



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Public Audit and Post-legislative Scrutiny Committee

**Thursday 26 September 2019**

**Session 5**



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Pàrlamaid na h-Alba

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**Thursday 26 September 2019**

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**PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE**

**21<sup>st</sup> Meeting 2019, Session 5**

**CONVENER**

\*Jenny Marra (North East Scotland) (Lab)

**DEPUTY CONVENER**

\*Liam Kerr (North East Scotland) (Con)

**COMMITTEE MEMBERS**

\*Colin Beattie (Midlothian North and Musselburgh) (SNP)

\*Bill Bowman (North East Scotland) (Con)

\*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

\*Alex Neil (Airdrie and Shotts) (SNP)

\*Anas Sarwar (Glasgow) (Lab)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Stephen Boyle (Audit Scotland)

Colin Cook (Scottish Government)

Penelope Cooper (Scottish Public Pensions Agency)

Gary Devlin (Scott-Moncrieff)

Lesley Fraser (Scottish Government)

Caroline Gardner (Auditor General for Scotland)

Helen Mackenzie (Scottish Public Pensions Agency)

Mark Roberts (Audit Scotland)

Gordon Wales (Scottish Government)

**CLERK TO THE COMMITTEE**

Lucy Scharbert

**LOCATION**

Committee Room 5



## Scottish Parliament

### Public Audit and Post-legislative Scrutiny Committee

Thursday 26 September 2019

[The Convener opened the meeting at 09:00]

### Decision on Taking Business in Private

**The Convener (Jenny Marra):** Good morning, and welcome to the 21st meeting in 2019 of the Public Audit and Post-legislative Scrutiny Committee. I ask everyone in the public gallery to switch off their devices or turn them to silent.

Agenda item 1 is a decision on taking business in private. Do members agree to take agenda items 4, 5 and 6 in private?

**Members indicated agreement.**

## Section 23 Report

### “Scottish Public Pensions Agency: Update on management of PS Pensions project”

09:00

**The Convener:** Agenda item 2 is on the section 23 report “Scottish Public Pensions Agency: Update on management of PS Pensions project”. I welcome to the meeting our witnesses: Penelope Cooper, chief executive, Scottish Public Pensions Agency; Helen Mackenzie, chair of the audit and risk committee, Scottish Public Pensions Agency; Lesley Fraser, interim director general for organisational development and operations, Scottish Government; Gordon Wales, chief financial officer, Scottish Government; and Colin Cook, director of digital, Scottish Government.

I believe that Penelope Cooper would like to make a brief opening statement.

**Penelope Cooper (Scottish Public Pensions Agency):** Good morning. I thank members for their time today.

As chief executive of the Scottish Public Pensions Agency, I welcome Audit Scotland’s section 23 report and its four key messages. The report focuses on the period between 2013 and 2017, a time of transformational change in the agency, and the implementation of a pension software platform was a major component of that change.

I joined the agency as chief executive in July 2017. A key priority was to fully understand the pension software project’s status and direction. I recognised an immediate need to implement thorough project governance reviews that would better support our supplier.

In February 2018, I made the decision to end the contract with our supplier following the office of the chief information officer’s January 2018 technical assurance report, which rated the project as red. Within two weeks of the report being delivered, I convened extraordinary meetings of the audit and risk committee and the management advisory board to share the report’s findings and brief the Scottish ministers on the decision to close the project.

Our focus then was on putting the customers first, and that is the focus now. I reiterate that there has been and remains no risk to the pensions that are paid by the Scottish Public Pensions Agency, which continue to be paid on time and in full.

I recognise that there are key recommendations in the report that the agency and the wider Scottish Government need to take forward.

The first key message was on our business case and procurement exercise. A number of measures have been implemented to improve the agency's approach to improving capability throughout. In particular, a new structure has been defined for the digital transformation and information technology operations, project management and procurement. That will ensure that our portfolio of digital improvement initiatives has robust governance and is continually reviewed, tested and moved forward. The agency is also changing the procurement approach to one of open and complete dialogue with vendors in order to ensure that the scope is feasible and achievable within the timescales.

The second message was on project governance and resources. The agency has implemented stronger governance across the current suite of in-flight technology projects, together with closer and more proactive engagement with Scottish Government technology and digital assurance. As part of the planned target operating model, the agency has put in place and will continue to put in place effective and consistent project management capability to ensure that governance is understood and applied in a well-planned and structured fashion. That will allow better scrutiny and challenge of our strategic suppliers.

The third message was on contract delivery and external reviews. We agree that our supplier was not able to provide a working system and did not achieve any of the project milestones. Our new procurement processes and guidelines mean that, if such a bid were received now, it would not be accepted.

The fourth message was on our failure to achieve value for money in the project. We have thoroughly reviewed our spending commitments since the closure of the project, and we are investing in current and future capability to provide greater functionality, wider automation and continuity of core services.

I also ask you to note that Capita paid £700,000 in compensation in November 2018, following the conclusion of the legal process, and the SPPA outlay under the contract was £681,000.

The figures in the 2018 report are potentially estimates and, should the committee wish it, I can provide a concise answer on our current spend and forecasts in writing.

In conclusion, as part of the lessons learned from the project, and the required transformation of the agency to better meet customer needs, a new strategic plan was created to make clear the agency's strategic direction and ambitions for the years 2019 to 2024.

The principal focus of the strategic plan is to prevent any similar occurrence from happening again, and the successful implementation of the transformation will enable the agency to respond more effectively to changing customer requirements, to increase efficiency, to deliver best value for tax payers, and to position the agency to increase the number of members serviced.

**The Convener:** Thank you, Ms Cooper. It is helpful for us to understand the lessons that you have learned, but we need to look back and ask questions on the report. Colin Beattie will open questioning for the committee.

**Colin Beattie (Midlothian North and Musselburgh) (SNP):** I refer you to exhibit 1 in the Auditor General's report, which details the change of leadership over the life of the project. What were the reasons behind the large number of changes in the chief executive and responsible officer during the lifetime of the project? It seems to indicate a level of instability at a senior level that is bound to have had an impact.

**Penelope Cooper:** The report is correct and details the changes in leadership during the lifetime of the project. There was no one particular reason why there was a change in leadership. Going forward, we will ensure that roles and responsibilities are very clear. I have a succession plan in place to ensure that there will be no gaps if it happens in future. We will also allow better scrutiny of the project.

**Colin Beattie:** Should someone—and I would like to know who that someone is—not have looked at what was happening and seen that all those changes at a senior level were going to lead to some sort of instability or lack of continuity in the management of the project, and that maybe such changes were not a good idea? Did nobody have that wider overview?

**Penelope Cooper:** The changes in leadership were not forecast. They were events that needed to be reacted to—and they were, as best they could be. The responsibility for the agency and for making those changes sits with the chief executive accountable officer. I was not there so I cannot explain why that happened. I can only say that I will make sure that it does not happen again on my watch.

As chief executive, it is my responsibility to ensure that I have robust and clear succession planning. I am putting in place a management team that, if anything unexpected were to happen to me—as it can—is capable of picking up and carrying on, to avoid such a situation happening again.

**The Convener:** Ms Cooper, I want to intervene briefly here to say that we need to scrutinise the

report in front of us. I appreciate that you came into post after a lot of what it outlines, but the committee has a duty to scrutinise this matter. You have had an opportunity to set out future plans and that was very welcome, but I need you to answer, to the best of your knowledge, on the detail that is included in the report. If you do not have that knowledge, that is fair enough, but it would be helpful if you could do that.

**Colin Beattie:** If I recall correctly, there was a period of six or seven months during which the chief executive was seconded to the Scottish Government.

**Penelope Cooper:** That is correct.

**Colin Beattie:** Did that seem like a good idea? Should the chief executive not have put his hand up and said, “You know, we are in the middle of this massive project. Don’t take me away.” I presume that the chief executive had no oversight over the agency while he was seconded.

**Penelope Cooper:** My understanding is that he remained the accountable officer and responsible for the project, and that he attended all the project boards and meetings.

**Colin Beattie:** However, he must have been distracted. Clearly, you are telling me that you do not have that information.

**Penelope Cooper:** I do not have that information.

**The Convener:** Perhaps the Scottish Government has that information.

**Lesley Fraser (Scottish Government):** We do not have that information. However, our understanding is the same as that of Penelope Cooper in relation to the oversight that the chief executive maintained throughout. The key point is that we absolutely recognise that it was not good practice, and that it is not what we would do for a project that was under way now.

A number of different layers of assurance would come into play from the agency, the audit committee and management board, and through the technology assurance framework, which is now mandatory for all public bodies that do that kind of project. That framework would also consider, for example, the appropriate skills for, and oversight of, such a project.

**Colin Beattie:** Looking back, things seem to have become rather opaque, so who do we have to speak to in order to get the retrospective oversight that we need in order to understand what happened at that point?

**Gordon Wales (Scottish Government):** Perhaps I can add a bit more colour, Mr Beattie. I took on temporary responsibility for oversight of the Scottish Public Pensions Agency from January

2017, and permanent responsibility from July 2017, which was before the decision to second the then chief executive was taken. However, in the early part of 2017, it became clear that the chief executive wanted to exit the organisation. I agreed that that was a sensible route forward and put in place plans to recruit a permanent successor, which resulted in Penelope Cooper being appointed as the permanent chief executive.

**Colin Beattie:** Were you aware of the turnover of senior staff at that point?

**Gordon Wales:** I was. However, it was an active decision by the individual to leave the organisation. Clearly, if an individual wants to leave the organisation, there is very little that I can do about it; all I could do was react to that and put in place a permanent successor. If it would please the committee, we can write to it on the rationale for the chief executive going off on that secondment.

**Colin Beattie:** That might be interesting. However, I am rather more concerned about the whole sequence of events, how it came about, and how it impacted on the project. There does not seem to be anybody around this table who can answer that question.

**Gordon Wales:** It clearly had an impact. However, it is important to understand that the previous chief executive—who left in April 2015—retired. Therefore, it was not a case of the Government moving people around in order to suit its specific priorities; the two previous chief executives made active decisions to leave the organisation.

**Colin Beattie:** Let us leave that just now.

There are questions about the quality of reporting on the project to the project board, audit and risk committee and management advisory board. The extent to which adequate reporting was given is not clear, and there is some indication that it was poor.

**Penelope Cooper:** That is certainly the finding of the report, and we do not work in that way now. We now have more in-depth reporting that includes full financials. We report to the MAB and the ARC, we have meetings of the senior leadership team, and the project board is comprised of a wide range of individuals—including a non-executive, external critical friend—to ensure that we have that robustness.

The subsequent level of reporting builds on the lessons that have been learned. Reporting changed on my arrival.

**Colin Beattie:** It is good to have that reassurance about the future. However, being an audit committee, we tend to look back at what happened. We are trying to find out why the

reporting was not up to standard and why somebody was not jumping up and down saying, "We are not getting adequate information on this project." It was a major project for the SPPA.

**Penelope Cooper:** I am very sorry, Mr Beattie; I am not in a position to answer that question.

**Colin Beattie:** I ask again—who do we have to speak to in order to get that information?

**The Convener:** Who in the Scottish Government is responsible for the SPPA? Is it one of you?

**Gordon Wales:** As I said earlier, I took on temporary responsibility for the line management of the chief executive of the SPPA in January 2017 and permanent responsibility from July 2017, which was the same point at which Penelope Cooper was permanently appointed.

**The Convener:** Who in the Scottish Government was responsible before that time?

**Gordon Wales:** Line management of the chief executive previously lay with Alyson Stafford, who is now the director general of the Scottish exchequer. As far as the SPPA is concerned, the oversight was done by a Fraser figure. Two individuals carried out that role during the period in question, and both have left the Government.

**The Convener:** It seems that turnover was high all round.

**Colin Beattie:** That certainly makes it very difficult for the audit committee to get the information that we need.

**The Convener:** Yes.

09:15

**Colin Beattie:** The questioning so far really has not elicited the sort of responses that I hoped for, so I do not see any point in continuing my questions.

**Bill Bowman (North East Scotland) (Con):** I want to ask about the Fraser figure. In paragraph 4 of the background section in the report, the Auditor General says that the management advisory board

"is composed of the Accountable Officer, non-executive members and the 'Fraser figure' sponsor from the Scottish Government. SPPA also has an Audit and Risk Committee".

I think that you have answered the Fraser figure question. However, I went to your website to try to find out a little bit more about the audit and risk committee and did not have much success. Unless I missed it, there was no explanation of that committee or who its members are, and there were no minutes. I then looked at the management advisory board information, which

had a small section on the audit and risk committee and referred to minutes but did not attach them. The management advisory board's minutes are for the past year only. We have to email to ask for its other minutes, which I did. Will you explain what the audit and risk committee is and what it does? I could not find that out from your website.

**Helen Mackenzie (Scottish Public Pensions Agency):** The audit and risk committee comprises me and two non-executive members, who have a financial services industry and governance background. I am from finance and procurement, so we have a good mix for the challenges that we are looking at.

Our agendas cover risk. We look at the risk register, key risks for the organisation, and a heat map. In every meeting, we do a deep dive, look at one particular risk and get the lead person in the SPPA to come and bring that risk to life so that we can see that it is being actively managed. We also receive the reports from internal and external auditors.

At our meeting on Monday, we looked at the report in detail and started to think about what risk management key performance indicators we need to ensure that the recommendations are followed throughout the process.

That is an overview of what we do.

**Bill Bowman:** There is a transparency issue because your website does not explain that. We know why you have come here. Have you looked back to see what the audit and risk committee was doing when everything was going on? It does not seem to have put its hand up or raised red flags.

**Helen Mackenzie:** Yes, we have certainly looked to address that. There is a difficult balance in governance in receiving reports from people who come to you and trying to dig underneath them to see whether what they say is actually going on. We are certainly aware of the issue of how to get under those figures.

**Bill Bowman:** I do not think that the Auditor General said—unless I missed it—that the audit and risk committee was active in saying that there were issues.

**Helen Mackenzie:** You are right. When the current chief executive came in, a full stop was put on that. Colleagues on the audit and risk committee possibly needed other mechanisms for raising concerns.

**Bill Bowman:** Without going into the names of specific individuals, is there a new audit and risk committee, or are the same people on it?

**Penelope Cooper:** There is one person who was on the committee at the latter end of the period, but it is predominantly a new committee.

**Bill Bowman:** So we probably will not have the same sort of issue that we had.

**Penelope Cooper:** I would say so.

**The Convener:** What confuses me is that the report was published by the Auditor General in June 2019, so she and her team must have spoken to people in your agency to elicit the information that is in front of us.

**Penelope Cooper:** Correct.

**The Convener:** Who did she speak to?

**Penelope Cooper:** I am sorry, but I do not have the full list. However, I know that they spoke with the outgoing chair of the ARC and the outgoing chair of the MAB. Both provided information for the report.

**The Convener:** Sorry—you mentioned the ARC and the MAB. For the public record, can you tell me what those are?

**Penelope Cooper:** I beg your pardon. The outgoing chair of the audit and risk committee and the outgoing chair of the management advisory board both provided information for the audit.

**The Convener:** Those people provided information for the audit after they had left the organisation.

**Penelope Cooper:** No—they were still incumbent at the time.

**The Convener:** Have they gone now?

**Penelope Cooper:** They have gone now. They finished in February this year.

**The Convener:** Audit Scotland must have spoken to more than two people. There must be more people in your organisation who have knowledge of what has gone on.

**Penelope Cooper:** Indeed—the Audit Scotland auditors spoke to many people, but I know that they spoke to two non-executives. I do not have the full list of everybody who was interviewed. The auditors spent quite some time in the organisation, reviewing past papers and minutes. They spoke with me, our procurement person and the previous chief executive. I am afraid that I do not have the full list—I expect that Audit Scotland would be able to tell you the names.

**The Convener:** That is not very satisfactory. Does Bill Bowman want to continue?

**Bill Bowman:** I have one final comment. I know that, whenever there is a change of management, the new management always wants to look forward rather than back. Are you satisfied, from

an audit committee perspective, that you know the lessons that need to be learned and what you should do now?

**Helen Mackenzie:** We are satisfied that we know the lessons. We are dividing what we will do in the future into three phased chunks. We are currently developing a business case for the new system. We have some risk KPIs around timescales for when we reach checkpoints and ensuring that those are reached, so that we flag any issues up as soon as we can.

I was on a national health service board needed to flag up some financial issues to a very senior level, even to ministers. From my experience, therefore, I am clear about what happens through the governance process if things seem to be going wrong and the chief executive's response through channels is not successful. I have the experience to raise matters up the tree if that needs to be done.

However, our focus is on early intervention. We are looking at KPIs that would tell us early on if things are starting to go wrong. The "Amber/Green" designation in the Audit Scotland report would start to ring bells for us immediately, and we would talk to Penelope Cooper about that. That is what will happen in future. We have the experience to know, and to be confident enough, to keep raising issues, and there is an early warning system.

**Willie Coffey (Kilmarnock and Irvine Valley) (SNP):** I have some questions about the software procurement for the project. Perhaps you can try your best to explain to the committee what happened. We have seen such examples on many occasions, and it is a mystery to us why nobody seems to be able to see when things are going wrong.

The Auditor General's report highlights some of the classic failures that lead to software design failure: poor initial specification and poor procurement; a lack of skills; an inability to estimate the time that it will take to deliver the projects; and the absence of embracing accepted development methodology standards. Those things all happened in the pensions project. First, Ms Cooper, perhaps you can explain why they happened. Did the organisation lack the experience required to carry out the project? Why do you think that you now have in place the skills to deliver the project successfully the next time round?

**Penelope Cooper:** There were several factors behind what happened. First, the agency did not have a clear strategic direction, so it was procuring without any real clarity. The report shows that the agency was not clear about what it was procuring. It was procuring under the old regime and

regulations, so a business case was not required—only a procurement notice was needed. That has changed. We will produce a robust business case; indeed, we have already done so for the current project.

The skills and ability in the agency were an issue. For some people, it was the first time they had ever done something like that, and they did not have the necessary knowledge and experience. That was a risk, and it was undoubtedly a contributing factor. We now work much more closely in collaboration with central procurement.

We also work closely with digital to ensure that we have that skill and capability on tap. We have reorganised the agency. There was no experienced head of IT. I am recruiting a head of IT and will be interviewing candidates for that role tomorrow. As the Audit Scotland report clearly identifies, the competence within the organisation was lacking and we are addressing that.

The regime under which we procure has changed: we now produce a robust business case, rather than a procurement notice. We have absolute clarity about the strategy for the agency, where we are going and what we need to support it. We will work in a different way on procurement. We are carrying out an architecture review with suppliers, so that we really know what we need and what kind of procurement we need to have.

We no longer have the same time pressure. The report says that the agency was procuring against the clock. I have changed the software licence with the provider so that we do not have that ticking clock, but have a little more leeway to get it right this time.

**Willie Coffey:** Some of that is encouraging. It is encouraging to hear that this time round, more effective IT skills will be deployed to deliver the project. However, I remind you of what it says in the Auditor General's report, which is that development methodologies—Prince2—were in place in the organisation to allow you to develop software in a consistent, recognised and controlled manner, but those did not seem to be adopted or understood. Can you shed any light on that? Can you assure us that that will not happen this time round?

**Penelope Cooper:** Prince2 skills were in place in as much as people had had the training. However, there is a world of difference between having done some training and having experience. This time, we will have people who will have done the training and have the experience. When someone does something for the first time, they are learning and the people who did the work previously were learning. We are bringing in experienced people who know what they are doing

because they have already done it before, successfully.

**Willie Coffey:** There is a role for Scottish Government officials and colleagues to answer. The Auditor General's report says that

“SPPA informed the Scottish Government ... that it did not have the skills to further probe the tender”

and the organisation took no further action. What on earth happened there? Why was there no liaison, assistance or intervention at an early stage before the project rumbled on and the software starting failing, leading to the project being cancelled two years later? Why do we not intervene at an earlier stage to address such issues? I ask the Scottish Government officials to address that point.

**Colin Cook (Scottish Government):** The assessment and audit that the office of the chief information officer—as it was at that time—carried out raised those questions about skills. The assessment made a series of recommendations, and it was up to the organisation or agency to respond to those. We went back at a later stage and looked at the degree to which those recommendations had been dealt with, which was one of the key reasons that we moved the assessment into the red, leading to the ultimate decision to stop the process. That happened because the recommendations that were made for management action throughout the assessment process were not being taken up.

**Willie Coffey:** I refer you to the timeline on page 16 of the report, which says that you started to identify errors in the software in May 2016. It took a further two years before the closure announcement was made—two years, for goodness' sake. Why did it take so long to reach that conclusion? The point that I am making is that a heck of a lot more work should have been done to specify the project properly and adequately prior to the software beginning to fail. Why did the team not have the skills to do that? My question is for the Scottish Government and the SPPA. The Scottish Government had oversight of the project and officials must have seen that the project was failing during those two years.

**Colin Cook:** Audit Scotland has made that point very powerfully. I know that Penelope Cooper accepts it, as do we. The assessment process identified that weakness and made clear recommendations. The skills to help and support organisations such as SPPA are available through the digital directorate and the digital transformation and commercial services that I run. It remains the responsibility of the individual chief executive of an agency to engage with us and to purchase those services.

They are free to find other mechanisms to do so, whether that involves going directly to the private sector or employing people themselves. In those instances, we offer support, and we are currently engaged to assist in the procurement of private sector skills and in the recruitment of the individuals to work in the agency. Those lessons have been learned.

From the point of view of audit and assessment, which is an independent process, the issues were identified and the skills were available, but they were just not taken up. Ultimately, that is what led to the correct decision that Penelope Cooper took on the basis of our advice to stop the project. We could perhaps have done that earlier, and I think that that is one of the lessons that we have learned.

09:30

**Willie Coffey:** I know that other colleagues want to follow up on those issues, so I will leave it there.

**The Convener:** Colin Cook is putting the responsibility for asking the Scottish Government for help at the door of the chief executive. However, I am still confused about the leadership issue. Page 10 of the Auditor General's report has a timeline about the changes to leadership that tells us that the previous chief executive of the Scottish Public Pensions Agency was in post for 13 years. That seems to be a sensible amount of time for someone to be in that post, given that the agency is critically important for our public sector workers. The Government appointed a new chief executive in July 2015 but, only a year later, it seconded them to the Government. Why on earth would the Government pull the chief executive of one of its critically important agencies into Government after only a year in post? That seems to be a key issue here, because, subsequent to that there was an acting chief executive, then so-and-so left and then there was another appointment and so on.

Gordon Wales, why on earth would the Government pull in the chief executive after a year in post?

**Gordon Wales:** We would need to write to you on that specific issue.

**The Convener:** Why can you not tell me now?

**Gordon Wales:** Because I am not aware of the personal circumstances surrounding the previous chief executive and his role, and how that decision was taken.

**The Convener:** Personal circumstances might mean that they were off ill. However, clearly, this person was working and the Government decided that their skills were better used in Government than in the agency.

**Gordon Wales:** However, as Penelope Cooper has said, the chief executive remained in an oversight role, so they were still an active chief executive and the accountable officer for the organisation at the time.

**The Convener:** Oh, so they were doing two jobs.

**Gordon Wales:** There remained that oversight role.

**The Convener:** So, you were expecting them to oversee the agency and do an additional job in the Government. That clearly did not work, because the situation ended up in this mess.

**Gordon Wales:** It is clearly a contributing factor, but I cannot comment on the exact circumstances.

**The Convener:** Is that a good enough answer for this committee when we are looking at a report that speaks of such dire consequences?

**Gordon Wales:** No. I accept that it would be helpful for you to have additional information, and we would be happy to write to you to set out those circumstances.

**The Convener:** I am not actually interested in the personal circumstances of the individual; I am interested in the strategic decision of Government to appoint a chief executive to a key agency and then pull them into another job or, effectively, give them two jobs. That was clearly the Government's decision, because it was a secondment to the Government.

**Gordon Wales:** I accept that.

**The Convener:** And the Government is also responsible for making sure that the agency works properly, so why take away its leader?

**Gordon Wales:** I accept that point. I think that we would need to write to you with details of the circumstances.

**The Convener:** Lesley Fraser, do you want to say something?

**Lesley Fraser:** That chief executive subsequently left the Government and neither Gordon Wales nor I know the circumstances surrounding that individual's career decisions. We can happily look into that and report back to the committee. We do not have that information just now.

**The Convener:** Okay. Thank you.

**Liam Kerr (North East Scotland) (Con):** I will stay on this area. Why did the SPPA decide to award the contract to Capita, given that the advice from the legal department in the Government was that more questions should be asked and that the agency should have another look because the price was "abnormally low"?

**Penelope Cooper:** I am basing my answer on the same information that Audit Scotland had—that is, on the minutes and notes. The agency went back and asked Capita questions, as it was advised to do. It asked whether that was the price that Capita meant. Capita said that it was sure that it could provide the service at that cost, and that that sum allowed for its margin. It said that its intention was to use the arrangement as something of a loss leader in order to gain a hold in the Scottish pensions market.

That answer satisfied the agency. It did not have the skills to prepare the additional questions that it should have taken back to Capita, and it did not have the time, because there was time pressure. Under the procurement guidelines that pertained at the time, it had to go with the cheapest bid—that was the driver. Capita was the cheapest—it was second on quality—and it went with that bid. As I said in my statement, that bid would not go ahead now—we would not accept that bid. However, under the circumstances at the time, the agency did.

**Liam Kerr:** Thank you for that answer. I want to consider the Government's role in this. There was a bid, which was classed as being of "abnormally low cost." The SPPA came to the Government and said, "Here is what we have got", and Government legal told it to go back and ask more questions. Crucially, the SPPA came back and said, "We do not have the skill set to do this; we do not know the questions to ask." I am paraphrasing, but that is how I understand it. At that point, the Government appears to have said, "Crack on". Is that a fair analysis?

**Lesley Fraser:** That is now how I would interpret it. The SPPA sought and was given advice. It then used that advice to go back and challenge. However, with the benefit of hindsight, it clearly did not do that to the level that would have illustrated the issues that subsequently came to be fatal flaws in the project.

**Liam Kerr:** Forgive me, but I respectfully put it to you that you missed out a stage. The SPPA did come to the Government, and legal did tell it to go back and ask more questions. However, the SPPA came back and said that it did not have the skill set to do that. Am I not correct?

**Lesley Fraser:** I cannot give you the exact timing—whether it was with hindsight or at the time—of when the SPPA recognised that it did not have sufficient skills.

**Liam Kerr:** According to the Auditor General's report, it was at the time. Paragraph 15 states:

"SPPA informed the Scottish Government Legal Department that it did not have the skills to further probe the tender. SPPA took no further action and accepted the bid."

After the SPPA told the Government that it did not have the skills to interrogate the bid, the Government dropped out, did it not?

**Lesley Fraser:** That is not the approach that would be taken now.

**Liam Kerr:** I accept that, but it was the approach that was taken at the time.

**Lesley Fraser:** It was the approach that was taken at the time, because different standards were being relied on at that point. There is now a mandatory process of technological assurance, which goes through all those different elements and assures that the relevant steps have been taken for a project of that scale. That is exactly the process that SPPA is undertaking with the appropriate colleagues in the Government.

**Liam Kerr:** My concern is that, as Penelope Cooper said in response to Willie Coffey—again, I am paraphrasing—there was a major dearth of skills in the SPPA to do such a project at that time. It needed support, and it told the Government that it needed support.

The SPPA looks after the pensions of the staff of our NHS, our education sector and our police and fire service. That body told the Government that it did not have the skills to do what it was about to do, and on the basis of that report, the Government washed its hands of it. It majorly took its eye off the ball and adopted a laissez-faire attitude to what the SPPA was telling it. Is that not a fair analysis?

**Lesley Fraser:** That is not the analysis that I would put on it. At the time, very different standards underpinned the process. The critical point is that pensions continued to be paid on time and in full, and that there was no threat to the public service. The question is about the most effective way to bring in new technology to improve the service that is provided to pensioners and citizens in Scotland.

We, along with the SPPA, firmly believe that there are lessons to be learned. We agree with the key messages in the Audit Scotland report, and that underpinned the change in our approach that was introduced in 2017. The standards and the approach in 2014 to 2015 were different, and there are absolutely lessons to be learned from that.

**Alex Neil (Airdrie and Shotts) (SNP):** I want to go back to the change of chief executive. Exhibit 1 in the Auditor General's report makes it clear that, over the two-year period between April 2015 and July 2017, there were at least six chief executives, including interim and acting chief executives. The chief executive who left in April 2015 had been in post for 13 years. When he left, an interim chief executive was appointed and the new chief executive did not start until July 2015. If somebody

was retiring, I presume that everybody knew well in advance when that was going to happen, so why was there a need to appoint an interim chief executive? Surely there was plenty of time to appoint a new chief executive. In fact, I would have thought that would be a rollover period—perhaps of a month or so—when the two chief executives doubled up. Why was an interim chief executive appointed?

**Penelope Cooper:** I cannot explain why that happened. I agree entirely that we should have robust succession planning, and I can only say that, in future, that is exactly what will happen. For example—

**The Convener:** Sorry, Ms Cooper, but, to be fair, that is more a question for the Government. We appreciate that you cannot answer it. Can someone from the Government answer it, please?

**Lesley Fraser:** I cannot set out the particular circumstances that led to that arrangement. There may have been good skills at the next level down, which meant that an interim arrangement was appropriate. However, I do not have that specific information here.

**Alex Neil:** Okay—let us move on to my next question. The interim chief executive served from April 2015 to July 2015, when a new chief executive was appointed. That chief executive was later seconded to the Government. What was the sequence? Was he offered the secondment and then he decided to leave the agency, or did he decide to leave the agency and was then seconded to the Government?

**Gordon Wales:** The decision to leave the Government was taken after the secondment was in place.

**Alex Neil:** No—I mean the decision to leave the agency. I want to know at what point he was seconded. Was the sequence that somebody from the Government said, “We want you in the Scottish Government,” and then he decided to do that and that he wanted to leave the agency, or was it the other way round?

**Gordon Wales:** That individual’s decision to leave the agency was not particularly a result of the circumstances related to the secondment; it was a decision to leave the agency and the Government in its entirety—in effect, it was a decision to resign as the chief executive. In other words, the individual did not want to go back and fill that post as chief executive on a permanent and continuing basis.

**Alex Neil:** What came first? That is my question. Was it the decision to second him, or his indication that he wanted to leave the agency?

**Gordon Wales:** His indication that he wanted to leave the agency was significantly after the point

at which he was seconded. That conversation took place with me in the early part of 2017.

**Alex Neil:** So he was seconded to the Government before he indicated that he wanted to leave the agency.

**Gordon Wales:** Yes—that is my understanding.

**Alex Neil:** Why was he seconded?

**Gordon Wales:** As I said, I do not understand the particular detailed circumstances surrounding that.

**Alex Neil:** What job was he seconded to?

**Gordon Wales:** He was looking at corporate and financial shared services for the Government.

**Alex Neil:** How many hours a week was he to work on the secondment?

**Gordon Wales:** Sorry, but I do not have that detail with me.

**Alex Neil:** How many hours a week was he allocated to oversee his job?

**Gordon Wales:** Again, I do not have that level of detail with me.

**Alex Neil:** Was he getting two salaries?

**Gordon Wales:** No.

**Alex Neil:** He was getting one salary. Was he being paid by the Government or by the agency?

**Gordon Wales:** As I understand it, he was still being paid by the agency.

**The Convener:** Why is it that you know details of the pay but nothing else?

**Gordon Wales:** That is my understanding. I am perfectly happy to obtain the details and write to the committee with the exact circumstances.

**Alex Neil:** With all due respect, you should have come here this morning with the answers to those questions, because it is a fairly big issue in the report. You need to do your homework better next time you appear in front of a committee.

There was then an acting chief executive, who I take it was full time.

**Gordon Wales:** That is correct.

**Alex Neil:** Was that an external appointment.

**Gordon Wales:** No, it was an internal appointment.

**Alex Neil:** Was it advertised?

**Gordon Wales:** No. That person had been acting in a previous role and was the de facto deputy chief executive, so they were the right person to take on that role on a temporary basis.

**Alex Neil:** They lasted from October 2016 to February 2017, when they left.

09:45

**Gordon Wales:** No, it was the same person. It was, effectively, just a change in title. There was continuity in terms of that person through that period.

**Alex Neil:** Was the chief executive who was appointed in March 2017 another person? Was that somebody completely new?

**Gordon Wales:** The person who was appointed as the permanent chief executive at that time was Penelope Cooper, but she took up the post in July.

**Alex Neil:** Aye, so there was a change of personnel again—

**Gordon Wales:** Yes, and if we refer back—

**Alex Neil:** Sorry, but what happened to the guy who was the acting chief executive?

**Gordon Wales:** He returned to normal duties in the agency.

**Alex Neil:** I take it that the job of the next full-time permanent chief executive was advertised.

**Gordon Wales:** Yes. I took the decision that, given the circumstances surrounding the agency's project over the previous years and the challenges that it faced, it was important to have an external appointment. Therefore, rather than carrying out an exercise solely within the civil service, the post was advertised externally, too, because I wanted to make sure that we brought in the most appropriate skill set for the challenges ahead. The person who was chosen through that exercise as the most appropriate person to be appointed was Penelope Cooper.

**Alex Neil:** Just to be clear, the acting chief executive who was appointed in October 2016 was the same person as the interim chief executive who was appointed in April 2017.

**Gordon Wales:** That is my understanding, yes.

**Alex Neil:** Why was there a change of status from "acting" to "interim" after they had been doing the job all that time?

**Gordon Wales:** That was really because of the circumstances around the chief executive leaving. The person had been in an acting role but the previous chief executive was still the permanent chief executive. When he left, it was appropriate to appoint the individual who was carrying out that role as the interim chief executive rather than as the acting chief executive. The defining moment is the departure of the permanent chief executive.

**Alex Neil:** Which was in February 2017.

**Gordon Wales:** Correct. That individual took a decision to leave at relatively short notice. There was then a period during which I had to carry out the recruitment exercise and put someone in place. Because Penelope Cooper came from the financial services industry, there was quite a long lead time associated with her departure.

**Alex Neil:** During the period when there was an acting chief executive and the previous chief executive—who was seconded to the Government—had an oversight function, what was the division of responsibility between the acting chief executive and the chief executive who was doing two jobs?

**Gordon Wales:** My understanding, from reading the arrangements at the time, is that the acting chief executive was, effectively, taking day-to-day decisions but that the permanent chief executive still had an oversight role and, as Penelope Cooper said earlier, still attended major committees, management boards and so on.

**Alex Neil:** This is utterly shambolic. If anybody allowed this to happen in the private sector, they would be sacked. There is no explanation for any of this. We need a detailed account of the whole situation not only in relation to the secondment, but in relation to why, when someone retires after 13 years, their job is not advertised well in advance, so that there is at least a transitional period of at least a month or so before they retire, as we would expect there to be in an agency of this kind.

We need an extremely detailed account of the sorry saga that is set out in exhibit 1—we need timelines, job descriptions, divisions of responsibility and so on. We need to know who in the civil service was responsible for this. Did this go to a minister to be approved? Who approved this at each stage? Why did they approve it? We need chapter and verse, because all of us—including you—are agreed that this was a major contributing factor to what ended up as a total shambles that has done enormous damage to the reputation of the Government and the agency's ability to manage IT contracts.

**The Convener:** On the back of that, I would like to ask about sponsorship—that is a key theme in all the audit reports that we consider. Who was the sponsoring person or department in the Scottish Government for the SPPA?

**Gordon Wales:** Sponsor arrangements are normally reserved for non-departmental public bodies. There tends to be a Fraser figure relationship with agencies.

**The Convener:** What does that mean, Mr Wales?

**Gordon Wales:** A Fraser figure is a consequence of a report by Sir Angus Fraser, back in 1991, about the Government having an individual. Unlike a non-departmental public body, which has a more arm's-length relationship with the Scottish Government, an executive agency is, of course, part of the core Scottish Government. Formal sponsorship arrangements are put in place with a non-departmental public body. A Fraser figure relationship is put in place with an agency, because the proximity is much greater.

**The Convener:** Who was the Fraser figure throughout the period?

**Gordon Wales:** As I said earlier, there was a difference between the line manager and the Fraser figure. Two individuals previously carried out the Fraser figure role: Alistair Brown and Eleanor Ryan, both of whom have left the Government.

When I took on temporary arrangements for the Scottish Public Pensions Agency, in January 2017, I looked at the oversight arrangements that were in place, and, when I took on permanent responsibility for the line management of the chief executive, from July 2017, I decided that it was appropriate that the line management and Fraser figure roles should be the same. From that point onwards, I have therefore been both the line manager to and the Fraser figure for the agency, so there is no separation of those roles any longer. I now hold Penelope Cooper, as the accountable officer, accountable for the delivery of the agency's performance and, as the Fraser figure, I attend meetings of the management board and the audit and risk committee, for example. Therefore, I have a different level of oversight.

**Alex Neil:** How much of that went for ministerial approval? I would be disappointed if none of it was given ministerial approval. I was disappointed by some of the decisions that were given approval, but we need to know at what level all of this was signed off at every stage.

On the chief executive who was seconded, had two jobs and eventually resigned, did he get a severance package?

**The Convener:** I am sorry, Mr Neil, but I must stop you. Throughout this session, the assumption that all the predecessors were men has been bugging me. You may be right, but that cannot be accepted as an assumption.

**Alex Neil:** The reason why I said that is that I think they were men.

**The Convener:** You may be right, but it is an assumption. Maybe Ms Cooper can briefly clarify that point.

**Penelope Cooper:** The interim chief executive from April 2015 was, in fact, a woman.

**The Convener:** I will allow Mr Neil to continue.

**Alex Neil:** When the person—he or she—who was seconded to the Scottish Government while they retained the role of chief executive eventually left the agency, were they given a severance package?

**Gordon Wales:** It was a resignation, so no additional payments were made over and above what someone would normally receive if they resigned from an organisation.

**Alex Neil:** Was that payment based on the terms and conditions of their job with the agency rather than their job with the Government?

**Gordon Wales:** Indeed. Absolutely.

**Anas Sarwar (Glasgow) (Lab):** I want to clarify something that Gordon Wales said about how the individual was paid when they were the chief executive and were seconded to the Government. I think that he said that they were not paid for two different jobs and that they were still paid by the Scottish Public Pensions Agency rather than by the Scottish Government.

**Gordon Wales:** That is my understanding, but I am very happy to clarify that when I write to the committee with all the other details.

**Anas Sarwar:** In effect, the Scottish Government had the Scottish Public Pensions Agency paying for its chief executive, but it took the person away to do a job for free.

**Gordon Wales:** Yes. That is one way of looking at it.

**Anas Sarwar:** You are, in effect, saying that we took away an organisation's leader to do another job and did not let them do their full-time leadership job in the agency. What were they seconded for?

**Gordon Wales:** As I said, my understanding is that the role was to perform an oversight and a study of financial shared services in the core Scottish Government.

**Anas Sarwar:** They were not seconded to something that was uniquely to do with the operation of the agency, even in respect of strategic long-term planning.

**Gordon Wales:** There was a link, because financial shared services cover a significant breadth of the Government's activities—everything from paying suppliers on a day-to-day basis for the goods and services that they provide to what the Scottish Public Pensions Agency does, which is to pay high-volume, customer-focused pension payments. They also cover everything in between. Therefore, there was a direct link with the Scottish Public Pensions Agency's work.

**Anas Sarwar:** I imagine that the chief executive of the pensions agency is a well-paid job.

**Gordon Wales:** The Scottish Public Pensions Agency role sits at the level of deputy director 1A in the civil service grading.

**Anas Sarwar:** What is the salary for that band?

**Gordon Wales:** I do not have the exact figures.

**Anas Sarwar:** What is it roughly?

**Gordon Wales:** It is roughly between £70,000 and £100,000—but that is a very rough estimate.

**Anas Sarwar:** The SPPA was, in effect, paying a chief executive £70,000 to £100,000 not to do their job full time so that they could go and work for free for the Scottish Government.

**Gordon Wales:** As I have said, that is one way that you could look at it, but there was certainly benefit from that individual bringing the experience that they had gained in previous roles to the examination of wider shared services arrangements within the Government.

**Anas Sarwar:** Alex Neil and Jenny Marra have covered the chief executive side. On the responsible officer side, there was obviously quite a high volume of change, particularly from 2016 to 2018. Senior responsible officer 3 was there only for about three months, and the post holder then changed. The high turnover of senior responsibility officers is a cause of concern. Could you say a bit about why that happened?

**Gordon Wales:** I do not think that I am able to comment on that issue specifically, but perhaps Penelope Cooper has some information.

**Penelope Cooper:** I can comment on the last point. She went off sick. She was the responsible officer when I arrived, and she went off sick in July.

**Anas Sarwar:** Is there a connection between the changeover of the senior responsible officers and the not-smooth path—if I can put it that way—of the acting interim and permanent chief executives?

**Penelope Cooper:** I do not think so.

**Anas Sarwar:** Were we just unlucky to have a rocky road on both sides?

**Penelope Cooper:** I am not aware of a connection between the two things.

**Anas Sarwar:** Alex Neil has asked for some written communication about the ministerial oversight. Can you set that out for us a wee bit just now, Gordon? During the period that we are discussing, what was the level of engagement with ministers—in particular, during the high changeover period of mid-2016 to 2018? What

was the level of oversight, discussion and interaction with Scottish ministers?

**Gordon Wales:** I do not have the detail of every interaction, but ministers were clearly being informed of the key events that were happening in the agency—in particular, when milestones were not being met. Ministers were being advised of that.

**Anas Sarwar:** Were they being advised purely for information, or were they actively part of the decision-making process?

**Gordon Wales:** Ministers were clearly given the opportunity to scrutinise further, to ask questions and so on, but day-to-day decision making rests with the chief executive of the organisation.

**Colin Beattie:** I wish to follow up on something that Colin Cook said, just to make sure that I understood it. As a result of a series of IT failures, structures have been put in place to provide support to people within the various bodies, so that they have a resource that they can come to, where they can get help and assistance. The SPPA did not do that. If I recall correctly, Colin Cook said that people within Government and the different bodies had a choice about whether to make use of that capability or to go off and do their own thing. Does that make sense?

**Colin Cook:** Let me be clear about this: they have no choice about the audit and assessment process. All digital and IT projects, regardless of their size, have to be registered with the digital assurance team, and they will be subject to a check if they meet the qualifying thresholds. We have talked about that in the past. For a major project, the threshold is £5 million of lifetime value. That is a no-choice issue.

The skills that people require to run their agency is a matter for the chief executive. Those skills can be provided with the support of a shared service that I operate—the digital transformation service—which provides people such as technical architects, service designers and software engineers. They can also be provided directly through the market, if those responsible in the agencies concerned choose to go out for external support.

I have a function that can help bodies to procure the right service at the right cost. Alternatively, they might decide that the issue is of sufficient importance that they wish to recruit a team internally, and I also have a service that can help them to identify people with the right skills.

10:00

The latter two decisions are a matter of management judgment, and they therefore rest with the chief executive or the appropriate person

in the agency. As I said, Penelope Cooper has decided to do both of those things. She has decided to bring someone who has IT skills into the IT team, and she has engaged us to find that person. In addition, she is procuring extra support from the marketplace and has engaged with us to support that process.

**Colin Beattie:** Does that not still leave a potential gap? If the chief executive of whichever function or agency decides that they can do the job in-house or go out to the market, they can do so without having to refer to you.

**Colin Cook:** Yes—that is correct.

**Alex Neil:** My question also touches on procurement. Given the amount of money that the Scottish Government and all its agencies across the board now spend, in capital and revenue, on IT—we are talking about billions of pounds every year—why does every agency still do its own thing and reinvent the wheel? Why is there no bulk purchasing for capital purchases, in particular? In terms of value for money, it seems to be an antiquated way of procuring services. Am I right or wrong?

**Colin Cook:** We have increasingly recognised that there are better opportunities and better ways of co-ordinating the procurement of IT services across the piece. For example, in the current spending review, we are ensuring that we have forward plans from every part of the Scottish Government, so that we can make those judgments and make recommendations to ministers if we believe that there is the potential for duplication. I accept that improvements can be made if we change the way in which we procure IT services.

**Alex Neil:** I will take the example of the national health service. My health board—NHS Lanarkshire—spends £30 million a year on IT services. Some of that spend is capital and some is revenue. If we multiply that amount across the health service, we see that the NHS probably spends not far short of £0.75 billion—or something of that order, between capital and revenue—on IT services. However, every health board—there are 23 of them—and now every integration joint board is doing its own thing. That is absurd. The waste of money must be enormous. When are you going to get a grip?

**Colin Cook:** I am doing so, and I know that my colleagues in the health service take the same view. They have undertaken an exercise similar to mine to understand what is being spent where, and they have the capability to support that. I know that the health service is addressing that issue.

There are also examples—they are increasingly important—of our building common components

and platforms. That will mean that organisations do not have to procure, because that has been done once on behalf of the entire Scottish public sector or, in some cases, by the Scottish Government.

**Alex Neil:** Is participation in that arrangement voluntary? Going by your last reply to Colin Beattie, is it not time for a bit of a dirigiste regime? It is public money.

We are about to deal with the Scottish Prison Service, which claims that its problems have come about because it is underfunded. The police service says that it is underfunded, as does education. Everybody and their granny says that they are underfunded, yet we appear to be wasting millions of pounds—if not hundreds of millions, potentially—because of the way in which we are procuring IT systems. IT is a particular issue. Is it not time for a bit of energy and for a foot to be put on the accelerator with regard to some of this stuff?

**Colin Cook:** There is a lot of energy on this particular accelerator. The audit and assessment process—the digital first service standard review process—will identify where people are deciding not to use the common processes and components that are available. There is a very good argument that we need to find a different mechanism for doing that and look for some form of central spend controls. That is a matter for ministers and concerns the way in which we run the organisation, and it will be considered as we go into the next spending round. As I said, we are collecting all that information and looking forward so that we can make those judgments and make some recommendations.

**The Convener:** Thank you. I think that Penelope Cooper would like to add something. I ask her to be brief.

**Penelope Cooper:** I just want to give Alex Neil some comfort. The pension systems are quite detailed and bespoke. I am co-operating on procurement as part of a group within a group of public sector pension providers. As you will be aware, there have been many changes in the pension legislation, and they affect the whole industry. We are working with other public agencies that deliver pensions to do some common procurement. I take your point fully—we are all looking for the same thing, so let us work together. On the pension side, that is exactly what we are doing. I hope that that gives you some comfort, Mr Neil.

**Alex Neil:** There is some good news there.

**The Convener:** That concludes the evidence session. I have to say that it has not been the most satisfactory session. I understand that that is due to personnel changes, but that has not made

our job any easier. The committee will consider carefully its next steps on the report. I thank the witnesses for their attendance and evidence this morning.

10:05

*Meeting suspended.*

10:09

*On resuming—*

## **Section 22 Report**

### **“The 2018/19 audit of the Scottish Prison Service”**

**The Convener:** Agenda item 3 is a section 22 report: “The 2018/19 audit of the Scottish Prison Service”. I welcome our witnesses: Caroline Gardner, who is the Auditor General for Scotland; Gary Devlin, who is a partner at Scott-Moncrieff; and Mark Roberts, who is audit director for performance audit and best value at Audit Scotland. I understand that the Auditor General would like to make an opening statement.

**Caroline Gardner (Auditor General for Scotland):** Thank you, convener—I will be brief. My report focuses on the multiple pressures that are facing the Scottish Prison Service, which together threaten its financial sustainability and the safe and effective operation of the service. Those pressures are clearly outlined in the auditor’s “2018/19 Annual Audit Report” for the Scottish Prison Service. The SPS’s revenue budget has been decreasing in real terms in recent years. Its 2019-20 budget for the current year is under pressure from a significant rise in prisoner numbers that has occurred over the past year, as well as from increasing costs.

Prisoner numbers exceed the operating capacity of Scotland’s prisons, and delays in upgrading the prison estate are increasing the system’s risk of failure. On 13 September this year, there were 8,231 people in Scotland’s prisons—555 above operating capacity. The situation is most evident in Scotland’s largest prison, Barlinnie, which is operating at 50 per cent over capacity despite being considered to be no longer fit for purpose. Any decision that is made now to replace important components of the prison estate will take a long time to have an effect.

There are things that the SPS can improve in the way that it delivers its services. It needs to improve its financial planning to deliver its aims and objectives. It also needs to reduce the high and increasing levels of sickness absence among prison officers, much of which is driven by high levels of stress-related absence. However, the fundamental pressure on the service from rising prisoner numbers is largely outwith its control and requires solutions from across the justice system.

Despite the aims of the Scottish Government’s justice strategy, Scotland still has one of the highest rates of incarceration in Europe. As exhibit 5 in my report illustrates, there is a range of issues that are leading to more people entering the prison system and staying there for longer periods of

time. Without any meaningful change in the way in which the justice system as a whole operates, there is a real risk that prisoner numbers will remain high, or even continue to rise and exceed the SPS's maximum capacity in the near future.

In its programme for government, the Scottish Government committed to considering the whole-system changes that are needed to address Scotland's internationally high rate of imprisonment. The speed with which that work needs to be taken forward is very clear.

Alongside me are Gary Devlin as the annual auditor and Mark Roberts from the Audit Scotland justice team. Between us, we will do our best to answer the committee's questions.

**The Convener:** Thank you, Auditor General. The report is very concerning. I ask Liam Kerr to open questioning for the committee.

**Liam Kerr:** Good morning. Auditor General, you started by talking about a decreasing budget, rising prisoner numbers, delays in upgrading the estate, an increase in violence and a rise in staff sickness absence. None of those things has happened overnight; the issues have presumably developed over several years. What analysis has been done in previous years by the SPS and/or the Scottish Government to address those matters?

**Caroline Gardner:** Mark Roberts will address that question in a moment, but first it might be helpful if I direct the committee's attention to exhibit 4, which helps to set some of those issues in context. We have tried to show prisoner trends and projections over the past few years. You can see that the upturn over the past year is the reverse of a trend of reducing prisoner numbers previously.

Exhibit 5 sets out some of the reasons for that. There is an increase in the number of prisoners entering the prison system, and fewer people are leaving. However, that issue is not as long term as you might think from the urgent way that I have described it today. Mark Roberts will give you a bit more background on that.

**Mark Roberts (Audit Scotland):** As Liam Kerr said, those pressures have been building for a number of years. They were identified in both the SPS's annual reporting and the annual audit reports that Gary Devlin has prepared in previous years. During 2018-19, an awful lot of those things started lining up together. Factors such as staff wellbeing, the condition of the estate and changes in the wider policy around the justice system all started lining up to drive the number of prisoners in the prison estate upwards. It was not that that had not been happening previously, but that everything started to coalesce to push the number of prisoners upwards.

**Liam Kerr:** I understand the point. However, to take an example—although I do not want to preempt colleagues' questions—prisons such as Barlinnie or HMP Inverness have always been Victorian; that is not a new problem. Decent planning would have addressed that issue years ago, would it not?

10:15

**Mark Roberts:** Both prisons have been in the Scottish Prison Service's plans for redevelopment for a number of years, but the pressures on capital budgets and so forth are such that redevelopment is taking longer than the SPS would have wished it to take. The SPS is keen to progress the development and modernisation of the estate, but it has not been possible to do that as quickly as the SPS would have liked.

**Liam Kerr:** The report says that the Scottish Government agreed to

"provide additional funding to SPS during 2019/20",

an element of which is to purchase "additional capacity" in the two private prisons. How much is that funding, and what else will it be spent on?

**Caroline Gardner:** Gary Devlin, the auditor, will come in with the detail. It is important to say that our understanding is that the Government has agreed to provide the funding but the funding has not yet been confirmed in the SPS's budget. We assume that that will happen through the autumn budget revision process that is due at the back end of this year.

**Gary Devlin (Scott-Moncrieff):** My understanding is that the additional funding will be in the region of £6 million, to fund the additional places.

**Liam Kerr:** You think that it is £6 million to fund the additional places in the private prisons, but you do not know what else the money will be spent on, whatever the amount is. If the Scottish Government said to the SPS, "We will give you extra money", what would that be spent on, aside from the private sector places?

**Gary Devlin:** The report sets out a range of pressures that the Scottish Prison Service must address. Some are capital pressures, which relate to investment in the estate, and some are revenue-type pressures—the increase in prisoner numbers means that prisoners have to be housed by using more places in the private finance initiative prisons, where additional capacity might be obtained in the short run. Simply by having more prisoners, there are more costs in relation to catering and reform, for example—I am thinking about education costs. When prisoner numbers increase, the costs increase.

The gap that was identified in the report is in the region of £20 million. The Scottish Prison Service identified savings of about £6.4 million, which leaves a gap of £13.5 million.

**Liam Kerr:** I am curious about something. I see from your report, Auditor General, that it costs about £35,000 a year to house a prisoner in the state sector. My understanding is that the cost is about £24,000 or £25,000 in the two private prisons—and they have spaces. What is different about those prisons? Why do two private prisons have spaces when the SPS has no spaces, and why does it appear to cost £10,000 a year less to house a prisoner there than it costs to house a prisoner in an SPS prison? What is going on?

**Caroline Gardner:** Again, Gary Devlin will give you the detail on that. We have spent a lot of time probing the difference between prison places and prisoner places. They are slightly different things, which cannot be directly compared. Gary will talk you through what we know about that and what the questions are for the SPS.

**Gary Devlin:** The answer is a little complex. First, the Prison Service does not calculate a cost per prisoner place separately for PFI prisons; it calculates an overarching cost per prisoner place. To calculate the separate cost would require a detailed exercise, and it has not done that exercise. Therefore, I am not sure that I recognise the numbers that Liam Kerr quoted, but perhaps the Prison Service can give you more detail on that.

When the Prison Service is budgeting, it estimates the total number of prisoners that it will have to house. It tries to take up the public sector prison places first, because those places are already paid for, in a sense—they are there. If it has to take up additional places through the PFI prisons, there are significant additional costs: the cost of taking on an additional 200 prisoners is in the region of £1.2 million, which is not budgeted for.

**Liam Kerr:** Auditor General, you said in your report:

“SPS does not currently have a medium-term financial strategy.”

That seems odd. Why does the SPS not have a financial strategy?

**Caroline Gardner:** You would have to ask the SPS that question. As the committee knows, for a number of years, given the pressure on public finances, the increasing demand and the increasing volatility that there will be in the public finances, I have recommended that all public bodies need to have medium-term financial strategies. The SPS is preparing a strategy to align with its revised corporate plan, so there is a

timing issue around that. However, given the pressures that it faces, it is critical that it has a clear understanding of what its cost pressures are likely to be and, therefore, what funding it needs in order to meet them.

**Mark Roberts:** In recognition of that challenging position, with the rise in prison numbers, the corporate strategy that the Auditor General mentioned was revised early in the course of last year by the Prison Service. As the Auditor General said, a medium-term financial strategy would be valuable to support the delivery of that.

**Colin Beattie:** I will ask about the payments that are made to prison officers. I was surprised that there is no overtime mechanism for prison officers. If they are not properly managed, the ex gratia, non-contractual payments that are made on a voluntary basis to officers who are working increased hours are open to problems and issues. The report indicates that there is a problem with about half of them, although that was based on a sample of only 10; with regard to the whole volume of transactions, I do not know whether that is statistically significant. Why is there an appropriate approval process but no appropriate control mechanism?

**Caroline Gardner:** The agreement that prison officers are not eligible for overtime payments was reached some time ago between the Prison Service and the prison officer unions. It starts from a good place, which is the assumption that the prisons should be staffed for the number of people who are housed in them and the service should not, as a matter of course, rely on overtime in order to be able to run safely. However, given the pressures that are set out in the report, that is leading to significant ex gratia payments. Gary Devlin will talk you through what he sees there and the question of the controls around the payments.

**Gary Devlin:** It is a good question. The sample size sounds small, but it is statistically representative. It goes through a sample size calculator, which gives a statistically reliable outcome. However, when we tested, we found that all those ex gratia claims had been appropriately signed but, in 50 per cent of cases, we could not trace them back to the source evidence that would confirm the additional hours worked. One of the recommendations in our report is that the Prison Service needs to tighten up that process and do an additional exercise to investigate the outcome. In the interim period, it has done that. Perhaps, if you meet the Prison Service, it will give an answer on that.

**Colin Beattie:** You said that 10 transactions is statistically significant. How many transactions of that nature are there?

**Gary Devlin:** I do not have that figure. I could come back and tell you exactly what the population is. The population spans three years. Payments were made in 2016-17, 2017-18 and 2018-19, so there will be a different population number each year.

**Colin Beattie:** I am interested in finding out what the volume is. What control mechanisms would be satisfactory for managing such payments? The report says that there does not seem to be a correlation between the notional overtime worked and the size of the payments.

**Gary Devlin:** We say that there is a correlation between the overtime worked and the size of the payments. It is clear that the ex gratia payments go up. They go up in correlation to sickness absence.

**Colin Beattie:** However, you say that you cannot reconcile them.

**Gary Devlin:** I would have expected to be able to reconcile them to a time record that demonstrated that the prison officer who was making the claim for an ex gratia payment had worked the additional hours. We expected that primary record to be available to the auditor.

**Colin Beattie:** So there is no link between the hours worked and the payment that is being made. There is no evidence of the hours worked.

**Gary Devlin:** The link is that, within the terms of the ex gratia payment, the payment made is valid for the hours that were claimed and approved. However, in 50 per cent of the cases, we could not find evidence that the hours had been worked.

**Colin Beattie:** Is it correct that most of that seems to relate to compensation for sick leave?

**Gary Devlin:** No. Sick leave reduces the number of prison officers who are able to staff prisons safely, which requires the Prison Service to have its prison officers work longer hours to compensate for staff sickness absence.

**Colin Beattie:** The value of the ex gratia payments has increased by 65 per cent. Does that directly correlate to the increases in the SPS's sickness rate?

**Gary Devlin:** It does. The report shows that sickness absence goes up by about 65 per cent. If we were to map that into an expectation of the additional hours for overtime worked, it is a good correlation. When it comes to the additional resource, those things happen in a lumpy way; they do not happen in an entirely linear way.

**Colin Beattie:** According to exhibit 2 in the report, there is not directly a 65 per cent increase in the number of days lost.

**Gary Devlin:** It is a 65 per cent increase in the sickness absence rate. We transfer that into the number of days lost and translate it into the additional hours for overtime.

**Colin Beattie:** However, the value of the ex gratia payments in 2018-19 increased by 65 per cent, which I would expect to correlate to the number of days lost to sick leave. Exhibit 2 shows a significant increase for 2018-19, but it is not 65 per cent.

**Gary Devlin:** We would not expect it to be exactly 65 per cent. Maybe I could come back and demonstrate that connection.

**Colin Beattie:** I do not see how that links in. The increase in the number of days lost looks like a lot less than a 65 per cent. I would be interested to see how that fits in.

I am confused by some of the terminology around prisoner numbers. The report talks about different capacities: operating capacity, design capacity and maximum capacity. What do those terms mean?

**Mark Roberts:** Operating capacity is the level at which the SPS thinks that it can operate safely with its current workforce. The design capacity is the capacity of the current estate, which is the structures of the prisons and the facilities that are available, recognising that there are different types of prison and different elements in the prisons that reflect the varying needs of prisoners. Maximum capacity is the maximum population that the service can house. That would require significant changes to operations, such as greater sharing of cells and reduced opportunities for prisoners to be outside cells in the course of the day.

**Colin Beattie:** With present prison officer numbers, the service cannot achieve maximum capacity.

**Mark Roberts:** It could, but that would place significant pressures on the service with regard to its safe and effective operation.

**Colin Beattie:** Do we have a feel for why so many prison officers are going off sick? Presumably, it is because of stress.

**Caroline Gardner:** The system is under pressure, which leads to increased pressure on prison officers. Financial pressures make it more difficult to do things, such as education, time out of cells and other leisure, that would release the pressure within prisons. Given the current operating circumstances, pressures are building up in a way that is difficult to release. That is one of the reasons for our concern.

**Mark Roberts:** That captures it well. It is a function of the ever-increasing pressures that the

service has faced over recent years, which came to a head during 2018-19.

**Colin Beattie:** Exhibit 4 shows that the number of prisoners had been dropping for years. In 2018-19, we had a significant uptick. You have given various reasons for that. Is it a one-off uptick? Will the decrease in numbers resume? Are there any projections on that?

10:30

**Mark Roberts:** That is a challenging question to answer. As you said, the long-term trend over the past decade has been a reduction in prisoner numbers, which is in line with what the Scottish Government is trying to achieve. The reversal came as a surprise to many people. As I said to Liam Kerr, a range of different pressures came together. We have had conversations with SPS and HM inspectorate of prisons for Scotland on whether it represents the new normal or whether it is an anomaly and we will revert back to the previous trend. The answer is that, at the moment, no one is entirely sure.

The nature of the prison population is changing. It is ageing. As we detail in exhibit 5, there are longer sentences and more convictions for historical sexual offences, which are associated with a different type of prisoner. There are more convictions for serious organised crime and domestic abuse. As well as the quantitative number of prisoners increasing, the nature of the prison population is changing. Whether that becomes the new normal remains to be seen.

**Caroline Gardner:** The bottom half of exhibit 4 sets out the Scottish Prison Service's scenarios for what might happen. In the best-case scenario, the number comes back down slightly; in the worst-case scenario, it continues to increase over the next few years, beyond SPS's capacity to accommodate those prisoners.

**Anas Sarwar:** Auditor General, I will focus my questions on HMP Barlinnie. The most startling statistic is the 50 per cent overcapacity. Before we go into more detail, what day-to-day operational dangers are there in Barlinnie?

**Caroline Gardner:** That is hard for us to comment on. It is not our area of expertise. HM inspectorate of prisons for Scotland is in a better position to comment on that detail. First, as we highlight in the report, that pressure on the prison system makes it harder for prisons to do re-education and retraining interventions to reduce reoffending, which are part of the solution to the pressure on prisons and are also important for society as a whole. Secondly, as we say in the report, it is a Victorian prison. It is difficult to maintain safely. Given the number of prisoners that it accommodates, if there were to be a failure

in part of the prison infrastructure, it would have serious consequences for the system as a whole.

**Mark Roberts:** Last month, HM inspectorate of prisons for Scotland conducted an inspection of Barlinnie. That report will make its way into the public domain in due course.

**Anas Sarwar:** To focus on the risk to staff, at Barlinnie, at any one time, almost one in five staff are off sick. You said that that is related to stress. A lot of that stress might be due to the fact that there is overcapacity. There was also an incident earlier this year in which four prison guards were seriously assaulted in the exercise yard, and four individuals were left to monitor 93 inmates in the exercise yard. Do we have recorded figures of the number of attacks or assaults on prison staff across the board or in Barlinnie specifically?

**Caroline Gardner:** Exhibit 6 sets out the SPS's key performance indicators. Two of those focus on assaults on staff by prisoners. The service categorises the assaults as serious or minor. As you can see from the exhibit, both figures have increased over two years. We do not have specific figures for Barlinnie.

**Anas Sarwar:** Are we able to find specific figures for Barlinnie? Looking at the capacity figures, we might assume that there is a higher incidence of assaults at Barlinnie. The numbers would tell us that. Are we able to find those statistics?

**Caroline Gardner:** The Prison Service will have those figures. Our report focused on the prison system as a whole.

**Anas Sarwar:** One of the frustrations that was expressed at the time of the assault on the four prison guards earlier this year was that there was a feeling, particularly among staff—as their union reported—that, often, attacks and assaults were not reported or recorded.

For example, the assault on the four prison officers was not reported to the police until three days after it took place. Is there anything that covers how the level of attacks on staff is recorded and reported? Has that been audited properly?

**Caroline Gardner:** That is part of the remit of Her Majesty's chief inspector of prisons and, as Mark Roberts said, there has been a recent inspection of Barlinnie. That focus on the professional running of prisons, the regime within them and the impact on both prisoners and staff is part of the chief inspector's responsibility.

**Anas Sarwar:** That covers the staff side. However, on the risk to inmates, we have had lots of sad reports, particularly in recent months, about attacks in prisons and the safety of individual inmates, particularly around mental health, suicide attempts and so on. Have any numbers come

through the audit about the level of danger to inmates in terms of adverse incidents and the possible connection to overcapacity at Barlinnie?

**Caroline Gardner:** I have no doubt that the pressures on prisons and the prison system that we set out in our report are bad for everybody involved. They are bad for prison staff, for prisoners and, in the bigger picture, for Scotland as a whole. The KPIs in exhibit 6 capture prisoner-on-prisoner assaults, categorised as minor or serious, but they do not capture some of the wider dimensions that Anas Sarwar mentioned. The chief inspector of prisons has raised concerns about the quality of healthcare in prisons, particularly in relation to the levels of mental health problems that we are seeing. I am not sure that we can comment on that directly other than to recognise that the pressures on the system are exacerbating existing problems. Mark Roberts may want to add to that.

**Mark Roberts:** No—that is exactly what I was going to say.

**Anas Sarwar:** Barlinnie prison has been earmarked as not fit for purpose and requiring new capital investment in a new build, but there is no clear path for when that will happen. Is that impacting on maintenance? Is that work not happening at Barlinnie because it has been earmarked for a new build? Is there a backlog?

**Gary Devlin:** There is a maintenance backlog. Of the £6.4 million of savings that the Prison Service has identified, 50 per cent comes from a reduction in planned maintenance across the prison estate. In the report, the Auditor General raised the issue of the pressure that that puts on the whole prison estate, with more focused pressure on the older Victorian prisons. They suffer from the natural issues that you would imagine for an older prison.

**Anas Sarwar:** Would it be correct to say that capital investment is probably not being made in maintenance work at Barlinnie because it is earmarked for closure and a new build?

**Gary Devlin:** Just to be clear, you are asking the right question, but repairs and maintenance are revenue expenditure that comes out of the revenue budget. Capital expenditure tends to be for new prisons or major works—

**Anas Sarwar:** Or major redesigns.

**Gary Devlin:** For re-roofing a prison or something like that.

**Anas Sarwar:** Has any value been placed on the level of maintenance that would be required if, for example, it was decided not to build a new Barlinnie prison and the current one needed to be used for the next 10 or 20 years? Do we know what it would cost to maintain it at its current site?

**Gary Devlin:** The Prison Service has a detailed planned maintenance schedule for the entire prison estate that sets out its expectations of the maintenance level and costs that would be required. Given current budget pressures, it is not able to maintain the prison estate to the level that it would wish to.

**Anas Sarwar:** What is the gap, in terms of money?

**Gary Devlin:** I do not know that off the top of my head, but that information is available. It is part of the £6.4 million of savings that has been proposed by the Prison Service. It will be around the £3 million mark.

**Anas Sarwar:** When will we be in a position to have a new Barlinnie prison?

**Caroline Gardner:** That is a question for the Government, relating to when funding can be identified. There is a commitment to replace HMP Glasgow and HMP Highland but funding is not available. As I said in my opening remarks, even once funding is available there is a long lead time until the prisons are built and up and running.

**Anas Sarwar:** Do you have any idea of the level of funding that is required?

**Caroline Gardner:** I am not sure that that is a question that we can answer.

**Willie Coffey:** I have a general question about the budget situation. The report shows that the allocation has pretty much flatlined, although I think that there is an additional capital allocation of £2 million to come. In paragraph 9, it says that there was an underspend last year of £6.37 million and that there has been an underspend trend over the past decade. Do we have any figures on the total underspend over the past 10 years and any explanation for why that has happened?

**Caroline Gardner:** You are right to say that the budget has been flat cash over the past few years, which equates to a real-terms reduction. The underspend of £6.37 million that we quote in paragraph 9 is mainly due to slippage in the capital programme. I think that the same is true for the underspend in previous years, but Gary Devlin will keep me straight on that.

**Gary Devlin:** Yes, that is true. The biggest single element of that is the replacement for HMP Glasgow. The Prison Service will be factoring an element of capital in its budget to start works on a replacement prison for HMP Glasgow. There are several other things in there, such as the fresh start project, which has not progressed, and so there is an underspend at the end of the year.

**Caroline Gardner:** We have also seen slippage in replacing the estate for the women's prison at Cornton Vale and moving to the planned

community units instead. That is obviously not welcome, given that replacing Cornton Vale is a policy priority.

**Willie Coffey:** Do we have a figure for the total underspend over the 10 years?

**Gary Devlin:** I do not think that we have that figure. It is a matter of record, so it is something that we can get to you.

**Willie Coffey:** I am interested in that because if there has been a significant underspend each year, it does not seem right that there should be an additional capital allocation.

**Gary Devlin:** That is because the Scottish Government's budget works on an annual cycle—it is as though it starts afresh every year, rather than carrying forward underspends from previous years and reallocating them to the same capital project.

**Willie Coffey:** Okay. Exhibit 6 sets out key performance indicators. There is an interesting one on purposeful activity hours. There seems to have been a significant drop in those hours, year on year. I cannot see any commentary around that. Caroline Gardner—can you explain what is going on there and the possible impact that that might have on the prison population?

**Caroline Gardner:** We are happy to answer that, but I will ask Mark Roberts to pick that up.

**Mark Roberts:** It is a significant decrease and it reflects the financial pressure that the service is under: there is less capacity and less time for prison officers to support prisoners in purposeful activities. That has knock-on effects on the ability of prisoners to complete programmes that might assist them in leaving prison and might reduce the positive effects that accrue from such purposeful activities when people leave prison and come back into the community. It has potential knock-on effects both on prisoner numbers—with slower rates of release—and on the individuals involved and the potential for reoffending.

**Willie Coffey:** It might be unfair to ask you about this, but presumably the inspectorate would have a view on the impact of that on prisoner behaviour, which is an issue that other members have raised. Is there a correlation between the two?

**Mark Roberts:** The inspectorate would be better placed to comment on that.

**Willie Coffey:** Finally, in your opening remarks, Auditor General, you said that we require people across the justice system to participate in helping to find solutions and to improve the situation that we find ourselves in. Can you say anything about the remand situation in Scotland? My understanding is that it is double the level in

England and Wales. Why might that be? Are any solutions being deployed to try to manage that better in Scotland?

**Caroline Gardner:** First, you are right that addressing the Prison Service's problems requires a response across the justice system. At the highest level, our incarceration rate is the highest in Europe. We have to ask why that is and whether there are better ways of dealing with offending, reducing reoffending and reintegrating people into society.

On the point about remand specifically, I direct you to exhibit 5, which shows factors affecting numbers going into prison; we talk specifically about supervised bail as an alternative to remand. At its height in 2005-06, there were 917 cases of people who were on supervised bail, rather than remand. In 2017-18, that figure had dropped to 268.

I do not know whether we can say much about the reasons for that, but there has clearly been an increase in the pressure on prisons, because we are not using the alternatives that we used in the past to the same extent. Mark Roberts can probably give the committee a bit more colour on that.

10:45

**Mark Roberts:** The Auditor General is right. As she said, a whole-system approach is needed to reduce the pressure. The Government has established and chairs a prison resilience leadership group, which meets regularly and takes representations from across the justice sector; it is looking at the multiple factors that are pushing up the prison population. To us, that is the right approach to take, because we need a whole-system approach to respond to the increase in the number of prisoners.

**The Convener:** Like Mr Coffey, I am looking at exhibit 6, on the key performance indicators. The key performance indicator on reduced substance abuse has deteriorated. I read from that that the Scottish Prison Service is having less success in reducing substance abuse. I appreciate that the figure has fallen, but only by 2 per cent. I am interested in the figures. Can Gary Devlin say what percentage of the prison population uses drugs?

**Gary Devlin:** I am sorry, but I cannot. We did not obtain that data as part of the audit. I am sure that the Prison Service would know the answer.

**The Convener:** How did you come to the figure of 45 per cent for that key performance indicator? Did that come from the Scottish Prison Service?

**Gary Devlin:** It came from the Scottish Prison Service's data, which informs its performance management system.

**The Convener:** I am interested in the figures because the drug problem in Scotland is huge. Recently, the Dundee drugs commission reported on the interaction between people who come out of prison and the community. Maybe we can get into that matter further.

**Liam Kerr:** I am also interested in the figures, because I have a feeling that something like 14 per cent—forgive me, but I am pulling stats from the back of my head—of the prisoners who were released in 2007 tested positive for drugs. Last year, I think that the figure was 26 or 27 per cent. If I am right—or even if I am in the right territory—I do not see how those figures marry with the figure in the report relating to reduced substance abuse. Do the witnesses care to comment on that?

**Mark Roberts:** I think that that question would be better targeted at the Scottish Prison Service. You would need to ask it how it collects and reports its data. We did not look at that through the audit process, so it would not be fair to comment.

**Gary Devlin:** It would be reasonable to say that managing drugs—spice and so on—is a major issue and a significant challenge for the Prison Service. Part of the reason why it is gathering the data is so that it can have better insight into the challenge.

**The Convener:** It is also not an easy issue for staff to deal with.

In exhibit 5, the Auditor General points to some of the pressures on the Prison Service. It is a very useful illustration. I am looking specifically at the headings “Growth in convictions for legacy sex offences” and “Convictions for domestic abuse”. The issue of convictions for domestic abuse has been discussed in Parliament for quite a few years; I remember Kenny MacAskill introducing legislation maybe as far back as 2012. There should have been reasonable anticipation in the Prison Service that, following the legislative moves in Parliament, the prison population might increase. Does the report say that the Prison Service did not plan for that?

**Caroline Gardner:** I am not in a position to go that far. As Mark Roberts said, planning has been going on. For some time, the Prison Service has had forecasts about what is likely to happen with prisoner numbers over a long period. That is a positive step, which I welcome.

However, exhibit 5 shows a number of factors all happening at the same time, some of which increase the number of people who are going in, including those who get longer sentences, for example, which is difficult to predict. There are

also some changes to the policy on prisoner release, and to the way in which home detention curfew and alternatives to remand are being used, which are lowering the number of people coming out, all at a time when the budget has been flat and is therefore reducing in real terms.

Although I suspect that there is always room to improve planning, my starting point is not that the SPS has not been planning well enough or is not a well-run organisation.

**The Convener:** Are you saying that do you not believe that?

**Caroline Gardner:** That is not my starting point in this report. I have no evidence that the SPS has not planned appropriately for the focus on domestic violence, which you rightly highlight.

**The Convener:** It is just that those pressures are all happening at the same time.

**Caroline Gardner:** That is right.

**The Convener:** I am especially struck by the effect of ending automatic early release. You say that it has had only a small impact to date but might affect another 370 prisoners in the next decade, so the Prison Service is trying to deal with all that at once.

**Caroline Gardner:** That is right.

**Alex Neil:** I declare an interest in that HMP Shotts is in my constituency.

I want to focus on exhibit 5. We could pick on any one of the elements in it, but I am interested in the ones on the lower half of the page and the impact that each of those factors is having. For example:

“Financial pressures, staff absences and prisoner numbers: are adversely affecting the number of prisoners completing reoffending/rehabilitation programmes”.

I am dealing with quite a number of such people in HMP Shotts—they are technically my constituents at the moment—who are concerned about the lack of resources in the self change programme, which is a key part of getting people to the point at which they can get parole. I would actually say that the self change programme is in crisis. It is a good example of how, if we do not address these issues, we will end up with many more people staying in prison for much longer, and a higher percentage of those who get out reoffending because they have not had their rehabilitation programmes.

Investing heavily in the self change programme, for example, would quite quickly—in three, four or five years—save money and reduce prisoner numbers as well as reducing reoffending. I hear what you say about a task force tackling resilience across the board, but is it moving fast enough? Is

it action orientated? The problem needs immediate action, rather than taking minutes and wasting years on a task force.

**Caroline Gardner:** The purpose of my report is to bring to the committee exactly those sorts of pressures. The risk is that they become self-perpetuating: the inability to invest in reducing reoffending means that more people are being released, committing more offences, and coming back to prison, so the numbers continue to climb.

In her annual report, which came out last month, Her Majesty's chief inspector of prisons was clear that there is a risk of a perfect storm of factors coming together and making it more difficult for the prison system and the justice system as a whole to work effectively. As I have said a couple of times, there are questions about the Government's response to that. The justice strategic board's work is a question for Government rather than something that we can reassure the committee about at this stage.

**Alex Neil:** Cuts to funding for rehabilitation were announced recently. Have you had a chance to look at the impact of those cuts on prisoner numbers?

**Caroline Gardner:** Not directly. As you know, we have reported in the past on the justice system and work to reduce reoffending. Last year, we reported on the slow start of Community Justice Scotland, the new organisation that is intended to develop some of the alternatives to imprisonment. We are considering coming back to it in future, and Mark Roberts is doing some work to scope that. Mark, do you want to say some more about that?

**Mark Roberts:** No, I do not really have very much to say about it, because we recognise that there is as a whole-system problem. The Auditor General has asked us to prepare some approaches that we could take to a major performance audit of the justice system as a whole.

**Alex Neil:** That is a good idea.

The other two factors are the changes to the home detention curfew criteria and the effect of the reduction in supervised bail. We have spoken about the higher numbers, and that is well over 800 people who would not be in prison but currently are. That number represents 10 per cent of the entire prison population, so it seems that those are fairly urgent issues that must be addressed. Do you agree?

**Caroline Gardner:** Absolutely.

**Alex Neil:** It seems that there are two broad financial issues here. One is that the Prison Service claims—justifiably, I think—that it is underfunded and needs significantly more money

than six million quid. The other is whether it is making the best use of the money that it has. Is it doing so, is there genuine underfunding and what level of additional funding is required just to stabilise the situation, let alone get prisoner numbers down in the medium to long term?

**Caroline Gardner:** We can probably have a go at answering two of those questions, but not the third.

As I said in my opening remarks, there are things that the Scottish Prison Service can do to improve the way in which it uses its finances. At the very least, its longer-term financial planning will be important in that, so we will need to see the financial plan that should accompany its new corporate plan.

Having said that, the Prison Service's budget has been flat cash since 2014-15, which represents a quite significant real-terms decrease of 12.5 per cent. That might have been manageable had we seen a continuation of the reduction in prisoner numbers that we had been seeing until 2018-19, but we have not done so; that trend has been reversing. As Mark Roberts touched on earlier, we are also seeing more older prisoners whose different needs must be accommodated, especially those who have been convicted of historic sexual abuse or given longer sentences. For the first time, we are seeing prisoners with dementia and similar health problems that must be cared for. We are also seeing increasing levels of drug use. The pressures within the system are increasing, so there needs to be a close look at what the resources are likely to be. At least in the short term, there might need to be an increase. Equally important is the capital investment that will be required to ensure that the prisons estate is fit for the future.

However, the big answer has to be that we must step back and look at the justice system and the way in which it is working, given our high incarceration rates. I should also recognise that the Scottish Government's whole budget is under pressure. There is not an immediate source for more money for the Prison Service, given the pressure that is on other areas, so making the best use of existing money right across the Government and the justice system must be the starting point.

**Alex Neil:** Serco claims to have better outcomes in preparing prisoners for leaving the system, and the destinations of its prisoners suggest a lower reoffending rate. If we compare private prisons with public ones and compare the different prisons within each sector, is there evidence to support any particular model getting better outcomes? Is performance better in some prisons than it is in others? If they were all to be

brought up to the level of the best performer, what difference would that make?

**Caroline Gardner:** We reported specifically on reducing reoffending two or three years ago. Mark Roberts led that work, so I ask him to talk you through what we knew then.

**Mark Roberts:** It was actually slightly longer ago than that, I am afraid; we last reported on reducing reoffending back in 2012-13. Again, that work focused very much on the whole-system approach that needed to be taken. Since then, there has been significant legislative change, with the abolition of community justice authorities and, as the Auditor General mentioned, the establishment of Community Justice Scotland. All that has changed very significantly the approach that is now being taken to community as opposed to custodial sentencing.

I do not have any information on the effectiveness of different approaches among prisons or between the public and private sectors. Perhaps HM inspectorate of prisons for Scotland would have that.

**Liam Kerr:** What Mark Roberts said gets to the nub of what the issue will be as we move forward. The SPS has been forced to axe throughcare. When you next look at the area, will you be able to assess the impact of that approach on reoffending and reconviction rates? Let us hope that its axing will be only temporary, but if it were to last for a significant period, could you assess that impact?

11:00

**Mark Roberts:** I would hope that we would be able to find some way of doing that. At this time, however, I would not want to commit to saying that we could definitely find a method by which we could do it.

That would be a really important question, and we would have to think about how we would get at the matter. An assessment of the impact would be challenging, and it would also potentially be quite long term; my initial caveat would relate to how long we would have to wait to see whether there was going to be an impact. That is certainly something that we factor into our thinking about how we approach a major performance audit.

**The Convener:** Do members have any further questions?

**Bill Bowman:** I want to go back to some of the numbers. On page 7, at paragraph 16, the report refers to payments totalling £13.9 million. Before I ask about that, I want to be clear that the £13.9 million does not contain the £4.25 million ex gratia payment that Colin Beattie asked about.

**Gary Devlin:** No—it is additional to that.

**Bill Bowman:** So, over three years, there were payments of £6.5 million, £3.7 million and £3.6 million, with £2,000 going to each employee in the first year, followed by £1,000 each in the next two years. If we divide that amount, does that mean that approximately just over 3,000 employees were receiving those payments?

**Gary Devlin:** I do not think that it works exactly like that, but it must be close to that number.

**Bill Bowman:** It would be roughly the same number. Were the payments going to the same group of employees each year?

**Gary Devlin:** Those employees are the prison officers who were initially in receipt of those payments. Prison officers were eligible to receive that payment for their engagement in the prison officer professionalisation programme.

**Bill Bowman:** So the same group of employees got the same payment each year.

**Gary Devlin:** Yes, that is right—it was the same group. It may have contained different people, because people would have left the service and so on.

**Bill Bowman:** Yes—taking account of that. Were those ex gratia payments?

**Gary Devlin:** No—the payments were approved by the Scottish Government. They were not contractual, so in that sense they were ex gratia, but they were approved and made by the Scottish Prison Service.

**Bill Bowman:** Would those payments be tax free?

**Gary Devlin:** Yes. Well, no—it is income, so it would be subject to tax.

**Bill Bowman:** So £6.5 million of the total would include the burden that the employer presumably had to pay on top of that.

**Gary Devlin:** Yes—the employer would have had to pay income tax on that.

**Bill Bowman:** The employer?

**Gary Devlin:** Sorry—the employee.

**Bill Bowman:** But the employer would have had to pay national insurance and pension contributions.

**Gary Devlin:** Yes—there would be other costs associated with that.

**Bill Bowman:** Do you know what percentage figure that would amount to?

**Gary Devlin:** The usual percentage for national insurance—5 per cent, I think.

**Bill Bowman:** What about the employers' pension contributions?

**Gary Devlin:** It is different for prison officers. I do not recall the exact figure for the contribution rate for prison officers.

**Bill Bowman:** It is quite a significant number.

**Gary Devlin:** Yes.

**Bill Bowman:** Those payments were made over three years. We have been told that they were non-contractual, but the same amount appears several times. Each year, it happened. Is there not therefore a contractual element?

**Gary Devlin:** No.

**Bill Bowman:** Even so, people who did not get the payment were entitled to get it because of the following equal pay action.

**Gary Devlin:** It was not contractual, because it was specifically for the purpose of securing the engagement of prison officers in developing the prison officer professionalisation programme. As soon as the programme was done, it was voted against, so it did not proceed; we raise issues in our report about value for money in relation to that.

Following the implementation, because the payment was not available to non-prison officer staff, an equal pay claim was made. You can see the number relating to that in paragraph 18.

**Bill Bowman:** So the prison officers were paid that amount to take part in the programme, and they then decided not to take part in the programme.

**Gary Devlin:** No—they were paid to support the development of the programme.

**Bill Bowman:** And they did not do that.

**Gary Devlin:** They then voted against the programme.

**Bill Bowman:** But they got paid for three years in a row

**Gary Devlin:** Yes.

**Bill Bowman:** They got paid to support the programme, then they voted against it.

**Gary Devlin:** That is right.

**Bill Bowman:** Why did they keep on getting paid?

**Gary Devlin:** We raised in the audit the question of the appropriateness of those payments and the questions around value for money. I think that that is a question for the chief executive and the Scottish Government.

**Bill Bowman:** What answer did you get from them?

**Gary Devlin:** The chief executive and others felt that the payment was the best way to secure the

engagement of prison officers in developing the programme.

**Bill Bowman:** So they tried it once, twice, three times, and it did not work. Have they continued with the payments in the current year?

**Gary Devlin:** No. Those payments have stopped.

**Bill Bowman:** Do we know why the Scottish Government approved the scheme? Was it approved only by the SPS?

**Gary Devlin:** The payments were approved by the Scottish Government.

**Caroline Gardner:** As we say in paragraph 60 of the report.

**Bill Bowman:** And you do not consider that to be good value for money.

**Caroline Gardner:** We say in the report that we cannot determine whether it represented value for money, because there were no success criteria for it. We have reported the facts so that they are transparent to the committee, along with the equal pay claim that came out of the approach that was taken.

**Bill Bowman:** Okay—thank you.

**The Convener:** I thank you all very much indeed for your evidence this morning. I now close the public session of this meeting.

11:05

*Meeting continued in private until 11:28.*

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

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