



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# JUSTICE COMMITTEE

Tuesday 13 January 2015

Session 4

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**Tuesday 13 January 2015**

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**JUSTICE COMMITTEE**  
**2<sup>nd</sup> Meeting 2015, Session 4**

**CONVENER**

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

**DEPUTY CONVENER**

\*Elaine Murray (Dumfriesshire) (Lab)

**COMMITTEE MEMBERS**

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

\*Jayne Baxter (Mid Scotland and Fife) (Lab)

\*Roderick Campbell (North East Fife) (SNP)

John Finnie (Highlands and Islands) (Ind)

\*Alison McInnes (North East Scotland) (LD)

\*Margaret Mitchell (Central Scotland) (Con)

\*Gil Paterson (Clydebank and Milngavie) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Dr Monica Barry (University of Strathclyde)

Sarah Crombie (Victim Support Scotland)

Lisa Mackenzie (Howard League Scotland)

Professor Alan Miller (Scottish Human Rights Commission)

Pete White (Positive Prison? Positive Futures)

**CLERK TO THE COMMITTEE**

Joanne Clinton

**LOCATION**

The James Clerk Maxwell Room (CR4)



## Scottish Parliament Justice Committee

Tuesday 13 January 2015

[The Convener opened the meeting at 10:15]

### Interests

**The Convener (Christine Grahame):** Welcome to the second meeting in 2015 of the Justice Committee. I ask everyone to switch off mobile phones and other electronic devices, as they interfere with the broadcasting system even when they are switched to silent. The sound system is loud. I have apologies from John Finnie—I am now whispering and hoping that the volume will go down.

I welcome Jayne Baxter as our new member of the committee. What a turnover we have—we must be some kind of gulag. Under item 1, I invite Jayne Baxter to declare any interests that are relevant to the committee's remit.

**Jayne Baxter (Mid Scotland and Fife) (Lab):** I have nothing to declare.

**The Convener:** Thank you very much.

### Decision on Taking Business in Private

10:16

**The Convener:** Under item 2, I invite the committee to agree to consider in private item 4, which is consideration of our approach to stage 1 scrutiny of the Human Trafficking and Exploitation (Scotland) Bill. Do members agree?

**Members indicated agreement.**

## Prisoners (Control of Release) (Scotland) Bill: Stage 1

10:16

**The Convener:** Item 3 is our first day of evidence taking at stage 1 of the Prisoners (Control of Release) (Scotland) Bill. I welcome to our meeting Dr Monica Barry, who is a principal research fellow at the University of Strathclyde and is alone and palely loitering. Unfortunately, due to a family illness, Professor Cyrus Tata, who is a professor of law and criminal justice at the same university, has had to withdraw at short notice. We hope that he will be able to give evidence at a future meeting. If he was able to come next week, would members be content with that?

**Members indicated agreement.**

**The Convener:** We have a written submission, so we will go straight to questions.

**Gil Paterson (Clydebank and Milngavie) (SNP):** I am particularly interested in addressing the behaviour of sex offenders, in which I have a personal interest. I wonder about early release and people addressing their offending. For instance, I know that there was a particularly good scheme in Peterhead, but it relied on people volunteering, of course. I suspect that some of those people volunteered to play up to the Parole Board for Scotland, although the indicators suggested that the scheme was very successful.

If early release stopped, what impact would that have? Would it be a good thing, in that there would perhaps be more time for people to reflect and understand that they would be in prison for longer if they did not participate and get working on things? Would it be a good thing for the two reasons that I have mentioned—the good reason and just to get out of the place—or is there a downside? I know that there may be some downsides. What are your feelings about that?

**Dr Monica Barry (University of Strathclyde):** First, I think that sex offenders are the most compliant of ex-prisoners you will find. They are absolutely paranoid about being returned to prison following a recall and they tend to keep to their licence conditions.

On sex offender programmes, I have done research with high-risk sexual and violent offenders in London who are on levels 2 and 3 of the multi-agency public protection arrangements and with around 70 people on licence in Scotland. All the sex offenders say that the programmes help, but they do not have the time for them.

There is an assumption in the bill that, if automatic early release is abolished, prisoners will more readily take up those group work programmes, but there are waiting lists for them in Peterhead and elsewhere, so not everyone can access them when they are in prison.

I have been told by prisoners and sheriffs that extended sentences are often used as a way to ensure that people get programmes in the community. I think that that is the wrong use of extended sentences.

There is not a demand problem with programmes; there is a supply problem. There are not enough programmes in prison, so people are being put out into the community and asked to do the programmes there.

While I am on that subject, I have a point to make about the open estate. To get parole, people must have time in the open estate and there are waiting lists for that as well, for some reason. Sometimes there is no possibility of people getting parole and therefore they are dependent on automatic early release at the two-thirds stage.

**Gil Paterson:** So perhaps there is a resource question in that.

**Dr Barry:** There is definitely a resource question now, which will be exacerbated if the reforms go through.

**Gil Paterson:** In your submission, you talk about programmes after release, for which people have to volunteer—they cannot be coerced into them. I find it difficult to believe that folk would volunteer in great numbers after being released. Are programmes in prison more reliable? I take on board your comment that there is a resource element. If that was not a barrier and resources were there, would we enjoy a higher number of people presenting voluntarily in prison?

**Dr Barry:** I am not sure, but I think that prisoners who are released on non-parole licence have to undertake the programme in the community if they have not done it in prison. I apologise if I am wrong on that, but I am pretty sure that that is part of the non-parole licence conditions. If they have not done in prison a course that needs to be done, they have to do it in the community. Sheriffs are putting extended sentences in place to ensure that there is time for them to do that.

Some sex offenders would do programmes voluntarily, but I doubt that many violent offenders would. There is probably quite a sizable minority of sex offenders who would not do programmes voluntarily.

**The Convener:** It may be different now, but a long time ago I visited Peterhead, where many sex offenders were in denial: they did not think that

they had committed an offence, particularly if children were involved. Is it a huge difficulty to get them to see that they are guilty of an offence in the first place?

**Dr Barry:** Yes, but that is a minority. They tend to do the programmes, not least because if they do not they do not get out.

**The Convener:** I understand the compliance element, but whether the fact that they have done the programme means anything is another thing.

**Dr Barry:** Some people whom I have talked to said that they went into the programme thinking that they would just do it for tokenistic purposes, but they came out thinking that it really helped them and made them change their mindset.

**Elaine Murray (Dumfriesshire) (Lab):** In your submission, you are pretty critical of the bill, which you describe as a “flawed change in legislation” that is

“undermining rather than strengthening the role of both deterrence and reintegration”.

Are the alternative proposals in the Custodial Sentences and Weapons (Scotland) Act 2007, which have not been enacted and in which sentences have a custody element and a community element, preferable to the approach that is being taken in the bill?

**Dr Barry:** They are much preferable. I do not know why the 2007 act reforms have not been enacted. It is vital that any custodial sentence has a community part, because that enables people to be tested in the community.

People will not reoffend in prison in a way that will harm the public, obviously. It is only when they are released that there is the potential for risk, so monitoring and supervision have to be in place when they get out of prison. The longer somebody is in prison, the more difficult it is for them to adapt to life on the outside and the more support they need. Many of those people, especially sex offenders, do not have social networks in the community that they can call on, so they are dependent on social workers and the police. Many people have told me that they look forward to having a police visit once a week—if they are on a sex offender notification requirement, for example—because it is company and somebody to talk to, and they really are desperate for that kind of social support.

**Elaine Murray:** Is your principal concern that the bill as drafted would lessen the support available compared with what currently happens?

**Dr Barry:** There will be no support for the people who potentially pose the highest risk if the reforms go through, because once they are out

after a full term of imprisonment, there is no statutory requirement to look after them.

**Elaine Murray:** So you would not agree that the proposed reforms would help to protect the public.

**Dr Barry:** Not at all, no.

**Roderick Campbell (North East Fife) (SNP):** I have a couple of disparate questions. First, the Government's policy memorandum makes it clear that

"the reforms will not mean that all prisoners affected by the ending of automatic early release ... will necessarily serve their entire sentence in custody. Prisoners will be able to be considered on a regular basis for parole and if the Parole Board is satisfied that a prisoner poses an acceptable risk to public safety at a given point in the sentence, discretionary early release on parole licence will take place."

Therefore, there will still be an incentive for a prisoner. Would you agree with that?

**Dr Barry:** Yes, but given that only around 25 or 30 per cent of people who go forward for parole actually get it, there is not much incentive there, and prisoners know that it is unlikely, depending on their offence, that they will get parole. If they have not done the programmes because there is a waiting list and they have not been in the open estate because there is a waiting list, they are unlikely to get parole, although they can continue to seek it every year or two.

If somebody is deemed eligible for parole and gets out, that is no guarantee that they are not going to reoffend. You can never guarantee that somebody is not going to reoffend. If they do not get out because they are deemed a risk to the public in January 2015, but they get out in January 2016 having served the full term of their imprisonment, that risk is not going to change, and if they are without support in January 2016, the risk of them reoffending will be exacerbated.

**Roderick Campbell:** The policy memorandum makes it clear that there are alternatives—such as extended sentences and the use of MAPPA—that could come into play if the proposals become legislation. Can you comment on that?

**Dr Barry:** Extended sentences and sexual offences prevention orders—known as SOPOs—as well as MAPPA will not make up for the lack of supervision and support that can be given through criminal justice social work. The additional sentences—they are additional sentences, in the eyes of prisoners; they are a double punishment—are purely for monitoring behaviour and managing risk. Prisoners think that they are a kind of catch-all to trip them up and get them recalled to prison as soon as possible; that is what they think they are for and they do not see them as a help at all.

**Roderick Campbell:** Can you help us with the figures on a different matter? At present, prisoners who are released at the two-thirds point are subject to supervision. What is the reoffending rate during the period in which they are subject to supervision, as opposed to the rate after supervision has ended? Is there a distinction between the reoffending rates?

**Dr Barry:** We have just completed the fieldwork for a study that looks at 10,000 people on community-based supervision—either community payback orders or post-release licence conditions. Unfortunately, we have not analysed that yet, but I can certainly get it to you when we do.

From previous research, I suspect that people on non-parole licence are more likely to reoffend than people on parole licence, and people on no licence conditions whatsoever are more likely to offend than people on licence.

**Roderick Campbell:** It would be useful to look at the same individuals and compare the subject-to-supervision reoffending rate and the not-subject-to-supervision reoffending rate. However, any information would be helpful. I think that the convener would agree with that.

**The Convener:** I always agree with you, Roderick.

10:30

**Dr Barry:** That would take time, because the people who are not subject to supervision now are a different type of person with a different type of offence and they have been in prison for a much shorter time. To really look at that, we would need four or five years so that we could, first, get them when the new legislation is enacted—if it is enacted—and, secondly, spend more than two years looking at their reconviction rates once they are in the community again. It would take time.

**The Convener:** I have just been discussing timing with the clerks. We have until the end of February before we have to draft a report. Would that information be available by then?

**Dr Barry:** Our information will be, yes.

**The Convener:** That is excellent.

**Christian Allard (North East Scotland) (SNP):** Good morning. I seek some clarification. You have talked about serious offenders and said that the bill covers only a limited number of offenders. Do you believe that it would have more merit if it was for all offenders?

**Dr Barry:** No, because I do not think that there is any merit in the bill in terms of reducing reoffending or encouraging reintegration. If the Government is piloting this with high-risk violent offenders and sex offenders, it is probably piloting

it with the wrong people. If it is going to abolish early release, it should be going for the lower end, such as dangerous driving, which is probably a higher risk to the public than sex offenders, or common street crimes such as shoplifting, theft or breach of the peace.

If people are in custody for less than four years, or less than two years, possibly, it is likely that they will survive better after a full term of imprisonment with no support in the community, but the longer people are in prison and the more stigma is attached to the offence—an example is sexual offending—the more support they need when they get out.

**Christian Allard:** I return to my colleague Roderick Campbell's question about MAPPA. You do not see any justification for having anything after the end of the sentence.

**Dr Barry:** I would have to check this, but I am not sure that there is a statutory obligation for MAPPA if the person is not on licence. I may be wrong, and I am happy for someone to tell me otherwise, but if there is no statutory obligation for social work to help the person or to monitor their risk, it will be difficult to hold them to account, whereas if they are on licence, there is a statutory obligation.

**Christian Allard:** So you are happy for those types of services to be provided at the end of the sentence but not after it.

**Dr Barry:** No—they can be provided afterwards as long as support is in place. There is no point in monitoring somebody in a vacuum. They have to be given proactive support in relation to accommodation, employment, education, benefits and so on.

**Margaret Mitchell (Central Scotland) (Con):** Good morning, Dr Barry. The bill targets sex offenders with custodial sentences of four years or more and other offenders with custodial sentences of 10 years or more. Given your comments about recidivism and the category of offenders who are more likely to reoffend, is there a case for more wide-ranging reform of the system of early release? You have said a little bit about where you would start with that, but it would be very helpful if you could expand on those remarks.

**Dr Barry:** I think that in general there needs to be much more wide-ranging reform of the criminal justice system. First of all, whatever happens reform-wise, groupwork programmes in prison need to be expanded and there needs to be more access to programmes for people when they need them. Even if they are transferred to a different prison, they need to be able to continue the programme that they have started. That is certainly an issue for some prisoners. Moreover,

greater use needs to be made of the open estate, if people need that before they can get parole.

The 2007 act with its half-custody, half-community approach needs to be brought into force. With regard to breaches, our study is looking at 250 offenders who have or have not breached community payback orders or post-release licence conditions. As I have said, those findings will be published later this year, but it has been said that adhering to breach conditions is overly strenuous, and I think that breach needs to be loosened for people on either parole or non-parole licences.

Community supervision needs to be much more proactive, which means giving social workers not just more resources to look after people on release but more of a remit to encourage them to get constructive activity in the community. Without such activity, they are not going to feel part of that community or reintegrate easily.

There also needs to be much greater prison-based planning for release. The suggestion in the reforms is that it might help if someone gets out on a Thursday rather than a Friday, but I have my doubts about that. Planning needs to take place in the prison for about three months prior to release, and that is not happening just now. If the person in question gets parole, they are let out the next day, and no planning can happen in that time. The whole system needs to change. For example, housing needs to be more proactive and to hold beds for people who might get out on parole or non-parole licences.

**Margaret Mitchell:** Given that the cost of reoffending is about £3 billion a year, it seems to me to make sense to put many more resources into the kinds of activities that you have just outlined instead of some of the approaches that we are taking.

Finally, can you comment on the issue of perception? Does the bill clarify sentencing policy? Indeed, is there a need for such clarification? Is there any confusion here?

**Dr Barry:** I do not think that the bill clarifies the situation; it just muddies the water even more at the expense of one of our most vulnerable groups. It plays into the hands of a baying public and media, and it seems to have more to do with electoral appeal than enhancing public protection. The 2007 act is a lot clearer: it is obvious that sentences are half prison and half community and that the community half is about rehabilitation and not purely surveillance.

**Margaret Mitchell:** Thank you.

**The Convener:** You said that 250 offenders breached community payback orders and you are looking at them just now. You said that



“breach needs to be loosened”.

**Dr Barry:** The breach criteria have to be loosened.

**The Convener:** Could you expand on that a little, please?

**Dr Barry:** A lot of social workers are currently going by the book and saying that, if someone does not turn up for two appointments or does not have a valid reason for not turning up, they are in breach. If someone’s grandmother dies and they cannot attend an appointment, they need to show the death certificate, for example. Things are getting quite out of hand.

Sex offenders are being alleged to have committed a further offence when they insist that they have not and they are being recalled to prison on the basis of an allegation from a member of the public. They can be there for years before being let out again, even if they are found to be not guilty of the subsequent offence.

**The Convener:** That seems to be quite extraordinary.

**Dr Barry:** It happens.

**The Convener:** That happens in Scotland?

**Dr Barry:** Yes, it happens quite a bit. It is not the fault of the Parole Board for Scotland, but it takes a long time to go through the paperwork to get somebody out of prison once they have been recalled. It can take three months.

**The Convener:** You just said that somebody could be in prison for years, but the Crown Office would have to bring a prosecution if there had been an allegation of another offence. Surely a person has to be prosecuted for a subsequent offence.

**Dr Barry:** Yes, but that can take time. It depends on why the person is recalled. If they are recalled on the basis of an allegation or because they have breached the technical conditions of their licence, they can be kept in prison for the duration of the original sentence, which can be years. I accept that if a prosecutable allegation is made, it will take less time, but people have told me that it has taken three to six months or longer to get a case taken to court and, once the person is found not guilty, it can take three months to get them out.

**The Convener:** Thank you for that clarification. We come to Jayne Baxter for her maiden voyage.

**Jayne Baxter:** You have spoken this morning about the impact of social isolation and the lack of community networks on prisoners who have been released and are living in the community. You have also spoken about the need for more proactive approaches and additional resources. If

those issues are not addressed and the bill goes through, how will that impact on the current workload of criminal justice social workers who play such an important role? Is their capacity to be effective going to be squeezed even more than it is at the moment?

**Dr Barry:** It depends. If people are released with no statutory supervision, it will not impact on criminal justice social workers at all, but it will impact on humanity, certainly, and on the community, because people will be without accommodation, possibly without employment, without social networks, and without any statutory authority to help them to get back on their feet. Offending is likely to increase if there is no support. The research finding is that the less support people have, the more likely they are to resort to offending.

I have had prisoners tell me that, when they were released and had no support from social work, they phoned the police and said, “Can I come back inside?” That is a damning indictment.

**Jayne Baxter:** Thank you.

**The Convener:** We have no more questions so I thank you for your evidence. I will suspend for a couple of minutes to allow for a change of witnesses.

10:44

*Meeting suspended.*

10:46

*On resuming—*

**The Convener:** I welcome to the meeting our second panel of witnesses: Lisa Mackenzie, policy and public affairs manager, Howard League Scotland; Pete White, national co-ordinator, Positive Prison? Positive Futures; Professor Alan Miller, chair, Scottish Human Rights Commission; and Sarah Crombie, acting director of corporate services, Victim Support Scotland. Do not take this the wrong way but, as you are the usual suspects and we have your written submissions, we will go straight to questions.

**Elaine Murray:** I do not know how much of the evidence of the previous witness you heard, but she described the bill as being flawed. Many of you have also expressed concerns about the bill, particularly the proposal to release people into the community without any support at the end of their sentence. You will know that the Custodial Sentences and Weapons (Scotland) Act 2007 proposed a different approach, whereby a sentence would have an imprisonment part and a community part. Will the witnesses comment on

the relative merits or demerits of those alternative approaches?

**The Convener:** As the witnesses know, they should just indicate to me if they want to speak and I will call them. Who would like to pick up that question? Nobody—right, that is the end of the session.

**Sarah Crombie (Victim Support Scotland):** Victim Support Scotland quite likes the 2007 act, as it allows the victim to have a clearer knowledge of and is more transparent about the amount of time that an offender will spend in custody and the amount of time that they will spend in the community. It is crucial that victims are aware of any conditions that may be attached to an offender's sentence and are given that information proactively so that, if they have any safety concerns, they have time to raise them and to put measures in place. As an organisation, we believe that victims should know what to expect, so knowing how much time an offender will spend in custody and how much time they will spend undergoing rehabilitation and reintegrating into the community is a positive thing.

**Pete White (Positive Prison? Positive Futures):** I agree with Sarah Crombie and her focus on the need for victims to know when someone will be released. However, the 2007 act was drafted before the Scottish Prison Service went through a transformation in its view of how it can work to help people in prison to leave in a better state. There is scope to carry out a review of the 2007 act and the bill together so that a wider range of options can be taken into account than are currently available.

We need to help the judiciary to recognise that prison is the last resort, not handy, and enable it to be more comfortable with handing down community sentences in the first place, because that would be better for everybody. Some parts of the bill are highly commendable, but it is flawed. We need to look at the whole system, from someone being charged through to their return to the community as a citizen, rather than look at bits and pieces of the process.

**The Convener:** Would anyone else like to comment on the flaws?

**Lisa Mackenzie (Howard League Scotland):** Do you mean the flaws in the current proposal?

**The Convener:** As compared with the 2007 act.

**Lisa Mackenzie:** I have to be honest and say that the 2007 act predates my role, so I am not very familiar with it. I know that the Howard League Scotland opposes—and, I presume, opposed at the time—bringing it into force. I also know that the McLeish commission identified a number of concerns with the act. I do not feel that I

am terribly well qualified to say much more than that.

**The Convener:** I will not press you. You make a fair point.

**Lisa Mackenzie:** The policy memorandum indicates that the current proposals are being advanced on a platform of increasing the likelihood of reducing reoffending and improving public safety, so we ought to measure them against the evidence base that suggests that that might be the case.

I presume that part of the reason why the proposals are being advanced is that there is a desire to retain some people in custody until the end of their sentence. Like Dr Barry, we have concerns about the idea of those people being spat out of prison, cold, with no supervision or support. It is hard to see how that would increase public safety and reduce reoffending.

Clearly, there is a desire to retain some people in prison until the end of their sentence. Otherwise, I assume that the proposals in the bill would not be being advanced. Let us measure the proposals against the policy objectives. We have some concerns that they will not live up to them.

Victim Support Scotland has made the point that there is a lot of public misunderstanding about the criminal justice process. We really do not want to run the hazard of increasing public cynicism about the criminal justice system. Automatic early release is not terribly well understood as it stands. If the Government stands on a platform, saying that its new proposals will increase public safety and they do not do so, there is a real hazard that levels of cynicism could increase. It is important to keep that in mind.

**The Convener:** We have had evidence, which you might have heard—I am not saying that it is right or wrong—from the SPS and the cabinet secretary and ministers that prisons now take the preparation of packages for individual prisoners much more seriously. It is not the case that one day someone is in prison and the next minute they are out.

That preparation is not just about releasing people on a day of the week other than Friday that is more convenient, to enable them to deal with services such as social work and housing; it is about ensuring that there is other support when people are released from prison and the fluidity to ensure that they have general practitioner services and so on. Is it fair to say that the bill should be viewed in the light of that? As has been said, prison is changing.

**Lisa Mackenzie:** Yes, although that is different from statutory supervision—people are compelled to comply with statutory supervision licence

conditions. It is absolutely right that when someone comes out of prison, the best efforts should be made to ensure that they have adequate housing and can access GP services, addiction services and so on, and that there should be programmes in prison to prepare people for being released.

However, we heard Dr Barry express concern that those programmes are not always available, and the other point that we make in our submission is that if the programmes are not available and prisoners are saying, "I want to put myself forward for parole, but I cannot access the programmes," we might lay open the way to further legal cases in which prisoners say, "I am being arbitrarily detained. I would like to prove to everyone that I am no longer a risk, but I am unable to do so because I cannot access programmes." That is another real concern.

**Pete White:** It is fair to say that the SPS has changed its attitude and its approach to planning, but it has not been able to change the way in which prisons are run on a day-to-day basis. The access that prisoners have to education and to courses is minimal compared with what is required. Huge resource reallocation is required to make the approach viable. If someone is going to spend any time in prison, it is important that they are provided and can connect with services to help them on their path back to being a contributing citizen. That is currently a vastly underresourced and unrecognised problem.

For example, in Edinburgh, where there are more than 800 prisoners, only 43 can attend education at any one time. That is a huge disparity with what is required. I know that education is not the only requirement, but it is a problem and presents in other ways.

**Professor Alan Miller (Scottish Human Rights Commission):** To pick up on the last few comments, as we have found out, good intentions do not always lead to good practice; they are not enough.

You have heard from witnesses that the resources within and outwith prisons are not seen as being adequate. The legislation will increase the spotlight on whether resources are adequate. We know that we are in a time of austerity and that that will not go away in the immediate future. Therefore, there is a danger that, despite the best intentions, there will be unintended consequences, which are foreseeable—there is a danger that the legislation will increase the risk to public protection and will not reduce reoffending or achieve the good intentions that we all recognise.

**Elaine Murray:** On reading the submissions that have come in so far, I have become increasingly concerned that, to a certain extent,

the legislation is tokenistic. It will only affect around 1 per cent of the prison population.

Should we not be taking a deeper look at the whole sentencing policy and process and at what prison and post-prison means? Perhaps the legislation is a reaction to pressures from the media rather than consideration of the problem.

**The Convener:** What? Politicians reacting to the media? For goodness' sake—breaking news.

Does the panel want to comment on that comment?

**Lisa Mackenzie:** It is a fair observation. The Scottish sentencing council is recruiting staff and it seems a shame to be, in a way, pre-empting its existence when this is, I presume, the sort of thing that it might be able to look at in more detail—as you say, it might view the big picture rather than look at it piecemeal.

**The Convener:** I never thought that I would hear myself say this, but let us defend the media a little bit: is it not the case that the public also want to see an end to early automatic release, because people feel that the sentence should be the sentence—as simple as that?

**Pete White:** That is why a sentence planning review is required. We are basically in a medieval or Victorian process, in which the sentence that is handed down—the length of time to be spent in prison—is based on what has been set before, and that is then cut. That is the bit that people do not understand because, particularly for short-term prisoners, there is no condition attached to that reduction. People do not have to behave themselves to be released after half their sentence has been served; they can be as rowdy and as uninterested in connecting with anything as they like in prison and they are still released.

If, when someone said "I sentence you to 12 months", that meant 12 months, people would better understand that conditions about how someone engages can be attached to the sentence. However, at the moment, the situation is a bit of a Frankenstein's monster: bits are bolted on to sentencing that do not add up to a complete being.

**Sarah Crombie:** I agree with what has been said on victim support. It would be good if the introduction of the Scottish sentencing council enabled courts to deliver similar outcomes for the same crime so that there are no disparities across the system.

Victims are often confused because they do not understand what the sentence means. We must remember that victims experience a lot of distress and trauma when sentences are handed down, so taking in any information can be difficult. There must be transparency and clarity.

When offenders are released, victims' views must be taken into account. No one wants to see the expansion of the victim notification scheme to include all victims of all crimes, so I am referring to the victims that we have cited. Their views on any supervision or community reintegration that might take place should be considered so that, if they want to, they have the chance to plan for their personal comfort and safety or, at the very least, they are aware that there is a chance that they might bump into the offender on temporary release while the prisoner is being educated at the local college.

**The Convener:** I thought that they were told that just now.

**Sarah Crombie:** They are, but in the current victim notification scheme there is a difference between those who are escorted and those who are unescorted, which is being looked at.

11:00

**Roderick Campbell:** In the earlier evidence session I talked about incentives. The Government states in the policy memorandum that the ending of automatic early release will make prisoners realise that there is an incentive to engage with schemes to modify their behaviour, because not engaging with those schemes will mean that they serve their full term, whereas at present prisoners can just say, "Well, I'll be out anyway at two thirds." Will the panel comment on that?

**Professor Miller:** I think that that is true. I completely agree with that analysis. An inevitable consequence of taking away automatic early release is that those who are sentenced to serious custodial sentences will be released back into the community cold, without any compulsory supervision. However, as you say, removing automatic early release could also incentivise prisoners to engage more with whatever programmes—adequate or inadequate—are in existence, because they will make more applications to the Parole Board.

As I said, the spotlight will therefore increasingly be on the programmes' adequacy. If more people are demanding them—rightly, because society has said that that is the deal—and if the Parole Board has to make more decisions than in the past on the adequacy of the programmes, the spotlight will be on those arrangements. The committee has heard evidence from a number of witnesses that the spotlight might not be very favourable, because the programmes will be seen to be inadequate.

There will be a big dilemma for the Parole Board in cases when it knows that there is no automatic early release and that a person could at the end of their sentence be released cold into the

community without any compulsory supervision. Does the board take a calculated risk and put the person out on licence because there will be some kind of compulsory supervision and less likelihood, on balance, of their reoffending? That might go wrong and the person might offend, in which case the board would be held accountable. Alternatively, does the board play safe and say, "No, we're not letting you out—complete your sentence," when it knows that that is basically transferring a potential risk to the public, whose right to life and security could be jeopardised by someone being released at the end of their sentence without any compulsory supervision?

A lot of the spotlight will be cast on what has up to now been largely an invisible area, which is what there is in prisons that prepares prisoners for release and reintegration into the community. Resources must therefore be considered hand in hand with ending automatic early release.

Having looked at the bill's human rights impact statement, I think that it is simply not adequate. All that it addresses is whether the measures in the bill will immediately violate prisoners' human rights, and the answer that is given is no. However, we must look at the foreseeable consequences of ending automatic release—the jeopardy that the public might be put in and the consequences for prisoners' rights if they are not given the rehabilitation programmes that they will be looking for more than in the past. The committee has to look at those unintended consequences and I welcome the fact that it is doing so.

**Roderick Campbell:** That is a helpful answer. Does anyone on the panel have comments about reoffending rates for prisoners who are released on licence conditions and rates when those conditions do not apply and there is no supervision? Can anyone throw any light on that?

**Pete White:** In our experience, people who have served long sentences and are released on licence are less likely to reoffend than, for example, short-term prisoners who are released with no particular support after half their sentence has been served.

As Dr Barry mentioned, licence conditions and the criteria on breaching them are rather restrictive and lead to people being recalled for a breach of licence for doing something that would not normally merit a jail sentence. That is a harmful way of dealing with things. Reoffending rates must come down, and that will not be helped by strict and inconsistently applied criteria for breaches of conditions.

The reoffending rate of people who come out of Shotts prison through the open estate is far lower than that of those who are released through the

gate of Shotts prison, who are the ones who have not complied with programmes and have not engaged. There is a way forward for the work that is done in prisons to reduce reoffending among people who are in there for a considerable time.

**Margaret Mitchell:** Given that recidivism tends to occur more among low and medium-risk offenders, should there be a more wide-ranging system of reform?

**Lisa Mackenzie:** That would be much more justifiable. It came out in many submissions that it is not entirely clear why the bill homes in on the two chosen categories of offender. The international evidence on sex offenders in particular seems to bear out a trend of their recidivism levels being lower than average. However, as we know, people who commit low-tariff offences, who are often in prison for a very short time, are much more likely to reoffend.

Conversely, the reoffending rate is higher among violent offenders. I am looking at the submission from the Law Society of Scotland. Admittedly, the numbers are very small—I think that the Law Society took them from Parole Board figures on recalls, which apparently are no longer available. In 2005 or 2006—I am not sure which—of 21 people who were released on licence for sex offences then recalled, 14 were recalled for non-compliance, three for crimes of dishonesty, one for drug offences and three for sex offences. Of 184 violent offenders who were released on licence and recalled, 65 were recalled for further violent offences, which is more than a third.

The message that I took from a lot of the other submissions was that offence type or sentence length is not necessarily the best or most reliable indicator of the likelihood of a risk to the public on release. It might be worth while for the committee to do further digging in the next few weeks to unpick that a bit. I know that the committee will hear from a panel of academics next week. You might be in a better position to dig into those statistics.

**Sarah Crombie:** I agree with Ms Mackenzie. The Scottish Women's Aid submission says much the same thing. It comments that the proposals exclude the vast majority of prisoners and do not cover perpetrators of domestic abuse, who can be considered as being at high risk of reoffending, although they often do not have sentences of 10-plus years, so that group is excluded.

**Pete White:** I agree that wider-ranging reform would be welcome. It would make quite a difference to look at everything, from the possibility of diversion from prosecution in the first place through to using prison as a last resort rather than a convenient one.

To pick up the point about austerity, it is a lot more cost-effective to keep somebody out of prison properly than it is to keep them in prison for any length of time. The scope for change is huge. My only concern is that, if the bill is not passed somehow or other, the excellent idea of changing Friday release to release one or two days earlier might be lost. That would be tragic for some people, because of the risk of harm and reoffending on Friday release. I find myself in a cleft stick—

**Margaret Mitchell:** Dr Barry suggested that two days would not do much in the grand scheme of things and that the throughcare that needs to be put in place—to arrange housing and so on—should be arranged many weeks in advance.

**Pete White:** There are two issues. Work should be done in prison to make practical arrangements, but that is not always achieved in the last few weeks of a sentence. Some of the practical arrangements that are put in place for people who are released on a Friday are impractical in reality.

For example, if someone is released from Inverness prison on a Friday and they have to attend a housing appointment in Stornoway, they will not make it, because by the time they get to Stornoway—given public transport and the like—the housing office will be shut. That immediately leads to a problem.

I realise that the change is seen as only very small. More people are released on a Friday than on any other day of the week. The people who are released on a Friday and who do not make appointments are those who reoffend, commit self-harm, overdose or commit suicide, or who reoffend to get back into prison because they have nowhere else to go. I would not want that point to be lost in what we are talking about.

**Margaret Mitchell:** That is a useful clarification, which puts the issue in perspective.

**The Convener:** Can Pete White explain to me why a release has to be on a Friday? Can that be changed in some other way?

**Pete White:** I am not here to tell politicians and Parliament how to change legislation or make things possible.

**The Convener:** Yes, you are—you are here to give us your experience and to tell us what is flawed and not flawed and how we could make things better. Did you not know that that is why you are here?

**Pete White:** I will claim naivety on that one, thank you very much.

**The Convener:** That is not you. Anyway, let us hear why it has to be a Friday.

**Pete White:** Sometimes services are open for a shorter time on a Friday than they are on any other day.

**The Convener:** I meant to ask why people have to be released on a Friday. I do not know.

**Pete White:** When a sentence is laid down, the length of time from that date can be extended by the calendar. People who would otherwise be released on a Saturday or a Sunday are released on a Friday, because they cannot be released on a Saturday or a Sunday.

**The Convener:** So the weekend people become the Friday people, which creates the bulge.

**Pete White:** The weekend people join the Friday people.

**The Convener:** I understand.

**Pete White:** If someone can be released a day or two before the technical date when their sentence ends, they have a better chance of engaging with services that will support them.

**The Convener:** I understand that bit. I just wanted to understand why we have the bulge.

**Pete White:** It is one of those things. Prisons and other services do not operate at full strength over weekends. Somewhere along the line in the legislation—this predates my knowledge of these things—it was set out that people are not to be released on a Saturday or a Sunday. If we kept all the services open seven days a week, that would be difficult to apply effectively and it would possibly be unsocial for the people involved in staffing offices.

**The Convener:** I am told that the Prisoners and Criminal Proceedings (Scotland) Act 1993 determines that, if someone was to be released at the weekend, they will get released on a Friday instead.

**Pete White:** Thank you for that clarification.

**The Convener:** That act could be amended without us having a whole bill.

**Pete White:** I would be delighted if we could do that—that would be great. Thank you very much for pointing that out. I am now less naive than I was two minutes ago.

**The Convener:** Thank you. I just wanted to understand that bit.

Christian Allard will ask a question next. We have made a muddle out of something, Christian. You can take us back to clarity.

**Christian Allard:** It is now my turn to make a muddle out of things.

I refer to the bill as it stands. The biggest concern that everybody this morning has raised is about people being released at the end of their sentence without any compulsory supervision. Would it be helpful if the bill was amended to provide, say, three months of compulsory supervision for every prisoner when they are released into the community—or maybe in the open estate?

**Sarah Crombie:** Sacro's submission comments that it would be good to see a reduction of automatic early release to the last three months of the sentence. I know that Dr Barry talked about the average three-month planning time within the prison. Victim Support thinks that putting in place that three-month period, to allow compulsory supervision to take place, is something to look at.

**The Convener:** Does anyone else wish to comment?

**Pete White:** I would agree with that.

**The Convener:** I have a feeling that I have curtailed your submissions, Mr White, but never mind.

**Pete White:** That might not be a bad thing.

**Christian Allard:** I want to ask the same question that I asked of the previous person who gave evidence. Do you think that the bill targets the wrong type of offenders? I note, Mr White, that your written submission states:

"We do not consider it appropriate to dismantle the automatic early release of prisoners in a piecemeal fashion."

I also noted that Ms Mackenzie spoke about things being done in a piecemeal fashion. When you say that, do you mean that the bill targets only a few offenders and that it would make more sense if the bill targeted everybody?

11:15

**Pete White:** I agree that it would make more sense if the bill did not just target those two groups. We need a review of the way in which people are sentenced and sent to prison in the first place, and I do not think that we should pick on those two groups in particular. As was said in previous comments, media focus on those groups may be the reason why they have been picked first, but a wider range of understanding could be extended to all people in prison to ensure that everyone understands from day 1 when their sentence will end, how it will end, and how they will be managed back into the community in a constructive way. That would help a great deal.

**Lisa Mackenzie:** As I said earlier, and as has been said in other submissions, there does not seem to be any evidence that offence type or

sentence length is a reliable indicator of the likelihood of someone being a risk to the public on release. I cannot come back with a better answer than that, but perhaps the panel at your next meeting will be able to dig deeper and shed a bit more light.

**Christian Allard:** If the bill wanted to pilot the changes, would you have targeted other types of offenders?

**Lisa Mackenzie:** Are you asking me? I do not know.

**The Convener:** Excuse me, but I want to ask Professor Miller about that. Could you pilot it so that one group of prisoners was subject to one regime in one part of the country and another group elsewhere was not, or would that breach the rights of those who were still entitled to automatic early release?

**Professor Miller:** I do not think that that would fly at all. It is difficult to understand the logic that underpins the bill. When a judge sentences someone, they will pass an extended sentence if they think that the person needs to be subject to compulsory supervision when they return to the community. We know that the biggest recidivists are the shorter-term offenders, but the Government has decided to target a category of offenders on whom judges do not pass extended sentences because they do not think that they are the most serious offenders, and whom we know are not the most likely to reoffend. The Government has said that it has chosen that group of prisoners because of the length of their sentences and because they should stay in prison for public protection, but it is that category that the Government has isolated for special attention who will then be released cold into the community, making them more likely to reoffend than if they were not released cold and subject to automatic release.

The bill turns things on their head. From a public protection point of view, it increases the risk to the public of reoffending by those individuals. It is difficult to understand why the Government does not want to look at the whole criminal justice system. If there is a particular problem with a category of prisoners, it is difficult to see what the bill will achieve. It is counterintuitive, because it will have consequences that will increase the risk to public protection.

**The Convener:** The purpose of the bill is

“to allow prisoners serving all but very short sentences to be released from prison on a particular day suitable for their re-integration into the community.”

I do not think that it would be possible to amend the bill to bring in lower sentences; that would not fit within the purpose. Is that a fair comment? If so, is it possible that the Criminal Justice (Scotland)

Bill could move into that territory? Perhaps the committee could look at that later.

**Margaret Mitchell:** VSS’s written submission refers to the 2008 Scottish Prisons Commission report’s call for automatic early release to be ended for those convicted with custodial sentences of two years or more. Recommendation 21 of that report was that

“the provisions around risk assessment, conditional release and compulsory post-release supervision arrangements should be reserved for those serving 2 years or more”.

Can you comment on that aspect of your written submission?

**Sarah Crombie:** As far as Victim Support Scotland is concerned, the issue is all about ensuring that, whatever system is taken up, there is clarity and transparency, and victims have the required knowledge and information. We believe that no matter what crime has been committed all victims should receive that information and be able to be safe in their own homes. They should be aware of when offenders are being released and any conditions attached to their release, and it should not really matter whether the sentence in question is for 10 years or two. As far as short-term and long-term prisoners are concerned, victims should receive information about what is happening.

**Margaret Mitchell:** Do you also agree with recommendation 21 in the Scottish Prisons Commission report that

“risk assessment, conditional release and compulsory post-release supervision”

should apply to those serving sentences of two years or more?

**Sarah Crombie:** Yes.

**The Convener:** It is fatal to say this, but I do not think that anyone else wishes to ask a question. I will therefore put my blinkers on and thank the witnesses very much for their evidence.

Next week, we will hear from criminal justice social work; Professor Tata should be able to come; and there will be evidence from the Risk Management Authority, the Parole Board, the staff associations and Professor McNeill. It will be interesting to put to them the issues that have been raised appropriately with us.

As agreed, we now move into private session.

11:21

*Meeting continued in private until 11:45.*





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