The Committee will meet at 1.30pm in Committee Room 1.

1. Inquiry into alternatives to custody (in private): The Committee will discuss lines of questioning for the witnesses.

2. Item in private: The Committee will consider whether to discuss agenda item 6 in private.

3. Inquiry into alternatives to custody: The Committee will take evidence from—

   David Strang, Chair, ACPOS General Policing Standing Committee, ACPOS (Association of Chief Police Officers in Scotland), Douglas Keil, General Secretary, SPF (Scottish Police Federation), and Allan Shanks, President, ASPS (Association of Scottish Police Superintendents).

4. Convener’s report: The Committee will consider the Convener’s report.

5. Petitions: The Committee will consider the following petitions—

   PE14 from Carbeth Hutters’ Association calling for the introduction of legislation to provide security of tenure and rights of access for those who own property built on leased land,

   PE29 by Alex and Margaret Dekker, PE55, PE299 and PE331 by Ms Tricia Donegan and PE111 by Mr Frank Harvey on dangerous driving, and
PE 347 by Mr Kenneth Mitchell on couping of horses.

6. **Legacy paper**: The Committee will discuss its approach to a legacy paper which will provide guidance for on-going Committee issues of the first Parliamentary Session to its successor Committee or Committees.

Alison Taylor
Clerk to the Committee, Tel 85195
The following papers are attached for this meeting:

**Agenda items 1 and 3**
Note by the Clerk (private paper) J1/03/3/1
Written submissions for the inquiry into alternatives to custody from:
ACPOS (Association of Chief Police Officers in Scotland) J1/03/3/2
SPF (Scottish Police Federation) J1/03/3/3
ASPS (Association of Scottish Police Superintendents) J1/03/3/4
Venture Trust, Applecross J1/03/3/5
Supplementary submission for the inquiry into alternatives to custody from SACRO (Safeguarding Communities Reducing Offenders) J1/03/3/6

**Agenda item 4**
Note by the Clerk (private paper) J1/03/3/7
Note by the Clerk (private paper) J1/03/3/8
Note by the Clerk (private paper) J1/03/3/9
Executive Summary of Scottish Executive report ‘The Glasgow Drug Court In Action: The First Six Months’ J1/03/3/10
Correspondence from the Law Society of Scotland re block fees for civil legal aid J1/03/3/11

**Agenda item 5**
Note by the Clerk for PE14 (petition attached) J1/03/3/12
Note by the Clerk for PE29, PE55, PE299, PE331 and PE111 (petition attached) LATE PAPER J1/03/3/13
Note by the Clerk for PE 347 (petition attached) J1/03/3/14

**Agenda item 6**
Note by the Clerk (private paper) J1/03/3/15

**Papers not circulated:**

Committee members may wish to note that the Scottish Executive report ‘The Glasgow Drug Court In Action: The First Six Months’ is available from the Scottish Executive website on: [http://www.scotland.gov.uk/library5/social/gdca.pdf](http://www.scotland.gov.uk/library5/social/gdca.pdf) or from the Committee Clerks in Room 3.11, Committee Chambers.

Committee members may wish to note that the background information documents provided by Reliance Monitoring Services is available from the Committee Clerks in Room 3.11, Committee Chambers.

**Paper for information circulated for the 3rd meeting, 2003**

Final written submission from the Faculty of Advocates to Justice 1 Committee’s consideration of the Prostitution J1/03/3/16
Tolerance Zones (Scotland) Bill

Scottish Executive report, ‘Youth Court Feasibility Project Group’, December 2002 J1/03/3/17

Correspondence from the Sheriffs’ Association regarding the role and responsibilities of sheriffs J1/03/3/18

Correspondence from the Scottish Executive regarding the Justice 1 Committee’s report for its inquiry into the regulation of the legal profession J1/03/3/19
Justice 1 Committee

Inquiry into alternatives to custody

Submission from ACPOS (Association of Chief Police Officers in Scotland)

I refer to your letter dated 19 July 2002. This has now been considered by the General Policing Standing Committee, which enables me to offer the following response.

Members feel that current community based alternatives appear to have evolved progressively and offer courts a fair range of options. Whilst it is acknowledged that there is scope for further alternatives to be introduced, the level of service provision within the criminal justice section of local authorities is a significant factor in the successful working of these disposals. Securing and sustaining the co-operation of the voluntary and business communities would be a great help to the operation of many community disposals, such as ensuring continuity of placements, which can offer the required stimuli and opportunity, whereby the community benefits as well as the offender. Members feel that inter-agency co-operation at a practical level will allow greater utilisation of limited resources, and in addition provide an opportunity to combat recidivism, and allow information to flow more freely between separate organisations. Association members also stress that to engender public confidence, decisions should take into account the views of the victim as well as the potential community impact.

Notwithstanding, members emphasise that any extension to the use of alternatives to custody may result in extra responsibilities for the Police Service and therefore have resource implications.

The effectiveness of disposals depends on the full understanding and contribution of all elements of the court, prosecutor, defence agent and bench, supplied with thorough medical and social reports, in order to match disposal to subject. Repeat offenders and substance abusers with disordered lifestyles are understood to often make this difficult. The ability to place confidence in the system hinges heavily on the local authority criminal justice departments who are providing the placements, advising on their use and ensuring their fulfilment, so members expect that a lot of answers to this quest will be found amongst practitioners. Members also question whether there is sufficient liberty to allow practitioners to innovate and experiment within the operation of the present disposals. On examining the issue of effectiveness, members also note that there has been little or no previous research undertaken to establish whether community penalties impact on recidivism. This remains a salient point for the police, as our main responsibility is the safety and well being of the communities we serve. Should such research be commissioned, members feel it would provide invaluable information to those presiding over court disposals, and assist them in determining the appropriate form of intervention.
With regard to the allocation of community penalties, again the criteria applied is that determined by the Presiding Judge. However, in the Strathclyde and Fife areas in particular, Drug Treatment and Testing Orders, and the Drug Court Pilots are excellent examples of community based disposals aimed at targeting the root cause of offending behaviour. At present, both initiatives are at the pilot stage and a full evaluation is awaited. Nevertheless members suggest that, if more appropriate, the sentence of imprisonment, which remains an option at Drug Courts, and can be imposed for breach of drug treatment and testing orders, should remain a credible option for the judiciary.

Alternatives such as electronic tagging, which provides a form of control that may be lacking in traditional community service, could also be seen as a wider and acceptable alternative to a custodial sentence. However as this option is in its infancy, time will tell if it is being allocated to the appropriate crimes/offences, or indeed the right offenders.

Members also note that in the range of disposals discussed, no mention of restorative justice was made. A number of pro-active ‘restorative justice’ projects have been running now for some time. For example, Grampian Police have been involved in the ‘New Directions’ project with Barnardo’s, the ‘Reparation and Mediation’ scheme operating through SACRO (Safer Communities and Reduced Offending), and the YOYO project (Youth Opportunities for Young Offenders) developed by the Princes Trust. There is an increasing amount of evidence which suggests that restorative justice, and youth diversion projects are having a positive impact on youth crime across Scotland. This stands in stark contrast when compared with the evidence which suggests institutionalising young people in children’s homes, secure accommodation, Young Offenders Institutions, and eventually prison simply leads to maintaining the individual in a cycle of crime, or increasing the seriousness of their criminal behaviour.

There is a general thought amongst members that the interests of the Police Service as regards the disposal of cases or referrals should terminate at the point of submission to the Procurator Fiscal of a police report, and the police should remain independent of any sentencing provisions. In reality, the Police Service is a stakeholder in all aspects of the Criminal Justice System, and increasingly asked to comment on the level of outstanding warrants in relation to ‘non payment of fines’ after sentence. Consequently, members suggest that consideration be given to the issue of Fines Enforcement and the manner in which monetary penalties imposed by courts are collected, putting the emphasis back on the fine as opposed to its collection.

In conclusion, members would consider it necessary that any alternative to custody initiatives or schemes, will require to be properly resourced in the delivery of any community programme. In addition, consideration must be given to the risks associated with such alternatives, to ensure community participation is an opportunity, not a threat.
I trust you find the foregoing of assistance.

Willie Rae
Chief Constable
(Hon. Secretary)
10 September 2002
Thank you for the opportunity to comment on the Alternatives to Custody inquiry on behalf of the Scottish Police Federation which is the staff association that represents police officers in Scotland below the rank of superintendent about 98% of all police officers in Scotland. The questions in the paper seek answers from those more directly involved in the provision and management of alternatives to custody but, nevertheless, we wish to submit the following comments.

The Police are the only agency that is involved in almost every major stage of crime and the criminal justice process. Police officers deal with the victims and witnesses, visit the crime scene, gather the evidence, apprehend the offender, report the details to the Crown, give evidence in court and often transport the convict to prison. Police men and women therefore have a wide experience of the nature of crime, criminals, victims and the courts. As the only highly visible part of the criminal justice system, it is to the police that the public complain about the courts and sentencing.

Non-custodial sentences are generally seen as a “soft option” and undoubtedly part of the reason for this is that the public is not well informed about the nature of such sentences. Very few people know what ‘probation’, or ‘supervised attendance orders’ entail. However, many criminals do see non-custodial sentences as ‘soft’ and as one Sheriff once said, “I’ve never heard a defence lawyer say that his client would rather go to prison.”

For serious crimes, or persistent offenders, prison is seen as the only appropriate punishment and there can be no question that while incarcerated, the criminal represents a far lesser risk to the public.

The high number of cases marked ‘no proceedings’ and the proliferation of ‘plea-bargaining’ often without reference to the victim, makes it easy to conclude that financial considerations are sometimes placed ahead of the overall public interest. An area of particular concern to us is the seemingly increasing trend to plea bargain with charges of assaulting the police which we see as completely unacceptable. The development of law and the whole legal system should make our land a place which is safe and where our people can live their lives without the fear of crime or criminals. It should not be the case that there will only be justice when the price is right. A properly based decision to send someone to prison should not be frustrated through a lack of finance. Similarly, an alternative to custody should not be chosen because it is cheaper.

The Scottish Police Federation supports the availability to sentencers of non-custodial sentences such as restriction of liberty orders, diversionary schemes etc but only where a proper risk assessment has been made available to the court. Failure to comply with the conditions attached to these alternative sentences should
be taken seriously and the errant offender left in no doubt that the failure carries a sanction. in our view, unless there is a campaign to educate the public about alternatives to custody they will not be seen as a ‘proper’ sentence.

Rehabilitation is critically important but the protection of the public and the effects on victims of seeing the offenders who were the cause of their misery on the streets apparently unconcerned by the judicial process have to be considered. At a time when the fear of crime and criminals is now recognised as being at least as important as the reality, the public need to be reassured that we are not living in an environment which is soft on crime.

Douglas Keil
General Secretary
Scottish Police Federation
16 September 2002
Justice 1 Committee

Inquiry into alternatives to custody

Submission from the ASPS (Association of Scottish Police Superintendents)

I refer to your letter of 19 July 2002 inviting this Association to submit written evidence to the inquiry by the committee in to the above subject and am pleased to provide the following response based on the questions listed in your letter.

What Currently Exists?

This information will be more comprehensively provided by other agencies. However from a police perspective it is felt that there is a limited range of penalties available when dealing with offenders. Depending upon the seriousness and circumstances surrounding the incident, officers can choose to use their discretion and issue a warning at the time of the offence or later. Warning letters can be issued by the police to juveniles and indeed one force is working on a project which may include warning letters being issued to adults for certain 'minor and trivial' offences. This local project also seeks to explore innovative ways in which the community can become part of the resolution process with the possibility of warning letters being issued by community officials and/or restorative justice conferences involving community representatives. Restorative justice principles will underpin this work in the hope that such intervention will break cycles of re-offending and provide long term solutions preventing escalation and ultimately imprisonment.

We are aware that community service has been an option for some time and that the use of electronic tagging is being phased in.

Level of Service Provision

Again this is a matter which others will be able to answer more fully.

Effectiveness

It is felt that it is extremely difficult to establish definitively the effectiveness of community penalties in addressing recidivism. Most research that is carried out is restricted to what an individual has been reported for as opposed to the level of crime they have committed. This can only be addressed through qualitative research such as took place in the Arrestee Drug Abuse Monitoring (ADAM) Programme in Strathclyde and Fife where arrestees were questioned by researchers on their actual crime commission rate.

We are informed that the Drug Testing and Treatment Orders (DTTOs) are having some success in reducing offending rates but there is no hard data to support this and no comparisons are conducted with other sentencing options. Data should be available for all community penalties in the form of the re-offending rates of all participants and through more qualitative research on representative samples.
There is some concern about the effectiveness of community penalties and that the benefits to the community are seldom apparent. The extent to which CSOs are breached is also of concern. It is felt that more meaningful services could be designed which would benefit the community in a more visible and effective way.

Members are also aware of the pressure which exists to avoid sentencing offenders to prison for a short term, due to the potential for overcrowding, and feel this is putting strain on the agencies which have to manage non-custodial sentences and is diluting the administration of justice.

**Allocation of Community Penalties**

Although it appears that Sheriffs have guidelines on the allocation of community penalties, there is no transparency surrounding these and there is a perception that trends can be politically influenced to keep more people out of prison.

It is felt that community penalties should be directed at those who commit minor offences or do not have a substantial criminal record. Such penalties are not considered suitable for those who have committed serious crime or habitual recidivists. Nor should the more serious sexual cases ordinarily be eligible for a community disposal.

Members feel that one of the obstacles to getting the right sanctions to the right people is the changing nature of political thinking which swings from a hard-line on offenders to a softer approach due to the pressures on the prisons system. This appears to cause fluctuations in sentencing patterns and can lead to inappropriate sentences.

**General Comments**

While members are generally supportive of the need to consider alternatives to custody to ensure that the prison population is reduced and that prison is retained as the ultimate sanction for serious offenders, there are concerns that financial and political considerations may dictate the agenda.

We consider that there is a need for increased investment in non-custodial penalties which are positive and offer better chances of rehabilitation of offenders, particularly young offenders in the early stages of their criminal career.

I hope these comments are helpful to the Committee.

Jack Urquhart  
General Secretary  
The Association of Scottish Police Superintendents  
3 September 2002
Demanding Physical Activity Programmes for Young Offenders

I am happy to provide you with an endorsement of the effectiveness of the programme at The Venture Trust. This is easily distilled from the findings of our recent research report for the Home Office, in particular concentrating on elements of best practice identified in the report and the extent to which The Venture Trust, a case study in the research, matches these. As is clear from the following audit of best practice characteristics, the Venture Trust performs very well against these. To minimise distortion of our research findings, I have selected appropriate passages from the case study report on the Venture Trust as the basis for my comments.

A Toolbox of Best Practice

A clear rationale

The Venture Trust has clear and valid objectives for the purpose of the programme: i.e. to create an environment where young offenders can review their behaviour, recognise opportunities to change and can develop new strategies. Issues of self-esteem, self perception, self confidence, forming and maintaining positive relationships, managing conflict and resolving difficulties are also addressed.

A suitable choice of activities and localities

Outdoor activities serve four functions. Firstly they are the hook which attracts people to the programmes in the first place. Secondly they are a useful medium for exploring for group work issues as well as affording opportunities for personal development. Thirdly the activities have an intrinsic value in their own right through the esthetic experience - this aspect of the outdoors is often neglected but can play a major role in the success of an event. Finally, activities put a structure into the day - an attribute missing in many young offenders' lives.

Sufficient time participating on the programme for personal and social development objectives to be attained

The course is three weeks in length as this is believed to be the optimum. Any less and there is insufficient time to get beyond the euphoric 'on a course' emotions and any longer...
and commitments back at home start interfering resulting in a high drop out rate. In three weeks participants can experience the fun of new activities, experience the low as group work problems start to emerge and gain skills and experience allowing them to work through these issues to enjoy the final expedition and prepare for their return.

Acknowledgement that the activity is not an end in its own right
The objectives explicitly and exclusively concern the personal and social development of participants. It is a common perception of young offenders that the course is about outdoor activities, even though less than a third of the time is spent doing the actual activities.

A high quality of staff delivering the programme
The staff at The Venture Trust employ a participative approach to encourage acceptable behaviour – in essence they lead by example.

Assistance with transport
Although participants have to travel a long way independently to participate at Applecross, the last and most difficult part from Inverness station to the centre is provided by the Venture Trust.

Commitment by referring officers
A young offender will not be accepted on the course if it is likely that their referring officer will be unable to help them on their return.

Explicit acknowledgement of achievements by participants
Outdoor activities offer many opportunities for experiencing success, in a collaborative environment. Many young offenders will have experienced traditional sports at school and reacted poorly to the competitive environment associated with it. Outdoor pursuits are used because they have no such connotations. Working through these activities and assisting participants to succeed can create a powerful sense of achievement which can be very long lasting.

Effective communication with the referring officer
Such communication is clearly evident during the referral process and in preparation for the return of the participant to their home location.

An explicit review process, integral to the activities
The regular reviews held after each activity allow for behavioural issues to be addressed, or they may be addressed as and when they occur. Inappropriate behaviour is challenged and young offenders are encouraged to face up to the difficulty and find their own solutions.

Continuity of the learning process achieved from participating on the programme, after the programme has been completed by a young offender.
An objective clearly evident in the practices of The Venture Trust is to ensure transfer of learning back to the individual's home environment. Many criticisms have been levelled at residential courses which take someone away from their home environment but fail to address the fact that they will be returning to the same environment which may have contributed to the problems in the first instance. Staff at The Venture Trust recognise this as a major area of concern and a substantial part of the latter half of the programme is dedicated to addressing the problems the young offender is likely to encounter.
A clear set of post-programme opportunities for participation
For those who wish to continue some of the activities they have done on the programme, a
club local to their home is identified and contact is made between the Venture Trust staff
and the club to facilitate access.

Monitoring of important constituent elements of the intermediate and final objectives
Kent Probation Service, on behalf of the Home Office, has examined reconviction rates of
73 young offenders, 12 to 16 months after they have attended the Venture Trust
programme. 31.5% have reoffended - significantly lower than the national average for
those on probation (57% of 17-20 year olds) or for young offenders who have attended
young offender institutions (75% of 17-21 year olds).

In summary, The Venture Trust meets a large majority of best practice characteristics
identified by the research. It is pertinent to add that such effectiveness does not come at
low cost. Our research conclusions expressed a general concern at the danger of reducing
programmes' objectives to 'throughput' indicators, which give a superficial appearance of
greater value for money. High throughput at relatively low cost would almost certainly be
an illusion of efficiency, however, because effectiveness is a precondition for efficiency
and effectiveness has a demanding set of requirements, as I hope I have demonstrated
above.

I wish you well in the development of your service.

Yours sincerely

Peter Taylor

Peter Taylor
Professor of Leisure Management
FURTHER SUPPLEMENTARY INFORMATION FOR JUSTICE 1 COMMITTEE
ALTERNATIVES TO CUSTODY ENQUIRY-IN RESPONSE TO QUESTIONS
DATED 24 JANUARY 2003

Introduction/explanation of SACRO's absence from today's meeting.

Questions for today's meeting were sent to our Inverness office late Friday 24 January and received this morning. Some relate to our experience in Highland, which our local Manager could have addressed as intended, but others are directed to me, as a previous witness in Edinburgh. I explored the possibility of coming to Inverness today but there were no seats left on the flight and it was too late to get the train or drive. I therefore submit this, in the hope it will suffice for today. Some of the questions obviously need a more considered response. I would be more than happy to send more detail or to come before the Committee on another occasion.

Availability of community disposals
1 Can you briefly outline the programmes offered to offenders by SACRO both in the Highland and across Scotland?

In Highland SACRO offers Supported Accommodation for ex-offenders, Transitional Care for prisoners being released and youth justice services which include restorative justice conferencing, victim/offender mediation & reparation, and work in schools with pupils engaging in anti-social behaviour. We are in the process of extending our youth justice services to serve more localities within the Highlands. All services are currently limited to particular localities because of funding restrictions.

Across Scotland SACRO has 20 offices each offering a different range of our services from a full menu of:
- Community Mediation.
- Victim/Offender Mediation and Reparation for adults.
- Youth Justice services comprising restorative justice conferencing, face to face/one to one mediation, shuttle mediation, victim awareness and behaviour change programmes.
- Conflict resolution in schools.
- Adult criminal justice services including supported accommodation, intensive supervision for high risk offenders, bail supervision and accommodation, throughcare and transitional care services, drugs arrest referral, and a range of groupwork services addressing alcohol related offences, domestic violence, sex offending, racially aggravated offending and alternative to custody programmes.

Resources
Your written evidence suggested that rather than focus on creating new community penalties, The Executive should concentrate on administering and resourcing those that are already available. Could you expand on that statement?

I did not mean to imply the above. There is certainly a good range of community disposals available to the Courts but there are additional ones, e.g. enhancing supervised attendance orders in the Criminal Justice Bill, the introduction of which we support. The programmes
necessary to allow these community disposals to be ordered by the court are not available to every court and where they are available they are not necessarily resourced to take as many as the court might like to refer. Prisons have to accept all whom the court imposes a custodial sentence. Community disposals can only take the numbers for which they are resourced.

In its written submission, Highland Council referred to the need to plan ahead to ensure necessary funding, but that this can be difficult due to the temporary nature of funding and the "bidding culture" that is at times applied by the Executive. Do you experience similar problems in securing funding? How does this impact on your ability to offer services?

We have experienced continuing funding uncertainties for all our services over a number of years which often makes forward planning difficult.

With regard to resources, is it the case that certain programmes suffer, because they have been successful and that they have to turn offenders away simply because they cannot always keep up with the number of referrals that they receive?

I would need to answer this for each of our services in turn, as it will vary from area to area and in different services types. I will do this in a fuller submission but for today I hope it will suffice to say that this does happen. In some services because we have close relationships with referral agencies they know when we are at capacity and therefore stop referring until there are spaces. In some services it is appropriate to have a waiting list in others not.

Allocation of community penalties

Your written evidence stated that 82% of all custodial sentences in 2000 were for short-term sentences (i.e. less than 6 months with the average time served being less than 30 days). In your opinion, how many of these offenders actually required to be given a custodial sentence?

In SACRO's view, these short custodial sentences are not only unnecessary, as these offenders are not a danger to the public, but can be counterproductive as they disrupt peoples' lives, mean they mix with other offenders and do nothing to change their behaviour for the better. A restriction on these short sentences would have only a limited impact on the daily prison population but this is our suggestion of how a reduction in the prison population could be achieved:

**HOW A REDUCTION IN PRISON POPULATION MIGHT BE ACHIEVED**

<table>
<thead>
<tr>
<th>Change</th>
<th>Reduction at 2000</th>
<th>2001</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average daily prison population (based on official statistics 1999 - 2001)</td>
<td>6000</td>
<td></td>
</tr>
<tr>
<td>Lifters, serious drug offenders and other types of serious offenders</td>
<td>5,300</td>
<td></td>
</tr>
<tr>
<td>Remanded in custody</td>
<td>1,000</td>
<td></td>
</tr>
<tr>
<td>Less serious offences</td>
<td>1,700</td>
<td></td>
</tr>
<tr>
<td>Achieve Reductions by</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Increasing Bail Services - reduce remand population by 30%</td>
<td>500</td>
<td></td>
</tr>
<tr>
<td>Reduce number of less serious offenders through increased use of community penalties</td>
<td>1,000</td>
<td></td>
</tr>
<tr>
<td>Reduce prison population to</td>
<td>4,500</td>
<td></td>
</tr>
</tbody>
</table>

The Committee is aware of the financial benefits which can be gained by referring offenders to community-based penalties, but the incidence of recidivism is what tends...
to engage sentencers and contributes to the level of custodial sentences which are handed down. How important do you think it is that alternatives to custody are promoted as a long-term strategy to address recidivism?

SACRO believes it is vital that community disposals are used repeatedly. The high return to custody rate of those sentenced to repeat short sentences shows that they are not an effective way of reducing reoffending. Fergus McNellis, said to the Committee that repeated use of short sentences is “flawed logic” and we would agree. As indicated in SACRO’s original and supplementary submission, our view is that the most pessimistic interpretation of return to custody and reconviction rates, does suggest that community disposals are at least as effective and probably significantly better than custody. When cost and the known damaging effects of imprisonment are taken into the equation, the balance swings clearly in favour of community disposals.

7. One of your recommendations regarding the allocation of community penalties is to enter into dialogue with sentencers to develop an effective policy of prison reduction. You state that this approach has been successful in Finland. Could you elaborate on the Finnish experience and highlight any problems which have been encountered with this approach?

I have a research paper on this, which I will have copied to the Committee.

8. How important a part do you believe the Sentencing Information System could play in promoting the use of alternatives to custody if it were available in all courts?

This would be an additional tool providing valuable systematic information about sentencing. It need not be consulted on the bench, indeed in a busy Sheriff Courts there would not be time to do so on the Bench, given the number of cases that have to be dealt with in a day. Sheriffs, of course, read papers beforehand and the system could also be a general reference for the next time after a case had been dealt with.

9. Is there any evidence to suggest that the use of repeat community penalties leads to a reduction in offending behaviour?

I will have to research what evidence is available and get back to the Committee in order to do full justice to this question. Anecdotally we know from our services that this can be the effect.

Effectiveness

10. In evidence to the Committee. SACRO stated that assessing the effectiveness of community sentences is a “complex matter”. Why is this the case? How can these complexities be addressed?

I am not sure that it was SACRO that made this statement and again, I will have to consider my response and get back to the Committee on this question.

Susan Matheson
Chief Executive
27 January 2003
Sheriff condemns lack of resources

A SHERIFF yesterday condemned the lack of resources for social work departments.

Sheriff James Farrell spoke out after being forced to continue numerous cases because of the lack of background reports and being told there was a delay of several months before community service orders could be started.

"Sitting in Edinburgh yesterday, he spoke of the 'credibility gap' growing between what was introduced by the justice department of the Scottish Parliament and the ability of social work departments to operate the system. Six cases which had been continued for social inquiry reports had to be continued again.

They had not been prepared because of staff shortages.

In three instances, where community service was imposed by Sheriff Farrell, he was told there would be a delay of two to three months before the impositions could be started." He said: "Unfortunately, this is not uncommon. I think the public would be astounded to hear this, because of the background today of new initiatives, such as youth courts, drug courts and tagging, at a time when the social work departments already have great difficulty in coping with the existing workload.

He said it was extraordinary that the justice department brought in new community-based disposals for the courts to use, when it was "startlingly obvious that social work departments are not being given the resources for the existing programmes". The sheriff said the public had the right to know of the difficulties being experienced by social work in implementing the initiatives because of the lack of resources."
Background
Drug Courts aim to reduce drug misuse and associated offending by offering treatment based options outwith the traditional court setting and have been established in a number of different jurisdictions with different populations of offenders. In October 2001 Scotland's first Drug Court was established in Glasgow Sheriff Court, operating under summary proceedings. The introduction of the new Drug Court followed the report of a Working Group for Piloting a Drug Court in Glasgow (thereafter referred to as the Working Group) which concluded in May 2001 that the establishment and operation of a Drug Court in Glasgow was feasible within existing legislation. The objectives of the new Drug Court are to:

- reduce the level of drug-related offending behaviour;
- reduce or eliminate offenders’ dependence on or propensity to use drugs; and
- examine the viability and usefulness of a Drug Court in Scotland using existing legislation, and to demonstrate where legislative and practical improvements might be important.

The proposed target group for the Drug Court is offenders aged 21 years or older of both sexes, in respect of whom there is an established relationship between a pattern of serious drug misuse and offending and whose drug misuse is susceptible to treatment. Offenders referred to the Drug Court must otherwise have been facing prosecution in the Sheriff Summary Court and should normally first appear before the summary court from custody.

The Glasgow Drug Court is staffed by two sheriffs on a part-time basis. Each sits in the Drug Court (Court Two in the Glasgow Sheriff Court complex) for four days per week on alternating weeks. A procurator fiscal has been assigned to the Drug Court to identify potential referrals to the Drug Court and to deal with new charges and breaches of Drug Court Orders. A multi-agency Drug Court Team has been established to review the working, development and operation of the Drug Court. It comprises representatives of the stakeholders involved in the Drug Court pilot, namely the Drug Court Sheriffs, the Sheriff Clerk, the Drug Court Procurator Fiscal, the Project Leader of the Drug Court Supervision and Treatment Team (see below), a Drug Court Medical Officer, a senior social worker, a senior dedicated worker from Phoenix House (the voluntary organisation contracted to provide treatment services), a representative of the police and a representative of the Glasgow Bar Association. A Drug Court Co-ordinator facilitates the work of the Drug Court Team.

A Drug Court Supervision and Treatment Team was established to support the Drug Court in all aspects of assessment, supervision, treatment, testing and reports to the court. It consists of a team leader, supervising social workers, addiction workers, treatment providers and medical staff who are located together in shared premise. It was intended that each offender made subject to a Drug Court Order would have a
Case Group, consisting of a supervising social worker, addiction worker and medical officer. The staffing level of the Supervision and Treatment Team has changed over the period of the pilot, reflecting the resource demands of Drug Court Orders and Drug Treatment and Testing Orders over this period.

The Working Group highlighted the importance of the Pilot Drug Court being subject to independent evaluation from the outset. Evaluation was deemed important as a means of establishing the extent to which the objectives of the Drug Court during the pilot period are met. A research team at the University of Stirling — who had previously evaluated the introduction of pilot Drug Treatment and Testing Orders in Glasgow and Fife — was commissioned by the Scottish Executive to evaluate the pilot.

The research will consist of two main phases. This report presents the findings from a **formative and process evaluation** of the Drug Court’s operation in the first six months. The aim was to document the operation of the Drug Court during this initial period with a view to identifying any changes that might be required to enhance its operational effectiveness. The second main phase of the research will take the form of an **outcome evaluation**. The outcome evaluation will continue to assess the operational effectiveness of the Drug Court over the course of the pilot. Importantly, however, it will also examine the effectiveness of the Drug Court in securing compliance with court orders and bringing about reductions in drug use and associated offending.

**METHODS**
The evaluation of the Glasgow Drug Court’s first six months of operation involved a variety of research methods aimed at the collection of both quantitative and (primarily) qualitative data. Fieldwork included:

- Interviews with 38 professionals associated with the Drug Court
- Interviews with 8 Drug Court clients
- Collection of information from Drug Court records
- Observations of screening group meetings, first callings, pre-court review meetings and review hearings during February, March and April 2002.

**FINDINGS**

**Referral to the Drug Court**
When the Drug Court was established it was envisaged that the main referral route would be through the ‘flagging up’ of custody cases by the police. In practice, however, just over one-third of the cases referred to a screening group were identified in this way. Initial referrals appeared to rely upon the knowledge and enthusiasm of individual police officers and was therefore, variable across the city. It also appeared that police officers were not fully conversant with the Drug Court referral criteria.

Cases considered potentially suitable for the Drug Court by the Drug Court Procurator Fiscal were referred to a screening group attended by the Fiscal, the defence agent, a social worker, a police officer and, on occasion, an addiction worker. The screening group was viewed as an effective mechanism for filtering out inappropriate referrals.
The Drug Court referral criteria were thought by most of those associated with the Drug Court as realistic and appropriate, especially since offenders under 21 years of age were unlikely to be sufficiently motivated or mature to cope with the Drug Court regime. Some concern was expressed that women were not being referred in sufficient numbers because their offences were often dealt with by the district court.

By early May 2002, 77 cases had been referred to a screening group, 61 of whom were considered potentially suitable for the Drug Court. It appeared that the criteria were being appropriately applied in the filtering out of inappropriate cases at this stage. By mid-May, 68 cases had been referred for a Drug Court assessment.

Whilst assessment reports were usually available at the first calling of the case in the Drug Court, this sometimes did not happen as a result of staff shortages, or the failure of the individual to attend the assessment appointments. There was a general desire among those involved in the Drug Court to reduce the four-week assessment period, though this was not considered to be feasible within existing resources.

**Sentencing and Treatment**

It is evident that Drug Court clients are willing to accept the requirements of a Drug Court Order for a number of reasons. At the initial stage of assessment, this willingness is, for many individuals, an attempt to avoid custody (either sentence or remand) and may even increase the likelihood that an offender will plead guilty. However, it is clear that additional motivation is required to ensure compliance with the stringent demands that are made of all Drug Court Clients. The requirements of treatment and testing are stressed throughout the assessment process by service-providers to ensure that offenders are fully informed of their obligations and possible sanctions.

The range of sentences available to Drug Court Sheriffs is considered to be effective and appropriate. Although the Drug Court has the same range of disposals available to it as the Sheriff Court under summary proceedings, the ethos of the Drug Court differs significantly. It is seen by all involved to be less punitive and more constructive, a situation considerably enhanced by the direct dialogue which takes place between the Sheriff and offender. Sheriffs believed that their sentencing decisions were better informed than in the Sheriff Court due to the more comprehensive and focused Social Enquiry Reports and drug assessments which are made available to them. Deferred sentences were seen to afford some flexibility in sentencing, while reservations were expressed by Sheriffs about the introduction of Restricted Liberation Orders (RLOs) and their suitability for offenders in receipt of drug treatment.

Treatment services included a range of provisions provided by the Drug Court Team and external service providers. The services included counselling, prescribing, access to day programmes and primary medical care. However, it was notable that substitute prescribing (using methadone) constituted the core element of the treatment service in practice. Concerns were expressed by members of the Supervision and Treatment team, and drug court clients, that the operational regime lacked flexibility and that levels of medication provided were not always in compliance with the wishes of individual clients. While prescribing is clearly a matter
for the medical profession, there was some suggestion that increased dialogue in monitoring and reviewing patterns of prescribing would be beneficial. There also appeared to be a broadly based desire for more comprehensive service provision and a broader range of services being made available to the Drug Court. In particular, Treatment and Supervision staff identified the need for increased rehabilitation services, and specifically rehabilitation and community-based services that met the needs of women.

Drug testing forms a key component of Drug Court Orders with clients tested twice weekly at the beginning of an Order. Relapse is recognised as a possibility and time is allowed to enable clients to stabilise their drug use before reducing/ending it. However, there are clearly practical and ethical issues relating to the testing procedures itself and consideration needs to be given to improving this. Nevertheless, drug court clients saw testing as a largely positive element of the Order, viewing it as a significant motivating factor. Obtaining negative test results was viewed as a clearly defined goal, particularly given the prominence of this issue during reviews, and the dialogue between clients and the Drug Court Sheriff.

**Reviews and Enforcement**

Pre-court review meetings were perceived to be a beneficial component to the process of supervising and treating clients on Drug Court Orders. The thorough private exchanges of information around the multi-agency table, chaired by the Drug Court Sheriff, informed and shaped the nature of the dialogue presented at the review with the client. While some offenders wished they were able to attend pre-court review meetings, all were confident that their progress was discussed in a fair and appropriate manner.

Review meetings were held in open court, a transparency that was perceived by the Drug Court Sheriffs as valuable to maintaining public confidence in the Glasgow Drug Court in its pilot stage. Sheriff-client dialogues were at the heart of reviews, ranging from 20 per cent to all of the review time. The sentencers on their side generally offered words of encouragement, regardless of progress and the clients on their side were honest, responsive and usually co-operative. The concept of drug use as a relapsing condition was recognised by Drug Court Sheriffs and emphasised particularly in shrieval dialogue.

Supervision and Treatment Team workers took active steps to respond to instances of non-compliance. The Drug Court Sheriffs had a number of sanctions without recourse to formal breach proceedings, although sentencers believed that the range of actions currently available to the Drug Court was insufficient. During the first six months of the pilot Drug Court in action, only one Order had been breached and Drug Court Sheriffs has made very few amendments to Orders to encourage compliance.

**Effectiveness of the Drug Court**

There was a general optimism among those involved in the operation of the Drug Court that it would be successful in reducing drug use and associated offending behaviour. All of those on Drug Court Orders who were interviewed reported significant reductions in drug use and offending and were positive overall about their experience of Drug Court treatment and supervision. Boredom was, however, a
common problem and Drug Court clients would welcome more organised structure in their lives.

The main strengths of the Drug Court were perceived to be the ‘fast-tracking’ of offenders, the existence of a trained and dedicated team in regular contact with each other and the system of pre-court review meetings and reviews. The Drug Court Sheriffs reported feeling much better informed about drug use as a result of their contact with other professionals and with people on Drug Court Orders. There was support for the existence of a specialist Drug Court, including from among other sheriffs who sat in Glasgow Sheriff Court.

Issues around multi-disciplinary team working within the Supervision and Treatment Team were believed to have undermined the effectiveness of the services provided to people in Drug Court Orders. The management arrangements were said by staff to be unnecessarily complex, the premises were inadequate and the staffing levels were too low, resulting in unrealistic workloads for the social workers and addiction workers. Each of these factors undermine opportunities for a genuinely collaborative, multi-disciplinary approach.

The workload for different professional groups involved in the Drug Court was variable, being more manageable for the Sheriffs and less so for the Supervision and Treatment Team. The sheriffs who sat in the Drug Court did not believe that its introduction had impacted significantly — in either a positive or negative way — on the workload of the sheriff court.

Factors that the Drug Court Sheriffs thought would further enhance the operational effectiveness of the Drug Court included the availability of additional sanctions for non-compliance, a more sophisticated system of rewards and, possibly, the introduction of a mentoring system for people on Drug Court Orders.

**CONCLUSIONS**

The formative and process evaluation of the first six months of the pilot Drug Court in action suggests that the initiative has largely been a success, with the role of the Drug Court Sheriffs having been critical in this respect. Certain issues have been identified that will require particular attention in the next phase of the pilot. These include the police contribution to the referral process, the multi-disciplinary team-working, the workload of different professionals involved in the operation of the Drug Court and the availability of a wider range of sanctions and rewards for, respectively, non-compliance and progress. Overall, however, the Glasgow Drug Court was perceived to be very effective in providing a resource for drug-using offenders. The dedicated team and resources were viewed as a positive contribution to the reduction of drug-related offences in Glasgow.
The Law Society of Scotland

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26 Drumsheugh Gardens
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8 January 2003

Mrs. Christine Grahame, MSP,
Convener, Justice 1 Committee,
c/o Room 3 9 Committee Chambers,
The Scottish Parliament,
EDINBURGH EH99 1SP

By e-mail

Dear Mrs. Grahame,

CIVIL LEGAL AID REFORM

Thank you for your letter of 19th December 2002 with regard to the above and the correspondence you received from Open Secret dated 15th November and Scottish Women's Aid dated 5th December 2002.

In my letter to you of 16th December I referred to a number of inaccuracies in the premises and conclusions of these letters. As you are aware the above letters suggest that the Proposal for Reform of Civil Legal Aid which was submitted by the Law Society of Scotland to the Scottish Executive in October 2002 would result in vulnerable people ending up losing out on the help that solicitors currently provide. In addition, Scottish Women's Aid stated that the proposals would result in a lack of accountability and lessen the likelihood of contributions being returned to applicants. These premises are simply inaccurate, and it seemed appropriate to advise you of this.

Briefly the Society's Proposal offers a new system of quality assurance together with administrative reform in applications, reporting and feeing in relation to civil legal aid matters. The proposed reform of the feeing structure introduces a new system of block fees. It is currently being discussed with the Scottish Executive.

I would refer the Committee to the Society’s submissions to the Access to Justice Inquiry by the Justice and Home Affairs Committee. I trust that the Society’s submissions on that occasion make it clear that it is inconceivable that the Society would endorse any reforms that would disadvantage vulnerable people.

In the letter from Scottish Women's Aid it is suggested that the current process has not been transparent. However the proposal has been discussed at length with the Scottish Legal Aid Board and the Legal Aid Committee with additional wider consultation within the profession. A great deal of work and effort has been done to create a proposal which will provide the public with quality assurance and more rather than less accountability in addition to the existing regulatory quality controls.

The Society has now sent a copy of the finalised Proposal to Scottish Women's Aid for their information and is very concerned that there has been any misunderstanding between the Society and Scottish Women's Aid. The Society has offered to meet with Scottish Women's Aid to discuss this, and indeed any other matters of mutual concern should they wish to do so. The Society is also writing to Open Secret in similar terms.
The letter from Scottish Women's Aid states that the Law Society's draft Proposal was submitted to them by the Association of Independent Law Accountants and attaches a copy of their briefing "Review of Civil Legal Aid Fee Structures" which suggests their own proposal for modernisation. Scottish Women's Aid states that this briefing highlights many of their concerns.

There are a number of inaccuracies in the AILA paper. However on this occasion I shall focus only on those parts of the paper relating to vulnerable people.

At paragraph 1.6 of the paper it suggests "there is clear evidence that the proposal particularly threatens the delivery of Family Law and the ability of service providers to seek non-judicial avenues of dispute resolution". At paragraph 2.4 of the AILA paper it states that there will be prejudice to women and children. Many of the negotiators involved in the preparation of the Society's Proposal are experienced family law practitioners. Indeed the lead negotiator, the Convener of the Legal Aid Committee, Ian Smart, is on the Board of Cumbernauld Women's Aid. It is simply unbelievable that they would support any proposal that would threaten the delivery of family law to those most in need.

As one of the results of the Proposal will be that solicitors will not require to use law accountants in their dealings with the Scottish Legal Aid Board then the Committee may wish to consider the motives of the AILA in their briefings.

I hope that this is helpful.

Yours sincerely,

Moira Shearer

Mrs. Moira Shearer
Law Reform Assistant
Justice 1 Committee

Mrs Moira Shearer
Law Reform Assistant
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19 December 2002

Dear Mrs Shearer,

Thank you for your letter of 16 December in response to the letters received by the Committee from Open Secret (15 November) and Scottish Women’s Aid (5 December) regarding a possible proposal to introduce block fees for civil legal aid cases.

You highlighted in your correspondence that there were “a number of inaccuracies both in the premises and conclusions” in the letters submitted to the Committee and offered to provide a briefing to the Committee in the light of the meeting being held between the Law Society, the Executive and SLAB on 17 December.

The Committee considered the correspondence at its meeting on 17 December within the context of its legal aid inquiry, and agreed to defer consideration of the issues raised until the next meeting of the Committee scheduled for 14 January 2003.

Rather than provide a briefing, I would be grateful if the Law Society could respond in writing to the points raised by Scottish Women’s Aid and Open Secret and report back to the committee on the outcome of the meeting on 17 December between SLAB, the Law Society and the Executive by 9 January to allow the Committee to consider this issue further at its next meeting.

Yours sincerely,

Christine Grahame MSP
Convener
Dear Ms. Goldsmith,

JUSTICE 1 COMMITTEE MEETING 17TH DECEMBER - LEGAL AID

The Society has just seen the letters from Scottish Women’s Aid and Open Secret to the Convener of Justice 1 seeking a re-opening of the Legal Aid Inquiry.

There are a number of inaccuracies both in the premises and conclusions in the letters submitted to the Committee. At such short notice it is difficult to provide you with a comprehensive picture of the civil legal aid reform proposal, which has emerged as a result of 18 months of consultation and negotiations between the Society, the Scottish Executive and the Scottish Legal Aid Board.

As it transpires however, there is a scheduled meeting between the Society’s negotiators, the Executive and the Board tomorrow afternoon at 3 p.m. and in consequence we would be in a position to offer a short briefing to the Committee at, or prior to, their next meeting.

However, we are conscious of the constraints on the Committee’s time as they will be of ours given the scheduled meeting referred to. Nonetheless, if you do wish to meet with us tomorrow please let us know as soon as possible in the morning.

Yours sincerely,

[Signature]

Mrs. Moira Shearer
Law Reform Assistant
Dear Ms Grahame

5 December 2002

Re: Legal Aid Inquiry

I refer to my telephone conversation with Jenny Goldsmith regarding the enclosed papers. As discussed, I am writing on behalf of Scottish Women’s Aid to ask that, as a matter of urgency, your Committee re-open its enquiry into the Legal Aid System in Scotland.

As you are no doubt aware, there are currently discussions taking place regarding a new fee structure for solicitors and we believe that a proposal to introduce block fees for civil Legal Aid cases is due to be agreed by the Law Society. While we do not disagree with a review to consider updating the fees solicitors receive for the work they do, it is imperative that any decisions taken regarding changes be open and transparent and that the interests of consumers should be at the centre of these changes. The Law Society were asked for a copy of the proposals, in order to assess the impact on our service users, but they advised that they were unable to provide us with this information. We are, therefore, gravely concerned that the current process is not transparent and that the proposals will, amongst other issues, result in a lack of accountability, lessen the likelihood of contributions being returned to applicants, and reduce the amount of non-court work paid for, all of which will be seriously detrimental to the vulnerable women, children and young people who use our service.

We believe that this issue is due to be decided by the end of the year and would ask that your Committee re-open its inquiry into the Legal Aid system, to ensure that these changes can be properly scrutinised. As stated, the way the proposals currently stand, many vulnerable people are likely to be disadvantaged, or even excluded outright, from accessing the help that solicitors currently provide. We understand that the Cross Party Group on Men’s Violence Against Women have also written to the Committee to voice their concerns over this matter.

We have enclosed, for your information, various papers, including the Law Society’s Draft Proposal To Members, submitted to us by the Association of Independent Legal Accountants. Also enclosed are their own briefings on the matter, which highlight many of our own concerns.

We thank you in anticipation of your assistance and look forward to hearing from you.

Yours sincerely,

H. Louise Johnson - National Worker (Legal Issues)
For Scottish Women’s Aid

Norton Park, 57 Albion Road, Edinburgh EH7 5QY Tel: 0131 475 2372 Textphone: 0131 475 2389 Fax: 0131 475 2384
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Scottish Women’s Aid Company No. 128633. Registered in Edinburgh at Norton Park, 57 Albion Road, Edinburgh EH7 5QY
Recognised by the Inland Revenue in Scotland as an organisation with charitable status, which offers information, support and refuge to abused women and their children.

Scottish Women’s Aid is the national office for Women’s Aid in Scotland. We are a feminist organisation and we aim to end violence against women. With all affiliated local Women’s Aid groups in Scotland, we work to promote the interests of abused women and their children and provide an accessible and effective network and service. If you are not already a supporter, please help us by making a donation, or contact us for information about other ways of supporting our work.
15 November 2002

Christine Graham MSP
Convenor Justice 1 Committee
Committee Chambers
George IV Bridge
Edinburgh
EH99 1SP

Dear Christine

Legal Aid Inquiry

I am writing on behalf of Open Secret to ask that your committee reopen its enquiry into the Legal Aid System in Scotland.

As you are no doubt aware there are currently discussions taking place regarding a new fee structure for solicitors. We believe that a proposal to introduce block fees for civil legal aid cases is due to be agreed by the law society. While we agree that there needs to be some uprating of the money solicitors receive for the work they do we believe that any decisions taken regarding changes should be open and transparent and that the interests of consumers should be at the centre of these changes.

We believe that this issue is due to be decided by the end of the year and would ask that your committee reopen its inquiry into the legal aid system so that these changes can be properly scrutinised. The way the proposals currently stand many vulnerable people could end up losing out on the help that solicitors currently provide.

Yours sincerely,

Pauline McCue
Development Officer

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A confidential service
for adult survivors of
childhood sexual abuse
Background

1. The detailed background to the petition relating to Carbeth Hutters and subsequent related correspondence from Mr Ramsay of the Drimsynie Estate, Lochgoilhead, is contained in Committee Paper J1/02/38/9, which is attached for information.

2. The Committee last considered the issues raised by both the correspondence and the petition at its meeting on 12 November 2002, when it was agreed to write to the Minister for Justice on the following issues, whilst expressing to the Minister the Committee’s consternation that this issue had been under consideration for a long period of time with as yet no discernible possibility of resolving the matter:

   • how many responses were received to the Executive’s consultation on the matter and whether an analysis of responses was carried out;

   • what issues were raised in the responses, and whether there was support for legislation to protect hutters in Scotland; and

   • what action has been taken since the consultation period ended.

Response from the Minister for Justice

3. A response was received from the Minister on 27 January 2003 (attached). With regard to the first point, an analysis of the responses has been provided which shows that in total there were 283 responses in favour of legislation to give greater protection for hutters, with 21 consultees against the proposal and 15 responses which did not express a view.

4. It is accepted by the Minister that there is strong support for legislating in this area but the analysis points out that there was very little contribution from respondents as to the content of the legislation. However the Minister states in a Parliamentary Question to Robin Harper MSP on 7 November 2002 (attached) that there are substantial drawbacks with legislation protecting hutters, “Legislation would be contrary to the fundamental principles of Scots law, in particular that leased land under a short lease reverts to the landlord at expiry of the lease and that property built on leased land belongs to the landlord; legislation could not be retrospective or applicable to hutters only, and its promotion might precipitate changes to the ownership and management of
comparable estates in Scotland which would be profoundly damaging to the interests of hutters.”

5. In relation to the third point, the Minister advises that local negotiations were taking place at Carbeth and concerned to avoid taking steps that might prejudice discussions. The Department has kept in touch with developments at both Carbeth and Drimsynie estates. The Minister has given a commitment to respond to the Committee’s recommendations as soon as possible.

Correspondence from Mr Ramsay, Secretary to the Lochgoilhead Chalet Owners Association

6. Mr Ramsay has provided the Committee with a copy of a letter sent to the Minister for Justice on 19 December 2002 (attached) which clarifies that there is currently no civil action ongoing which would prevent the Executive progressing this matter.

Options

7. The Committee is asked to consider whether it wishes to pursue the issues raised in the correspondence received.

8. If so, the Committee may wish to write to the Minister for Justice asking:

   • that the Executive set out in detail why legislation to protect hutters would be contrary to the fundamental principles of Scots law and explain what the impact of this position will be on the Executive’s response to the outcome of the consultation exercise;

   • to clarify the status of local negotiations and give an indication as to when a conclusion can be reached and whether the outcome of these negotiations will have an impact on hutters elsewhere in Scotland; and

   • for a timescale for responding to the Committee’s recommendations;
Correspondence relating to Petition PE14 from the Carbeth Hutters Association

Note by the Clerk

Background

Public Petition PE14
1. The Carbeth Hutters' Association submitted a petition to the Parliament (Petition PE14) in September 1999. The Petition calls for the Scottish Parliament to bring in "legislation which will ensure that people who have owned property on rented land for at least four years, where that property cannot be removed without being destroyed, have secure tenancies and access to rent control, to ensure that rents cannot be arbitrarily increased above inflation without reason, and that such owners cannot be deprived of their property without fair cause."

Report by the Justice and Home Affairs Committee
2. The petition was referred by the Public Petitions Committee to the Justice and Home Affairs Committee to consider the issues it raised. The Justice and Home Affairs Committee took evidence on:

- whether a statutory system of rent control and arbitration for huts was required; and

- whether legislation to give hutters increased security of tenure should be introduced.

3. On 2 May 2000, the Justice and Home Affairs Committee published its 'Report on Petition PE14 from the Carbeth Hutters' Association'.¹ The report invited the Executive to consider ways of providing legislative protection for hutters, specifically:

- a system of rent control and arbitration; and

- increased security of tenure which balances the huts' status as holiday homes with recognition of hutters' ownership of an immovable structure.

4. An opinion was also sought from the Executive on whether the then forthcoming Land Reform Bill offered a suitable opportunity to address this issue.

The Executive’s Consultation Paper

5. In response to the Report, the Executive commissioned research into ‘Huts and Hutting in Scotland’. The research identified the majority of sites across Scotland and examined their origins, growth and in some cases decline. It also looked at the characteristics of sites and huts, their use and ownership. The Executive considered it a useful piece of work, which placed the Carbeth issue in the wider context of hut use and ownership throughout Scotland.²

6. On 15 December 2000 the Executive issued a Consultation Paper on possible legislation to provide greater protection for hutters in Scotland³. The consultation paper explained the background to the situation and set out the detailed provisions that might be required to provide legislative protection for hutters. In particular they were keen to hear views on:

- whether or not, in principle, the Executive should seek to promote legislation to give greater protection for hutters;
- the detailed legislative provisions that would be required if legislation along these lines were to be introduced into the Scottish Parliament.

7. The closing date for the consultation was 9 March 2001. A decision on whether to proceed with legislation would be taken after responses to the consultation had been analysed.

Correspondence

8. Dorothy-Grace Elder wrote to the Convener of the Public Petitions Committee (letter attached) enclosing a letter from Mr J T L Ramsay, the Secretary of the Lochgoilhead Chalet Owners Association, asking that the Petitions Committee look into the current situation regarding hutting in Scotland. The correspondence refers to an ongoing dispute between Drimsynie chalet owners and the Drimsynie Estate landowners, but also questions why the Executive had taken no action since the consultation period ended in March 2001. As such, the correspondence has been passed to the Justice 1 Committee, as successor to the Justice and Home Affairs Committee, to consider.

9. Members should also note that Robin Harper MSP has lodged a Parliamentary Question on 10 October asking when the Executive publish its proposals in the light of the responses to its Consultation Paper.

Options

10. The Committee is asked to consider whether it wishes to follow-up the general issue raised in Mr Ramsay’s letter.

11. If so, the Committee may wish to write to the Minister of Justice asking:

- how many responses were received and whether an analysis of responses was carried out;
- what issues were raised in the responses, and whether there was support for legislation to protect hutters in Scotland; and
- what action has been taken since the consultation period ended.
S1W-30533 - Robin Harper (Lothians) (Green) : To ask the Scottish Executive when it will publish its proposals in the light of the responses to its Consultation Paper on possible legislation to provide greater protection for hutters in Scotland.

Answered by Mr Jim Wallace (7 November 2002): Consideration of the consultative response has confirmed substantial drawbacks to any attempt to legislate in this area. Legislation would be contrary to the fundamental principles of Scots law, in particular that leased land under a short lease reverts to the landlord at expiry of the lease and that property built on leased land belongs to the landlord; legislation could not be retrospective or applicable to hutters only, and its promotion might precipitate changes to the ownership and management of comparable estates in Scotland which would be profoundly damaging to the interests of hutters.

We are aware that constructive discussions continue at local level to resolve the difficulties at Carbeth. It would not be appropriate for the Executive to seek to intervene in private negotiations between landlord and tenants, but we would encourage local resolution of such difficulties.
Dorothy-Grace Elder, MSP

17th October 2002

John McAllion, MSP
Chairman
Public Petitions Committee
Scottish Parliament

Dear John,

Hutters in Scotland

I enclose for your attention a copy letter dated 21 September from J.T.L. Ramsay, Secretary of the Lochgoilhead Chalet Owners Association and my reply.

"I wonder if you would be good enough to look into the issues referred to in the second half of the letter?"

It may be that the Public Petitions Committee may have to reconsider this matter. I would appreciate your thoughts.

With Best Wishes

Dorothy-Grace Elder, MSP

Enclosure
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email:-
dorothy.elder@scottish.parliament.uk
Dear

Greater Protection for Hutten in Scotland
Drumshet Estate Lochgoilhead Argyll & Bute
Loch Lomond & the Trossachs National Park

At 8am on the morning of Friday the 20/9/02, Chalet number 36 situated within the Drumshet Holiday Village was entered by employees of the landowner in the absence of the chalet owner. The furniture, cooker, personal effects and external shed belonging to the chalet owner Mr George Scott a retired maths teacher from Edinburgh were removed and taken away without his knowledge or consent.

It is considered that this process will be the first step towards the eviction of Mr. Scott and demolition of chalet number 36. This would be the first forced eviction in the ongoing dispute between the Caribeth hutters Drumshet chalet owners and their respective landowners and certainly the first forced eviction within the boundaries of Scotland’s National Parks.

As a result of a continuing policy of high rents and prohibition of chalet sales by the landowner it is understood that four chalets have already been acquired by him and replaced with caravans on short term leases costing in excess of £60000 each. Since March 2002 Argyll and Bute Council have been unable to confirm whether or not planning permission was necessary or whether planning permission was granted by them for this new development.

Despite general support and recommendations from the former Justice and Home Affairs Committee and the Public Petitions Committee with regard to rent control and security of tenure, the Scottish Executive appears to have taken no action in relation to the above consultation process which ceased on 9/3/01.

How many evictions will have to take place before a decision is made?

I shall be pleased to receive any comments which I can take back to the members of my Association.

Yours sincerely,

J.T.L. Ramsay
Sec., Lochgoilhead Chalet Owners Association

[Signature]
Copy to :-

Steve Farrell
Committee clerk
Public Petitions Committee
Scottish Parliament
Dorothy-Grace Elder, MSP

1st October 2002

gelder@public.petitions.aramis

J.T.L. Ramsey
Secretary
Lochgilphead Chalet Owners Association
72 Randolph Road
GLASGOW
G11 7JL

Dear J.T.L. Ramsey,

Hurters in Scotland

I refer to your letter of 21 September 2002 regarding your concerns over the removal of items belonging to a chalet owner, Mr. George Scott from his chalet situated in Dalmarnock Holiday Village.

I have to advise you that due to current parliamentary procedures, I am unable to become involved in an issue that is of concern to the Glasgow constituency.

I have been informed that the chalet owner has lodged a complaint with the Police from the constabulary in Stirling District.

I shall raise this matter with the Chairman of the Public Petitions Committee in order that a more substantive reply can be made regarding your general points over rents and evictions of chalet owners.

With Best Wishes.

Dorothy-Grace Elder, MSP

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dorothy.elder@scottish.parliament.uk
Dear Jim,

Correspondence relating to hutters in Scotland

I am writing in regard to correspondence (attached) received from Lochgoilhead Chalet Owners Association on security of tenure and rights of access for those who own property built on leased land. This correspondence was considered by the Committee at its meeting of 12 November 2002. I enclose the relevant section of the Official Report of the meeting for your information.

The correspondence refers to an ongoing dispute between Drimsynie chalet owners and the Drimsynie Estate landowners. It also questions why the Scottish Executive has taken no action since the consultation period for its consultation paper on possible legislation to provide greater protection for hutters in Scotland ended in March 2001.

The Committee agreed that it wished to write to you to request responses on the following points:

- how many responses were received for the consultation and whether an analysis of responses was carried out (if an analysis was carried out, the Committee would be grateful for a copy of this);
- what issues were raised in the responses, and whether there was support for legislation to protect hutters in Scotland; and
- what action has been taken since the consultation period ended.

In addition, the Committee expressed consternation that this issue had been under consideration for a long period of time with as yet no discernible possibility of resolving the matter. The Committee further agreed that I should refer you to a
Parliamentary Written Answer of 24 April 2002 (contained within attached Official Report of the meeting extract) in which you stated; 'I expect within the next few weeks to announce conclusions on the committee's report and the subsequent consultation.'

The Executive has not yet issued a formal report on its consultation paper regarding hutters in Scotland. I would be grateful if you would inform the Committee of the timescale for an announcement on this issue.

I would be grateful if you could copy your response to this letter to the Committee clerks at the address denoted above.

Yours sincerely

Christine Grahame MSP
Convener, Justice 1 Committee

cc  Scott Rogerson, DCLO, Scottish Executive Justice Department
    J T L Ramsay, Secretary, Lochgoilhead Chalet Owners Association
Petition

Carbeth Hutters (PE14)

The Convener: Agenda item 7 is on petition PE14.

Lord James Douglas-Hamilton: I should again declare an interest that does not directly relate to the Carbeth hutters. I am an unpaid director of a family company that has a number of properties that either have or have had ground rents.

On the petition, I think that the recommendation in paragraph 11 of J1/02/38/9 is fine.

The Convener: Before we proceed, I refer members to that paper and to the options in paragraphs 10 and 11. I would like members’ views; Lord James Douglas-Hamilton has just given his view, although I am not sure what proposal he is content to accept.

Lord James Douglas-Hamilton: Paragraph 11 is fine.

The Convener: Right. Our course of action is that we will ask how many responses were received and whether an analysis of responses was carried out. We will also ask what issues were raised in the responses, whether there was support for legislation to protect hutters in Scotland and what action has been taken since the consultation period ended.

Does anyone have any other suggestions?

Maureen Macmillan (Highlands and Islands) (Lab): I am happy to go along with the recommendations in paragraph 11. It is ridiculous that the issue has died. A lot of work was put into it, a consultation document was produced with recommendations—I remember filling in my suggestions—and the whole topic appears to have vanished.

14:45

The Convener: I have a copy of the origina report from the Justice and Home Affairs Committee and I think that it is important to put on record again what it says in paragraph 24:

"With the exception of one committee member, Phil Galle, we therefore support the introduction of statutory measures to give hutters increased security of tenure so that they may not be deprived of their property without due cause and explanation."

I will also read out an answer from Jim Wallace to a written question, which he gave on 24 April, because it links to how the matter has dragged on. My question was:

"To ask the Scottish Executive, further to the answer to question S1W-23538 by Mr Jim Wallace on 20 March 2002, when it will report to (a) the Justice Committees and (b) the Parliament on its conclusions from its consultation exercise on Huts and Hutters and the report on the Carbeth Hutters by the former Justice and Home Affairs Committee."

I received a holding answer on 4 April and a substantive answer on 24 April, which was:

"I am aware that constructive discussions are taking place at local level to resolve the difficulties at Carbeth which prompted the committee’s report. All of us who are keen to see a fair and amicable settlement to the issue will hope for a positive outcome to the current discussions. I would not, however, wish to intervene in private negotiations, nor would it be appropriate to do so.

I expect within the next few weeks to announce conclusions on the committee’s report and the subsequent consultation. It is already clear however that there would be substantial drawbacks to any attempt to legislate in this area. Some of these were recognised by the committee itself. Such legislation would be contrary to fundamental principles of Scots law, in particular that leased land under a short lease reverts to the landlord at expiry of the lease and that property built on leased land belongs to the landlord. Moreover, legislation could not be retrospective or applicable to hutters only and its promotion might precipitate changes to the ownership and management of comparable estates in Scotland which would be profoundly damaging to the interests of hutters."—[Official Report: Written Answers, 24 April 2002; p 485.]

I apologise to members that that was not in their papers. It is the most recent answer that we have had on the Carbeth hutters. As far as I understand, we have not yet had a full conclusion, but the hints in the answer are not good. I read that by way of information and against the background of a long time ago when the committee was keen to see some legislation. Ministers cannot keep saying, "I will do this shortly." That answer was in April. Do we want to refer to the parliamentary answer and to point to the fact that there has still not been any other formal response?

Members indicated agreement.
January 2003

Dear Minister,

Thank you for your letter of 10 December about correspondence you have received from a member of the Lochgoilhead Chalet Owners Association about security of tenure and rent control for those who occupy property built on leased land.

In response to the Committee’s first and second points, I enclose an analysis of the consultative response. The full set of responses can be made available to SPICe if required, except for a few responses where confidentiality was requested.

In my reply to your written question last April, I noted that constructive discussions were taking place at local level to resolve the difficulties at Carbeth which prompted the Committee’s report. I also explained that, while the Executive hoped for a positive outcome to those discussions, it would not be appropriate for the Executive to intervene in what were private negotiations. I also referred to the substantial drawbacks to any attempt to legislate in this area, some of which were recognised by the Committee itself. I replied on similar lines to a question from Robin Harper MSP on 7 November 2002.

We are aware that local negotiations at Carbeth have been constructive and concerned to avoid taking steps that might prejudice the outcome of discussions between the Trustees and the landlord. We have kept in touch with developments at both Carbeth and Drimsynie estates and have also given the Committee’s proposals and the consultative response detailed and careful consideration. I shall give a substantive response to your Committee’s recommendations as soon as possible.
A copy of this letter is being sent to the Committee clerks as requested.

Sincerely,

JIM WALLACE
CONSULTATION ON LEGISLATION TO PROVIDE GREATER PROTECTION TO HUTTERS IN SCOTLAND

Analysis of response to consultation paper issued by Scottish Executive Development Department on 15 December 2000

Introduction

1. On 15 December 2000, the Scottish Executive Development Department published a consultation paper requesting views on the following issues:

a. Whether or not, in principle, the Executive should seek to promote legislation to give greater protection for hutters;

b. The detailed legislative provisions that would be required if legislation along these lines was to be introduced into the Scottish Parliament.

2. Suggestions as to what the detailed legislative provisions might be were included in the body of the paper, which in particular advocated legislation specific to hutters and hut sites rather than extending the scope of other legislation, such as that applying to caravans and mobile homes or the private rented sector; or covering ground leases other than for huts.

3. Responses were requested by 9 March 2001. Following receipt of the responses, the subject was transferred to the Scottish Executive Justice Department.

Overview of responses

4. There was a total of 521 separate responses to the consultation. Of these 180 letters were pro formas of different kinds, sent in by a range of individuals and organisations including MSPs. The broad position in these letters was to support legislation, and to agree with the proposed detailed provisions. In particular the most commonly used pro forma upheld the proposition that legislation should be specific to hutters and hut sites, and should allow for compensation, assignation and access rights.

5. A further 54 letters were not pro formas, but followed a similar line to the pro forma responses. These included a few letters that indicated an incomplete understanding of the issues, for example based on the belief that the hutters were losing their “homes” or drawing an analogy with the clearances.

6. Some 10 responses took no firm view on the question of legislation, either expressly or implicitly, except in one case to urge that “humanity should prevail”.

7. Twelve (12) responses argued against legislation and two (2) proposed arbitration.

8. One response was impossible to read.

9. Three (3) responses argued for legislation by reference specifically to another hut estate, where rents remained low but it was alleged that hutters received no services, not even clean water.
10. Thirty (30) responses were received by or on behalf of 'owners' of chalets on one estate. These tenants believed that legislation should be enacted which extended to chalets as well as huts.

11. 28 responses examined the legal issues and expressed some personal or organisational opinion on the details. Of these 16 favoured legislation, 8 opposed legislation while commenting on the details should legislation proceed, and 4 did not express any firm view.

In total there were 283 responses in favour of legislation generally, 21 against, and 15 which expressed no view (or in one case could not be read). The consultation therefore produced a strong response in favour of legislation, but only a limited contribution towards considering what the contents of that legislation might be.
S1W-30533 - Robin Harper (Lothians) (Green) : To ask the Scottish Executive when it will publish its proposals in the light of the responses to its Consultation Paper on possible legislation to provide greater protection for hutters in Scotland.

Answered by Mr Jim Wallace (7 November 2002): Consideration of the consultative response has confirmed substantial drawbacks to any attempt to legislate in this area. Legislation would be contrary to the fundamental principles of Scots law, in particular that leased land under a short lease reverts to the landlord at expiry of the lease and that property built on leased land belongs to the landlord; legislation could not be retrospective or applicable to hutters only, and its promotion might precipitate changes to the ownership and management of comparable estates in Scotland which would be profoundly damaging to the interests of hutters.

We are aware that constructive discussions continue at local level to resolve the difficulties at Carbeth. It would not be appropriate for the Executive to seek to intervene in private negotiations between landlord and tenants, but we would encourage local resolution of such difficulties.
Jim Wallace MSP Deputy First Minister  
and Minister for Justice  
St Andrews House  
Regent Road  
Edinburgh EH1 3DG

72, Randolph Rd  
Glasgow G117JL  
19/12/02

Dear Mr Wallace

Hutters in Scotland

I note that in a written answer to Robin Harper MSP (7/11/02) you indicated that "the Executive was aware of developments on Drimsyne Estate but it would not be appropriate to comment on any related civil action."

I also note that in a letter to Sandra White MSP dated 14/11/02 you state that you "have been made aware of the situation at Drimsyne through officials within the Justice Department with whom Mr Ramsay has kept in touch...Unfortunately it would be inappropriate for me to comment on this matter as I believe a civil action has been raised."

I can also confirm receipt of the letter from your department dated November 2002 in which it is stated that "Due to the nature of this situation it would not be appropriate for the Executive to comment on any related civil action which is known to have been initiated and rightly so as this is a wholly private matter between the tenant and the landlord."

I also understand that Christine Graham MSP wrote to you on the 10/12/02 expressing the consternation of the Justice 1 Committee that this issue had been under consideration for such a long period of time with no discernable possibility of resolving the matter.

Let me make it clear that NO civil action has been raised in relation to the dispute at Drimsyne nor is it the intention of Mr George Scott to pursue any future civil action in relation to his eviction and the subsequent demolition of his chalet owing to the potential legal costs involved.

Current civil action can no longer be used as an excuse for political delay and prevarication.

The inability or unwillingness of the Executive to make a decision on this matter since the consultation period ended in March 2001 has caused much wastage of the time of officials, MSPs and therefore taxpayers money.

It has also caused continued anxiety and uncertainty for the owners at Drimsyne who would now welcome a decision of any kind.
Now that the issue of civil action has been clarified I trust that you can provide a more meaningful reply to the undernoted MSPs who have, unlike yourself, shown an ongoing and genuine concern to have this matter satisfactorily resolved.

Yours sincerely

J.T.L. Ramsay

Secty to the Lochgoilhead Chalet Owners Association

copy to Christine Graham MSP

Robin Harper MSP
Sandra White MSP
Winnie Ewing MSP
Pauline McNeill MSP
John McAllion MSP

Joyce McVarrie  S.E. Justice Department
Jeremy Watson  Scotsman
Background

1. This petition (attached) calls for the Scottish Parliament to investigate the practice of couping Clydesdale Horses and to introduce legislation to make such style of shoeing illegal unless sanctioned, for medical reasons, by a veterinary surgeon\(^1\).

2. Committee members are reminded to note that, regrettably, the petitioner, Mr Kenneth Mitchell, a registered farrier, has died since submitting this petition. Mr Jim Sharp is now the primary contact for the petition.

3. The petition has been referred to the Justice 1 Committee because this matter is dealt with by the Justice Department of the Scottish Executive as it is responsible for criminal sanctions behind the protection of domestic and captive wild animals which is mainly covered mainly by the Protection of Animals (Scotland) Act 1912.

Committee’s past consideration and actions

4. The Committee first considered this petition at its meeting on 3 September 2002. The Committee considered a wide range of views submitted to the Public Petitions Committee and collected by the petitioner (see Committee meeting paper for the petition, J1/02/28/9). The Committee subsequently agreed to write to the British Equine Veterinary Association (BEVA) to establish whether it would be practicable for vets to be present when couping of horses occurs. Responses were received from BEVA, Mr Jim Sharp, the Laminitis Clinic and Animal Concern and considered by the Committee at its meeting on 29 October 2002.

5. Having discussed the petition on these occasions, the Committee agreed that the practice of couping is inappropriate and cosmetic and wished to end this practice by consensus with the organisations involved in couping. The Committee subsequently agreed to write to both the Farrier’s Registration Council and the Worshipful Company of Farriers asking if they will ban their members if they are involved in couping. The Committee also agreed to write to the Clydesdale Horse Society asking if they will require their judges to disqualify horses subject to couping from their events.

Responses

6. The Committee has now received responses from the Farrier’s Registration Council and the Clydesdale Horse Society. The Worshipful Company of Farriers

\(^1\) Couping (or show shoeing) is a method of shoeing horses that supports only the front of the hoof and causes the back of the hoof to drop. It is used primarily at horse shows and exhibitions to create an exaggerated version of the Clydesdale’s natural stance which is regarded as a desirable feature in the show ring. The late petitioner alleged that couping can cause both short and long term medical problems and may shorten the life of the horse. Two motions have been lodged in the Parliament on 17 November 2000 calling for a ban of couping: S1M-1366 Dr Sylvia Jackson and S1M-1365 Nick Johnston, both of which have expired and no longer appear in the Business Bulletin.
has not responded to the Committee. The Committee has also received correspondence from Sylvia Jackson MSP and several letters from Mr Jim Sharp. The aforementioned documents are attached.

Responses from the Farrier’s Registration Council and the Clydesdale Horse Society

7. The Farrier’s Registration Council is not willing to impose an outright ban on their members if they are involved in couping as requested by the Committee. The Council states that they have received no evidence to prove that couping causes suffering to horses despite asking for this information. The Council states that without this evidence, they cannot discipline their members. The Council’s current policy to date therefore has been ‘by way of persuasion rather than coercion’ although it disapproves of couping as being cosmetic and potentially harmful. In practice, the Council together with the Worshipful Company of Farriers has produced a joint statement in February 2001 on the shoeing of Clydesdale horses for showing (attached to the response by the Council).

8. Similarly, the Clydesdale Horse Society is not willing to require their judges to disqualify horses subject to couping from their events as requested by the Committee. The Society states that it endeavours to ensure show Clydesdales are shod in accordance with the Society’s Guidelines for Showshoes on Clydesdale Horses which have been issued to all its members on several occasions. These Guidelines (attached to the Society’s response) were issued in February 2001 and have been considered by the Committee at previous meetings in regard to the petition. The Society told the Committee that if the shoeing of any horse does not comply with the guidelines, the owner will be given a verbal warning and warned that if the guidelines are not observed at future shows, he/she may be asked to leave the ring.

9. The Registrar of the Farrier’s Registration Council states that he is confident that these Guidelines are being enforced and adhered to having observed horses at the Royal Highland Show this year. He also mentions two further measures agreed to by the Clydesdale Horse Society. These are, firstly, to hold a seminar for farriers to explain the Guidelines and the reasons for them, and secondly, to appoint a Shire horses farrier (rather than a Clydesdale horse farrier) to judge Clydesdales at the Spring Show in Perth.

Unregistered farriers in the Highlands and Islands region

10. The Registrar is however concerned that the Farrier’s Registration Council’s powers do not extend to the Highlands and Islands, a point which was made to Committee during previous consideration of this petition. The Council state that they have ‘no powers to regulate unregistered farriers or owners who choose to shoe their horses badly or cruelly in the Highlands and Islands region’. The Council state that there is full support from registered farriers and equine welfare organisations to extend the applicability of the Farriers (Registration) Act 1975² to include the Highlands and the Isle of Skye. The Council states that there is general agreement on extending applicability to all of the Islands region but notes

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² The Farriers (Registration) Act 1975 as amended by the Farriers (Registration) (Amendment) Act 1977 is intended to prevent and avoid suffering by and cruelty to horses arising from the shoeing of horses by unskilled persons; to promote the proper shoeing of horses; to promote the training of Farriers and Shoeing Smiths; to provide for the establishment of a Farriers Registration Council to register persons engaged in Farriery and the shoeing of horses; to prohibit the shoeing of horses by unqualified person; and for purposes connected therewith.
that there is concern of the practicalities of this due to bad weather conditions or the availability of farriers. The Council requests that the Committee address this issue.

Responses from the petitioner and Sylvia Jackson MSP
11. The petitioner, Mr Jim Sharp, has responded to the correspondence from the Farrier’s Registration Council and the Clydesdale Horse Society. He disagrees with these organisations that there is no evidence that couping causes suffering and highlights the evidence from vets and equine welfare experts previously submitted by the original petitioner, Mr Kenneth Mitchell (see Committee paper J1/02/28/9). The petitioner is also concerned that the Clydesdale Horse Society can only apply its guidelines to the shows that it organises and that the Farrier’s Registration Council does not have powers over owners or unregistered farriers (especially those in the Highlands and Islands region) who carry out couping. Sylvia Jackson MSP supports the petitioner’s views although she recognises that improvements have been made to farriery standards.

Procedure
12. The Standing Orders make clear that, where the Public Petitions Committee refers a petition to another committee, it is for that committee then to take “such action as they consider appropriate” (Rule 15.6.2(a)).

Options
13. The various organisations involved with Clydesdale horses believe that existing guidelines are sufficient and do not agree with the Committee that the practice of couping should be banned. There is however support for extending the regulation of farriers to the Highlands and Islands region which does not currently exist.

14. The Committee may wish to consider whether it agrees that existing guidelines are sufficient and to take no further action.

15. Alternatively, the Committee may wish to write to the Minister for Justice to ask that the Scottish Executive introduce legislation in the next Parliamentary session to order to ban the practice of couping.

16. Another option for the Committee would be to ask the Scottish Executive to extend the applicability of the Farriers (Registration) Act 1975 to include the Highlands and the Isle of Skye region as requested by the Farrier’s Registration Council so that all farriers in Scotland are registered.

Previous Committee papers for reference
- J1/02/28/9
- J1/02/36/5
24 January 2003

Dear Christine,

Petition PE347 - The Couping of Clydesdale Horses

I understand that the above petition will again be considered by the Justice 1 Committee in the near future. As you will know I have been involved with the above petition since its inception, both as a constituency MSP and as a member of the CPG on Animal Welfare, and would like take this opportunity to again give my views to the Committee on this matter.

Having read the evidence you have received from both The Farriers Registration Council and the Clydesdale Horse Society it can be seen that the crux of the matter relates to the definition of suffering. Having viewed a number of letters sent to the original petitioner, the late Kenny Mitchell, by respected veterinary experts I have no doubt that couping shoeing is detrimental to the well-being of the horse and has the ability to cause significant suffering in the medium to long-term.

I do recognise that both The Farriers Registration Council and the Clydesdale Horse Society have made moves to improve farriery standards within the Clydesdale horse world. However even with the CHS regulations in place, unlevelled shoeing continues. It also must be noted that these regulations have absolutely no authority within the Highlands and Islands region, an issue which I believe merits the attention of the Parliament.

I hope that the Committee can take these views into account when this issue is discussed.

Regards,

Sylvia Jackson MSP
Ms Jenny Goldsmith,
Assistant Clerk,
Justice 1 Committee,
The Scottish Parliament,
Room 3.11,
Committee Chambers,
Edinburgh EH99 1SP

Friday, 17 January 2003

PF347 Couping of Clydesdale Horses

Dear Ms Goldsmith,

Thank you for forwarding copies of the letters from The Clydesdale Horse Society (CHS) of 13/1/03 and The Farriers Registration Council (FRC) of 15/11/02. I would be grateful if my comments on these letters could be passed to the members of Justice 1 Committee before they next consider this issue.

I will first address the letter from the FRC.

The FRC accuses the late Mr. Mitchell and his supporters (many of whom are registered farriers) of producing material which “has been more emotional than factual” and does not differentiate between coupling and “bad farriery”.

Kenneth Mitchell based his case on facts backed by expert evidence from respected veterinary and equine science sources – not on emotional argument. The FRCs own joint statement with The Worshipful Company of Farriers makes no differentiation between coupling and bad farrier stating that they regard: “... unbalanced or unlevel shoeing as bad practise and contrary to established teaching unless it is carried out for specific remedial or veterinary purposes.”

The FRC seems to put much faith in the CHS guidelines on showshoes for Clydesdales. However they qualify this by noting that the guidelines will only “minimise the risk of injury or subsequent damage to the horse” “if observed”. The CHS does not have the power to police horse shows other than those they organise and, judging by the number of coupled horses shown at such events last year, the guidelines are not observed even at their own shows. The FRCs apparent faith in the CHS is weakened when they reveal that they want a farrier “from the Shire Horse
World, not the Clydesdale world" to inspect Clydesdale shoes at the Spring Show in Perth.

In their letter the FRC admit they currently do not have powers to regulate farrier in the Highlands and Islands and that they cannot control owners or unregistered farriers who carry out coup shoeing. It must also be remembered that, even if they were properly observed, the CHS guidelines only apply to those shows organised by the CHS.

I would now like to briefly address the CHS letter of January 13th.

Yet again the CHS display their arrogance by clearly stating that they will not ban coup shoeing. They also say that if horses shown at those shows they do police fail to meet their guidelines for coupling the owners will be given a verbal warning and, if they do it again at subsequent shows, they "may be asked to leave the ring". I'm sorry but this "two strikes and you are out policy" would be laughable if we were not dealing with something as serious as animal welfare.

Guidelines, even good guidelines properly policed throughout the equine world, are only guidelines and provide no legal protection for the welfare of the horses. The CHS guidelines are lax and, even at those few shows where they can be policed, still allow horses and foals to be fitted with unbalanced shoes.

Unlike the FRC and the CHS the Scottish Parliament can police the whole of Scotland by passing legislation making coup or unlevel shoeing illegal unless carried out for specific veterinary purposes. I urge you to recommend this course of action and give these horses the legal protection they deserve.

Yours sincerely,

Jim Sharp
Ms Jenny Goldsmith,
Assistant Clerk,
Justice 1 Committee,
The Scottish Parliament,
Room 3.11,
Committee Chambers,
Edinburgh EH99 1SP

7 November 2002

PE347 Couping of Clydesdale Horses

Dear Ms Goldsmith,

Thank you for your letter dated 22nd October enclosing the Official Report of The Justice 1 Committee meeting of 29th October. I wish I too could see into the future because, if I could, I might not have promised the original Petitioner on his deathbed that I would take responsibility for his Petition after his demise. If I had known then that our MSPs had an apparent phobia about taking decisions I might have let this Petition die when my good friend Kenny Mitchell passed away.

However I agreed with Kenny that couping should be banned and I kept his campaign going in the hope that our Parliament would do what all the supposedly responsible bodies have failed to do - stop the cruel practise of cosmetic coup shoeing of Clydesdale horses. That is why I am appalled and very angry at the outcome of the meeting of October 29th. The Committee has referred the matter back to the Farrier’s Registration Council, the Worshipful Company of Farriers and the Clydesdale Horse Society.

If the Committee had read all the evidence supplied by Kenny Mitchell, Animal Concern and others they would have learned that the Farrier’s Registration Council has already refused to bar members who practise cosmetic coupings, that not all horse shoeing in Scotland is carried out by registered farriers, that the Worshipful Company of Farriers is a trade association with no power over farriers and that the Clydesdale Horse Society failed to properly implement their useless code of conduct on couping and do not have any jurisdiction over non members or the many horse shows they are not involved in organising.
All avenues have been tried and have proved that the only way to stop couping is to make it illegal yet the Justice 1 Committee decided to refer it back to the position we were in two or three years ago. If buck-passing was an Olympic sport our MSPs could win Scotland a barrow load of gold medals.

I would be grateful if you would pass this letter to all members of Justice 1 Committee so that they know how angry and dismayed I am at the outcome of their meeting. I can only hope that, when they do receive what I expect shall be negative or non-committal replies from the three organisations they have written to, they will act on their own obvious concerns over couping and the concerns expressed to them by various equine experts and animal welfare bodies and legislate to make cosmetic couping illegal.

The Clydesdale horse was for centuries the backbone of Scottish agriculture. Now it is paraded like a poodle with its feet maimed to make it walk in the fashion which twisted judges and owners like to see in the showring. Regrettably it is couped horses which win the main prizes thus bringing many owners financial rewards through sales and stud fees. It might be years later but the couped shoes fitted to give the horses that showring stance will result in damage to their feet and limbs. I hope that Justice 1 Committee will eventually provide justice for these magnificent animals and recommend that they be given the full protection of the law.

Yours sincerely,

Jim Sharp
The Clydesdale Horse Society
The Faulds, Kilmany, Cupar, Fife KY15 4PT
Tel: 01382-330154
E Mail: secy@clydesdalehorse.co.uk
Company Limited by Guarantee SC204832
Scottish Charity SCO11766

3 pages by fax to Mr Tony Riley

Ms C Graham MSP
Convener
Justice 1 Committee
The Scottish Parliament
Room 3.11
Committee Chambers
Edinburgh
EH99 1SP

13th January 2003

Dear Ms Graham,

Petition PE347 regarding shoeing of horses

I acknowledge receipt of your letter dated 12th November, which was discussed at the Society's Council Meeting last month.

This Society will not "require their judges to disqualify horses subject to cupping from their events" but will endeavour to ensure show Clydesdales are shod in accordance with Society rules. These rules were initially issued to all members in March 2001. In October 2002 members were again issued with a copy of the current guidelines for shoe shoes on Clydesdale Horses. At that time they were also informed that Society officials have authority to "police" shoeing at various shows. If the shoeing of any horse does not comply with the guidelines the owner will be given a verbal warning and informed that if the guidelines are not observed at future shows he/she may be asked to leave the ring.

The guidelines for shoe shoes on Clydesdale Horses are as follows:
1. The well balanced foot:
   1.1 The correctly trimmed foot should allow frog pressure. This facilitates the absorption and distribution of concussion thus minimising fatigue and wear to bones, joints and ligaments.
   1.2 The feet should be trimmed to suit the configuration of the leg and excessive flairs removed.
   1.3 Hind feet should be well balanced and trimmed to a natural shape without excessive flairs or distortions.
2. Shoes:
   2.1 Front shoes should be fitted to give maximum support at the heels and the bevel should follow the contour of the well balanced foot.
   2.2 Hind shoes should be fitted to the trimmed foot with an outside heel of three degrees lift as maximum. The bevel on the outside of the shoe should follow the contour of the outer edge of the wall.
3. Clips:
   3.1 Clips should be broad and should not terminate in a sharp point. They should relate to the width of the shoe and be fitted to conform to the configuration of the limb.
I understand from Mr Riley, Justice 1 Committee, you may not be aware of information previously sent by this Society to Mr Farrell of the Petitions Committee regarding shoeing of Clydesdales. For your information I attach a copy of a relevant report which was sent to Mr Farrell in April 2001.

The Society is strongly of the opinion that there is no reason whatsoever to ban the current correct method of shoeing Clydesdale Horses as there is not a shred of evidence that this causes distortion to limbs, lameness or maltreatment.

May I also stress that Clydesdale foals, unlike any other equine breed, are naturally born with their hind legs together from hock to fetlock.

Finally, an invitation has been issued to all MSPs (via your Public Information Unit at Committee Chambers, George IV Bridge, Edinburgh) to attend a clinic entitled “The Shoeing of the Show Clydesdale” at 9.30 am on Saturday 1st February 2003 at Balmullo Smithy, Balmullo, Fife. This clinic will be an ideal opportunity for MSPs to see a Clydesdale being shod. I may add that, to date, I have only received one reply from an MSP – a refusal!

Kind regards.

Yours sincerely

Mardy Whiteford (Miss)
Secretary
The Shoeing of Clydesdale Horses

The manner and fashion in which Clydesdale Horses are shod today follows the traditional practices which have been in place for centuries. The Clydesdale Horse is unlike any other equine breed in its natural stance and conformation and the manner of shoeing has been pertinent and appropriate to the unique 'structure' of the horse. The method of shoeing does not alter the true stance of the horse and it certainly does not cause long term medical problems for the horses. It would be totally counter productive for any exhibitor to do anything to his horse that causes either short or long term lameness or medical problems, as a lame or malformed horse will not win in a show ring. It is not asserted - damage has occurred on the scale implied then Scotland would be full of crippled clydesdales - this is simply not the case. As a Society we can show many examples of elderly males sound (in wind) and limb, many in their late teens and early twenties, who are still fresh for their age and in many instances still producing foals and enjoying life. These horses would have been shod in their youth to no ill effect. We challenge Mr Mitchell to produce any evidence of animals damaged by show shoeing. Without such evidence his theories and allegations must be held to be unfounded.

Clydesdales are only shod by Registered Farriers who operate under the codes of their governing bodies. These farriers are skilled craftsmen who would not do anything that contravened their professional codes - if they did their livelihoods would be in jeopardy as they would be at risk of having their membership withdrawn and hence their license to practise. In consequence they could not allow owners to dictate irresponsible or detrimental practices to them.

It is certainly true that the majority of Clydesdales are kept to be shown to the public at agricultural shows. The members of our Society were the very people who kept the breed going during the low point after mechanisation and if it had not been for the dedication and indeed sentimentality of these people, then the breed would have become extinct. These men and women are custodians of what is surely a very valuable part of Scotland's living heritage. Sadly, however, the breeding of these horses is not a profitable exercise and to suggest that the only reason they continue to be bred and shown is a brutally commercial one would be very wounding to our members. Indeed for Mr Mitchell to aver that the owners are only interested in financial profit rather than animal welfare is verging on the actionable. At our last public auction the average price for a clydesdale was £850, with the top price paid being £1,100. Stud fees average £150, with a bill for keep for the mare coming in at £120. Registration fees for a filly cost around £50. Add say a weekly cost of £10 to keep the resultant horse for one year and you arrive at a figure of £970. This in truth represents the economics of fools and madmen - it does not evidence Mr Mitchell's 'profilling' even when horses are exported, the possible export price of a filly up to say three years old being in the region of £2,000 - £3,000 and those top animals are few in number.

As in all areas of life there may have been a few individuals who operated bad shoeing practices. As a Society however we are adamant that we could not condone anything that was proven to be an act of cruelty to the horses, not that was detrimental to their well being. We do have in place a set of guidelines with regard to best practice for the shoeing of Clydesdales. This was drawn up by one of the top men in the farriery sphere, renowned and respected as a practitioner and much in demand across the world as a judge of horse shoeing. A copy of these guidelines is attached.
15 November 2002

Christine Grahame MSP
Convener
Justice 1 Committee
Room 3.11
Committee Chambers
Edinburgh
EH99 1SP

MWN/mwn/3990

Dear Ms Grahame,

Petition PE347 Regarding Couping of Horses

Thank you for your letter of 12 November covering Mr K A Mitchell’s Petition and the Committee’s discussions. As the statutory regulatory body for farriery throughout Scotland, except for the Highlands and Islands, the Farriers Registration Council has been closely involved in Mr Mitchell’s earlier concerns, and with subsequent discussions with the Scottish Society for the Prevention of Cruelty to Animals (SSPCA) and the Clydesdale Horse Society. We were, therefore, somewhat surprised that your letter was the first notification that we had of your discussions, and that we were not invited to contribute to your debate. This is particularly concerning since some of the material produced by Mr Mitchell and his supporters has been more emotional than factual, it has not always differentiated between coupling (more accurately described as asymmetric shoeing) and plain bad farriery, and has not made clear when horses had been shod by owners (possibly illegally) rather than by farriers.

The Farriers Registration Council is established under the Farriers (Registration) Act 1975 which is

“An Act to prevent and avoid suffering by and cruelty to horses arising from the shoeing of horses by unskilled persons; to promote the proper shoeing of horses; to promote the training of farriers and shoeing smiths; to provide for the establishment of a Farrier Registration Council to register persons engaged in farriery and the shoeing of horses; to prohibit the shoeing of horses by unqualified persons; and for purposes connected therewith.”

The Act has been subsequently amended by the Farriers (Registration) (Amendment) Act 1977, and Statutory Instrument No 1597. The Act was made fully effective in Scotland, except for the Highlands and Islands, in 1981 by Statutory Instrument 1981 No 767.

The Council has the power to discipline farriers by removing or suspending their names from the register, thereby prohibiting them from practising farriery in the areas of the UK to which the Act applies. However, this may only be done in cases of serious misconduct in a professional respect or following a conviction for cruelty to animals. The problem in the case of coupling is that it would be necessary to show that suffering had actually been caused, and despite many pleas for information to this effect, no evidence to show actual suffering, as opposed to opinions as to possible future
suffering, has been forthcoming. Furthermore, the Council’s powers do not extend to the Highlands and Islands region. Thus, while the Council may disapprove of cupping as being cosmetic and potentially harmful, it has had to proceed by way of persuasion rather than coercion. The policy has, therefore, been to convince the Clydesdale Horse Society of the need to put its own house in order, and to offer guidance to farriers on what is considered acceptable. In February 2001 the Farriers Registration Council and the Worshipful Company of Farriers produced a joint statement on the shoeing of Clydesdale horses for showing (see Enclosure 1). This was notified to all registered farriers, and copied to the Clydesdale Horse Society and the SSPCA. Mr N Johnston MSP was also provided with a copy. At the same time the Clydesdale Horse Society issued Guidelines for Show_shoes on Clydesdale Horses to all its members. While these did not go to the extent of banning asymmetric shoeing, the limits imposed, if observed, should minimise the risk of any injury or subsequent damage to the horse.

Conscious that a policy does not of itself ensure compliance, these earlier efforts have been followed up. I personally attended the Royal Highland Show this year, and informally observed the majority of the Clydesdales being shown. I must stress that I am neither a farrier nor a veterinary surgeon, but it was clear that all the horses I saw were complying with the Society’s Guidelines. I also had a meeting with officers of the Society and agreed two further measures. The first was that an eminent farrier experienced in the correct shoeing of Clydesdales would hold a seminar for farriers who regularly shoe Clydesdales to explain the Guidelines and the reasons for them. Secondly, an experienced heavy horse farrier from the Shire Horse world, not the Clydesdale world, would judge the Clydesdales at the Spring Show in Perth, and a warning would be given to any exhibitor found to be flouting the Guidelines. Any exhibitor found breaking the Guidelines thereafter would have his/her exhibit eliminated from the class, and could be disciplined by the Society. These measures will not necessarily ensure that all show Clydesdales are shod in a completely balanced fashion, but should ensure that no horse is caused pain and suffering. This is great progress from the position a few years ago, and much credit is due to Mr Mitchell and his supporters for highlighting the problem.

One significant weakness in our ability to police the position does remain, and that is that the Farriers Registration Council has no powers to regulate unregistered farriers or owners who choose to shoe their horses either badly or cruelly in the Highlands and islands region. We recently attended a meeting in Inverness in which it was clear that there is now universal support from registered farriers and equine welfare organisations to extend the applicability of the Farriers Registration Act to the Highlands and the Isle of Skye. There was also general agreement on the desirability of extending applicability to all the major islands, but some concern that it might not always be practicable to insist on it, for example in periods of bad weather or non-availability of the farrier. We are currently investigating what action would be required to amend Statutory Instrument 1981 No 767, and would be delighted to hear of any member of your committee who would be prepared to champion this cause.

Yours sincerely

**S M D Williamson-Noble**

Registrar

cc: Mr T Wynne, Registrar and Craft Secretary, Worshipful Company of Farriers
Miss M A Clayton, Chairman, Farriers Registration Council
JOINT STATEMENT BY THE WORSHIPFUL COMPANY OF FARRIERS AND THE FARRIERS REGISTRATION COUNCIL ON THE SHOEING OF CLYDESDALE HORSES FOR SHOWING (COUPING)

The Worshipful Company of Farriers and the Farriers Registration Council regard unbalanced or unlevel shoeing as bad practice and contrary to established teaching unless it is carried out for specific remedial or veterinary purposes.

The Farriers Registration Council is very willing to investigate any individual case of “coup ing” where it can be proved that pain or suffering has been caused by the farrier but to date no such case has been brought to its attention.

If proven, such a case could result in the farrier’s removal from the Register of Farriers on the grounds of serious misconduct in a professional respect. This is the only sanction open to the Farriers Registration Council.

The most effective way of discouraging bad shoeing practice is for the judges of equine showing classes to ensure that balanced shoeing is a significant factor in judging.

The Company and the Council will continue to urge all those who set judging standards to promote good practice in this way.

Lady Graham  
Master  
Worshipful Company of Farriers

Miss M A Clayton  
Chairman  
Farriers Registration Council
To the Scottish Parliament

To ban the practice of shoeing of Clydesdale Horses known variously as Couping, Show Shoeing, Foal Slippers and other local names and descriptions

We, the undersigned, declare that many Clydesdale Horses are fitted with shoes that are designed to alter their natural stance. This is done for cosmetic effect only to enhance the chance of winning prizes at shows and exhibitions. This method of shoeing puts pressure on all structures of the limb of the horse causing long term medical problems and may shorten the life of the horse. The Clydesdale Horse breed is a traditional draught horse and is still used for promotional work as well as traditional agricultural work on some small farms and also in forestry work. The Breed is now primarily bred and kept as a show horse with large sums of money made on the export market. A horse that has won many prizes is more valuable than one that has not. To improve the chances of winning, it has become the practice of owners of Clydesdale Horses to have a style of shoe fitted to the hind feet that alters the natural stance of the horse. The foot is shaped and a shoe fitted that raises the outside of the foot and lowers the inside of the foot, causing the foot to be unlevel. The shoe often covers only between half to three quarters of the hoof and does not protect it properly. As a result, the hind limbs are subjected to unnatural stresses and are therefore thrown out of balance.

This practice is deemed unnecessary by all vets, some horse owners and many registered farriers. Many Clydesdale Horse owners insist that these types of shoes be fitted to their horses, irrespective of the advice of their vet or farrier. Registered Farriers and Veterinary Surgeons are the only professional individuals to receive training in hoof and leg care of horses. Breed Societies are comprised in the main by horse owners who are only interested in the financial profit to be made rather than full animal welfare.

The Petitioners therefore requests the Scottish Parliament investigate this practice (as described in Motions to the Parliament by Nicholas Johnston, MSP and Dr Sylvia Jackson, MSP), to confirm the potential welfare issues and to introduce legislation to make such style of shoeing illegal unless for medical reasons sanctioned by a Veterinary Surgeon.

Signed: Kenneth A. Mitchell, DWCF. Date: 19th February 2001

Contact Details: Kenneth Mitchell, DWCF, 68 Causewayhead Road, Stirling. FK9 5EZ
Telephone/Fax 01786 445053
1.0 We note that the Bill addresses the issue by providing that no offence is committed under section 46(1) of the Civic Government (Scotland) Act 1982 (soliciting and importuning by prostitutes) by virtue of anything done in a public place where that is within a prostitution tolerance zone as designated by a local authority during such time as the zone is operational. Effectively, section 46(1) would have no application in relation to an operational prostitution tolerance zone.

2.0 In our view, this approach is an appropriate and legitimate way to seek to achieve the policy objective of the Bill.

3.0 It is to be noted that the Bill does not seek to impact on any other offences relating to prostitution.

4.0 The only other matters on which we would make observation are the provisions on appeals (section 5) and suspension/modification of zones.

5.0 Section 5 provides that a person aggrieved by a designation may appeal to Scottish Ministers against the designation. The grounds of appeal are limited and relate to issues as to whether the zone consists of an area or includes a place inappropriate to such a zone; whether the periods of operation are inappropriate; and whether any code of conduct is inappropriate. There is no provision for any further appeal to, for example, the sheriff. On must assume, given the subject matter and the nature of the grounds of appeal, that this is deliberate. Accordingly, any challenge to an appeal decision by Scottish Ministers would have to proceed by way of judicial review.
6.0 Section 6 empowers the local authority, on application by the chief officer of police, to suspend or modify the operation of a zone. There is no power to revoke such a designation although given the power to suspend for what may be the unexpired duration of the designation that is, we think, unnecessary.

7.0 There is no requirement that the chief officer of a police or the local authority specify any ground for making such application or suspension/modification. It is recognised that the local authority does not require in terms of sections 2 and 3 to specify any grounds on which it proposes to make or has made any designation in relation to a particular area. It may be that it is not considered appropriate to specify possible grounds for what is also essentially a policy decision. However, it may be suggested that given the consequences of suspension/modification, there may be some justification for requiring that a basis or ground be given for such an application or suspension/modification.

8.0 Perhaps mirroring the provisions in section 5 it could be provided that application may be made or suspension/modification effected where in the opinion of the chief officer of police/local authority it is no longer appropriate to designate such an area or part of such an area either completely or during a specified period. There may be a number of reasons why that is proposed. This could cover the conduct of persons within the zone or changes in the character of the area. Whether it would be desirable or necessary to require such specification is open to debate.

9.0 It is recognised that a requirement for grounds for suspension could encourage challenge and possibly require provision for some form of appeal. That in turn would raise the difficult issue of who should be entitled to appeal. If designations were to operate for limited periods, provision for appeal may be impracticable. Having set out the issues, we can understand why it might be thought appropriate to make no provision for grounds being put forward but we are of the view that the matter might usefully be considered.

10.0 Again, as with section 5, where there is no provision for appeal against decisions to suspend or modify, such decisions would, in theory, be amenable to judicial review.
Dear Sir/Madam

REPORT OF THE YOUTH COURT FEASIBILITY GROUP

I attach for your information a copy of the Report of the Youth Court Feasibility Group, which has been published today.

You may already be aware that the Ten Point Action Plan for youth justice, published by the Executive in June 2002, committed us to examining the feasibility of setting up a youth court for persistent young offenders. The feasibility group convened to take this forward which was chaired by Sheriff Principal McInnes, reported to Ministers on December 30 last year.

The attached Report details the groups findings and concludes that a Youth Court is feasible under current legislation. It recommends that the pilot take place in Hamilton Sheriff (Summary) Court and that the it should have the same powers and range of sentences as the normal summary court. The Report also sets out a proposed model for the court and I include at Annex A a note on the key features of the proposed model.

Ministers have committed to establishing the youth court in line with the recommendations of the feasibility group before the next Scottish Parliamentary election, which is due to take place in May.

Yours faithfully

Elizabeth Carmichael

MRS ELIZABETH CARMICHAEL
Head of Division
Annex A

Principal features of the Youth Court

Referral process
- For the purpose of entry to the Youth Court “persistency” defined as “at least three separate incidents of offending, which have resulted in criminal charges within a 6 months period”;
- In order to ensure a fast track system, other than in exceptional cases, prospective Youth Court offenders to make their first appearance in court within 10 (exceptionally 14) days from the date of charge;
- Wherever possible and practicable known outstanding and other charges in the system will be rolled up to be taken together;
- Where the young person is co-accused with non-16 & 17 year olds, the case will normally be dealt with by the Youth Court;

Court process
- Sheriffs presiding in the Youth Court to have the same range and powers of sentence as any other sheriff sitting in a sheriff summary court;
- A pool of sheriffs (four at any one time) to preside over the Youth Court on a rotation basis thus allowing other sheriffal duties to be undertaken during the pilot;
- The cycle of court business to be arranged, where practicable, so that individual Youth Court sheriffs:
  - deal with all first appearances in court;
  - where possible, deal with any intermediate diets;
  - be allocated many (but not all) of the summary trials of 16 & 17 year olds identified by the fiscal as potential candidates for the Youth Court;
  - retain oversight of any community supervision orders (she makes so as to ensure the young offender will appear, wherever possible, in front of the same sheriff;
- Dedicated Youth Court staff (i.e. fiscal, clerk, social work) to support and service the court;
- Provision of fast track breach procedures;

Programmes
- New and extended supervisory programmes to be provided for the youth court to use where appropriate;
- The Youth Court will be serviced by multi-disciplinary local authority youth justice teams in both North and South Lanarkshire;

Implementation
- Establishment of a Youth Court Advisory Forum to oversee implementation and thereafter to review regularly the working, development and operation of the Youth Court;
- Appointee of a Youth Court Co-ordinator to service the Youth Court Advisory Forum and co-ordinate practice across the nine different agencies involved;
- External research and evaluation of the effectiveness of the pilot’s operations and programmes.
YOUTH COURT

FEASIBILITY PROJECT GROUP

REPORT

DECEMBER 2002
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EXECUTIVE SUMMARY

Background

In June 2002, the Scottish Executive announced its 10 action points on youth crime. In particular, Scottish Ministers were concerned that, whilst there has been a reduction in youth crime overall, the number of persistent young offenders has increased. Two particular action points sought to tackle this problem. Action point 1 proposed fast track Children's Hearings to deal with persistent offenders in the under 16 age group. Action point 2 proposed a study into the feasibility of a Youth Court to deal with 16 and 17 year olds prosecuted in the courts. As a result, a Project Group was set up to consider the feasibility of a Youth Court and asked to report to Ministers by the end of the year. This Report sets out the conclusions of this Group.

Remit

The remit of the Youth Court Feasibility Project Group was:

"As an integrated element of the Action Plan on Youth Crime announced by Scottish Ministers on 27 June 2002, to report to the Deputy First Minister and Minister for Justice by December 2002 on the feasibility of setting up a Youth Court to fast-track persistent offenders aged 16 & 17 years (with flexibility to include some 15 year olds) through the criminal justice system, with a view to reducing the frequency and seriousness of offending through targeted disposals with judicial supervision and continuing social work involvement."

Proposals

The Group agreed the following proposals for the establishment and operation of a Youth Court:

1. The objectives of the Youth Court should be:

   • To reduce the frequency and seriousness of re-offending by persistent 16 and 17 year old offenders and some 15 year olds who are referred to the court;
   • To promote the social inclusion, citizenship and personal responsibility of these young offenders whilst maximising their potential;
   • To establish fast-track procedures for those young offenders appearing before the Youth Court;
   • To enhance community safety, by reducing the harm caused to individual victims of crime and providing respite to those communities which are experiencing high levels of crime;
   • To test the viability and usefulness of a Youth Court using existing legislation and to demonstrate whether legislative and practical improvements might be appropriate.

These reflect the importance which the Group attaches to providing a quicker response, a more focused approach, ready access to effective programmes and assistance in dealing with other underlying problems, as part of an integrated approach within the context of a Youth Court.
2. Given the reference in the Group’s remit to persistent young offenders, it was agreed that, for the purpose of eligibility for entry to the Youth Court, “persistency” should be defined as “at least three separate incidents of offending which have resulted in criminal charges within a six month period.”

3. The Group also concluded that it was important to provide a clear definition of the target group for the Youth Court and so it agreed that the target group for referral to the Youth Court should meet the following criteria:

(i) Alleged offenders, 16 or 17 years of age (and appropriate 15 year olds who might be prosecuted in the sheriff summary court having regard to existing criteria for such prosecution and after consultation with the Reporter);
(ii) Resident within North or South Lanarkshire, appearing before Hamilton Sheriff Summary Court;
(iii) Those for whom the procurator fiscal, having received and considered a report from the police, decides that there is a sufficiency of evidence and that prosecution in the sheriff summary court is merited;
(iv) Those with a history of at least three separate incidents of offending which have resulted in criminal charges, including any in the report under consideration, within a six month period or those currently subject to Youth Court procedures. (NB: Charges arising from these incidents need not have resulted in a referral by the Reporter of the Children’s Panel nor a prosecution.)

There should be flexibility to consider other cases where the offender’s contextual background and circumstances suggest a referral to the Youth Court would be appropriate in terms of enhancing community safety and reducing the risk of offending.

4. The location of the Youth Court should be at Hamilton Sheriff Court.

Operation

5. The first step in the process of fast tracking persistent young offenders to the Youth Court falls to the police and the procurator fiscal. The target group for the Youth Court should be identified by a three phase process:

Phase 1: the Police Sift of all 16 & 17 year olds arrested by them to identify those meeting the Youth Court eligibility criteria in respect of “persistency” and place of residence;
Phase 2: the initial sift by the procurator fiscal to determine if the circumstances of the case merit prosecution in the sheriff summary court and if so, to review suitability for referral to the Youth Court; and
Phase 3: the final marking decision for the Youth Court by the procurator fiscal after gathering and considering additional information and assistance in these cases from the police, reporter and social work.

6. In order to ensure a fast track system, it is proposed that - other than in exceptional cases - prospective Youth Court offenders should make their first appearance in court within 10 (exceptionally 14) days from the date of the charge. Identified young offenders should appear in court from custody or by means of police undertaking, more rarely after police report to the fiscal.
7. Wherever possible and practicable, known outstanding and other charges in the system should be rolled up to be taken together.

8. Where the young person is co-accused with non-16 & 17 year olds, the case should still normally be dealt with by the Youth Court.

9. Sheriffs presiding in the Youth Court should have the same range and powers of sentence as any other sheriff sitting in a sheriff summary court.

10. A pool of sheriffs, from the Hamilton Sheriff Court bench, should preside over the Youth Court on a rotation basis thus allowing other shrieval duties to be undertaken during the pilot.

11. The cycle of court business should be arranged, where practicable, so that individual Youth Court sheriffs:

   - deal with all first appearances in court (whether by means of custody, undertaking or otherwise) of the young offenders identified by the fiscal as potential candidates for the Youth Court;
   - deal with any Intermediate diets arising from the offender’s first appearance;
   - be allocated many of the summary trials of 16 & 17 year olds identified by the fiscal as potential candidates for the Youth Court;
   - retain oversight of any community supervision orders (s)he makes so as to ensure the young offender will appear, wherever possible, in front of the same sheriff.

12. Amongst the range of custodial and non-custodial options available to the Youth Court are the following community based supervision orders:

   - Probation Orders
   - Restriction of Liberty Orders (electronic monitoring)
   - Structured and other Deferred sentences
   - Community Service Orders
   - Drug Treatment and Testing Orders
   - Any competent combination of these

The court may also refer the case to a Children’s Hearing for advice then disposal (eg a supervision requirement).

13. It is anticipated that Youth Court sheriffs will in many cases decide that there should be continuing regular judicial oversight of the response of the young offender to some of those community supervision orders which they make. Such oversight can only take place where there is an ability in law to require the offender to return to court on a periodic basis for such purposes - for example in Probation Orders, Deferred Sentences or Drug Treatment and Testing Orders. This periodic return to court could be undertaken by means of regular Court Review Hearings. The frequency of Court Review Hearings would be at the discretion of the presiding sheriff, taking into account the circumstances presented in each individual case, and could, for example, be on a 4-weekly basis during the first six months of an order and then at suitable intervals depending on the offender’s progress.

14. An offender will have the right to defence agent representation at all court appearances before the Youth Court, including at Review Hearings although a Hearing might include direct sheriff - offender dialogue. Defence agents will retain their rights of advocacy
and representation of their clients at all such court appearances and hearings. Legal aid will be available for such purposes.

15. Where young offenders fail to comply with the requirements of any community-based supervision order imposed by the Youth Court, a fast-track breach process should operate for the offender to account for his or her actions to the Youth Court. The court programme would have to be arranged to facilitate this.

16. New offences prosecuted in the sheriff court in relation to offenders currently subject to a Youth Court community supervision order would normally be assigned to be heard by the overseeing Youth Court sheriff for that offender.

17. New and extended supervisory programmes should be provided for the Youth Court to use where appropriate.

18. The Youth Court should be serviced by multi-disciplinary local authority youth justice teams in both North & South Lanarkshire. Supervising social workers should act as case managers to ensure the whole needs, as well as the deeds, of the young person are addressed. The supervising social worker in collaboration with programme providers should provide written reports to the presiding sheriff at least 24 hours before a court hearing, including Review Hearings.

19. Social work should contract with specialist programme providers in the voluntary or other sectors to ensure needs and deeds can be adequately addressed. A combination of individual and group work opportunities will be utilised wherever assessed as being appropriate and agreed by the court.

20. It is proposed that a Youth Court Advisory Forum be established, chaired by a Youth Court sheriff, consisting of representatives from those ten agencies operating or servicing the Youth Court. Its remit should be to oversee the implementation of the Youth Court and thereafter to review regularly the working, development and operation of the Youth Court, identify improvements that might be made or issues that need raised or resolved.

21. A full time Youth Court Co-ordinator should be appointed, at a senior level, to service and support the Youth Court Advisory Forum and to co-ordinate the activities of the ten different agencies operating and servicing the Youth Court.

22. The Group supports the Scottish Executive’s intention that the pilot Youth Court would be externally researched and its effectiveness evaluated.

Distinctive Features of the Youth Court

The two key elements which underpin the establishment of the Youth Court are:

a. Improvements to existing processes
b. Differences in culture, practice & procedures.

Distinctive characteristics of the Youth Court are: first, the opportunity for dedicated Youth Court sheriffs to become involved with the regular oversight of their sentences enabling the same sheriff to review the offender’s progress throughout the order; and second,
multi-disciplinary teams to provide supervision of the young offenders and to provide or
access a flexible new range of programmes - including elements of reparation and support
services - which are able to address the whole of the young person’s needs and deeds.

The Youth Court has the additional distinguishing features:

- Fast tracking of young offenders to and through the Youth Court
- Dedicated Youth Court staff to support and service the court (e.g.: fiscal, clerk, social
  work)
- Fast track breach procedures
- Additional resources across agencies to enable provision of a quality and consistent
  service
- Formation of a 10 agency Youth Court Advisory Forum, chaired by a Youth Court
  sheriff, to review the working & operation of the Youth Court
- Appointment of a full time Youth Court Co-ordinator at senior level to service the Youth
  Court Advisory Forum and co-ordinate practice across the 10 agencies involved
- External research and evaluation of the Youth Court’s operation and programmes.

Recommendations for Legislative Change

The Group makes the following recommendations in relation to legislative change which we
believe would further enhance the efficiency and effectiveness of the Youth Court and its
operation:

(i) Provision should be made, if necessary in legislation, as soon as possible to make it
both competent and practicable to add electronic monitoring as a condition to a bail order.

(ii) Where an accused has cases pending in more than one court, courts should be given
power to remit a case to another court before which there is another pending case relating to
that accused. District Courts should be enabled to remit cases to Sheriff Courts in such
circumstances and vice versa. A case should be regarded as pending until any sentence
imposed has been completed.

(iii) Amendments should be made to legal aid secondary legislation to meet the
requirements of the Youth Court process. (These are detailed on Pages 22 & 23 of the Main
Report.)

The Group considers that it is not in a position to recommend legislative changes which
would enable courts (a) to impose intermediate sanctions or (b) to require offenders to attend
post-sentence reviews of sentences, such as community service orders, which cannot
competently be reviewed at present unless there is an alleged breach. Such changes might be
reconsidered as part of the evaluation of the Youth Court pilot.

Conclusion

The Group came to the conclusion that, on the basis of our proposals, it is feasible to
establish a fast-tracked pilot Youth Court under existing legislation.
CHAPTER 1. INTRODUCTION

1. Establishment and Context

In June 2002, the Scottish Executive announced its 10 action points on youth crime. In particular, Scottish Ministers were concerned that, whilst there has been a reduction in youth crime overall, the number of persistent young offenders has increased. They identified a need to concentrate attention on this group of offenders and to direct additional resources at reversing this trend. They proposed two specific and linked initiatives to tackle this problem. Action point 1 proposed fast track Children’s Hearings to deal with persistent offenders in the under 16 age group. Action point 2 proposed a study into the feasibility of a Youth Court to deal with 16 and 17 year olds prosecuted in the courts. As a result, a Project Group was set up to consider the feasibility of a Youth Court and asked to report to Ministers by the end of the year.

The Youth Court Feasibility Project Group was established in September 2002 as an integral part of the ten point Action Plan on Youth Crime, announced by Scottish Ministers in June 2002. The second of the ten points in the Action Plan stated:

“2. A Youth Court feasibility project: A project to determine the feasibility of Youth Courts for persistent offenders aged 16 and 17, with some flexibility to include 15 year olds. The development of a Youth Court would complement and build on the existing Youth Crime Strategy. Persistent offenders cause concern in communities, and have often had a history of unsuccessful interaction with the Children’s Hearings. Youth Courts would depend on a multi-agency approach with access to intensive programmes to tackle repeat offending.”

The Sheriff Principal for South Strathclyde, Dumfries and Galloway, Sheriff Principal John McInnes QC, was invited to convene and chair the Project Group.

2. Remit

The remit of the Group was:

“As an integrated element of the Action Plan on Youth Crime announced by Scottish Ministers on 27 June 2002, to report to the Deputy First Minister and Minister for Justice by December 2002 on the feasibility of setting up a Youth Court to fast-track persistent offenders aged 16 & 17 (with flexibility to include some 15 year olds) through the criminal justice system, with a view to reducing the frequency and seriousness of offending through targeted disposals with judicial supervision and continuing social work involvement.”

In carrying out its remit, the Project Group was invited to:

- Consider the most appropriate target group and criteria for referral to the Youth Court, for 16 & 17 year olds;
- Consider the appropriate criteria for adding 15 year olds;
- Consider the system of referral for either age group;
- Examine the powers and range of disposals available to the Youth Court, including sanctions for breach;
• Consider the requirements for appropriate intervention programmes and other services needed to support the disposals;
• Make proposals that can be accomplished within existing legislation, while not overlooking the potential desirability for future legislative change, for example, to give the court additional powers to impose intermediate sanctions or to change the age at which disposals apply;
• Develop one or more possible models for the operation of the Youth Court, including the possible roles of the police, the procurator fiscal, the reporter, the court itself, local authority social work officers and the voluntary sector in ensuring a coherent approach;
• Examine the experience of the Drug Courts in Glasgow and Fife, with a view to determining comparable and non-comparable features from which lessons can be drawn for the operation of the Youth Courts;
• Examine the proposals for a specialist Hearing to fast track persistent offenders under 16, and the usual court process for 16 and 17 year olds, to ensure that the Youth Court provides additional and complementary benefits for the proposed target group;
• Consider the resource implications for the various agencies; and
• Consider Hamilton and Airdrie as the possible locations for the Youth Court within the sheriffdom of South Strathclyde, Dumfries and Galloway, and consider the possibility of extending the Youth Court to more than one site either from the outset or on a phased basis.”

3. Membership

The members of the Group were:

Chairman
Sheriff Principal John McInnes QC

Sheriff Principal of South Strathclyde, Dumfries & Galloway

Members

Sheriff John Morris QC
Sheriff Hugh Neilson
Sheriff Simon Pender
Sheriff Alf Vannet
Sheriff Kenneth Maciver

Airdrie Sheriff Court
Hamilton Sheriff Court
Hamilton Sheriff Court
Airdrie Sheriff Court
Sheriffs’ Association

Ms Mairi Brackenridge
Mr Jim Brisbane
Ms Susan Devlin
Mr David Forrester
Mr Brian Lister

South Lanarkshire Council Social Work Resources
Area Procurator Fiscal, Lanarkshire
North Lanarkshire Council Social Work Services
Scottish Court Service, Area Director West
Scottish Children’s Reporter Agency,
Manager Central West Region

Mr John McLean
Mr Tom Murray
Mr Charles Macnair QC
Mr Oliver Adair

Assistant Chief Constable, Strathclyde Police
Scottish Legal Aid Board, Director of Legal Services
And Applications
Faculty of Advocates
Solicitor, Law Society of Scotland

7
Ms Josephine McKenzie
Mrs Marion Pagan

Victim Support Scotland
Children’s Panel Chairmen’s Group

Scottish Executive

Mrs Micheline Brannan
Mrs Elizabeth Carmichael
Dr Joe Curran
Ms Jo Knox
Mr Sandy Taylor
Mr Kit Wyeth

Justice Department, Criminal Justice Group
Justice Department, Community Justice Services
Central Research Unit, Criminal Justice Branch
Deputy Chief Inspector of Social Work
Justice Department, Criminal Justice Statistics
Education Department, Young Persons & Looked After Children Division

Secretariat

Mr Cliff Binning
Mr Brian Cole
Ms Marilyn Riddell

Scottish Court Service, Operational Policy & Planning
SE Justice Department, Community Justice Services
Scottish Court Service, Operations & Policy Unit

4. Organisation

The Project Group consisted of a range of agencies with knowledge of the workings of the criminal justice system and with experience of working with young offenders. It met on five occasions: 16 August, 5 September, 10 October, 28 November and 17 December, 2002. To assist with its work, 4 sub groups were established to report back on Legal Aid; Pre-court Procedures; Court Process & Operation; and Supervision & Programmes. The Chairman, Scottish Executive members and Secretariat met with the sub-group conveners for a co-ordinating meeting on 8 November.

The Group would wish to acknowledge the assistance received from several people who attended and contributed to the sub groups or who otherwise assisted with our work:

Monica Barry
Aileen Currie
Anne Donaldson
Maureen Hughes
David Jones
Fergus McNeill
Paul H Morrison
Anne O’Neill
Sandra Paterson
Irene Scullion
Jan Smart
Marie Woods

SE Criminal Justice Research Branch
Interim Sheriff Clerk, Airdrie
District Fiscal, Hamilton
North Lanarkshire Council
Authority Reporter, SCRA, South Lanarkshire
University of Glasgow
Advisor, SE Community Justice Services
Inspector, Strathclyde Police
Association of Directors of Social Work
Social Work Services Inspectorate
Solicitor, Airdrie
Dean of Faculty, Airdrie

To inform its deliberations, the Group considered:
• international experience of Youth Justice & Youth Court systems in England & Wales, Northern Ireland, the Republic of Ireland, Canada, Australia (New South Wales) and New Zealand

• the latest research findings and evidence based practice in relation to supervision & programmes

• the extensive expertise and local knowledge of members of both the Project Group and its four sub groups.

The Group was also able to look at the experience of the formation and operation of the Glasgow and Fife Drug Courts. We noted the very different characteristics of the offenders targeted by the Drug Courts as compared to those scheduled to appear in front of the Youth Court. Whilst the Drug Court deals primarily with older offenders in their mid-twenties and beyond with extensive criminal - and custodial - records alongside well established patterns of addiction for which treatment is available, the Youth Court will have to deal with 15 to 17 year olds with a more variable maturity, uncertain motivation, unstable life styles and systems of support, and for whom there is no treatment of a medical model that can be applied. This has led us to adopt a quite different and distinctive approach.

In developing the model for a Youth Court, the Group was aware of the need to respect the independence of the judiciary and the Crown in making decisions in individual cases, an independence which is enshrined in our constitution and criminal justice system. Our report deals with many procedural and court matters and so our proposals seek to develop a model of how we believe a Youth Court might best operate although we acknowledge that it cannot be prescriptive, particularly on how sheriffs should discharge their sheriffial function. The model, if implemented in practice, is dependent on providing courts with additional resources and disposals for sheriffs to use as they deem appropriate in individual cases.

5. Objectives of the Youth Court

The Project Group agreed the objectives of the Youth Court should be:

• To reduce the frequency and seriousness of re-offending by persistent 16 and 17 year old offenders and some 15 year olds who are referred to the court;
• To promote the social inclusion, citizenship and personal responsibility of these young offenders whilst maximising their potential;
• To establish fast track procedures for those young offenders appearing before the Youth Court;
• To enhance community safety, by reducing the harm caused to individual victims of crime and providing respite to those communities which are experiencing high levels of crime; and
• To test the viability and usefulness of a Youth Court using existing legislation and to demonstrate whether legislative and practical improvements might be appropriate.”

The Group believes that an initiative which chooses to address any one of these objectives in isolation would not be as effective as one which adopts a co-ordinated approach to tackling the problem. We believe that the Youth Court offers the opportunity to do this. The Group recognises that the work being done to set up programmes for young offenders provides a good foundation on which to build. But another key component of our objectives is the fast-
tracking of offenders to the Youth Court. The basis of this policy is our belief that it is in the public interest to expedite such cases. This is due to the persistency of the offending; the risk of current offending becoming more serious, and/or the risk young offenders may pose to themselves or to the public. In addition, there will be cases in which there are indications that the nature of the offence(s) with which they have been charged can best be addressed by measures of a kind which will be able to be accessed via the Youth Court.

The Youth Court forms an integral part of the ten-point Action Plan on Youth Crime. It is geared primarily towards persistent 16 & 17 year olds prosecuted in the court system in the sheriff summary court. Another part of the Action Plan is the establishment of fast track Children’s Hearings which will concentrate on fast tracking under 16 year old persistent offenders who are dealt with through the Children’s Hearing system. The two approaches share parallel objectives but with distinct target groups. However, it is recognised that the lessons of one may inform aspects of practice of the other. The Youth Court Advisory Forum will therefore keep in close contact with the Specialist Children’s Hearings pilots.

6. Location of Youth Court

The Group commenced its work on the basis that there could be benefits in running pilot Youth Courts in two different locations, Hamilton and Airdrie. This had the potential of providing a comparative experience of two adjacent court districts but within the one sheriffdom. Only towards the end of our considerations, did we come to the view that a single site was preferable given the numbers involved; the complexities of identifying the target group and fast tracking them to and through the court system, and the consequent advantages in concentrating police, fiscal, court and other agency resources in one location. Hamilton was thought to have the advantages of size (it is one of the three busiest sheriff courts in Scotland) and the continued involvement of both North & South Lanarkshire Councils (the court’s jurisdiction covers significant areas of both local authorities.)

We conclude the location of the Youth Court should be at Hamilton Sheriff Court.

7. Target Group for the Youth Court

The Group’s remit and agreed objectives focus on the problems and activities associated with persistent young offenders and of the impact they have on individual victims and communities.

It was therefore necessary to consider how such young offenders might be identified and in what circumstances a young offender should be thought of as persistent.

Some thought was given to the threshold that should be reached for persistency to be acknowledged. Two components were apparent: the number of offending episodes and the period of time (frequency) in which these episodes occurred.

If the threshold was set too low, accepted research in the “What Works?” literature indicates that premature escalation of young offenders with low frequency of offending into intensive programmes could be counter-productive and even lead to elevated levels of recidivism. Any risk of premature ‘up-tariffing’ of offenders also had to be avoided. On the other hand, if the pattern of behaviour and particular circumstances of the young person were indicative of a high level of recidivism developing, it would seem appropriate to act to reduce this persistent
offending before it took full hold. If the threshold was set too high, it seemed inconsistent with our objectives that victims and communities should have to endure high levels of crime by individual young offenders before the special measures available to the Youth Court would become accessible. Our conclusions about the target group reflected these concerns. The starting point in considering persistency, the norm for referral to the Youth Court, was therefore set as being at least 3 separate incidents of offending that have resulted in criminal charges within a 6 month period.

We therefore define the criteria for referral to the Youth Court as follows:

(i) Alleged offenders, 16 or 17 years of age (and appropriate 15 year olds who might be prosecuted in the sheriff summary court having regard to existing criteria for such prosecution and after consultation with the reporter);
(ii) resident within North or South Lanarkshire, appearing before Hamilton Sheriff Summary Court;
(iii) Having received and considered a report from the police, the fiscal decides that there is a sufficiency of evidence and that prosecution in the sheriff summary court is merited;
(iv) The offender has a history of at least 3 separate incidents of offending that have resulted in criminal charges, including any in the report under consideration, within a 6 month period, or the offender is currently subject to Youth Court procedures.

There should be a flexibility to consider other cases where the offender's contextual background and circumstances suggest a referral to the youth court would be appropriate in terms of enhancing community safety and reducing the risk of offending.

Notes: (i) Charges arising from these incidents need not have resulted in a referral by the Reporter to the Children’s Panel nor a prosecution;
(ii) The trigger offence in (iv) above would normally be at sheriff court level.

The offender’s “contextual circumstances and background” would include offenders whose offending if not checked would become persistent; where the young person poses a risk to self or to the public, and those charged with an offence the nature of which suggests the intensive measures of a kind which can be accessed by the Youth Court would be appropriate.

It should be noted that the Group felt at this stage young offenders who would otherwise meet the above criteria but who were appearing on indictment should, not least because of the different court process, be excluded. Their numbers are low but this is a matter worthy of future review once the Youth Court has accumulated experience and expertise.

8. Estimated Numbers of Youth Court Offenders

This was a difficult exercise. The Group had access to helpful court statistics, including concluded proceedings against under 18 year olds in Hamilton Sheriff Summary Court for the period 1999-2001, provided by the Scottish Executive through its criminal justice statistics branch. In addition, Strathclyde Police undertook a one month survey - August 2002 - of young persons charged and how they were subsequently dealt with; this proved to be highly informative. We also had useful information on Reports on 16/17 year olds received by the Hamilton procurator fiscal’s office for the 12 months to March 2002.
We noted:

(i) The total number of proceedings against under 18 year olds at Hamilton Sheriff Summary Court, taken as an average over the three years 1999/2000/2001, was 484 of whom 336 on average were found to have a charge proved. This represented 933 separate offences.

(ii) Proceedings resulting in a custodial sentence averaged 33 per annum whilst those resulting in community supervision orders averaged 96 per annum. An average of 83 individual offenders per year received at least one custodial or community sentence; these offenders accounted for 319 separate offences with a charge proved.

(iii) Last year, the procurator fiscal’s office in Hamilton received Reports on 16/17 year olds in relation to 2,104 accused concerning 3,260 charges.

(iv) The August 2002 Police survey identified 50 young persons who had offended on at least 3 separate occasions in the previous 6 months (in QA/QB/QC Police sub-divisions). We estimate this represents 90 cases if factored up to the whole of the court catchment area (= 1,080 cases per annum.)

From this information, we estimated:

- the fiscal would consider up to around 600 cases per year after screening for onward referral to the Youth Court. (The fiscal would have to consider, amongst other matters, sufficiency of evidence in all cases; cases that would be better referred to the reporter or to some form of diversion from prosecution; and cases that merit prosecution in either the less serious District Court or the more serious Sheriff Solemn Court. This explains how the residual 600 figure is arrived at from the 1,080 base line.)

- the number of offenders who might receive a community supervision order from the Youth Court could be in the region of around 120 per annum. (This increases the current annual average of 83 by about half as many again. This is largely based on past experience but would also take into account deferred sentences which are currently omitted from the statistics, allow for the results of the more focused screening process and take account of the enhanced range of disposals being made available to the sheriffs sitting on the Youth Court bench.)

We would caution, however, that experience alone will provide a truer picture of demand, and resources and practice will almost certainly have to be adjusted accordingly.
CHAPTER 2. PROCEDURES TO REACH THE YOUTH COURT

1. Identification of Target Group

The target group would be identified through the operation of a three-phase system:

**Phase 1. Police sift**

- The police to sift all 16/17 year olds arrested by them and to identify those young offenders who meet the Youth Court eligibility criteria (as outlined in Section 7 on Page 14). To aid this process, more specific guidelines will be drawn up between the fiscal and the police, after consultation where appropriate with other members of the Screening Group.

- Other than in exceptional circumstances, those 16/17 year olds who have been arrested and so identified as meeting the Youth Court eligibility criteria to be either detained in custody by the police or released by them on an undertaking. The criteria for detention in custody applied by the police to continue - as at present - to be in accordance with the Lord Advocate's guidelines.

- All reports to the procurator fiscal involving 16 & 17 year old offenders, including those charged with non-arrestable offences, should be submitted by the police within 28 days. However, in the case of those young offenders sifted out by the police as meeting the Youth Court eligibility criteria, police reports in undertaking cases would normally be submitted to the fiscal within 7 days.

- Undertakings should be set for the young person to attend court within 10 (exceptionally 14) days of release from custody.

- All cases involving statutory children to be reported to the reporter at the same time as to the fiscal.

- This process primarily to cover Strathclyde Police Divisions Q (A & B) and N (E & D) who will require dedicated additional staff due to the large numbers involved.

**Phase 2. Fiscal Initial Sift**

On receipt of the police reports identifying Youth Court eligibility criteria as being met, the fiscal to consider the case as at present in order to determine such matters as sufficiency of evidence; whether the circumstances of the case and public interest merit prosecution or some alternative to prosecution (eg diversion; fiscal fine; no proceedings; fiscal warning; referral to reporter; etc); and, where prosecution is merited, whether this should be in the District or Sheriff Summary or Solemn court.

Where the case merits proceedings in the sheriff summary court, the fiscal automatically to review the case with a view to considering its suitability for the Youth Court.

On receipt of all other police reports on 16/17 year olds, the fiscal to carry out a check in order to identify any cases (a) meeting the Youth Court eligibility criteria that the police may
have missed, and (b) that might be otherwise appropriate for Youth Court consideration due to the contextual background and individual circumstances of the young offender even where the primary criterion of 3 charges within 6 months is not met.

**Phase 3. Fiscal Consultation & Marking Decision**

The fiscal to embark on a consultation process with the police, the reporter and social work. The purpose of this consultation is to consider any contextual background or other relevant information available concerning the offender in coming to a decision as to whether the case should be referred to the Youth Court.

**Police**: any such background information normally to be supplied by the police in the remarks section of their report to the fiscal.

**Reporter**: the current structured but flexible arrangements for case liaison, normally by telephone, with the reporter to be retained and applied to this consultation process in each case.

**Social Work**: a similar system of liaison between the fiscal and reporter to be extended to social work through the relevant dedicated South & North Lanarkshire Youth Justice Teams. Meetings rather than phone liaison will be held where necessary.

Consideration of this additional information may on occasion lead the fiscal to reconsider the full range of marking options.

2. **Screening Group**

It is envisaged that a Screening Group comprising fiscal (chair), police, defence agent, reporter and social work representatives would convene on a monthly basis (i) to review the effectiveness of and consider improvements to the pre-court processes and (ii) to monitor the level of case work. It would report to the Youth Court Advisory Forum.

The Screening Group may also be convened as a result of Phases 2 or 3 above (but without the defence agent representative being present) to consider cases that merit further discussion having regard to eligibility criteria or any other reason. Such meetings may be called at short notice.

In considering the options on how best to deal with new charges against an offender who is currently subject to a Youth Court community supervision order, the fiscal may wish to consult with members of the Screening Group and, if preferred, may call a short notice Screening Group meeting for such purposes.

3. **Fast Tracking**

The Group felt it critical that a fast track system be identified to ensure as rapid a Youth Court appearance as is possible following the commission of an offence. This is important to ensure the young person is held accountable for his or her actions and to enhance public confidence in the efficiency of the system.
The target time from offence arrest to first appearance in court is outlined as follows:

**Phase 1: Police sift.** Cases should appear in court within 10 (exceptionally 14) days, by means of custody or undertaking.

**Phases 2 & 3: Fiscal sift & Marking Decision.** These are designed to be concluded within a 72 hour period from receipt of the police report. A dedicated unit will be established within the procurator fiscal's office to implement the Youth Court work.

**Expedited Diet to Court.** Where cases do not proceed through custody or undertaking, they will be notified by the fiscal to a dedicated sheriff clerk for arranging an expedited first diet at court. The target date for this first calling of the case to be within **14 days of the date of the receipt of the police report** by the fiscal. The fiscal to make provision for expediting the delivery of relevant papers to the police and, where known, defence agents to enable this timetable to be met.

### 4. Rolling up outstanding & other charges in the System

This is a desirable target. To achieve it in full, however, will take time due to the complexities involved and would require legislative changes to be made. Wherever possible, the police to submit all outstanding reports against the offender contemporaneously with their report which identifies the offender as meeting the Youth Court eligibility criteria. Where information is available within the fiscal’s office, matters within Hamilton’s jurisdiction to be rolled up wherever possible. In some other cases, joint minutes between the fiscal and defence agent may assist. However, the construction of rigid procedures to cover all eventualities should be avoided at this stage. More progress may be achieved with changes in the fiscal’s IT data base which will widen the net of available information to other court jurisdictions outwith Lanarkshire. These changes are planned for the first half of 2003.

**Note**

The Group concluded that it would be of value if, in relation to offenders subject to Youth Court procedures, other courts were to be enabled to remit other cases outstanding against that offender to the Youth Court, whether the remitting court was another Sheriff Court or a District Court.

Accordingly, we would support legislative change, where an accused has cases pending in more than one court, to confer on courts power to remit a case to another court before which there is another pending case relating to that accused. District Courts should be enabled to remit cases to Sheriff Courts in such circumstances and vice versa. A case should be regarded as pending until any sentence imposed has been completed. Such a power would enable cases pending in other courts to be remitted to the Youth Court. That would enable the Youth Court to consider the offending behaviour of accused in the round and the steps which would be most appropriate to address that behaviour. Such a power would be likely to have advantageous resource implications in many cases, in that cases from neighbouring areas could be dealt with as one. We so recommend.
5. Process where Co-accused Involved

Where a 16/17 year old is co-accused with a person or persons not aged 16 or 17 years of age, the norm would be referral to the Youth Court for all. The Youth Court possesses the full powers and range of sentence that a normal sheriff summary court has so this enables it to deal adequately with non-16/17 year olds in these circumstances.

Discretion, however, to be retained to call such cases outwith the Youth Court according to the particular circumstances of individual cases (eg: where there are several non-16/17 year old co-accused.)

Co-accused under the age of 16 will continue to be referred, as at present, to the reporter.

6. Model of Court Organisation

The Project Group examined various models of court organisation. These recognised the need for a model which would produce an efficient and effective system for running the Youth Court without prejudicing the overriding need not to disrupt or diminish the overall efficiency in transacting the heavy volume of business at Hamilton Sheriff Court.

The Group felt there was advantage in those young offenders identified as meeting the Youth Court eligibility criteria entering the Youth Court process from their first appearance at court; this might provide the best opportunity thereafter for managing the young offender through the court system with a significant level of continuity. A further consideration was that regular oversight by the court - by means of Court Review Hearings - over some community supervision orders imposed on Youth Court offenders would make high and difficult demands on the organisation of court time. In the light of these difficulties and conflicting needs, we followed through different models of court organisation - from no dedicated Youth Court sheriffs on the one hand to a single, full time dedicated sheriff on the other. We concluded that the most satisfactory system, on balance, was a model of Youth Court organisation along the following lines:

The assignment of 4 sheriffs from within Hamilton Sheriff Court to conduct Youth Court business, with each taking the Youth Court for one week on the basis of a four-weekly cycle, when he/she would sit as the dedicated sheriff in the Youth Court.

7. Court Process

Court business should be organised to facilitate the management of the young offender through the court system with a significant level of continuity. The cycle of court business should be arranged so that it is the individual Youth Court sheriffs who, so far as practicable:

- deal with all first appearances in court (whether by means of custody, undertaking or otherwise) of those young offenders identified by the fiscal as meeting the eligibility criteria for the Youth Court;
- deal with any Intermediate diets arising from the offender’s first appearance (this need not be the same sheriff);
• are allocated the summary trials of 16 & 17 year olds identified by the fiscal as potential candidates for the Youth Court;

• are responsible for making the community supervision orders; and

• retain, as the sheriff sees fit, oversight of the community supervision orders (s)he makes so as to ensure the young offender will appear, wherever possible, in front of the same sheriff.

*On that basis, the court process would be:*

**Stage 1:** *First Appearance from Custody, Undertaking or Diet Court*

**Stage 2:** *Where Plea of Guilty*

• Case either to be continued for 3 weeks for a Social Enquiry Report, often on bail, or otherwise disposed of.

**Stage 2A:** *Sentencing Diet*

• The SER to be considered along with any defence representations. The court could, if it so wishes, hear the social worker. The provisions of the Criminal Justice Bill relating to personal statements by victims of crime would, if enacted, apply to Youth Court cases as they would to other criminal court cases.

*Following sentence:*

• Where the court decides to dispose of the case by means of a community supervision order (that is to say: a Probation Order, Community Service Order, Restriction of Liberty Order, Drug Treatment and Testing Order, Deferred Sentence, or any combination of these), the Youth Court is designed to enable continuity in judicial oversight, if appropriate, of the case thereafter till conclusion.

• Where the court decides to dispose of the case by means of a Probation Order, Drug Treatment and Testing Order or Deferred Sentence, the court has the ability to fix a subsequent Review Court diet, normally in 4 weeks time.

**Stage 2B:** *Review Court*

Each Review Court has the power thereafter to fix the next Review Court diet, probably normally 4 weekly for the first 6 months and thereafter at suitable intervals according to progress and individual circumstances.

*Note: We believe that the best results would be achieved where it is possible for the same Youth Court sheriff to hear the case through Stages 1, 2, 2A, 2B and thereafter till conclusion.*
Stage 3. Where Plea of Not Guilty

- Date of Intermediate diet would be fixed - normally about 19 days from plea of Not Guilty.
- Trial diet would normally be fixed for a date no more than 40 days from the date the case first calls in court.

Release on Bail

The Group felt that the court should consider adding a bail condition as follows: “To inform the court in writing of any changes of address.”

We felt, however, that the Youth Court process could be strengthened were the sheriffs to have available to them electronic monitoring as a condition of bail. Although it may be competent to add such a condition to a bail order we believe that the competence of doing so should be put beyond doubt. We understand that the present contractual arrangements do not permit electronic monitoring unless there has been a conviction. We consider it to be of great importance to the success of the Youth Court that sheriffs should be able to attach an electronic condition to a bail order. Such a measure might also increase the confidence of the public in having some young offenders kept in the community whilst on bail instead of being remanded in custody.

We therefore recommend that provision should be made, if necessary in legislation, as soon as possible to make it competent and practicable to add electronic monitoring as a condition to a bail order.

Stage 3A: Intermediate Diet

- Statements of witnesses who are police officers at or in advance of the Intermediate Diet to be provided to the defence along with a summary of the Crown case.
- Where the accused fails to appear, we envisage that the court would normally continue the case to Trial Diet (21 days). Any warrant issued should wherever possible be enforced before the retained trial diet. The fiscal to monitor the position against the possible need to countermand witnesses.
- Where the sheriff taking the Intermediate Diet is not a designated Youth Court sheriff, the fiscal should draw the sheriff’s attention to the fact that this is a case identified by the sift system as being a potential candidate for the Youth Court.

Stage 3B: Trial Diet

Where it is necessary to adjourn a trial, the court diary should allow an adjourned date to be fixed which is not more than 28 days later.

Where there is a plea or finding of guilt, then:

_In the case of the trial sheriff being a designated Youth Court sheriff:_ the case either to be disposed of or otherwise continued, often on bail, for 3 weeks for a Social Enquiry Report.

_In the case where the trial sheriff is not a designated Youth Court sheriff:_ the fiscal to draw the attention of the sheriff to the fact that this is an offender who has been identified by the_
sift system as a potential candidate for the Youth Court. The case might then either be disposed of or otherwise continued for 3 weeks for a Social Enquiry Report. It would be a matter entirely for the discretion of the sheriff whether to have the court diet at which the SER is to be considered called in front of him/herself or called in front of the Youth Court sheriff to determine the outcome.

Stage 3C: Sentencing Diet - Youth Court

The process would now continue in the same way as Stages 2A and 2B above.

8. Legal Representation

It was agreed that the offender would be entitled to legal representation in relation to all appearances leading to or in front of the Youth Court. This would include any Court Review Hearings. Legal aid would be available for all such Court and Hearing appearances.

This brought the Group to give detailed consideration to legal aid issues. We concluded:

(i) Our Youth Court proposals appear feasible within existing primary legislation in legal aid terms. However, amendments to secondary legislation would be needed whether Youth Court cases are ultimately funded by criminal legal aid, Assistance By Way Of Representation (ABWOR) or a combination of the two.

(ii) It is possible to use such a combination to meet the requirements of the pilot, for example:

- For cases appearing from custody or on a police undertaking: Automatic criminal legal aid could be available from either a solicitor of choice or from the duty solicitor where the accused does not have his/her own solicitor. Such cover will be available until either the tendering of a not guilty plea or where a guilty plea is tendered until the case is finally disposed of.

- For diet cases: The existing arrangements should continue whereby a solicitor of choice may provide the accused with (a) advice and assistance to give general advice leading up to the making of a plea and where a not guilty plea is tendered the submission of an application for summary criminal legal aid (b) ABWOR to tender a guilty plea and thereafter deal with the case until it is finally disposed of. As in the generality of criminal cases, it is not proposed that cover should be available for representation to tender the plea of not guilty in court nor that the financial eligibility test should be applied.

- For Trials: (a) Continue to make summary criminal legal aid available where the accused meets the current tests for financial eligibility and interests of justice as contained in the 1986 Act. (b) Where summary criminal legal aid is made available, fixed payments could be extended to include cover for the community supervision orders proposed following a finding of guilt. (c) Where summary criminal legal aid is refused, ABWOR could be made available to cover the work required to be done in respect of the hearings to deal with the community based orders following a finding of guilt.

(iii) A satisfactory financial package would have to be developed in support of our proposals for them to succeed.
We therefore recommend that the necessary amendments be made to secondary legislation in the following respects:

- The Criminal Legal Aid (Scotland) Regulations 1996 (Regulation 5(3) to be amended to disapply the exclusive jurisdiction of the duty solicitor in respect of the identified target group of offenders appearing before the Youth Court from custody or on a police undertaking.)

- The Criminal Legal Aid (Fixed Payments)(Scotland) Regulations 1999 (Regulation 2(1)(c) to be amended to remove the exception of automatic criminal legal aid from Youth Court proceedings for the purposes of fixed payments. Part 2 of Schedule 1 to be amended to prescribe payments for all work done in connection with any appearance of an assisted person before a Youth Court under automatic criminal legal aid.)

- The Criminal Legal Aid (Scotland)(Fees) Regulations 1989 (Regulation 6 to be amended to remove the cap for follow up duties in the Youth Court.)

- The Advice and Assistance (ABWOR) Regulations 1997: (The regulations to be amended to provide ABWOR for any appearances following a finding of guilt until the case is finally disposed of where summary criminal legal aid has been refused. Regulations 6 & 7 to be amended to enable ABWOR to be provided by the solicitor without applying qualifying criteria.)


The Group believes that its proposals would not offend the provisions of the Criminal Procedure (Scotland) Act 1995 section 166 (previous convictions not to be laid before the court prior to conviction) nor ECHR jurisprudence (though the sheriff members of the Group expressly wished to reserve their opinion on these matters) because some of those who are likely to be referred to the Youth Court will not have been previously convicted by a court (though many, of course, will have previously appeared before a Children’s Hearing on offence grounds). The court will not be told the reasons for the referral prior to conviction. However, the Group recognises that these issues may be tested in court.
CHAPTER 3. OPERATION AND NATURE OF THE YOUTH COURT

1. **Youth Court Sheriff**

The business of the Youth Court should be organised so that it may be presided over by one of the designated Youth Court sheriffs at Hamilton Sheriff Court.

In planning the business of the pilot Youth Court, the expectation should be that sheriffs presiding over the Youth Court would be invited to do so on a rotation basis and could expect to leave the Youth Court at anytime after 12 months or so. This would require the changes in composition of the Youth Court bench to be done on a phased and planned basis.

In relation to the case load of young offenders which the departing sheriff has accumulated over his/her period on the Youth Court bench, the sheriff may take the view that for some cases the current circumstances suggest that he/she should retain oversight of the offender till the court order is completed. For other cases, the sheriff may decide that it is more appropriate for the case to be transferred to the incoming sheriff. With this in mind, it would be helpful if presiding sheriffs could keep a written record of each case they oversee in a form that could be readily handed on to a replacement sheriff.

2. **Powers of the Youth Court**

It is important that the Youth Court is recognised by offenders - and the wider community - as having the same authority and status as other courts. Working within the framework of existing legislation, it is therefore proposed that the Youth Court would have the same range of powers on sentence and disposal available to it as would be available to any other sheriff dealing with 15 to 17 year olds in a summary court. This is not considered to be a disadvantage: it ensures that offenders realise that referral to the Youth Court does not in itself indicate an avoidance of a custodial disposal.

3. **Community Based Supervision Orders in the Youth Court**

Within the range of custodial and non-custodial options available to the Youth Court are the following community based supervision orders:

- Probation Orders
- Community Service Orders
- Restriction of Liberty Orders (electronic monitoring)
- Drug Treatment and Testing Orders (will become available in Hamilton during 2003)
- Structured and other Deferred Sentences
- Any competent combination of the above
- Referral to Children’s Hearing for Advice then Disposal (eg a Supervision Requirement)

Structured deferred sentences will become eligible for 100% funding from the Scottish Executive, subject to Parliamentary approval of the relevant provisions of the Criminal Justice (Scotland) Bill under current consideration. A structured deferred sentence is a normal deferred sentence but incorporating a programme of specific and focused action in addressing offending behaviour or problems (eg alcohol abuse) contributing to that offending behaviour.
All sheriff summary courts have the power to refer a 15-17 year old to a Children’s Hearing for advice and thereafter, at the court’s discretion, for disposal. Where the young person is subject to a current Children’s Hearing supervision requirement, the court must refer the case to the Children’s Hearing for advice before it can dispose of the case. One option thereafter is to refer it back for disposal. The reporter has indicated that to expedite matters and maintain the fast tracking process in the Youth Court, all such referrals for advice will be dealt with by convening the relevant Hearing within 21 days.

4. Judicial Oversight and Court Review Hearings

The authority and status which reside in the judiciary in Scotland give judges a unique role in our criminal justice system. We are also aware that many of the young people who will come before the Youth Court will have chaotic lifestyles and may lack a source of authority and respect in their lives. The sheriff alone will be able to bring the full authority of the criminal justice system to bear on the proceedings of the Youth Court and to command respect. In the case of this group of offenders, regular judicial oversight of the response of the individual young offender to any community supervision orders imposed by the court, is therefore likely to be of particular benefit in motivating, encouraging and sanctioning the young person. The Group expects this to become a feature of the Youth Court. One way of achieving this would be through the institution of Court Review Hearings.

Reviews held in court would enable the young person to be held to account for his/her behaviour and level of progress since the last Review whilst at the same time allowing efforts to be made to engage the young person directly in the process. This engagement might include, for example, direct sheriff-offender dialogue. The supervising social worker (and or programme provider or other specialist worker where appropriate) would be able to attend the Review to provide information on the progress of the young offender and to back up any information in the written report submitted to the sheriff (and defence agent) prior to the Review. The offender would have the right to be represented by a solicitor and legal aid would be available for such purposes. Defence agents would enjoy their normal rights of advocacy and of representing their clients. According to individual circumstances, the court may wish on occasion to encourage attendance by relatives or family members at court and where relevant and appropriate engage with them also. The presiding sheriff of course has the responsibility to determine the most effective way of conducting the Review.

The frequency of such Reviews would also be a matter for the presiding sheriff to determine, taking account of the circumstances of each individual case. In broad principle, however, Reviews might be expected to be held more frequently at the start of orders and diminish over time and good progress. For example, during the first six months, Reviews at 4 weekly intervals might be considered.

After the first six months, these intervals might be extended to 6 or 8 weekly or such other term as the sheriff thinks appropriate. However, it is always a matter of discretion for the Youth Court to deviate from any of these norms according to the circumstances of individual cases: for example, it may wish increased or reduced levels of Reviews according to progress.
5. Specialist Expertise Available to the Youth Court

The Youth Court will have access to a range of specialist resources to support its work.

This will include dedicated local authority youth justice teams, programme providers from the voluntary sector and specialist workers and agencies dealing with drugs and alcohol dependence, mental health & other issues. The court will also be able to access assistance to offenders with regard to accommodation difficulties and education/training/employment opportunities.

The Youth Court will have available to it for all new cases a full Social Enquiry Report prepared by the youth justice team and such other specialists as appear pertinent to the needs of the young person. This will assist the court in its assessment of the suitability of offenders to undertake community supervision orders, the nature of such orders and the range and intensity of programmes available within such orders. The SER will be compiled during a 3 week period. Bail supervision services will be available to support any decision to release the young person on bail. This is likely to make engagement with the young person easier and can provide a good indicator of likely levels of co-operation.

The same team of professionals will also consider all cases before every Review so that the Youth Court sheriff will have a report available for each offender appearing at each Review.

A written completion report at the end of each community supervision order will be provided to the presiding sheriff by the youth justice team.

6. Additional Conditions in Youth Court Orders

The mechanism of regular Review Court Hearings can only relate to those orders where there is a legal mechanism available to require the offender to attend such Reviews.

*Probation Order or Structured Deferred Sentence*

Probation Orders & Structured Deferred Sentences might benefit from having an additional condition or requirement inserted in them for purposes of the Youth Court.

All Probation orders already come with three standard conditions: to be of good behaviour; to conform to the directions of the supervising officer; and to notify the supervising officer of any change of address or employment.

An additional Youth Court condition might be:

“**To attend each court review hearing, the first review to be heard on (date & time)**”

*Community Service Order*

There appears to be no statutory basis for an offender to be called back to court purely for progress review purposes. Voluntary invitations to do so should be avoided lest they are disregarded by the offender.
Where Community Service is imposed as an additional requirement of a Probation Order, the situation changes and the court may wish to oversee progress as part of its Review.

There may be limited ability to call an offender back to court under section 240 of the Criminal Procedure (Scotland) Act 1995 where it is in the interests of justice to do so having regard to circumstances which may have arisen since the order was imposed.

Orders made concurrent with Probation, Drug Treatment and Testing Orders or Deferred Sentences could be reviewed at the same time.

Restriction of Liberty Order

As with the Community Service Order, there is no statutory ability to require periodic court appearance for Review.

The only possibility of Review by court would be where the order is made concurrently with a Probation Order, Drug Treatment and Testing Order or Deferred Sentence.

Drug Treatment and Testing Order

Monthly formal court review is built into primary legislation for such orders.

Children’s Hearing Supervision Requirement

Once referred to a Children’s Hearing for disposal, the court has no further jurisdiction over the matter.

7. Fast Track Breach Procedures

(i) A theme running through our Report is that young offenders should be fast tracked to and through the Youth Court process. It is therefore consistent that breaches of compliance with Youth Court orders be dealt with rapidly in order that the accountability of offenders for their actions is clear. Our target would be that the first breach hearing should take place within 4 weeks of the submission of the breach application.

An example of how such a fast track breach procedure in relation to a Probation or Drug Treatment and Testing Order might operate is appended in Annex 1A. For those community supervision orders where there is no in-built mechanism for regular Review Hearings (Community Service and Restriction of Liberty Orders), a fast track breach procedure might take on the appearance as illustrated in Annex 1B.

(ii) One of the facilities that Court Review Hearings provide for presiding sheriffs is to enable them, should they so wish, to deal with some instances of non-compliance summarily without the necessity of full breach proceedings.

The sheriff, for example, might indicate displeasure from the bench and issue a warning about future conduct and expectations, instruct more frequent contact with the supervising officer or require attendance at court for more frequent Review Hearings.
(iii) In our consideration of breach issues, we gave some thought to whether any benefit might be accrued at this stage to the Youth Court having available to it additional intermediate sanctions for non-compliance and if so what the nature of them might be. However, we concluded that it would be wiser to wait for (a) the Youth Court to accumulate experience during its pilot period and (b) the outcome of the evaluation of the Youth Court, before making any recommendations in this regard. We believe it would be worthwhile for the Youth Court Advisory Forum to reconsider this issue towards the end of the pilot phase.

8. New Offences

Where an offender subject to a Youth Court community supervision order is reported to the procurator fiscal, the procurator fiscal will consider the report using the same criteria as for the prosecution of a new offence.

The fiscal will wish to take into account the nature and gravity of (a) the existing Youth Court case and (b) the alleged new offences, as well as the progress and extent of co-operation by the offender on the community supervision order. In order to ascertain the latter, the fiscal will be able to access up to date progress information from the supervising social worker in the dedicated youth justice teams. Information may be conveyed by telephone in cases of urgency (eg: custody cases), or by phone or in writing in other cases.

The Group proposes that where the fiscal decides to proceed with prosecution in the sheriff summary court in Hamilton, the case would be brought at first instance before the Youth Court. Other than in custody cases, the first court diet might be called at the same time as the next scheduled Court Review Hearing where one is arranged or within 4 weeks, whichever is the shorter. The Youth Court would take the plea or continue to Intermediate diet where it would again hear the matter. Where guilt is accepted, the Youth Court would proceed to disposal.

The question arises as to how a person charged with a new offence can be identified as an offender who is subject to a current Youth Court order. The Group felt this might be met in due course by means of the Integrated Scottish Criminal Justice Information System (ISCJIS). Alternative short-term systems would have to be worked out.

A further issue considered by the Group was the importance of the bench knowing at any future court appearances that an offender is or has formerly been dealt with by the Youth Court. This would imply that lists of previous convictions emanating from the Scottish Criminal Record Office (SCRO) which are communicated to the fiscal for placing in front of a court (in the event of a plea or finding of guilt on a new charge) would need to identify such past Youth Court disposals. One suggested expedient for such cases might be to note the source court as being Hamilton Sheriff Youth Court as against Hamilton Sheriff Court. We understand that, subject to further discussion and agreement, such a system could be put in place.
CHAPTER 4. SUPERVISION PROGRAMMES AND SUPERVISION OF OFFENDERS

1. Introduction

This chapter outlines the likely characteristics of young people appearing before the Youth Court and the range of programmes and services that will be established to address their offending behaviour.

2. Characteristics of Young People

South Lanarkshire commissioned an audit of the characteristics of young people who offend persistently in their area. The findings echoed other research and indicated chaotic lifestyles and entrenched patterns of challenging behaviour, lack of insight and the significance of anti-social peer group influence. Poverty and substance misuse and emotional/mental health problems were also major issues. Because of the complex nature of the characteristics of this group of young people, their needs and level of risk of re-offending will require a full assessment to be carried out leading to the preparation of an individualised action plan setting out the scope of work required. Research evidence on effectiveness emphasises the need for intervention to match the level of risk, so that intensive intervention is not offered to those at lower risk of re-offending.

3. Process

Specialist social workers from the Youth Justice Team will assist the fiscal in the screening of young people coming into the system, to determine those who will be most suitable for the Youth Court.

A principle of social work service provision will be to commence work with the alleged young offender as soon after the young person has been charged as possible. Prior to conviction this will focus on ensuring welfare needs are met. In appropriate cases, this could be offered through a bail supervision condition.

Following conviction, as part of the work undertaken in preparing a Social Enquiry Report, an assessment will be undertaken by means of a formal risk/needs assessment instrument (the Youth Level of Service tool (YLS)). This will enable the development of an individualised action plan to be determined in appropriate cases as well as providing aggregate data for service planning and development.

A structured programme of intervention focused on issues related to offending will be core to the intervention strategy. Although group work is a particularly effective method of intervention with young offenders, some young peoples' individual learning styles may be better suited to a more individualised approach.

In undertaking the assessment, the social worker will consider the suitability of all community based options. For those who are particularly chaotic or hard to engage, a structured deferred sentence might be appropriate for a period of time after conviction before consideration is given to the imposition of a probation order.
For those young people on whom sentence is deferred or on whom a probation order is imposed, the action plan will take the form of attendance on a core offending programme, a programme of restorative justice and work on those issues determined by the assessment as associated with the young person’s offending.

The role of the supervising social worker as ‘case manager’ will be vital to the entire process from assessment to formation of the action plan, co-ordination of all aspects of the intervention, and consolidation and reinforcement of all work carried out with the young person.

4. Action Plan

The individual action plan will lead to a core programme, which will address offending behaviour by addressing cognitive skills. Valuable data will be gained from using different programmes in North and South Lanarkshire by allowing for a comparative analysis of effective programmes. The two options identified are:

- ‘Offending is not the only choice’ (OINTOC) - a private sector group work or 1-1 package developed by the Cognitive Centre (details in Annex 2A). This is a problem solving/thinking skills programme, running over 24 sessions. Three Scottish local authorities and 4 English Youth Offending Teams currently use it in whole or in part.

- ‘Pathways’ - a private sector group work or 1-1 package developed by LMT consultancy for young people aged 10-17 (details in Annex 2B). Approximately 30 Youth Offending Teams and secure units in England and Wales currently use it. It consists of 5 modules over 70 sessions. Each of the modules can stand alone.

Understanding the impact of their offending on victims is considered an important part of intervention and this will form an integral part of the programme. More formal reparation may be identified as an important element of their action plan for some young people. North and South Lanarkshire have developed different models of restorative justice.

- North Lanarkshire’s model is based on reconfiguring the existing services and expanding to create a Community Service and Restoration Team which will link with Youth Justice Teams located in each area of the Authority. A new restorative justice service focussing on young people will be developed in local communities with a strong emphasis on reparation. To further complement the developments, a Group Conferencing service is being commissioned.

- South Lanarkshire has commissioned a voluntary organisation to develop a restorative justice model to work with young people who are persistent offenders. This model has three stages: an educational programme, a community service element, and individual reparation and mediation.

There will be intensive social work contact during the period of supervision. This will be through a package of support for the young person that timetables appropriate activity on a formal and informal basis over the week and may include referral to intensive services available out of hours and at weekends. A range of services to provide intensive support will be contracted which will complement and supplement the focussed work of the Youth Justice Teams.
For a small number of people there may be the need to include some form of residential support. This may be needed to provide the necessary stability to those young people whose personal circumstances are particularly chaotic and which require the stability of a residential setting to enable them to address other aspects of their lives. This may be required at the earliest stage of contact, possibly as a condition of bail or during the course of the period of supervision if the young person’s circumstances break down.

The importance of social inclusion is highlighted by research to ensure ongoing desistance from offending. Therefore each young person’s programme will also address issues of education, training, employment and constructive use of leisure time. (See Annex 2C) It is recognised that some young people will require support beyond the end of the formal order.

Because of the nature of these young people’s behaviour and needs, the minimum period of intervention with them is likely to be a minimum of 18 months. Part of the initial assessment will be to estimate the period of involvement.

5. **Role of worker**

The role of the social worker is critical in ensuring that all identified problems are properly dealt with. The social worker may not be responsible for delivering all aspects of intervention with the young person but has an important role as a case manager in:

- planning intervention
- referring to appropriate services
- ensuring that the sequence of intervention is appropriate
- reviewing progress
- ensuring that the discipline of the order is upheld
- evaluating outcomes
- reinforcing motivation
- liaison with other providers
- advocacy
- direct casework
- providing natural support systems
- providing opportunities to consolidate learning
- resourcing gaps in service
- crisis intervention.

6. **Demonstrating Effectiveness**

As well as the Youth Court’s formal review process there will be a parallel process within the Order to ensure that the work with the young offender does not drift and that problems in engagement are identified early. The case will be subject to an initial review after no less than four weeks from the date of the order and thereafter as decided at that initial review but no less than 3 monthly to ensure that the objectives set out in the action plan are being met. This will feed into the formal Youth Court review process.

There will be a formal re-evaluation of the individual’s progress using an internal evaluation framework with both qualitative and quantitative measures after six months. This will
include repeat administration of the YLS tool. That will provide an independent measure of progress which can be reported to the Court to demonstrate the effectiveness of the intervention.
CHAPTER 5. IMPLEMENTATION AND REVIEW

1. Youth Court Advisory Forum

(i) Remit

The Group proposes that a multi-agency Youth Court Advisory Forum be established to oversee the implementation of this Report and thereafter to review regularly the working, development and operation of the Youth Court, identify improvements that might be made or issues that need to be raised or resolved.

(ii) Membership

There are 10 key players concerned with the operation and servicing of the Youth Court and its procedures: these are Youth Court sheriffs, procurator fiscal, Strathclyde Police, North & South Lanarkshire Social Work Resources, Reporter, defence agents, sheriff clerk, contracted voluntary sector programme providers and Victim Support/Witness Service. These should be invited members of the Youth Court Advisory Forum as of right.

Membership should be drawn from those actually involved in the operation or servicing of the Youth Court and its procedures, and might therefore include:

- a Youth Court sheriff (who in attendance might chair the meeting)
- a sheriff clerk administering the Youth Court
- a fiscal assigned to Youth Court business
- senior social worker leading dedicated youth justice team (x2: North/South Lanarkshire)
- senior Reporter covering Hamilton
- senior police officer involved with Youth Court covering Hamilton
- a local defence agent
- senior contracted voluntary sector programme provider (x2 if more than one provider)
- local Victim Support (Scotland) representative
- Youth Court Co-ordinator.

(iii) Co-options & Meetings

The Youth Court Advisory Forum, it is proposed, should feel able to co-opt such other persons or agencies as they see fit or to invite such persons or representatives to sit in on an observer basis.

Meetings might be convened monthly but the frequency should be established by the Youth Court Advisory Forum itself on the basis of experience. Meetings of whatever interval, however, should be regularly held.

The Youth Court Advisory Forum should also at its own instance be able to set up sub groups reporting to it as it thinks desirable or necessary.

Meetings should be minuted for the record. These may be of particular use to senior members of agencies not themselves members of the Youth Court Advisory Forum.
2. **Youth Court Co-ordinator**

It is proposed that a full time senior appointment of a Youth Team Co-ordinator be made.

(i) **Principal Aim**

To support the Youth Court Advisory Forum in its regular review of the working, development and operation of the Youth Court and in the identification of improvements that might be made or issues that need raised or resolved.

(ii) **Envisaged Tasks**

1. To assist with the implementation of the Youth Court model outlined in this Report.

2. To co-ordinate the court and community based Youth Court services and agencies to ensure the smooth operation of the court.

3. To establish the procedures set out in this Report, reviewing their operation and effectiveness, brokering solutions to inter-agency issues which may arise.

4. To convene meetings of the Youth Court Advisory Forum and be responsible for the administration of the Forum, *but not of its constituent members.*

5. To arrange for initial joint training for the Youth Court Advisory Forum and for meeting its continuing training needs.

6. To promote the work of the Youth Court, locally and nationally, and to provide information/exchanging knowledge and experience with youth courts in other jurisdictions.

7. To maintain close liaison and exchange information with the Specialist Children’s Hearing pilot projects.

8. To be responsible for the collection of statistics, for the compilation of any reports on behalf of the Youth Court Advisory Forum, and to act as the liaison person for the external evaluation of the project.

9. To monitor the performance of the Youth Court and to liaise on behalf of the Youth Court Advisory Forum with the Scottish Executive, researchers & other relevant agencies.

10. To co-ordinate responses to media interest on behalf of the Youth Court Advisory Forum and arrange visits to the project as necessary.

*Note: The remit of the Youth Court Co-ordinator does not extend to responsibility for areas that fall within the remit & responsibility of individual agencies.*
(iii) **Person specification**

We believe the appointed person should have the following:

**Essential Skills**

- Good organisational abilities and managerial experience
- Good communication skills (verbal, written & presentational)
- Negotiating & influencing skills
- Ability to work across & along with a multiple number of agencies
- Ability to work with the press & media and to promote the work of the Youth Court Advisory Forum
- Project management

**Desirable Skills**

The person should have experience in or knowledge of the Scottish Criminal Justice system and of the operation of Scottish courts or of the provision of youth services and treatment programmes or of both. The Co-ordinator should feel comfortable working in a court and criminal justice setting. IT skills would be an asset.

3. **External Research & Evaluation**

The Group welcomes the intent of the Scottish Executive to appoint external researchers to evaluate the Youth Court and hopes such researchers will be appointed from the commencement of the Youth Court and will follow up young offenders after they exit the Youth Court.

We believe the following issues need to be considered as part of the external research and evaluation remit:

- The effectiveness of the differing core offending programmes, different methods of reparation and differing work on factors associated with offending
- The relative impact of each of these components
- The Youth Court process
- The relationship between the Youth Courts & the Fast track Hearings as part of an overall process
- The need for further legislative change prior to roll-out of Youth Courts to other parts of Scotland.

The desirability of a consortium of researchers might be considered, given the complexity of the task.

*Note:* South Lanarkshire Council has had a preliminary discussion with Glasgow University about supporting a post-graduate student to work alongside the Youth Justice/Courts Team to look at the implications of the process for the individuals within the team, the team itself and for the organisation as a whole. This may represent a useful additional piece of research that may help to inform the lessons to be learnt from any Youth Court pilot that may arise from this Report.
Annex 1A

Illustration of how a Fast track Breach procedure might Work
(Probation & Drug Treatment and Testing Orders)

For example where the sheriff warned offender at previous Review Court Hearing that
repetition of a specific instance of non-compliance - such as unauthorised absence from
programme attendance - would result in initiation of breach and there is a further instance of
non-compliance:

Stage 1: Sheriff could initiate breach procedures by inviting the supervising social worker to
submit breach report, or give advance authorisation to the social worker for initiating a
breach report.

Stage 2: Supervising social worker submits breach report (either on own initiative or as a
result of Stage 1) to clerk, sends copy for information to fiscal. Breach report accompanied
by brief supplementary Social Enquiry Report

Stage 3: Clerk gives copy breach report and supplementary SER to sheriff and forwards
copy to defence agent.

Stage 4: Sheriff issues a warrant to cite the offender to attend court to answer the breach
charge(s), or issues a warrant for the apprehension of the offender.

Stage 5A: Warrant to Cite Cases

(a) Clerk fixes citation date for next scheduled Review Court Hearing (or within 4 weeks,
whichever is the shorter) for that offender. This might conveniently be done at the
same time as Stage 4
(b) Clerk notifies defence agent, fiscal & supervising social worker of date fixed
(c) Citation with grounds of breach sent by recorded delivery mail to offender by fiscal or
personal service by police via fiscal. This could be undertaken by the clerk if current
provisions contained in the Criminal Justice (Scotland) Bill receive parliamentary
approval.

Stage 5B: Warrant to Apprehend Cases

(a) Clerk sends warrant with grounds of breach to fiscal and fiscal forwards to
police
(b) Police arrest offender as soon as possible and inform fiscal
(c) Fiscal notifies clerk who in turn notifies supervising social worker and defence agent
of court appearance from custody to answer breach charges in front of Youth Court

Stage 6: Offender appears in Youth Court and pleads to breach charge
Stage 7A: Offender Accepts Grounds of Breach

(a) Youth Court sheriff sentences
(b) Clerk notifies supervising social worker in writing of outcome of breach

Stage 7B: Offender does not accept Grounds of Breach

(a) Proof date is fixed by Youth Court (diet within 4 weeks)

Stage 8: Proof Diet

(a) Proof is heard by Youth Court sheriff. Where grounds of breach are accepted or proved to the satisfaction of the sheriff, sheriff sentences. Where grounds of breach are not proved to the satisfaction of the sheriff, the Youth Court supervision order continues.

Or, more usually,

(b) Proof is heard by another sheriff. Where grounds of breach are accepted or proved to the satisfaction of the sheriff, the sheriff would consider whether it was preferable to refer the case back to the Youth Court for sentence. The proof clerk would then intimate the outcome to the youth court clerk. Where grounds of breach are not proved to the satisfaction of the sheriff, the Youth Court order continues.
Annex 1B

Illustration of a Possible System for Fast Tracking Breaches
(Community Service & Restriction of Liberty Orders)

A. Breach application submitted to Youth Court clerk; in the case of a Community Service Order, accompanied by a brief supplementary Social Enquiry Report

B. Clerk gives copy of breach report to sheriff and forwards copy to fiscal & defence agent

C. Sheriff considers breach report and (a) takes no action, or (b) issues a warrant for citation, or (c) issues a warrant for apprehension

D. **Warrant to Cite:** Youth Court clerk fixes citation date **(within 28 days)**; notifies defence agent, fiscal & supervising social worker of date fixed; citation sent by recorded delivery mail by fiscal or personal service by police

**Warrant to Apprehend:** Youth Court clerk sends warrant to fiscal and fiscal forwards to police; police arrest offender as soon as possible and inform fiscal; fiscal notifies clerk who in turn notifies supervising social worker & defence agent of court appearance to answer breach charges before the Youth Court

E. Stages 6, 7A, 7B and 8 of Annex 1A are then followed as the case may be but the Youth Court sheriff in these cases would normally hear the proof. Any proof diets would be fixed **within 28 days.**

Note: In relation to Restriction of Liberty Orders, for social worker read Restriction of Liberty Order contractor.
OFFENDING IS NOT THE ONLY CHOICE (REVISED 2002)

This program was developed for young people and is currently available for delivery in both individual and group settings. There is a male and female version.

It was developed from the Cognitive Centre Foundation’s original manual and that of Dr Barbara Armstrong’s Criminal Lifestyle Programme. The former manual was evaluated in its adult form by a team led by Gil McIvor on behalf of the Scottish Executive and reported a large decrease in recidivism, whilst the programme suite developed by Dr Barbara Armstrong was evaluated as one of the two best performing programmes to be found in the literature (Meta Analysis conducted by Paul Gendreau). Current pilots of the programme are reporting positive findings eg Kerelaw Secure Unit.

It is a core cognitive behavioural programme consisting in its group format of 24 sessions.

Further key programmes relating to violence reduction and substance misuse can increase the required density of intervention for the higher risk group.

The programme tackles key criminogenic needs and focuses on the following targets:

(a) Family support,
(b) Communication,
(c) Problem Solving including clearing obstacles, alternative thinking and option, selective information gathering and consequential thinking,
(d) Operant Behaviour - how people learn,
(e) Cognitive Restructuring where they learn to apply skills in real situations,
(f) Socially Reasoning - relating behaviour to the reasons for doing do and assessing values,
(g) Offence Reconstruction.
(h) Victim Awareness.

Linking most sessions would be fixed assignments but the programme is generally designed to be responsive to the needs and learning styles of young people.

A comprehensive training package enables practitioners to deliver the programme and the clinical supervision module enables the implementation process to be established and involves senior management in the planning phase.

It also establishes a model for evaluation and feedback and provides all the necessary supporting material.

PROGRAMME GOALS

(1) To assist in developing pro-social thinking patterns.
(2) To develop realistic pro-social alternative thinking patterns.
(3) To determine the justifications for anti-social behaviour.
(4) To develop a more realistic perspective on anti-social activities including victim awareness.

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(5) To examine morality and foster a more mature degree of morality.
(6) To practice and generate new thinking patterns and behaviours repeatedly.

Key Aims are therefore to reduce the chances of continuously associating with others who support anti social activity and to reduce the chances of the young person committing new offences.

The programme therefore tackles:

(a) Feelings, thoughts and behaviours.
(2) Empathy or sensitivity to the wishes, feelings and expectations of others.
(3) Self - Management.
(4) Self control skills.
(5) A sense of accomplishment and feelings of self worth based on achievement in conventional pursuits and activities.
(6) Affiliation with pro social others.

The programme attempts to do this by giving prominence to assisting the participants to discover and explore what they think is relevant to identified problem areas. There is a specific link made between what they think and how they think and what they do. A way of changing this in order to lead to behavioural change is established through the training in relevant skills in a simple step by step approach and through practice in related situations.

CCF THE COGNITIVE CENTRE FOUNDATION.

NOV 2002.
“PATHWAY”

PATHWAYS

Pro-social Actions & Thinking WAY already forms a key plank in the intervention strategy of 25 English Youth Offending Teams and secure Units and is supported by the Youth Justice Board in England; it provides a comprehensive, modular programme to address the criminogenic needs that influence young people’s offending behaviour. It is evidence informed, skills development orientated, highly engaging and interactive and informed by the cognitive behavioural model of change.

It can be delivered either as a group work provision or within a framework of individual supervision, or a combination of both.

Advice is provided about organisational infrastructure, assessment and targeting, worker style and attitude, monitoring, evaluation and consolidation considerations and other responsibility elements which have been demonstrated to be prerequisite to effective work with young persistent offenders.

Each module can stand alone to enable flexibility in delivery and dosage of intervention and ensure responsiveness in addressing the needs which research has identified as being significant to young people who offend. Used in totality there are 70+ sessions. The modules are:

“WORKING IT OUT” – 10 sessions which use the IDEAL building block approach to enable young people to develop skills in problem solving e.g. consequential thinking, goal setting, alternative thinking, information gathering, decision-making, etc.

“LEARNING NEW SKILLS” - Social Skills training, providing young people with the opportunity to develop the essential pro-social skills necessary for the improvement in interpersonal relationships. Training materials in 26 skills graded basic, intermediate, advanced 1 & advanced 2 are provided

“THINKING THINGS THROUGH” – 10 sessions to facilitate skills in social perspective taking, values enhancement, understanding attitudes and skills in self-regulation.

“CONSIDERING OTHERS” – 10 sessions to teach the skills which underpin empathic thinking and behaviour.

“WORKING WITH OTHERS” - sessions to develop co-operation with others skills, followed by project work to engage in and practice pro-social behaviours. The project work will provide the opportunity to develop links between the programme and other areas of work such as work with families, mentoring and reparative schemes.
Annex 2C

Social Inclusion Resources: North & South Lanarkshire Councils

There are a range of supports in place that we would access to support young people to access facilities within the community. These include:

Education/Training/Employment

- where appropriate teaching support available to alternative to care and supports to young people outwith school; links have been established between education and social work that facilitate this
- access to life long learning support through education resources
- access to IT through social work, Universal Connections (Youth Services)
- Support through Youthstart – aimed at supporting young people in accommodation and to find employment
- Careers service developments – provide facilitated support to young people.

Health

- Young People’s Health Service – ensure accessibility to appropriate services
- Peer Education – support by young people for young people to improve health.

Leisure Opportunities

- Universal connections (youth services) – provide full range of youth services, with particular emphasis on including excluded young people
- Developments coming on stream to support young people using outdoor activities
- Covey – befrienders/mentors – support young people’s access to appropriate leisure opportunities
- Princes Trust.
Dear Ms Grahame

THE OFFICE OF SHERIFF

Some time ago a document was drafted under the above title setting out in general terms the role and responsibilities of sheriffs.

An abridged version of that document is made available to applicants for sheriffal office and Council of the Sheriffs’ Association decided it might not be a bad idea if members of the Justice Committees were given a copy of it.

We appreciate that as Convener of your Committee you are well aware of what we do but it might be helpful if the non-lawyers were given some information about our Association.

To that end I enclose a copy of the document so that you may circulate it to the Members of your Committee if you wish.

Yours sincerely

SHERIFF H MATTHEWS QC

enc
adoption; and the division of family property on separation or divorce. The length and complexity of such hearings has in recent times increased markedly. Cases involving residence and contact orders and freeing for adoption orders can often last for many days and involve difficult and anxious issues where both parties regularly adduce conflicting evidence from expert witnesses.

The sheriff is expected to issue civil judgements with the least possible delay. For the reasons explained above, it can be very difficult to consider cases and prepare judgments in the course of the working day. As a result it is common for sheriffs to undertake this task in private time.

For reasons of speed and minimisation of expense, civil cases in the sheriff court are divided into small claims, summary causes and ordinary causes. Small claims, which comprise claims with a value up to £750, are dealt with under special rules which encourage informality and some active intervention by the sheriff. Summary causes, which comprise claims between £750 and £1500, or claims for removal from heritable property of whatever value, have a more structured formality, but do not involve formal written pleadings or the attendance of a shorthand writer to note the evidence. All other cases are generally classed as ordinary causes. They have full, formal pleadings, and shorthand notes of evidence are taken. The sheriff is however required in each defended ordinary cause to deliver a judgment in writing, setting out at length all the relevant facts which he or she has found proved and giving detailed reasons for the decision. In appeals against the sheriff’s decision in a small claim or a summary cause, the sheriff must set out in the form of a stated case the facts which have been held proved, with his or her reasons for decision. Proposals to increase the small claim and summary cause limits are currently under consideration by the Scottish Executive.

Appeals against the sheriff’s decision in civil cases may be heard by the sheriff principal or by the Inner House of the Court of Session. There is in general an appeal from the sheriff principal to the Court of Session. In matters appealed to the Court of Session, a further appeal may lie to the House of Lords. In certain circumstances the sheriff may have to consider whether to refer a case pending before him to the European Court.

In civil cases a sheriff is bound to follow decisions of the Inner House of the Court of Session which are in point, and also the decisions of the House of Lords in Scottish cases. Decisions of the Outer House of the Court of Session, of the House of Lords in English cases, and of the Court of Appeal in England, are of persuasive, but not binding, authority.

Children’s Referrals

In Scotland children alleged to be in need of compulsory measures of supervision are referred by the Reporter to the Children’s Panel. If there is a dispute as to whether the condition(s) upon which a child is to be referred is established, the Children’s Hearing remit the case to the sheriff for proof and it is the sheriff who has to decide on the evidence at proof whether what is alleged by the Reporter is established. These cases require to be given priority in the court programme and if the child is detained in a place of safety, strict time limits for hearing and disposing of the case apply. Many of these cases are extremely anxious involving serious allegations of physical or sexual abuse of children. Many cases are hotly contested and last for several days, particularly when parties lead conflicting expert evidence. Such cases form an increasing part of a sheriff’s work. The sheriff also has an appellate function in relation to decisions reached by Children’s Hearings as to disposal of a child’s case and such appeals have to be dealt with as priority business.
THE OFFICE OF SHERIFF

1 Terms of Appointment

All permanent sheriffs are appointed by Her Majesty The Queen on the recommendation of the First Minister of the Scottish Executive. The First Minister must consult the Lord President of the Court of Session, Scotland’s most senior Judge, before putting his recommendations forward. Once appointed a sheriff may remain in office until the compulsory retirement age which is 70 for all sheriffs appointed since 1995. Sheriffs may, if they wish, retire at any time after reaching the age of 60 but retirement between the ages of 60 and 65 would be on actuarially reduced terms.

2 Qualifications and Experience

To qualify for appointment as sheriff a person must have been an advocate or solicitor for at least 10 years. Because of the nature of the office, those appointed should be practitioners of standing, whether Queen’s Counsel, advocates or solicitors with considerable court experience. Before appointment, the person would in many cases have had some experience of the sheriffal bench as a temporary or part-time sheriff.

Initially, before sitting alone, a sheriff will normally undergo five days of specific training plus five days sitting alongside an experienced sheriff.

As the jurisdiction of the sheriff is vast, he or she must have a grasp of every aspect of law, both civil and criminal, as well as mastery of the rules of evidence. Each sheriff requires to devote considerable time to maintaining an up-to-date knowledge and awareness of the relevant law, rules of evidence and procedure. Each sheriff requires to read a substantial number of law reports and other relevant publications in order to keep abreast of the many changes that occur in the law. Sheriffs require to be aware of the legislation of both the UK and Scottish Parliaments as well as the decided case law and jurisprudence of the Scottish courts and the European Court of Human Rights.

Each sheriff requires to be versatile and be able to deal with whatever type of case is put before him or her at short notice and to maintain a sound judicial temperament at all times. Many sheriffs will require to deal with various different types of business during the course of each working day, whether in court or in chambers.

3 Primary Functions

The primary function of the sheriff is to act as a judge of the first instance. However, sheriffs also exercise some appellate functions and a large number of administrative and quasi-judicial functions. There are 49 sheriff courts situated throughout Scotland and each sheriff has the same powers and responsibilities within his or her sheriff court district. In the cities and larger towns a number of sheriffs work in the local sheriff court building. In some courts there may be only one resident sheriff whereas in the more remote areas, particularly those in the islands, the resident sheriff may sit in more than one court during the course of a working week. More recently there have been appointments of sheriffs who are directed to sit where there is a need from time to time: such sheriffs are known as All-Scotland Floating Sheriffs.
4 Attendance at Court

The sheriff will normally commence the court sitting at, or sometimes before, 10.00 am. In some areas pressure of business has resulted in courts now starting at 9.30 am.

Before going to sit in court the sheriff will usually read and consider reports or other court papers in connection with that day's court business. These reports can be lengthy and complicated and many of them, such as social enquiry reports, psychiatric reports and community service assessments, require to be given careful and anxious consideration. Most sheriffs consider such reports the day or, more usually, the night before the case calls in court. The sheriff will often require, before sitting in court, to conduct interviews or preside at hearings in chambers in respect of various types of court business.

The Sheriff Court sits each day from Monday to Friday except in certain rural areas where the court will only sit for part of the week and the sheriff will have to travel to other sheriff courts in the course of a week's work. Human rights considerations require that on occasion courts sit on Saturdays and public holidays. This is in order to keep to a minimum the period of detention between arrest and court appearance.

Out of court the sheriff has to undertake a substantial amount of written and chambers work. For example, civil judgments, preparation of stated cases and reports for criminal or civil appeals or children's referral cases, consideration of applications for adoption and applications for freeing for adoption, undefended divorces based on affidavit evidence, administrative applications such as those relating to liquidations, bankruptcies, clubs, wills and succession, trustees and factors, etc and other matters of a quasi-judicial or administrative nature.

A sheriff may be called on at any hour of the day or night to consider urgent applications for various criminal warrants, civil interdicts and child protection orders. In October 1999 the Lord Advocate directed that, as a result of certain deficiencies in search warrants granted by Justices of the Peace, all warrants in future were to be considered by sheriffs. This has placed substantial additional duties on sheriffs, particularly out of hours. Sheriffs who cover more than one court may additionally spend a considerable amount of time in travelling.

5 Special Conditions of Service

A sheriff may be required to live in or near the town in which he or she has the main or only court. The sheriff may not engage either directly or indirectly, in private legal practice or in business, and may not accept any other paid appointment. He or she may be directed to serve temporarily in another sheriffdom or at another court in the same sheriffdom; and may also be transferred permanently to another court. The sheriff's leave of absence is fixed by statute at not more than seven weeks in any year, and is subject always to the approval of the sheriff principal.

6 Nature of Work

Criminal Proceedings

The criminal jurisdiction of the sheriff is both summary (where the sheriff sits alone) and solemn (where he or she sits with a jury). In summary procedure the maximum penalty, except where higher penalties are prescribed by a particular statute, (e.g. twelve months under
the Misuse of Drugs Act and nine months under the Police (Scotland) Act is six months' imprisonment and a fine of £5,000. There are however wide discretionary sentences including probation which may involve detailed conditions, deferring sentence involving conditions, community service, drug testing and treatment orders, extended sentences and supervised release orders, restriction of liberty orders, supervised attendance orders and the power to order compensation, in addition to other sentences including orders for registration of sex offenders.

The procedure for solemn trials is essentially the same in the High Court and in the Sheriff Court. The maximum penalty available to the sheriff is three years' imprisonment and an unlimited fine. He or she has a power to remit to the High Court for sentence in any case in which a longer period of imprisonment than three years is thought to be necessary. This power is regularly used.

Parliament has legislated to increase the maximum period of imprisonment available to a sheriff from three years to five years on indictment and from six months to 12 months on summary procedure (Crime and Punishment (Scotland) Act 1997 Section 13); but these provisions have not yet been brought into effect.

An accused in Scotland has no right to elect to be tried by a jury. The forum, whether solemn or summary, is decided by the public prosecutor, whether the Lord Advocate, his Deputies, or his local representative, the Procurator Fiscal. Recent jury trials taken in the sheriff court have included culpable homicide, attempted murder, assault to the danger of life, assault and robbery, attempted rape, computer fraud, corruption, death by dangerous driving, death of a child during a charity helicopter ride, possession of drugs with intent to supply and being concerned in the supply of drugs, insider dealing and child abuse.

The volume of appeals in criminal cases is increasing markedly. In appeals against sentence the sheriff is required to prepare a report for the Appeal Court, providing a sufficient record of all relevant circumstances and the reasons for the sentence. Appeals against conviction are however likely to involve a great deal more work than those against sentence. In summary cases the sheriff has to set out all the relevant findings-in-fact, together with a detailed note in support and explanation of them. In solemn cases he or she will have to prepare a report for the High Court giving the sheriff's opinion on the case generally and on the grounds of appeal. The amount of work is considerable, has to be carried out within strict time limits, and must be undertaken even in an apparently hopeless appeal.

Civil Court Proceedings

The sheriff court has exclusive jurisdiction for all claims under £1,500. Beyond that limit, and subject to a small number of exceptions, the jurisdiction of the sheriff court and of the Court of Session is the same. Because solicitors as well as advocates have a right of audience in the sheriff court, solicitors can choose to raise the most complicated and important cases in the sheriff court. There is no pecuniary limit. Important and complex cases, which might otherwise have been taken in the Court of Session, are taken in the Sheriff Court for reasons of finance or geographical convenience.

The sheriff court deals with almost all family court actions in Scotland. This involves the bulk of divorces, defended as well as undefended; disputes over the custody and maintenance of children; adoptions including contested adoptions, and applications to free children for
Summary Applications

The authoritative and recent chapter on the Sheriff Court, which is contained in Volume 6 of The Stair Memorial Encyclopaedia of the Laws of Scotland, lists (in paragraphs 1076 to 1138) more than 500 statutory appeals or other statutory applications, which are directed to be made to the sheriff. In some of these applications the sheriff’s decision is final; in others a further appeal is available. The subjects are so miscellaneous that no summary can even be attempted. While some appeals and applications are by their nature infrequent, others are frequently made. The latter include applications for admission to or release from mental hospitals, and appeals and applications relating to matters of Licensing, Gaming, Public Order, gun control, education, and Adults with Incapacity.

Fatal Accident Inquiries

Inquiries into sudden or suspicious deaths are conducted (a) if the deceased dies in the course of his or her employment or in custody or (b) if the Lord Advocate determines it is appropriate to hold an Inquiry in the public interest. These inquiries are normally selected because of particular public interest or importance and can be very lengthy. Recent Inquiries have involved the Newton Rail Disaster, death of children in dental surgeries under anaesthetic, death in the oil construction and repair industry, the RAF Chinook Helicopter Crash, death during fire fighting operations of Tayside Fire Brigade, and death as a result of septicemia after admission to hospital. The sheriff is required to make certain findings and is empowered to make recommendations to avoid a recurrence of the incident. Substantial public interest often attends such inquiries.

Recent developments

(i) The incorporation into the Law of Scotland of the European Convention of Human Rights in terms of the Scotland Act 1998. Devolution issues, where it is argued on behalf of an accused person that the conduct of the prosecution breaches the European Convention of Human Rights, have become a regular feature of criminal procedure. These cases require the sheriff to know the relevant European Jurisprudence. This development is expected to expand once the Human Rights Act 1998 comes into force in October 2000.

(ii) Sheriffs are required to adopt a more pro-active role in certain cases. In civil cases, an Options Hearing is set where, under the Rules, the sheriff is required to seek to secure the expeditious progress of the cause by ascertaining from the parties the matters in dispute and information about certain other matters regarding the case. In particular in Family and Commercial actions this is a very important part of the procedure and requires substantial preparation by the sheriff in advance of the Options Hearing. In criminal courts, intermediate diets in summary cases and first diets in solemn cases also require an interventionist approach.

(iii) Child Welfare Hearings. These hearings have become an important part of actions involving residence and contact orders where the sheriff, on an interim basis, requires to make orders considered appropriate having regard to the welfare of the child. The rules require the sheriff to secure the expeditious resolution of disputes in relation to the child by ascertaining from the parties the matters in dispute and any information relevant to that dispute and allow the sheriff to do anything which he or she thinks fit.
7 Sensitivity of Judgements

The range of decision-making by the sheriff is very broad, and includes matters of considerable local or public interest. Particularly, but not exclusively, in the more remote areas, sheriff court decisions can be of considerable local interest. Sensitivity and tact must often be applied by the sheriff in dealing with issues involving public interest or concern. Fatal Accident Inquiries in particular often involve sensitive or evocative judgments, not only in relation to those closely involved but to the public at large. They also often raise matters of considerable technicality, upon which the sheriff has to express views in writing. They often attract the attention of the national as well as the local media.
Dear Convener

In terms of paragraph 17 of the Protocol between Committee Clerks and the Scottish Executive, I am writing to let you know that the Executive will not be in a position to provide a response to the Justice 1 Committee report on its inquiry into regulation of the legal profession within the normal two months of publication of the report.

The Executive intends to respond to the Committee before the end of next month. This reflects the undertaking given by the Deputy Minister for Justice on 9 January during the Stage 1 debate into the Council of the Law Society Bill that a response to the report would be issued within a month to six weeks.

I am copying this letter to the Committee clerk.

Yours sincerely

M P WEST