



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# JUSTICE COMMITTEE

Tuesday 15 September 2015

Session 4

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## Tuesday 15 September 2015

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### **JUSTICE COMMITTEE** **25<sup>th</sup> Meeting 2015, Session 4**

#### **CONVENER**

\*Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

#### **DEPUTY CONVENER**

\*Elaine Murray (Dumfriesshire) (Lab)

#### **COMMITTEE MEMBERS**

\*Christian Allard (North East Scotland) (SNP)  
\*Roderick Campbell (North East Fife) (SNP)  
\*John Finnie (Highlands and Islands) (Ind)  
\*Margaret McDougall (West Scotland) (Lab)  
\*Alison McInnes (North East Scotland) (LD)  
\*Margaret Mitchell (Central Scotland) (Con)  
\*Gil Paterson (Clydebank and Milngavie) (SNP)

\*attended

#### **THE FOLLOWING ALSO PARTICIPATED:**

Amanda Coulthard (West Dunbartonshire Community Planning Partnership)  
Dr Graham Foster (Forth Valley Health Board)  
Lorraine Gillies (West Lothian Community Planning Partnership)  
Chief Superintendent Grant Manders (Police Scotland)  
Alex McCallum (Dumfries and Galloway Council)  
Councillor Harry McGuigan (Convention of Scottish Local Authorities)  
Sean McKendrick (Social Work Scotland)  
Councillor Peter McNamara (National Community Justice Conveners Group)  
Mark McSherry (Risk Management Authority Scotland)  
Teresa Medhurst (Scottish Prison Service)  
Michael Stewart (Outer Hebrides Community Planning Partnership)  
John Watt (Parole Board for Scotland)  
Paul Wheelhouse (Minister for Community Safety and Legal Affairs)  
John Wood (Convention of Scottish Local Authorities)

#### **CLERK TO THE COMMITTEE**

Peter McGrath

#### **LOCATION**

The Mary Fairfax Somerville Room (CR2)



# Scottish Parliament

## Justice Committee

*Tuesday 15 September 2015*

*[The Convener opened the meeting at 09:46]*

### Subordinate Legislation

#### Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Scotland) Regulations 2015 [Draft]

**The Convener (Christine Grahame):** Good morning and welcome to the Justice Committee's 25th meeting in 2015. I ask everyone to switch off mobile phones and other electronic devices as they interfere with broadcasting even when switched to silent. We have received no apologies.

Agenda item 1 is the formal debate on the motion to approve the draft Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Scotland) Regulations 2015. As members will recall, we agreed to postpone this item after last week's evidence-taking session, and I therefore welcome once again Paul Wheelhouse, the Minister for Community Safety and Legal Affairs. I also welcome the justice department officials who are supporting the minister, but I must remind everyone that, because this is a debate and not an evidence-taking session, the officials are not permitted to take part.

I invite the minister to speak to and move the motion.

**The Minister for Community Safety and Legal Affairs (Paul Wheelhouse):** I am grateful to the committee for allowing further time for consideration of the legal aid arrangements for the new sheriff appeal court. Last week, my officials met representatives from the Law Society of Scotland to reassure them of the Government's commitment to continue to engage with them on this important issue. Following that discussion, I remain of the view that the draft regulations make appropriate legal aid provision until a review of the court's operation can be undertaken early in the new year.

As the example accounts that have been shared with the Law Society and the committee show—I am aware that there has been some criticism of the examples, and I hope to be able to address that—appropriate fees will be available to solicitors who conduct appeals in the sheriff appeal court through the detailed fee arrangements. The Scottish Legal Aid Board estimates that a Glasgow solicitor could earn fees and outlays of anything

from £400 to £600 and more; indeed, the example account in the committee papers demonstrates how a fee of £606.77 is arrived at in a hypothetical appeal against conviction. As I have said, I am aware that the Society of Solicitor Advocates has been critical of some of the numbers, but I should also point out that a solicitor who represents a client from the original defence of the case through to appeal at the sheriff appeal court could be paid more than £900 per client.

It is important to emphasise that the payments for the new appeal court are calculated on a different basis from the block fee that is paid to counsel conducting an appeal in the High Court. That fee does not make detailed provision for travel and other expenses, and the detailed fees that are proposed for the new court will allow a proper assessment to be made of the work that is undertaken by individual solicitors in each case. That, though, is not the end of the process and, as I have said, we will continue to engage with the profession to review the fee arrangements for the new court and the legal aid system more widely. Indeed, the data that we will develop through the use of detailed fee arrangements will allow us to assess in due course whether there is a case for block fees to be applied for the sheriff appeal court, and the information that solicitors provide will help to inform that process.

Members have raised concerns about the costs of travelling to the new court. Mr Finnie highlighted an example, and I hope that we have addressed that in the information that we provided to the committee for this meeting. I assure members that travel fees will continue to be available and solicitors will not be disadvantaged relative to the current arrangements; in fact, the travel fee arrangements are in effect similar to those that are already in place for solicitors attending court in Edinburgh. For these types of appeals, solicitors will often choose to instruct an agent in Edinburgh, as they do at the moment—it is important to stress that—instead of travelling.

The Scottish Legal Aid Board will take a pragmatic and flexible approach to sanction for counsel, which will help solicitors to make the transition to the new sheriff appeal court. If it is evident that solicitors do not want to take on this work in the immediate term, SLAB has indicated that it will sanction counsel for cases in the new court.

We are considering whether it will be possible, in due course, to use an accelerated process to amend the regulations and allow for what would, in effect, be a guarantee that sanction for counsel will be given in cases to remove doubt from the minds of solicitors, some of whom, I understand from the discussions that we had with the Law Society, are concerned that there might be a risk

of taking on a case only to find that they are not able to represent the client in the sheriff appeal court. That will ensure that, if a solicitor chooses not to appear in the new court, they will be no worse off than at present. More important, the client will be represented and there will be equality of arms.

As we discussed last week, solicitor advocates will not be able to charge counsel rates in the sheriff appeal court, but they will have the option to provide representation in their capacity as solicitors. I understand that that is not ideal from a solicitor advocate perspective, but it reflects the existing legal aid situation for civil sheriff appeals and other proceedings in the lower courts, where solicitor advocates do not exercise their extended rights of audience.

We have already begun discussions with the Law Society, the Society of Solicitor Advocates and the Faculty of Advocates on the role of solicitor advocates in comparison with counsel with a view to addressing the wider issue. I must put on record that I have the utmost regard for solicitor advocates and their work, and I undertake to meet their representatives in the near future—and well ahead of the legal aid arrangements for the new sheriff appeal court being reviewed—to discuss the issues from their perspective.

I hope that my letter and the further clarification that I have provided today will enable the committee to support the draft regulations and allow the new sheriff appeal court to begin its work. Finally—I mentioned these figures last week, but given the nature of the discussion that we had, I want to make sure that they register—I note that we are talking about less than 1 per cent of the cases that are granted support by SLAB. Around 30 solicitor advocates are doing work of this nature and might therefore be affected by the measures, but in the most recent year for which SLAB has data, only six did work that was worth more than £5,000 in fees. I hope that that puts into perspective the scale of the potential impact on individual businesses and the number of individuals who might be involved. That said, I appreciate that the issues are serious for those individuals, hence my commitment to meet the Society of Solicitor Advocates to discuss the matter.

I hope that what I have said helps to clarify the position somewhat, but I am happy to engage in the debate.

I move,

That the Justice Committee recommends that the Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Scotland) Regulations 2015 [draft] be approved.

**The Convener:** I will begin with Roderick Campbell, who has just indicated that he wishes to speak. Rod, do you wish to make a declaration of interests before you start?

**Roderick Campbell (North East Fife) (SNP):** Thank you for reminding me, convener.

**The Convener:** I did that just in case you get sued, you understand.

**Roderick Campbell:** I refer members to my declaration of interests as a member of the Faculty of Advocates.

In that context, I direct you to the impact of sanction for counsel. Last week, my colleague Margaret Mitchell referred to a section that applies only to civil proceedings. I am grateful for your comments about further discussions on extended rights of audience, but can you say any more about the impact of sanction for counsel with regard to these types of proceedings?

**Paul Wheelhouse:** Can you remind me of the point that Margaret Mitchell made last week?

**Roderick Campbell:** She referred to section 108 of the Courts Reform (Scotland) Act 2014, which relates to sanction for counsel in the sheriff court. However, that provision, which gives the court the power to decide whether sanction for counsel is appropriate, applies only to civil proceedings and is not relevant to criminal legal aid.

**Paul Wheelhouse:** We are trying to ensure that the provisions provide equality of arms. I take the point that Margaret Mitchell made last week and I hope that in the evidence that we have presented in our letter to the committee we have addressed a large number of the concerns that were raised last week.

There will be a number of areas where we might need to review the performance of the court in practice. The issue around the regulations as proposed is that, by requiring solicitors to provide information on detailed fees, we will be able to build up knowledge of the costs of taking forward a case and to look sympathetically at the need for block fees and other arrangements that might be put in place in future to assist solicitors and reduce the bureaucracy that is involved in drawing down legal aid. Where solicitors and solicitor advocates and counsel are doing appropriate work on behalf of their clients, we do not want to create unnecessary bureaucracy.

Section 108 of the 2014 act is about whether the cost of counsel can be recovered from the unsuccessful party in civil litigation. We can come back to the committee on that in due course, but it is not entirely relevant to the point that is being debated with regard to the draft regulations.

**Roderick Campbell:** Okay. Moving away from sanction for counsel, my second point is about the £260,000 of savings that the Law Society had predicated by alternative fee arrangements. In your letter to the committee, you say:

“It is unclear how such savings would be achieved from the options proposed by the Law Society.”

Is there anything—

**The Convener:** I remind people that this is not an evidence session but a debate. It is all right—I am quite flexible about it—but I remind the member that the format is more of a debate. You might want to make a little speech instead. If you raise issues, we hope that the minister will answer them in winding up. Do you wish to put your point in a different way?

**Roderick Campbell:** On the £260,000 figure, with the best will in the world, the committee is unable to take a view on that alternative proposal because insufficient information has been presented to us.

**Elaine Murray (Dumfriesshire) (Lab):** My approach to this debate is not so much about what solicitors or solicitor advocates are paid; the essential thing is access to justice for people on low incomes. My concern is that, if solicitors will not perform those duties on the fees that they receive from the Scottish Legal Aid Board and people are unable to get a solicitor advocate to represent them in the sheriff appeal court if they are supported by legal aid, they will not get the same access to justice as people who can pay the private fees that solicitors or solicitor advocates charge. That would mean that people on low incomes would be disadvantaged.

In essence, legal aid is a benefit for people who are on low incomes; it is paid to help them to pay their legal costs. A cut to that budget is a cut to a benefit for people who are on low incomes. That is my main concern, and I am afraid that it has not been allayed in the past week by the information that we have received. I am not convinced that solicitors will continue to do the work or that solicitor advocates will be prepared to do the sort of work that they have done for the fees that they will get from the Scottish Legal Aid Board. Unless that concern can be allayed today, I consider that I will have to oppose the draft regulations.

I know that there is a certain amount of time pressure, but the Government has had a long time to think about the matter. The draft regulations have been in front of the committee for only a week, but the Government has had quite a long time to consider them and get them right, and I am not convinced that it has done so.

My query, which the minister could perhaps respond to when he sums up, relates to the letter

from the minister, which is on page 37 of paper 1. There is a suggestion that

“the unintended effect”

of not approving the draft regulations would be to leave

“solicitors worse off for representing the client in the original defence of the case”.

I do not understand that argument at all, and I would be interested to hear the rationale behind that statement.

**Alison McInnes (North East Scotland) (LD):** First, I draw the committee’s attention to my entry in the register of members’ interests as a member of Justice Scotland.

The minister has chosen to characterise the debate as an issue of fees for the legal profession. Last week, he quite inappropriately cited comparisons with the minimum wage. We do not pay legal aid for the good of the legal profession; as Elaine Murray said, we pay it as a public benefit to secure access to justice.

The minister said that legal aid fees are reasonable rates of pay for the work that is involved, but it is clear that, in this instance, that is not the case. We have had a significant amount of correspondence challenging the figures that the minister has given.

The sheriff appeal court is a new court, but there has been ample time to consider the matter. It is really not our place to avoid scrutiny because the minister has left it all to the last minute. The court reforms are about streamlining and modernising and were not meant to be a cost saving exercise, yet we seem to be getting just that on the coat tails of the reforms.

I stress that the appeals will be no less demanding than they were before and they will be just as important to the appellant, yet we are facing appellants with an inequality of arms. We have heard that advocate deputes will be making the case for people who have no representation whatsoever, given the tight timescales. The draft regulations are hasty and ill thought out and I will not support their passage today.

10:00

**Margaret Mitchell (Central Scotland) (Con):** Good morning, minister. I am grateful that you have come back with extra information and tried to provide some clarity. Unfortunately, I do not think that you have succeeded.

**Paul Wheelhouse:** There is always time.

**Margaret Mitchell:** Given the representations that we have had and the valid points from those who are affected by the draft regulations, it seems

that the contingency—which is an accurate description of what you are now proposing—and the transitional arrangements have led to a bit of uncertainty. That is not good for the establishment of the new appeal court. It may be that only 1 per cent of the cases and only 30 solicitor advocates are affected, but there will still be access to justice issues for every individual who might be looking for representation from those solicitor advocates.

There also seems to be some dubiety about the five accounts of expenses that were drafted to show different scenarios, and they are being challenged. There is also real concern that, if solicitors take on some work in the sheriff appeal court but then find that they are on court duty or that they have other local commitments, they might be in contempt of court. You covered that in your opening statement, but it was not covered last week, when we could easily have approved the draft regulations. How many other issues are there that could affect access to justice?

We have already had the Society of Solicitors and Procurators of Stirling and the Falkirk and District Faculty of Solicitors advise that they would not take on any appeal court work. That opinion has been reinforced by the Law Society representations, and many legitimate points have been raised by solicitor advocates.

In one way or another, minister, I think that the wisest thing would be for us not to agree to the motion on the draft regulations today but to have a fuller debate and more clarity before they go before members in the chamber.

**Christian Allard (North East Scotland) (SNP):**

Thank you for your opening statement, minister. As Margaret Mitchell said, it is welcome that you tackled more points than you tackled before. I also thank you for giving us some indication of the fee levels. We now understand that they are quite different from those in the submission that we received. I have no declaration of interests to make because I have never worked in the profession, but I understand that when a profession feels that it has to defend its fees, it will make a strong argument.

One thing that will convince me to vote with the Government is what you said about having a review after six months. That is quite important. I am also encouraged that you will keep up communications with the profession during the six months.

Everything that you can tell us about the draft regulations is welcome. I wish that some of the submissions that we received did not try to compare apples and pears, because it is important to understand what the fees are.

Another point that we have to make is about travelling. Of course it is in the profession's

interest if someone in Edinburgh instructs someone there to represent them.

All the submissions that we have received are welcome, but they are all similar. To an extent, I understand why they were made. I am quite encouraged by the proposed six-month review and the engagement that the Government proposes during the six months, and I will vote with the Government on this.

**John Finnie (Highlands and Islands) (Ind):**

Equality of arms is an important issue that has been mentioned a number of times. To me, the issue is about status and the relative positions of the Crown and those who are deliberating on important matters such as findings and sentences.

The draft regulations' frailty relates to communications. I would have found them more compelling if there had been a review six months before we considered approving them, rather than having one six months after they are approved.

You used a lot very positive phrases, minister. If I noted this correctly, you assured us that, in the near future, SLAB would be pragmatic, and you talked about accelerating amendments.

Basically, the issue relates to the reform that the committee was involved in passing, because it has changed the title of a forum, although it probably does not even change its location. I do not think that the purpose of the committee is to negotiate fees on behalf of any profession, but we have to protect the interests of workers, regardless of their status or competence. It seems entirely wrong that someone is suddenly disadvantaged because we have changed the title of the forum. Indeed, the fact that a member of the profession refers to competition law and exclusion is a very interesting development.

My obligation is to act in the best interests of my constituents. I have been left in no doubt about the situation by the faculty of solicitors of the Highlands—and the situation would be compounded for the island courts—whose representative says:

"I have canvassed the views of the legal practices working in your constituency who regularly undertake criminal court work ... and can report that none is prepared to accept instructions from legal aided clients in respect of summary appeal cases with effect from 22 September 2015."

Last week, I said that the phrase "access to justice" is bandied about all the time. This is not access to justice for my constituents. I am disappointed that the work that will take place after we have discussed the draft regulations did not take place beforehand. I cannot support the proposal that is in front of us.



**Margaret McDougall (West Scotland) (Lab):** I add my concerns about access to justice to what has already been set out by my committee colleagues. Nothing has convinced me since last week to change my mind about the draft regulations. I have concerns that people will not be able to get the solicitor of their choice, because not every solicitor will be willing to offer their services.

Minister, you mentioned that you will review the fees at a later date. My concern is about what will happen to people who do not appeal over the period, having lost the opportunity to appeal as they are not able to get a solicitor either because one is not available or because they find it financially impossible to secure one.

**The Convener:** I find the issue very difficult. I have to say that the jury is still out for me. My concern is also about access to justice. Throughout the passage of the Courts Reform (Scotland) Act 2014, equality of arms was one of the main issues that we looked at.

I understand that the sheriff appeal court will be up and running on 22 September. As another member has said, the main thrust for urgency that we hear from the minister—perhaps when he sums up, he will advise us whether this is the case—is that if we do not approve the draft regulations, solicitors will be “worse off”. I need a working example of that. The minister’s letter says:

“Consequently, this would have the unintended effect of leaving many solicitors”—

not all, but many, so I want to know about that—

“worse off for representing the client in the original defence of the case”.

I need to know why, if we do not approve the draft regulations, it will be worse than if we approve them and wait for a review.

The other point I want to make relates to something that sort of skimmed past me, which is the role of SLAB. I think that the minister said that there were only about 30 practising solicitor advocates. How firm is SLAB’s commitment—and how sympathetic are you, minister—to bringing in automatic sanction for advocates and solicitor advocates in the sheriff appeal court, so that we get rid of the problem of the differential?

There are quite a few issues in there for me. The main question is, if we do not approve the draft regulations and the court is up and running on 22 September, why will solicitors be worse off? Otherwise, like everybody else, I have concerns about sorting things by returning to the issue after we approve them.

**Paul Wheelhouse:** I hope that I will be able to address all the points that members have raised. I thank them for their considered remarks.

The issue has gathered significance as time has gone on. I believe that, when the committee scrutinised the Courts Reform (Scotland) Act 2014, the issues did not come up, or were not raised as issues of concern. Clearly, the committee, and indeed Parliament, supported the creation of the sheriff appeal court. I appreciate that the committee is now in some difficulty as it tries to understand what the implications will be for access to justice. I recognise that a number of members have made that point.

On access to justice, we are absolutely committed to ensuring that individuals are represented well for appeals. I have acknowledged that, in the long term, the issue of solicitor advocates must be addressed. If a solicitor is unwilling to take forward a case to the sheriff appeal court, or if there is a concern about equality of arms, we can amend the regulations in an accelerated process. I cannot give a timescale for that, because we obviously need to work with the committee on when that would be possible.

However, we can bring forward accelerated changes to the regulations to ensure that clients are guaranteed sanction for counsel. That will remove the risk when a solicitor is taking forward a case of there being inequality of arms for the client and a concern that the solicitor will not be able to represent them to the appropriate level in the sheriff appeal court. Our statement today on that follows our discussions with the Law Society in the past week. Points were raised in those discussions that we acknowledged and felt had to be addressed. I hope that we are reacting positively to the engagement that we have had with the Law Society on ensuring that equality of arms is guaranteed.

However, that does not deal with the fair point about solicitor advocates that the convener raised. I put on record my recognition of the quality of work that solicitor advocates do. I am in no way critical of their function and I know that they have done a lot of good work under the current arrangements. We need to address their position.

As the committee will be aware, there are much bigger debates about the role of solicitor advocates. There are a number of stakeholders, and we are engaging with the Law Society, the Society of Solicitor Advocates and the Faculty of Advocates to ensure that we address the issues and get a fair settlement, if you like, on compensation for the work that solicitor advocates do for their clients. That will not be a quick process, and I believe that there is a good bit of debate to be had still between the different parties and the Government—we are trying to marshal the three groups involved to come to a reasonable position.

As I said, I acknowledge the convener's point about solicitor advocates, but members will appreciate that I cannot address it today. However, I assure members that we will take that issue forward.

On the more general access to justice point—

**The Convener:** I would like you to address how solicitors could be worse off and people could have fewer solicitors to represent them. That is a key point, but you have not addressed it.

**Paul Wheelhouse:** I will happily do so—I was coming to that point.

The sheriff appeal court will be up and running on 22 September, regardless of what members decide today. On solicitors being worse off, they are already paid a block fee for most summary criminal work. That is perhaps where some of the problems arise in terms of a comparison between what we are proposing and the situation that pertains.

Some cases involve more work than others, and the block fee is intended to offer fair remuneration across the piece. Solicitors will have cases of differing complexity; in some cases they might benefit from the block fee, whereas other cases might be loss leaders. They will pick up some cases for which they will get more for their work than they would charge on a detailed fee basis.

The draft regulations distinguish appeal proceedings with a separate grant of legal aid. The solicitor will receive the block fee for the original proceedings, plus detailed fees for the appeal. They will therefore get the existing block fee and—

**The Convener:** Do you have an example?

**Paul Wheelhouse:** The key issue is that solicitors could be worse off in assistance by way of representation proceedings. Without the regulations, solicitors would be paid only detailed fees for the whole case. In the absence of the block fee in cases for which they would have benefited from that fee, they will get less than they would have got. Solicitors who do more work than the block fee would have covered will be paid accurately for their work. Therefore, in some cases solicitors might get less than they currently get, because the block fee overcompensates them for the work that—

**The Convener:** I am in Sir Humphrey mode now. I am trying to untangle that. Are you saying that some will be better off and some will be worse off?

**Paul Wheelhouse:** Indeed, because the block fee recognises that some cases are less complex and some are more complex—I hope that I have made that point clear.

**The Convener:** I understand about the block fees. Does anybody else want to intervene in the debate to ask a question to clarify the issue?

**Elaine Murray:** Yes. The second paragraph of the section on implications in your letter of 10 September says:

“the first instance work (usually paid in a block) as well as the appeal would have to be assessed on a detailed fee basis”.

That is not the same as the argument that you have presented to us. You argued that the block fee might not cover all the work that is done, which we understand. I simply cannot understand why, if we do not approve the draft regulations, that will somehow affect other work that is usually paid in a block.

10:15

**Paul Wheelhouse:** At the moment, we have no regulations that deal specifically with the sheriff appeal court. We have no regime in place, if you like, to determine fees for that court because it is a new jurisdiction. In the absence of regulations—if the draft regulations are not approved—we will have to revert to calculating the cost from a legal aid perspective on a detailed fee basis. There will be a mixture of the block fee for the original casework that has been taken forward and detailed fees that will be charged for the work thereafter.

**Elaine Murray:** I understand that.

**Paul Wheelhouse:** On the block provision and why that falls, I will consult my colleague, convener. [*Interruption.*]

I am sorry—I misunderstood the point that was made to me earlier. Because they are not distinct proceedings for legal aid purposes, they will all be on one account, so they will all be assessed as detailed fees rather than there being a block fee and detailed fees. What I said to Elaine Murray was incorrect. I apologise for that, convener.

The point is that all the fees will have to be assessed on the same basis, so we would lose the ability to pay the block fee for the case prior to the appeal, and everything would be assessed on a detailed fee basis.

**The Convener:** I am sorry, but how do you then know that solicitors would be worse off? You would have to let it run.

**Paul Wheelhouse:** Convener, the block fee arrangement that was put in place—

**The Convener:** I know, but what fees—

**Paul Wheelhouse:** The arrangement currently overcompensates some solicitors for the work that they do in court because the block fee is higher

than the amount that would be charged on a detailed fee basis. We know that because the block fee is based on the average across cases. In more complex cases, the solicitor might be better off by charging detailed fees, but solicitors who are perhaps benefiting from the block fee for less complex cases will get less through detailed fees than they would get through the block fee. I hope that that clarifies that point.

**The Convener:** It depends on the case.

**Paul Wheelhouse:** Yes. It depends on the nature of the case.

**Gil Paterson (Clydebank and Milngavie) (SNP):** Is the cost not in the fee but in the administration of the work that is done? Is that where the costs are?

**Paul Wheelhouse:** Perhaps I could ask Mr Paterson—

**The Convener:** Bear with me for a moment, minister. [*Interruption.*] I do not know what the clerk said, but it sounded correct. Gil, I think that you have to come to me and the minister has to agree whether to take an intervention, but I am sure that he will comply.

**Paul Wheelhouse:** I am happy to take an intervention, convener.

**Gil Paterson:** It sounds to me as if it is not the differential in the fees but the administration of the new work, or the detailing of the work, that will bring costs to the individuals who carry it out.

**Paul Wheelhouse:** If I may respond to the point that Mr Paterson fairly makes, with regulations in place, there will of course be a requirement, as the case study set out, for the submission of detailed fees. In the absence of regulations, we will require solicitors to submit detailed fees for legal aid in this context. From the point of view of the solicitor and the Scottish Legal Aid Board, the administration will be the same.

The beauty of approving the draft regulations is that solicitors will not lose access to the block fee; for that part of the case, they will still be able to charge the block fee, and they will not have to detail everything. If they have to detail fees, there is a risk that they will get less paid to them in less complex cases than they would currently get under the block fee arrangement. However, it is certainly an administrative issue.

**The Convener:** Does Elaine Murray want to come back in?

**Elaine Murray:** Yes. Margaret McDougall and I met the Law Society of Scotland last week, and its understanding was that, if the draft regulations are not approved, a situation would arise where the Scottish Legal Aid Board would make emergency payments for work done in the appeal court.

Solicitors would still get their block fee for the initial work, and they would get an emergency payment for the work in the appeal court. I do not understand how the calculation has been made.

**Paul Wheelhouse:** That is not our understanding of the situation, I am afraid, convener. We disagree with the Law Society of Scotland on that point.

**The Convener:** We have pretty well exhausted our questions, unless there is anything else that you want to add.

**Paul Wheelhouse:** I want to address a couple of points that I did not pick up in my earlier responses to members.

On access to justice, I make it absolutely clear that there is no cut to the budget for legal aid. Indeed, as I set out in my letter to the committee, the budget for the legal aid fund has increased this year by approximately £4 million. There has not been a cut to the budget as Elaine Murray suggested.

In a situation in which a solicitor was unwilling to take a case or there was some concern about a solicitor's ability to represent someone in the sheriff appeal court, the Public Defence Solicitors Office could step in—and we could sanction counsel ourselves—to ensure that the client was represented at an appropriate level.

We would rather not be in that position—we want to work with the Law Society and solicitors to ensure that the system works—but I reiterate that we are determined to review the operation of this area. The submission of information on detailed fees will very much inform what we do in the future, such as potentially bringing in block fee arrangements to try to reduce the administrative burden and streamline the process of accessing legal aid.

A couple of members have asked why we are in the position of having to have detailed fees. When there is a change in jurisdiction and a new court is created, such a situation is quite normal. We do not yet know in detail how the landscape will look in six months' time or thereafter, so the review of the data that is submitted by solicitors working with us in the sheriff appeal court will inform our understanding of the economics of how the process is working. If there are any particular issues of disadvantage, they can be addressed.

I make it clear that there is no exclusion of any legal representative from the sheriff appeal court. It has been suggested, at least in one submission that I have seen from the Law Society, that solicitor advocates will be excluded from the sheriff appeal court. There might be an economic issue for solicitor advocates, but there is no legal exclusion of any counsel—solicitor advocate,

solicitor or advocate—who wishes to represent a client in the sheriff appeal court.

**John Finnie:** Minister, will you take a question?

**Paul Wheelhouse:** I will indeed—with your consent, convener.

**The Convener:** Members should speak through the chair, please.

**John Finnie:** The final paragraph of the Scottish Government justice directorate's policy note relates to the financial effects. The very last sentence states:

"The Scottish Legal Aid Board estimates that this will reduce expenditure from the Legal Aid Fund by around £1.4 million per year."

**Paul Wheelhouse:** I stress that the bulk of the savings relate to the personal injury court, as is referred to in the policy note to which Mr Finnie has drawn our attention.

If we are sanctioning counsel, as we have agreed to do in the guarantee for sanction of counsel, that will potentially increase the expense to the legal aid fund. We will have to monitor that as part of the review to see what the impact is. I think that it is a sensible measure to take in order to remove from solicitors' minds at this transitional stage any doubt over whether they can take the risk of taking a case. They will know that they are at least guaranteed that counsel can be sanctioned if that is the most appropriate way to represent their client in the sheriff appeal court, and that they will not be putting their client at a disadvantage. From a professional indemnity and safety perspective, it will, we hope, give solicitors sufficient comfort that they will not have to risk their reputation, or indeed the future of their client, in taking a case without knowing who can represent the client at the sheriff appeal court—if a case comes to that stage, of course; it may not require an appeal in due course.

**The Convener:** Do you want to go on, Mr Finnie? I see that Roderick Campbell wants to intervene.

**John Finnie:** If there is no issue with sanctioning counsel, what is the issue with sanctioning solicitor advocates?

**Paul Wheelhouse:** That is a fair question from Mr Finnie and, with the convener's consent, I will address it.

As I said earlier, I am very keen to try to resolve the difficulties that we have in getting agreement on the remuneration for solicitor advocates. As a group, they have made a strong contribution to providing access to justice and giving people choice. As I said last week, I very much recognise the importance of giving people choice.

We are, unfortunately, in a situation in which we need to put in place regulations to ensure the efficient operation of the sheriff appeal court. However, I assure external stakeholders and committee members that we will review the performance of those regulations in practice and come back with any necessary amendments to ensure that access to justice does not suffer as a consequence of the measures that are taken. I take very seriously the committee's concerns in that area.

**The Convener:** We are going round in circles a bit—we have covered it all. Is your question a new point, Mr Campbell?

**Roderick Campbell:** I would be grateful for some clarification, convener.

We are talking about moving towards a block fee following a six-month review. Is it possible, based on historical information, to work to a much shorter timescale than that?

**Paul Wheelhouse:** Mr Campbell makes a fair point. I said last week and I am happy to repeat that we do not necessarily need to wait until the end of the six months to see the evidence. If the emerging situation causes difficulty for solicitors' clients, I will be keen to address that at the earliest opportunity. Indeed, the proposal to come back with regulations to provide a guarantee for sanction for counsel is the first of the potential amendments. That is based on the discussions that we have had with the Law Society and our desire to make sure that we do not present solicitors with difficulties in understanding the risks that they might be taking on for their clients in not being able to represent them fully.

We are already trying to address some of the concerns. The regulations that we have brought to the committee will provide a platform that we can use to improve and develop the regulations to ensure that they work efficiently and effectively once we have a better understanding of how the sheriff appeal court will work in practice. We will be keen to address any access to justice issues that arise.

**Margaret Mitchell:** You have made quite an argument that access to justice will not be affected, but we are clearly hearing a feeling that the fee regulations will not work. Even with the contingency plans, there seems to be a recognition that there is a problem. The practical effect of that will be that cases will be marked down and we will never know how many people have lost out during the interim period because we failed to get it right. That is what the committee finds it hard to come to terms with.

**Paul Wheelhouse:** I recognise the concerns that Margaret Mitchell raises and I can understand the committee's nervousness about creating a

situation that is worse for the people who need legal services. I very much respect the sincerity with which Margaret Mitchell and other members have raised the point.

However, we need to look at the alternative. There may be an economic challenge to solicitors because, if they are forced into submitting a full account to SLAB and into charging detailed fees from start to finish, it may be less financially attractive for them to take less complex cases that do not attract much detailed fee. Under the current block fee arrangements, there is a degree of cross-subsidy from more complex cases to less complex ones, so there is less of a disincentive for a solicitor to take on such a case.

I apologise to Ms Mitchell because I do not have any definitive evidence, but I believe that there could be a disadvantage to the clients who have a less complex case. The solicitor might say that they do not have expertise in that area and that the client should speak to someone else. There could be a degree of disadvantage to some individuals. That is purely conjecture on my part, but that is my impression of what would happen because of the loss of the block fee for the less complex cases.

**The Convener:** That concludes the debate.

If we vote no to the motion, it will be reported to Parliament. The Parliamentary Bureau will then not lodge a motion for the Parliament to agree to the regulations, but the Scottish Government will still be able to lodge such a motion. For myself, I am not satisfied. If the committee votes no and the Government lodges such a motion, I hope that we take the opportunity to have an extended debate in the chamber rather than just a short one. Too many questions remain unanswered, although they might be answered in a debate, which I understand would have to be next week. That is just an option for the Government. I am not blaming the minister, because I think that he has inherited the situation, but there are still unresolved issues. That is just a procedural matter.

If the Government lodges a motion, I know that the debate will be a short one and I do not believe that that is a good way to deal with it.

The question is, that motion S4M-14088, be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### **For**

Allard, Christian (North East Scotland) (SNP)  
Campbell, Roderick (North East Fife) (SNP)  
Paterson, Gil (Clydebank and Milngavie) (SNP)

#### **Against**

Finnie, John (Highlands and Islands) (Ind))  
McDougall, Margaret (Central Scotland) (Lab)  
McInnes, Alison (North East Scotland) (LD)  
Mitchell, Margaret (Central Scotland) (Con)  
Murray, Elaine (Dumfriesshire) (Lab)

#### **Abstentions**

Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 1.

*Motion disagreed to.*

**The Convener:** The committee is required to report on all affirmative instruments. Normally I would just ask for the committee's agreement to delegate responsibility to me to report on the regulations, but I will circulate the report, which has to be lodged by 21 September. I will let members see what is in the report because we have had a substantial debate and some of the issues that have been raised will be in it.

Minister, I thank you and your officials for attending today.

10:30

*Meeting suspended.*

10:37

*On resuming—*

## **Community Justice (Scotland) Bill: Stage 1**

**The Convener:** Item 2 is a round-table discussion on the Community Justice (Scotland) Bill. We are going to have two such discussions today. Everyone should have before them a copy of the table plan. The purpose of round-table discussions is to allow more informal discussion among the witnesses, so committee members will tend to sit back and let the witnesses interact. Anyone who wants to speak should indicate to me and I will give them an early warning when they are about to be called.

Before we start, we will go round the table anticlockwise and allow people to introduce themselves. I always have to think about which direction that is. Am I right to say that Elaine Murray will go first?

**Elaine Murray:** You are. I am the MSP for Dumfriesshire and also the committee's deputy convener.

**Michael Stewart (Outer Hebrides Community Planning Partnership):** I am the criminal justice service manager for the outer Hebrides and I am representing the views in the outer Hebrides community planning partnership submission.

**Margaret Mitchell:** I am a member for Central Scotland.

**Amanda Coulthard (West Dunbartonshire Community Planning Partnership):** I manage corporate and community planning in West Dunbartonshire.

**Roderick Campbell:** I am the MSP for North East Fife.

**Lorraine Gillies (West Lothian Community Planning Partnership):** I am from the West Lothian community planning partnership.

**Gil Paterson:** I am the MSP for Clydebank and Milngavie.

**Christian Allard:** I am an MSP for North East Scotland.

**John Wood (Convention of Scottish Local Authorities):** I am a policy manager at the Convention of Scottish Local Authorities.

**Councillor Harry McGuigan (Convention of Scottish Local Authorities):** I am a North Lanarkshire councillor and the COSLA spokesperson for community wellbeing.

**John Finnie:** I am an MSP for the Highlands and Islands.

**Alex McCallum (Dumfries and Galloway Council):** I am the criminal justice social work service manager in Dumfries and Galloway.

**Alison McInnes:** I am an MSP for North East Scotland.

**Councillor Peter McNamara (National Community Justice Conveners Group):** I am chair of the south-west Scotland community justice authority and also spokesperson for the Scottish conveners of community justice authorities.

**Margaret McDougall:** I am an MSP for West Scotland.

**The Convener:** I am the convener of the committee and the MSP for Midlothian South, Tweeddale and Lauderdale.

I will throw out a question to start off the discussion. Does the Community Justice (Scotland) Bill represent an improvement on what is happening just now? Mr McNamara is first off the blocks.

**Councillor McNamara:** That should not surprise you.

There are a number of things in the bill that I want to focus on, and two things that seem to be missing from it. I hope that what we are all trying to achieve is to reduce reoffending, which was done successfully under the previous structure. Surely we want to ensure that the new structure continues to reduce reoffending.

The different groups—the police, the Scottish Prison Service, parts of the judiciary, local authorities and social workers—came together to work on this nine years ago. It takes a lot of time to build up trust, communications and a desire to achieve what we have achieved in reducing reoffending across Scotland by something like 4 per cent, which is no mean feat. We need to put in place something that will do the same.

The reason why that worked was that the community justice authorities had one thing—the power to give direction to all those disparate groups. For me, what is wrong with the bill is that it devolves community justice to community planning partnerships but there is no power for them to give directions to the prison service or the police service. They will have their own agendas. What is really needed is the power for the partnerships to give direction to affect what happens in the local area. That is called community justice. That influence and direction needs to be written into the bill and not left to the laissez-faire way in which it is done at the moment, under which some bodies are put round the table in the hope that they will

address the issues. My perspective is that direction needs to be given.

**Amanda Coulthard:** The bill has potential in relation to bringing the community justice outcomes under the umbrella of the community planning partnership and the rest of the outcomes in the single outcome agreement. However, there is still work to be done on the definition of community justice. The outcomes that currently sit within the single outcome agreement are about the community—they are about people's housing, health and involvement in the local area—but the definition of community justice in the bill is still very much focused on criminal justice social work. It misses the opportunity to embed justice outcomes within a wider remit, and as a result it is slightly adrift of the public sector reform agenda.

**The Convener:** Will you expand on that? What do you want to see in the definition that is not there?

**Amanda Coulthard:** There needs to be a wider definition of community justice that recognises the wider outcomes that impact on justice outcomes and the wider range of partners that are involved in the delivery of community justice services. A reflection of the requirement for a prevention and early intervention agenda—more than a criminal justice social work response—would allow us to deliver a significant improvement in outcomes for people who are affected by offending.

**The Convener:** We will hear from Councillor McGuigan next, and then Lorraine Gillies.

**Councillor McGuigan:** I am glad to be here this morning.

I say at the outset that COSLA and its leaders have supported the redesign of community justice since the early days. Following the Angiolini report—the report of the commission on women offenders—and the Audit Scotland report “Reducing reoffending in Scotland”, we felt that it was necessary to move forward and ensure that the community justice agenda was genuinely community oriented and that people understood what we were trying to do. We wanted people to understand how we were working with partners to achieve the objectives, and we wanted them to be able to monitor and feel comfortable with that.

I am going back about three years to when Kenny MacAskill was Cabinet Secretary for Justice. We had many discussions on the detail of redesigning community justice and there seemed to be a greater willingness to ensure that there was on-going dialogue between local government and the Scottish Government in respect of that redesign. That dialogue has become a bit less certain in the past few months. I have spoken to the minister, Mr Wheelhouse, and I think that he is very much on the same page as us, but it is

important to ensure that local government and the Scottish Government are working in a complementary fashion. That is what we want to achieve. We want reoffending to come down and we want that to happen in a coherent way.

10:45

I have met the minister, as I said, and I feel that he supports that approach. We should discuss early on the issues where there could be some tension between local and national Government. I was disappointed by the evidence that was given two weeks ago by the minister's officials, one of whom referred to some information about resources that COSLA had put on the table. He seemed to imply that the arithmetic that we used was somehow flawed. He might have been correct about that, but the officials did not come to us and discuss that before the draft was prepared. That is an unhelpful way to work. I hope that, in future, we can work better.

We are pleased about community justice Scotland, which can certainly complement the work that we should all be doing. It can assure us that the outcome agreements are being met and the local plans are being implemented.

Peter McNamara made a point about community planning partnerships. I was amazed to find out in the past couple of weeks that community planning partnerships do not have a legal status. That is a worrying aspect. In many situations where I am talking to people and engaging with them, I talk about my hope that community planning partnerships will work together not only to reduce reoffending but in a host of shared interest areas, but we are not getting that and there is no mandate for it.

We discussed the matter with Kenny MacAskill. I have not discussed it with Mr Wheelhouse, but I will certainly do that. I sent him a letter when I heard about the supposed miscalculation that your officers described.

**The Convener:** They are not our officers but the Government's. We are separate.

**Councillor McGuigan:** I stand corrected.

We are anxious to ensure that community planning partnerships are not seen as an exercise in window dressing. The partners round that table must have, if not a duty, at least an ability to demonstrate that they are working in a coherent way with local government and the other partners at the table. We must remind them that outcomes depend on their contribution as well as on ours. That is a worrying aspect of the current situation. CPPs seem not to have that authority. We hope that the joint integration boards will have some statutory authority so that we can move forward.

I may want to come in later to respond to further points.

**The Convener:** You can do that, of course.

**Lorraine Gillies:** I would like to respond briefly to Councillor McGuigan's point. We have an opportunity to firmly anchor the work that has been done in the Community Empowerment (Scotland) Act 2015. For the first time, we have a sound statutory footing for community planning partnerships, which is welcome. There has been an issue around the teeth of community planning, but the 2015 act gives us a different level of influence.

I agree that some work can still be done on the power base, but we now have a commitment and an obligation for partners to work together to deliver outcomes that include a wider set of community justice outcomes. The opportunity that that creates for the agenda is that we now have partners who previously would not have recognised their roles in delivering against community justice outcomes, and I welcome that. There is an opportunity to strengthen the area.

I agree with what Amanda Coulthard said about setting out much more clearly the role of prevention and early intervention. Under the 2015 act, we have not just a wish but a statutory requirement to engage with communities in a much more ambitious and enhanced way, and that also gives us an opportunity to take the agenda forward where we have not done so before.

To sum up, my overarching comment is that the bill should be much more clearly anchored in what we have in the 2015 act. There are obvious links and relationships there, and there are obvious advantages to setting those out a little more clearly.

**The Convener:** This committee is not dealing with the Community Empowerment (Scotland) Act 2015 but, on behalf of the committee, I have asked the Scottish Parliament information centre to show the linkages between that and the bill. That will be especially helpful now that the act has been raised with us.

**John Wood:** I absolutely support what Lorraine Gillies said about putting the community justice partnerships on a more robust footing. That will ideally fit in with the community planning partnerships or, by local agreement, with another formal mechanism such as the integration joint board.

I welcome the fact that we began the debate by talking about the local partnerships, because we see this very much as a local model, and that is reflected in the Government's consultation and the surrounding literature. However, as any local government officer—and colleagues round the

table—will know, what matters is the bill. If someone was to pick up the bill, it would not be evident to them that there will be local partnerships. We understand that there will be, and COSLA is leading work on the transition process for local partnerships to be formulated, but the bill begins with a definition of community justice that does not quite reflect the cultural shift that we as partners are looking for. It then immediately gives an outline of what community justice Scotland will do, and it mentions the national strategy and performance framework. We welcome those aspects of the new model, but the local emphasis that COSLA signed up to is not quite borne out in the bill in the way that we would like.

**The Convener:** Thank you, Mr Wood. I call Michael Stewart, to be followed by Councillor McNamara.

**Michael Stewart:** I will reflect some of what has been said already.

From our perspective in the Western Isles, there are gains and losses in what is expected. Through the bill there is the opportunity to strengthen some of the local relationships around the community justice table, which were perhaps not as strong under the previous arrangements. However, there are also challenges in that, especially for areas such as ours—although we do not have a monopoly on rurality—there is difficulty in engaging statutory partners such as the Scottish Prison Service, Sacro, Apex and other key partners in community justice that do not have a presence in the area. From our point of view, there are local gains but also potential losses in what is proposed.

The other point that has been mentioned is the relationship with community justice Scotland. I welcome the strategic direction, especially in how it addresses some of what was brought up by the Angiolini report, but I would wait to see how that works in practice for an area such as ours. We said in our feedback to the consultation that, with a national strategy or national agenda, rural areas commonly tend to be a secondary thought when it comes to how to put things into practice.

**The Convener:** Not on this committee—many of us represent rural areas. In fact, I think that we all have rural patches in our areas.

**Michael Stewart:** Yes, and I was quick to point out that we in the Western Isles do not own rurality, but there is a stretch of 100 miles where it takes three ferries or two flights to get from one place to another.

**The Convener:** It is a lovely part of the country.



**Michael Stewart:** You are absolutely right, convener. If we could record that formally, I would be very grateful.

A working example would be the moving forward, making changes programme—a national strategy for working with sex offenders. Despite the rurality that we experience, a prerequisite for that training is three or four-day group work. We will never run in a group in the Western Isles for sex offenders. There is then three weeks training in a city on the mainland, the logistics of which are almost impossible for us, given that people have caring responsibilities and relationships at home that need to be attended to.

My concern is not so much about the logistics but what a place such as the Western Isles does instead if we cannot solve those logistics when the community justice strategy is geared towards what could easily be seen as a mainland directive. The alternative could leave us open to risk by using some secondary measure that is not accredited or research based simply because we cannot do what is asked.

To come back to whether the bill is an improvement, I believe that there are gains and losses but the communication strategy will be key to how it runs and whether 32 voices are heard. Each of those 32 voices is unique and distinct and will say that its area is just as special as I say the outer Hebrides are. It is important to recognise that the communication strategy will be key to ensuring that all voices are heard before a national direction is taken.

**The Convener:** You are right that the issue is the balance between national and local knowledge and how we deal with things on our own patches.

**Councillor McNamara:** I agree that there is a great opportunity when working with community planning partners, especially with devolved budgeting and locality planning in all of the issues that affect communities. I put up my hands and say that the community justice authorities failed to engage with the wider communities, so there is a real opportunity for local people to be involved. However, if we shift the justice agenda on to the community planning partnerships, there is a resource issue. The financial memorandum states clearly that £2 million is available for a national body but absolutely hee-haw is available for local authorities.

**The Convener:** I am looking forward to reading the *Official Report* with hee-haw in it. [*Laughter.*]

**Councillor McNamara:** Sorry—

**The Convener:** No, it is good—I like it.

**Councillor McNamara:** That is how passionate I am about the matter. If we want the system to work, we have to resource it properly. We cannot

simply leave it to the likes of officers to get on with it. If we are serious about reducing reoffending, which has an impact on our community, we should resource the proposal properly and, if we resource it properly, the consequence will be a reduced number of people in prison and a reduced cost to the public purse and we will be able to reinforce what happens in the community with any of the savings that we make.

**The Convener:** There is also an issue with the public. Because we give help to people when they come out of prison or intervene to prevent them from going there, the public perhaps sometimes thinks that we are going soft and that those people are getting something over and above what other people should have. I can understand that, but you are right that, even in hard cash terms, if we prevent somebody from going back into prison, the money savings are substantial and can go back into the rest of society.

**Councillor McNamara:** Indeed.

**The Convener:** We accept that very much.

**Councillor McGuigan:** Peter McNamara mentioned the need to ensure that resources are available. He made the point that £2.2 million will go towards setting up community justice Scotland but hee-haw—I am not sure what that means, actually—

**Councillor McNamara:** It means nothing.

**Councillor McGuigan:** Nothing goes to the new community justice arrangements. That must be rectified and it needs to be detailed in the bill.

**The Convener:** It would be in the financial memorandum. The Finance Committee will examine that as well. It will give us its report.

**Alex McCallum:** You made a point, convener, about the public perception of being soft on crime. The definition of community justice in the bill is a missed opportunity to bring communities with us. They need to fully understand their part.

In working together in the various forums involving the whole gamut of local organisations, such as faith organisations, community groups and schools, we need to look at the notion of community justice in its broadest sense, so that the community takes ownership of its transgressors and works alongside them and the agencies and organisations that are there to assist.

11:00

**The Convener:** You are really talking about the partners rather than the definition of community justice. In section 12, which is entitled “Community justice partners”, subsection (3) states:

“The Scottish Ministers may by regulations modify subsection (1) or (2).”

I presume that that means that other partners could be added. Rather than put them all in the bill, there will be flexibility to add partners. One could add an amendment procedure, which might be a very good idea. It leaves flexibility to bring in even more partners as the situation unrolls and we see that the bill is not all-encompassing and needs to be more all-encompassing.

Does that make sense? I do not know whether I am making sense today. You are looking at me bewildered, Mr McCallum. I am a bit bewildered myself by what I have just said.

**Alex McCallum:** There is an opportunity to be all-encompassing. Clearly, there is still a need to manage people whose behaviour is such that they need to be managed.

**The Convener:** It is important that we bring in the voluntary sector. Sometimes, very small voluntary organisations have a big impact in an area.

**Alex McCallum:** Yes.

**Alison McInnes:** The Angiolini report recommended a national service that would commission, provide and manage all adult offender services. There has been a long consultation and various iterations since then. The submission from the conveners of the community justice authorities states:

“the lengthy consultation process and the Bill itself have instead created another ‘least worst’ local/national compromise, such as that which led to the creation of CJAs”

in the first place. It continues:

“the current proposals once again restrict reform to the strategic level, leaving frontline operational delivery untouched.”

I would like the partners round the table to explore that and say what we need to do to improve the bill to ensure that the operational delivery is developed.

**The Convener:** That is your cue, Councillor McNamara.

**Councillor McNamara:** I have outlined some of the issues, not least of which are those to do with finance and having some form of authority or power to give direction. However, there is a more important issue, which is about definition.

The bill says that one of the partners is the local authority, but it does not define the role of the local councillor, who I would have thought is a reflection of the local community. Also, the national body will be appointed by the Government, but there is no mention of local government being involved in that either. It seems to me a missed opportunity if we

have a national body that will give support, encouragement and direction to the local bodies without having any local authority representation on it.

There are a number of issues. I was involved in community justice for nine years. We got the Audit Scotland report that said that there was a lack of accountability and governance, but we could have addressed that without having to go through the process of another bill to create distance from the minister. I sometimes get frustrated, because I thought that the relationship that we had with the minister was good and I thought that we were delivering on the agenda, but suddenly Audit Scotland came in and said that governance was not right. Therefore, we need to get the governance right and, for me, that means having locally elected people on the local partnership body and on the national body.

**John Wood:** We had a productive discussion with Mr Wheelhouse prior to today’s meeting about how the relationships will work between the Scottish ministers, CJS and its board, and locally elected members. However, I am glad that Councillor McNamara raised that point, because it is missing from the detail of the bill and has not been padded out in any of the consultation materials.

There needs to be a productive relationship between local partnerships and the locally elected members who will lead them, and the national body. If that were to happen, some of Audit Scotland’s questions about governance would be answered; it would also help with the outcomes and the model, because it would engender a sense of ownership of the national agenda at the local level.

**Lorraine Gillies:** I want to pick up on two points. The first is about stigma, which the convener mentioned. Community planning partnerships are trying to grapple with a wider issue in relation to their efforts to move towards prevention and early intervention. The public perception is that there is too big a gap. We are all pretty much aware that prevention is better than cure—there is a lot of rhetoric on that—but in reality that would mean partners having to take unpalatable actions, albeit that those actions would be unpalatable to the general public but not to the professionals who are on board with the approach. That issue seems to come up time and again. In my community partnership, it certainly hinders some of our work on realigning some of our resources and doing the things that we know are preventative but the general public sees as being light touch and soft on offenders.

Secondly, on resources, there has never previously been such a tension in community planning partnerships because of the pressure on

them to take forward elements of the public sector reform agenda. That pressure is quite right, because we will never get where we want to without a focus on outcomes and through partnership working. However, I remind everyone that we are talking about community justice and community planning partnerships are currently working on implementing the Community Empowerment (Scotland) Act 2015, trying to figure out the arrangements for the integration of health and adult social care and working on other public sector reform agendas. The landscape for community planning partnerships is very cluttered, and they are trying to bring everything together under an umbrella of, broadly, better outcomes for communities across West Lothian—I do not mean just West Lothian but across all communities. I am reverting to where I am from.

All that work is, broadly speaking, unresourced. Even within the parameters of the Community Empowerment (Scotland) Act 2015, different expectations are placed on partners. By and large, a lot of the work will fall on local authorities. That is the reality. I therefore make a plea for support. We need to have a discussion about resourcing to ensure that none of the workstreams happen in isolation and that community planning partnerships are able to do some thinking on the matter, which is sometimes quite hard to find the time to do.

**The Convener:** If members will forgive me, I will take two more of our witnesses. I will then let in members, because they may have other questions to ask. I call Mr Stewart, followed by Ms Coulthard.

**Michael Stewart:** I echo those points, which were well made by Lorraine Gillies. The bill's key flaw is that it defines an offender as someone who has been convicted of an offence. If I were a community planning partnership organiser and manager, I would be asking, "Where does prevention come in—to prevent the conviction in the first place?" If prevention is not reflected in other planned legislation, I would certainly like to see a much better discussion of the issue and to have it reflected in the bill's remit.

**The Convener:** We have heard that point. The committee is quite sympathetic to a definition that includes intervention and does not focus on a post-sentence definition. We are already there.

**Michael Stewart:** I am content then.

**Amanda Coulthard:** To pick up on Lorraine Gillies's points, the community planning managers' network has had an opportunity to discuss community justice redesign a number of times. We are all in agreement that there probably has not been a more exciting time to work in community planning, with the range of reform agendas that

are coming together that fall in the remit of community planning partnerships.

On a specific focus on justice funding, community planning partnerships have been offered three years of transition funding to put in place the new arrangements. However, on the burden of planning, all of the consultation and the legislation so far have focused on a separate community justice plan for each area, rather than it being embedded in the current local outcome improvement plan, as it will be under the community empowerment legislation and the single outcome agreement.

If planning for justice were part of a wider planning approach, it would be easier for us to manage. We have had a significant lack of investment in the infrastructure of community planning, which is a real issue for us. The additional burden in the bill in relation to planning is taking our ability to respond to the tipping point.

**The Convener:** We have got the message about funding—everyone takes the opportunity to make that point when they are with us.

**Margaret Mitchell:** One of the concerns that we had following the briefing on the bill was about what the relationship would be between the national body and the local community partnerships. At that time, we were told that they would be equal partners, but now we hear from COSLA that the consultation proposal was that the national body would support the community partnerships, so there has already been a shift. We can see how people are beginning to get a little worried that the national body might have too much influence and therefore that we need safeguards for the early intervention that we want to be built in, and the resources to ensure that local priorities are considered.

At our previous evidence session on the bill, Dame Elish Angiolini suggested that we consider having an inspectorate for community justice—in much the same way as prisons and the police have inspectorates—to examine the balance. The inspectorate would check whether the national body was exerting too much influence, whether enough account was being taken of the local provisions, whether there was sufficient flexibility to address specific community solutions and whether there was proper funding. What does the panel think about that suggestion?

**Councillor McGuigan:** That is a very good question. We are nervous about the role of community justice Scotland, which may change as the organisation beds in. We see the opportunity for a sensible and productive working relationship between the integrated board, community planning partnerships and community justice Scotland. We can look for advice and support. However, Peter

McNamara used the word that we do not like, which is “direction”. We would be very guarded about a situation where we were receiving instructions that were being manufactured at national level in respect of programmes and projects in the local area.

I do not feel nervous about having an inspectorate. As an ex-teacher, I have been through inspectorate regimes many times. The important thing is the way in which the inspectorate carries out its business. I am not sure whether community justice Scotland can take that role, but it can monitor, comment and suggest good practice.

**Margaret Mitchell:** The point is that an inspectorate would be totally independent and could look at how the national body was functioning, as well as considering the community planning partnerships and the role of Scottish ministers.

**The Convener:** It would be the whole shebang—if I can add another word alongside “hee-haw”.

**Councillor McNamara:** Local government and all the agencies—including the police and the prison service—are already inspected to death and I do not see the need for yet another inspectorate to oversee what is happening. We will be able to monitor the reports that will be published each year on community justice activities in particular areas. Community justice Scotland can comment on those, although I understand the nervousness about the body giving directions.

The role of community justice Scotland is to oversee, offer support and share good practice. That is what we are looking for, rather than to be inspected yet again. We have limited resources and a limited number of people working in community justice, and they would spend most of their time getting reports ready for inspectorates, which is something that we already do to death. I would caution against taking that approach; indeed, I would say, “Do not do it.”

**John Wood:** I completely support Councillor McGuigan and—

11:15

**The Convener:** Could you speak up a little? You have a lovely soft voice, but we are having a bit of difficulty at this end of the table. That was a compliment, by the way.

**John Wood:** Right, I will take a deep breath.

I completely support Councillor McGuigan and Councillor McNamara. The idea of an inspectorate being created had not come up before Dame Elish

raised it, and we certainly have not had the chance to consider it. To be completely honest, the case is still being made for a national body, so it would not make sense right now to put in place plans for checks and balances on such a body and its relationship with local partnerships.

Coming back to the bill, if we are looking for assurances that there will be a constructive relationship between the national and local elements of the model, the bill is the place to find them. With proper constraints around what community justice Scotland can do and a clearly defined set of competencies at local and national level in the bill, we would not need to consider an inspectorate at this stage.

**The Convener:** Mr McCallum, to inspect or not to inspect—that is the question.

**Alex McCallum:** The inspectorate bodies that are in existence would be perfectly adequate to carry out an inspection. We have already had fairly successful joint inspections across the country of children’s and adult services and, more recently, the multi-agency public protection arrangements.

The remit of the inspectorates could be broadened to include the broader justice agenda without creating a separate inspectorate.

**Amanda Coulthard:** To go even wider than Alex McCallum’s suggestion, we already have the role of Audit Scotland in reviewing the progress of community planning partnerships. Rather than add an additional burden of inspection, if the outcomes are to be embedded in the community planning arena, Audit Scotland will be able to take a view on whether we are delivering appropriately at local and national level on the justice outcomes as well as everything else,

**The Convener:** Ms Gillies, you are nodding. Do you agree?

**Lorraine Gillies:** Yes.

**The Convener:** We should have no inspector—the inspector does not call.

**Lorraine Gillies:** There should be no inspector.

**Roderick Campbell:** My question follows on from the subject that we have just discussed. When Dame Elish gave evidence a couple of weeks ago, she said:

“the effectiveness of community justice was not being measured at that time, which meant that judges could not be convinced that it made a difference”.—[*Official Report, Justice Committee*, 1 September 2015; c 4.]

She said that one of the most important aspects of her report, which has not been picked up on, is that we are not measuring

“the success of that activity”.—[*Official Report, Justice Committee*, 1 September 2015; c 23.]

Are we really saying that it is just enough for Audit Scotland to report? How are we going to measure the effectiveness of community justice?

**Lorraine Gillies:** I am not sure that I agree with that. There is a fair level of sophistication in measuring community justice outcomes through single outcome agreements and their mechanisms. There are variations across the country and in each community planning partnership's ability to measure everything that it is responsible for measuring.

I am aware of some work that has been done to support the national strategy and its development through producing a framework that is measurable and that can give us some confidence that the efforts that we are making across the wider community planning partnership are enabling us to measure what we are doing on community justice.

I do not think that there is no measurement. It is, however, not a simple picture; it is quite varied.

**Councillor McNamara:** I take the same view. There are measurements available. I have a set for south-west Scotland, with which I can furnish the committee. Ayrshire had the worst reconviction rate in Scotland but, after five years of hard work with limited resources, it dropped from 33.9 per cent to 27.5 per cent.

Elish Angiolini came to the committee and said that she was glad to see the abolition of "criminal justice authorities". Sometimes, people get confused about what we are talking about. It is the community justice authorities. I wanted to set the record straight.

**The Convener:** I do not think that she will like being called confused. There we are; you have said it. That will be another thing on the record for you.

We will move on to Mr Stewart.

**Michael Stewart:** No matter what I say now, it will not seem contentious at all.

The key difficulty will be with the potential for there to be 32 outcome plans that could be individualised, seen as parochial, or measuring what they want to measure, and the national board will have to try to make sense of that. I would certainly appreciate the guide of the national strategy to help us to answer what has so far been an unanswerable question for justice: how do we measure the effectiveness of community justice and criminal justice? The reconviction rates do not reflect the level and quality of service and the work that is undertaken daily by criminal justice social work and partner agencies.

With reconviction rates, somebody could be convicted 10 times last year and twice this year for much less serious things, but that could still be

viewed as a failure. There is room to move on the outcomes.

My concern is that, if we are to take our own measurements and so have 32 aggregate outcome measurements, will we be able to get a national picture that makes sense and shows whether we have been successful in tackling the known issues?

**The Convener:** I am kind of lost now. Are you pro or against an inspection?

**Michael Stewart:** Yes.

**The Convener:** You are for inspection.

**Michael Stewart:** No.

**The Convener:** Are you against?

**Michael Stewart:** I am pro and against. *[Laughter.]*

My perspective is that I agree that we already have inspection in place to the level that I want, and I do not want us to fix problems that we have not had yet. We need to see how the national board communicates with local CPPs before we put another layer of inspection in place.

**The Convener:** I want to park the issue of inspection, although I noticed that Peter McNamara jumped when the word "parochial" was mentioned. We will leave that for now. We have aired the issue, so we will move on.

Is Roddy Campbell satisfied, or does he want to come in again?

**Roderick Campbell:** I have other points, but I am happy to let other members in.

**The Convener:** I will come back to you, although I am conscious of time.

**Gil Paterson:** I would like to follow up on partnerships. I know that, no matter what the circumstances are, local government will be fairly powerful when it comes to the local body itself, and that is quite right; it goes with the territory. Our witnesses are all from the public sector, so what do they feel about the third sector's involvement? How should it fit in to any part of the equation?

**Councillor McGuigan:** The third sector has a big role to play and it should already be well represented on the CPPs. Many of us have been trying to change that over the years of the evolution of community planning partnerships to make sure that the right voices are heard round the table.

One problem with the third sector is that the organisations cannot all be on a CPP board. Difficulties arise with nominating all the third sector voices that will be heard at the board. However, Mr Paterson is absolutely correct that the CPP has

a crucial role. It is highly valued by local authorities and other partners in my CPP in North Lanarkshire. The effectiveness of the role that the third sector can play will grow.

**Amanda Coulthard:** I agree with Councillor McGuigan that the third sector has a clear role when it comes to community planning partnerships. However, the third sector at CPP level is a strategic voice that represents a range of issues and groups of varying size.

We have work to do on the criminal justice voluntary sector's involvement in community planning as we move forward into responding to community justice outcomes. Each community has a range of valuable organisations, but they are small and often focused on service delivery or support and do not necessarily want to be involved in strategic discussions or planning. We have to find a balance between that strategic oversight and operational service delivery.

**Councillor McNamara:** I agree with everything that has been said, especially what Amanda Coulthard said about the community justice third sector. The bill is missing any reference to the third sector. If that sector is to be given a place at the table, it should be treated respectfully as an equal partner and not just as an add-on. That is the one thing that is missing that should be introduced into the bill.

**The Convener:** We have already noted that, but thank you for saying it again.

**Alex McCallum:** We need to be cautious about the mechanisms for commissioning the services of the third sector and how those structures are established. We have had some difficulty with the initial establishment of the nationally commissioned services. In Dumfries and Galloway, for example, we have benefited from the shine mentoring service. However, in the initial stages, two half-time workers had to respond to three different management systems, which was confusing for them and an inefficient use of resources. We need to make sure that we get the local and national commissioning processes right so that the right resources go in to meet the assessed needs of the communities that we are here to serve.

**Michael Stewart:** I will make two quick points, one of which Mr McCallum has expressed already, which is that the commissioning strategy is key. From my perspective, the national bids for mentoring were not truly national. They considered only some of the more difficult-to-reach areas after the granting of funds had been made, and as such I do not think that there is an equitable service.

The other point is something that has been raised with the committee before. The short-termism of funding makes it very difficult for third

sector organisations to survive and not have to morph and change in order to chase pots of money. I am aware that the committee has had that—

**The Convener:** I made a song and dance about that at our previous evidence session on the bill. It has been on-going for decades.

**Elaine Murray:** Alison McInnes referred to a suggestion in Elish Angiolini's report, which was that there should be a joint board that would bring together community justice Scotland and the Scottish Prison Service. Does the bill miss a trick by not looking at that? Such a board might facilitate an understanding of the roles of prevention and punishment in the community, as opposed to imprisonment, and it might facilitate the movement of resource from the Prison Service into community justice. Alternatively, would the fact that it would be a national body reinforce centralisation, as the money might not come down to the partners that actually need it?

**Alex McCallum:** I agree that such a board would be good thing. If, in the long run, we are looking to move people out of prisons and into the community, the resource needs to move from prisons to the community. That is a long-term objective so meetings between those bodies at the national and, as far as possible, local levels would be a good thing. We have missed a trick by not including such a board in the bill.

**The Convener:** Thank you.

I have got my councillors muddled up. Was it Councillor McNamara or Councillor McGuigan who wanted to speak? [*Interruption.*] Both of you want to speak.

**Councillor McNamara:** We could do a duet.

I would be cautious about setting up yet another joint body to oversee matters. A community planning partnership joint arrangement for community justice should be the vehicle for setting up local community units to support women, for example. We would not be creating a prison but putting in place a support mechanism. The community justice element to community planning would be the ideal route for oversight and delivery.

If we are emptying prisons, there is an obligation to look at the Prison Service budget. For example, when I first got involved, there were 800 young people at Polmont, whereas now there are fewer than 400 and yet the Government has built two large extensions, which are now almost half empty. There has to be a link between policy and the capital expenditure.

I understand what Elaine Murray is saying—that it sounds ideal to have a national body—but I do not agree. Given that we are talking about Government agencies, the Government should

say that if the Prison Service saves money in its budget, that saving should be devolved to the local community so that it can decide how best to use it.

11:30

**The Convener:** I wonder why the SPS is not in section 12, on community justice partners, which include the chief constable, the Scottish Fire and Rescue Service and Skills Development Scotland.

**Councillor McNamara:** Do you mean the Scottish Prison Service?

**The Convener:** Yes.

**Councillor McNamara:** It should be in the bill.

**The Convener:** It is not.

**Councillor McNamara:** It is one of the partners.

**Elaine Murray:** Would it not come under the Scottish ministers?

**The Convener:** You are right—it comes under the Scottish ministers. I beg your pardon; I am getting befuddled.

**Councillor McGuigan:** There is a role for the SPS both nationally and locally. We have seen evidence of a change in attitude in the SPS, which has become more outward looking and wants to engage with communities. That is happening and is beneficial.

We have to be careful about saying that the SPS's national role will be operated simply through the mechanism of community justice Scotland. I do not want to see a powerful body up there; rather, I want to see such activity taking place at lower levels.

**Amanda Coulthard:** I completely agree with the aspiration to bring the SPS further into the discussion on community justice, and having a joint board could free up some resources and allow them to flow back to the communities. However, the important bit is the resource flow. If the community justice Scotland board and the Prison Service board were combined, there would be a concern that that would take us back to a criminal justice discussion, rather than the focus being on a community justice discussion. That would take us away from the focus on prevention and early intervention that we are looking for.

**The Convener:** The confusing thing for me is section 12(1)(h), which refers to "the Scottish ministers". I would prefer it to refer to the SPS, because to me the Scottish ministers are not the SPS.

**Margaret McDougall:** I should say that I was Peter McNamara's vice-convener on the south-west Scotland community justice authority and we

were also councillors together in North Ayrshire Council.

**The Convener:** And now you are sitting beside each other.

**Councillor McNamara:** Spooky.

**Margaret McDougall:** Yes, this is a reproduction of things as they were before.

Two weeks ago, Cleland Sneddon said:

"The bill would be strengthened if the central role of CPPs was reinforced and there was greater clarity about the duties on all partners to contribute locally." —[*Official Report, Justice Committee*, 1 September; c 13.]

Lorraine Gillies and Amanda Coulthard spoke about the pressures on CPPs. As a former convener of a CPP I wonder whether Cleland Sneddon's suggestion would be one challenge too many for them.

I know how difficult it is to get the third sector involved in CPPs and to ensure that they are truly represented, so is there an issue about how the third sector will be represented under the bill?

Finally, are offenders, families and victims adequately represented? I have not seen anything on that or heard anyone mention it this morning.

**The Convener:** I am getting nods from both directions—we have become very informal suddenly. I will take Ms Gillies first and then Ms Coulthard.

**Lorraine Gillies:** I do not think that it would be one challenge too many—it is about time. The Community Empowerment (Scotland) Act 2015 gives us a strengthened sounding board for moving ahead in the terms that you are discussing.

There are challenges around how the third sector engages. At the moment, the expectation is that people should engage through the third sector interface model and there are some challenges in how that has been rolled out across Scotland. There are some good examples of where that relationship works well and where the third sector engages strategically and operationally. However, there are areas where that does not work as well, which require attention.

Community planning and community empowerment give us the opportunity to engage others who are not necessarily engaged in community justice outcomes. I am thinking particularly of local employers, the private sector and the Scottish Courts and Tribunals Service, but we would like a whole raft of organisations to engage better. The third sector is one area, but there are others with which I would probably look to have an enhanced level of engagement through community planning and empowerment.

I am linked into several different workstreams around the national strategy. We have been looking at victims and families in particular. Where are they in the whole agenda? I am not convinced that they are pulled out strongly enough.

**Amanda Coulthard:** I agree completely. We see the bill as being an opportunity rather than a step too far. The timing of the community empowerment legislation, public sector reform and justice reform allows us to bring everything together and to be much more person centred in how we approach our work.

We need to think differently about how we engage with a range of stakeholders in this work. That engagement must be at the appropriate level for the people whom we are trying to involve. A huge amount of work needs to be done on families and victims, as well as on offenders. That does not necessarily have to be at the level of writing the justice plan. We have to think differently about how we commission services, how we consult and how we engage service users and local community members on what services should look like for their area and what their need is. We have some great examples of third sector interface to pick up and learn from, but we have a fair way to go.

**John Wood:** I will make a couple of quick points in response to Margaret McDougall's question. On Cleland Sneddon's suggestion, we absolutely agree that the CPP's role should be more clearly explained in the bill. We have yet to hear a convincing answer as to why it is not. It would be interesting to hear from the minister on that issue.

**The Convener:** I am going to come round the witnesses shortly to ask them what one thing they would change in or add to the bill, so you will get your chance to talk about that then.

**John Wood:** Okay.

There is an opportunity to bring in the contributions of community planning partners and community justice partners through section 30, but its wording is not quite robust enough.

If I am being pressed, I would reiterate Amanda Coulthard's point that we absolutely need to involve families and victims, as well as people with convictions, in the co-production of services.

**The Convener:** Do councillors McGuigan and McNamara—team councillors—have something different to add? I see that Councillor McGuigan has.

**Councillor McGuigan:** No, I do not, other than to say we cannot, should not and must not run away from the challenge.

**The Convener:** No means no—that you have nothing different to add. We will stop you right there.

Bearing in mind that the witnesses for our next round table are waiting, I ask this panel what one thing—just one thing in summation; I do not want a big story—would you like to add to or change in the bill?

**Michael Stewart:** The key thing is to make the prevention agenda more clear. It is a massive mistake not to make clear the CPP focus on prevention if we want to engage CPP partners.

**Amanda Coulthard:** The bill should strengthen local governance and accountability through community planning partnerships.

**Lorraine Gillies:** We need to look at how we resource this.

**John Wood:** The bill should include a robust footing for local partnerships and limitations on what community justice Scotland will do.

**Councillor McGuigan:** The bill should be absolutely clear about community planning partnerships' role in the whole venture. That needs to be defined more clearly. I repeat: we should not run away from the challenges. It is not a challenge too far. Community planning partnerships should be working together, sharing resources and making a difference to the communities that they serve.

**Alex McCallum:** I would like to see community justice defined as broadly as possible.

**Councillor McNamara:** I would like the community justice arrangements to be clearly empowered so that they have the influence to drive forward the agenda, which is extremely important, as has been pointed out.

**The Convener:** I thank you all for your evidence. I hope that you enjoyed the session as much as I and the committee did, and that you found it useful. If you have anything that you wish to add—it may follow on from what you hear or read next—write to me, and the information will be shared with the entire committee. Sometimes witnesses think of things afterwards.

I suspend the meeting for five minutes, to allow a changeover of witnesses and me to stretch my legs.



11:40

*Meeting suspended.*

11:47

*On resuming—*

**The Convener:** We move to our second round-table session. I welcome the new participants, all of whom—I think—sat through at least part of the previous session. You will, therefore, have got the idea of how we do things. If you want to say something, indicate that to me. I will call you, or put you on a list and tell you where you are. Your microphone will come on automatically. We will go round the table again—this time I will remember which way is anticlockwise; I thank Elaine Murray for that—so that everyone can introduce themselves.

I am the convener, and the member for Midlothian South, Tweeddale and Lauderdale.

**Elaine Murray:** I am the member for Dumfriesshire and vice-convener of the committee.

**Mark McSherry (Risk Management Authority Scotland):** I am from the Risk Management Authority Scotland.

**Margaret Mitchell:** I am an MSP for Central Scotland and a member of the committee.

**Teresa Medhurst (Scottish Prison Service):** I am director of strategy and innovation for the Scottish Prison Service.

**Roderick Campbell:** I am the MSP for North East Fife.

**Sean McKendrick (Social Work Scotland):** I am from Social Work Scotland.

**Gil Paterson:** I am the MSP for Clydebank and Milngavie.

**Christian Allard:** I am an MSP for North East Scotland.

**Dr Graham Foster (Forth Valley Health Board):** I am the director of public health and strategic planning at NHS Forth Valley.

**John Finnie:** I am an MSP for Highlands and Islands.

**John Watt (Parole Board for Scotland):** I am chair of the Parole Board for Scotland.

**Alison McInnes:** I am an MSP for North East Scotland.

**Chief Superintendent Grant Manders (Police Scotland):** I am from Police Scotland.

**Margaret McDougall:** I am an MSP for West Scotland and a member of the committee.

**The Convener:** Thank you. As I threw out to the witnesses in the previous session, we are here to discuss what is good and bad—like the curate's egg—about the legislation. Do any of our witnesses want to open?

No one is answering—it is tumbleweed time.

**Sean McKendrick:** There are a number of advantages to the bill. I will start with the positive aspects, because I think—on reflection—that there might be more negatives.

The positive part is the commitment to a national community justice strategy—specifically the outcomes and the performance improvement framework. Those are, of course, just principles right now, and none of the consultees have seen the final details of those positive elements, but they are broadly welcomed. It is incredibly helpful for local government and other partners to be clear about what they want to provide and the outcomes that they want to produce. A clear strategy would, I hope, draw partners together to work much more effectively in delivering community justice strategies.

There are some more concerning aspects of the bill. I apologise if I reiterate some of the final comments from the previous session, but duplication in this instance might be quite helpful. The definition of “community justice” in the bill is fairly poor and narrow. Respondents to the consultation and witnesses before the committee have also commented on the bill's lack of reference to early intervention and prevention, which is deeply concerning.

On the notion of creating and nominating community justice partners, the consultation process did not suggest a body that would deal with the enshrinement of community justice partners in localities—indeed, the process has gone on to reflect the importance of community planning partnerships.

I will not get this quote exactly correct, but the Government's response to the consultation in December 2014 indicated that governance—I mean governance in the broadest sense in relation to performance, finance and accountability—would lie with community planning partnerships. That is of particular concern.

Building on that, the last major aspect that causes us concern is that the relationship between community justice Scotland and local partnerships, and the way in which functions are articulated, might open the door to misrepresentation and lead to an unhelpful approach to delivering the outcomes and services to address what we all want from an effective community justice service.

**Teresa Medhurst:** From the Scottish Prison Service perspective, the bill gives us the

opportunity to work at national level on strategy and performance, and to look together at the outcomes. We have been able to give our input—we are still doing so—at national level.

At local level, most of us, as national bodies, previously dealt with eight community justice authorities. With a potential move to 32 community planning partnerships, how we engage with 32 different authorities may prove to be challenging, so we are working on that, at present.

In addition, we are pleased that the definition of those who are coming out of custody and who will be involved with those partnerships has been broadened. As offenders leave our custody and return to communities, there are more challenges than just those that exist within community justice with regard to resettlement. As was discussed earlier, the broader definition gives more impetus to providing wider access to services and support for offenders when they leave custody.

There are some challenges that we are currently working on with regard to how we get appropriate representation and input at local level. We have identified what will be done initially by mapping out those partnerships and what the implications are. We are looking at the type of information that is required and how we can provide that, and at how we can provide leadership through the identification of governors in charge who will represent the SPS at local level.

We are working through that at present, but in very broad terms. We welcome the opportunity to look at shared outcomes and at much more effective local planning for people who are leaving custody and making the difficult transition back into the community.

**Dr Foster:** I want to start on a positive note, before we dive into the details of the bill. From the public health standpoint, we are very enthusiastic about the content of the bill. In tackling Scotland's public health problem, it is important to recognise the importance of the cycle of offending and reoffending, which is deeply linked to the cycles of poverty and deprivation that our communities face and is a clear element of the persisting inequalities in our communities. We think that the bill is a real positive step forward.

We welcome the clear recognition of the importance of community planning. It is very important that delivery should be through community planning partnerships, because they are the vehicle that we are currently working with; they are our local partners in tackling many issues. We would like to see single outcome agreements continuing to be the main vehicle for tackling some of Scotland's public health challenges; that, too, is really important.

A third element is that it is important that the bill recognises the role of alcohol and drug partnerships. Speaking as the chair of an alcohol and drug partnership, I think that it is very important that we recognise the link to substance misuse in its many forms. It is good that the bill recognises that and will start a move forward on that.

**The Convener:** No other witness wants to come in right now. That was a challenge that I had hoped the chief superintendent would take up. Go for it.

**Chief Superintendent Manders:** It is a challenge that I am delighted to take up.

In a similar vein to what Dr Foster said, by and large Police Scotland welcomes the opportunity that is given by the bill to tidy up the area a wee bit. Also, similarly to what the committee has heard already—this could sound like a broken record—we recognise that, as it is currently constituted, there might be some challenges around the bill.

Police Scotland particularly welcomes the emphasis on community planning—or what we thought was the emphasis on community planning. The bill has perhaps not translated that emphasis into delivery. Community planning and local outcome agreements are where this stuff ought to get delivered. If it is delivered through those, we can tidy up the interface with alcohol and drug partnerships and the like more successfully than we could under another system.

We recognise that there is real potential in the bill, but we think that it needs to be made a bit more explicit. To underline that I say that the terminology in the bill might cause some confusion—for example, by referring to “community justice partners” as opposed to “community planning partnerships”. If community justice is to be delivered successfully, the spectrum of potential partners is huge. The partners are not necessarily what we would immediately recognise as traditional criminal justice or even community justice partners. The committee has heard evidence on housing and that sort of thing, and has talked about the importance of the third sector and some of the niches within that. All that is important. The local cut and thrust is really important to delivery.

There are two final points that Police Scotland would like to make. First, for all this to be successful it is necessary to take a whole-system approach; it needs to be right from start to finish. That leads to the emphasis on prevention and early intervention. Local partners recognise the terminology of whole-system approaches; we have been using it in youth justice for a number of years. Sean McKendrick and I have worked

closely on that in Glasgow in an operational sense, and in my current role in Argyll and Bute, local partners are equally adept, knowledgeable and practised at delivering whole systems. For me, successful community justice is a whole-system approach. It would be nice if some of the language, experience and good practice were encompassed in the language of the bill.

The other thing that worries me and a number of the contributors to the Police Scotland response a wee bit is the resourcing of the provisions. It seems that the only money that is mentioned in the bill is the money for community justice Scotland and the section 27 moneys that are available anyway. If the section 27 moneys continue to be delivered as they have always been delivered, not very much will change. So, there are some issues around resourcing in the broader sphere of things. I know that the committee also discussed that with the first panel. From what was meant to be two sentences, I seem to have been going on for about 10 minutes.

**The Convener:** That is all right. I was listening.

No other panel members want to come in, so I will move to committee members' questions. I will take John Finnie, because he did not get in last time.

**John Finnie:** I would like to hear the panel's views on what public awareness of the partnerships should be. Many people whom I encounter have never heard of them and have no experience of such partnerships. That is the case across the public sector. Is that important? Do we need more public involvement?

12:00

**Sean McKendrick:** I do not want to commit to answering every question first, but I will try this one. You will note that in the Social Work Scotland submission we mention community involvement. However, reality is where the people who are providing and receiving the services are living. The public does not have significant awareness.

We would welcome community justice Scotland having responsibility for promoting the benefits of engagement and desistance, and for working collectively with organisations and partnerships to deliver the interventions.

The short answer to the question is that in many respects the public is far removed from the rehabilitative element of community justice and is instead clearly focused on what creates offenders and on managing and dealing with those who commit offences. The other side of that coin, in terms of the public's understanding of the rehabilitative nature of community justice, is understanding the reasons why women—and

some men—get involved in some form of offending; those reasons are particularly well highlighted in the report by the commission on women offenders. There is quite a bit of debate to be had with the public. Politicians, as well as community planning partnerships and community justice Scotland, have a significant role to play.

**The Convener:** In fairness to the drafters of the bill, section 3(1)(d) says that one of the functions of community justice Scotland will be

“to promote public awareness of benefits arising from”

community justice. That may not be wide enough for your liking, but it is included in the bill.

**Teresa Medhurst:** I want to reflect on a point that was made earlier on the work that the SPS does. There is often an adverse public reaction to the more innovative practices or approaches that we take in doing things differently to try to improve outcomes. That adverse reaction can have a negative impact on the individuals whom we are trying to transition back into communities. There is an issue about public awareness for us all in that we need to take more of what we are doing back into communities so that we get a better understanding from them about what we require in terms of their support, because these people are their citizens—when people return to communities they are no longer offenders or people in prison, but citizens of our community, who should be treated as such.

**Christian Allard:** I read the submissions, some of which talked about the bill being an enabling bill. We have heard a lot this morning about how it should be more limited, who should be engaging, who should be included as a partner and so on. We are trying to find a lot of definition and adding a lot to the bill, but will that strengthen the bill or will it weaken the idea of it being an enabling bill that is very permissive about what can be done at local level, particularly by local authorities taking a lead from one another or, as we heard this morning, by the private sector? There could be different pictures in all local authority areas. How much should we change the bill or should we leave it as an enabling bill, as it is described in some of the submissions?

**The Convener:** I take it that your focus is section 12 on community justice partners.

**Christian Allard:** Yes.

**The Convener:** Perhaps we should look at that section to see whether there needs to be more of a list—although when you start a list you never know when to stop it.

I have a question for the SPS. The SPS is included only within “the Scottish Ministers”, in section 12(1)(h). Are you happy about that?

**Teresa Medhurst:** Duties were placed on the Scottish Prison Service to work with community justice authorities, and we have duties to work with community planning partnerships. We fully understand that we have a role to play.

**The Convener:** That is not what I asked. In section 12(1)(h), as a community justice partner, you are included only under “the Scottish Ministers”. Should not you be on that list as the Scottish Prison Service? That would make more sense to me.

**Teresa Medhurst:** We are an agency of the Scottish ministers.

**The Convener:** You are being very diplomatic, but I do not want you to be; I want you to tell me whether you should be in the bill as the Scottish Prison Service. Anyone reading this would not understand what it means—I do not understand it.

**Teresa Medhurst:** I understand why you do not understand.

**The Convener:** Would somebody else answer for this good lady, who is not prepared to answer? Who would find it more helpful were the SPS listed?

**Chief Superintendent Manders:** Similarly, the Crown Office and Procurator Fiscal Service is not specifically mentioned. The argument in relation to that body would be along the same lines.

I also note that the chief constable is the only individual who is mentioned: I wonder why.

**The Convener:** Do you think that just Police Scotland should be listed?

**Chief Superintendent Manders:** Yes.

**The Convener:** The Crown Office and Procurator Fiscal Service and possibly, but not necessarily, the Scottish Prison Service should be included.

Legislation should be understandable to other people; I do not think that this is understandable.

Are there any other comments?

**Dr Foster:** I want to echo that point. In response to the question about community involvement, there are a number of things currently ongoing that are about trying to deliver community empowerment and to engage communities. To give a simple answer, the situation needs to be simple. People cannot understand our very complex arrangements, and I have frequently heard the public landscape being described as a rather crowded dance floor. At the moment, that landscape is very crowded. We are introducing more bodies to it, and the more bodies we introduce, the more difficult it becomes for our population to understand and the harder it

becomes for us all to engage. Our call would be for Parliament to try to make arrangements as simple as possible.

**The Convener:** Is Christian Allard finished?

**Christian Allard:** Does nobody want to answer the question whether the bill should be enabling or more prescriptive?

**Mark McSherry:** We have functions as a non-departmental public body, or NDPB—I always get the acronym wrong—to promote effective practice, undertake research and deliver training. I am not sure whether the bill covers the overlap between the new body’s functions and our responsibilities in relation to those who pose a risk of serious harm. The bill does not need to detail what the relationships are, as long as there is a commitment to discuss further how the two bodies will sit together.

**Sean McKendrick:** I will tackle the question whether the bill should be enabling or prescriptive. Degrees of flexibility are always welcome in planning services. The answer to your question will come in part from what the national strategy and the outcomes and improvement framework tell us. That should be enabling and should be sufficiently wide and encompassing to engage the partners that are involved in delivering community justice services.

The permissiveness is helpful and welcome. There will be an absolute and clear connection with what the national strategy says. It has not been written yet, but a connection will come with the national performance and improvement framework and will give the flexibility that is required.

I repeat the point that there are concerns about the relationships that are articulated in the bill between community justice Scotland, locality community justice partners and CPPs. With the new development of the nomination of community justice partners, and the lack of a mention of community planning partnerships, we have missed an opportunity to be more flexible and permissive.

I will explain what I mean by that. As we all know round the table, community planning partnerships are well established. They deal with a host of complex and difficult problems that our communities face and they pull in a wide variety of resources. They have significant governance arrangements and significant experience in planning.

My concern in relation to the engagement of community justice Scotland is that the body will take some time to form and the relationships and accountability between community justice Scotland, local partners and CPPs are not

particularly well articulated and could lead to significant misinterpretation.

The permissiveness and enablement are helpful. As for the bill's objectives, they are not necessarily best reflected in legislation; rather, they should be in the strategy and the outcomes framework. We wait with interest to see how those will be shaped and what they will say. Social Work Scotland cautiously welcomes those elements, because those aspects, which will support the bill's permissiveness and the flexibility that is required, are not yet known or articulated.

Our position is that the flexibility is good. We await the two supporting aspects to the bill and we will see in due course whether it is permissive enough to create the flexibility of service provision that is required.

**The Convener:** It will perhaps be when community justice Scotland is up and running that such things will sort themselves out. I am not saying that everything will be solved—I am not saying, “Suck it and see”—but, once it is in place, I think that there will be a rebalancing.

**Sean McKendrick:** Practice tells us that that will be the case.

**The Convener:** Yes.

**Sean McKendrick:** The outline of what will be developed post legislation is quite important. That will address a number of issues.

**The Convener:** Indeed.

**Roderick Campbell:** My question has to some extent been answered. Nevertheless, I will pose a general question to the panel. Will the bill as it stands—I assume that it will be tweaked slightly—enhance the attraction of community justice for judges?

**The Convener:** There is more tumbleweed.

**John Watt:** I can give you a short answer.

**The Convener:** I think that sheriffs and judges like to know what is out there before they make disposals.

**John Watt:** They do; that is the point that I was going to make. I was a fiscal for 35 years before I retired and took up my Parole Board job. When I look back at my previous role, I think that you are right, convener. Judges must understand what is out there for them in their area—what programmes are available to them and what schemes they can use. Until they see something operating, with social background reports in front of them, I do not see that there is much for them.

**The Convener:** There we are then. That is that one nailed to the floor.

**Elaine Murray:** A contributor on the previous panel expressed concern about there being £2 million for community justice Scotland but, as he put it, “hee-haw” for the local community justice partners. Is that a concern for panel members?

The bill does not follow the Angiolini recommendation that there should be a joint community justice and prison service board, which might have facilitated some transfer of funding from the prison service to community justice. Is that necessary? Some people on the previous panel thought that that might be a good thing, while others thought that it might not be.

**The Convener:** When you mentioned “hee-haw”, I saw the official reporters studiously writing the term down again. Can I have answers to the question on funding?

**Chief Superintendent Manders:** I am happy to speak to the first question, and Teresa Medhurst will probably speak to the second question. The hee-haw question has been discussed in community planning partnerships. I sit on two CPPs. It would be wrong to say that the issue has been missed. I noticed that Lorraine Gillies and Amanda Coulthard backed up the hee-haw point when it was mentioned. That question is important to address.

**The Convener:** We will stop referring to it as the “hee-haw question”, so that the official reporters do not have to write that down.

**Chief Superintendent Manders:** I will just call it “HH”. The funding is important to us. Even if we look at how community justice authorities are currently configured, there is a small resource for policy, performance and analysis—all the outcome-based issues that we look at that allow Peter McNamara and others to talk about their splendid results. My reading of the bill is that some resource will transfer to community justice Scotland, and no resource will be left other than what is currently in community planning arrangements.

There is no doubt that the staff in community justice authorities have built up expertise and knowledge that perhaps is not translated into the broader community planning governance arrangements. If that resource is not transferred, that will present some threats.

12:15

**Teresa Medhurst:** In the budgets under the current funding arrangements, the Scottish Prison Service has no unallocated resource. There is still significant churn in the short-term population, while the number of prisoners with high levels of care needs and the number of high-risk prisoners

who are coming into custody with complex needs are also increasing. There is a suggestion that the presumption against short-term sentences might be extended, and evidence was given to the committee in February when it considered the Prisoners (Control of Release) (Scotland) Bill, which could also have an impact on prison numbers. Although consideration will have to be given at some point to what Elaine Murray referred to, that will need to happen when the overall population has been reduced and we can manage that.

**Elaine Murray:** Is there merit in the Angiolini suggestion that the SPS and the community justice authority should have one board? The Government might not feel that this is the time to do that, but have we missed a trick there?

**Teresa Medhurst:** In light of Angiolini, the Scottish Government undertook a consultation, out of which came the proposed arrangements, which seemed to be most appropriate at this time. The Scottish Prison Service is concerned to consider such issues, and we welcome Mr McGuigan's comment that we are becoming more outward facing. We understand and appreciate the strength of partnership working in communities, and how taking individuals out of custody and their transition are important in the desistance path and ultimately in reducing reoffending. We will engage in that whatever shape the bill turns out to be.

**Sean McKendrick:** I will come to the question about the board in a second. For the record, I endorse Mr Manders's comments about the concern that is associated with the funding question and the experience that we have built up in relation to reporting and analysis.

I am not really sure about a board. The mechanism of justice reinvestment needs to be considered and requires further reflection. The Audit Scotland report pointed to £3 billion being spent on dealing with offences. That is not all connected with prisons, but it is a significant amount of money.

I have some misgivings and I am not certain that the mechanism for justice reinvestment should be a joint board of community justice Scotland and the Scottish Prison Service. I am certain that we need some reflection and a structure that allows us to re-establish individuals or manipulate them into remaining in the community with proper support. There should be a mechanism for looking at that form of readjustment and resource realignment. I am not certain about whether it should be a board, but I would like either the strategy or the bill to reflect such a mechanism.

**The Convener:** Do you mean that money should flow from the SPS budget?

**Sean McKendrick:** Yes. We have seen many such examples in the public sector in relation to health and hospitals; we should learn from that and think of a mechanism that assists the process. However, I am not certain whether that should be a board, as I said.

**Margaret Mitchell:** At our previous meeting, we heard that COSLA very much welcomes the community focus but, when the consultation was being done, it was under the impression that the national body would support the 32 local bodies. We have moved to talking about a partnership, and there is concern that a national body might be a little too powerful. I note from Police Scotland's submission that there is concern about ministers appearing to retain wide influence over the national body and about what the directions and guidance would involve.

Given those concerns, Dame Elish Angiolini suggested an inspectorate which, as you probably heard, did not find much favour with the previous panel. I would welcome your views on whether there should be some independent scrutiny.

**Chief Superintendent Manders:** I suspect that everybody will have a strong view on that. My view mirrors that of the previous panel: we have plenty of good inspection bodies and we are very experienced in joint inspections, which can bring a richness and a broader perspective than a single agency can. For example, if we were considering the pure community justice element and there was a broad inspection regime that involved the inspectorates for prisons, the police, social work and others, as well as Audit Scotland with its particular perspective, we would get a rich picture. It is not beyond our wit to work with that and benefit from it.

**Margaret Mitchell:** I wonder whether the problem lies with the word "inspectorate", which Dame Elish might have used because we already have an inspectorate of prisons. Perhaps it would be more helpful to describe the body as an independent arbiter—Audit Scotland has been talked of as possibly being able to carry out the function. Has anyone explored how an independent source could strike the balance to ensure that there were no abuses and that there was the local flexibility that is intended in the bill to ensure that prevention and early intervention happen rather than a concentration on criminal justice?

**Chief Superintendent Manders:** A joint inspection with the aforementioned bodies would be the best way to achieve that aim.

**Sean McKendrick:** I am in the no camp. There are a significant number of public sector inspection bodies. One issue is how we manage the outcomes and how well we deliver on them, both

collectively and as individual organisations. Some of that will come from the governance structure for the local partnerships and some will come from the objectives that are established for community justice Scotland.

Your first question was on the imbalance in relation to having a local or national model. The bill is imbalanced around the responsibilities and objectives of the national model. In some respects, that appears to be balanced by paragraph 105 of the policy memorandum, which, instead of talking about monitoring and the almost negative set of activities on outcomes that is associated with that, describes a more supportive relationship between community justice Scotland and local partnerships.

I hope that the balance that is helpfully articulated in the activities that paragraph 105 of the policy memorandum proposes—they are generally about using community justice Scotland's skills and experience to develop and support local practice and initiatives—will be included in the bill and in statutory guidance. If we reflected those activities in the bill, the balance between the national body's objectives and the activities that it undertakes would be appropriate.

**The Convener:** Section 3(1)(c) of the bill says that a function of community justice Scotland is “to promote and support”, which is not to direct. The section says that the body has a main function

“to promote and support ... improvement in the quality and range of provision of community justice”.

Does that satisfy you that the word “support” is in the bill?

**Sean McKendrick:** It does, but there is a distinction between the memorandum, which by its nature is much more detailed, and the bill. The memorandum provides a much more collegiate perspective.

**The Convener:** The bill is what counts at the end of the day.

**Teresa Medhurst:** I agree with the point that Grant Manders made about inspections. The inspectorates are well established and already conduct thematic inspections as well as inspections of services, so we would be able to jointly propose a remit, scoping and outcomes.

**The Convener:** I think that Margaret Mitchell has lost that argument. Margaret, you have tested it to death.

**Margaret Mitchell:** Absolutely.

**Alison McInnes:** I want to pick up on what Mr McKendrick said. Ms Medhurst said that the Government consulted on the Angiolini proposal for a national agency and concluded that the approach in the bill is the most appropriate way forward. We heard from the previous panel that

the community justice authorities think that that is the

“‘least worst’ local/national compromise”,

and is too much of a fudge. Is it a compromise too far, or is it the most appropriate way forward in balancing local and national responsibilities?

**The Convener:** Please come in on that, Mr McKendrick. We would rather hear from you than have silence—please do not take that badly.

**Sean McKendrick:** I will not take it badly.

I am not sure that I accept the word “compromise”. I have expressed our professional surprise and disappointment that the proposals are not integrated into the responsibilities of community planning partnerships. That is a major error; let me take the opportunity to explain why. We talked about the complexities of individuals and the circumstances in which they offend, and restricting the responsibility for community justice planning to nominated community justice partners, as the bill does, will not create the synergies that are developed through community planning partners.

For example, significant people will be missing, and not just the legal profession, in terms of the Crown Office. There are services that are very helpful to families, such as early intervention services, the third sector and housing services, all of which appear to have been missed out. I am not sure that I agree that there has been a compromise, but I think that there is a missed opportunity to cement into the system the activities that we associate with the delivery of good outcomes for people who are involved in the justice system. Not to connect those activities with community planning partnerships represents a missed opportunity.

**Teresa Medhurst:** As I said in my opening remarks, the SPS absolutely welcomes having a broader range of partners at the table, because we know that when it comes to making the transition to the community, individuals who have made part of that journey while in custody and have made positive changes in their lives find it difficult to access not necessarily criminal justice services but the broader range of services that we are talking about. The SPS is a national organisation, so of course we come at the issue from a national perspective, but we think that the local perspective, which can offer much broader engagement across the community, can improve outcomes for people who are moving back into the community.

**Margaret McDougall:** I put this question to our earlier panel of witnesses. The bill is very light on inclusion of the third sector. What are your views

on that? Also, are offenders' families and victims adequately represented in the bill?

**Teresa Medhurst:** The third sector is incredibly important. We work with the third sector, but the difficulty is that what is provided in communities differs considerably across Scotland. Local services have been developed to meet local needs, so it is difficult to ask people to engage meaningfully, because they do not have the resources or the support to do so. We engage with the sector on whether things are done in a community sense, or in a national sense. We recognise that the sector is there and that it can provide support that is critical in work that is done locally.

The third sector is a key partner in most of the work that we are developing in prisons. We always engage and work as positively as we can with third sector organisations and recognise the role that they play, not necessarily so much while an individual is in custody but when they are coming up to release, and on release. We have strong links with those organisations, but there are difficulties around what they are able to deliver and the fact that, by their very nature, they are not national but local.

You asked about victims and offenders' families. We are on a journey of organisational change, looking at desistance and the asset-based model. Our focus is very much around engaging with the individuals and their families, while always respecting the rights of the victims. It is about how we do that constructively when we are working with someone during their sentence and in their transition back into the community.

12:30

**Dr Foster:** The question was about the importance of involving the voluntary sector and the role of families—

**The Convener:** And whether the bill gives sufficient cognisance to the families of the offenders, as well as to the victims.

**Dr Foster:** The roots of offending behaviour run deep. They engage all our different organisations around the community planning table. That starts with the early years and interventions, it runs through schooling and how we support people through school, and it runs through the positive destinations after school and so on. We all carry responsibility for that, so the community planning partnerships are a good place to do that.

I have experience of setting up a family support hub at Cornton Vale prison. To do that, we needed to engage the community planning partners. There is a huge opportunity to use that community

planning focus to engage the public and the communities in this work.

The voluntary sector is a vital participant. A good thing in our local area is that we have the voluntary sector at the community planning table. We need to emphasise that, because it is a positive step.

A third factor is that there are other agencies at the table that would not be at a separate table or in a different discussion. For example, Forth Valley college is a strong partner in our local partnership. Clearly, it would play an important role in supporting us to reduce the offending and reoffending patterns. We have a lot of potential to use the existing community planning structures to nail down not only the voluntary sector engagement but community engagement, because we are actively trying to strengthen community engagement in the community planning partnership right now.

**Sean McKendrick:** I do not think that the bill gives enough prominence to the vital role that the third sector plays in the delivery of community justice interventions. The matter is fairly straightforward and the answer is pretty clear, but the third sector is sparsely mentioned in the bill. Perhaps the other question that follows from that is why that is the case.

Earlier contributions have reflected some of the points that I will make. Organisations in the third sector are diverse. They can provide national services as well as appropriately and locally defined services to bespoke subsections of those individuals who are involved in the justice system. The picture is complex, and we need to do more to make it more coherent from a national and local perspective. Some of the complexity is down to the commissioning arrangements and how well partnerships are using strategic commissioning principles; some of it is down to the section 27 funding being made annually and the capacity of third sector organisations to bring resilience to their organisations, which is impacted by the form of the funding that is available to them.

There is no mention in the bill of the families, victims and individuals who are involved in the justice system. I take you back to the bill's definition of community justice. If we were thinking about broadly articulating the bill, as is done in the policy memorandum, which is much broader in scope, the issue around the impact on victims, families and individuals who are involved in the system would be encompassed. For a number of reasons, I am strongly of the view that those constituent members should be reflected much more in the bill. That is in part due to the rather narrow definitions that I have articulated.



**Margaret Mitchell:** We all recognise the importance of the third sector. The answer usually is that it is represented on the community planning partnerships. However, there is concern that that is very much top down, and there might be only one voice there, so there is not the direct link that is needed if funding is to go to third sector organisations such as Circle or Open Secret, which goes into Cornton Vale. How do the witnesses feel about that? Do community planning partnerships tick the box, or does there need to be a more explicit mention of third sector organisations?

**Chief Superintendent Manders:** It would be useful for the bill to be clear that there is a duty to have the right third sector agencies involved in community planning. This issue might have been covered in the earlier evidence session, but it is probably worth repeating that, normally on community planning partnerships, the third sector person who attends the strategic meetings is from the third sector interface and they will not necessarily be a member of a third sector body that understands the community justice agenda. It is important that we get people to the table who understand the community justice agenda. That would be useful.

A secondary but important issue is on strategic commissioning, which Sean McKendrick mentioned. There are a lot of examples across Scotland of community planning partnerships and local authorities joining together to commission third sector bodies. That ought to be encouraged. For example, if North Ayrshire has X service, it would be a good idea if it shared that with South Ayrshire and vice versa. That way, we would end up with a virtuous circle. There are good examples around Scotland, but it would be useful if the bill, or certainly the strategy that sits round it, was clear about what we can do on that.

**The Convener:** As I did with the previous panel, I will take a last round-up from all the witnesses of one thing that you would like to change in the bill or add to it. If I was to put you on your mettle, what one thing—just one—would you put in or take out?

**Chief Superintendent Manders:** In a word, it would be prevention. The reason for that has already been mentioned and is to do with the issues around short-term prisoners. We are well provided for in relation to longer-term prisoners.

**The Convener:** Right—early intervention.

**Chief Superintendent Manders:** Yes—early intervention.

**The Convener:** I nearly asked Alison McInnes, who is sitting next to Chief Superintendent Manders, what she would like, but she will get her chance another time.

Mr Watt?

**John Watt:** I suppose that, as a judicial agency, our role in the matter is limited, but I would ask for some kind of duty to have a full exchange of information about an individual among the partners so that that information can be made available to the decision maker, whether that is a court, a fiscal or a parole tribunal.

**The Convener:** Is that not available just now?

**John Watt:** It could be an awful lot better.

**The Convener:** I would like you to expand on that—not now but perhaps in writing—to explain the data protection issues, perhaps.

**Dr Foster:** Unfortunately, I have two issues, so I will need to be clever and try to make them into one.

**The Convener:** Just say that you have one and it is in two parts. That is what politicians say.

**Dr Foster:** Thank you—that is what I will do. I have learned something today.

**The Convener:** I should not have to tell you these things.

**Dr Foster:** I have one reply, and it is in two parts. [*Laughter.*]

The first part relates to the discussion about how we measure. It is important that we find a way in the bill to talk about positive destinations and not just the negative measures. We should not measure only reoffending rates; we need to measure individuals going into employment or other positive destinations. That would make a huge difference.

The second part picks up on the discussion about the complicated landscape. The national health service, even as a large public sector body, already struggles to attend all the different partnerships and organisations, so anything that we can do to keep it simple and keep down the number of organisations will help us all, especially people in voluntary sector bodies who want to come to the table. We should try to keep it simple and build on existing mechanisms rather than create new ones.

**The Convener:** Mr McKendrick is next. You do not have one point in three parts, do you? We have opened up the gates there.

**Sean McKendrick:** For timing I might just make the one point, as you suggested.

On the basis that form follows function, we really need to look at the definition. If there was a broader definition, with clarity that picked up some of the discussion around inclusion, the bill would be much better.

**Teresa Medhurst:** Mr McKendrick just stole my thunder. I think that there is to be a further working definition of community justice. It is really important that that definition gives clear parameters so that there is absolute clarity about the continuum of service for offenders, within both community and custody.

**Mark McSherry:** My answer has two parts, although they are on a continuum.

**The Convener:** You are embellishing it now.

**Mark McSherry:** The first part, as I mentioned earlier, is not so much changes to the bill but clarification with regard to the delineation of roles and functions between the new body and our organisation—Risk Management Authority Scotland. That would be welcome. We mentioned in our submission that there is a reference to the annual reports of the multi-agency public protection arrangements being subject to review by community justice Scotland. It is unclear in the bill what function the community justice Scotland body will have, and whether it will have responsibility and oversight of those MAPPA arrangements. We would welcome further clarification of that in the bill.

**The Convener:** Thank you all very much. We have enjoyed this evidence session and it has been very useful.

I suspend the meeting for a minute—stay put team—to let our witnesses leave. We have another item on the agenda.

12:41

*Meeting suspended.*

12:41

*On resuming—*

## **Subordinate Legislation**

**The Convener:** Agenda item 3 is consideration of five negative Scottish statutory instruments. Our paper says that

“the purpose of all five instruments is to move toward fees that reflect the full cost of the processes involved”.

There are some

“fee exemptions to protect access to justice.”

### **Adults with Incapacity (Public Guardian’s Fees) (Scotland) Regulations 2015 (SSI 2015/260)**

**The Convener:** The first instrument makes provision for the fees payable to the public guardian in Scotland. The Delegated Powers and Law Reform Committee considered the regulations at its meeting on 1 September 2015 and agreed that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit. If members have no comments on the instrument, are they content to make no recommendation on it?

**Members** *indicated agreement.*

### **Court of Session etc Fees Order 2015 (SSI 2015/261)**

**The Convener:** The second instrument makes provision for the fees payable to the Court of Session, the principal clerk of session, the accountant of court and auditor of the Court of Session, or any officer acting for one of those officers. The DPLR Committee considered the order at its meeting on 1 September 2015 and agreed that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit. If members have no comments on the instrument, are they content to make no recommendation on it?

**Members** *indicated agreement.*

### **High Court of Justiciary Fees Order 2015 (SSI 2015/262)**

**The Convener:** The third instrument makes provision for the fees payable to the High Court of Justiciary, the principal clerk of justiciary and any other officer acting for the principal clerk. The DPLR Committee considered the order at its meeting on 1 September 2015 and agreed that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit. If members have no comments on

the instrument, are they content to make no recommendation on it?

*Meeting closed at 12:45.*

**Members** *indicated agreement.*

### **Justice of the Peace Court Fees (Scotland) Order 2015 (SSI 2015/263)**

**The Convener:** The fourth instrument makes provision for the fees payable in justice of the peace courts in Scotland to the clerk of the justice of the peace court. The DPLR Committee considered the order at its meeting on 1 September 2015 and agreed that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit. If members have no comments on the instrument, are they content to make no recommendation on it?

**Members** *indicated agreement.*

### **Sheriff Court Fees Order 2015 (SSI 2015/264)**

**The Convener:** The fifth and final instrument makes provision for the fees payable in sheriff court to the clerk or the auditor of the court. The DPLR Committee considered the order at its meeting on 1 September 2015 and agreed that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit. If members have no comments on the instrument, are they content to make no recommendation on it?

**Members** *indicated agreement.*

**The Convener:** At our next meeting on 22 September we will take evidence on the Community Justice (Scotland) Bill, consider amendments to the Criminal Justice (Scotland) Bill at stage 2 and look at our on-going petitions. On the Criminal Justice (Scotland) Bill, we will go no further than the end of part 6. We will consider amendments on stop and search and powers of arrest at a later meeting.

I will ask SPICe for a briefing on the Community Empowerment (Scotland) Bill, which seems to interact so much with the Community Justice (Scotland) Bill. It would be useful for us to have an idea about that bill—it is with the Local Government and Regeneration Committee, is it not?

**Elaine Murray:** The bill has been passed.

**The Convener:** It has been passed. That went past me in a flash. I think that we need to know more about the interaction, because the bills seem to relate to each other considerably.



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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