payment, puts another burden on the prosecution whereas, if coercion can be established, whether it is for payment or otherwise, it is criminal. The payment may or may not aggravate or mitigate the offence, depending on the circumstances of the crime, but sexual coercion is already legislated for under the 2009 act.

James Kelly: Thanks for your comprehensive comments. Does Ms Hamilton or Mr Lewis have comments on the amendments?

Ann Hamilton: I suppose that we see this as presenting challenges to the police, but no more so than lots of other areas of criminal activity. When it comes to domestic abuse, for example,

the police have to consider how to get corroboration and how to evidence that something that happened in a domestic or private setting is a crime.

When a brothel-keeper is charged, it appears that it is currently possible to prove that money passed over into other hands, that sex was being paid for and that sexual activity took place. Those are all matters for which evidence is provided in court now; the only addition would be that the person who was paying and passed over the money would also be liable.

In respect of advertising for paid sex, it is clear that, if people were not able to advertise in the newspaper, they would not stop but would move on to the internet, which is currently used very extensively, but there are means of addressing that. We do so in relation to child pornography and a number of other crimes. Because something might be difficult is not a reason for not doing it. It is an area in which the police would be able to develop more investigative tools, over a period.

The amendment on facilitating would make another offence. At the moment, someone can be charged with living off immoral earnings and brothel-keeping; the new offence would be similar and we think that it would assist in the disruption of the industry.

The amendment on coercion is probably the most difficult to evidence because women quite often say that they were not coerced, and it might be difficult to prove that they were. Coercion can be very subtle.

11:00

George Lewis: My colleagues here have referred to the sheer complexity of the subject, and there is an underlying perception in the submissions, certainly from the academic and legal point of view, that the amendments have been tacked on to something that is much bigger. Although we are certainly not accusing anyone of trying to force things through without wider debate, the complexity is such that all the amendments should be rejected in full in favour of much wider consultation and debate. In the previous session of Parliament, we had the expert working group on prostitution, which I think took nine months just to debate the outdoor industry. The indoor industry is much more complex, and the consultation period has been short. We have had a month and, although the three of us sitting here have various opinions, we are certainly not representative of the diversity of opinion. The subject needs a lot more consultation than it has had so far.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): Mr Livingstone, I think you said that you have reservations about the enforceability of the

amendments. I am confident that our law enforcement officers in Scotland will enforce any laws the Parliament passes. The submission from Glasgow Community and Safety Services says:

“Although the very nature of the sex industry makes it covert, prostitution can never truly exist underground as if the punters are able to find the women selling sex, then so can the Police”.

Do you accept that statement?

Assistant Chief Constable Livingstone: I have no doubts or reservations about our ability to enforce the law. My reservations are about the ability to have sufficient evidence to allow a conviction to take place. If the law is there, we will seek to enforce it as best we can. If Parliament has legislated, that law will be enforced. My reservations and those of my colleagues are about the difficulty of evidencing brothel keeping. There are the wider circumstances of financial gain by an individual but there are difficulties with individual transactions—the instance that Mr Maxwell put to us. We might end up taking criminal sanctions against individuals who really did not want the authorities, such as the police, to come near them.

The police will enforce the legislation that Parliament passes; our comment was a practical one—that establishing sufficient evidence to get a conviction would be challenging. The comment about punters finding prostitutes is a fair point. That is what we do—we utilise the advertisements and we increasingly utilise the online threat. As we know from our experiences relating to child abuse offences, the traditional grooming mechanisms and means of contact by the paedophile have changed. Likewise, in the online world, the traditional contact mechanisms have changed, which provides added complexity. I have no difficulty saying that if the law is there the police will take steps to enforce it; I am just saying that we have some reservations, before the law is passed, about how it might play out in practice.

Cathie Craigie: You mentioned that the proposed legislation could drive the problem further underground. Will you say a bit more about that?

Assistant Chief Constable Livingstone: One thing that there has been a consensus on is that we do not know the full extent of off-street prostitution. The adverts may point us in its direction to some extent. There are women working with George Lewis and Ann Hamilton who we have come upon, prosecuted and referred to support means. We deal with what we see but, as we said about trafficking, when it comes to what is happening in the far corners, people are not going to go near any officialdom. Therefore, the more enforcement legislation we have, the more potential there is for a problem that is already proportionately hidden to become more hidden.

That is all. It is just a concern that people who we should be looking to assist, give advice to, rescue and provide health care and diversion opportunities to, might be harder to reach because of the enforcement mechanism. Make no mistake: if the law is passed, the police will enforce the law.

The Convener: I invite Trish Godman, who is one of the proposers of the amendments, to ask any appropriate question.

Trish Godman (West Renfrewshire) (Lab): I want to make two quick comments and ask Iain Livingstone a question. George Lewis, you said that you are anxious about whether there is sufficient evidence for the amendments. That smacks of the domestic violence issue—Ann Hamilton mentioned it too; there is a bit of déjà vu here. I take your point, but we would perhaps not be discussing anything at all if we had not lodged the amendments—and the number of people who have responded to the amendments shows that someone wants to do something about the issue.

Iain Livingstone, you said that there is nothing here on trafficking and arrests, as there is in England. I spent a couple of days with the Metropolitan Police exploring that very issue. Is it only because we need corroboration here? What other difficulty would you have—if there is another one—doing the same kind of things as are being done in England?

Assistant Chief Constable Livingstone: People trafficking is linked to prostitution, but it stands alone—as we know, people are trafficked for reasons other than prostitution. Trafficking is more prevalent in the south-east of England because of the points of entry, the extent of London and the international links there. Our understanding—which is still partial—is that people are more likely to be trafficked into the south-east first and then moved north. However, as Ann Hamilton suggested, although one may define a person as being a trafficked individual, they may define themselves as an economic migrant. It is hard to establish where the distinction falls.

I accept that trafficking is an area on which we need to do more work. Gordon Meldrum, Johnny Gwynne, other colleagues and I, who lead in the crime arena in Scotland, know that it is an area in which our information and intelligence is lacking and in which we need to be more coherent. We need to consider what is happening south of the border and whether it is applicable where we are. We are addressing the issue. The Scottish Crime and Drug Enforcement Agency has the lead for it because we have determined that it is primarily a manifestation of organised crime. It does not matter to organised criminals whether the commodity is drugs, cigarettes or people. That is

why we are using the organised crime mechanism to address it.

I agree about the extent to which we have progressed with domestic abuse. We will discuss stalking and harassment, which are linked to it. The distinction that I would draw between prostitution and domestic abuse is that there is not the same consensus on the two issues. There is clarity about the social harm that domestic abuse does, its nasty, malicious nature and its impact on children and society. We have already heard that prostitution is far more complex. Our view is that vulnerable people are involved in prostitution and that they are victims. There are analogies with domestic abuse, but I do not think that we can say that the progress that we have made in services and in society on domestic abuse is identical to what we can do on prostitution—there is not a straight lift from one to the other.

Trish Godman: I was not suggesting that the two issues are the same; I was just saying that there is a bit of déjà vu about this. The thing that worries me is the corroboration issue. Perhaps this is a dumb question, but I am an MSP, so there are no surprises there. We need to have corroboration here, but you do not need to have it in England. Will that stop you?

Assistant Chief Constable Livingstone: My personal opinion is that corroboration is not the difficulty. Corroboration is a fundamental part of Scots law and it is why, although we have had significant cases, we have not had great miscarriages of justice. Corroboration can be sought from a number of sources. We are more sophisticated at getting corroboration—it is no longer about getting two individuals who are saying the same thing. I do not think that the need for corroboration is a threat to any police enforcement activity; it is a necessary discipline and a fundamental part of Scots law that we should protect.

Margo MacDonald (Lothians) (Ind): The evidence that we have heard underlines what George Lewis said: this is not something that should have been tacked on to a bill that has an entirely different objective to the specific objectives that everyone who is interested in prostitution would want to achieve. For that reason, I say on the record that if anybody wants to reconvene the second part of the committee that was set up under Jack McConnell's Government to look at indoor sex, I would be willing to serve again, because the issue just fell through the cracks and the police were left with absolutely unsatisfactory legislation.

However, let us start. Do the witnesses think that it is possible for the amendments to cover the individual who is working herself to pay off the big Christmas bill, lap dancers and potentially

trafficked people or economic migrants? Is it possible to take a catch-all approach to that? Ann Hamilton said that we need to take a general, strategic approach, but I do not think that the amendments represent that. Perhaps you disagree.

George Lewis: The short answer is no, because the three situations that you mentioned are so different. The experience in each city in Scotland is different, too. The catch-all approach looks like a blunt instrument and it will not address the real issues of trafficking and violence. I honestly cannot see that it will deal with the real nasties, particularly given the experience of the loss of tolerance zones and the kerb-crawling legislation.

Margo MacDonald: I think that Iain Livingstone suggested that.

Forty-four police forces took part in operation pentameter, which tried to determine the scope of people being trafficked for prostitution. How many of the Scottish forces took part?

Assistant Chief Constable Livingstone: All the forces and the agency were involved. The operation led to no convictions in Scotland.

11:15

Margo MacDonald: Do you agree that it is a bit previous to say that we know that there is trafficking and that women are being coerced and moved about, given that the operation did not result in one conviction?

Assistant Chief Constable Livingstone: That is a fair challenge. I rely on items of intelligence, the experience of voluntary groups such as Barnardo's and the work that Ann Hamilton has been doing. Our professional opinion is that trafficking is a growing potential threat. A dedicated resource within the SCDEA is looking specifically at trafficking. A number of individuals are now working on that in the new SCDEA premises at Livingston, which is linked to the United Kingdom human trafficking centre at Sheffield. Observations were made about our linking into the UK. Scotland is seeking to do that, but the bottom line is that we have yet to convict anybody of that offence.

Margo MacDonald: Do you agree that it would be safer just now for your strategic approach to be preventive, rather than curative, because there is no proof?

Assistant Chief Constable Livingstone: Our approach should always be preventive. It is a cliché, but prevention is better than cure. However, one does not preclude the other. There has to be robust enforcement but, at the same time, there has to be wider work around

interventions. A lot of the interventions might have nothing to do with legislation on prostitution—they might be to do with getting access to assistance for drug abuse or child care. It is about addressing all the other social factors that underpin the problem.

We would certainly welcome having a longer look at this issue, as an imperative. As Ann Hamilton said, the issue now has public profile. It was difficult to get a coherent police approach nationally—it is difficult for me to sit here and talk on behalf of all the forces and the agency. There is value in our committing to having a longer look at the problem, its various layers and complexities and interdependencies and deciding what we need to do. Once we have done that, we have to consider whether we need legislation to allow us to do the things that we agree we need to take forward.

Margo MacDonald: I am absolutely delighted to hear you say that, because it seems much more logical.

Can I ask Ann Hamilton about the number of complaints the police have had from people saying that a brothel is operating up their close?

The Convener: Would she be in a position to answer?

Margo MacDonald: I should hope so; she is the officer for that in the council.

Ann Hamilton: I am not working for the police.

We have had a number of complaints about specific premises. We are taking a much more co-ordinated approach to gathering complaints. For a long time people who had a brothel next door to them felt that there was no point complaining about it because very seldom did anything happen. One of the things we are challenging is the acceptability of a brothel either in the close next door or in the street. A number of police operations are now happening on specific premises.

Margo MacDonald: Are the numbers up or down compared with two years ago?

Ann Hamilton: I cannot tell you that because we do not collect that information—the police would do that.

Margo MacDonald: How, then, would you know whether there are more or fewer prostitutes working in Glasgow or whether they are foreign women or home-grown women? How would you know if you do not collect figures?

Ann Hamilton: We provide a service for any woman who is involved in indoor prostitution. About 180 women are registered with that service at the moment. About 50 per cent of them are foreign women. I cannot tell you whether that is a

tenth or a quarter of the women involved in prostitution. A significant number of women are involved in prostitution throughout Glasgow and Scotland; some are home-grown and some are foreign. It is very difficult to tell how many women are involved, but the problem certainly appears to be increasing because there is more advertising, whether on the internet, in magazines or in newspapers.

Iain Livingstone referred to the need for a preventive approach. We have had a preventive approach in Glasgow—we have arranged child care and looked at providing drug packages—but we know that unless we tackle the demand for prostitution there will always be new women coming in, who will be harmed. Simply carrying on providing harm-reduction and early-intervention services—which we are committed to providing—will never tackle the problem; we need to make a fundamental change in the way that we view the nature of prostitution.

It is estimated that about one in 10 men buys sex. The Women's Support Project study on prostitution in the central belt of Scotland that was published about a year and a half ago showed that 25 per cent of those men had serious regrets about buying sex. Part of the reason they bought sex was peer pressure, which relates to acceptability. That is what we want to address to reduce the number of men who buy sex from women in prostitution.

The Convener: I think that Margo MacDonald now has her answer.

Margo MacDonald: With all due respect, convener, that is not the purpose of the amendments. If the aim is to bring about a cultural change, why seek to do it by criminalising those who may be the victims of the cultural attitude and habit that is to be changed?

The Convener: I point out that this is not a debate but an evidence session.

Margo MacDonald: I was asking a question.

The Convener: Would the witness care to comment briefly on that question?

Ann Hamilton: The first proposed offence is about buying sex, which is about tackling the demand for sex. That is saying that prostitution is not a harmless activity, but has an impact. Such activity may be tied into organised crime, whereby people profit from the misery of the men and women who are involved in prostitution. That is not to deny that some—a tiny number, I believe—women and men may not be harmed by their involvement in prostitution. However, we need to look at attitudinal change.

The Convener: Thank you for that.

The next question will be from Angela Constance. As is inevitable in such evidence sessions, the further we go, the greater the danger of repetition. I ask that, when witnesses have already answered part of the question, they simply refer to their earlier answer.

Angela Constance (Livingston) (SNP): At various points this morning, all members of the panel have acknowledged that prostitution is complex, hidden and, of course, dangerous. Therefore, first and foremost, I am interested in finding out what specific impact the offences that are proposed in the various amendments that we are considering this morning would have on women who work as prostitutes. Would the proposed offences help or hinder work to keep such women safe, whether by preventing offences from being committed against them or by promoting good health? Would the amendments do anything to drive the level of prostitution up or down?

The Convener: Perhaps Ann Hamilton can open on that question.

Ann Hamilton: We think that the proposals would disrupt the lives of the women and of the men who buy sex, but we do not think that that should be the central consideration.

After the murders that took place in Ipswich, efforts were made to drive kerb-crawlers off the streets. That meant that women could not make any income from prostitution. Support services then supported those women out of prostitution. Ipswich now does not have kerb-crawling or street prostitution. That is not to say that there has not been some displacement, but those actions have had a very positive impact on reducing the number of men buying sex and the number of women involved in prostitution as well as the public harm that is caused by street prostitution—

Angela Constance: My question was specifically about the impact on women who work as prostitutes. Would the proposals help them, or not?

Ann Hamilton: I think that the same thing would happen here. When police operations in Glasgow have disrupted brothels, women have come to the support services to ask for support to exit prostitution. Although the proposals might be disruptive and make things difficult for women, we see them as a way of engaging better with women and supporting them to exit prostitution. I do not know whether that answers your question. The women will not say, “Well, that is fine. I will go and do something else.” They will need support. We feel that support can be provided.

Another thing that has not been said today is that the Scottish Government has a policy on prostitution, which is that it sees prostitution as

violence against women and as intrinsically harmful. That is really the framework within which we think the amendments could start to address the issue to take forward that policy position.

The Convener: Does Mr Lewis want to respond as well?

George Lewis: I was not aware that the Scottish Government's position is that prostitution is violence against women—

Margo MacDonald: It cannot be such, because that would be gender specific.

George Lewis: We tend not to get involved in the ideological debate, but I felt that I should pick up on that point.

The question was whether the proposals would help or hinder women who are involved in prostitution. I think that I have already mentioned the loss of access to services. Therefore, taking up the convener's point, I refer you to my previous answer.

It is certainly the case that we have not seen any reduction since the introduction of the kerb-crawling legislation and the loss of the tolerance zone, but we have seen a reduction in the sense of co-operation that previously existed, particularly between street women and the police. I would point the committee in the direction of the Liverpool experience, where a much more cohesive sense of co-operation between street women and the police has led to more attacks being reported and convictions being achieved. In particular, the figures relating to rape there are something like six times the national average. For me, the reduction in the sense of co-operation has been the biggest effect of the legislation that has been brought in over the past few years. We believe that further legislation would just lead to that emerging pattern continuing. In our view, the proposed offences would be a hindrance.

The Convener: Bearing in mind that the issue is slightly political, I leave it entirely up to Mr Livingstone whether he will answer the question.

Angela Constance: My question was certainly not political.

Assistant Chief Constable Livingstone: I think that the question gets to the hub of the debate. My answer is that we do not know. The proposed legislation might cause more harm or it might cause less harm. Until we have had an assessment of what its likely implications are, there might be dangers in going forward with it. The police's position is that we are not sure what the impact would be. That is a straightforward answer, although it might not be a clear one.

The Convener: I think that Mr Livingstone would make a superb politician.

Assistant Chief Constable Livingstone: No offence taken.

Angela Constance: It still was not a political question.

The Convener: I think that we have advanced fairly far. Do committee members have any other questions that they wish to ask at this point?

Cathie Craigie: I would like to seek clarification from George Lewis on the level of violence and harassment. He tells us in his submission that, from his organisation's discussions with the women involved, violence seems to be taken as normal. He states in page 3 of his submission:

"From discussions with women, we are aware that levels of violence and harassment continue to grow, but that women are still not reporting to police as they see the violence as 'normal' and do not see the benefit of reporting crimes."

Is violence taken as normal?

11:30

George Lewis: I think that that is a result of the growing alienation there has been over the past few years, with the loss of the tolerance zone and the kerb-crawling legislation. Women are feeling alienated from the establishment and there has been even more of a loss of self-respect and self-esteem. It is almost a case of, "Why should we bother; the establishment has given up on us, so what's the point in reporting things? Nothing will get done." The continuing pattern of alienation has probably led to that feeling. There is certainly not that feeling right across the industry—many women will still take time to report violence and appear in court, if need be—but the increased regulation has caused a pattern of isolation and alienation. Does that answer your question?

Cathie Craigie: Are you referring solely to women who work on the streets?

George Lewis: Yes, because that is where regulation has kicked in over the past few years. Obviously, the kerb-crawling legislation and the loss of the tolerance zone have particularly affected the street women.

Cathie Craigie: Earlier, you said that we should consider the evidence from people who work in the sex industry. I have considered that evidence. We have statements from people who have worked in the sex industry, and they have been scathing. They have talked about people who make money from them simply not entertaining the truth. If the truth is that there is abuse and that people still have to suffer violence and take it as part of the job, I find it difficult to reconcile that with your evidence in the second section of your submission, in which you say that we should see the licensing of indoor establishments as having a

"consequent positive effect on public health. Additionally, it has brought income to local councils in terms of Rates, and the Treasury in terms of V.A.T. and direct taxes."

Surely local authorities and the Government should not sit back and accept that while women are saying that they accept that violence is a normal part of their job.

George Lewis: You are highlighting a complex experience. What I have said about violence is about violence that has been experienced by the street women. Such violence is not so prevalent in the sauna sector of the industry and it is certainly not so prevalent in the escort part of the industry. There are three, diverse, kinds of experience that highlight what I have already said about the complexity of the issue. For that reason, the violence aspect should not be considered in isolation as being representative of what happens in the whole industry, if that is what you are doing.

Cathie Craigie: I am not doing that; I am saying that we should not say, "Don't touch that," and leave people who work in the industry having to accept violence as a normal part of their life. From the figures that you have quoted, violence seems to be increasing.

George Lewis: I am not saying that that should happen.

Cathie Craigie: No—I am sorry—I know you did not say that, but we politicians should not sit back and accept it.

George Lewis: I am saying that the figures show that increased regulation has led to an increase in violence and the sense of isolation in the sector.

Ann Hamilton: That is not our experience. There has certainly been some dispersal, and services have experienced challenges maintaining good contact with women, but the street liaison team, which is part of the police, continues to work on engaging with women and men who are involved in prostitution. Women still report violence, but I am not aware of an increase in violence and attacks. It is certainly not the case that women who are involved in saunas and indoor activities do not experience violence and rapes. They do; sadly, that is part of the nature of the activity.

George Lewis: Do not the different experiences at each end of the M8 underline the complexity of the matter? Ann Hamilton's experience is completely different from ours. It is obvious that we will not agree ideologically, but our completely different experiences underline what I have said right from the beginning: the complexity of the matter is such that much wider debate and information gathering are needed.

The Convener: We are entering into the realms of debate. I would like members to confine themselves to asking questions.

Stewart Maxwell: I will be as quick as I can. I want to ask about definitions. First, how does the panel define “sexual activity”? Sexual activity can range from something that we would all clearly recognise—I will not go into detail—but does the use of telephone sex lines represent sexual activity? Does lap-dancing that does not involve physical contact between two individuals represent sexual activity? When we considered a previous bill, we heard about sexual activity that involves submission, domination and all sorts of other things but no actual sex, if I can put it that way.

Margo MacDonald: Arousal.

The Convener: Let Stewart Maxwell finish, please.

Stewart Maxwell: There are complications. What is meant by “sexual activity”?

Secondly, I want to ask about the definitions of “paid for” and “payment”. What do they mean? Does a payment mean a cash payment or a payment in some other form? Has there been a payment if a person has paid an electricity or council tax bill, or if goods or services have been provided, or if jewellery has been bought?

Assistant Chief Constable Livingstone: Your question articulates our concern about the lack of definitions. What does the term “paid for” mean? Does it refer to payments in kind or cash-only payments? What does the term “sexual activity” mean? How would that be established on a bilateral basis? Would medical evidence be required if a woman was unwilling to give evidence, albeit that the circumstances pointed to a man having purchased sexual activity? Questions about what such activity is, how it is proven and what is meant by the word “payment” underline our concerns about the lack of definitions relating to the amendments.

Ann Hamilton: Sexual activities are those that are associated with brothels. They include masturbation, intercourse and other things that people currently pay for in brothels.

Stewart Maxwell: So anything that is paid for in a brothel would be defined as a sexual activity?

Ann Hamilton: Well, no. Sexual activities are activities that are normally provided by brothels and saunas and on the street, and they include masturbation, sexual intercourse and anal intercourse. People are fairly clear about the kinds of activities that we are talking about. Some brothels will give a list of what the activities are and prices beside them. We are not looking at kissing and lap-dancing, but the kinds of activities that are now paid for in brothels nearby.

It is obvious that most activities that happen in traditional brothels and saunas are paid for by cash or credit card. We have some women and men who trade sex for drugs, rent, heating and clothing. That would be much more difficult to pursue, but it may be worth covering that in the bill as it is still about exploitation and harm being caused to people.

George Lewis: The fact that you had to ask the question highlights the confusion that the police and the justice system would face when trying to enforce the legislation. It also highlights the fact that the law is already a bit of a mishmash and that there might be more confusion. I cannot answer the question, “What constitutes sexual activity?”—it is all things to all people.

Robert Brown: I was struck by what Assistant Chief Constable Livingstone said about his uncertainty about the effects of the proposed legislation. Against the background of the non-convening of the second stage of the task force inquiry into indoor sex, does the panel think that, given the complexities, the proposed legislation would benefit from an in-depth, properly studied inquiry into all its implications?

Assistant Chief Constable Livingstone: Yes, that would be a prudent and helpful approach.

Robert Brown: Do we know why the expert group was not reconvened? Does anybody have any knowledge of that?

Margo MacDonald: Yes.

Robert Brown: Mr Lewis?

George Lewis: Do you have a better handle on it Margo?

Margo MacDonald: I was on the group. An urgent investigation into outdoor work was planned because of the ending of the policy set-up in Edinburgh. It was to be followed by further investigation of indoor work. The intelligence gathering had just started. Everybody knew that it was going to be difficult and complex, but it was allowed to fall through the cracks because, regrettably, our colleagues did not think that it was worth putting that much effort into it.

Robert Brown: Ms Hamilton, do you accept the suggestion that in-depth consideration by a reconvened task force or something similar would add a considerable degree of light and allow us to settle the significant, almost theological, difference of view that has emerged between panel members this morning and in evidence? More specifically, would that allow us to get a handle on the implications of the amendments for harm reduction or otherwise?

Ann Hamilton: Many of us have been looking at the issue over a number of years. The expert

group's report was not accepted by the Government and many of its recommendations were not acted on. The Prostitution (Public Places) (Scotland) Act 2007 took a very different approach from that which was recommended by the expert group and sought to criminalise the buying of sex in public places. We always felt that it was a flaw to consider street prostitution in isolation from commercial sexual exploitation in general, which would include both indoor and outdoor prostitution and trafficking. We have not had a group looking into the issue at a Scotland level, but we have lots of evidence of the nature of it, the harm that is caused by it and what has worked in other jurisdictions.

Robert Brown: With respect, from the point of view of laypeople and legislators such as us, there does not appear to be any consensus on this stuff. I would like to have a good deal more information about what people throughout Scotland in different situations think about all of it before we legislate on it. Do you not think that there would be some advantage in having a further study? Is there not even more need for that given what you have said about the lack of a link between the exploitative aspects and the outdoor sex trade?

Ann Hamilton: I would not oppose further consideration.

The Convener: I will allow Margo MacDonald back in. Briefly.

Margo MacDonald: I have said all that I wanted to say. If it is possible, I would like the committee to advise the Government to look at the whole problem in a different way. I have lodged amendments to the bill, but only to show that there are alternatives to the amendments that have been lodged by Trish Godman. I do not think that the bill gets anywhere near tackling the issue.

The Convener: You will appreciate the difficulty that we have in that the amendments before us must be disposed of in one way or the other.

11:45

Trish Godman: As the former convener of the Local Government Committee, which took evidence on tolerance zones, I point out that the violence does not take place in the tolerance zones. The business with the punter is done outside the tolerance zones, as members will know. We did what we did because of the kind of things that Ann Hamilton has spoken about. The police knew where the women were and there was contact with them in the tolerance zones—you are absolutely right about that. However, if the services adapt to the changes, the women can be helped. We have evidence of that in Glasgow and in other places. The violence does not take place inside tolerance zones; if it takes place, it takes

place outside the tolerance zones. The committee was charged with looking into that and how services could pick up the women and work with them.

The Convener: Do you want to respond to that, Mr Lewis?

George Lewis: The beauty of the tolerance zone was the spirit of co-operation that existed there. Women were more likely to work in the tolerance zone and, if there were incidences of violence, they were more likely to report it to the police because of that spirit of co-operation. I do not have any figures with me, but there was probably more direct reporting of attacks to the police by the street women at the time because of that spirit. I do not disagree with the assertion that the violence took place away from the tolerance zone, but the fact that the zone existed made it much more likely that attacks would be reported.

The Convener: Ms Hamilton, gentlemen, I thank you very much for your attendance this morning. It has been an exceptionally useful evidence session. I will suspend the meeting briefly to enable a change of witnesses.

11:47

Meeting suspended.

11:52

On resuming—

The Convener: The committee will now deal with the issue of stalking. Amendment 402, which was lodged by Rhoda Grant, whom I welcome to the committee, provides for a new offence of stalking. Amendment 378, which was lodged by the Scottish Government, provides for a new offence involving threatening, alarming or distressing behaviour. The two amendments are grouped with amendments 399, 400 and 401, also lodged by Rhoda Grant. I welcome our second panel of witnesses: Ann Moulds, the campaign founder of Action Scotland Against Stalking; Frida Petersson, senior research and policy officer at Victim Support Scotland; and Assistant Chief Constable Iain Livingstone of Lothian and Borders Police and Detective Chief Inspector Peter McPike of Strathclyde Police, both of whom are representing the Association of Chief Police Officers in Scotland. I thank Ms Moulds, in particular, for her attendance this morning. She will be relieved to know that the evidence session will not be nearly as long as the previous one. We have around four questions to ask, after which I will ask whether you have anything further to say. Thank you very much for coming here this morning—it is greatly appreciated.

Cathie Craigie: Good morning. Let us get straight to the main point. Do we need a specific offence of stalking, so that such behaviour is

clearly labelled, or is it best to have a more general offence, to avoid potential difficulties in prosecuting cases in which behaviour was clearly threatening?

The Convener: I ask the police to give us their response first.

Assistant Chief Constable Livingstone: We think that we need a specific offence. People understand what it says, and it criminalises insidious, threatening behaviour. We strongly support the proposal for a specific offence of stalking. You also asked about the requirement for a more general offence of threatening behaviour. A statutory breach of the peace would be valuable in giving wider coverage, as some recent case law has narrowed the common-law definition.

Therefore, the ACPOS position is that we strongly support having both a specific stalking offence and a statutory breach of the peace, with reference to the other amendment.

Ann Moulds (Action Scotland Against Stalking): Part of the reason why I launched the campaign was as a victim of a long, horrendous stalking crime that was not recognised as such. Breach of the peace is an open, catch-all offence. It does not identify the crime or tell anybody what law has been broken, and it did not define a course of conduct, although the Government has included that aspect in its amendment. Nevertheless, stalking is a hidden crime between the perpetrator and the victim. With a catch-all offence, it will remain a hidden crime, despite it being a serious crime. A significant number of people are affected by stalking. Making the crime a statutory offence would give a clear definition of what offence was being committed. As Iain Livingstone said, making the crime a statutory offence would ensure that it was not open to interpretation or ambiguity.

Frida Petersson (Victim Support Scotland): Victim Support Scotland takes the same view: we support there being a more defined crime of stalking. The general public is well aware of the term. Research from 2002 stated that more than 95 per cent of respondents to a survey understood the concept of stalking. We think that it is important that stalking is clearly defined. In particular, we like the non-exhaustive list of suggested conducts that the offence would cover, which would give more clarity both to the general public and the victim as well as to potential offenders.

Cathie Craigie: Do you see any practical difficulties with using either of the proposed offences to deal with instances of stalking?

Assistant Chief Constable Livingstone: DCI McPike has led a lot of work on exactly that type of case in the domestic violence task force in

Glasgow and Strathclyde. He might be able to offer something.

The Convener: Before DCI McPike answers, I remind people that all mobile phones should be switched off to prevent proceedings from being interrupted.

Detective Chief Inspector Peter McPike (Association of Chief Police Officers in Scotland): We take the view that amendments 402 and 378 deal with different types of behaviour. We support the first amendment, which seeks to make stalking an offence, because it is clear. It would focus the attention of law enforcement agencies and make clear the practicalities of investigating stalking-type offences. It is difficult for us to do that at the moment because there is no crime of stalking, so we do not record stalking crimes as such and it is difficult to gauge the extent of the problem. Often, individual types of behaviour might not be criminal. For example, the mere presence of someone in a street at a given time of the day might not appear to be criminal, so the proposed stalking offence would help.

Amendment 378 proposes a statutory breach of the peace, as Mr Livingstone referred to it. Certainly, I know from investigating domestic abuse-related crimes that it is possible, for example, to have two people living in a dwelling-house where there is no chance of any other person overhearing the conduct or behaviour that goes on in the dwelling-house or between the two people and one individual is being subjected to pretty appalling verbal abuse, but that set of circumstances is not a crime in Scots law because, as the recent High Court decision in the *Harris v Her Majesty's Advocate* case reinforced, there is a need for a public element to the crime of breach of the peace—it was not a new decision, but it reinforced the point. The proposed amendment would make the example that I gave a crime. In a practical sense, the amendment would give us the ability to investigate that type of behaviour, whereas my understanding is that now, although we could investigate that set of circumstances, the Crown might not be able to prosecute without there being a public element to the crime.

12:00

The Convener: The law on breach of the peace is varied. The original case, way back, was *Logan v Jessop*, from which the High Court retreated to some extent. However, on the basis of the *Harris* judgment, there has to be a public element, which would seem to be a justification for doing something to tighten up the law, would it not?

Detective Chief Inspector McPike: That is true. That would be of significant help to us in our

investigations, particularly of domestic abuse-related incidents, which is where most of the circumstances that I referred to would arise.

Nigel Don: If a conversation got that heated, would that constitute assault? I know that that is a technical question, but I am interested in whether there is a hole in the law there.

Assistant Chief Constable Livingstone: Assault is a crime of common law. It constitutes a physical attack on the person by another. It does not need to be a contact, but verbal abuse alone would not constitute an assault.

Nigel Don: So there really is a hole in the law with regard to a situation in which two people are at home, shouting at each other, and one of them genuinely gets alarmed.

Assistant Chief Constable Livingstone: Absolutely. As Peter McPike said, in the case of someone in an isolated, remote farm cottage, there is no public element, as the nearest neighbours are miles away. Clearly, there is a need for some form of intervention because of the level of abuse or harassment, but at the moment that course of conduct is not open to us. The two amendments identify gaps in the law of Scotland as it stands.

The Convener: Verbal comments would not constitute a sufficiency for action at the moment. Is that the case?

Assistant Chief Constable Livingstone: That is correct.

Robert Brown: I want to talk about some of the proposed defences to an offence of stalking, which are fairly limited, in particular about a protest situation or picket line, of which we have seen some evidence in recent days. Such activities might be covered by proposed subsection (5)(c), under which it is a defence for a person to show that a course of action

“was, in the particular circumstances, reasonable.”

However, if there is to be a general offence of stalking, does that part of the bill need to be strengthened to cover legitimate public protest activities?

Assistant Chief Constable Livingstone: I would have concerns about doing that. I appreciate that the test in proposed subsection (5)(c) is subjective, but given that the impact of the course of action and its cause are both essential elements of the proposed new offence, I think that the wording is sufficient in stating that the person who is charged must demonstrate that their course of conduct was reasonable. I do not think that it has to be more specific.

Robert Brown: Is there a risk that people’s right of public protest will be weakened? That is not an

unimportant issue. Public protest is obviously different from what most people would describe as a stalking offence, but is there a need to state specifically that while such situations might constitute a breach of the peace or whatever, they are not the same as stalking?

Assistant Chief Constable Livingstone: In the protest scenario, are you thinking of a constituent or a complainer who felt that their complaint had not been addressed and was constantly engaged in a certain course of conduct against an individual?

Robert Brown: Proposed subsection (6)(e) says that “conduct” includes

“entering or loitering in the vicinity of ... the place of work or business of ... any other person”

or

“any place frequented by ... any other person”.

That seems to me to cover a picketing situation or, I suppose, a situation in which someone demonstrates in a particular place about a particular thing—I know that that might touch on some contentious issues but I think that you follow the point that I am trying to make. There is a generality about the proposed provisions that is a bit tricky, as they seem to include conduct that is undertaken with non-stalking purposes in mind, if I can put it in that way.

Assistant Chief Constable Livingstone: Proposed subsection (3) in amendment 402 requires that the person engages in the course of conduct

“with the intention of causing ... harm ... or ... arousing ... apprehension”

and proposed subsection (4) requires that they know

“that engaging in the course of conduct would be likely to cause such harm”.

My take on the matter is that if the other elements are satisfied and harm has been caused by someone who had the guilty intent to cause that harm, the conduct may legitimately be considered an offence. In my interpretation, amendment 402 already provides a sufficient defence in cases in which the conduct was reasonable because the person was making a protest.

Robert Brown: Do the other witnesses have a view on that? You can see the point that I am trying to get at. An area of behaviour that is not really stalking could be caught by the legislation if it is too vaguely drawn.

Ann Moulds: It is important to note that proposed subsection (3) in amendment 402, on the intention behind the course of conduct, would have to apply as well. With stalking, there is a mode, a motive and a perspective. Somebody

might harass another person because they are not happy with them or whatever, but that is slightly different from the intimate relationship that a stalker has with his victim. There is an emotional relationship between two people, and it is an unequal relationship. One of the written submissions gives an excellent comment on that. It states:

"Badcock (2005) notes that the term 'continues to be apt in its image of a hunter pursuing prey in a sustained but unequal relationship'".

That is slightly different from just harassment.

Robert Brown: So we need to capture that effectively in the legislation.

Ann Moulds: Yes.

Robert Brown: We heard that the Government lodged amendment 378, on threatening behaviour, primarily to deal with a perceived gap in the law following a recent court decision. However, it appears to contain a restated breach of the peace charge in statutory form. I ask Mr Livingstone in particular—I apologise to him for the fact that he is getting all the difficult questions today—whether he has any concerns about the breadth of the provision. It is one thing to fill a relatively narrow gap in the definition of breach of the peace because of a court decision, but it is another to create a new offence that is wider than breach of the peace but encompasses the sort of things that would usually be charged under breach of the peace at present.

Assistant Chief Constable Livingstone: Again, I do not disagree with your analysis. That is how I read it. My understanding is that the provision was deliberately drafted with such breadth because it was felt that that was appropriate to capture some of the difficult scenarios that we discussed earlier. You will know better than I do the difficulty with prosecuting such cases. Breach of the peace has always been a broad offence in common law. The appeal court judgment legitimately narrowed it, which provided clear guidance for members of the public, police and prosecutors, but in our view that left some victims vulnerable because of the requirement for a public element.

I accept your analysis that the proposed new offence is broadly drawn, but we argue that it is appropriate because it will enable us to support victims who are currently unsupported by the law.

Robert Brown: I suppose what I was getting at is whether it would have been possible to deal with the gap in the law by tweaking the breach of the peace offence. As you rightly say, it has been a useful offence, but its breadth has made it subject to criticism. Conceptually, there is not a huge gap in the law, although there are some people who need to be brought within the definition. Would an

amendment to the definition of breach of the peace not do the trick? Do we simply need to tweak the definition to reflect the appeal court judgment?

Assistant Chief Constable Livingstone: Potentially. This is the first time that I have ever seen breach of the peace codified, and it is a codification of my understanding of breach of the peace, subject to the restatement of the public place element in the Harris judgment. I believe that amendment 378 restates the breadth of the offence in statute and is properly drafted—or its intention is right. I defer to the people who draft legislation on whether it is properly drafted. However, our opinion is that the amendment addresses the gap in the law that allows some offenders to go free and some victims' issues not to be addressed.

The Convener: Can you not provide some reassurance to Mr Brown on his earlier points about a demonstration? There might be similarities in the mens rea under the amendments and under the standing common law on breach of the peace, but the practicalities are surely that in the circumstances that Mr Brown envisages, the offence would be charged as a common-law breach of the peace.

Assistant Chief Constable Livingstone: Yes. In practice, that is exactly what would happen. On the mischief of the offence that we would look for, stalking does exactly what it says on the tin. That is why we would welcome a specific offence of stalking—people would know what it means and what the law is there to do.

James Kelly: I want to ask Ms Moulds and Ms Petersson specifically about amendment 402, which is quite a wide-ranging amendment. Do you feel that it addresses your concerns about stalking or does the specific amendment in the name of Rhoda Grant need to progress really to address your issues?

Frida Petersson: Victim Support Scotland is happy with Rhoda Grant's proposal, which specifies types of conduct that could be covered but leaves it open to add new types of conduct, as new technology develops and so on. In our written response, we have made a few comments on specific additions, such as publishing statements, to ensure that things like Facebook and Bebo are included. In general, we are quite pleased with Rhoda Grant's proposal, which also looks at the reaction of the victim, which is vital to ensure that we cover what we talked about before. Many of the actions that will constitute the offence of stalking will not necessarily be criminal in themselves. It is important to balance that with the reaction of the victim. We are happy that all those elements seem to be part of the amendment.

James Kelly: What about amendment 402? What are your views on that?

Frida Petersson: Is that not Rhoda Grant's amendment?

James Kelly: No, that is the amendment in the name of Kenny MacAskill—the more wide-ranging amendment.

The Convener: That is amendment 378.

James Kelly: I apologise.

The Convener: When there are 600 amendments to a bill, Mr Kelly's confusion can be understood.

Frida Petersson: That is not a problem.

As we have said before, we have looked at this wide-ranging offence. We have had discussions back and forth about it. It involves reckless behaviour as well as intentional behaviour. Having discussed with colleagues in other organisations the practicalities of the Harris judgment, we are content with the phrasing, which will ensure that it targets specifically breach of the peace situations that currently do not have a public element.

James Kelly: Would you say that there is a case for progressing both amendments?

Frida Petersson: Yes. We would support both of them next to each other. We see that they would cover different offences.

James Kelly: Ms Moulds?

Ann Moulds: Yes, I think that they are both excellent amendments. There is a different focus in each one. Rhoda Grant's amendment focuses specifically on stalking. It deals with the crime—it names the crime, as we said before. It is focused, but it has a wide scope and a broad application, so the list is non-exhaustive. The advantage to going for a more listed method or having more categories of behaviour is that it helps those on the front line recognise what types of behaviour might constitute the course of conduct.

Normally, stalking is a constellation of acts. Stalkers employ all different types of things, and if there are five things that a stalker should not do, he or she will find a sixth thing. Amendment 402 allows for that—it is flexible and open enough without being so open that something could fall through the net. Everything should be captured quite well within the framework. The Government's amendment 378 is excellent. It differentiates between what is a breach of the peace and what is a specific stalking crime. Both amendments have their place in the bill.

12:15

The Convener: I ask Rhoda Grant whether she has any questions, as we are discussing her amendment.

Rhoda Grant (Highlands and Islands) (Lab): I have just one question, as most aspects of the amendment have been covered. I ask Ann Moulds what difference it would have made to her had there been a statutory crime of stalking when she was being stalked.

Ann Moulds: I have tested my case under both amendments and without a doubt it would have fallen through the net under the Government's amendment, as it would not have been recognised. The course of conduct was not recognised. It was not just the police who did not recognise it at the time; even in the early stages, the prosecution service did not recognise it. You could argue that that is a training issue, and I would agree with that; however, the fact is that the course of conduct was not recognised. There was no legal definition that was not too broad and loose—it was like a wild card sitting in there because of the type of stalking that I experienced. However, it would fit well under amendment 402, which is more prescriptive. Amendment 402 proposes a good framework into which the behaviours could have been placed quite well, and I could see it being translated down to front-line response a lot more easily.

Stewart Maxwell: Proposed subsection (6) of amendment 402 is prefaced by the phrase

“conduct” includes (but is not limited to)”.

Are you happy with the non-exhaustive list that follows, or is there a risk, as with all legislation, that including a list—even a non-exhaustive one—in the bill could lead to people trying to find a way around it and does not address the fact that things change and that behaviour might arise that was not anticipated? There appears to be no easy way of amending the list through subordinate legislation. Might an additional amendment that allowed the list to be amended by subordinate legislation in the future be of some value? I am not asking Rhoda Grant; I am asking the panel. Lists can create difficulties if there is no possibility of changing them.

Assistant Chief Constable Livingstone: I recognise that legitimate concern. The fact that stalking is not defined in exclusive terms—the amendment states that

“conduct” includes (but is not limited to)—

suggests that the listed behaviours are merely examples from 2010. However, there may be a potential danger. If the fact that the definition is not limited to the listed behaviours were expressed more overtly in the bill, that might deal with your

concern. You are absolutely right that every time that there is a new means of committing an offence or of getting round it, human behaviour is guaranteed to find it. It is important that we do not define too narrowly the conduct that we mean. I hope that the qualification that the offence is not limited to that list of behaviours addresses that.

Stewart Maxwell: Ms Moulds, do you have a view on that?

Ann Moulds: The matter was thought about and well discussed in looking at the different forms of legislation. When anti-stalking legislation began to be introduced in America, the problem was that the definition was too open and broad. That was the start of a learning curve. The definition had to be narrowed a bit and made more focused.

I take on board your point about whether it is better to have a list of behaviours or whether stalking is better defined as a course of conduct without the list. The list must not be exhaustive; it should be possible to add to it. Proposed subsection (6)(i) covers someone

“acting in any other way that a reasonable person would expect would arouse apprehension or fear”,

which is an open statement that should cover other behaviours. It is slightly more open to interpretation, but some flexibility is needed in the provisions.

Stewart Maxwell: So you think that there is enough flexibility in the amendment as it stands to cover any changes.

Ann Moulds: Yes. It is more important that the police are better at responding, as the provisions must be put into practice.

Detective Chief Inspector McPike: I agree with Ann Moulds that proposed subsection (6)(i), which refers to

“acting in any other way that a reasonable person would expect would arouse apprehension or fear in”

another, is a good catch-all provision.

The Convener: At the beginning of the session, I told Ann Moulds that if she wanted to make any concluding remarks, we would be interested in hearing them. We received full initial written correspondence from her, which all of us have read carefully, as she can see. She can also see that members have a degree of sympathy for the proposal.

Ann Moulds: I am comfortable with what has been discussed and with the questions that have been asked.

The Convener: I thank all of the witnesses for their attendance this morning.

12:21

Meeting suspended.

12:23

On resuming—

The Convener: Today's final panel relates to sentencing for knife crime. The session will deal with amendments that would create mandatory sentences for knife crime. Amendment 10, in the name of Richard Baker, whom I welcome to the committee, proposes a change to sentencing law to require a court to impose a custodial sentence of at least six months for the carrying of a knife in a public place, other than in exceptional cases. Amendment 10A, in my name, proposes a minimum custodial sentence of two years and a different test for where that might apply.

I welcome the final panel of witnesses: John Muir, Damian's law campaigner, and Chief Constable David Strang, executive vice-president of the Association of Chief Police Officers in Scotland. I am sorry that you were held up this morning—we had some fairly complex matters to deal with—but the session should not take terribly long. We move straight to questions.

Angela Constance: Good afternoon. Government statistics for 2008-09 indicate that 30 per cent of people who were convicted of handling an offensive weapon, including knives, received a custodial sentence and that the average length of such sentences was 263 days. The figure has more than doubled in the past decade. In your view, what are the implications of those facts?

Chief Constable David Strang (Association of Chief Police Officers in Scotland): It is clear from the facts that you have stated that 30 per cent of those who are convicted of knife offences are sentenced to imprisonment. Knife crime is a serious crime; as we know, the consequences can be fatal, especially when an offender's behaviour is fuelled by alcohol and associated with severe violence. I do not want anything that I say to be seen as suggesting that we should be soft on violence or crime. However, the statistics that you cited show that, if the amendments are agreed to, there will be a huge increase in the rate of imprisonment of people who are convicted of carrying knives and offensive weapons. In the year to which the statistics refer, the sheriff or judge in 70 per cent of cases determined that an alternative to imprisonment was appropriate. In ACPOS's view, discretion ought to remain with the bench, so that it can impose an appropriate sentence that takes into account the facts of the case and the circumstances of the offender.

Angela Constance: You intimated that you have concerns about the proposal that everyone who has been convicted of handling an offensive

weapon should go to prison. The figures indicate that 3,529 individuals were convicted of that offence in 2008-09. Does ACPOS have concerns about the vast majority of those offenders going to prison?

Chief Constable Strang: Our position is that we need to tackle knife crime and that it is much better to invest in preventive measures such as robust policing, searching people, education and using metal detectors at night clubs. At the point of sentencing—six months after the offence—it is too late to have a real impact. All the evidence shows that the deterrent effect of mandatory imprisonment is marginal. Early police involvement and a prevention strategy that includes pre-emptive searches and tackling knife and gang culture have much greater deterrent impact.

12:30

John Muir: You can make anything that you want from the statistics that have been cited. Everyone in government knows that you can make what comes up sound different by altering it to suit you. We have heard that 30 per cent of people in the knife crime business have been drinking; they are part of a booze and knife culture. Does the fact that the other 70 per cent were not drinking mean that it is okay? You can fix the figures to make things look how you want them to look.

I am pleased to say that, in our region of Inverclyde, we have pioneered many initiatives over the past two years. Last Saturday, all the effort that has been put in produced results: for the first time in nine years, we have a lower level of knife crime. That is an accolade for our local constabulary and for the petitions that we have run with the *Greenock Telegraph*, which has backed us to the hilt and run a sticker campaign on cars, vans and elsewhere.

We have a superintendent and a chief inspector who are really switched on. We work in conjunction with Inverclyde Council and with the police and go to these places. All those things are factors.

Of course, statistics mean a lot. I look at the national figures and we hear about all the big things that are jumping up and down. I can bring out figures that have been reported, in various newspapers, on the league of knife shame, as they call it. There is fury because, from 1999 to 2008-09, knife crime has increased by 67 per cent. Somebody has these figures and is able to put them into the newspaper. I am not a politician and I do not know where all these figures come from, but I have to accept that, if they are written up, there must be some substance in what has been said.

I can tell you honestly about what we have achieved through direct involvement in Inverclyde, because I have been involved in it. As Chief Constable Strang said, object policing, targeting certain things, is good and it is working in our area, but we are looking for sentencing to be more severe and to ensure that someone who has committed a knife crime is dealt with appropriately. Risk management is okay if it works, but risk management did not work for my son. The person who murdered my son had a record as long as your arm but, because of the local authority, the court, the police and the welfare people, my son died. He was stabbed eight times. That was very frustrating for us. Risk management had gone straight out the window, because the man who murdered my son in July 2007 had disfigured a man with a knife in December 2006 and disfigured a man with a bottle in March 2007. In between, there were incidents when he was caught for carrying knives, for threatening behaviour and for other things, yet he was let out. That was risk management gone mad. How many figures can we come up with on that? That is another set of figures that we should be looking at—cases in which it has not been properly adjusted.

We as a family feel very sore about the issue. We lost a son who we consider to be very good. Everybody tells us that he is one of life's good guys, but we are suffering for it. No one ever comes back and says to us, "What would you like to see happen in prison?" I would like prison to be reinvented as a place of punishment, because all we hear coming from parliamentary debates and papers is that they are going back in there for rehabilitation. Damn the rehabilitation—what about the punishment part of a sentence? Everyone just sits and nods, but who is going to do it? I cannot do it; I can bring it to your attention and hope that you will do it. I am sorry if I deviated from the issue of statistics, but that is where we are coming from and that is why we are pushing quite hard in the hope that the judiciary, the police, the public—I have missed out somebody.

The Convener: We are considering the bill, so I think that we perhaps have a wee bit of a role to play.

John Muir: Yes. I would like to take any questions as we go along on how it affects the family, how it affects your life and how it affects what you try to do. I am in favour of direct intervention on a week-to-week basis to try to get things done. We have proved in Inverclyde that it is a going thing. To have the lowest figures in nine years after less than two years of petitioning and going round is a credit to the police force down there—they have got so many things going. I support the long-term action, but this is where we fall out with the police and others: what about the here and now? It is good to say that, in five or 10

years' time, we will have less knife crime in Scotland, but there have been, on average, 55 knife murders a year over the past decade. It is quite incredible that it was the choice of weapon in 55 murders. People say that they carry a knife for protection. That is rubbish—we have proved that. In every 100 knife cases, whether a stabbing, a slashing or a fatality is involved, 90 of the people who are injured are not carrying a weapon. That is quite a dramatic figure. Ten people in every 100 such cases carry a knife for their protection.

The simple reason why we want mandatory custodial sentences for knife crimes is that, if a person is prepared to put a knife in their pocket on the way out of the door before they go for a drink, or even if they are not going for a drink, they are a knife user. There is intent, so they must be sorted out.

I am sorry to take up so much time.

The Convener: You may have anticipated some questions that would have been forthcoming. Is Angela Constance satisfied with her answer?

Angela Constance: Yes, just for now.

Bill Butler: Good afternoon, gentlemen. I would like to direct some questions at Mr Strang first; I will then turn to Mr Muir. As you know, Mr Strang, amendment 10 seeks to establish a custodial sentence of at least six months as the norm for any adult who has been convicted of carrying a knife in a public place. Amendment 10A seeks to establish a custodial sentence of at least two years as the norm. Do you think that such changes to the law would have a positive deterrent effect?

Chief Constable Strang: I think that the effect of increased sentences on deterrence is marginal.

Bill Butler: What is your evidence for that? I know that you said that in an answer to Angela Constance.

Chief Constable Strang: I have with me an article on mandatory sentencing by Declan Roche of the Australian Institute of Criminology.

Bill Butler: Is that your only piece of evidence?

Chief Constable Strang: No. From what I have read by criminologists, there is not a strong correlation between mandatory sentences and reductions in crime.

Bill Butler: What is the criminologists' evidence for their assertion? I am worried. If there is evidence, that is fine: let us have it. However, do you agree that mere assertion is not enough?

Chief Constable Strang: There are much higher levels of mandatory sentencing and higher levels of imprisonment in the United States of

America. We have mandatory sentences for murder in this country, but that has clearly not reduced the number of murders to zero. We know that people will still commit offences. The prospect of detection is much more of a deterrent than the length of sentences that people are given in court.

Bill Butler: Is the number of homicides not decreasing? You referred to murders.

Chief Constable Strang: I am saying that mandatory life imprisonment for murder does not stop people committing murder.

Bill Butler: The members who have lodged the amendments can speak for themselves, but I do not think that any of them would say that the amendments are cure-alls or panaceas. Is it not at least arguable that, if Parliament agreed to such changes and they were implemented, they would go some way to deterring illegitimate knife carrying?

Chief Constable Strang: I accept that that is a possibility, but the costs and the impact on individuals' lives of an automatic sentence of imprisonment must be considered. I would argue that sentences of imprisonment also do harm in the long run. That was also the conclusion of the Scottish Prisons Commission.

Bill Butler: What about the harm to victims? What are the costs to them?

Chief Constable Strang: Of course our primary concern is the victims. We want to make Scotland a safer place by reducing crime. As I argued earlier, we make the greatest impact on reducing crime by taking a broad approach that includes prevention, early intervention, police searches using metal detectors and an attempt to change the culture among young people so that they do not go out carrying a knife, which is hugely important.

My only point is that the introduction of a mandatory two-year term of imprisonment would not have the impact that we want. The discretion ought to remain with the judge.

Bill Butler: If I remember correctly, the amendments provide that the discretion would still ultimately remain with the judge. No one would disagree that we should not take a one-club approach; there is no doubt that any approach should include preventive measures.

However, do you think that people who listen to this evidence session might be at least a bit disappointed that you seem to think that the two amendments that have been lodged on mandatory minimum sentences would have only a marginal impact? What do you say to the 30,000 Scots who have signed a petition that calls for the implementation of mandatory minimum sentences?

Chief Constable Strang: We hear real concern about people carrying and using knives, and we are determined to tackle the issue. In Scotland, the number of knife crime offences has fallen over the past two or three years, which is evidence of the effectiveness of what we are doing without the notion of a mandatory sentence.

As you will know, the options that are available to the court were increased four years ago, so it is possible for courts to impose a sentence of four years for carrying a knife. That sends out a message about how seriously we take the issue, but it is quite different from removing the discretion and making it mandatory that people should be sentenced to imprisonment.

Bill Butler: Thank you, Mr Strang—although I emphasise again that, from my recollection, neither of the two amendments that will come before the committee and, ultimately, the Parliament, removes the discretion.

Mr Muir, you responded to my colleague Angela Constance's question by giving the very personal reasons why you support the amendments that the committee will discuss in the weeks to come, and we have listened carefully to those. I will ask you a slightly different—although obviously related—question.

What reaction have you had from members of the public when you were gathering support for the knife crime petition? Were they content with the law as it stands, as detailed by the chief constable, or did they want something more to be done? What was your impression in that regard?

John Muir: We clearly stated at the top of our petition sheets, and on our website when it was running, that we were seeking mandatory custodial sentences along the line, so people were signing for that.

If you meet the public face to face and ask them, "Are you happy with the way things are being handled on the street?" they will turn round and tell you that they are not happy. I have tried many times to say that to Parliament. That is the public's view now and, unless the issue is addressed properly, there is no doubt that it will become an election issue.

People are now thinking about the current rules and regulations, especially given the comments that are made by those who should know better—for example, that prison is a "skoosh"—which stick in people's minds. People do not want to know about statistics; they just want to know that things will happen to make things better.

My position is along the lines of the statement that I made to the knife crime summit in January 2009. I said then:

"Today must be the pivotal point in the fight against violent crime and, in particular, against knife and weapons crime. Any and all honest men would recognise that there has been very nearly criminal institutional failure and neglect on the part of the authorities in which the protection of the Scottish nation is vested. That failure is borne out by the frequency of incidences of knife crime and by the disgraceful statistics that shame Scotland. I remind this learned assembly that those statistics relate to real people and are not an academic board game.

Each and every one of the statistics represents ... a person whose life has been taken or shattered along with the lives of their family and friends."

Knife crime does not need to involve murder for it to have an effect on people throughout the rest of their lives, even if they did not die. Younger people who have been slashed cannot get a job because they have a face like a hot cross bun. That does not give them any solace when they are trying to get work. No, what is in place just now is not up to the job. Changes need to be made.

12:45

Bill Butler: That is very clear, Mr Muir. Thank you, gentlemen.

Stewart Maxwell: I want to follow up on a couple of points that Bill Butler raised with Chief Constable Strang. Bill Butler asked what evidence exists to prove what he called an assertion that Chief Constable Strang had made. Are there any studies or evidence from around the world that show that mandatory sentences reduce crime? I am not aware of any such evidence.

Chief Constable Strang: No, I am not aware of any studies that show that mandatory sentences reduce crime.

Stewart Maxwell: Are you aware of any evidence or studies that show that mandatory sentences have little or no impact on reducing crime?

Chief Constable Strang: The piece of evidence to which I referred earlier states that mandatory sentences have very little impact on reducing crime.

Stewart Maxwell: On the practical implications of such a policy, is it your understanding that, in the United States, where mandatory sentences have been in vogue for some years, many parts of the penal establishment and others—including, even, many on the right—are now backing away from that policy because of its failure?

Chief Constable Strang: I do not know whether people are backing away from it, but the United States certainly has much higher rates of imprisonment—more than four times higher than the rate in Scotland—and higher levels of crime. There does not seem to be a correlation between

imprisoning more people for longer and reducing crime.

Stewart Maxwell: Mr Butler also asked about the impact on victims. From the tenor of Mr Butler's questions, I presume that he believes that all victims throughout Scotland would support the amendments. If that is the case, can you explain why Victim Support Scotland does not support the introduction of mandatory sentences for knife crime?

Chief Constable Strang: That question would need to be put to Victim Support Scotland. However, I think that there is almost a sense that it is misleading potential victims to try to persuade people that introducing mandatory sentences or increasing sentence tariffs will somehow have a big impact. Sadly, we know that there will be victims of crime. The court needs to take into account the facts of the case and the circumstances of the individual in sentencing in an appropriate way. I know that Victim Support Scotland is thoughtful in its approach and would not welcome a blanket mandatory sentence.

James Kelly: My first couple of questions are directed to Mr Strang. He will be very aware of the experience in Lothian and Borders, where the number of people who have been caught and convicted for being in possession of a knife has increased by 21 per cent. Homicides involving an attack by a knife or sharp object comprise 71 per cent of all such incidents in Lothian and Borders. However, as Mr Muir said, the issue is not about just statistics but about the human side of the story. For example, there was a serious knife attack in Edinburgh on Sunday night, when a man opened his door and was attacked.

In the face of those statistics and of incidents such as the one on Sunday night, do you accept the logic that, if people going out on a Friday or Saturday night know that being caught in possession of a knife will likely mean jail, fewer people will carry knives as a result, so there will be fewer knife incidents and a resultant decline in the number of murders, thereby saving lives?

Chief Constable Strang: I said that the incidence of knife crime in Lothian and Borders has reduced in the past two or three years. That partly reflects police activity such as more proactive searches. As for the murder rate, half the homicides in which a knife is used do not involve someone taking a knife outside but take place in a domestic situation, in which a knife is the most readily available weapon.

If someone goes out with a knife and has the malicious intent to use it, they face a severe prison sentence at the moment. It is self-evident that that does not stop people carrying knives. People's motivations are different—some carry a knife

through fear, for protection or because of group pressure. People who carry and use knives already receive custodial sentences, so I do not accept your premise that making a mandatory prison sentence would stop people carrying knives, because it does not do so at the moment.

James Kelly: Do you not think that your attitude is complacent, particularly given the human situations that have, unfortunately, occurred throughout Scotland, where 58 per cent of murders result from knife attacks?

Chief Constable Strang: No. I have said clearly that we are absolutely not complacent. We want effective measures that reduce the number of people who carry and use knives. We want our criminal justice system to reduce offending effectively in the long term.

We know that sending people to prison is the punishment with the least positive outcomes—people who are sentenced to prison lose their jobs and are more likely to reoffend on release. I am much more in favour of targeted sentencing that is appropriate for an individual and a case. We are far from complacent—we want to make Scotland safer and to arrest those who commit offences. We will do that and we will continue to reassure the public.

James Kelly: You have mentioned costs. *The Sunday Times* reported recently that the cost to the national health service of treating 1,170 victims of knife attacks was £500 million. Do you accept the logic that a tougher sentencing policy will reduce the number of knife attack victims whom the NHS must treat, which will therefore reduce those costs and save the service money?

Chief Constable Strang: I agree that we want to reduce those wasted costs. Much more important is the cost and impact of the damage and harm that are done to individuals and families. However, as I said, I do not accept your link between mandatory sentences and a reduced cost to the NHS. We need much more effective and earlier intervention rather than compulsory imprisonment at the end of a court case.

James Kelly: Mr Muir, what is your view of people such as Mr Strang, who support the status quo in sentencing policy? Does that address the concerns of campaigners such as you?

John Muir: We are trying to redress the whole situation in one swoop, to get something done. In Inverclyde, the local newspaper—the *Greenock Telegraph*—has backed our campaign for the past two years. It has stood up and said, "We want things done." As a result of that, Sheriff John Herald said that anyone who was found to be in possession of a knife and who came to his court would be held over in jail until trial. That has applied for the past 15 months and is obviously

having an effect. After the lowest reported knife crime stats, we can turn round and say that it is nine years since the position has been as good as it is. We must look at that and say, "Yes—we're doing the right thing." We are not considering the opposite.

No one seems to be taking up the point that prison has to be disinvented or reinvented—whatever way you want to look at it. It is a place of punishment, not somewhere to put somebody conveniently out of the road. There must be terms before offenders go to prison. If the prison service gives them a course to follow and they muck about or jump about and do not do it, instead of having time taken off their sentences, time should be added on, otherwise they are not being challenged for the crimes that they commit.

That must happen. It is another stage to which we must move forward; it is all progression. We will eventually take the right decision on mandatory sentences. It is all right saying that the prisons are overcrowded but they are overcrowded for only a little while, because the sentence can soon be adjusted to get the offenders out—they are given tags. I read in the paper last week that a chap who was convicted of culpable homicide had received an eight-year sentence, had done two years in the mainstream prison and was being considered for open prison. What message and assurance does that give the public?

I meet the rank and file of the police who—contrary to what Chief Constable Strang says—tell me, "Keep it going, John. We've got to keep these rascals and thugs off the street. We find it hard. We get them in and before we can even get our squad car back to the garage, they are waving to us in taxis." That is where the weaknesses are coming in. It is not being applied and nailed to the floor. If people commit crimes and break the law, they should be punished, not told before they go to prison that they will be rehabilitated. There should be a punishment part of the sentence before they get anything easier.

Angela Constance: I ask both gentlemen whether we can address knife crime in isolation from Scotland's battle with the booze.

Chief Constable Strang: Absolutely not.

I will correct one implication of Mr Kelly's last question. He said that I supported the status quo on sentencing but, as you know, I do not. ACPOS argues strongly for effective community sentencing and fully supports the proposals in the bill to make alternatives to prison much more effective.

Alcohol and drug abuse are undoubtedly underlying factors in many of the offences with which we deal, whether carrying knives, assaults

or crimes of dishonesty. It is not the case that dealing with one aspect alone will transform someone's life. We often find that alcohol and substance misuse play a part in assaults and knife carrying. I accept entirely that we need to tackle the broader, underlying factors as well as the single offence.

John Muir: We can differentiate between the booze and the knife culture. Generally, we find that someone who has been out earlier in the night having drink might pick up a knife and have it in their possession or that knife crime is committed by a guy who goes out reasonably cold headed and has the knife for a purpose. We have always said that if somebody carries a knife, he is a user. There is no doubt about that, because we have proved time and again that there is no need to carry one.

This has been spoken about for a long time—years and years. In case anyone missed it, I will read you something that I put in my submission:

"It is depressing nowadays to take up one's paper and read the daily catalogue of assaults and murders with knives, razors and other lethal weapons. Indeed slashings and stabbings are becoming so common that they appear to be accepted as part of our modern youth's recreation."

That came from the *Evening Times* letters page on 14 March 1930. Do you not think that we should be changing things? That quotation tells us enough about Scotland: we have had the problem for 80 years and we are not moving fast enough.

13:00

Angela Constance: Are there any other aspects of the criminal justice system where we might be able to do better than consider only mandatory sentences? For example, when Mr Muir spoke of what happened to him and his son, he mentioned that it had come about because a violent recidivist had been released on bail, and perhaps we should focus on such matters.

I also listened with interest to Mr Muir's comments about improvements in the Inverclyde area, and I wonder whether we can do more to ensure that people throughout Scotland follow that kind of good practice.

John Muir: I can speak only about what happens in Inverclyde and what happened to our family. There is no doubt about it; what happened to us was a tragedy that we feel greatly. However, my son did not die in a ghetto or a bad area; as the police said, he was in the wrong place at the wrong time and got picked on. Unfortunately, the guy who did it was also in the wrong place at the wrong time—he should have been in jail.

Risk management is part of the judiciary's role, and it decides whether a particular guy can be released as long as he wears an electronic tag. I

am quite sure that there are statistics for the number of burglaries, incidents of knife crime and other offences that have been committed by people with electronic tags, but I want to focus on knife crime. Booze and knife crime go together. Greenock had a terrible reputation for such crime; at one stage, you were three and a half times more likely to be stabbed in Greenock than anywhere else in Scotland. However, the effort over 18 months to reduce this kind of crime has resulted in the best figures for nine years, and I believe that the same approach can work with many people.

Inverclyde Council and Strathclyde Police have been absolutely immense in all of this. These particular exercises, which are carried out every three or four months, are not cheap; it costs £11,000 a night to put the police in position and everything else. In case people do not know what happens on those nights, I should say that the police take their police vans into areas where there has been violence, drunkenness or whatever, pick up the people involved and bring them down, say, to James Watt College, among other places. Those who have been picked up because they are part of a drinking culture are processed; as for those who have committed a crime—for example, those carrying drugs or knives or underage drinkers—before they can go home their parents are called and they have to see three different people. A senior police officer explains to the family what might have happened, especially to girls, if they had been left lying in the street and makes it clear that boys in the wrong company can end up being knifed or stabbed. Someone from the council then explains to the younger ones about antisocial behaviour orders, how hard they can affect families and the fact that for someone who gets an ASBO at a certain address their right of tenancy after six months goes out the window. They do not know these things, and they come as a shock to the parents. Then I tell the people how a family feels to lose someone and ask them whether they want to be in the same position. That approach is working.

However, the big thing is that we have had as many as 30 organisations offering options including badminton, tennis, football, tae kwon do, boxing and music. People always say that nothing can be done; the fact is that plenty can be done, and we are showing them what we have been able to do. As I say, the approach is working and I think that communities and councils can do a lot in conjunction with the police force.

Chief Constable Strang: I commend those comments about the proactive work with the community in Greenock. Indeed, such an approach is being taken throughout Scotland. For example, operation floorwalk in West Lothian was similarly aimed at engaging with young people

who were at risk of offending, particularly as a result of alcohol. Instead of trying to do something after people have offended, we need to take a preventive approach in the first place and put more effort into those kinds of early intervention and upstream measures.

Angela Constance: The letter that Mr Muir read out from the *Glasgow Evening Times* mentioned “lethal weapons”. Richard Baker’s amendment 10 talks about

“having in a public place an article with a blade or point”.

I wonder whether there is a risk of displacement and whether, instead of carrying knives or things with a blade or point, people might go on to carry other types of offensive weapon that could have the same catastrophic consequences.

Chief Constable Strang: The blade or the pointed article reflects the Criminal Law (Consolidation) (Scotland) Act 1995 in which the amendment seeks to make a replacement. I do not think that people will be as calculating as that. If someone puts a knife in their back pocket, I do not think that they think about the sentence that they might get if they are caught and have to appear in court in six months.

Angela Constance: What would deter you or me will not always deter a feckless, irresponsible individual.

Cathie Craigie: This question is specifically for you, Mr Strang. You said today that you support prevention efforts and you mentioned something that happened in the Lothian police force area. Mr Muir spoke about the good work that has gone on in Greenock and how it has reduced the level of offences there in the past year. If work is going on in the Lothian area, why are we seeing a rise in the level of knife crime there?

Chief Constable Strang: I will say two things. One is that right across all eight forces in Scotland we are tackling violence. The violence reduction unit headed by Chief Superintendent John Carnochan provides support to campaigns throughout Scotland in all our cities and rural areas. The other is that the number of recorded knife crime incidents has fallen in the Lothian and Borders police area over the past three years; it has not increased.

Cathie Craigie: But not in the past year according to the information in front of me.

Chief Constable Strang: I think that you might be talking about conviction rates in court, which are different from recorded offences. I have here the figures for the past three years in Lothian and Borders: in 2006-07, there were 984 incidents with offensive weapons; in 2007-08, it was 797; and in 2008-09, it was 784.

The Convener: Due to the lateness of the hour, I propose that we do not go into any great depth about what is happening in Lothian and Borders, but perhaps it would be helpful if the chief constable could write to us with the figures.

Chief Constable Strang: Certainly.

Cathie Craigie: Then we can confirm the numbers, because I stand by the figures that I have.

According to Mr Muir's evidence, the focus of the work being carried out in the Greenock area is on young people, which I applaud because a lot of behaviours can be learned from older people. The statistical bulletin published in March 2010 on the criminal proceedings in Scottish courts in 2008-09 tells us that 67 per cent of people who were convicted for using an offensive weapon were over 21. Therefore, it is clear that there is a group of people that some of those preventive measures will not touch. Earlier today, Mr Strang, you said in your evidence that people who carry a knife at present can expect to go to jail, but in fact that is not the case, according to figures that we have from the published statistical bulletin. Would the deterrent of the possibility of going to jail help to reduce that percentage?

Chief Constable Strang: The 67 per cent of people who were over 21 were people who were convicted in court. They were people in relation to whom we had taken preventive action, by arresting them because they were carrying a weapon.

It is clear that people are sent to prison for carrying knives. My point was that someone who goes out with a knife in their pocket is not thinking that they will be caught. They are not thinking, "I have only a 30 per cent chance of going to prison. If the case comes before the sheriff there is a 70 per cent chance that I will get only a community sentence, probation or a fine." That is not how people who carry knives think. They assume that they will not get caught. I do not accept the premise that to make the final court disposal a mandatory prison sentence will stop people taking a knife with them when they leave the house on a Friday evening.

Cathie Craigie: Would it not make a difference if someone who gets ready to go out on a Friday night by gelling their hair and putting a knife in their pocket knew that if they were caught the court would send them to jail?

Chief Constable Strang: No. I think that such people think that they will not get caught, just as people who drink and drive think that they will not get caught and get a particular sentence. That is the deciding factor.

Cathie Craigie: Why then do we not see lots of people going about with guns in their pockets? The approach proposed in the amendment is similar to the law on possession of a gun. If knife-carriers think that they will not get caught, why do they not stick other offensive weapons in their pockets?

Chief Constable Strang: The culture around—and availability of—guns is very different from the culture around knives. The purpose of imprisonment is primarily punishment for the offence and protection of the public. There is some deterrent effect, but the evidence is that that is weak. There are all sorts of reasons to do with the availability of firearms, and other social reasons, why people do not carry guns.

Robert Brown: I thank Mr Muir for hosting my visit to Inverclyde to learn about the initiative. As I understand it, the essence of the initiative is early intervention. There is a restorative element, whereby people are brought face to face with people like you, who have experienced tragic knife crime in their families. Young people are given positive alternatives through various opportunities, and their parents are brought into the picture. All that, which has nothing to do with mandatory sentences, has had a significant effect on knife crime rates in Inverclyde. I do not know whether we have the statistics, but there is anecdotal evidence that knife crime has gone down by about a third—is that correct?

John Muir: Yes.

Robert Brown: Does that not establish that whatever we think about other matters, early intervention techniques have an effect on that catchment of people? I pay tribute to John Muir for his impressive work in that regard.

13:15

John Muir: There is no self-accountability among people who want to carry a knife and be violent. That is not part of their religion. If they have not got something, they will take it, so they put a knife in their pocket. The old-fashioned way when guys went out at night was to take bonnet, belt, fags and matches; now they take a mobile phone and a knife. That is the modern style.

Something that has been greatly overlooked is that the murder conviction rates show that murders are being committed not by feral 15-year-old and 14-year-old youths but by older people—people who are 21, 23 or 30. Down in Greenock, we have had people who were 43 and 51 and carrying a knife. It is not about the feral youths that everyone keeps talking about.

At the summit in January last year, John Carnochan said:

"People kill people, not knives".

Although that is a fair point, at the time I said that equally people not carrying knives are less likely to kill people. For us as victims, what he said was a total snub. Who did he think he was talking to? Some wee boy from the side of the street? I am an elderly gentleman—an elderly man—who is trying to put a point across to Parliament and someone was talking down to me. I did not like it; I resented it.

While I am here I should say to Robert Brown that I brought to the summit Kelly McGee, whose brother was stabbed to death in Lochwinnoch. I have a list in my diary of the people I introduced her to on the day. Reading from the top down, they included Bill Aitken and Miss Goldie. Nigel Don also saw the girl that day. Robert, you were waiting to be interviewed; you did not make time to be introduced to her. That was a snub to the family. I can assure you that the girl went home in tears; she was really upset. How can I come to a meeting such as this knowing that some of the people who take the decisions do not support us? Kelly McGee was not just an ordinary voter; she was a victim. Her brother had been stabbed to death. He had received the Queen's commendation for bravery medal for his bravery in Iraq and he died on his own doorstep.

We are talking about self-accountability. These people do not care; they just do it. There is only one place for them and that is behind bars. If I am driving past Barlinnie, I do not for one minute think to myself that the people inside there are paying a debt to society. Damn that. I am pleased that they are in there. While they are locked up in there, they cannot do any harm to my family.

The Convener: In defence of Robert Brown. I am certain that he would not have done that through any lack of courtesy. He is one of the most courteous of members.

Robert Brown: Thank you, convener. That is useful on that one.

I refer you to the paper that you helpfully gave us, Mr Muir, in which you analyse your reasons for looking at issues such as punishment across the criminal justice system. I am clear about your view on punishment, which you have articulated this morning. I also understand your view on paying a debt to society. If someone goes to prison, they have to come out at some point—after three months, six months or two years. The central question is: do they come out of prison more or less likely to carry knives and commit crimes? When I visited Polmont young offenders institution, I was told that 91 per cent of the young offenders had been there before. Polmont is a facility for those under 21, but going there appears not to be an obvious deterrent. I think that there are similar

statistics for those given prison sentences. Prison seems not to have a deterrent effect. Do we not have to deal with the underlying causes of why people commit crimes?

John Muir: Where do those differentials get us? Let us take general conditions for prisoners—

Robert Brown: Some of them are inside for a long time.

John Muir: That is fine. Get them in for a long time if they have done a big crime.

Prisoners have Sky television, warm cells, showers and three meals a day. If they do not like the meals they get, they have them brought in from the outside. There is no deterrent in that. They go back into prison readily; it is like a club. They say, "I'm going back in to see my mates who're in for a wee bit longer than me. They'll give me an update on what's going on."

At times, I feel that I am letting myself down when I come along and complain about things. I have said this many times: go to the sharp end of the boat. Go to the areas where life is difficult and where things are poor and bad. People in those areas do not live the life that you or I live. I live in an area where I am not faced by violent crime every hour of the day, but people near to where I live face that.

Again, this goes back to self-accountability and the lack of proper prison sentences. The big thing that jumps up when people go into prison is that they then have these wonderful civil liberties—civil rights to claim for sundries so as not to upset their cosy lifestyles. I have to ask the question time and again: what about my son? He was 34 years of age when he died, and he will be 34 years of age when I die. That is what you have to look at. He had nothing out of life up to that age. He was a fine boy.

The victims are us—the family, carrying on in the aftermath. We see people coming out of prison, giving us the finger, snubbing us just because of who and what we are, and saying, "We beat the system again." The present system does not have enough guts.

The Convener: Right, I think that we have now reached the point of repetition. On the strict understanding that their questions be without significant preamble, we will have final brief questions first from Trish Godman and then from Richard Baker.

Trish Godman: I represent part of Inverclyde—Paul McGee was a constituent of mine. I want clarification from you, Mr Strang. You opened by saying that cost and prison space would be a problem, and then you said that mandatory sentencing would be a problem, too. Which do you

think is the bigger problem in terms of your objections to the amendments?

You have also said, “We need to do” lots of times—I have written it down. You have good examples in Inverclyde and Lothian, so why are you not doing it? If you are not doing it just now, do you have the intention to move the good practice that Angela Constance spoke about across the city? However, I am more concerned about your opening statement that says that it will cost a lot, there is not the prison space and you do not believe in mandatory sentencing. Which of those things is the reason why you do not support the amendments?

The Convener: Short, crisp answer, Mr Strang.

Chief Constable Strang: On mandatory sentencing, I think that the discretion should be with the sheriff or judge who is sentencing. They know the facts of the case and can take into account the individual’s circumstance and sentence accordingly. However much it cost or however many prison spaces we had, I would still say that a mandatory prison sentence is not the right way forward.

The Convener: I ask Richard Baker to follow the excellent example set by Trish Godman.

Richard Baker (North East Scotland) (Lab): I am not sure whether I can match that, but I have two brief questions.

Mr Strang, my amendment is based on the current laws for mandatory sentences for firearms offences. I presume that you are not suggesting that the current laws on firearms are faulty, so can you understand why some of us are perplexed that we have that sentencing regime in place for firearms, offences of which are falling, but not for knives? Last year, 57 people were stabbed to death, while only two people were killed with firearms. Can you see why your logic escapes us?

Chief Constable Strang: No, because I do not think that there is a logic that says that if we introduced mandatory sentences for knife crime, they would have the impact that you hope for.

Richard Baker: Even though, with that sentencing regime in place, firearms offences are falling.

Chief Constable Strang: I do not have the figures for firearms offences with me but, as I said earlier, the culture and circumstances of people carrying firearms are very different. The availability of firearms is in stark contrast to the availability of knives: every kitchen has a string of knives in it.

Richard Baker: I understand that we are short of time and that we will have an opportunity to return to the subject, so this is my final question.

The figures that we have show that there was an increase—admittedly a small one—between 2007-08 and 2008-09 in offences of handling an offensive weapon in Lothian and Borders. The interventions in your police force area that you have mentioned and those in Greenock that John Muir has referred to are to be commended, but why should they preclude a change in the sentencing regime? We could have a new sentencing regime that would have the effect that we want, send out a clear message—“Carry a knife, go to jail”—and, at the same time, have those interventions, too. Surely they can work side by side.

Chief Constable Strang: From a logical and technical point of view, they could. However, I am arguing against a mandatory sentence that is applicable to absolutely everyone, whether they are a 16-year-old who is fearful or a 30-year-old who has gone out with criminal intent and carrying a knife. I think that there needs to be a distinction.

I stressed preventive and proactive policing—working with communities, youth clubs and schools—because that is the way to make a real difference, rather than sending people to prison, which we know has negative outcomes for them. I accept entirely that it protects the public while those people are in prison because they are not committing offences on the street, but we must remember the long-term impact. The point of “Scotland’s Choice”, the report of the Scottish Prisons Commission, was that we have a choice to make: either we continue to lock up people, with the negative outcomes that that has, or we have a fresh approach to community sentences.

The Convener: Thank you very much—

John Muir: I just want to make one small point. One reason why we have had a lot of success in Inverclyde is the Scottish Parliament. That should not be forgotten. We have received proceeds of crime money, which has been a big bonus, and I want the MSPs here to know that we appreciate that very much.

The Convener: Thank you for those generous words, and thank you for your evidence this morning. That concludes our evidence session.

13:25

Meeting continued in private until 13:36.

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