



OFFICIAL REPORT
AITHISG OIFIGEIL

Criminal Justice Committee

Wednesday 8 September 2021

Session 6



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CRIMINAL JUSTICE COMMITTEE

3rd Meeting 2021, Session 6

CONVENER

*Audrey Nicoll (Aberdeen South and North Kincardine) (SNP)

DEPUTY CONVENER

*Russell Findlay (West Scotland) (Con)

COMMITTEE MEMBERS

- *Katy Clark (West Scotland) (Lab)
- *Jamie Greene (West Scotland) (Con)
- *Fulton MacGregor (Coatbridge and Chryston) (SNP)
- *Rona Mackay (Strathkelvin and Bearsden) (SNP)
- *Pauline McNeill (Glasgow) (Lab)
- *Collette Stevenson (East Kilbride) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

- Ken Dalling (Law Society of Scotland)
- Tom Fox (Scottish Prison Service)
- Deputy Chief Officer Ross Haggart (Scottish Fire and Rescue Service)
- Tony Lenehan (Faculty of Advocates)
- Assistant Chief Constable Kenny MacDonald (Police Scotland)
- James Maybee (Social Work Scotland)
- Eric McQueen (Scottish Courts and Tribunals Service)
- Teresa Medhurst (Scottish Prison Service)
- Kate Wallace (Victim Support Scotland)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 8 September 2021

[The Convener opened the meeting at 10:04]

Decision on Taking Business in Private

The Convener (Audrey Nicoll): Good morning and welcome to the third meeting in session 6 of the Criminal Justice Committee. No apologies have been received. Agenda item 1 is to agree to take in private items 3 and 4, which are consideration of our approach to pre-budget scrutiny and consideration of today's evidence. Are we agreed?

Members *indicated agreement.*

Covid (Justice Sector)

10:05

The Convener: The next item is a round-table discussion about the impact of Covid on the justice sector and plans for recovery. We will take evidence from a round table of witnesses who will be joining us virtually. I say to them that I am sorry that they cannot join us in person; that is due to current rules on social distancing.

I welcome Tony Lenehan, president, Scottish criminal bar association, Faculty of Advocates; Ken Dalling, president, Law Society of Scotland; Assistant Chief Constable Kenny MacDonald, executive lead for criminal justice, and Chief Superintendent Barry Blair, criminal justice services division, Police Scotland; Eric McQueen, chief executive, Scottish Courts and Tribunals Service; Chief Officer Martin Blunden and Deputy Chief Officer Ross Haggart, Scottish Fire and Rescue Service; Teresa Medhurst, interim chief executive, and Tom Fox, head of corporate affairs, Scottish Prison Service; James Maybee, chair, justice standing committee, Social Work Scotland; and Kate Wallace, chief executive officer, Victim Support Scotland.

We very much appreciate your taking the time to join us. I thank those witnesses who have provided written submissions, which are now available online. I intend to allow around an hour and 30 minutes for questions and discussions, but we can go on for a little longer if need be, so that everyone can have their say.

I add that we have received an email from the criminal justice voluntary sector forum, saying that it wished that it had been invited today and providing us with some additional information on how Covid has affected its members. We will circulate that material to committee members. As we have further sessions coming up, we will see whether we can hear from that important body in the future.

I ask members to indicate which witness they are directing their remarks to, after which we can open the floor to other witnesses for comment. If witnesses wish to respond, I ask them to indicate that by typing R in the BlueJeans chat function, and I will bring them in if time permits. If they are merely agreeing with what another witness is saying, there is no need to intervene to say so. Other comments that witnesses make in the chat function will not be visible to committee members, nor recorded anywhere, so, if they want to make a comment, they should do so by requesting to speak. The BlueJeans platform shows only nine people at any given time, so witnesses may not be able to see themselves on screen; however, if

anyone loses their connection, the clerks will advise us.

We move directly to questions. I ask members and invited guests to keep their questions and comments as succinct as possible. That said, I am keen to encourage a free-flowing discussion.

I will kick things off by asking our colleagues from the Scottish Fire and Rescue Service a couple of questions on reform in that service. Before I do that, however, I put on my record my appreciation of the work that the Scottish Fire and Rescue Service has done throughout—and before and beyond—the pandemic. Mr Blunden and Mr Haggart, I very much appreciate the work that your service has undertaken over the past 18 months or so.

I start by acknowledging, as is important, the well-established role of the Scottish Fire and Rescue Service in local and regional partnership work in responding to emergencies—albeit that I think that everybody would agree that none of us was quite prepared for the Covid pandemic. However, I am sure that that sort of experience came into its own during the period of the pandemic. I notice that, in your written submission and in the chief officer's recent report, you outlined some of the operational and organisational changes that were put in place, for example in supporting the Scottish Ambulance Service in some of its work. You also introduced some flexibility around your tactical response as things developed during the period of the pandemic.

I would like to ask about reform. Thinking about the opportunities that Covid presented from a reform perspective, I am interested to hear about how the Scottish Fire and Rescue Service might be able to embed some of those practice changes into the organisation. Yesterday's programme for government announcement contained some reference—albeit brief—to modernising the service.

Deputy Chief Officer Ross Haggart (Scottish Fire and Rescue Service): Good morning, convener, good morning, committee, and many thanks for your question and for the opportunity to provide evidence this morning.

You are right to say that the modernisation of the Scottish Fire and Rescue Service was included in yesterday's announcement on the programme for government, and we welcome the inclusion of that in the programme. We are committed to doing more for the people of Scotland as a national fire and rescue service. We welcome the opportunity.

On the lessons learned from the Covid pandemic, we have made a number of changes to our operating practices. Those were very much done to ensure that we could continue to deliver

vital services to communities while keeping our people safe as they were doing so.

We have a recovery, reset and renew programme in place, which is being led through our senior management board. Some outline details of the areas that the board is examining are contained in our written submission. We will absolutely take the opportunity to learn any lessons that we can from the Covid pandemic on the way in which we have operated, so that we can make enhancements to how we continue to protect the communities of Scotland.

The Convener: In your written submission, you note that a range of

“work packages have been developed and are being progressed”

as part of your recovery programme. You set them out, and they include

“Operational Strategy ... Technology ... Communications and Engagement ... Prevention, Protection and Partnerships.”

Among those packages, are there areas of work that you consider to be priorities? I am thinking about the opportunity for reform and renewal in the Scottish Fire and Rescue Service and the actions that you might look to undertake in quicker time, while others may involve longer-term pieces of work.

Deputy Chief Officer Haggart: All of those areas that we are focusing on at the moment are key areas in our recovery, reset and renew programme. Some things within that are longer-term pieces of work, and we have a change portfolio with more significant change projects and programmes that are on-going in the service.

Among the work packages that we are developing in quicker time, I will highlight in particular that, in the people area, we have just introduced what we are terming our agile working framework, which involves providing our staff with much more flexibility in how they undertake their work. That particularly goes for support staff who have been able to work from home during the pandemic. We therefore have in place that agile working framework, which gives much more flexibility to our staff, particularly support staff and those who do not need to come into the workplace to undertake their role.

10:15

We are also significantly advanced with a new concept for our operations strategy, in which we have different concepts of operation for different types of activities that we undertake—for example, wildfire specialist rescue. That operations strategy, and the way in which we deliver our operations

and organise ourselves to deliver them, is an advanced piece of work.

I will also highlight our work on prevention, protection and partnerships. The convener mentioned earlier the work that we do in conjunction with local and regional resilience partnerships, which is very important to us in delivering our roles. Over the pandemic, we have had to make some fundamental changes to how we deliver our prevention and protection work. We are learning all the lessons from that so that we can provide services effectively and efficiently, using the new technologies and new working practices that we have embraced during the pandemic.

The Convener: That is an interesting overview.

My final question is a practical one about people's behaviour, particularly that of vulnerable people, who the Scottish Fire and Rescue Service comes into contact with on probably a regular basis. You have some clear and productive partnership arrangements for how you respond to the vulnerable people your staff encounter.

Obviously, we were in deep lockdown and very much confined to our homes. Did any learning come from that period of lockdown, in particular about how it impacted on people confined in their homes? Are there learning opportunities for the Scottish Fire and Rescue Service, in particular to inform your prevention work?

Deputy Chief Officer Haggart: It is true to say that our prevention work was impacted by the pandemic. To keep our firefighters and communities safe, we changed our approach to prevention work. We still visited those most vulnerable to fire, because we felt that the risks of not doing so were greater than the risks posed by the pandemic. However, we obviously took all necessary control measures when doing that.

We also worked very closely with local partners, who are often in touch with the most vulnerable people in society. We engaged in what we termed our making the call campaign, which was very much a call to action for communities, family members and friends of the most vulnerable to look out for their health and wellbeing during the pandemic.

We also had a range of media and social media advertising campaigns. We used a suite of forums to put safety messages across, tiered from physical visits—where we felt that they were still appropriate, with control measures—through to the making the call campaign and working with partners to identify the most vulnerable, as partners could often put across those safety messages. There were also general safety messages to the public.

A suite of measures was put in place, which we deployed as appropriate, depending on the risk to individuals and households, and very much working with partners in mind over that period. As the convener said, we are reviewing that and taking best practice into our normal ways of working.

The Convener: It is very inspiring to hear that. I am sure that you have a lot of work ahead in relation to reform and modernisation across a wide range of work areas within the service. Thank you very much—those were all my questions for you.

Moving on to our Police Scotland representatives, ACC Kenny MacDonald and Chief Superintendent Barry Blair, I want first of all to put on record my grateful thanks to your organisation for keeping us safe in what has been an extraordinary period in our recent time. Your work is very much appreciated, and I know that it was not without its challenges for your service.

In its written submission, the Association of Scottish Police Superintendents has commented on current challenges with recruitment. From my personal background, I know that this is not a new situation; indeed, I live and have worked in the north-east of Scotland, and I am aware that, for many years, Grampian Police competed with the oil and gas sector to recruit personnel. However, it seems that we are not entirely clear about what is impacting on recruitment. What are your thoughts on those challenges, and how can we move forward with redressing the recruitment balance?

Assistant Chief Constable Kenny MacDonald (Police Scotland): Thank you, convener, and good morning. Thank you for your very kind words about the service and what our officers and staff have done over the period of the pandemic.

As for your question about recruitment, I have to say that I am not sure where ASPS heard that information. We have 140 new recruits starting this month; we have also been focusing on rural and remote recruitment, with 35 new officers going to the north-east division.

In the early days of Covid, we experienced an upsurge in members of the public seeking to join the police, and I think that people saw applying to policing, as one of the key public services, as a very attractive avenue for helping our communities. Applications have now returned to a more normal level, but we certainly have no particular issues with the volume of applications that we are receiving.

Because of social distancing, we reduced the size of intakes to ensure that they were safe, and we introduced lateral flow testing and ensured that social distancing measures were applied. Recruitment is not a particular challenge at this

time, and we will pick the issue up with our ASPS colleagues.

The Convener: That answer was helpful and reassuring.

My next question is also linked to recruitment, although it relates more to the issue of training. I know that some training in the police service is critical, particularly officer safety training recertification, while there are other parts of training that can be either adapted or deferred. I am just interested in hearing your comments about the impact of the pandemic on your training regime, timetable and requirement, particularly in relation to the 26th United Nations climate change conference of the parties—or COP26—which is coming up in the not-too-distant future. What, if any, challenges are you facing in ensuring that staff and officers are ready to go and that you have the requisite training in place ahead of that event?

Assistant Chief Constable MacDonald: Because of the physical distancing restrictions that we faced, a lot of essential training—which we would consider that to be—was postponed and we have a training backlog. Thankfully, with the easing of some of the restrictions, we have managed to reintroduce e-training, particularly in officer safety—which is very important to those operating in that front-line response—as well as specialist training. We also have a backlog in driver training.

The creation of a strategic training and co-ordination group under Deputy Chief Constable Fiona Taylor has prioritised the needs of the service to make sure that all the essential training that we required to undertake in advance of COP26 is prioritised and achieved. At this time, there are no concerns that we will not meet the requirements for training those specialist officers in armed policing or for public order training to achieve our needs for COP26, but that will require significant co-ordination and innovation. We have introduced Microsoft Teams for over 14,000 officers and staff, which has allowed more virtual training to be undertaken. We have also reintroduced some classroom-based briefing, albeit for a smaller number of staff.

Training is absolutely an issue that we are tackling; I am sure that it is the same with many other agencies. It is being prioritised, and COP26 is at the forefront of our minds.

The Convener: My final question for you is also about training. Police Scotland will receive significant mutual aid. I am interested in how the training requirement will be managed, given that COP26 will require personnel from a number of organisations over whose training regime we, in

theory, have no control. How can we be sure that the required training will be provided?

Assistant Chief Constable MacDonald: Much of the training for specialist assets comes under the remit of the National Police Chiefs Council and is therefore standardised across the United Kingdom.

It is important that our colleagues who are coming to support us from the rest of the UK understand that we operate in a different criminal justice system. They will get specific briefings on the law in Scotland and on the policing tone and style that has been set by our gold commander, Assistant Chief Constable Bernard Higgins. That is to ensure that the strategic intentions for COP26, and the tone and style of policing—which, in Scotland, is very engaging and facilitative—is achieved.

There will be clear briefings for all attending officers on mutual aid, professional standards, Scots law, proportionality and the approach that we want to achieve in delivering one of the largest policing events that the UK has experienced. The briefings are ready and will be delivered in the coming weeks.

The Convener: Thank you, Mr MacDonald. That is all from me. I hand over to Mr Findlay, and then Ms Stephenson.

Russell Findlay (West Scotland) (Con): I would like to ask Mr Blunden or Mr Haggart a question. You are dealing with a huge volume of fires—it is almost a return to normal—but, in recent weeks, there has also been some high-profile wilful fire raising that we believe is linked to organised crime. Can you quantify that in any way? Have you had any specific discussions on that issue, either internally or with the police and other agencies?

10:30

Deputy Chief Officer Haggart: Some figures on incident activity are provided in our submission. I am more than happy to provide the committee with additional detail and numbers of any specific incident types that we are attending, but the submission sets out some overarching figures that compare last year with the first quarter of this year and a return to what we would consider to be more normal levels of operational activity.

As for wilful fire raising, we have a number of preventative initiatives on-going with local partners, and we have specialist fire investigation staff who work very closely with Police Scotland and Scottish Police Authority forensic colleagues to investigate such incidents and report them to the relevant procurator fiscal.

Russell Findlay: Thank you. My next questions, which are for Police Scotland, are on unanswered 101 calls. I do not whether I should address them to ACC MacDonald or Chief Superintendent Blair.

We know from what was said at a Scottish Police Authority meeting that, in June, 71,000 calls—or around 40 per cent of all 101 calls that month—were abandoned. Given yesterday's historic admissions with regard to the M9 tragedy, it seems that the problem of unanswered calls or calls not being acted on has not been addressed. In fact, the situation might even have worsened during the Covid pandemic. Is that the case? Why have we still not got a grip of the problem? What needs to happen to fix it and give the public confidence that calls will be answered?

Assistant Chief Constable MacDonald: First, we offer our condolences to both families, as the chief constable did yesterday. The situation that we had in 2015 with 101 calls is significantly different from where we are now. Covid, in particular, has presented our contact, command and control division with the same challenges of social distancing and absence that you will see in many other agencies, but I would point out that we have maintained our emergency response to those who dial 999 at an exceptionally high level throughout the pandemic and have ensured that anyone who phones the police in an emergency is answered and responded to appropriately.

Things have taken longer with non-emergency calls. Part of our Covid response involves considering whether the individual calling for service has Covid or been in contact with somebody with Covid. That is part of our required health and safety considerations before we dispatch officers or staff to a location.

We have also introduced the contact assessment model in which, with all calls that come into the service, we take the THRIVE approach, which means that we consider threat, harm, risk, investigative opportunities and the victim's vulnerability to ensure that we make the most appropriate response to a particular incident.

There have been challenges, which have been clearly articulated at the Scottish Police Authority—and, indeed, the chief constable has spoken publicly on the matter, too—but we continue to improve our service. Indeed, we are working through an ambitious programme of change to modernise contact and engagement. The public can be reassured that, in an emergency, the police will answer. As that emergency service, we continue to answer all calls within a very effective timescale and respond appropriately.

Russell Findlay: Is there not a risk that, if you put a reliance on emergency calls being answered, as is right, people might give up on 101—that that becomes a bit of a pointless option—and turn to 999 calls?

Assistant Chief Constable MacDonald: We have put out public communications on the use of 101. Some of the 101 calls that we receive are to get advice and guidance, and we direct people to other online opportunities for getting that information. If we take Covid, sometimes, we received calls seeking guidance on what the legislation or Scottish Government public health guidelines meant. That information is available, as members will be well aware, in other online forums.

We have also increased our use of online reporting, which is another means through which members of the public can contact the service. In this modern age, many people prefer that as a medium of contact.

There is still a strong need for a 101 service, and for it to perform at a high level. The call answering times are improving, and we have plans to improve that further. I therefore think that the public should maintain confidence in that service.

Russell Findlay: I will quickly move on to Mr Lenehan, if he is there—I cannot quite make that out on the screen. In your submission, you talk about their being a suspicion that some witnesses and accused people are avoiding turning up to court, through the use of fake text messages—which, presumably, purport to be from medical or official sources. Will you expand on that, and tell us what, if anything, can be done about it?

Tony Lenehan (Faculty of Advocates): My most recent direct experience involved somebody from south of the border who, at three trial diets in a row, presented text messages that were, on the face of it, convincing, but who was not prepared to have face-to-face testing done. The eventual conclusion of the Crown Office was that that was a ruse of some sort. In that case, it was communicated to me that, when Police Scotland was sent to enquire about the person, it was not able to obtain information from English hospitals, which simply would not engage with it.

In any number of cases, witnesses—for example—have complained of having Covid-like symptoms. If that happens in the middle of a trial, it is very hard to accommodate the necessary periods of self-isolation within that trial. There is often a consequence for the sitting jury. We cannot have a jury idling for 10 days or so.

I think that that is viewed by some as an easy way out because, if they claim to have Covid, it is very hard for us as legal professionals, and for the Scottish Courts and Tribunals Service, to dig down

to the bottom of that claim, and it very often means that, just from a practical point of view, a trial has to be abandoned.

At the moment, I am not aware of any prosecutions, for example, of people falsely claiming to have Covid, but my experience and that of my members satisfy me that people use that claim as a means of avoiding something that they do not want to happen. That might apply in other aspects of life in Scotland as well, not just in the courts. It is an issue.

You asked me how I could fix that. I do not know the answer to that. Others might be able to determine how you could have a robustly verifiable system, so that it is not possible for someone to be sent a test kit and then get their pal who has Covid to take the test. I do not know how people do it. It is an issue, because it has a consequence for trials.

Last week, a trial in Glasgow High Court, in which I had peripheral involvement, eventually collapsed because of, again, perhaps disputed Covid symptoms on the part of one person. It became impossible for the jury to continue to sit at the remote centre, given that, from day to day, there was a lot of uncertainty about the situation. It might be the case that, in the grand scheme of the difficulties that Scotland faces just now, that is not a big deal, but I thought that I would bring it to your attention, as I was asked to consider the negative and positive aspects of the situation.

Russell Findlay: That is very interesting. I am conscious of the time—I would like to ask questions of everybody, but I cannot do that. My final question is to Mr Dalling of the Law Society of Scotland. The thorny issue of legal services regulation has been with us for many years, and Covid appears to have put on ice Esther Robertson's recommendations that a new single body should be established with the clear remit of dealing with such regulation. Most of you will not have read her review, but page 8 is worth a look, on which there is a diagram of the current regulatory framework, which serves no purpose for members of the public. From the Law Society's perspective, given all the other massive challenges, will Covid get in the way of that long-overdue reform to the regulatory system?

Ken Dalling (Law Society of Scotland): I thank the committee for the opportunity to engage with you. I offer, on an on-going basis, the Law Society as a constructive partner in progressing the committee's agenda.

Without wishing immediately to disagree with you, it is not clear to me that the current regulatory system does not properly serve the people of Scotland. In fact, the Law Society's representations on the Robertson review are to the

effect that, largely, the main conclusion of the review had perhaps been formed in the mind of Ms Robertson before the investigation process had begun. You will note that there is dissenting opinion among members of the review team.

Also, the review that was commissioned by the Government from Ms Robertson was carried out on the basis of identified failings in the regulatory process, which were brought to the attention of the Government by the Law Society itself. The Law Society wants to be an effective and proportionate regulator of the profession. The Law Society's position as a representative of the profession is enhanced by a robust regulatory model, and, in my respectful opinion, a careful examination of the review report makes it difficult to identify any particular failings beyond, largely, the systemic and procedural problems that were initially identified by the Law Society and which we would be keen to have addressed.

Covid has meant that various things have had to be prioritised, and various things have, therefore, been shelved. I understand that the proposed consultation in relation to the Robertson recommendations is now in prospect for publication and action, which the Law Society welcomes.

The Convener: Ms Stevenson is next, before I bring in Mr Greene.

Collette Stevenson (East Kilbride) (SNP): First, I want to thank each of the public agencies, for all the work that they have done, and all the staff, who have stepped up to the mark in these unprecedented times. The range of work that you have done to keep Scotland's communities safe is commendable.

My questions are focused on the prison service. I want to ask Teresa Medhurst and Tom Fox about the purposeful activity in rehabilitation programmes that, as your submissions outline, was suspended during Covid. Will you outline the plans for rolling out work in key areas of that purposeful activity? Have any lessons been learned in how we go forward? Do you have any transformational ideas about how we can do things differently to ensure that, as is key, and in accordance with human rights, the prison service is delivering purposeful activity in education, as well as delivering programmes for rehabilitation?

10:45

Teresa Medhurst (Scottish Prison Service): Good morning, Ms Stevenson, committee members, convener and colleagues. Thank you for giving me the opportunity to speak, and particularly for your question about purposeful activity. At the start of the pandemic, as I am sure you will understand, the Scottish Prison Service

recognised the particular vulnerabilities in our prisons and, therefore, had to take considerable action. We made significant changes to our operating arrangements in order to comply with Scottish Government guidance and changes to legislation, as well as to ensure that we were keeping everyone in our care safe, including our staff and our partner agencies.

Over the full period of the pandemic, we have developed a route map, which has reflected Scottish Government guidelines, in order to ensure that there is legitimacy around the action that we are taking. We have received very commendable co-operation from those in our care, who have been subjected to quite significant restrictions during this time, as I am sure you will understand. We have all experienced that in communities, but it has been even more restricted for those in our prisons.

At the start of the pandemic and of lockdown, we had to change the shape of our operating day. That was due partly to the staff profile at that time and partly to our need to focus on the things that would be important, such as access to fresh air, means of contacting family, showers and meals. Because we had to reflect the Scottish Government guidance, we focused and concentrated on activities where we had to provide a service for people—laundry, industrial cleaning and catering—as well as on ensuring that supplies were still coming into our prisons.

We have applied the guidance on social distancing, which has meant cohorting our population into smaller households. That has demanded greater staff time, but it has resulted in closer working relationships. Relationships in prisons have always been positive, which has been reflected across the board in inspection reports. However, during the pandemic, relationships have become closer, and communication and engagement have been really positive.

We had to put down the majority of our activity, including our learning service from Fife College and our prisoner programmes. It was only when we started to step out from lockdown with the rest of the country that we were able to look at the arrangements that we could put in place in order to reinstate some of those services. I am sure you will understand that that has limitations because of the restrictions. Although we reinstated prisoner programmes in September last year, we are restricted as to the size of rooms and the number of people who can be in them in order to ensure that people are kept safe. The same applies to other activities. Basically, we have stepped through a route map as the Government has stepped through its route map in order to reinstate activity as and when it has been safe to do so.

During all of this time, our colleagues at Fife College, our psychology teams and our national health service colleagues have provided a lot of materials and support for those in our care, who have had access to learning packs, materials for meditation and self-help, and in-cell gymnasium activity. That was about helping people to understand how they could keep themselves well while there were restrictions on their activities.

We are still working through that reinstatement of activities, with the next phase being reinstating the longer day. Establishments are working incredibly hard to ensure that we have sufficient programmes of work for people across a longer day and that we and our partner organisations have the staff profile to support that. We aim to have that in place in the next few weeks.

On lessons learned, it is interesting that having smaller cohorts of our population has presented people with feelings of greater safety. That has been reported back consistently throughout the period. Therefore, when we are looking to reinstate activities, although we need to be mindful of the public health guidance, we are also factoring in the feedback that people have given us that they have felt safer in those smaller cohorts.

On transformational ideas, there are a couple of areas. Last year, through the considerable agility of our teams, we put in place more access to contact for families of those who are in prison. Our work on that has accelerated. Because we had to step down visits at the start of the pandemic and the lockdown period, we have introduced a variety of other means of contact. We have introduced a voicemail service through which families can leave voice messages on the telephone system. We have also introduced virtual visits, which have not only enabled families to make contact directly into the prison, but enabled those in prison to see family members in their home.

That has had positives and negatives—some people have found it really difficult to deal with, but others have found it positive. For example, people have been able to see their children in their school uniforms on the first day of school, which would not have been possible previously, and there has been the opportunity to see family who are outwith Scotland, in other countries. We have also introduced mobile phones, which have given people another means of contact, and not just with their families—they can call other numbers for support.

All of that has enabled us to fully realise what can be achieved through technology. We are exploring how we can make better use of technology to support more learning and self-help opportunities, particularly in relation to health, and we intend to do that. Our NHS colleagues have

seen the benefits of using more virtual technology, which has significantly supported their ability to continue to deliver services during this difficult time.

The Convener: This is extremely important and interesting, but in the interest of time, I ask everyone to keep answers as concise as possible.

Collette Stevenson: Teresa, you touched on the impact of staff shortages. Has that situation improved at all?

Teresa Medhurst: As I am sure you will understand, the position with staff shortages is not a constant as we have had outbreaks in prisons throughout the pandemic. At the moment, our absence levels related to Covid are sitting at around 3 per cent. That is not insignificant, but it does not give us cause for concern. When there are outbreaks at particular sites and there are wider implications, we can deploy staff from other establishments to support them. We have done that and we will continue to do so.

Jamie Greene (West Scotland) (Con): I have three separate lines of questioning. I will throw them out, and I ask you to try to keep your responses as condensed as possible so that we can get through all three topics. The first topic is the temporary Covid measures that were introduced by Government. We all appreciate and understand that they were a reaction to the circumstance that we were in, which was—to use an overused word—unprecedented.

I have read the submissions, and those from the Faculty of Advocates and the Law Society of Scotland raise issues about modifications that you believe should end when the public health emergency ends. The comments relate specifically to virtual hearings and the use of so-called virtual or digital justice. The Faculty of Advocates says:

“Calling virtual hearings ‘digital justice’ is only justified if we continue to prioritise justice ahead of convenience.”

It goes on to say:

“The boldness of the plan ... to double High Court trial frequency is likely to expose further the depleted defence resources.”

What concerns do you have about some of the temporary measures that you think may end up becoming permanent? What are you calling for the Government to cease requiring as soon as is practicably possible? The Scottish Courts and Tribunals Service might then wish to respond to any criticisms or concerns that are raised.

Tony Lenehan: I must doff my bonnet to the SCTS delivery team for putting the electronic system in place. I do not know whether members have had a chance to look at it, but the fact that such a complicated system works so well is extraordinary. However, the words that are set

down in our submissions are heartfelt. Communication is never improved by using screens as we are using them today. There is no doubt that each of us would respond better to the nuances of other people’s interventions and arguments if we could all be in the same room, speaking to and seeing each other.

Although conveniences are built into the virtual scheme, there is no improvement in communication. There is a measurable reduction in the ability to communicate. Decision makers, be they juries, judges, sheriffs or whoever, need the best information in order to take the best decisions. If the people who have the information, be they witnesses, lawyers or accused people, have a diminished ability to communicate, the eventual decisions will be reduced.

The High Court is a grand structure that strikes fear into the hearts of those who are here to do evil. When we reduce it to a TV screen—I see myself on the screen and I am not the size of a postage stamp—we lose the sense of awe-inspiring grandeur that can melt the resolve of the guilty to take a matter to trial or stiffen the resolve of those who are scared to tell the truth.

11:00

If someone is in custody for an offence, the preliminary hearings in the High Court—which are substantial hearings where people argue about excluding or admitting evidence and whether things are fair—take place by default not just virtually, but with no link at all to the prisoner. They are simply not present. Everything that has happened has reduced the ability of the accused person and that of the user of the High Court, be that a witness, a complainer or a family, to get the full value of their involvement in it. The sooner we step back from this, the better, from the point of view of justice.

My argument is based on the fact that, in the High Court, things have to be about justice first and foremost. When it comes to matters of convenience to do with shepherding people to court, keeping people from travelling on the roads and all that sort of thing, I understand that there are benefits there, but they do not measure up to the benefits of having the most accurate and the fairest justice. Virtual contact reduces that.

Jamie Greene: You have made your point eloquently and your submission speaks for itself.

Mr Dalling, do you have any comment? In your written submission, you say that now

“is not the time to fundamentally change the Scottish criminal justice system without robust consultation and research”.

Are you aligned with the view of the Faculty of Advocates on the temporary measures and their possible permanency?

Ken Dalling: I am indeed, Mr Greene. The convener told us not to come in simply to agree with somebody else, but I agree entirely with what Tony Lenehan has told you.

I am conscious that, in the committee's discussion a week ago with the Cabinet Secretary for Justice and Veterans, Katy Clark said that, in her view, there are very good reasons for doing things in the way that we used to do them. Some of the systems, perhaps, did not take account of the technology that we have. The remote empanelling of jurors is a no-brainer. Why have we not been doing that for years? It should certainly stay, and I would say the same about the electronic submission of documents.

I note that the Scottish Police Federation's written submission contains a comment that absolute fairness should not be compromised for convenience. I think that the matter goes beyond that. Last week, Mr Greene, you spoke about getting the best evidence in court, and Tony Lenehan has just highlighted that the arena of the criminal court in particular has a specific beneficial effect on those who find themselves within it. I accept that there is a need to allow witnesses to give evidence in a supported fashion and in a way that they feel comfortable with. However, there is a real risk that, if we go too far in relation to the measures, the weight of the witness's evidence will be diluted because, as Tony pointed out, there needs to be contact between the decision maker and the person whose evidence they have to weigh.

There are concerns about maintaining the measures for too long. We have certainly learned about benefits during the pandemic, but there is a fear that changes could be Trojan-horsed in, if I can use that term, on the back of the Covid pandemic. I am entirely aligned with the Lord President's statement that the fact that we used to do something in a particular way does not mean that we have to return to it. However, we have to value those things that are of value within our system and get back to them in order to make sure that the absolute fairness of the system is again guaranteed.

Jamie Greene: It is probably only right and fair that Mr McQueen is offered an opportunity to respond. There is a drive to address the backlog, but there is a lot of concern that that should not be done in a way that dilutes the sanctity, if you like, of putting justice ahead of convenience.

Eric McQueen (Scottish Courts and Tribunals Service): Absolutely. I do not disagree with some of the things that Tony Lenehan and

Ken Dalling have said, nor do I take them as criticism. This debate is about what justice is going to look like at a time in the future. We should absolutely not be doing anything simply for convenience; it has to be about best evidence and protecting the right to a fair trial. No one would disagree with that.

Some of the things that we have brought in in recent years demonstrate that, to a certain extent. For a long number of years, we have taken evidence remotely from vulnerable witnesses in a range of cases. That has worked very well and we want to extend its use. We have also brought in evidence by commission. We now have full pre-recording of cross-examination, which is brought back into court. At the moment, we use that for children, but we are looking to extend its use to adults. It is widely recognised that there are already developments under way in extending digital access to courts that have been very beneficial. It would therefore be unfair to categorise everything as being a step backwards; there are positive examples of areas in which we are starting to see benefits.

There is a growing sense that moving back to having the accused in court, when the pandemic allows us to, particularly for preliminary hearings and first diets in solemn business, would be a sensible way to go. Equally, however, I think that it is beneficial to have a hybrid option whereby we can allow different people to join hearings in different ways, whether that is for the defence or the prosecution. In particular, we are looking to extend that facility to police and expert witnesses. Every year, some 20,000 policemen give evidence to courts across the country. Is there a model that we could introduce that would allow police officers to give evidence? We have piloted such a model in about six High Court trials and, so far, it has been fairly successful. Rather than just putting up barriers to everything, we need to test different approaches, look at where the benefits and the opportunities are and try to determine what will be best for the system in future.

A range of issues need to be considered. The use of the electronic submission of documents and electronic signatures has been regarded as a success across the system, and we would like to keep that in place and expand its use in future.

We are piloting digital summary trials. We are holding virtual summary trials in Aberdeen for domestic abuse cases. An evaluation of that will be carried out so that we can have a proper and full discussion about the merits and benefits of such a system and where the use of such methods has a place. It is by no means a case of the courts trying to force through some sort of Trojan horse; we want have an open discussion about how we can improve the justice system by

taking advantage of digital technology while making sure that we protect access to justice and the right to a fair trial.

An area that was explored during the Covid period was dealing with custody cases through virtual means. We think that we now have an opportunity to move to a model in which the vast majority of custodies are dealt with virtually. We want to look at whether, rather than moving people around in vans on a daily basis and having them wait around for a hearings in court buildings for eight or 10 hours a day, we could do that in a fully virtual environment, while fully taking account of people's vulnerabilities and issues that they might have that would not allow them to take part.

We must be open to the opportunities that exist but at the same time be wary about where there may be concerns about whether those opportunities could impact on the quality of justice. We would certainly not support doing something just for the sake of convenience.

Jamie Greene: Thank you for that feedback. I refer you back to the comments that were made about virtual hearings and the lack of communication. It is important that account is taken of that and of the gravity of appearing in the High Court. The discussion about changes to the justice system will rumble on.

On a completely separate issue, I have a question for Police Scotland about the submission—

The Convener: Mr Greene, I would like to bring in Ms Wallace from Victim Support Scotland on the question of remote justice and the issues and challenges there.

Jamie Greene: Of course.

The Convener: Ms Wallace, I would like to give you the opportunity to say a few words from your organisation's perspective about the rights of victims in the context of remote justice and the issues and challenges around court delays.

Kate Wallace (Victim Support Scotland): Thank you. I would like to contribute to the discussion about the use of remote trials and hybrid models. Tony Lenehan spoke about what an intimidating environment a court can be, and it is worth while remembering that many victim support organisations across the board hear victims and witnesses describing exactly how traumatising that environment is. They will often describe the court process as being more traumatising than the crime itself. We need to remember that in the context of the provisions that already existed for vulnerable witnesses in particular to be able to give evidence remotely, which Mr McQueen laid out.

My organisation and others would ask for an extension of that approach, because we have seen some really good work on that come out of the Covid pandemic. There have been really good opportunities. We have continued to support victims to give evidence remotely, and many of them have described how much better their evidence has been because of the ability to provide it remotely.

Obviously, the model is not convenient. It requires a lot more resource and planning but, if the mental health of witnesses and victims and ensuring that the justice system in Scotland is not in and of itself traumatising are important to us, we need to hold on to it.

We need to remember victims and witnesses when we talk about a hybrid model, as opposed to potentially going down the route of just professional witnesses—police witnesses, for example—giving evidence remotely. We would like the approach to be extended to other witnesses, and perhaps not just vulnerable ones.

On the question about the impact of the pandemic on victims and third sector organisations, we have seen a significant impact on people's mental health. As members know, I have discussed that elsewhere, in other round-table discussions. At the start of the pandemic, our organisation saw a 400 per cent increase in the number of people who reported suicidal ideation. The delays in trials are having a massive impact on the mental health of victims and witnesses. I was just checking the figures. We are now seeing every single week as standard the figures on safeguarding incidents that include suicidal ideation that we would normally see in a month. In July 2019, we had five incidents of people reporting suicidal thoughts; in July 2021, that was up to 20. That is on the conservative side. The figure was much higher than that in August.

There has been a massive impact on victims and witnesses, and there has therefore been an impact on support services. The normal NHS routes have often not been available, so a lot of third sector organisations have had to provide longer-term support and more enhanced support for people who have been really struggling during the period. They have tried to do that in a safe environment. Many have provided support over the phone rather than face-to-face support, which in itself has been a challenge.

As members know, the delays to trials have had a massive impact on capacity across the whole third sector, because we are supporting people for a longer period. As I have said, people need much greater depth of support.

I suppose that the big takeaway from me is to do with involving those in the third sector as equal

partners in any planning process, and ensuring that we are involved early enough so that we can be prepared and gear ourselves up for supporting whatever models are taken forward.

I hope that that answers the question.

The Convener: Thank you very much, Ms Wallace. That was helpful.

Jamie Greene: That was a very helpful intervention. I thank Ms Wallace and commend the work of Victim Support Scotland. We have all dealt with casework in which Victim Support Scotland has played an integral role in supporting constituents. I know that it has been an incredibly difficult time. The statistics on interventions that you have had to deal with are very worrying. Perhaps we will hear about that from Mr Maybee, as well.

There is a submission from the Scottish Police Federation in our papers for today's evidence session. I will not comment on its content or agree or disagree with what it says, but I would like to give Police Scotland the opportunity to respond to it. It contains a relatively harsh critique of Police Scotland. It says:

"The internal bureaucracy and turgid decision making meant"

that Police Scotland

"was on the back foot"

during the pandemic. It says that the

"command and control structure was often found out to have little or no control";

that

"police officers have throughout this pandemic felt neglected and unsupported by Government";

and that that

"abandonment should not be underestimated."

Does Police Scotland have a response to those concerns?

11:15

Assistant Chief Constable MacDonald: I do not recognise, and strongly disagree with, much of the content of that submission. I agree with what it says about our officers and staff having stepped up during the pandemic. They have worked in a balanced and proportionate manner and have maintained public trust and confidence. I agree with the point about the volume of citations that will come with the expansion in court numbers that is taking place at the moment. We are working closely with our colleagues in the Scottish Courts and Tribunals Service and the Crown Office and Procurator Fiscal Service to minimise the impact

of the withdrawal of officers from their communities for court purposes.

In relation to the SPF's submission, it is important to highlight the increasing number of people who are on bail. That goes back to Ms Wallace's point about the length of time before a case comes to fruition, which means that individuals on bail continue to be in our communities for longer periods. I concur with the points about that issue, but certainly not with what is said in the rest of the submission.

The Convener: We might have lost Mr MacDonald's sound momentarily. Can you still hear us, Mr MacDonald?

Assistant Chief Constable MacDonald: I can. Were you able to hear my comments?

Jamie Greene: We were, thank you. Your feedback is noted.

I have a question on prisons, but it might be better for me to ask it as a supplementary in order to allow other members to come in.

The Convener: Thank you very much, Mr Greene.

We are having a very comprehensive session, but I am conscious of time. If members and witnesses agree, we will extend the session until about midday in order to let everybody speak. I hope that that will not be inconvenient for the witnesses, but I want to give everyone a reasonable time allocation. I remind members and witnesses to keep their questions and answers as succinct as possible.

Pauline McNeill (Glasgow) (Lab): Good morning. As my colleagues have done, I put on record my commendation of all the services and organisations for their incredibly hard work in getting through the crisis.

I found the submission from the Faculty of Advocates helpful in setting out and identifying what practitioners thought would be helpful to keep and what would not be helpful to keep. That will be a central issue for the committee as we examine how to go forward. In the section about the backlog of trials, the faculty talks about the role of the defence and how the "depletion of talent" might impact on what seems to be good progress in dealing with the backlog of trials. Would Tony Lenehan like to expand on that?

Tony Lenehan: To a certain extent, I am treading on the toes of Ken Dalling, because the issue is a lot to do with solicitors, as they make their way up through the ranks. Both play their part in High Court trials, but they also come to the bar in due course. Ken Dalling might be better placed to talk about that. I was in private practice for many years, but I left it 17 years ago, so I do not

have any recent experience, except what I have observed from my current standpoint, that would be of particular benefit to the committee.

In my mind, there is no question but that the low ebb of spirit and motivation to start a career in criminal defence is having an impact. People speak to me about their difficulties in retaining staff. A lot of positives flow from the recent extra investment in the Crown Office and Procurator Fiscal Service, but that is having an impact in that criminal defence firms cannot now retain staff because they cannot make a financial case for matching the offers that the Crown Office can make. That is going to come home to roost. If we are to approximately double the capacity or throughput in the High Court, that will place stresses on a system that has been weakened year on year, certainly for the past decade. I have no doubt that it will expose the cracks in the system. There is not a quick fix to that.

As I said, I do not want to step on Ken's toes any more than I did in my submissions, but we notice it at our side. It has an impact on us, because our membership is drawn almost entirely from experienced criminal solicitors. We notice the things that we set out in the submissions, and they are not positive.

Pauline McNeill: In that case, I put the same question about the role of the defence and the depletion of talent to Ken Dalling.

Ken Dalling: The private practice business model has delivered for the people of Scotland and for the Government ever since I became a solicitor. It has provided the most efficient way to deliver defence in a legal aid environment. However, it is underfunded, and it has been for more than a generation now.

It was on the back of that situation that the immediately preceding Cabinet Secretary for Justice agreed a support package that included an increase in fees this year and next year—albeit a modest one—as well as a resilience package to help solicitors who were unable to get through the work simply because the courts were not operating over the initial period of lockdown. Those supports are appreciated, but my concern is that they might be too little, too late. As we said in response to the offer of support from the then cabinet secretary, it is only a start.

At the moment, solicitors in private practice have a core payment rate of £45 an hour, which reduces to £22.50 an hour when they leave the office to drive to a court that is not in their town. If they go to a court in their town, they are not paid anything for travel. The advocacy rate is now £59 an hour. That just does not compare with the levels of charge that can be made on a private basis. Many firms, including mine, support the

legal aid side of the practice because we can charge properly—I would say—on a private basis. We accept that there is no way that we will get parity, or anything like it. The certainty of payment has always been the reason why there is a discount in the legal aid sphere, along with, to a degree, the public service element. However, the message has now got through to young solicitors and those who would be solicitors that there is no money in criminal defence, so they simply do not want to do it.

My daughter recently started a traineeship, which is not in a legal aid firm. She knows of no one in her LLB year or her diploma year who was going into criminal defence. Some were going into the Crown. Of course, the much-needed and well-received extra investment in the Crown has only further harmed the position of the defence bar because, with that funding, there has been a further departure of young defence solicitors from the defence bar into the Crown.

Therefore, when the Government is funding more sheriffs and more prosecutors, the question from the defence side is: where will the defenders come from? We are just not seeing people who are keen to join. Frankly, although I make a plea for extra funding, my fear is that it might be too late, because the demographics are just not there. Mr Greene made that point to the previous cabinet secretary last year. It is old folk like me and Tony Lenehan who are doing the job, although Tony now sees it from the sidelines and I am perhaps seeing it more remotely.

The situation is worse than that, because we are seeing firms simply say that they do not want to do criminal legal aid any more and that they want to do something else, whether or not that involves pulling in their horns. I urge the committee to take the calls for extra funding very seriously indeed, because we must ensure that all parts of the system are funded to pull together. Presently, our part is chronically underfunded, and that is seen across the board.

Pauline McNeill: My next question, which follows on from that, is probably best addressed to Tony Lenehan and Eric McQueen. Do you have any concerns about the extension to time bars to account for the Covid period? I have put on record my concerns about that. I appreciate that, during the crisis, the initial extension was necessary. However, that has meant that there have been significant delays to trials. The remand figures in Scotland have been commented on internationally as being unacceptably high. I am sure that Kate Wallace of Victim Support Scotland would point out that the measure has also had an added impact on victims.

Tony Lenehan: I am not sure that I can see how the Scottish Courts and Tribunals Service

could have done a better job during this time. It is fair to say that Scotland led the way in solving the crisis of how to continue to have jury trials while dealing with social distancing and all the problems that Covid brought.

I think that the extension is an inescapable evil of the crisis. I cannot think of a way, in the real world, of improving on the current situation. The plan to have 20 High Courts running each day is to be applauded rather than criticised. That is a bold undertaking—

Pauline McNeill: So, the Faculty of Advocates—

Tony Lenehan: —and it will—

Pauline McNeill: Sorry, but I just want to be clear on that point. I appreciate that, up until this point, the approach that has been taken has been necessary. However, the extension might still exist in the future—it might be put into legislation so that it becomes permanent. Are you saying that the Faculty of Advocates does not have any concerns about the remand figures or about the impact on witnesses should the time limits be further extended?

Tony Lenehan: No, I am saying that the position that we are in now is that we have a backlog and great steps are being taken to diminish that backlog. That measure, which is already in place and moving forward, will be the secret to reducing the backlog.

The backlog means that people—whether they are the accused or otherwise—must wait longer for trials. Sometimes, people have a record of offending or the allegation in the whole circumstance is such that it is thought better that they remain in custody. I cannot propose a situation in which we just stop remanding people in custody when the overall circumstances suggest that they should not be at liberty during this time. Courts are not approaching the matter in that way. There are people who are remanded in custody and who, it is decided, both when they first appear before the sheriff and subsequently when they appear in the High Court, need to remain in custody. Those cases will take longer and those people will be in custody for longer.

It is not the case that I am happy with the situation, but that is the reality of the situation. The SCTS is doing things as quickly as they reasonably could be done. Let us say, for example, that it is suggested that 40 High Court trials be run per day. There is nothing like the personnel necessary to have that done—that simply would not be possible.

Within the realms of what is possible, it seems to me that moving up to 20 trials a day, which is close to double the number of trials that were

being held before, represents the best way forward and will result in trials being held as soon as they reasonably can be. The truth is that we cannot do any better than that. Like so many things in life, I wish that we were closer to perfection, but the reality is that the situation that we are in, in the practical sense, is being handled well by the Scottish Courts and Tribunals Service. Members of my profession, the solicitor advocates profession and the Crown Office will react to the situation and we will simply cope with it. However, it will not be possible to say, for example, “Let’s have all the trials within the time limits.” We do not have the court rooms or the staff for that—we do not have anything that we would need to do that.

Last year, we lost months and months of trials. Then trials were slower for a bit as we built back up. All those time delays have taken place and the situation cannot be fixed simply by waving a magic wand. I recognise that the SCTS is doing the best that it can, so I am not criticising it for that. I am sure that there are tens of thousands of people who are waiting a lot longer for important surgery. Every aspect of life in Scotland has been adversely impacted by the pandemic. The Scottish Courts and Tribunals Service seems to be trying hard and boldly to fix things, and there will be consequences for us all. I wish that it were not necessary, but I can only acknowledge the fixing of things in a realistic way.

11:30

Ken Dalling: Last week, Ms McNeill expressed a concern about the scandal of remand. I may be able to reassure the committee about that. Although the responsibility falls largely on the defence solicitor, remand and bail is a dynamic process. Just as the Crown can apply to have someone’s grant of bail reconsidered, the defence can go back to the court with a different scenario or a change of circumstance and say that remand is no longer proportionate. That has happened far more often during the period of Covid.

There is authority from the Lord President relating to the tests that should be applied, which comes from a case that was decided early on in lockdown. Although it is unfortunate if people are in custody for longer than would otherwise have been required, there will come a point when that remand may no longer be proportionate. When we look again at something like electronically monitored movement restriction condition bail, which we looked at some time ago and rejected, the possibility of reducing the remand population and of doing so in proportion to the circumstances of the case becomes a reality. Remand is not just a single decision about a period that extends and extends; it can be looked at. In the appropriate

circumstances, a prisoner who was remanded could be released.

That can cause other tensions. I commend the work of Victim Support Scotland. I am conscious that this is a new committee and I was conscious of the use of the word “victim” in last week’s meeting and today. I do not want to make your job more complicated, but I make this observation: the word “victim” can be a difficult one to use before a conviction. I know that Mr Findlay has been the victim of a crime. I have been a victim of crime. Other members of the committee and other participants are likely to have been the victims of crime. However, there is a presumption of innocence that requires the Crown to prove both that an offence occurred and that there is an offender who committed that offence. I commend the report by Sir Richard Henriques on the failings of operation Midland. The starting point of that report is the institutional presumptions that are tagged on to the idea of a victim.

I make that point to ask you to be careful as you embark on some very difficult work. The committee can be reassured that, subject to the question of statutory reconsideration of the test of substantial risk, remand is a dynamic process. When remand terms increase, that is not a question of merely throwing away the key.

Pauline McNeill: If you have followed my lines of questioning, you will know that I have always made it clear that I am interested in fairness to the accused. That is why I was interested in the role of the defence.

I have other questions about prisons and the police, but I will wait to see whether there is time for those at the end of this session.

Rona Mackay (Strathkelvin and Bearsden) (SNP): I would like Kate Wallace to comment on how the backlog has affected victims of domestic abuse. Some constituents who have contacted me have been extremely stressed about the situation. Domestic abuse is unique in being a crime that victims must live with every day. What are your thoughts on that? Do you have any preferred route for addressing that?

Kate Wallace: During the pandemic, there was an increase in reports of domestic abuse and pleas for support from victims who were trapped in the home, often with the perpetrator, which was a really distressing situation.

As I pointed out earlier, the delays and backlog are also having a huge, compounding impact on people’s mental health. Comments have been made about trying to reduce the backlog, and there are questions around capacity and resource. I am well aware and supportive of everything that the SCTS and other organisations are doing to reduce the backlog.

To explain to Ken Dalling, I use the terminology “victim” not as a legal term but because that is what people prefer to be called—if asked, they do not like the term “complainer”.

The delay and the backlog mean that victims who are expected to give evidence have to hold that fact in their mind all the time as they prepare themselves to give evidence. They are exceptionally nervous and worried about the legal proceedings—particularly about going to court and potentially having to come face to face with the accused again. There are some measures that we can put in place around that, but, from a victim’s perspective, it is a hugely distressing time. Many people say that they feel that they cannot move on from it because they have to keep it uppermost in their mind and they do not want to forget anything that is crucial, so they have all of that going on.

The backlog is one problem and the delay is another, but so are some of the issues that Tony Lenehan talked about, such as uncertainty, adjournments and trial dates moving. People think that they are going to court to give their evidence or giving it remotely, and then the rug gets pulled out from under them and the trial is not going ahead on that day. That also has a hugely negative impact on victims and witnesses and a further impact on their mental health. Therefore, as well as continuing measures to increase capacity, we need to plan across the systems, because they are not working efficiently at the moment and the adjournment level is huge. Tony Lenehan talked about accused persons and others using Covid symptoms as a way of delaying trials, and we have seen that, too. I want to see real focused effort, and Eric McQueen and I have had several discussions about making the system more efficient, working and planning together in order to reduce delay and uncertainty for victims and witnesses.

Rona Mackay: Thank you. That is very helpful. In the previous parliamentary session, we passed groundbreaking legislation for domestic abuse protection orders. Those are not yet in force, as far as I understand, but that legislation will be of comfort to some.

I have a question for Teresa Medhurst that relates to a question that my colleague Collette Stevenson asked about contact with families in prison. Are there plans to keep the current methods that are being used during Covid? The organisation Families Outside has suggested that virtual contact could be made, for instance, at parent-teacher nights and at other events where parents should be involved with their children. Is there any scope for that? Are you planning to widen the scope of virtual contact for families?

Teresa Medhurst: Good morning, and thank you for your question, Ms Mackay. You raise the

valid point that there is potential to broaden the range of opportunities for the parent to be involved with the child, particularly when the child wishes that to be the case. We are actively pursuing that.

Rona Mackay: Thank you. That is really encouraging to hear.

I have a final, quick question for Tom Fox about the new women's estate that is being built. Has Covid affected or delayed its construction or implementation?

Tom Fox (Scottish Prison Service): Unfortunately, we have had some construction delays, as the committee might be aware. However, we are still on target for the three new facilities on part of the site at Cornton Vale and the community custody units in Glasgow and Dundee coming on stream next year—by the beginning of the summer, I hope. It is an exciting opportunity, as I am sure you know. I had the opportunity to discuss it with you at the cross-party group last year.

The facilities are well advanced. I am sure that we would welcome the committee coming to see the work that is in progress and the range of facilities that we believe will be groundbreaking and game changing in helping to empower women in custody and get them back into constructive and positive roles in their communities. I am sure that we would welcome committee members if they would like to visit and see for themselves what is in train.

Rona Mackay: Thank you. That is helpful.

Katy Clark (West Scotland) (Lab): I want to pick up on some of the points that were raised earlier about the emergency Covid regulations. In the programme for government, it is clear that we should expect legislation on custody and bail, and legislation to make some of the emergency Covid practices permanent. Pauline McNeill has already raised the issue of time limits, and we have heard powerful evidence about the experiences of witnesses. There has been success with using electronic documents and taking more evidence on commission, and it is suggested that that should be extended perhaps to have witness evidence taken remotely.

In Scotland, we have an adversarial rather than an inquisitorial system. Whether that is right or wrong, it is the system that we have. On the detail of what would in your opinion be acceptable and what would not be, to what extent do you think that those kinds of methods, particularly the hybrid model, should be used by the agreement of both parties? What detail should be in the legislation that you think it would be reasonable for this place to pass? What would that look like? Could you give us a bit more detail on that, because it is going to be a big issue?

Perhaps Tony Lenehan and Ken Dalling could come in on those questions. I am looking for the detail of what you think would work.

Tony Lenehan: The submissions deal with two positive suggestions, one in relation to electronic signatures. It seems as though that suggestion will not meet any opposition. The question of the remote balloting of jurors is the same, but that is not a huge step in itself.

I salute the value of increasing the scope for commission evidence, or capturing the evidence early on from vulnerable people. That took a step forward during lockdown; there was very much an emphasis on that. It used to be used just for children, but it is now used more broadly. I am not sure whether that will require any further legislation. It might just be a case of increasing the estate within the SCTS to allow more of it.

Eric McQueen raised a question earlier about having police and expert witnesses give their evidence remotely. I am on a working group that is looking at that and the view is that, when witnesses are identified as suitable for that, we should move forward with it. However, we should not move towards all police witnesses giving evidence remotely, because they often have evidence that is a critical focus of dispute, and that means that they need to be in a courtroom.

Our membership is content that we move towards removing people from the courtroom where both parties—or more than both, in a multiple-accused case—are content that that witness does not need to be in the courtroom. Then convenience favours having them removed and being remote and virtual.

11:45

I do not want to raise the subject of Lady Dorrian's report, because I know that we have only a few minutes left, but the vice-dean of faculty and I had a constructive meeting with Sandy Brindley of Rape Crisis Scotland to identify common ground. It might be that we can join heads and put forward some sort of proposals to you, where there is common ground between the defence bar generally and Rape Crisis, to improve the experience of all who are involved in courts and the efficiency of the system. I would be content if you would welcome some sort of submission from us and Rape Crisis to identify what we think is common ground in relation to Lady Dorrian's report.

There are still big issues. The notion of juryless trials for serious crimes is an emotive subject, and I am afraid that I am entrenched in my opposition to it. However, the things that I have identified in my submissions are straightforward and should be brought in.

Katy Clark: I ask Ken Dalling whether he agrees that the virtual approach should be taken by agreement. There will be police witnesses where the evidence is relatively uncontroversial, and it could be agreed but, with other key witnesses where, as Tony Lenehan said, the evidence is critical and controversial, would it be right for that evidence to be taken remotely if the accused and their representatives did not agree? Is there a need for agreement on that, to give the right to a fair trial?

Ken Dalling: I am conscious of the risk that, given the extent to which I agree with Tony Lenehan, you will just not invite me back—you will just have him. However, the position is that some procedural matters can be dealt with remotely very efficiently, and you do not need to engage the accused. Sometimes, you have to engage the accused, and without that you cannot get anywhere or make any progress.

Eric McQueen mentioned virtual custodies. I am a relative convert to virtual custodies, which are being piloted in the Stirling, Falkirk and Alloa areas and are about to be rolled out in other testing courts in Tayside, central and Fife. As I understand it, ultimately, the plan is to use virtual custodies elsewhere.

Funnily enough, that approach seems to be well received by the accused who are appearing, because they do not have to be bussed around. That kind of things works. As long as the solicitor can engage appropriately with their client, the prosecutor and the court, I see no real difficulty in it, subject to the need on the odd occasion to press the red button and say, “No—this person has to come to court.” That might be to be seen by a community psychiatric nurse or for some communication issue.

A criminal summary trial, no matter whether it has been waiting to call for a year or 18 months, as it might be in the current environment, can be over within an hour or an hour and a half. It can be a very efficient way of disposing of business and allowing a decision maker—usually a sheriff—to get to the bottom of a criminal allegation. The minute we start to make that remote and involve technology, we have a control environment that can break down at so many points. Basically, we are using a central body to try to control lots of individuals.

As we have heard and as we realise, we are talking about a people process and it takes only one part of it to go wrong for there to be issues. Therefore, we have to be careful. Just because we have the technology, we should not necessarily use it. There is a summary trial project in Aberdeen to be decided on and assessed. I have to say that it has not been favourably received by the Aberdeen bar, and no doubt they will make

their observations known. Like me, they might be converts to the use of that type of technology, but I very much doubt it.

To answer your question, it is far better to proceed by agreement than to impose. There is always the possibility that someone will be unreasonable in their opposition and, in such circumstances, decisions have to be made. However, as you said last week, there were good reasons for doing things in the way we used to do them, and a lot of it we did incredibly well, especially by comparison with our very near neighbour south of the border.

Katy Clark: I have one final question, which is for the Scottish Fire and Rescue Service. Last year, there was a doubling of fire fatalities—

The Convener: Ms Clark, much as I would like to bring you in—

Katy Clark: If there is not enough time, that is not a problem at all.

The Convener: Yes, you can follow it up another time. Apologies for that.

Following on from those questions, Mr Lenehan, you mentioned some contact that you have had with Rape Crisis Scotland, which sounded interesting. The committee would be interested to hear a little more about that as that contact progresses, if that would be possible.

Tony Lenehan: Of course.

The Convener: I am conscious of time, so I would like to bring in Fulton MacGregor, who is linking with us online.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I want to focus on the criminal justice social work area, so my questions are for James Maybee, who has been waiting patiently to come in.

Before that, I want to thank all the witnesses. A lot of ground has been covered in the other areas. I believe that we might have lost our online connection to the representatives of the Scottish Fire and Rescue Service, but I want to quickly say thank you for the work that people from the Coatbridge fire station did in my constituency when they responded to a fire in Guidi's restaurant. That was big news locally, and the service that they provided was second to none, just like the work of all our emergency services. I wanted to put that on the record, as representatives of the service were here today.

Before I ask my questions, I refer members to my entry in the register of members' interests and declare an interest as a registered social worker with the Scottish Social Services Council.

My first question, which is for James Maybee, is a general one. Could you outline the impact of the pandemic and the measures that are in place during the recovery period on criminal justice social work services in the round?

James Maybee (Social Work Scotland): Thank you for that question. I welcome the opportunity to provide evidence to the committee on behalf of Social Work Scotland.

The initial impact of the pandemic was profound because, when we went into lockdown, a number of services had to stop. The delivery of physical unpaid work had to cease with immediate effect and we had to stop delivering groupwork programmes as part of interventions such as the Caledonian system, which deals with domestic abuse, and the moving forward: making changes programme for sex offenders. That had a clear impact on the work that we do with individuals who are on community orders and prison licences. Staff were working from home, which meant that contact with individuals was done either by telephone or by some form of video technology, such as WhatsApp.

I think that, as has been mentioned, the virtual world is here to stay and will be part of our business in the future. However, we need to get back to having face-to-face contact.

As we moved through the various stages of the pandemic, we were able to resume aspects of the work that we do, such as facilitating unpaid work. However, because of physical distancing rules and all of the other restrictions, we could not take out five individuals at once, as we did previously. The restrictions also had an impact on our ability to bring people back into the workplace to deliver interventions and programmes and to meet face to face with individuals.

One of the challenges for us is what comes next and what is about to happen. We are now below level 0, but local authorities are moving at different speeds in their removal of physical distancing, for example. Some are still being cautious and are retaining physical distancing of 2m. That has an impact on how we work in offices and when facilitating unpaid work.

The key challenge is what is coming through the courts. We are working on the assumption that we will face an increase in our normal business of something like 30 or 35 per cent. Before the pandemic, we got something like 16,000 to 17,000 community payback orders. If you add 30 or 35 per cent to that, you will see that there is a significant increase in business over and above the normal business that we would expect to get through the courts. That will be hugely challenging. We are not yet on the other side of the pandemic, and court business will start to

ramp up this month, and over the coming months, to address the backlog.

Justice social work is putting a lot of time and effort into planning for that, recruiting staff using the money that we receive through Covid consequential. There is £12.8 million across Scotland for local authority justice social work, and a further £2.5 million that is directed specifically to third sector services. Nonetheless, there are challenges. We know that there is a very limited pool of justice social workers who have all the relevant skills and qualifications for the job, so we often recruit people who need training, which takes time. Some areas are reporting difficulties in recruiting; they are simply not getting people applying. There is a very limited pool to draw on, and a lot of competition between local authorities in that regard.

There are significant challenges, but justice social work is rising to meet them. We have been imaginative and creative—for example, in using online methods to deliver modules on mental health and employability skills. A lot of creative work has been going on with the third sector, involving organisations such as the Wise Group and Street Cones.

The mix of blended working, with staff continuing to work from home and in the office, will continue long beyond the pandemic. There is a role for the on-going use of the virtual world to have contact with the people with whom we work, but we cannot get away from the fact that many people need to be seen face to face. That enables us to pick up nuances and to understand and work with those individuals, many of whom have significant vulnerabilities and trauma in their life. We cannot move away from that, as other witnesses have highlighted.

Fulton MacGregor: Thank you—that was a robust response. I want to pick up on one area that you mentioned. You said that we need to get back to the face-to-face work. Can you expand on that? From your answer, and from my own understanding, I know that there is a level of social work—including justice social work, which we are looking at—where face-to-face working has continued. In which areas has that not happened? How might that be resolved as we move forward?

James Maybee: I think that it is fair to say that, throughout the pandemic, criminal justice social work has continued to provide the range of services that we usually provide. However, the amount of face-to-face contact dropped dramatically because of lockdown, and as we moved through the various levels of the Scottish Government's route map through the crisis.

Our focus was very much on those high-risk individuals who present an imminent risk of harm

that might impact on communities. We do what we can to help to prevent victims from being further traumatised by reoffending. However, we cannot get the numbers of people back into offices. Even this morning, as we speak, an office of 12 social workers, who each see individuals daily, will still have only four, five or six people there. There is therefore real pressure on interview space, some of which is not fit for use because of Covid issues such as ventilation.

There is still an impact on delivering groupwork. We have moved to deliver individual one-to-one sessions with people, but that is resource intensive. If we previously ran a group for eight people, it is obvious that there will be an impact on resources if we move to one-to-one sessions. All those things are having a tangible impact, and colleagues are working hard to get us back to where we were, but that will take some time.

There is an impact on the workforce as well. That impact is mixed—some areas would say that their staff have retained resilience and good morale, while others report that staff are really tired because of the way in which they have had to work during the pandemic. I am sure that that is the case across all the organisations that are represented here this morning. It will absolutely take time for us to work through these things.

12:00

Fulton MacGregor: It was useful for you to put on the record the fact that the service for high-risk individuals has continued throughout the pandemic, as has been the case with the other emergency services that we have heard from today.

My final question relates to an announcement in yesterday's programme for government. As you will probably be aware, the First Minister announced plans for a new national community justice strategy, which will involve investment in community justice services, work on diverting people from prosecution and the promotion of alternatives to prison. There will now be a year of discussions on that. What are your expectations for the strategy? What solutions or plans to help your services to recover from the pandemic would you like to see?

James Maybee: My hope is that there will be a real commitment, as was reflected in yesterday's programme for government, to making the shift from prison to community. We have to invest in community justice in its broadest sense, which includes justice social work. The programme for government commits to providing £500 million over the next few years to invest in the prison estate. There needs to be similar investment in the community because, in comparison, justice social

work is funded to the tune of just over £100 million a year. We need to invest in community justice services, including justice social work, if we want to provide and deliver a high-quality range of services.

There are commitments on other things that we need to do. For example, we need to fill in some of the gaps to ensure that every local authority is able to deliver a domestic abuse perpetrator programme, such as the Caledonian system, and I welcome the commitment to roll that out. We are redesigning other programmes, such as the moving forward, making changes programme. We need to look at what other interventions are available. We need to identify best practice and what is effective and then implement it consistently across justice social work services in Scotland. We have to be bold and imaginative.

We should not forget that lots of good things were going on before the pandemic. For example, the Care Inspectorate's report on Aberdeen City Council's use of community payback orders, the work on which had more or less finished before the pandemic struck, was published in February this year. The report talks about the transformative impact of the work that justice social work is doing in Aberdeen through the delivery of interventions. There is good practice out there, and we need to build on that. We also need to look at other things that we can do, such as the range of interventions to which I have referred.

The Convener: I thank Mr Maybee for those responses.

I thank all our witnesses. It has been a long but very productive session. If the witnesses feel that there are outstanding points that they wish to share with the committee, I invite them to submit those in writing to the committee. We will take that evidence into account. Similarly, I am aware that members would have liked to have raised some other points. We will certainly afford members the opportunity to make those points in due course.

That concludes the public part of the meeting. Our next meeting will be on Wednesday 15 September, when we will hold a further two round-table evidence sessions, on prisons and youth offending. We will move into private session for the final items on our agenda.

12:04

Meeting continued in private until 12:55.

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