



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Justice Committee

**Tuesday 4 June 2019**

**Session 5**



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**Tuesday 4 June 2019**

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**JUSTICE COMMITTEE**

**16<sup>th</sup> Meeting 2019, Session 5**

**CONVENER**

\*Margaret Mitchell (Central Scotland) (Con)

**DEPUTY CONVENER**

\*Rona Mackay (Strathkelvin and Bearsden) (SNP)

**COMMITTEE MEMBERS**

\*John Finnie (Highlands and Islands) (Green)  
\*Jenny Gilruth (Mid Fife and Glenrothes) (SNP)  
\*Daniel Johnson (Edinburgh Southern) (Lab)  
\*Liam Kerr (North East Scotland) (Con)  
\*Fulton MacGregor (Coatbridge and Chryston) (SNP)  
\*Liam McArthur (Orkney Islands) (LD)  
\*Shona Robison (Dundee City East) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Graham Ackerman (Scottish Sentencing Council)  
Dr Sarah Armstrong (University of Glasgow)  
Laura Hoskins (Community Justice Scotland)  
James Maybee (Highland Council and Social Work Scotland)  
Colin McConnell (Scottish Prison Service)  
Dr Katrina Morrison (Howard League Scotland)  
Professor Cyrus Tata (University of Strathclyde)  
Rt Hon Lord Turnbull (Scottish Sentencing Council)  
Kate Wallace (Victim Support Scotland)

**CLERK TO THE COMMITTEE**

Stephen Imrie

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



# Scottish Parliament

## Justice Committee

*Tuesday 4 June 2019*

*[The Convener opened the meeting at 10:00]*

### Subordinate Legislation

#### Presumption Against Short Periods of Imprisonment (Scotland) Order 2019

**[Draft]**

**The Convener (Margaret Mitchell):** Good morning and welcome to the Justice Committee's 16th meeting of 2019. We have received no apologies.

Under our first agenda item, we start our scrutiny of proposals to change the time period for the presumption against short sentences. I am pleased to welcome to our first evidence session today Laura Hoskins, head of policy, Community Justice Scotland; Colin McConnell, chief executive, Scottish Prison Service; James Maybee, from Highland Council, representing Social Work Scotland; and Kate Wallace, chief executive, Victim Support Scotland.

I refer members to paper 1, which is a public paper and paper 2, which is a private paper.

I will kick off with a question to all the panellists. Will you comment on the resource implications of current short-term custodial sentences and of community sentence alternatives and on the implications of extending the presumption against short sentences, to sentences of less than 12 months?

**Laura Hoskins (Community Justice Scotland):** I am happy to start. At Community Justice Scotland we have done some research and analysis, which we submitted with our evidence to the committee, on the needs of people on current short-term sentences as opposed to those on community sentences. It clearly shows that those who are currently serving short-term sentences have more needs across a range of issues, such as housing, finances, mental health and so on, so we know that the resource implications for those people in the community would be greater if PASS were to happen. However, that is not to suggest that those people should not be given community sentences, but is to say that more resources would be required.

We know that there are different resource implications for those serving community sentences. I do not have information on the

financial implications of current community sentences to hand.

**The Convener:** Will you comment on the resources that are currently available for short-term sentences?

**Laura Hoskins:** My colleague from Social Work Scotland could perhaps give more information on that.

**James Maybee (Highland Council and Social Work Scotland):** Based on the Scottish Government officials' scenario planning, we are looking at a potential increase of 7.5 per cent in community payback orders if the presumption against short-term sentences is extended, which would present great challenges for community-based services.

Community payback orders were introduced in 2011 and, since then, Scottish Prison Service funding has increased by about 8.9 per cent, whereas the core grant for criminal justice social work has remained static at £86.5 million per annum—if we were to get an extra 8.9 per cent, it would raise the grant by about £7.6 million or £7.7 million. That is indicative of the fact that resources have been put into one part of the system but have not been injected into the other part.

As we said in the Social Work Scotland submission, the Scottish Government has made some resources available to assist criminal justice social work to prepare for the presumption against short-term sentences, but we are playing catch-up, and many of those resources are going into trying to maintain the status quo, rather than building new capacity.

Several social work authorities, including one or two that submitted evidence to the committee, still receive support from their local authority in addition to the section 27 core grant for criminal justice social work. That is simply to maintain services at their current level.

I will make a footballing analogy: if a manager has only 10 players, it does not matter how tactically astute or brilliant they are, they will find it difficult to win—the team might score a goal against the run of play, but the players will become tired and demoralised and, inevitably, they will lose the game.

That is very much the feeling in criminal justice social work; we are running to stand still with the demands on the service and the complexity of the work that we are doing. Very recently, Community Justice Scotland did some work that looked at the prison population on up to 12-month sentences, and the anticipation is that if some of those individuals come on to community sentences, they will bring much more complex needs, particularly

for mental health support, as well as for other services.

There is a ripple effect. Criminal justice social work needs to be resourced to do the work, but so do a whole range of other agencies in the community. The ripple starts at the court stage when a report is made, but once a person is on an order, a range of statutory and third sector agencies require the resources to provide input in the community.

I make particular reference to the figure for the women's population in prison, which is staggering: in 2017-18, 90 per cent of the custodial sentences received by women were for less than 12 months. That is a really interesting piece of information. If some of those individuals find their way on to community payback—which we very much hope that they will—they will bring very complex issues with them. We know that women often have greater adverse childhood experiences, for example, and are often victims of domestic abuse. Therefore, we need to ensure that we have the resources to deliver PASS, if it is extended.

**The Convener:** Thank you. Do any other panel members have comments?

**Kate Wallace (Victim Support Scotland):** Victims want to have confidence in the criminal justice system and confidence that nobody else will be in the situation in which they find themselves. That means putting enough resource behind community payback orders. For example, we were very interested in Social Work Scotland's evidence, which said that those orders need to be heavily resourced from a social work point of view. However, as Community Justice Scotland said, they also need to address the "offending behaviour" and its "underlying causes" through targeted programmes, a number of which come to mind, including on stalking, for example. The Suzy Lamplugh Trust has found that unless there are targeted interventions around that fixated and obsessive behaviour, anything that is done is unlikely to successfully help the perpetrator to stop reoffending.

We echo what has been said about resourcing to ensure that if we go down this road, community payback orders are as well-resourced as possible to be as effective as possible. Otherwise reoffending will continue, and victims will not have confidence in the justice system.

**Colin McConnell (Scottish Prison Service):** A couple of points have been made about the SPS's resources, which I will address in due course. On the overall question, the resourcing of the system in general needs careful consideration. The churn of people who are given short sentences—in this case sentences of under 12 months—is considerable. I checked the stock today before I

left the office, and we have 1,049 people in that category in our care today. That is the stock, but the churn on that is quite considerable and takes up a lot of front-end resource, through reception and settling people into their period of custody.

We seriously have to question that from a value-for-money perspective. We would reasonably expect someone who is sentenced to a relatively short period of custody to serve only half of that, so although someone might get sentenced to five or six months in custody, in reality, they will serve but a few weeks. Therefore, it is right for us to reflect on whether that is value for money, which then takes us into the overall effectiveness of short-term prison sentences compared with community payback orders or other sentences that might be developed or implemented in the community. From a custodial perspective, I welcome the scrutiny that is being applied.

That must be put in the context of a general upward trend in the numbers of people who are being sentenced to custody. The system has been designed and is resourced for 7,669 people, but this morning, we have 8,242 people living with us. That is the equivalent of a large prison; there are too many people living with us on a day-to-day basis and not enough resources to look after them.

You will forgive me, but I was slightly surprised by James Maybee's analysis of our financial situation, which is actually a matter of public record. Our corporate plan, which has just been published and is in the public domain, records that, over the past five years, SPS has been subjected to either flat-cash settlements or, in fact, cash cuts. A proper response to the point would separate out the cash, or running cost, elements and the capital elements, and it is the running cost side of the custodial service that has been driven down year on year. We have to be careful and not be attracted to the notion that the Scottish Prison Service is absolutely awash with cash and that if only we could take out a few hundred people, we could free up millions and millions of pounds that could be redirected to the community space.

As I said initially, the system needs to be properly reviewed to ensure that funding is put towards the right solutions and where those solutions are considered to be most effective. This should not be seen as some binary, either/or thing—the system as a whole needs to be properly resourced.

**The Convener:** Thank you. Those comments have set the scene for further questions. I believe that John Finnie has a supplementary.

**John Finnie (Highlands and Islands) (Green):** Good morning, panel. Mr Maybee mentioned a specific sum from the Scottish Government for

criminal justice social work. Is that funding ring fenced for that purpose? Do local authorities have a distinct budget in that respect? If there are—for want of a better term—cuts to come, will they be made across the board in the social work departments of the local authorities?

**James Maybee:** The section 27 grant to local authorities, as it is usually referred to, is ring fenced for criminal justice social work and is therefore protected. However, there is an impact on criminal justice social work as a result of the broader pressures on the other services that local authorities provide such as housing, children and families social work and adult social work. We are not protected from that, but the answer to your question is yes, the money that we receive from the Scottish Government is ring fenced.

**Daniel Johnson (Edinburgh Southern) (Lab):** I just want to test and probe the logic of the proposal in front of us, and my comments very much stem from what Colin McConnell has just said.

With recidivism rates at 50 per cent for short sentences, there is a cohort of people who are essentially repeat customers of the Scottish Prison Service. First, does the panel agree that that is the main issue, in a nutshell, or are there other elements that we need to consider if we are to solve this particular problem?

**James Maybee:** The evidence suggests that those given a custodial sentence of less than a year are reconvicted almost twice as much as those given a community payback order. Of course, the two populations do not match up completely, but I think that the academics and the research evidence would suggest that, if individuals given short sentences were given community payback orders instead, they would be less likely to reoffend and be reconvicted. I do not know whether my colleagues agree or disagree with that, but it is generally accepted in the criminal justice world. In fact, I can give you some other figures. Short custodial sentences come with high reconviction rates; within a year of being released from a custodial sentence of one year or less, 51 per cent are reconvicted and 35 per cent are back in prison.

To come back to Colin McConnell's point about resourcing, I did not suggest that the Scottish Prison Service is awash with cash—I do not think that it is. The figure of 8.9 per cent was quoted from the Howard League for Penal Reform's submission. However, people going into prison for short sentences is an issue, as has been outlined. They cannot be provided with a full range of services by the Scottish Prison Service, with the best will in the world.

Colleagues in Sacro sent me a short clip from a television report in recent weeks about the presumption against short-term sentences. An individual who had been in and out of prison for nine or 10 years said that, for the first time, he is getting Sacro's support and that, during that input over eight or nine months, he has made more progress in the community than he made over the whole of his time in prison. That is one individual, but I am sure that he is not alone in that view.

10:15

**Kate Wallace:** The data that James Maybee discussed is about reconviction. Social Work Scotland says in its written evidence that the evidence about the impact on reoffending from community payback orders is a lot more contested, as it is not as straightforward. There is a difference between reoffending and reconviction. A very small number of people who are charged and arrested go on to be convicted; it is worth bearing in mind that the issue is not as straightforward as saying that community payback orders are reducing reoffending rates, because the data does not support that.

**Laura Hoskins:** There are also the problems that we create by sending people to prison on short-term sentences, particularly with regard to housing and accommodation needs. In our evidence, we mention that people who leave prison are much more likely to have problems finding accommodation. We create new problems for some people by taking them away from their employment and tenancies.

We also highlighted the Child Poverty Action Group's research about people's legacy benefits under universal credit. If they go into prison, they lose their existing thresholds on the benefit; when they come out and make a new claim, the lower rate is given, which makes a bad financial situation even worse for them.

By sending people to prison for very short periods, we create a lot of additional social problems for them in the longer term.

**Colin McConnell:** I agree with all that has been said. I do not believe that people on the shrieval benches knee jerk into sending people to prison. Much as the proposal is crafted—as a presumption against, rather than a prohibition—it is right that sheriffs are left unfettered but have guidance about how their decisions affect the individuals who are in front of them.

This morning, I checked with regard to the presumption against sentences of three months or less; 55 people are today in our care serving such sentences, which gives insight into how the issue could play out in the future. Sheriffs may well decide that prison remains the appropriate

decision—not the last resort—for the people who are in front of them.

We have to be absolutely clear that, in Scotland, the people who come into prison custody for very short periods have little opportunity to do anything that is in any way intended to change the criminogenics that lie behind why someone might commit particular forms of offences. There is not enough time, so that short period has to be focused on simply the administrative process of taking someone into custody and, beyond that, stabilising their condition and situation for that short period of time. Therefore, we should not be overly surprised that, when someone is sent to custody for a very short period, their offending behaviour does not alter that much.

I suppose that takes us into the realms of what the sentence is for and how much of it is deterrence, how much of it is about rehabilitation and how much of it is aimed ostensibly to punish. It might well be—I do not know, because I do not sit on the shrieval benches—that a short sentence is simply a way to punish someone for a wrong done. However, because of the short period, there is little in the way of reformatory engagement that can take place.

**Daniel Johnson:** Those points are particularly relevant. I broadly agree that we need to do something to reduce the cohort of people who seem to be stuck in a revolving door. I also agree with the questioning of the assumption that prison is the right or best place to deal with such people. However, I worry that, in drawing an arbitrary time limit, the underlying causes are not being looked at.

In Norway, which is one of the jurisdictions that take a progressive approach, the typical sentence is three to six months. You said that we do not have enough time to engage with people on short sentences. If someone is in your care for two or three months, is that not enough time, or is the issue that there are insufficient resources to engage with that person adequately? We know that you direct more of your resources to long-term prisoners than to short-term and medium-term prisoners. That is just a fact.

Should we be looking at what people do when they are in prison, and making sure that that is as effective as possible, rather than looking at setting an arbitrary time limit? I am playing devil's advocate to an extent, but are we not putting the cart before the horse in looking at time rather than at the effectiveness of what occurs when people are incarcerated?

**Colin McConnell:** That is hard logic to unpick or argue against. Regardless of which jurisdiction we consider, and certainly in the United Kingdom—as you know, I have worked in all three

UK jurisdictions, and my observations and experience are consistent across the three—it is incredibly difficult to engage transformatively and to build trust with someone over a number of weeks as opposed to over many months or, for that matter, years. Other more informed cognitive programmes also take time to influence and have affect.

To respond directly to the point about resources, the challenge seems to be entirely consistent with what Daniel Johnson has put forward. This morning, 8,242 people are living in prison. The resource base for the system is for 7,669 people. Again, I agree that, in that context, it is extraordinarily difficult to focus progressively on 8,200 people at a time when a thousand of them are with us for only a matter of weeks.

**Daniel Johnson:** Community Justice Scotland has set out well what the alternative is, and that alternative is available to sentencers right now. If we work on the assumption that sentencers do not like people returning to their courtroom, the question is why they are not using alternatives now. Are sentencers, in effect, overreliant on prison sentences? Is something else going on in relation to the alternatives that are available to them?

**Laura Hoskins:** I cannot speak for how the judiciary makes its decisions, but it has been said that sentencers and victims need to be confident that there is robust community provision, so the issue might be lack of confidence in what is available locally.

Sacro mentioned in its submission the issue of short-term funding cycles for third sector agencies that deliver good community provision. Again, we get into the discussion about resources: we need to make community provision more robust. Longer funding cycles would be a good start and would, potentially, result in a shift.

In some parts of the country, there is almost a de facto presumption against sentences of 12 months or less in operation—I think that the submission from Clackmannanshire mentioned that that is the case in Alloa sheriff court, where very few cases do not go to the community. There are different behaviours around the country. There are also good examples from Lanarkshire courts of structured deferred sentences working.

There are good models, but we probably need to invest more in them. Again, that is about the resourcing issue, and not necessarily just resourcing for criminal justice social work. It could also be about resourcing of the third sector, and not just in justice provision: it could be broader than that—housing, mental health and other areas.



**Daniel Johnson:** I should pass over to my colleagues, now.

**The Convener:** We have a supplementary from Fulton MacGregor, after which he will ask his own question.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** I have a specific question on the back of Daniel Johnson's line of questioning. It picks up on Laura Hoskins's point about structured deferred sentences. Will the panel comment on the direct interplay between community payback orders and short-term sentences? To give an example that I believe is not too uncommon, somebody on a community payback order might be given a short-term custodial sentence for a completely unrelated matter. I ask Laura Hoskins and, perhaps, James Maybee to comment on that.

**James Maybee:** On occasion, people certainly go to prison and then come out and are still subject to the same community payback order. I cannot comment on how widely that happens. I suspect that it does not happen that widely, but I would need to check.

**Laura Hoskins:** Anecdotally, that is the case, but I do not have any data to support that. There is probably a need for more research on the reason for non-compliance with CPOs, because there is a suggestion that, eventually, a short-term sentence is the answer to repeat attendance at courts.

**Fulton MacGregor:** I probably did not put the question particularly well, so I will reframe it. I was wondering about the interplay between the two when, for example, somebody is doing really well on a community payback order but appears in court for a totally separate matter. Basically, what is the impact of short-term sentences on people who are serving community payback orders?

**James Maybee:** If somebody is on a community payback order and has established a good relationship with their social worker and is engaging in work, but then finds themselves in prison, that would clearly interrupt that course of work. We know from academics that if we want to make a difference with an individual, their relationship with the social worker is really important. With short sentences, Scottish Prison Service staff do not have an opportunity to develop that longer-term relationship. Any interruption to that relationship can be problematic and, potentially, a backward step.

Non-compliance is relevant. I suspect that sheriffs struggle with seeing the same individual coming back time and again. Non-compliance can be wilful or it can be for complex reasons. If somebody is not turning up for appointments or engaging as well as they could, it might be because they are trying to deal with a range of issues, including mental health problems,

homelessness, housing problems or benefits. We need to think about how we work better to support individuals who are struggling. There is a commitment—such people want to engage and to change and move forward with their life—but that needs intensive work.

A number of areas have persistent offenders projects, including Glasgow. We have one in Highland, and individuals who engage with our project often have multiple convictions. They are often not engaged with services and are not on statutory supervision, but they are getting intense input from people who can see them several times a week to engage with them and get them linked into services and re-engaged with what is going on in their community. We need to give some thought to that, particularly if PASS goes ahead and the extension is taken up to 12 months, because services are likely to get people who will need that kind of input to help in their community payback.

10:30

We know that services for prisoners who are coming out on release—such as the shine mentoring service, Sacro, the new routes programme and Action for Children—that are providing really good high-quality mentoring services, can make a difference to the person who is walking out through a prison gate. We need also to think about how somebody walking out of a court gets such intensive support.

**Kate Wallace:** On the point about non-compliance, at the moment victims do not get any information at all about what has happened with a perpetrator who has received a community payback order. If a victim knows that someone has engaged successfully with their community payback order and completed it, that would help them to have confidence in the justice system and to understand that what happened to them will not happen to anyone else.

**Colin McConnell:** I agree with everything that has been said by the other witnesses. What is coming out in a sense challenges the raw financial comparisons between the cost of a short-term prison sentence and the cost of keeping the person in the community. It would be wrong for the committee, or people more generally, to think that keeping people in the community will somehow be a cheaper option. I would challenge that fundamentally, based on everything that has been said.

If, as I hope it does, such provision is to become part of our justice infrastructure, we have seen that the way forward will require substantial financial and other resources, and it will require skills and competences right across the system—in the statutory services and, for that matter, in the third

and voluntary sectors. Over time, that will probably cause us to spend a lot more on the justice system, not a lot less, so it is important that we do not see it as a way of reducing the cost of the system. It will clearly require significant investment over a sustained period.

**James Maybee:** That is a very important point. We are almost talking about spending to save. The evaluation that was done of the Glasgow persistent offender project in the 2000s and the evaluation that we have done in Highland of our project demonstrate significant cost savings to the justice system, which is also an important point to make. There might well be high up-front costs of doing it properly, but if we do it properly, we will be able to recoup the costs down the line.

**Fulton MacGregor:** Based on what has been said about the investment in community resources that will be necessary to make this work, rather than looking at the advantages of community sentences over short custodial sentences, do the witnesses think that the introduction of the presumption against short custodial sentences could, in the wider scheme of things, enhance the effectiveness of community payback orders, if resources are as has been described?

**Laura Hoskins:** Yes—outcomes for the individual would be better.

**James Maybee:** Yes, I think so. If the resources were there, there would also be benefits to the victims. We are all trying to prevent people from reoffending or from being convicted again or causing harm. Social Work Scotland is very much of the view that there is a place for prison in the sentencing framework—of course there is—but it should be restricted to those who commit serious offences and are at the highest risk of causing serious harm.

I think that I am right in saying that 80 per cent of people who are convicted in court receive sentences of 12 months or less. If we have the resources and there is synergy among the various parts of the system, we can make a real difference with that group.

My colleague Colin McConnell mentioned diversion and structured deferred sentences, which we should not forget. If fiscals and sheriffs make different decisions, there could be cost and resource implications for services in the community.

**Kate Wallace:** I have a couple of points to make from the perspective of victims. One is about the safety of the public and of victims. Fulton MacGregor talked about having a criminal justice system that is effective overall. That is what victims are looking for. With community payback orders, the issue is not just about resources; it is also about how effective they are. As I mentioned

earlier, resources must be targeted at tackling the offending behaviour. Community payback orders are already being used when pretty serious offences have been committed, some of which have resulted in death or serious injury.

In its submission to the committee, Scotland's campaign against irresponsible drivers mentions a case study of an unlicensed driver who pled guilty to causing the deaths of three teenagers by careless driving. He was given a 300-hour community sentence. In the context of providing a justice system that is effective as a whole, we need to remember the safety of victims and to ensure that interventions are effective in reducing offending. Some victim organisations are calling for the presumption against short sentences to be used only when no physical or psychological harm has been caused to a victim, for the reasons such as I have illustrated.

**Liam Kerr (North East Scotland) (Con):** I would like to go back to Daniel Johnson's line of questioning to Mr McConnell, who made some good points about the challenges around stabilisation. I think that the most recent statistic that we have is that 60 per cent of drug treatment and testing orders in the community are not completed. What do you think about the argument that a short period in your care provides an opportunity for effective targeted work to be done with the chaotic population to whom you alluded?

**Colin McConnell:** I will relate my answer to the discussion that we had about resourcing. It cannot simply be an either/or. As it is currently crafted, the proposal will leave the sheriff with the option to sentence an offender to custody for a short time, as long as they have good reason for doing so, and that is explained.

Regardless of whether this is a fashionable reality, prison can be—in some circumstances, for some people—a place of safety. That is particularly the case for people who lead fantastically chaotic lives, who might well not have an abode, not be registered with a general practitioner and so on. Regardless of whether it is a fashionable or comfortable view, a space in prison—for all its foibles and weaknesses—for a time can bring with it stability, in that it offers somewhere warm and dry to sleep, three meals a day, medical attention and so on. However, I make the point that prison begins to lose much of its attraction or its effectiveness when the period is particularly short: the effect of placing someone with us for a couple of weeks or so is a wee bit negative, even in that regard.

The point that Liam Kerr made is absolutely right, because it can be argued persuasively that prison is the right place for some people. However, the broader discussion that we are having is the right one: there are far more

positives to keeping people out of custody and in well-resourced and well-structured community settings. That is important.

**Liam Kerr:** You have made good points, and I take your point about very short periods of two weeks.

Daniel Johnson talked about using short periods productively, but I think that I am right in saying that purposeful activity in prisons is at a very low level—the lowest since 2010 or 2011. I would be interested to know whether that decision has been taken due to a lack of resources and, if so, whether we should put in more resources. However, I go back to the point that Daniel Johnson was getting at. If we provide purposeful activity for a person who is serving a short sentence—not a terrifically short sentence, but a short sentence—will that not have a value that a CPO perhaps could not deliver?

**Colin McConnell:** That is a hard question for me to answer, because I am not sure whether we are comparing apples with apples. I can answer in relation to the custodial space. As all committee members will know, there is a complex interplay of issues in the prison setting. We have 8,242 individuals living with the SPS today, and every one of them would benefit from highly specialised and individualised service provision. That is the ideal, but providing such services is not always possible when we are looking after that many people.

The matter goes back to the fact that we have a system—this applies not just in Scotland but in the rest of the UK—that is, fundamentally, born of the Victorian era, when the focus was, in essence, on calm and quiet incarceration, contemplation and reflection. In the modern era, we have built on that system by introducing education, work and skills, but those have been add-ons to what is still a system that is based fundamentally on accommodation.

We have limited opportunities to provide full employment, full education and a full wraparound service. We are much better at providing that service and I think that Scotland is ahead of the game and ahead of the UK in that regard. You would expect me to say that, but I have worked in all three jurisdictions. We need to be realistic about the prison service's capacity; it simply cannot be everything to everybody. Fundamentally, the system is still based on safe accommodation.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** Before I ask my main questions, I will go back to what Mr McConnell said about the drop in the number of people who receive sentences of three months or less. There is evidence of upturning taking place, with some people

receiving sentences of four, five or six months. Do you agree that having a presumption against sentences of 12 months or less would mitigate that situation?

**Colin McConnell:** That is a hard one to call. The justice analytical services division has done some analysis, and I believe that the committee has the data on the potential impact of having a presumption against sentences of less than 12 months. It is set out in relation to a reduction in custodial sentences of 10, 20 or 50 per cent.

The evidence on having a presumption against three-month sentences is compelling, but there is an argument for leaving the judiciary unshackled on that basis. Judges should be trusted and must be free to make decisions based on the individual who is before them. Even with a presumption against short sentences in place, I expect that in the future we will still have people with us who are serving sentences of less than 12 months.

**Rona Mackay:** Okay—thank you.

I would like to move on to the number of women who are being imprisoned. Mr Maybee gave the shocking statistic that 90 per cent of them are serving sentences of 12 months or less. Seven in 10 of those women are victims of domestic abuse and 65 per cent are mothers. Those statistics are incredibly alarming. We know that £1.5 million is being put in to fund women's services, although in my view we could never put enough money into those services to cover all needs.

Is some of this down to housing organisations, the benefits system and the national health service not being joined up? Should they get together and put in place a programme—it would not necessarily need to be resource intensive—to make it easier for women not to have to be in prison and for women who are in prison not to reoffend when they come out? We are used to seeing a revolving door in that regard.

I think that we have a massive problem with women being imprisoned—we should not be doing it, basically. I ask for Laura Hoskins's view on that.

10:45

**Laura Hoskins:** We are all familiar with the figures that you quote, and they are indeed shocking. There may be examples of good practice from places such as Northern Ireland, which has what are called enhanced combination orders as part of its overall problem-solving approach to justice. Those orders focus on rehabilitation, reparation, restorative justice and desistance. They are more expensive than CPOs, but less expensive than sending someone to prison, and we know that the outcomes from that are not so good.

I echo a point that Colin McConnell made: if we look at the system in its entirety, there are other things that we could think of doing and investing in.

**Rona Mackay:** For roughly how long has that system been in place in Northern Ireland?

**Laura Hoskins:** I think that Northern Ireland started to pilot it in 2015.

**Rona Mackay:** Right—so it is relatively new.

Does anyone else want to comment?

**James Maybee:** I am sure that members will recall the commission on women offenders, which was led by Dame Elish Angiolini. Its report, which was wide reaching and very influential, discussed what is required to work with women who have offended. Certainly across the local authority landscape, that has become the template for how we structure services for women. It is very much about trying to create seamless services and one-stop shops to draw in all the agencies and the services that are available so that women do not go from place to place. Sometimes that can be done physically by bringing people together in one space, but sometimes that is not possible, simply because of the infrastructure. However, it is about linking people in so that people do not have to tell the same story twice, and it is very much about bringing services together.

It is a journey. I would not claim that we have reached the end point—

**Rona Mackay:** We have the same number of women in prison that we had 10 years ago, so something is missing, is it not? I hear what you say, but something is not working when we still have that number of women receiving custodial sentences.

**James Maybee:** Community Justice Scotland and the arrangements for community justice are still in their infancy. Community justice is about bringing all the players in the justice system together in local areas. We are part of the way through that journey. People are bringing their knowledge, their skills and their experience and looking at what the gaps are in the criminal justice system and how we can resource and fill them collectively. It is not just about criminal justice social work, Police Scotland, the Scottish Prison Service or third sector agencies; it is about what we can do collectively.

That is a challenging agenda and we are only a couple of years into it. We need to give it time to breathe and develop; we also need time to build trust and confidence locally. That applies to work with women and with men. It is a good concept and a good model, but we need to go further and really share resources in a true sense among partner agencies.

**Rona Mackay:** Presumably the presumption against sentences of 12 months or less would help with the figure of 90 per cent of women prisoners being in for 12 months or less. Once there is a presumption against short sentences, you would imagine—being optimistic about it—that that would not happen quite as much.

**James Maybee:** Being optimistic, it is clearly a matter for the sentencers. At the point of sentencing, a sheriff or indeed a judge has a significant amount of information before them. They cannot make a community payback order unless they have a criminal justice social work report. That report contains a wealth of information regarding the offence and previous offending. It assesses risk and need, using accredited tools for general offending and for specific offences. For domestic abuse, for example, there is the spousal assault risk assessment tool, and there is a tool relating to sex offenders. All of that information is laid out to inform the sentencer. It is particularly important from a victim's perspective that that report contains information about who is at risk, the likelihood of the offence happening again and the seriousness of the impact.

I think that we need to go further. We need more information at the point of sentencing. We are often reliant on what the offender tells the social worker and, frankly, that is not good enough. We need to get objective information about what somebody has done. Some people are honest and up front about what they have done and its impact, but some are not; that is just a fact of life. I would like social workers to get that information and what we call summaries of evidence in all cases, which will give us holistic information about what somebody has done so that we can really analyse offending and the potential risk to victims, and put forward proposals to the court that are credible. It does happen that a sheriff will read a report and say, "This isn't credible", because the offender has not been honest about what they have done. We need to fill that gap.

**The Convener:** We have three panels before us today. We are working to a very tight timescale and we have already overrun. We have to conclude this evidence session by 11, so I ask that the remaining questions from members and the responses from the panel are as succinct as possible.

**Liam McArthur (Orkney Islands) (LD):** We have touched on this already, but I would be interested to know the panel's assessment of the impact of the presumption against three-month sentences. We heard from Rona Mackay that there are concerns about uptariffing. We have also seen a reduction in the figures, but that predates the introduction of the presumption. I want to link that to what the expectation would be of extending

the presumption to sentences of less than 12 months, given what we know about what has happened since 2011.

**Colin McConnell:** I think that information on the custodial population has already been shared. This morning, for example, there were 1,049 people in our care who are serving sentences of up to 12 months. If we use the justice analytical services formula, on the basis of the decremental effect of that presumption, a 50 per cent take-up, if you like, by sheriffs could, over time, mean 525 or so fewer people in our care. However, the figure that justice analytical services is settling on at the moment, which is based on the evidence around a presumption against sentences of three months, is a reduction of around 20 per cent. Again, that looks at the difference between stock and churn. While, over time, that could see something in excess of 1,000 fewer people passing through prison in any given year, it will actually reduce the stock of people serving a sentence by only about 200 on any given day. Potentially, we could still see a significant number of people in our care serving sentences of less than 12 months, but that could well be appropriate if we are not going to shackle the judiciary, and if we are going to allow its members make what they believe are the right decisions for the individuals in front of them.

**Liam McArthur:** I think that Kate Wallace suggested that there are concerns among some victims groups about certain types of offences falling within that broad presumption. Is that concern shared more widely by the panel or within the sector?

**The Convener:** I remind members to be as succinct as possible. That would be appreciated.

**James Maybee:** Social Work Scotland's position is that that is a matter for the sentencer. We would not propose that the presumption be restricted to certain offences.

**Laura Hoskins:** Community Justice Scotland also thinks that that is a sentencing matter.

**Liam McArthur:** Okay.

**Shona Robison (Dundee City East) (SNP):** I want to follow up the point about the assumed 20 per cent reduction in custodial sentences that we can take from the experience of the three-months presumption. Laura Hoskins said that there is huge variation in sentencing and that the court in Alloa gives fewer short sentences. Why is there such variation? What is driving it? I think that it was Colin McConnell who talked about the courts being unfettered but guided by policy, and we all support such an approach. There is nothing particularly different about the population that the court in Alloa serves, but something is driving different decisions about custody, despite

everyone operating under the same policy, and I am interested in hearing what you think that is.

**Laura Hoskins:** It is the independence of the judiciary. Clackmannanshire Council mentioned Alloa sheriff court in its evidence, and its comments relate to the point made by Colin McConnell or James Maybee about relationships. In a small area, there is perhaps more potential for the sheriff to know the people who come before them—I do not know; the question might be more appropriately answered by sheriffs. We have to recognise sheriffs' independence in making their decisions.

**Shona Robison:** We all recognise that, but if our policy is to be successful we need to understand why it is more successful in some areas than it is in others. It would be helpful to get the figures for each court. We should do that.

It might be about quite soft issues, such as relationships and trust in the alternatives to custody. Is that an educated guess about what is going on?

**Colin McConnell:** There is a range of issues. It is about the independence of those who sit on the shrieval benches. It is about the availability of alternatives in different locations, and the perception of how effective such alternatives are. It is about sheriffs having information to hand about the individual and the alternatives—one would imagine that it is then the sheriff's job to match the individual to the best disposal for them.

I do not think that there is a common picture across the landscape; it is a diffuse picture. That is my informed position on the matter. It is not just about sheriffs acting independently—although they do. Variations in provision and available information also influence what happens.

**Shona Robison:** As we heard, despite such variations, the three-months policy has been successful. Has that been of interest in other parts of the United Kingdom, given the direction of travel? Have you had visits from ministers or officials from other parts of the UK or further afield who want to consider the success of our policy?

**Colin McConnell:** Yes, very much so. In the past, there has been interest from England and Wales in Scotland's journey towards a presumption—of course, England and Wales appear to be taking a different approach. There has also been broader interest in how the presumption relates to the delivery of services in, certainly in our world, the custodial space. Scotland has been regarded as leading the way in considering court disposals in the context of the impact on the individual. We should all be concerned about getting the right impact for the individual.

**James Maybee:** I echo that. In our submission to the committee, Social Work Scotland referenced the report, “What could England and Wales learn from Scotland’s approach to justice?”, which was published in May 2019. Other jurisdictions are very much looking at, evaluating and learning from good practice in Scotland. That says something very positive about the criminal justice system in Scotland.

**The Convener:** We have covered the area that Jenny Gilruth was going to ask about, so I will bring in Liam Kerr to ask the final questions.

11:00

**Liam Kerr:** I will be very brief, convener.

I have three questions for Kate Wallace. First, sticking with the CPO side of things, I note that you have referred several times to victims and public confidence in the system. I understand that, at the moment, one in three CPOs is not completed. If more people come into the system, is that statistic likely to get worse? If so, how will that play with victims and the public?

**Kate Wallace:** It comes back to resourcing and having effective interventions and community payback orders. Like Social Work Scotland, we are concerned about there being enough resources to ensure that the orders are as effective as possible. Moreover, there needs to be transparency. I have found the area to be very opaque—it is very difficult to get information about breaches and repeat community payback orders.

Another issue with the criminal justice system is that victims will receive certain support in the event of a custodial sentence being given, but that support will not be provided if a community payback order is given. If we had information about whether people are engaging with the orders as well as about breaches and successful completions, that would help address certain public safety concerns and some of the concerns that victims have expressed.

**Liam Kerr:** I am grateful for that excellent point.

Secondly, in February, VSS said that custodial sentences provide

“victims of domestic abuse some breathing space”,

and you make a similar point in your submission for this meeting. What safeguards are in place for victims of domestic abuse if the abuser gets a community disposal? Is there a danger of those people simply going back to the house from which they came?

**Kate Wallace:** The timing of the presumption against short sentences was designed to coincide with the implementation of the Domestic Abuse (Scotland) Act 2018 in Scotland and its provisions

with regard to coercive control, non-harassment orders and so on in order to provide some protection and to address some of those concerns. As far as timing is concerned, the new domestic abuse legislation should assist with that.

**Liam Kerr:** You also say in your submission that the current three-month presumption has been inadequate in protecting victims and witnesses. In that case, should the whole process not be put on hold until we are absolutely certain that sufficient protections are in place?

**Kate Wallace:** That takes me back to my earlier point about information for victims and the need for more transparency and more resources to be put into community payback orders to ensure that they work effectively. Scotland is taking quite a bold step but, as Colin McConnell and others have rightly pointed out, if the resources are not put into community payback orders, we might—as people will—look back in a year or two and find that they have not been as effective as we had expected. A number of things could be done, such as increasing transparency and providing more information to victims to support them and allow them to understand what is going on with the orders, as well as more information on compliance and so on.

I will stop there, convener, because I am conscious of the time.

**The Convener:** I thank the witnesses for their evidence, especially the written submissions, which the committee finds particularly helpful.

I suspend the meeting for two minutes to allow for a change of witnesses.

11:03

*Meeting suspended.*

11:06

*On resuming—*

**The Convener:** I am pleased to welcome our second panel: Dr Katrina Morrison, who is a board member at Howard League Scotland; Dr Sarah Armstrong of the Scottish centre for crime and justice research at the University of Glasgow; and Professor Cyrus Tata, who is director of the centre for law, crime and justice at the University of Strathclyde.

I will begin by asking the panel about the current resource implications of short-term custodial sentences and the alternative, community service orders, and how that will play out in relation to the extension of the presumption to 12 months?

**Dr Katrina Morrison (Howard League Scotland):** The extension of the presumption

cannot be supported because it will save money—that is not a reason for supporting it. We support the extension of the presumption, but not as a cost-saving exercise. As the earlier panel outlined, significant resources will be required to make it work. For community alternatives to be regarded as credible and legitimate, statutory and third sector organisations must be adequately funded.

It is not just about funding for criminal justice services. We also need to think about adequate and robust resourcing beyond the criminal justice system—about funding for mental health, addiction, housing and employment services and so forth. If those services are not adequately funded, we are setting people up to fail. We also run the risk of people being sent into custody to access those services, which is inappropriate. The point was made earlier that the extension could result in a saving of money in the long long term. However, certainly initially, that will not be the case if it is to work well.

**Dr Sarah Armstrong (University of Glasgow):** I very much agree with Dr Morrison that it would be overly simplistic to consider the issue in terms of the comparative costs of community service versus prison—there are a lot more costs to think about. I do not want to repeat anything that she said, but I point to my speculation, which is untested, that there would be increased associated costs.

Colin McConnell suggested that there would be 500 fewer people in prison. I am not sure about that number, but even if that were the case, I have not heard him say that he would close a prison of 500 beds; without the closure of a prison of that size, the significant costs that are associated with a prison would still be incurred.

The costs that are associated with community sentences include not just running them but managing their breach. In my written submission, I made the point that community sentences are themselves a driver of prison population growth, so that probably needs to be modelled and analysed by an economist.

**Professor Cyrus Tata (University of Strathclyde):** You raise an excellent question about resources, which gets the heart of the matter, convener. We talk about the proposal as something bold and radical, but if you look at the formulation of section 17 of the Criminal Justice and Licensing (Scotland) Act 2010, you will see that the proposal is a rehash of what we have been trying to do for the past 30 to 40 years.

The draft order does not use the language in the Criminal Justice and Licensing (Scotland) Act 2010 but, as ministers have said again, it basically says that prison is a last resort and that a custodial sentence should not be passed unless

appropriate. Who passes a sentence that they think would be inappropriate? Who takes any serious decision in their life that they think is inappropriate?

I am less sure that the proposal will change a huge amount. We could easily end up in a polarised debate. I absolutely understand the concerns of victims groups and I see the point that they make but, given how permissive the legislation is, I am not sure that we will see that much of a difference. In fact, the Government's own research, which was published in 2015, said that

“there was little sign of PASS”—

presumption against short sentences—

“figuring prominently or explicitly in decision-making”.

That again makes the point that that presumption would not, in itself, make a difference.

The problem is the one that you identify: there is a group of people serving short custodial prison sentences who are almost serving a life sentence by instalments. Everybody pretty much agrees that many of those are non-dangerous people who should not be going to prison at all and do not pose a threat, other than often to themselves. It is wrong—it is too easy—to blame the sentencers, or individual professionals, such as social workers. People in this group end up going to prison because it appears that no one else wants them. Their lives seem to be so chaotic—they are homeless and have addiction, physical and mental health problems—and so chronic that a sheriff will often say, “What else can I do? Nobody else wants them.” I do not think that it is fair, in general terms, to blame sheriffs.

Sheriffs are left with an apparent discretion that is actually a hollow virility symbol, because they are not equipped to do what they would like to do. I think that most know very well that prison is not the right place for people whose needs are often far greater than their offending. They might have committed minor offences, but they do not show up for appointments and all the rest of it, so the sheriff will eventually say, “What else can I do?” I think that we can get a consensus about that group. We should be thinking about and targeting that group.

Unless there is a plan to ensure that there is a major change of resourcing not just in community justice but in community services more generally—often community services will say that they cannot deal with a person because it is too difficult—we will continue to end up using prison. What are we doing? Essentially, we are using the resource of prison in the same way that the Victorians did: as a poorhouse. We use prison as the last line in the welfare state. That is a societal

issue—it is not fair to point the finger at individual professionals—and it need not be a party-political issue.

My proposal—I have set it out briefly in my written submission—is that we should have a principle stating who should not normally be imprisoned, or what cases should not normally lead to a prison sentence, and that we have a date by which we ensure that there is a transfer of resources. Unless there is such a transfer, I do not think that the proposed presumption, whether it be against sentences of 12 months or whatever, will make much difference because—quite rightly—the sheriffs will, by and large, say that imprisonment is still appropriate because there is nothing else. Prison is the last resort; it becomes the default when nothing else seems to be there. Prison never has to prove itself; everything else has to prove itself.

Obviously, there is an issue here that I want the committee to consider. The proposed order may well go through but, in a sense, the much bigger issue is for us to have a vision. If we want Scotland to have, as successive justice secretaries have said, one of the most progressive justice systems in Europe, we need a vision to say that, by 2040, or by such and such a year—we should give ourselves a target—we will stop using prison essentially as a place to access services.

I heard what Colin McConnell said. He is doing the right thing as the chief executive of the SPS. However, as a society, we need to think about what we should be doing. Should we really be locking people up essentially because of their needs, including poverty-related needs? It does not even make financial sense to do that.

**The Convener:** That answer was pretty comprehensive. Members will go into the issues in some detail.

11:15

**Jenny Gilruth (Mid Fife and Glenrothes) (SNP):** Professor Tata has touched on my line of questioning. In Dr Morrison's written submission, she points to Scotland having one of the highest prison rates in western Europe. Six months ago, nine of Scotland's 15 prisons were at or above capacity and, in April 2019, HMP Barlinnie was operating at 142 per cent capacity. In the previous panel discussion, Colin McConnell spoke about the current prison population. Why do we still have such a general attachment to imprisonment in Scotland in 2019?

**Dr Morrison:** That question is very interesting. The attachment has deep cultural and structural roots. It is easy to say that we need to change sentencing legislation in order to reduce the prison population, but the cultural context in which it is

sustained and legitimised needs to be addressed. We can consider top-down approaches and policy changes, but we need to have a deeper conversation about what punishment is and is not if we are to have a sustained reduction in the use of imprisonment.

You have probably read the recent Scottish crime and justice survey, which showed that three quarters of the population say that they know nothing or nearly nothing about the criminal justice system. In that context, it is easy to have populist reactions against offenders walking free from court if they are subject to a community sentence instead of a sentence of imprisonment. We need a much deeper conversation about what punishment is and is not that involves everybody in civil society.

I echo what has been said about the solutions to the problem lying beyond the criminal justice system. Those big structural problems relate, in essence, to questions of social inequality and social injustice. In countries across the world, higher rates of imprisonment have a very strong relationship with questions of social inequality. We need to look beyond the criminal justice system.

**Dr Armstrong:** Dr Morrison has summed up the situation well; that profound question is one to which we would all like to have an answer.

If Scotland were a state in the United States, its imprisonment rate would be like that of Texas or Louisiana. That makes no sense, because their social welfare policies and commitment are unlike Scotland's—they are quite the opposite. I and other scholars of punishment in Scotland struggle with the paradox of why a country that is so committed to social welfare investment makes huge use of such an incredibly expensive resource as prison.

My sense is that there is a combination of conservatism—moving change at a particular pace—and, ironically, a progressive spirit of wanting to do something to improve the situation. In the criminal justice sector and criminology, we sometimes believe that we can solve the problems if we just do something differently: add in a reform or a new sentence; come up with a new idea; or create a new agency or workforce. We believe that more people working on the problem will mean better results.

The result of that approach has been only to expand the criminal justice system. Following the reform of bail and remand, the remand population increased. Following successive reform reviews of the number of women in prison, that number has increased or remained stable—it has certainly not decreased by two thirds, which Dame Angiolini was looking for. Every time we try to come up with solutions for the criminal justice sector, we come



up with ourselves as the answer, which is a criminal justice solution to a social welfare problem. As a criminologist, I am not qualified to offer advice about cancer care or the curriculum for excellence, but we increasingly ask the criminal justice system to come up with solutions for people whose problems lie in substance abuse, housing or jobs—in settings other than those that we are qualified to act on.

**Professor Tata:** The question about why prison is so central to our cultural imagination is a good one. The point about welfare is excellent, given how easily we seem to use sending people to prison as a form of penal welfarism. Prison has become the last line of the welfare state for those for whom nothing else out there seems to work or is good enough; in other words, we are using it as the poorhouse for many people. I have no problem with those who have committed serious offences being in prison—they need to be there—but people whose offending is not serious and whom we would not normally want to send to custody end up in prison because it seems like a place of sanctuary or a place where they will be helped. It is the old—indeed, the Victorian—idea of using an institution to help people.

Again, I am not blaming individual practitioners for the dilemma that they face but, as a society, we need a much clearer vision of what we are trying to do and we need to say that, by a target date X years from now, we will not be using prison as a place of welfare. Nobody should go to prison unless their offending demands it—and once those people are in prison, the SPS can do the great rehabilitative work that it should do and wants to do with them. The churn that we have been talking about should not be happening. As I have said, I do not blame the practitioners—the sheriffs and so on—for this, but we should not be sending people to prison as the last line of the welfare state. We need to face up to the problem. Ironically, it is the desire to be benevolent that results in prison being used more, unless people have a clear vision and a clear demarcation around what they are trying to achieve.

**Jenny Gilruth:** Going back to the initial presumption, I point out that the number of individuals receiving a custodial sentence of three months or less has decreased from 35 per cent in 2010-11 to 27 per cent in 2017-18. Is there a role for sentencing in that context? I know that we have talked about wider welfare concerns, which will ultimately play a huge role for some prisoners in Scotland, but is sentencing part of a bigger picture? Can the presumption help reduce the overall prison population?

**Dr Armstrong:** I am probably the exception on this panel, in that my thinking on the issue has evolved and I no longer support a presumption

against short sentences. One of the reasons why I am sceptical of its effect is that the unilateral, blunt tool of a single sentencing change such as the presumption against three-month sentences initially bumped up the number of sentences of four months or longer. In other words, there was an initial uptariffing effect, and it has not yet fully stabilised. We cannot tell you today the exact number of people in prison who are serving four months, three months or nine months, because the Prison Service has not published any validated prison statistics since 2013-14.

I also think that the single sentencing change is not enough, because of the unanticipated effects in other parts of the system. We have set up a very elaborate architecture of sentencing and punishment in this country, and making this change will have some unanticipated effects that I think will drive further net widening of the higher-tariff population. There is no indication that the way in which the current law is phrased would lead to the sentence not being used unless a judge felt it absolutely necessary, and that will affect anyone whom this legislation is presumably trying to target—in other words, the people in the churn who have serially served 10, 15 or 20 of these sentences. They are precisely the people about whom a sheriff might feel they can do nothing else but issue a custodial sentence.

**Dr Morrison:** I echo Dr Armstrong's point that creating or extending this presumption will not, in and of itself, meet the policy objective of reducing reoffending. The Howard League Scotland supports the extension as a good first step, but it needs to happen alongside other measures.

According to data that was recently published by the Council of Europe and which I think has been cited in one of the written submissions, Scotland has the highest number of people subject to penal sanctions—that is, both imprisonment and community service—of any country in Europe. We cannot see transplanting people from prison to community sentences as an achievement, because such sentences are still a sanction that imposes harm and is experienced negatively. As Sarah Armstrong said, community justice sanctions often have the effect of funnelling people back into prison, following breach or non-compliance. We need to think more ambitiously about reducing the penal system and making greater use of diversion from custody, suspended and deferred sentences, as well as thinking about questions of sentence length and so on.

**Professor Tata:** The use of three-month sentences was already going down—the Government has clearly noted that—well before the presumption was implemented. I am sceptical whether it will make much difference—the presumption against three-month sentences does

not seem to have made much difference. I know that the Government has said that it has made a difference and that, in one of its news releases, it credited the presumption with a reduction in reconviction rates, but I think that that is a rather dodgy claim, for all sorts of reasons, not least because the term “conviction”, refers to criminal convictions and there has been an enormous growth in direct measures, such as out-of-court offers of settlement, fiscal fines and so on. I suggest that the committee should look at that quite carefully.

I have never really been persuaded by the idea of a presumption—I was sceptical when the original legislation was passed 10 years ago. I am not sure that it will make that much of a difference. We have got quite excited about it and victims groups are concerned, but in a sense they do not need to be that concerned, because the legislation is already very permissive and says, “Don’t do it unless you think it’s appropriate.” Is that not what sheriffs have always done and quite rightly so? Why would we want them to do something that was inappropriate?

To go back to the resourcing issue, unless we make sure that community services are in place, courts, social work and so on will say—understandably—“You know what? We cannot do anything with this person, so it has got to be prison.” That is because that is the default position and the last resort—if there is nothing else, the outcome is prison.

**Shona Robison:** I do not know whether the panel heard the earlier evidence, but one of the points that was made by Laura Hoskins of Community Justice Scotland—the rest of the panel seemed to agree—was that part of the variation in the application of the current three-month sentencing was down to the trust and confidence that the sheriff had in what alternatives there were in the locality. The presumption against short sentences can be effective—as it appears to be in particular areas—if it goes hand in hand with confidence in the system and a variety of disposals. Do you agree with that suggestion?

**Professor Tata:** That might be the case. We have shockingly poor data in this country. That is no criticism of the Government statisticians who do their best. We have very little data to verify whether that is the case. We have very little data on remand that we can use to drill down. The quality of the data that we have is very poor.

It is very difficult to compare one locality with another, because we are often comparing apples with pears. We can say that one area has a high custody rate and another area has a low custody rate, but unless we compare the seriousness of the case loads in each area, those comparisons are meaningless. The Government used to

produce league tables that were utterly spurious—we cannot say that area X is harsher than area Y unless we know what the case load looks like.

We need to have proper data, because without it we just do not know what the situation is. My hunch is that Ms Robison is right that relationships are crucial and the sense of credibility is important. However, I return to the point—I know that I am hammering it in, but I really want the committee to have a long-term vision—that we should have a target, so that by 2040 or whenever, we are committing ourselves as a society to saying that unless the seriousness of someone’s offending requires it, we will not use the expensive resource of imprisonment, which is so damaging to people.

**Dr Morrison:** I think that the written submission from the criminal justice voluntary sector forum highlighted that it was often frustrated when it spoke to sheriffs who did not know about the available services in their area. More could be done that could raise awareness of all the non-custodial services that are available. That might help.

11:30

**The Convener:** Have you completed your line of questioning, Shona?

**Shona Robison:** Yes. That is fine.

**Liam Kerr:** First, I have a brief question for Professor Tata. To go back to something that you said, is it your view that judges do not have confidence in moving people out into the current community system?

**Professor Tata:** In thinking about sentencing, I should preface my remarks by saying that we should not forget about remand and backdating for remand. As far as I can see, our data on that is really poor. There is no differentiation. People are frequently remanded in custody because a sheriff and a social worker say that they are in such a bad way that they must be given remand, and they might then get a backdated custodial sentence. We really need to look at that data.

The problem is one of resources. When we are faced with someone in that situation, we know that they have not committed a really serious crime and that they are not a particular danger to the public, and we would prefer them to get help in the community. However, we have to be honest about the matter. Quite often, people say that they do not really want that person; they do not say so quite as explicitly as that, but that message comes across, and prison is the only place that will take them. Therefore, prison almost becomes the attractive place—it becomes the ever-reliable option—whereas community penalties seem to be a little non-credible and slow and, in the voluntary

sector in particular, their funding is often so precarious that they are made unreliable.

To pick up the point that Dr Morrison made, sentencers often ask whether a service is still available. They are not sure about that, but they know that prison is always there. As a society, we all know that prison is there, and the other things are almost made precarious. We need to think about that problem.

**Liam Kerr:** I would like to move on.

Dr Armstrong, you said in your submission that there are flaws in the evidence that those who have been given CPOs have lower reoffending rates than those who have been given short sentences. Will you explain that to the committee, please? If you are right about that, does that not undermine the central tenet of the legislation?

**Dr Armstrong:** I did not say that there are flaws; I said that the comparisons, which are narrowly made, are not matched to compare similar populations. Raw statistics on those who have done a community sentence versus those who have done a short sentence are compared in order to look at the reoffending patterns or reconvictions of those people over two years, but that does not control for the histories of those people.

We know that, in general, people who serve community sentences have many fewer convictions. That is because one of the systemic problems in Scotland is that, once a person has been allowed to serve one or two community sentences, they are increasingly seen as a poor risk or as unable to benefit from them, and they are never given that opportunity again. They are continuously given short sentences. The short-sentence prison population is therefore made up of people who have done many short prison sentences or have had experience of community sentences. It is therefore a matter of comparing apples and oranges. If we could match those populations, we would know what the reconviction rates are. I am afraid to say that we simply do not know. Community sentences for a similar population could well have much better outcomes, but we would not see that with just a raw comparison of those figures.

From the research that I have done with Beth Weaver at the University of Strathclyde and the research that my colleague Marguerite Schinkel has done, many people are ready to do a community sentence after they have been quite deep into the system and have had many convictions and, when they have done a community sentence—particularly in a project that feels meaningful—that has had a huge impact on their lives and in transforming their sense of relationship to a given community. There has

already been some debate about the process by which people are excluded from receiving community sentences once they have served a prison sentence. That is a significant issue.

I am sorry; I forget what Liam Kerr's other question was.

**Liam Kerr:** That was a comprehensive answer—I am grateful to you.

I am riffing slightly—

**The Convener:** I would appreciate it if you could be quick.

**Liam Kerr:** I will be quick; I am always quick, convener.

You talked about meaningful activity in the community. Am I right in thinking that your research shows that one in four community sentences does not have any of that purposeful activity or an unpaid work element?

**Dr Armstrong:** That is not part of my research, but it might well be shown in the criminal justice social work statistics. There could be an issue of the sort that you raise. Perhaps Dr Morrison would be in a better position to speak about that.

**Dr Morrison:** I do not know the details of CPOs for different sentence lengths. I would be happy to send that information to you later, if you want. However, I would say that that does not mean that prison is the solution, because, as Colin McConnell said, we know that that activity is also not being provided in a prison setting.

**Dr Armstrong:** Shona Robison asked why different areas use community sentences as an alternative at different rates and wondered whether there was a trust or confidence issue. The first thing that I would say is that “alternative” is the wrong terminology. At the moment, community sentences are not alternatives, and the adoption of the presumption would not make them alternatives. Community sentences have worked, under the three-month presumption, as additions to sentencing. We are seeing growth in community payback orders, as well as in the prison population. Both of those populations are increasing—it is not that the balance is shifting. That is why, as Dr Morrison pointed out, Scotland has the largest proportion in the world of people who are under some form of criminal justice control, except for—I think—Russia and Turkey. I just wanted to clarify that point.

**The Convener:** That is helpful.

Fulton MacGregor has a supplementary question, and then Rona Mackay and Daniel Johnson want to come in. I remind members that we are against the clock.

**Fulton MacGregor:** Bearing that in mind, I will keep my question short.

I thank the panel for their articulate views. I agree with the point that has been made about where we need to get to. Like most people here, I agree that the population who this legislation targets should not be in custody. Like Dr Morrison, I see the legislation as part of a package that will get us to where we want to be.

Professor Tata, you have put forward a powerful position today. Is there anything that the Parliament could legislate for to help us to get to the point that you have spoken about?

**Professor Tata:** Thank you for the invitation to discuss that. Whether it is the Parliament or some other body that comes up with it, we need some sort of authoritative principle that says that, by a given point in time, our society will cease to use imprisonment unless someone's offending warrants it. At the end of my submission, I set out a sort of two-part principle in that regard.

Obviously, principles do not, in themselves, produce results, but they give us a vision, and having one is a bit like having a climate change target or whatever. It would be important to have a target date, because that would help to concentrate minds. Unless we have that, we will continue having the discussion that we have been having for the past 40 years.

I know that the extension of the presumption seems bold, on its face, but to my mind it is simply a rehash of the kind of thinking that we could call last-resort thinking. In essence, we should say, "Don't pass a sentence of imprisonment unless it's the last resort." Unless you make sure that what is in the community is reliable, people whom we do not want to see in prison will end up in prison, and we will carry on with that churn. Aside from the moral case, there is the financial case that says that it is perverse to do that, as that costs us money as taxpayers.

I would like to be proved wrong, but I am not sure that the presumption will make a huge difference. I understand and share the concerns of victims groups about the fact that, within that 12-month cohort, there could be people who have committed some quite nasty offences and who we could say might be deserving of imprisonment. Having said that, I think that we can trust the judiciary on that point.

My point is that we, as a society, have to think about what prison is not for—not what it is for, but what it is not for. Prison is not a sanctuary. It is not a school. It is not a hospital. Okay, we might be using it like that at the moment; Colin McConnell talked about how he had to give people a warm and dry bed, and a place of safety. I understand that he is doing his best and the Prison Service is

doing its best, but society needs to have a target date by which we say that we are just going to stop doing that. That is not what we in Scotland are about any more.

**Fulton MacGregor:** I do not disagree with anything that you have said, or with the principle of what you have said. If we are to put in place a principle—whether that is done through legislation or by another body—would that not run into some sort of conflict with another key premise of the criminal justice system in Scotland, in that it would, to some extent, take away the discretion of the sentencers, which we also want to protect?

**Professor Tata:** I am all in favour of judges being able to use their sensible discretion. The problem is not so much that judges are being prevented from using discretion; the extension will allow them to continue to use it. It is the opposite. They often find the discretion that they have frustrating, because it is a hollow virility symbol. They often feel that they are simply not equipped to do what they feel they should be doing when they know that they do not want to remand someone in custody because they know it will be damaging.

The shrieval bench in general is probably very different from what it was 30 years ago; it is much more enlightened, I would think. Judges might not want to give those sentences, but they do not see any other option. There are lots of aspects to that, one of which is about society making a major shift in resources so that we can have community services as well as community justice. Otherwise, judges will have to use imprisonment because there is nothing else. It is the last resort, which is to say that it is the default. The legislation that we are discussing is still the last resort, in that it has imprisonment as the default discourse. That is the problem. It is still the same old idea.

**Rona Mackay:** I want to return to my earlier point about women in prison. You probably heard what I said, so I will not rerun everything. Given that Professor Tata said that only the most serious offenders should get a custodial sentence, should we be setting a target that no woman should serve a sentence of fewer than 12 months by 2030, let us say? Would that be progress?

**Professor Tata:** I see where you are coming from, and that is a nice question. Personally, I would still couch it in terms of the seriousness of the case. That has many aspects, and detailed work could be done on that. As the Scottish Sentencing Council establishes itself further, it might well decide that it has the confidence to start looking at what "seriousness" means. That is a long-term project.

Although I absolutely agree that there are particular issues for women, many of those issues

are also true for men, although the proportion can be a bit different. I am not sure. I would prefer to couch things in terms of the seriousness of the offence.

When you do the detailed work on that, gender might well be a part of it, and then we can start to say that certain aspects of imprisonment might affect women in certain ways that they do not affect men.

**Dr Morrison:** We recognise that women in custody can experience being vulnerable and victimised. The fact is that a greater number of women are serving short sentences than is true in the male population, so we support any measure that will reduce the number of women who are in custody.

We would probably not support a target of no women in custody for the reasons that Professor Tata outlined. If we are looking at the seriousness of the offence, particularly in relation to violence and so on, and we follow that principle, many women will not be in custody.

**Daniel Johnson:** The tenor of the evidence seems to be that we have identified the right problem but that we are not really looking at the underlying causes. I was struck by Dr Armstrong's written submission, in which she posed the rhetorical question:

"Is it the sentence or something more fundamental that doesn't 'work' for short-term prisoners?"

On that basis, I want to ask the panel two questions. Is there any evidence base for picking 12 months as a threshold? If not—and I am thinking about the other answers that you have given this morning—should we be looking at having more precision in sentencing? In the previous session, Laura Hoskins highlighted the enhanced combination orders that are used in Northern Ireland and which have components that explicitly address, for example, social rehabilitation and so on. Should we be looking at that type of approach?

Those are my two questions. Is the 12-month threshold just arbitrary, and should we take a different approach to sentencing?

11:45

**The Convener:** I realise that there is a lot in those questions, but it would be very much appreciated if you could be as succinct as possible.

**Dr Armstrong:** Briefly, my answers to your questions would be yes and yes. The 12-month threshold is arbitrary; in fact, I have seen no evidence for having a threshold of three, six, nine or 12 months. There is research that will tell you

the magic number, but that is probably a decision for you rather than for us.

As for whether there are alternative sentences that we should be thinking about, the sort of combination order that you have mentioned sounds a lot like you would be moving an individual from a heavily circumscribed experience in prison to a heavily circumscribed experience in the community. What European countries make a lot of use of and Scotland does not—at least to any significant extent—are suspended sentences, under which someone might be given a prison sentence that comes with conditions such as, primarily, not committing the offence in question or any other offence again but probably engaging with other services as well as receiving certain support services. I am not saying with certainty that that should be done, but there are alternatives to the approach that we are discussing this morning. In my submission, I was mainly targeting the fact that the legislation is seeking to change a sentence, not the situation, and it is not addressing a group of people who experience that sentence.

**Dr Morrison:** Yes, 12 months is an arbitrary figure, but in a sense any figure would be arbitrary. In our submission, we point out that in Finland it is envisaged that all sentences of two years or less will be translated into community supervision. Again, that is an arbitrary figure, but it supports a significantly reduced use of imprisonment in that country. I would argue, therefore, that arbitrariness is not a problem in and of itself.

As for different sentencing approaches, we could definitely look at suspended and deferred sentences and much greater use of diversion from custody. We might also consider the approaches that are used in problem-solving courts; for example, a recent evaluation of the problem-solving court in Aberdeen has shown how effective that kind of approach can be. There are targeted changes that I think could be made to support these proposals.

**The Convener:** Finally, and again briefly, I call Professor Tata.

**Professor Tata:** I will be brief, convener.

The answer to your first question is yes; in criminological terms, the 12-month figure is arbitrary. It might well have been chosen simply because it is at the top end of summary powers—although that is not quite the case. There are exceptions to that, but that is another discussion.

I would prefer it if time were not used as a measure to identify those to whom the presumption of a prison sentence should or should not apply. As I have said, it is much more justifiable to refer more broadly to the seriousness of the case, and work can be done around that.

Using time leads to problems—indeed, that is why victims groups and so on have raised concerns—and it is also more difficult to justify. Of course, the proposal might well go through, but my appeal to the committee is that it considers raising its gaze and thinking about what we should do in the long term. I just do not know whether this approach will have that much of an effect.

**The Convener:** I thank all the witnesses for their evidence. If anything else occurs to you, please write to the committee if you wish to do so. I also thank you for your written submissions.

We would normally have a comfort break about now, but I will suspend the meeting for only two minutes, because one of the witnesses on the next panel categorically has to leave by 12.15 pm.

11:49

*Meeting suspended.*

11:51

*On resuming—*

**The Convener:** I am pleased to welcome our third and final panel: the Rt Hon Lord Turnbull, senator of the College of Justice, and Graham Ackerman, secretary, Scottish Sentencing Council.

I again refer members to paper 1, which is a public paper, and paper 2, which is a private paper.

Daniel Johnson will begin our questioning.

**Daniel Johnson:** I thank our panel for coming along today. It is always useful for legislators to engage in dialogue with sentencers; in fact, I think that it is fundamental to the job that we do.

We have heard from the previous panels that, although alternatives to prison sentences exist, sentencers do not use them, for a variety of reasons that have been speculated on. Lord Turnbull, why do you think that sentencers seem to prefer prison sentences to the alternatives that exist at the moment? After all, that is what has led to this proposal being made.

**Rt Hon Lord Turnbull (Scottish Sentencing Council):** I am not entirely sure that I understand your premise that sentencers prefer prison sentences. I heard the tail end of what your previous witnesses said, and I heard Professor Tata say that, in his opinion, the shrieval bench was occupied by sentencers who would prefer not to send people to prison, if they could. That is a view that I recognise.

The question then, I suppose, from your perspective, is: why are so few non-custodial sentences, as one might categorise them, being imposed? The answer is in two parts. First of all,

sentencers are guided by a number of considerations, one of which is plainly the seriousness of the offence. The “Principles and purposes of sentencing” guideline, which was produced fairly recently by the Scottish Sentencing Council, identified parsimony as one of the principles that should be followed—namely, a sentence should be no more severe than is necessary to achieve the sentencing aim that the sentencer has in mind. If we consider such a principle to reflect long-standing practice, we might assume that if a sentencer selects a period of imprisonment—say, in the range of six to nine months—as a sentence, he or she must have concluded that, because of the gravity of the offence, the offender’s circumstances or a combination of the two, no other appropriate sentence is available.

I suppose that that leads us to the question of what the alternatives are.

I am confident that the alternatives that are currently available are well liked. They are recognised as being robust—they are not in any sense a soft option. For example, a community payback order, with a supervision requirement and a requirement to perform unpaid work in the community, has a punitive element and a rehabilitative element. However, if other options were available, the sentencers who feel that the options that are available to them mean that they have no choice but to select a custodial sentence might be able to come to a different conclusion.

I know that, over recent years, projects such as the Caledonian men’s project and the Tay project have increased in popularity and have been used more by sentencers. They are considered to be effective and are disposals that sentencers have confidence in. As time has gone on, projects of that sort have become more broadly available than they once were. I do not believe that they are universally available, but I understand that the Caledonian men’s project, for example, is being rolled out to most parts of the country.

There is also an interesting project under way in Hamilton sheriff court, which is looking at using what it calls a structured deferred sentence approach, principally, if not exclusively, in relation to young offenders. The project permits the sentencer to engage with the offender in a managerial fashion; it is perhaps similar to the concept of a problem-solving court. The pilot project seems to be proceeding well: the perception is that it is effective, and there appear to be far fewer breaches than there are with community payback orders. Once that pilot project is completed, something of that sort might be available more broadly.

All those options—if they are available—will allow a sentencer who, at the moment, might

conclude that a sentence of six or nine months' imprisonment is the only suitable sentence available to him to come to a different view.

**Daniel Johnson:** Thank you. In the interests of time, I will hand over.

**The Convener:** Do you have anything to add, Mr Ackerman?

**Graham Ackerman (Scottish Sentencing Council):** No—Lord Turnbull and I are both representing the Scottish Sentencing Council.

**The Convener:** That is absolutely fine.

**Shona Robison:** We explored with the previous panels the geographical variation in the success of the presumption against sentences of three months or less. Laura Hoskins of Community Justice Scotland suggested that, as you have said, the issue is partly to do with what is available but that there is also a softer aspect, which is the confidence that the sheriff has in the alternative disposals. Given your experience, do you agree with that?

**Lord Turnbull:** I am perhaps not best placed to offer a very informed view on that. I suspect that sentencers from the sheriff court might be better placed to inform you on that.

My overall sense is that modern sentencers do not consider non-custodial sentences to be soft options. There is a range of such sentences. Drug treatment and testing orders, for example, are extremely onerous. I think that people's experience of those orders is that they have to accept an in-built period of partial failure. People who undertake those programmes cannot simply transform their lives instantly, so it is recognised that there will be a period during which compliance will be less than perfect, but the sentencers tend to invest in that disposal and stick with it.

There are other disposals that are very far from soft options. The requirement to perform unpaid work in the community is a significant form of undertaking. As well as requiring effort on the part of the individual, it has a constructive element to it—I think that I heard one of the previous contributors say that the evidence tends to demonstrate that such work can transform lives in a positive way.

Therefore, I would be surprised if there was a general sense that community-based disposals were something of an unviable soft option.

**Shona Robison:** One piece of evidence suggested that awareness of the range of disposals available was not always as good as it could be. Could that be tackled?

12:00

**Lord Turnbull:** That might be right. If new opportunities become available, it is important that the judiciary is fully aware of what they are and of the scope for benefit that they present. There is a role there for the social work department, perhaps for other third sector organisations and for the Judicial Institute for Scotland, which provides national judicial training. It is important that judges are kept aware of what is available. For example, in rolling out the Caledonian men's project or the Tay project, it is important to educate the judiciary in the receiving jurisdictions as to what those projects can provide.

**Shona Robison:** Thank you.

**Liam McArthur:** Lord Turnbull, you talked about the onerous nature of some of the community payback orders and DTTOs, which was reflected in what we heard from the previous panel. There was some suggestion that that is creating a pipeline into custodial sentences and that greater use of deferred or suspended sentences might be a way of allowing wider support to be brought in to help individuals to turn their lives around. Is that something that you recognise and support?

**Lord Turnbull:** I am not entirely sure. I have sometimes heard it suggested that the concept of prison as a last resort is misplaced and that, if someone receives a community-based sentence by way of disposal, regardless of what happens with the progress of that sentence, no other form of sentence should ever be imposed. That is difficult to understand, because sentencers will tell you that, although non-custodial sentences work for a significant number of the offending population, they do not work for others.

Sentencers will have experience of imposing non-custodial sentences with which the offenders do not comply, even after being given a number of opportunities to do so. The question then is, what is the court to do at the end of the day? If somebody is given a community payback order, I would have thought that the concept is that they require to make restoration to the community for the harm that they have caused to it. If they decline to do that, what is the court to do? Is it to be left with no sanction?

Experience demonstrates that it will not work for some people simply to tell them that they must comply with the order and that they must now do more by way of unpaid work in the community than was in the sentence that they first received. If, at the end of the day, the court has no sanction in the nature of a custodial sentence, it is likely—or there is at least a risk—that non-custodial sentences will come to be portrayed as being voluntary, with it being a matter for the offender whether to comply with them. I am pretty sure that

any such perception would undermine the confidence that the public had in the use of those disposals by the judiciary.

I understand that we need to support people who are given non-custodial sentences, but if the court does not retain a final sanction, somebody would need to explain to me what it was supposed to do in that situation.

**Liam McArthur:** Thank you.

**The Convener:** On that point, is there ever any analysis of why someone has breached an order, or is it just a de facto breach and therefore a prison sentence is the disposal that must be looked at?

**Lord Turnbull:** There will, ordinarily, be an explanation.

For example, the offender will say that they did not turn up for their unpaid hours of work because they were not well that day or because something happened, or the person on a drug testing and treatment order who is found to test positive for heroin or something of that sort will provide an explanation for why they relapsed. However, what is the court to do when it hears the same explanation over and over again from the same individual? Sentencers reach a stage where they feel that they are dealing with someone who is declining to comply rather than someone who has a particular reason for non-compliance.

**The Convener:** In your experience, is that what is happening? When someone defaults, is every effort made to see whether there were extenuating circumstances and whether the penalty could be suspended to give the person one more chance?

**Lord Turnbull:** Again, I suspect that you might be better informed by the sheriffs, who tend to impose such sentences more frequently than other judges do. However, I know—and the council knows from its combined experience of information from sentencers across the board—that people who fail to comply with the requirements of community payback orders will ordinarily get a number of chances, assuming that they do not just turn up and say that they could not go because they could not be bothered. If they have an explanation, the court will take account of that. The court wants the disposal to work; otherwise, the sentencer would never have selected it in the first place.

**The Convener:** I suppose that, in such circumstances, a custodial sentence is the disposal of last resort after a series of breaches.

**Lord Turnbull:** Yes, I think that that is what will happen: the sentencer will say, “I have tried to support this individual and to give them an opportunity, but they have demonstrated that they are either incapable of taking, or unwilling to take,

that opportunity, so I must apply myself to what the sanction is.” Of course, in those circumstances, there are two issues. There is not just the fact that the sentence that the court passed for the original offence has not been effective; there is also the fact that the individual has then breached the orders that the court imposed on them.

**Liam Kerr:** I have two brief questions. The submission from the Scottish Sentencing Council flags up that the presumption would cover solemn sentences of up to 18 months, as sentences can be discounted by up to a third due to early guilty pleas. Am I right in thinking that the presumption could cover some really serious crimes? If so, can you give us any examples? Could this committee have sight of the data that you have collated on that?

**Lord Turnbull:** The council has not specifically collated data on what offences result in what particular sentences. However, I can give you examples of what kind of offences will be caught. It is obvious that offences of assaulting or impeding police officers or providers of emergency services will be caught by the presumption, because offences under the Emergency Workers (Scotland) Act 2005 and the Police and Fire Reform (Scotland) Act 2012 carry maximum sentences of 12 months’ imprisonment. Equally, more serious offences could be caught in the circumstances that you have identified, when an individual pleads guilty to an offence that the sentencer thinks might be appropriately dealt with by giving a sentence of, say, 15 to 18 months. If the offender has pled guilty at an early stage, conventionally, they might expect to receive a discount of a third. As you have anticipated, that would bring the final sentence down to somewhere between 10 and 12 months, which is right in the teeth of the presumption. Offences that might be in that category could include causing death by careless driving; causing death while driving while disqualified; possession of indecent photographs of children and, possibly, the distribution of lower-category images; possession of offensive knives and weapons; assaults; and, perhaps, some drug supply charges, sexual offence charges and charges of multiple housebreaking.

The question is, what will the sentencer do? Although the sentence that we are discussing might be attributable to offences of that sort, if the sentencer concludes that the sentence ought to be around 15 months’ imprisonment and then, in the light of the early plea, discounts that sentence by one third to bring it down to 10 months, they will have to apply their mind to the question of whether, despite the presumption, imprisonment remains the only appropriate sentence. We will have to wait and see what individual sentencers decide in that situation. I would have thought that,



if a sentencer had concluded that a sentence in the region of 15 months was the only appropriate sentence, they would be unlikely to change their mind once they applied the discount and realised that they had to take account of the presumption. Yes, they would think again, but I am not sure that they would come to a different conclusion.

**Liam Kerr:** The submission says that

“1 in 10 received a headline sentence”.

The committee would be interested in some of that data.

**Lord Turnbull:** We just picked that figure up from the Scottish Courts and Tribunals Service’s figures.

**Liam Kerr:** My second question is around something else in the submission. There is an assertion that it cannot be assumed that those who would previously have got custody but who now get a community sentence would show a similar reconviction rate to those who would currently get a community sentence. Can you elaborate on that point for the committee?

**Lord Turnbull:** In the face of a three-month presumption, people who receive non-custodial sentences are probably relatively new to the criminal justice system, whereas, at the moment, people who receive sentences in the region of six to nine months are either being convicted of serious offences or probably have a history of involvement with the criminal justice system. We question whether the rehabilitative effect that we see in one group of offenders is likely to be replicated in another group. It is likely that the group of offenders who currently receive sentences of imprisonment of six to nine months will already have received a number of non-custodial sentences and community payback orders, despite which they have not desisted from offending.

**Fulton MacGregor:** I appreciate that we are short of time.

Will members of the panel comment on the use of electronic monitoring to reduce short-term prison sentences?

**Lord Turnbull:** Electronic monitoring is now available as part of a community payback order. Legislation was put in place to bring about that option, and it is a sentencing tool that will be available to sentencers. Electronic monitoring is just a tool to ensure compliance with a restriction of liberty order. Restriction of liberty orders impose a degree of punishment on an individual—perhaps particularly a younger offender—and provide a degree of public protection, because many of the offences that those offenders become involved with are committed at night and a restriction of liberty order can ensure that the offender stays at

home. As a consequence of the change in the legislation, which I alluded to, such orders might become more prevalent in the future.

**The Convener:** What are the resource implications of the presumption against three-month sentences that is currently in place and of the proposal to extend that to a presumption against 12-month sentences?

**Lord Turnbull:** It is necessary that non-custodial disposals be adequately resourced. If Parliament’s policy is that more of those disposals should be provided for, it is essential that both the sentencer and the public have confidence in the robust and effective nature of those disposals.

The Scottish Sentencing Council is not aware of any research that demonstrates that there is inconsistent use of non-custodial sentences around the country—other than perhaps anecdotal evidence about areas where particular projects are not available. There seems to be better or more prevalent use of non-custodial sentences in certain sheriff courts than in others. However, one would need to dig a bit deeper to understand why that is. Geographical locations throw up all sorts of differences in offending behaviour, and it is not necessarily terribly easy to compare one location with another.

I think that the principal concern that sentencers have is the availability to them of a non-custodial disposal that they can see is sufficiently well resourced that they can have confidence in it.

**The Convener:** That concludes our questioning. Thank you very much for attending.

**Lord Turnbull:** Thank you.

12:15

*Meeting suspended.*

12:19

*On resuming—*

### **Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Amendment Order 2019 (SSI 2019/172)**

**The Convener:** Item 2 is consideration of a negative instrument. The Delegated Powers and Law Reform Committee considered the order and made no comment. I refer members to paper 3, which is a note from the clerk.

If there are no comments or questions from members, are we agreed that the committee does not want to make any recommendation in relation to the instrument?

**Members indicated agreement.**

## Justice Sub-Committee on Policing (Report Back)

12:20

**The Convener:** Item 3 is feedback from the meeting of the Justice Sub-Committee on Policing that took place on 30 May. After we have heard from John Finnie, there will be an opportunity for members to make brief comments and ask brief questions. I refer members to paper 4, which is a note from the clerk.

**John Finnie:** As you said, convener, the committee papers include a feedback note on the sub-committee's most recent meeting, on 30 May, when, as part of our pre-budget scrutiny of the 2020-21 draft budget, we took evidence from the Association of Scottish Police Superintendents, the Scottish Police Federation and the police staff branch of Unison Scotland on the capital funding for Police Scotland. The sub-committee heard that the capital budget allocation for Police Scotland is inadequate and that the lack of resources is impacting on the ability of police officers and staff to provide an efficient service. Witnesses said that sub-optimal conditions and equipment are impacting on police efficiency and that a longer-term capital investment programme is required. The capital budget allocation for Police Scotland is low in comparison with those for other police services across the United Kingdom. Unison described the 2019-20 capital settlement for the force as a "sticking plaster".

The sub-committee heard that, although communication with the unions by senior force management and the Scottish Police Authority has improved, there has been no meaningful pre-budget engagement with the unions by force management and the SPA. The Scottish Police Federation was critical of the level of suitable engagement with unions on the policing 2026 strategy, which is the 10-year plan to transform the force. There was a strong feeling that the SPA needs to make a more robust case to the Scottish Government for the funds that Police Scotland needs if it is to overhaul its information and communications technology systems and deal with the major backlog of maintenance and replacement of buildings, fleet and equipment.

The sub-committee was told that Police Scotland is carrying out a health and safety survey across its estate—that is in addition to the workplace inspections that the staff associations undertake—to identify maintenance priorities and assess working conditions for officers and police staff. The sub-committee requested that we and the police staff unions receive a copy of the information when it is available.

The next meeting of the sub-committee will be on Thursday 13 June, when we will take evidence from the Cabinet Secretary for Justice, Humza Yousaf, on the Scottish Government's response to the sub-committee's "Report on Police Scotland's proposal to introduce the use of digital device triage systems (cyber kiosks)". That will be the final meeting of the sub-committee before the summer recess.

**The Convener:** Thank you very much. Do members have any comments or questions?

**Liam McArthur:** As John Finnie said, the meeting was helpful and revealing. I think that all members understand that budgets are tight and that Police Scotland will not be the only organisation that comes forward with claims that more money is required. However, the stand-out take-away from the session for me was the suggestion that the SPA is not being robust enough in setting out the effect that an insufficient capital budget is having on front-line policing and policing generally. We will need to keep an eye on the situation as we go into the budget process.

**Liam Kerr:** I am not a member of the sub-committee, and I was hugely concerned by what I read in the report. I recognise the point that Liam McArthur makes about the SPA. Can members help me out on where the issue goes from here? There are clearly serious concerns. How does the sub-committee, or whoever is tasked with this, follow up on the matter to make sure that something changes?

**John Finnie:** We are aware that the Scottish Police Authority pays particular attention to the sub-committee's work, and, as I said in my report, we will hear from the Cabinet Secretary for Justice next week, when we will put those points to him very strongly. Indeed, I presume that that will strengthen his hand in negotiations with the finance secretary when the budget decisions are made. We will pursue the issue, and next week's meeting will be a matter of public record, of course.

**The Convener:** I concur that the meeting was very concerning, to say the least. The committee was left in no doubt that the inadequacy of resources, particularly in relation to estates and vehicle fleet management, is affecting the efficiency of the police. There was a concerning comment about lack of transparency in the context of the SPA's highlighting the full extent of the problem, which raises health and safety issues. It was frustrating and disappointing that all stakeholders said that there is still a lack of meaningful engagement with the SPA in the pre-budget process.

**John Finnie:** I concur with you, convener. I must correct myself for Mr Kerr's benefit—we will

not be speaking to the cabinet secretary about the matter on 13 June; I think that we will do that after the recess. However, the cabinet secretary will have had sight of the *Official Report* of the sub-committee's previous meeting.

**The Convener:** As there are no more comments, that brings us to the end of today's meeting. Our next meeting will be on 11 June, when we will continue our consideration of a statutory instrument in relation to the Scottish Government's plans for a presumption against short sentences. We will also continue to take evidence for our inquiry into secure care for children and young people in Scotland.

*Meeting closed at 12:25.*



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