



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Criminal Justice Committee

**Wednesday 3 November 2021**

**Session 6**



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**Wednesday 3 November 2021**

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**CRIMINAL JUSTICE COMMITTEE**

**9<sup>th</sup> 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:**

Dorothy Bain QC (The Lord Advocate)

David Harvie (Crown Office and Procurator Fiscal Service)

Teresa Medhurst (Scottish Prison Service)

Gerry O'Donnell (Scottish Prison Service)

**CLERK TO THE COMMITTEE**

Stephen Imrie

**LOCATION**

The David Livingstone Room (CR6)



## Scottish Parliament

### Criminal Justice Committee

*Wednesday 3 November 2021*

*[The Convener opened the meeting at 10:01]*

### Decision on Taking Business in Private

**The Convener (Audrey Nicoll):** Good morning and welcome to the ninth meeting in 2021 of the Criminal Justice Committee. No apologies have been received.

Under item 1, do members agree to take in private item 3, which is consideration of today's evidence?

**Members** *indicated agreement.*

## Pre-Budget Scrutiny 2022-23

10:01

**The Convener:** Item 2 is consideration of the spending priorities in the justice sector for 2022-23. We will focus today on the Crown Office and then the Scottish Prison Service. I refer members to papers 1 to 3.

I welcome our first panel of witnesses, who I am delighted to see in person: Dorothy Bain QC, the Lord Advocate; and, from the Crown Office and Procurator Fiscal Service, David Harvie, the Crown Agent. We appreciate your taking the time to join us and thank you for your written submissions, which are available online.

I intend to allow about an hour and 15 minutes for questions and discussion. I ask members to indicate which witness they are directing their remarks to. I invite the Lord Advocate to make a short opening statement and, after that, I will ask the Crown Agent whether he wishes to add anything.

**The Lord Advocate (Dorothy Bain QC):** Thank you for inviting me to give evidence and for permitting me to give some opening remarks, conscious as I am that this is my first appearance before the committee as Lord Advocate. I very much look forward to working with you all during this session of Parliament and my period in office.

I am here with the Crown Agent, who is the chief executive and accountable officer of the Crown Office and Procurator Fiscal Service. Day in and day out, the staff of the service fulfil their responsibilities to prosecute crime and to investigate sudden, unexpected and suspicious deaths, and they do so rigorously, fairly and effectively.

I take a realistic view of the pressures on public sector funding. The substantial increase in this year's budget was most welcome and is sufficient for normal pre-pandemic levels of casework. It also enables the pay of Crown Office and Procurator Fiscal Service staff to reach parity with colleagues in other Government departments. The biggest challenge that the service has faced in the current financial year has been in recruiting to fill the planned increases to the staffing complement. However, we expect to reach full complement by the end of 2021-22.

The challenges that the pandemic has presented and continues to present to the criminal justice system are unprecedented. I am grateful that the criminal justice system was collectively provided with additional funding so that we could begin to tackle the backlog in trials without

affecting our operational activity, but it is important for that recovery funding to be sustained.

The Crown Agent and I will be happy to elaborate on the service's plans in this evidence-taking session.

**The Convener:** Thank you very much. Do you have anything to add, Mr Harvie?

**David Harvie (Crown Office and Procurator Fiscal Service):** No, thank you, convener.

**The Convener:** I would like to open with some questions on the back of your opening statement, Lord Advocate. First, you raised the issue of recruitment in your statement, and casework complexity has been highlighted in previous submissions. We know that 70 per cent of the cases that are being dealt with in the High Court are serious sexual offence cases, the number of serious and organised crime cases has increased and the number of petitions in homicide cases increased by around 31 per cent in the past financial year. This morning, and in previous submissions, you have helpfully set out your plans for recruitment and increasing overall staff numbers, but I wonder whether you can provide a wee bit more detail on the matter, particularly given the growing specialist nature of casework and the high tariffs that are associated with the cases that are being dealt with.

Secondly, what budgetary challenges might you face with regard to recruitment, especially in the short to medium term?

**The Lord Advocate:** The main challenge for the Crown Office in the current financial year has been to recruit sufficient suitably skilled and qualified staff, particularly at entry-level legal and information technology staff grades. Increasing the staffing complement so significantly in a very short period of time is a challenge, but the news is that we are making good progress. As I have pointed out, we expect, in spite of the challenges, to reach full complement by the end of financial year 2021-22.

In contributing further to this discussion and responding to the question of the complexity and challenges of casework, I think that it would assist the committee to understand that, from 2002 to 2011, I was privileged to serve as advocate depute, senior advocate depute, assistant principal advocate depute and then principal advocate depute under Lord Advocates Boyd and Angiolini. In that time, I had probably the most rewarding time of my professional career, working with the many talented lawyers and staff in the Crown Office and Procurator Fiscal Service on prosecuting many high-profile and complex cases in the High Court and the Court of Appeal. I grew to recognise the enormous contribution made by all those in the service to the prosecution of crime

at that level, not just those working in administration, business management and human resources but the very talented lawyers who are the custodians of the public interest and who work, and have always worked, in highly specialised fields of specialist and serious casework—homicide and major crime—in the High Court and local courts. My personal experience of prosecuting at that level demonstrated to me that everyone in the service was committed to reaching the high standards required to deal with these very difficult and complex cases.

When I returned to the Crown Office after 11 years in private practice at the bar, I found that, in line with all my experience of working with the staff and lawyers in the Crown Office and Procurator Fiscal Service, things simply had not changed. They demonstrated the same commitment, dedication and desire to strive to improve. Yes, there are profound challenges and recruitment is difficult, but we are progressing in the right direction and will achieve what is necessary in prosecuting the type of cases that you outlined.

**The Convener:** Thank you—that is helpful.

I will stick with recruitment. Prosecution is a career choice for many, and I am interested in the comments from Fiona Eadie, in the FDA union submission, about the important role that more experienced staff have in mentoring and supervising younger, less experienced solicitors or procurators fiscal who are coming through the system. That issue does not arise solely in the court system, of course, but nonetheless I am interested in its impact there.

What do you see as the priorities, in the context of mentoring and supervision, in enabling younger, less experienced staff to learn on the job and build up their own experience while allowing more experienced and senior staff to manage their own casework alongside fulfilling that important role? Again, I am looking at the issue from a budgetary point of view, and I would be interested to know what you see as options in the court system for balancing those elements as well as possible.

**The Lord Advocate:** I can comment on that from my position as Lord Advocate, but the Crown Agent can contribute the fine detail that you are looking for. At a high level, as a prosecutor, I am determined to drive excellence in all Crown Office and Procurator Fiscal Service casework, and I see as critical to that the provision of an appropriate level of training for the lawyers who come to the service.

It is in the public interest that we have well-trained lawyers, and that cases are well prepared and well presented in court. There is no doubt that the recruitment drive brings an enormous pressure in that regard, and it has to be through the

dedication of those who have committed their professional life to the service that we bring through young people and inspire and promote them to view the work in the same way that all those dedicated servants in COPFS currently do. At a high level, I see training and education as critical to the improvement of the service. Perhaps the Crown Agent can give you a little more detail on how we develop that at the level that you are looking at, convener. I recognise absolutely the strength in what Fiona Eadie of the FDA has said.

**David Harvie:** I too recognise the point that Fiona Eadie makes. Staff have shown extraordinary resilience over this period, and they will continue to do so as we transition into a larger organisation with new recruits. That presents a challenge, but it is a welcome challenge to have the opportunity to bring on new, enthusiastic, skilled people. I know that colleagues welcome that, while appreciating the fact that, in itself, it presents a short-term challenge. We recognised that as part of the recruitment exercise, and earlier this year we published a new learning and development strategy precisely to accommodate that challenge. In general, our training is quite highly regarded across the profession, whether at trainee level or at more experienced levels, with bespoke courses.

Given the nature of the challenge and the volume of the training that is required, a particular approach is required, not least because there is a variety of experience among those who are joining us. Some people, like me when I joined the service, have already gained some experience in prosecuting in front of jury courts, while others come from different parts of the profession and may not have appeared in court at all. There is no one-size-fits-all approach; we have consciously designed an induction policy that, in so far as possible, we seek to tailor to the individual.

I could say quite a lot about that but, in the interests of time, I would be happy to share the strategy document with the committee if that would be of interest to you. I am also happy to pick up any detailed questions as required.

**The Convener:** That would be helpful.

I will hand over to other members who are interested in staffing issues.

10:15

**Jamie Greene (West Scotland) (Con):** Good morning, Lord Advocate, and thank you for attending the committee. I put on record our thanks to staff in the Crown Office and Procurator Fiscal Service, who have worked under tremendously difficult circumstances to keep our judicial system operating fairly and justly.

I want to drill down into some of the comments in your written submission. On your asks for the Government as we scrutinise the forthcoming budget, the third bullet point in the section on “Looking ahead” says:

“additional funding for court recovery must be sustained. It will take many years to remove the trial backlog”.

Can you give the committee an indication of the scale of the backlog, the potential time that it will take to clear it and, more important, the analysis that has been done by the COPFS on the cost of clearing the backlog? It is clear that it will require a year-on-year uplift in the budget. The uplift was 17 per cent last year. What percentage will you need this year to ensure that you are able to clear that backlog quickly, efficiently and fairly?

**The Lord Advocate:** First, I will deal with the backlog and what troubles me deeply about that, and then, with the assistance of the Crown Agent, I will see whether we can provide you with the figures that you are looking for.

We have given some figures on cases and backlog in the submission. The backlog of cases and the timescale for recovery troubles me deeply. It impacts adversely on accused persons who are awaiting trial, on victims and witnesses who are unable to obtain resolution and on the lawyers and staff working in the Crown Office and Procurator Fiscal Service. It delays justice for all and, consequently, individuals and communities do not obtain the protection of the law that can be obtained through sentences of imprisonment, protective orders, court-imposed disqualifications and so on.

Out of all the difficulties and challenges, my acute concern relates to those highly vulnerable victims of serious, gender-based violence—predominantly women and girls—whose cases are backed up in the system of prosecution and in the High Court, where such serious cases are tried. Out of 1,934 cases post-indictment, 1,290 are cases of serious sexual violence and, as at the end of September, 837 of those cases—a 57 per cent increase since lockdown—are awaiting trial. Added to that equation, a significant increase in cases will be indicted in the next two years.

Those cases of serious sexual violence make up 70 per cent of High Court work and 80 to 85 per cent of cases that proceed to trial. Therefore, the delays arising from the backlog predominantly and disproportionately affect women and children.

My acute concern arises from the fact that crimes of sexual violence require a distinct approach because of the nature of the crime and the impact on the victims. Such crimes cause enormous harm and often result in life-enduring consequences for the victims. The work done by Lady Smith and the childhood sexual abuse

inquiry demonstrates that to be so. That is why it is recognised as a violation of women's human rights and a form of discrimination and why the World Health Organization states that violence against women, particularly intimate partner violence and sexual violence, is a major public and clinical health problem and a violation of women's human rights. It is rooted in and perpetuates gender inequalities.

Essentially, I consider that sexual crime is different from other forms of crime and requires a distinct response. However, the solution remains a political one. It is for the Scottish Parliament to recognise the issue and to determine whether there is an alternative to what is currently being done that does not impact on the accused's rights to a fair trial but also recognises the scale of the impact on the rights of victims of gender-based sexual violence, and to determine whether there is another measure to recover and renew in those cases and an alternative way to proceed as an interim measure.

The backlog is an enormous problem, Mr Greene. The figures are in the submission that we have given you, but for my purposes today, I wish to highlight the extraordinary numbers of sexual violence cases that are waiting for trial and the impact that that has on the most vulnerable members of our community and of society, who require the protection of our courts.

On the particular, identifiable number of cases that we need to deal with, the Crown Agent might be able to help, but it is important to note and recognise that we have to work constructively with other people on the backlog. The Crown Office and Procurator Fiscal Service has to work with the Scottish Courts and Tribunals Service, the Law Society of Scotland, sheriffs principal and the senior judiciary to operate the court programme in a way that tackles the backlog. Whether or not we know at this stage the precise number of years that it will take, we know that it will take multiple years to clear the backlog in the High Court and, more profoundly, the numbers of cases in the sheriff and jury and local courts.

That is the high-level response. I hope that you appreciate the reasons for that. Perhaps the Crown Agent can explain a little further.

**David Harvie:** First, Mr Greene, I thank you for the words that you said about colleagues in the service, which I whole-heartedly endorse. Picking up on the Lord Advocate's point, I would extend that to everyone who is involved across the system. Speaking personally, I note that it has in some ways been a privilege to be in my post during the pandemic because people have risen to the challenge across the organisations, and the levels of collaboration and testing of new ideas have been unprecedented. I include the Law

Society and the Faculty of Advocates in that. I wanted to put on the record my thanks to all of them at the first opportunity today.

I will give you some figures for the local courts in order to give you a sense of the impact of the pandemic. Before the pandemic, there were 13,400 or thereby sheriff court trials outstanding. The number at the moment is over 32,400. In the justice of the peace courts, there were just over 3,200 trials outstanding, and the number is now sitting at 7,890 or thereby. In the sheriff and jury courts—the Lord Advocate said that they are a particular pinch point, and I agree—there were about 1,330 trials outstanding pre-pandemic and there are currently in excess of 3,500.

Before I touch on the recovery plan, I want to make it clear that that case load was not plateauing as we went into the pandemic. It was already rising quite significantly, particularly in the solemn courts. It was not rising so much in the summary courts, but in the solemn courts it was rising very significantly in the years leading up to the pandemic.

There are two challenges, as if the pandemic challenge is not enough. There is the impact on the backlog that has been created by the pandemic, but there was an underlying issue beforehand in relation to serious offending that merits petition, and that is still there in both the sheriff and jury courts and the High Court. The Lord Advocate mentioned the disproportionate impact of that on women and girls, and the percentage of High Court cases that is made up of such cases is really eye-watering. That is the nature of the challenge.

I am conscious that you asked a finance question, Mr Greene. On the nuts and bolts, the recovery programme as currently agreed enables four additional High Court trial courts, two additional sheriff and jury courts and 10 additional summary trial courts. A pot of money was made available across the system to support that, and we secured £7 million from that. To be clear, however, that was part-year funding, because there was an assumption, which proved to be the case, that we would have to recruit and train in order to be able to populate those courts. The full-year equivalent cost, not accounting for inflation or the issues of pay parity, which we can come on to discuss, is £12 million. That might be a helpful figure for current purposes.

**Jamie Greene:** Thank you. I will forgive the lengthy answers, because the question was a high-level one.

You have touched on an important issue. We are talking about budget numbers and finance, but people lie behind them. You have made that point eloquently, and I know that the committee will

discuss those areas in more detail. However, the numbers are important, too.

It sounds as though the backlog situation is extremely worrying, and it sounds a little as though you are facing a perfect storm. You had a rising number of cases before Covid—it is clear that the pandemic has added to those challenges—and rising levels of vacancies. People have struggled to recruit and fill posts, given the time lag that is required to take new entrants into the profession and train them to levels to manage very complex—and increasingly complex—cases.

I want to ask about that. Perhaps people and places are the biggest costs to you at the moment. Your vacancy rate is currently 12.8 per cent, and you have stated that that will be down to 0.2 per cent by March 2022. That is only five months away. How realistic is that? What will it take to get that 12.8 per cent down to practically nothing, which is what you are forecasting?

**The Convener:** I am conscious that this is a really important discussion, but we would like to work through quite a lot of themes, so I would be grateful if people kept their questions and answers as succinct as possible.

**The Lord Advocate:** Mr Greene indicated that the issue is a very important one. I have made my point about the backlog. The Crown Agent can come back on the fine details of the figures. I appreciate the point that was made.

**David Harvie:** I will try to be as brief as possible.

We have a fairly high degree of confidence in the predictions. Offers are out with individuals, and we are confident that the numbers will drop down quite significantly before Christmas. One issue is simply the time that it takes to do security checks. We have a fairly high degree of confidence that we are about to have another step change. There will still be a challenge at the start of the next financial year, but it will be a significantly smaller challenge. Given the time, I would be happy to follow up on what I have said by providing a bit more detail in writing, if that would help.

**Jamie Greene:** That would be very helpful.

The committee will present back to the Government the findings of our pre-budget scrutiny, so you have an opportunity to make an ask of the Government. If we know what we are asking for, that makes life easier. You are welcome to follow up on what you have said in writing.

An area of slight concern that jumps out at me is that, if you are making a large number of offers to junior solicitors or to people to join the Crown Office and Procurator Fiscal Service, that might ring alarm bells in other parts of the legal sector.

What are the average salaries in the Crown Office and Procurator Fiscal Service in comparison with, for example, the independent sector, which you worked in previously? There is a general feeling that the public sector and governmental bodies are recruiting proactively and aggressively from other sectors in which there are now shortages, and that those sectors are really struggling to stay afloat. It is great news that you are reducing your head count vacancy rate, but is that at the expense of other areas of the legal sector?

**The Lord Advocate:** Perhaps I can comment from the position of someone who practised at the bar. The Crown Agent can then give details in relation to those who are being recruited to serve as permanent legal staff within the service.

As an independent practitioner at the Scottish bar—as a Queen's counsel in practice—I was very fortunate in my later years of practice to earn significant sums of money, which came from having committed myself to my job for a long time and from having put in many hours, including many unsociable hours, of hard work. Speaking personally, my rate of pay in coming into the Crown Office as an advocate depute and committing again to public service is probably a quarter of what I earned as an advocate in private practice.

That is the case for many of the people whom we recruit from the bar to come in and serve as an advocate depute. They serve in the public interest and commit to public service, which I have to say is the most rewarding part of any lawyer's work. Such a move involves an enormous financial drop in salary, a huge time commitment and huge emotional engagement. The notion that those who come from the bar to serve as advocate deputes are earning far more is quite wrong.

10:30

**Jamie Greene:** That is noted.

**David Harvie:** This might sound trite, but one of the things that I would like committee members to take away is that this is going to be a marathon that will test the resilience of everybody in the system for years to come. It is, in essence, the professional challenge of their lifetimes. I am hesitant about making comparisons at particular moments in time because, from my perspective, it is absolutely essential that we succeed in that marathon and that we have a healthy and successful defence bar for the duration of that challenge. I do not regard those two things as mutually exclusive.

On COPFS staff pay, I think that I have mentioned the pay parity arrangements, which are set out in our submission to the committee. All they do is put us on parity with Government

lawyers for the first time since I joined COPFS in the late 1990s, and because we are seeking to implement them over three years, we have not yet achieved that parity. However, we can offer a better package than we have been able to historically. Historically, there were times when it would have been possible for me to leave the prosecution service and earn considerably more on the defence side. We are talking about a particular moment in time here, and I again commend to the committee the point that it is important for all parts of the system to be in a healthy state.

We have done a little bit of work on recruitment. The vast majority of recruits do not come directly from defence practice; indeed, 40 per cent of them are our own home-grown trainees. We are the largest recruiter of trainees across Scotland and have been for some years, and that approach has created benefits at times such as these.

As for applications, our HR colleagues have looked back over the past year and I am told that about a quarter of successful applicants identified themselves as having come from a defence firm; about a third came from other firms that take on mixed work; and the best part of 10 per cent of applicants were unemployed. Some of the last group were former defence colleagues. We have sought to recruit across a range of experience levels, and we continue to do so, which I think comes back to my first answer to the convener on the need for bespoke responses.

I want to leave the committee with the thought that we need a healthy profession across the board to achieve the outcomes that I think everyone in the room wants to achieve when we are faced with such a challenge.

**The Convener:** Thank you very much. Bearing in mind that we have covered the issue of recruitment to quite an extent, I hand over the questioning to Collette Stevenson.

**Collette Stevenson (East Kilbride) (SNP):** I will try to be as succinct as possible, convener.

Good morning. Full-time equivalent staff numbers have increased over the years—from your submission, I believe that the figure stands at 2,000—but what difference, if any, has that increase made to your service? Has it made a significant difference? Moreover, given the pinchpoints and challenges with case load that have been mentioned, will the Crown Office need further real-terms funding increases in next year's budget to cover staff costs?

**The Lord Advocate:** What I would say in relation to the wonderful fact that we have had an increase in staff is that we are being given the opportunity to prepare and prosecute cases in a way that we would like. It is in the public interest

that cases are well prepared and prosecuted, and, if you have more staff and more people working on the casework, the outcome will be just that. For me, it is wonderful to experience the fact that there is a greater level of staffing in the fiscal service.

There has also been an enormous recruitment drive in relation to the advocate depute court, which has resulted in the ability to provide greater preparation time for cases and, hopefully, a greater standard of preparation and presentation at trial. In addition to that, it has allowed me, as Lord Advocate, for the first time, to appoint a director of training specifically to the advocate depute team, all of whom are challenged day and daily in court to perform very difficult work in very pressing circumstances.

Those opportunities allow us to serve the public interest better. The Crown Agent will be able to give you a bit more information on the specific issue of staffing in the service.

**David Harvie:** I will try to be brief. Referring back to what I said earlier, we were up against a rising challenge in serious casework. When we talk about baseline and core funding in our submission, that involves the step change that was required in order to deal with that underlying trend and, in our view, meet what we regarded as reasonable levels of public expectation in relation to that underlying trend. We then face the challenge of the backlogs over and above that. I have given you some indication of the scale of those challenges, and the funding that is available to us to deal with that backlog element is the recovery funding.

At the moment, we have an enormous number of cases live in the system, some of which would have been there anyway, regardless of the pandemic. We are in the midst of recruiting in order to get ourselves to the staffing level that we believe would have been necessary to meet that underlying challenge and to go beyond it to deal with the recovery.

Going back to the FDA's submission, I entirely understand how people feel just now, because there are those two layers of challenge. As I said, we are in the midst of recruiting in order to be able to deal with both of them. The reasonable levels of public expectation, the levels of contact that we would want to have with victims and witnesses, the levels of support and so on are things that we will continue to strive for, but we will do that against the reality of there being around three times as many sheriff summary cases, twice as many High Court cases and the best part of three times as many sheriff and jury cases. There is a huge and significant challenge to not only service those cases but improve the service.

**The Lord Advocate:** It is also important to remember that, over the next two years, there will be a 50 per cent increase in indictments from the current level, with the cases that are to be indicted increasing from about 56 a month to about 100 a month.

**David Harvie:** Just to pick up on that, it is perhaps helpful to note that, with the 10 additional sheriff summary courts, the latest Scottish Courts and Tribunals Service prediction is probably 2025 or 2026, and the position for the High Court is similar. For sheriff and jury cases, it is longer than that. Those estimates involve an assumption that we will be operating at our current capacity. Our prediction is that we will be indicting 100 cases a month into the High Court from the start of the next financial year.

**Collette Stevenson:** As a result of the pandemic, we have seen the establishment of online juries and so on. How has that been, financially? Has that involved more of a cost? You touched on digital technology in your submission. How is that developing? Where do you stand financially in terms of initial outlay versus potential savings?

**The Lord Advocate:** In so far as the use of technology is concerned, the service is wholly committed to continuing to play its part in modernising the justice system to provide a more efficient and effective response. The use of technology is seen as an important part of that. There are some digital solutions, such as custody processing and virtual trials. Currently, those might seem to be more resource intensive, but they look to be a way of improving matters such as the timescales for cases going through, and they involve opportunities to make savings from, for example, reduced travel time and court downtime, and to address challenges such as those that witnesses face in attending court for cases. Certainly, the digital work that is being done by the service is important to making progress in the current situation of the pandemic.

On financing for remote juries, I think that that is a question that you would be better directing to the Scottish Courts and Tribunals Service. I ask the Crown Agent to confirm that that is correct.

**David Harvie:** Of the funding that was made available for the recovery during the current financial year, more than half went to the funding of the remote jury centres.

**The Lord Advocate:** The issue is an important one. The fundamental point that I would make is that we must embrace the notion of virtual courts and meaningfully address the backlog of cases. To not do that would be a real failing. We are facing a challenge in that regard earlier than we would have expected to, because of the

pandemic, but it is an important part of the renew, recover and transform programme.

I ask the Crown Agent to talk about the fine detail.

**David Harvie:** I will be brief. Much of the digital transformation is funded by capital, which has been flat for 10 years. We had a welcome increase this year, but we have identified significant opportunities for improvements that could be made across the system, with investment. We are in the process of developing, along with justice partners, a digital evidence-sharing capability across the system, a witness gateway and a defence agent system. Separately, as part of the emergency legislation that was helpfully passed by the Parliament, we have had electronic service of court documentation and so on. There are several areas in which we would not want to return to the previous model, and there are several things in the emergency legislation that I would suggest that we do not ever want to lose; electronic service is one of those.

Other innovations include virtual custodies, of which there have been more than 1,000 so far. One of the challenges that we have at the moment is that that has been operated as a hybrid system, which, in some ways, is inefficient. There are some questions around piloting and so on, and the need for further exploration to ensure that the processes are absolutely fair. Once we have an evaluation, that could be further expanded.

**Pauline McNeill (Glasgow) (Lab):** Good morning. My question is a follow-up from Jamie Greene's question about pay and staffing. First, though, I say that I fully acknowledge that Crown Office staff having parity with Government lawyers is long overdue. I go back a wee bit on this issue, so I am fully aware of how long that has taken, and I am delighted that it has happened.

My question relates to that issue. The Crown Agent has said that the challenge of outstanding trials is huge. However, I would have thought that, if all the parts of the system are not functioning as they should, we have got a bigger problem. You will be aware of the boycott of court due to the dispute on legal aid fees. Yesterday, I spoke to the presidents of the Glasgow Bar Association and the Edinburgh Bar Association and I heard that those lawyers are working 26 days consecutively over the period of the 26th United Nations climate change conference of the parties—COP26—including the three weekends. As the Lord Advocate said, if you work out the hourly rate for a lawyer working in those circumstances, you will see that it is pretty low, and the committee has already heard evidence that the conditions are not exactly family friendly.

It is clear that one part of the system is not working. We are losing good lawyers because of the dispute on the issue of legal aid, the end of which is long overdue. Is there a danger that a shortfall in the availability of suitably experienced defence lawyers might undermine efforts to improve criminal justice and meet the challenges that are before you, as you outlined to the committee?

10:45

**The Lord Advocate:** My response has to be understood from my position as head of the prosecution service. The points that Ms McNeill outlined would raise concern in any quarter, but from my perspective it is important to the Crown Office and Procurator Fiscal Service that we have a well-functioning, well-served criminal defence bar in Scotland. The rule of law requires it. In any system of prosecution of crime, it is essential that the rights of an accused person are properly protected and that the accused person is properly represented at trial. Therefore, it is in the interests of all of us—the Crown and the public—that there is a strong defence bar.

If there are issues to do with what people are paid and whether we can attract them to do that important work, that is a matter for someone other than me. Perhaps the question would be better directed to the people who are responsible for the legal aid fund, the bar associations, the Faculty of Advocates and the solicitor advocate profession. For me, it is essential that we have a strong defence bar; that is essential in any well-functioning system.

**David Harvie:** I agree entirely with the Lord Advocate about how imperative it is that the defence bar is not just functioning but healthy. I touched on that earlier in terms of the challenge that we face. I am a solicitor advocate and a member of the solicitor profession. I was on the other side of the table, defending clients, before I became a prosecutor. I am fully behind the idea that having a healthy defence bar is essential for the proper administration of justice and the effective rule of law in Scotland.

There is perhaps an opportunity in all this, although we feel some distance away from it just now. It goes back to my earlier point about the challenge of a professional career, which I am sure the committee will be familiar with having had similar conversations. It is incredibly rewarding work, regardless of which side of the bar you are on. I am not talking about financial reward; I am talking about the contribution that you feel you are making to society. I have spoken to senior leaders in the faculty and the Law Society about the opportunity that there may be, given that the challenge is a marathon and we are, regrettably,

at the start of that marathon. That opportunity is to build towards encouraging young lawyers to join us in that challenge of a lifetime across the different parts of the profession. I appreciate that there are discussions to be had in relation to how we ensure that everybody is brought along together on that. Those discussions are not for me. The committee may have a role to perform as we recognise the strategic challenge and make sure that all parts of the system, as Pauline McNeill said, are in a position to move together and encourage others to join us.

**The Convener:** We have less than half an hour left, so we will move on to questions about violence against women and girls.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** Thank you, convener. I will try to keep this brief.

I will ask some questions about violence against women and girls. I thank you, Lord Advocate, for speaking so passionately about the subject and its unique nature. I whole-heartedly agree with everything that you said on that. You also said in your opening statement that funding was adequate for the normal level of cases based on pre-pandemic levels. Given that the number of solemn cases of domestic abuse has gone up by 20 per cent since 2019 and given the huge backlogs about which we have spoken, is this the time for something radical? Would you be in favour of a specialist court? Will you have enough funding to cope with the extreme figures that you mentioned?

**The Lord Advocate:** Your first question was whether it is time for a radical solution. I said at the beginning that the solution remains political. The issue is whether the Parliament is prepared to recognise the profound problems that we face in the prosecution of those difficult cases because of the backlog and the fact that it is a violation of a woman's human rights to be the subject of gender-based violence. The World Health Organization makes the point when it says that it is a major public health and clinical problem. It is rooted in and perpetuates gender inequality.

I consider that we need to take a radical step. The Crown Agent was on the review that the Lord Justice Clerk carried out. That review group made certain recommendations, one of which was for a pilot of judge-led trials. I support that recommendation but, in light of what we face now, we must ask whether there is another way to recover and renew in such cases. Is there an alternative way of proceeding that provides an interim measure, given the pandemic? If there is, we are morally obliged to consider it.

**Pauline McNeill:** I will continue Rona Mackay's line of questioning. Like her, I commend the strong words that you gave to the committee. I agree that

there is a moral imperative for all of Government to consider carefully the disproportionate nature of gender-based violence against women. As you and the Crown Agent described, the unavoidable delays will have a serious impact.

You are also right to say that it is a political matter and, therefore, a matter for us to consider. However, I am interested in your opinion as to the length of the period in which there would be judge-led trials as an interim measure, if that were to be legislated for. Should it be one year or two years? Do you have any time in mind? I know that it is hard to judge how long the backlog will take to clear, but it would be helpful if you could tell the committee how long you think we would need those arrangements for before we reassess the situation.

**The Lord Advocate:** Thank you, Ms McNeill. I know that you have committed a lot of the work that you have done as a politician to promoting those issues in relation to gender-based violence, as have a number of committee members.

I have not analysed the sort of timescales that you are talking about, but it is important to say that the matter requires detailed consideration. The Lord Justice Clerk's report includes an interesting section on the question of jury or non-jury trials and different models that exist across the Commonwealth and the European Union. Those issues should be considered before anybody says that recovery is likely to take X or Y years.

It is important to recognise that the length of trials would be shortened if there were non-jury trials and that that would give us the opportunity to tackle the backlog. However, I should also underline that, in saying that, I do not wish to impact on an accused person's right to a fair trial. Given all the years that I have practised as a lawyer, nobody would recognise the importance of that more than I would.

That said, we have a different constitutional arrangement from that of the English, and the article 6 right to a fair trial is not constitutionally informed. The English have the Magna Carta, and we do not. Moreover, we know from jurisprudence and case law from the European Court of Human Rights that a non-jury or judge-led trial does not impact on an article 6 right to a fair trial, given that an accused person would have the right to representation and would receive in writing the decision of the fact finder. In other words, he or she would be given reasons for the conviction.

Any debate on this matter has to be well informed and must recognise the competing legal rights of all those in the system. Fundamental to that is, of course, an accused person's article 6 rights, but other rights—those of the victims of crime—need to be considered, too. As I have said,

the solution remains a political one, and the timing of such a move to address the backlog is perhaps an area for further inquiry and examination if indeed parliamentarians are prepared to take that forward.

**The Convener:** I think that Jamie Greene has a question on this issue.

**Jamie Greene:** I realise that we are slightly steering away from the budget to a deep philosophical conversation about how we manage the rising levels of crimes of this nature. There is no disagreement that we want to have a more trauma-led approach to supporting victims of such crimes, but are you saying that the political solution to this issue needs to change, simply because of the scale of the backlog and the lack of available resource to process it? Would we be making these changes to the way in which we prosecute and try people just because of the situation that we find ourselves in as a result of years of increasing activity in cases? Surely that is not the right way or the right reason to make changes to how we try people, given the effect on the rights of the accused and so on.

**The Lord Advocate:** My point arises out of the situation created by the backlog and the disproportionate impact on women and children. The political solution is an issue for parliamentarians.

You say that what has been suggested impacts on article 6 but, as I have said, that is not the case. We have to recognise all rights. We are not asking for anybody's rights to be curtailed, impacted on or defeated in any way; we are simply looking for a solution that needs to be provided for particular types of cases that require a distinct approach. That point has been recognised across a number of areas of the world and, indeed, in the jurisprudence of the European Court of Human Rights.

I ask the Crown Agent to say a little bit more on Mr Greene's comment that the suggestion is financially driven.

**David Harvie:** This is not a question of finance, but perhaps I should take a step back and refer to your earlier comments about what was going on previously. Given the statistics that we have provided on the increase in serious sexual offending that was happening before the pandemic, I would actually say that we are facing two challenges here. The first is the one set out by the Lord Advocate, and the other relates to the fact that 80 per cent of High Court trials are for serious sexual offences.

It is partly that those trials represent the sharp end, but it is also about something far more profound in society. I cannot imagine that there is any dispute about that in this room, nor can I

imagine, to be frank, that anything would be easier to get behind than something that seeks to address the issue. It could be addressed from an education point of view—I talk about it as a marathon, not a sprint, so I am also interested in the cases that may come up in five years' time. I do not want 17 and 18-year-olds to find themselves in the High Court in five years' time, so perhaps we can start to cut that off. There is a big debate. I am conscious that we are here to discuss money, but there is a whole other issue there.

11:00

**Jamie Greene:** For the benefit of the record, I was not implying that the proposed changes were financially led—I was merely raising the question.

**The Convener:** Katy Clark would like to come in, and then we will move on to look at issues around organised crime. We will stay with Katy for that, as I know that she is interested in asking some questions on that area.

**Katy Clark (West Scotland) (Lab):** I want to ask about drugs policy and the budgetary implications.

Lord Advocate, you recently made a statement to the chamber on class A drugs, and last week the committee heard representations from a range of campaigners on issues such as drug consumption rooms. Do you agree with the repeated representations to us that there are no legal problems with drug consumption rooms in the current legislative framework? Perhaps you could outline the policy in relation to that. Are there any budgetary implications as a result of some of the shifts in drug policy that we are seeing? I will then go on to the wider issues in relation to organised crime.

**The Lord Advocate:** It is important to remember the history behind drug consumption rooms. In June 2017, the then Lord Advocate was asked by Glasgow city health and social care partnership to confirm, by way of guidelines, letters of comfort, protocols or formal policy, that the health board, the council and their staff, and partner organisations, which were considering the provision of drug consumption facilities, would not be prosecuted for a range of potential offences.

The then Lord Advocate considered that proposal carefully and reached the conclusion that the public interest objective in providing a consumption facility was about health rather than justice. However, with regard to what was asked of him in terms of prosecution, he concluded that it was not possible to grant the request. The potential offences that may be committed in any particular consumption facility will depend on the individual scheme that is envisaged; the policies

and processes in that scheme; and the actual behaviours of both the operators and the users. The Lord Advocate could not, therefore, as a matter of law, whether through policy or otherwise, decriminalise conduct that was by law criminal, nor could immunity from prosecution be granted in advance.

The question of prosecution in the public interest is different. If there was a proposal for drug consumption facilities that was precise, detailed and specific, underpinned by evidence and supported by those who would be responsible for policing such a facility, and by Police Scotland, and if there was careful consideration in and around how those consumption rooms would impact on communities, it could be brought to the Lord Advocate. If that sort of planned use of drug consumption rooms was brought to the Lord Advocate as a well-set-out proposal, in the context of the undoubted crisis that we face in relation to the number of drug deaths in Scotland, and if it was in the public interest that there should be no prosecutions for those who use drug consumption facilities, with all the safeguards that require to be in place, it would require fresh consideration by me, as Lord Advocate.

It is important to see the distinction between what James Wolffe was asked and what could be asked. Those are different things. The question of what is in the public interest could be looked at again, but it would have to involve looking carefully at the circumstances, where a detailed set of proposals is brought forward and we are confident that they are based on sound evidence.

**Katy Clark:** That is helpful.

I turn to budgetary issues. We know that organised crime is heavily involved in both the supply of drugs and prostitution. In relation to Crown Office priorities, will you outline how we can better focus resource on tackling organised crime, specifically in those spheres, but also more generally?

**The Lord Advocate:** I will comment on the high-level approach that I wish to take, as Lord Advocate, in relation to serious organised crime. It is a very serious issue and one that concerns me greatly. The focus will be on robust prosecution because of the damage that serious organised crime does across the Scottish community and the enormous impact that all the different types of offending have, from environmental offending through to the supply of drugs and more serious levels of violence and homicide. Those things impact across the board. It is important to me that the work in this area is properly funded and that such crime is properly prosecuted in the public interest.

I can come back to you with more precise detail on the budgetary commitment to that, but the Crown Agent, who is more familiar with the particular issue, can perhaps comment on the financing.

**David Harvie:** I will be brief as I am conscious of the time. At the most serious end, for High Court cases, we have a bespoke serious organised crime unit, which deals only with organised crime and counterterrorism cases. As you will have seen, there have been some of those of late that are worthy of mention. We have seen an increase in such cases that forms part of the High Court backlog that we have talked about. Those are often multiple-accused cases, which have been difficult to deal with during the pandemic. We are only now in a position where they can start to be put through the courts.

The area is a classic example of one where improvements in technology have improved investigative opportunities and then increased case load and the complexity of cases. For example, you will probably have read about the EncroChat cases, which arose from an international investigation in relation to a secure server that was based in France, which was used by a number of organised crime groups around the world. We have 50 cases from that single investigation involving people who used that advanced technology to communicate with one other. That is an indication of the nature of the challenge, and it is all part of the complexity and the need for resilience that we highlighted earlier.

**The Convener:** We move on to the issue of Covid deaths, with questions from Russell Findlay.

**Russell Findlay (West Scotland) (Con):** Good morning to you both, and welcome. I begin by echoing my colleague Jamie Greene's opening comments.

The level of the backlog of criminal cases is startling and the figures that you have provided today really bring that home. There is perhaps a public perception that you work primarily or entirely on criminal cases, whereas you are also responsible for investigating a large number of deaths that are not homicides. The COPFS submission refers to a year-on-year increase from just under 11,000 death reports to almost 16,000, and many of those will be Covid deaths.

I have read about a Covid investigation unit, although I do not know whether it is called that or whether it is a stand-alone thing. Forgive me for my question being a bit woolly. Will you expand on the nature of that unit and the challenges, which I would guess are primarily financial, that arise from that huge increase in the numbers? Will you also say whether every Covid death merits the same type of investigation or whether it depends on the

individual circumstances? That question perhaps drifts away from finance, but I suppose that it relates to the financial cost that Covid is bringing to the Crown.

**The Lord Advocate:** You are quite correct that Covid deaths are dealt with by a specialist part of the Scottish fatalities investigation unit. From the time of my appointment, I have been engaged closely with members of the Crown Office and Procurator Fiscal Service in discussing the way in which we can appropriately deal with Covid deaths, as they arise in all sorts of circumstances. They arise in the work environment, in the prison estate, in care homes and in hospitals. That is a very important area of our work, and we need to get it right. A dedicated unit looks at Covid deaths and works out protocols and policies to underpin how we deal with those cases so that we can apply the same sort of decision making across the board in considering whether those cases will merit fatal accident inquiries, prosecutions and the like.

You are right that there is a specialist unit that specifically looks at Covid deaths and all the issues that they raise that are within my responsibility as Lord Advocate for the investigation of deaths. That includes my responsibility to ensure that steps are taken as quickly as possible if deaths can be prevented.

That is a very serious issue for us, and we are taking a great interest in it. The numbers are significant. The Crown Agent might want to focus a little more on the other aspect of your question and the funding that we have for that area. There has definitely been a specific focus on Covid deaths in the work that we have been doing to modernise the process for the investigation of deaths.

**David Harvie:** I cannot add much detail to that. As the Lord Advocate has said, the reality is that each investigation has to be assessed on its own merits and concluded accordingly. As we have touched on in relation to other deaths investigations, a proportion of those will result in a fatal accident inquiry and/or a prosecution.

The team's assessment of the capacity required is part of the core funding process that we talked about earlier. That needs to be regularly monitored. In putting in bids this time last year, we made an assessment of what the death numbers might be. As members can see from the figures, the numbers that have been reported to us are very high. There has been a 50 per cent increase in deaths reported to us, so it is fair to say that we have had to review that.

**Russell Findlay:** Perhaps it is also fair to say that the budget for that unit is based on the entire

budget and what the unit requires to do its job. There are not really stand-alone figures.

**David Harvie:** It has assessments of its staffing requirements. The point that I am trying to make is that, because of the cycle of finance, there was a particular moment in time in which we asked about that. We are now better informed about what that scale is. Perhaps that is the best way to put it.

**Russell Findlay:** I will move on to a more specific issue. I am mindful that there are still ongoing matters in relation to the Rangers cases, but there has been a lot of speculation in the media about the overall figures. I am not asking you to predict outcomes, but can you tell us where we are right now on pay-outs that have left and are no longer live?

**The Lord Advocate:** What I can say is that some cases have resolved, with a sum paid to the pursuers totalling £35.3 million, as of September 2021. Other cases remain before the court. As you have rightly said, there are limits on what can be said today about them.

There has been no impact on the Crown Office and Procurator Fiscal Service budget as a result of the civil actions, which were underwritten by the Scottish Government with in-year transfers to directly cover the costs of damages, expenses and settlements.

In the wider context, the Crown is committed to further public accountability and the process of inquiry, once all the litigation is concluded. However, at this stage, I cannot really go into the cases that remain before the court and the amount of money that is associated with what those involved. You will appreciate that the extent to which I have personal knowledge of the cases is restricted because of my personal recusal from the Rangers litigation due to my previous involvement as senior counsel for Duff and Phelps.

The Crown Agent might want to add some more detail.

11:15

**David Harvie:** I am not sure that I can add anything, since the figure has been given.

**Russell Findlay:** I have a very specific question. With regard to the £35.3 million that has gone out in both cases, I understand that there was an indication that there was a commitment that the Crown would pay tax if the payment resulted in there being a tax liability for those litigants. Do you know whether that has happened? Has the money been paid yet? Do the litigants know whether they are going to have a tax liability?

**David Harvie:** I am not sure whether I can talk about an individual's tax affairs. All that I can say is that we have not been asked for any additional funding at this stage.

**The Convener:** Do you want to turn to the issue of fatal accident inquiries, Russell?

**Russell Findlay:** Yes. Obviously, the fatal accident inquiry backlog is as significant as the criminal case backlog and the other deaths backlog. There have been significant reports indicating what appears to be a rise in cases of deaths in custody. Have you seen any discernible rise in deaths in custody, and what are the budgetary implications of that?

**The Lord Advocate:** I have not been informed that there has been an increase in deaths in custody. I am not sure whether that is dealt with in our submission.

**David Harvie:** I have that information. I will give it with reference to financial years. In 2018-19, we had 36 reports of deaths in custody; in 2019-20, we had 30; and in 2020-21, we had 46.

**The Lord Advocate:** By how much was that an increase?

**David Harvie:** I suppose that, if you were to look at the increase between the financial year ending 2020 and the financial year ending 2021, you would see that the increase was more than 50 per cent.

**Russell Findlay:** Are those figures for financial years?

**David Harvie:** Yes. I do not have the current number for this year.

**Russell Findlay:** Do you just have to deal with those as part of your overall budget?

**David Harvie:** Yes.

**The Lord Advocate:** It might help if I note that the modernisation that the Crown Office undertook for fatal accident inquiries, which started in 2019, has had a significant impact on the age of cases that are going forward to a determination before a fatal accident inquiry. Within that work, a specialist unit has been created to deal with deaths in custody, and deaths in custody are considered by a case management panel that has suitable expertise and understands all the significant related issues, from the nature of the vulnerability of the prisoners within the prison estate through to the suicide prevention strategies and the mental health provision that is available in the prison estate.

Because of the concern that has been raised publicly about the issue and the natural concern within the organisation, there has been a real focus on those particular cases and a drive to

ensure that we look properly at what underpins the difficulties that are associated with the figures for deaths in custody.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** Good morning. I welcome the Lord Advocate to her new position.

I know that post mortems have been a topical issue for you, with issues with the toxicology departments causing significant delays. There has also been a more recent surge, because of an increase in deaths. Have the toxicology issues been resolved? Moreover, is the current budget sufficient to ensure that post mortems can continue to be carried out as fast as possible?

**The Lord Advocate:** You are correct that there were difficulties with toxicology analysis, but in response to a recent parliamentary question and in a written answer to Jackie Baillie, I said that a very successful improvement plan had been put in place for the backlog of toxicology reports and they are now being completed within acceptable timescales. There were issues with the contracts relating to the University of Glasgow, and that delay in providing toxicology reports had a consequent impact on the ability to conclude post-mortem reports.

The toxicology issue has been resolved, but the impact on post-mortem reports has yet to be resolved absolutely. Those who deal with those reports are now dealing not only with new reports but reports that have been delayed by the toxicology issues, so there is a bit of backlog. For me, what is important is that the issue has been identified and is being worked on and resolved and that the needs of families of victims of homicide are understood. The import of the issue is being addressed. Nobody understands more than I do the impact of any delay in these matters, so my focus has been on what has been done to improve the situation and how we take things forward.

The Crown Agent might be able to assist with your question on budgetary provision, but I do not think that there is any significant issue in that respect.

**David Harvie:** A live procurement exercise is under way on pathology. This is perhaps a common misunderstanding, but we have to contract out that work to a supplier, whether it be the health service, a university et cetera, and that is happening at the moment. We have contracts with seven suppliers across the country, and that situation is being reviewed in relation to two toxicology providers.

Another issue that might interest the committee and which is worth raising in a strategic sense is the availability of pathologists not just in Scotland or the United Kingdom but further afield.

Underlying issues beyond finance are impacting on capacity.

**Fulton MacGregor:** It was helpful to get that on the record.

**The Convener:** We are coming to the end of this evidence-taking session, but I think that Collette Stevenson wanted to ask about outturn figures.

**Collette Stevenson:** I believe that in one of its reports Audit Scotland highlighted the question of your long-term strategic plans. Do you have a report outlining what those plans might be and, if not, when will it be available?

**The Lord Advocate:** I think that that is a question for the Crown Agent.

**David Harvie:** We have a strategic plan—

**Collette Stevenson:** So you have a strategy.

**David Harvie:** Yes, we have a strategic plan, but I am not entirely clear about the reference to outturns.

**Collette Stevenson:** I am sorry—my question was more to do with your long-term strategic plan report. I confused that slightly with the outturn exercise.

**David Harvie:** It is fair to say that we have one, but it needs to be revisited in light of the challenge that we now face. Perhaps the best way of putting it is that it has to appreciate the scale of the challenge, and it will be informed in part by the outcome of that exercise.

**The Lord Advocate:** Our budget informs our strategy.

**The Convener:** As there are no further questions, I thank the witnesses for their time and their attendance this morning. If you have any additional information that you wish to share with the committee, we will of course be keen to see it.

We will have a five-minute break to allow a changeover of witnesses.

11:25

*Meeting suspended.*

11:31

*On resuming—*

**The Convener:** Welcome back. The next witnesses are Ms Teresa Medhurst, interim chief executive, and Mr Gerry O'Donnell, interim director of finance, for the Scottish Prison Service. Thank you both for attending and for your written submissions, which are available online. I intend to allow an hour and 15 minutes for questions and

discussion and I invite Teresa Medhurst to make a short opening statement.

**Teresa Medhurst (Scottish Prison Service):**

Good morning. We welcome the opportunity to meet the committee to discuss the budget for the Scottish Prison Service for 2022-23. First, I record my appreciation for the increase that we received in the budget for this financial year. It was an increase of around 4.1 per cent in both resource and capital. However, the Scottish Prison Service is a large and complex organisation and although our primary purpose is to manage those individuals whom the courts place on remand or sentence we do, and must continue to do, more than just hold people—something that becomes increasingly more challenging. Our understanding of risk and needs becomes ever more complex and the demands placed on our staff group also become more complex. Those demands shift due to the changing make-up of our population as well as the increased complexity of the different population types.

All of that is set against our physical constraints. Our estate is large and a mixture of newer builds, which are between 10 and 20 years old, through to our older Victorian prisons. I am sure that the committee is aware of the significant commitment of capital investment into our estate, which we welcome. I also draw the committee's attention to the contracts that SPS manages. There are three large contracts. Two of them are private prisons—Addiewell and Kilmarnock—and the other is the prisoner escort contract with GEOAmey, which we manage on behalf of not only ourselves but our partners.

I am sure that the committee is in no doubt about the impact of Covid-19 across the justice sector, as you have just heard evidence from the Crown Agent and the Lord Advocate. We have also experienced the complexities and added pressures brought about by that impact. Although it has brought challenges, it has also brought learning and new ways of working. We have had to operate through a public health lens in a way we would never have experienced previously. That has created a context that has raised awareness of the need to ensure that we continue to seize the opportunities and benefits from striking a greater balance between managing risk and improving health outcomes.

The pandemic and other societal factors have impacted on and shaped our financial spend and will continue to do so. That will require readjustments to our profiling and financial planning, not least of which is the need to continue to invest in our staff, the estate and the expansion of our digital capabilities.

I record my thanks to all my colleagues in the SPS and all our partners throughout the

organisation, particularly our national health service colleagues, for their hard work and dedication throughout the Covid-19 pandemic.

Thank you for the opportunity to provide an opening statement. I look forward to taking the committee's questions.

**The Convener:** I note that you spoke about the demands on staff, particularly those that arose from Covid but also the general demands that arise from your increased prison population and the different population types for which you care. Will you comment on the staffing challenges that you face from Covid, such as shortages of staff, issues with morale and increased incidences of violence?

We had a helpful visit to HMP Edinburgh earlier this year that helped to focus our thinking about staffing challenges. Issues with recruitment and retention might apply not only to prison staff but, for example, to healthcare workers. I am interested in the short to medium-term budgetary considerations that you have to make to get to a point at which working in the prison sector is a career of choice for many people.

**Teresa Medhurst:** That is a multifaceted question, so I will try to answer all parts of it.

At the height of the pandemic, when we went into the first lockdown, we experienced extreme pressures on our staff. The reason for that was multifaceted. We normally operate within a 1 per cent tolerance level for vacancy assumptions but we had not achieved that due to attrition rates the previous year as well as some challenges with recruitment. When we first went into lockdown, people were concerned for their health and we experienced high levels of absence. There was also a degree of confusion about who was in the shielding category and what that meant.

Our absence levels increased at that point, which meant that we needed to move to a core-day operating model. We normally operate a two-shift system, but we moved to a core day, which took on slightly different start and finish times depending on which establishment requirements needed to be met. That move to a core day placed different pressures on the staff group because it meant that we had to condense all our legal requirements into a much shorter timeframe. However, the cessation of court business at that time meant that our population and related pressures dropped.

Since that period—over the past year and a half—we have managed to make some changes that have allowed us to continue to recruit through an online platform. That new digital capacity and capability enabled us to continue our recruitment activity. We are now sitting at around our 1 per cent tolerance level, which is a great improvement

from where we were last year. We have also experienced a slowdown in the attrition rates. It is difficult to say why that is—it is possibly because of reduced opportunities during the pandemic—but people have chosen not to leave the organisation.

In addition, our staff absence levels have fluctuated. That is probably the best way to reflect the position. The levels have improved considerably and have not reached the rates of absence that we experienced in 2019, for example, when there were real pressures on our population from increases during 2018 and 2019. The absence levels are monitored carefully. We introduced a new staff absence policy at the beginning of April, which has much more focus on a person-centred approach and providing the right support and appropriate aids to individual members of staff to ensure that they can come back to work.

The organisation has, however, felt almost as if it has been in two parts. Some parts are headquarters—our stores at Fauldhouse and our college—where we have enabled much more remote working. That has allowed a degree of flexibility that was not previously available, certainly not to the extent and range that it is at the moment. That flexibility has ensured that staff feel that they have much more agency over their working arrangements.

On the counter side, however, we have had a year and a half in which our operational staff have been working a day-shift, rather than a two-shift system. When they have been used to working a back shift and an early shift, for example, we know that the monotony of the day shift has had an impact on staff. That has been an issue and it has had a particularly detrimental effect on individuals who had lifestyle arrangements around their shift pattern.

All through the pandemic, we have worked in partnership with the trade unions and we brokered an agreement with them that we would try and move back to a two-shift system by the end of September or beginning of October. All but one establishment, or possibly two, have managed to do that, but it has added pressures because we are still experiencing Covid outbreaks—we are still in the middle of a pandemic.

Therefore, there are still some tensions around the staffing models that we have applied. However, throughout the pandemic, where establishments have had significant increases in absence, particularly those related to Covid outbreaks, we have been able to redeploy staff from other establishments to support them and ensure that we had a safe operating model in place.

**The Convener:** Thank you. Bearing in mind that I am keen to keep the session on track around budget scrutiny, does Mr O'Donnell have anything to add to that?

**Gerry O'Donnell (Scottish Prison Service):** I will add one thing. You asked about all staff and we probably have some recruitment issues with IT staff. There are specialist areas where recruitment is challenging, which may have a budgetary impact.

**The Convener:** Thank you. I will stick with the issue around staffing because I know that other members want to come in on that.

**Katy Clark:** Drugs are obviously a massive problem in the prison system. Will you outline what you are doing to tackle that problem in the current situation? A number of measures that were brought in around mail during Covid have been referred to. Did that have a positive impact on the drug situation or are you currently undertaking any other initiatives that are helping to address that massive challenge?

11:45

**Teresa Medhurst:** The Crown Agent referred to the impact of serious organised crime, which does not relate just to drugs. The success that has been achieved in other parts of the justice sector has meant that the number of serious organised crime offenders has risen, so the issues of drugs in prison have become ever more dynamic and complex.

We have taken and continue to take steps. We are looking at how to deploy technology better. Last year, Rapiscan machines were rolled out across all establishments after a period of piloting and testing in two or three establishments.

At the forefront of the work that we are doing in relation to the Rapiscan machines is our link with the University of Dundee, which has been described to me by the academic world—these are not our words—as doing world-leading work on psychoactive substances. The university is leading work to anticipate changes in the make-up of the substances that come into prisons and to help us to understand the profile and where the drugs market is likely to go. That involves looking at what is happening not just in prisons in Scotland but in other jurisdictions. We are sharing the work with other jurisdictions, because it is not being done elsewhere in the UK.

It is clear that more sophisticated methods are developing, which is why I said that we are dealing with dynamic circumstances. We also work closely with Police Scotland, which is at the forefront of the tactical and response options for dealing with serious organised crime and illicit drugs, to

develop not just our profiling but our tactical options, so that we keep up to date with changes in the scene. Another aspect is helping people to recover.

**The Convener:** If you do not mind, I will pull the session back to staffing issues. We will come back to the important issue of drugs, but that will keep the session on track.

**Russell Findlay:** I welcome both witnesses. Teresa Medhurst touched on absences and said that sickness levels have fluctuated and have not reached the levels of 2019. I appreciate and respect the officers in your service, who do an incredible job. In the past few weeks, I have heard from a number of them, as you will be aware. In effect, some have become whistleblowers and have talked about significant absence levels. The levels across the board might not be those that have previously been seen, but are there hotspots in particular establishments that have high absence levels?

**Teresa Medhurst:** I said that, as we have moved back to the two-shift system, that has put pressure on our staffing profile in establishments. We are acutely aware of that. There are pressure points, when establishments identify that they are not coping. For example, there are unique pressures at HMP Grampian because of the really buoyant job market in that area. We have problems recruiting there, and that establishment has not moved back to the two-shift system because its staffing model would not allow that.

Where we can flex and change, we will do so. As I alluded to earlier, where establishments indicate that they are unable to meet the demand, we will look to deploy from other establishments, and we have done that a number of times over the past year and a half.

**Russell Findlay:** You said that some establishments are back to the two-shift system.

**Teresa Medhurst:** The majority are. I think that only two are not.

**Russell Findlay:** Okay. My next question is on a similar theme, which is the role of senior management. It has been suggested to me that many people in senior positions, including you, are in interim posts, temporary posts or similar. It has further been suggested that that is causing some uncertainty for the staff, and there are some—cynical, perhaps—suggestions that the reason why so many people are in such posts, if indeed that is the case, is that the service saves money by not putting people into permanent positions. Do you recognise that?

**Teresa Medhurst:** As you rightly point out, I am in an interim position, as is Gerry O'Donnell. We have a number of vacancies in senior leadership.

The figure is about 19 per cent in the F band and the numbers get smaller as we move up the ranks. We have continued to run campaigns throughout the pandemic. From my perspective, we are running campaigns but we are not achieving resolution for the vacancies. It is not the case that we are not trying to fill the vacancies; we are clearly trying to fill them.

However, the pandemic has allowed us to refocus where we want to be with regard to our leadership development. We are about to relaunch our leadership development strategy, which required to be refreshed, and we are moving to an approach that is focused on development. Development centres will be launched next year.

In the meantime, another series of recruitment campaigns is commencing this week, but we have amended and adjusted them to take cognisance of the pressures that people have been working under for the past year and a half. We needed to ensure that the assessment procedures, while still being fair and open, will allow people to bring through their experience in a way that is much more meaningful, so we have made some adjustments. I hope that, between now and the end of the financial year, all those vacancies will be filled.

**Russell Findlay:** As well as filling the vacancies, will the approach affect the large number of temporary or acting posts?

**Teresa Medhurst:** It will negate them.

**Russell Findlay:** Okay. I have a final question on a different topic. Much has been said about the introduction of mobile phones and the cost of that. I do not have the figure in front of me but, off the top of my head, I think that it was £3 million or thereabouts. I understand that the private prisons chose a different model whereby they have phones that can be used communally attached to the wall and, as a result, they have not had the security issues that we have seen with the model that was adopted elsewhere.

Given that that money has been spent and the phones are in circulation, is there any discussion about perhaps phasing that out and moving towards the other, apparently more secure model?

**Teresa Medhurst:** I appreciate the question, because much has been said about mobile phones in prisons. We introduced the mobile phones last year. We have stopped family visits for two days at Christmas and new year, but apart from that, other than because of things such as the beast from the east, we have tended not to stop visits for any period of time, in my experience. With the pandemic, we were therefore entering uncharted territory, and we knew and understood that communication was going to be incredibly important, not just for those in prison but for

families and particularly for children, and that, at the start of the pandemic, when we were experiencing staffing difficulties, it was difficult for families to make contact with those in custody.

In normal times, we would not take four months to introduce mobile phones into the Prison Service, but we were facing unprecedented challenges. From my perspective, to have done so as successfully as we did was quite unprecedented for an organisation.

With that measure came some very clear guidance from Government about the security protocols. We tied down those that we were aware of, but others have arisen subsequently, which have been alluded to, and we are now working to fix those—we do have a fix.

The model applied in Addiewell and Kilmarnock was possible because the infrastructure that is built into the establishments allowed them to come up with a hard-wired solution, and that would not have been possible for us in the timescales that we had available. To move to a system like that would take considerable time and investment. However, we are considering what should come next to alleviate some of the existing difficulties with mobile phones and to ensure that we have something more enduring.

A considerable number of calls have been made with our mobile phones. I would need to look at my notes, but the number of calls that have been made to families—and the contact that has been sustained while the mobile phones have been in place—is eye-watering. When it came to reassuring those in custody that the measures that we were applying were proportionate and in line with communities, families were able to confirm that for them.

**Russell Findlay:** That is interesting; thank you.

**The Convener:** I would like to move on to consider the prison estate. I will bring in Jamie Greene first, and I will then ask a couple of questions.

**Jamie Greene:** I have two strands of questions. The first is purely on the budget, and the other is on the prison estate. My first question is perhaps best addressed to Mr O'Donnell.

Looking at the past three financial years, why are the planned budgets and the outturn figures so starkly different? There seems to be an underspend of around £51 million across three years. Is it the case that less has been spent than forecast, or less than is available to you as a budget? If so, what is the reason for any underspend, and what happens to it? Is it simply not drawn down, or do you have to return it to the Government?

**Gerry O'Donnell:** In answer to your first point, yes: less has been spent. The primary reason for our underspends is our capital programme. We have a number of construction contracts across the estate at the moment, which is probably unusual compared with five or six years ago. Quite a large investment is being made in the estate. Because of the delays caused by the pandemic and so on, we have had significant delays in those construction projects. That was the primary reason for the delay last year. There were also delays in the previous year, but they were perhaps not specifically to do with the pandemic.

On construction contracts, I point out that I have just recently joined the SPS, having come from the construction industry, and it can be very difficult to go from the initial conception of a project to handing over the keys to the building. There are inevitably delays, and that is what has happened, primarily, within the SPS.

We start at the baseline budget each year. During the year, we have the opportunity to have a discussion with the Scottish Government on a revised budget. At that point, we would say that we are unable to spend X amount of capital, and that would be available across the Government for other areas.

12:00

**Jamie Greene:** Presumably, that is capital underspend on new-build projects that are going beyond their expected timescales, but we know that those projects are also going over budget—HMP Inverness, for example—so that does not quite tally. Surely that relates only to the capital budget on new build? We know that there is quite heavy underinvestment in the area of prison estates, and I will come on to that with some specifics. Why are you, in effect, saying to the Government “We will be spending less than we forecast this year”, given that we know that so many projects will still require spending?

**Gerry O'Donnell:** It is not about going out and getting a product quickly off the shelf. Projects require planning, which could involve planning permission, but it does involve planning the workload. A tender has to go out, then the contractor has to be put in place and so on. As I said, traditional maintenance work has slipped, but that is because organisations have not been able to work on the estate because of the pandemic.

The capital budget is not just for the estate but for IT equipment, which is also an area that we are investing in. Knowing that we will have slippage in projects, we are looking to bring the projects in line. We are therefore looking to minimise, as I said, the shortfalls on capital spending. There have been significant reductions in the capital

spend for a couple of years, but we are looking to address that going forward.

**Jamie Greene:** Thank you for that explanation.

**The Convener:** Teresa Medhurst is keen to come in on that.

**Jamie Greene:** My next question is for Ms Medhurst. The committee is undertaking budget scrutiny, and we have had a number of written submissions about the SPS budget. The Howard League Scotland states that it

“does not believe that the Scottish Government is providing enough budget for the work expected of the SPS.”

The Howard League is obviously a third sector organisation, but Her Majesty’s Inspectorate of Prisons for Scotland has stated that it has

“seen no evidence to suggest that the SPS is sufficiently resourced to make adequate progress with ... capital projects and strategic initiatives ... and important but routine maintenance”.

To what extent do you agree or disagree with those written submissions?

**Teresa Medhurst:** I will answer that question first, then come back to the points that you made earlier. The Howard League and HMIPS both make partial reference to the increasing prison population and the increasing complexity of its demands on us. We have spent time looking at our capacity and capability for the delivery of prisoner programmes and at the profile of those programmes, because of the change in the nature of the risk of those individuals coming into our care. We have done preparatory work and have started to reshape our psychology service as well as considering the wider implications for our workforce.

There will be increased demands. On the earlier reference to being trauma informed, I know that there will be a significant cost in having a bespoke trauma-informed service for women in custody in a reconfigured women’s prison estate. However, that applies equally to the men’s prison estate, so there will be a greater cost implication overall going forward, although a lot of that work is still in its infancy.

The chief inspector refers to the estate. In previous years, there has been a concentration on the capital investment required to upgrade Victorian buildings—the women’s estate and the replacement of Inverness and Barlinnie. Barlinnie in particular is a single point of failure for us as an organisation. We must ensure replacement. It is an old building with old structures and infrastructure. Barlinnie is responsible for flex across the whole estate when the prison population rises. That is critical for us, and is why it was important that it was included in the infrastructure investment plan.

I think that the chief inspector is talking about the other older estate. We have carried out condition surveys on the prisons at Greenock and Dumfries and we have already begun upgrading work. Two more years of investment will be required for the upgrading, and that will be part of our budgetary submission to the Scottish Government. We will also undertake condition surveys on the remainder of the estate, which will inform not only our future maintenance programme but any major capital investment that is required for the rest of the estate.

**Jamie Greene:** I am glad that you mentioned HMP Greenock, because it and Dumfries are probably the most criticised parts of the estate. HMIPS said that the establishment breaches the human rights guidelines on cell size, is expensive to maintain and has limited surge capacity. Are you disappointed that the programme for government did not include any announcement of new capital budget for the replacement of HMP Greenock or Dumfries prison? What would your asks be of the Government on that front?

**Teresa Medhurst:** Greenock is not in the five-year infrastructure investment plan. However, there has been some discussion about Greenock and we have the site, so we will work towards that. Dumfries also needs to come into our options in terms of a replacement, but that will depend on capital resource coming to SPS from other parts of the public sector. We will make our case, as will others, for further investment in the estate.

**Jamie Greene:** How long does it take to build a new prison?

**Teresa Medhurst:** That depends on the size, the design concept and the strategic intent. It also depends on the nature of the labour market and other market factors. I was going to come to your question to Gerry O’Donnell about capital spend. Some of the money that we have handed back was not just capital but was for maintenance. Some of the contracts that we set out in terms of letting them are not taken up because they are not attractive enough. It can seem attractive to bundle up contracts, but sometimes it is not.

The construction market has fluctuated in the past few years, which has made it difficult to plan for and prepare some of the work that we need to undertake. The most significant capital underspend was in 2020-21 and was due to the pandemic, but we are also experiencing a number of other pressures that will have consequences in this and future financial years. Those are societal factors that you will be aware of, such as supply chain issues, material shortages and long lead times to get the materials required for construction. There are also labour shortages. In some of our key projects, key personnel are now shifting across different organisations. There are

pressures and tensions around capital spend that do not apply only to SPS.

**Gerry O'Donnell:** I can come in on how long it takes to build a prison. The process would start with developing the initial design. It would then go out to tender for a contractor, with whom a period of up to a year would be spent developing the design, because a prison is a unique building. Then, depending on the complexity of the prison, you would be looking at two years plus to build it. I would therefore say that a large prison would take a minimum of four years to build.

**Jamie Greene:** That is a problem, then, if it is not in the current five-year capital investment plan and it takes at least four years. Such projects tend to roll over, go over budget and take longer than people expect, for all the reasons that you have just mentioned. Realistically, we are talking about being a decade away from having new facilities in Greenock or Dumfries. That is surely why organisations such as the Howard League are so concerned, given that the prisons are not fit for purpose now.

**Teresa Medhurst:** The chief inspector said that she does not think that they are fit for purpose, but the areas that are of concern are not currently in use. That is why the condition surveys have been undertaken. Over the next three years, investment will be required for both Greenock and Dumfries, and we have already scoped out what is needed. We will include those proposals in our funding bid for next year and the year after. Those remedial works should satisfy the chief inspector.

**Jamie Greene:** I will save my other questions for later, if we have time.

**The Convener:** Thank you. I will ask a question while we are considering prison estates and modernisation. We have spoken a fair bit about the capital commitment that is required. I am more interested in looking at the conditions in prisons and the practical, possibly short-term, measures and actions that can be put in place to adapt and improve prison conditions for certain parts of the population. I am thinking in particular of older people, individuals with disabilities and so on, and measures such as widening cell doors or improving access to showers.

I know that that is difficult, given that we are aiming to get to a point at which the prison population consists of those people who pose the greatest risk of harm to society. However, I know that there can be challenges with that mix of population. From a budgetary perspective, I am interested in what short to medium-term actions can be taken to improve general conditions in prisons, particularly those in Dumfries and Greenock, which Jamie Greene highlighted.

**Teresa Medhurst:** I am not sure that I understand your question. Were there two parts to it? Is one part about accessibility and some of the social care challenges that people experience, and the other part is about the general condition of buildings?

**The Convener:** I am most interested in the first part. What adaptations can be made in the short term to alleviate some of the issues that we know prison and healthcare staff face when they are caring for people who perhaps have additional health, physical capacity or general wellbeing needs?

**Teresa Medhurst:** I will start by mentioning something that prison probably helps with to some extent. We have an increasing elderly population. The number of people over 50 has increased considerably—I think that Her Majesty's chief inspector of prisons used the figure of around 46 per cent in her annual report. However, we know and understand that people with social care needs do not necessarily all sit in that age group; it cuts across all age ranges.

Part of what we do is support people with dementia, for example—we have people who suffer from that, unfortunately. The routine of prison helps with that, because it provides a degree of stability, which gives them a sense of knowing where they are and who is with them and around them.

12:15

We have definitely seen a significant rise in other social care needs. At the end of September, I think that the number of those who require social care support was about 50. That might seem a small number in a population of 7,500, but it is nevertheless quite significant to us as an organisation, given that we have prisons that were built for prisoners and not for people who require additional support.

In the newer and more recently developed prisons across the prison estate, there are accessible cells. The problem is that the number of people who require them exceeds the number of facilities that we have. We have therefore undertaken an assessment of additional needs, which can be anything from beds with pulleys, which require greater space, to better access to showers, as you have mentioned. I highlight that we have cells with access to showers.

We have such facilities across the estate, but what we understand from our experience over recent years is that we must ensure that we have more flexibility and greater capacity, hence the assessment. That has involved a multidisciplinary team. Obviously, we are a prison service and not a care or health service, so that has been carried

out in conjunction with other colleagues, to ensure that we better understand what we require.

At the moment, we are scoping out exactly where the changes should be made—that is, at which sites we can provide greater flexibility in terms of accommodation needs—and then we will determine the costs that are attached to that and how we can best implement that over the next year or so.

I should also say that such requirements have been factored into our thinking for both HMP Highland and the new Glasgow facility.

**The Convener:** Thank you—that is very helpful. I will hand over to Pauline McNeill, who is interested in an issue to do with cell occupancy.

Before I do that, the clerk has helpfully updated me on the issue of prison construction timescales. I understand that HMP Barlinnie is due to be completed and ready for operation in 2025. As that project was first presented to ministers in 2011, that is a significant timescale. I thought that that information would be of interest, given that we consider that aspect to be a very important issue.

**Pauline McNeill:** It would be helpful to get a response to the convener's remark. I raised that issue in our virtual session in September because I represent Glasgow, and, obviously, HMP Barlinnie is an important prison for the west of Scotland. That date just seems so far away.

It is important that I acknowledge, as other members have done, the serious challenge for the Prison Service and its staff during the pandemic and the amazing job that they have done under very difficult circumstances.

Ms Medhurst knows that I am interested in making progress on the amount of fresh air that prisoners can get outside their cells. Obviously, the opportunity to do that has been very much restricted during the pandemic. I do not need to remind you that

“Every prisoner who is not employed in outdoor work”

is entitled to

“at least one hour of suitable exercise in the open air”.

We have heard your answers to our questions, and you cannot be accountable for all that, but we need to make serious progress in Scotland on meeting our obligations under the European convention on human rights. What shift in the budget would be required to double or make a significant difference to the minimum period for which prisoners can go outside?

**Teresa Medhurst:** I had not anticipated that question, Ms McNeill. First of all, I would like to reassure you that last year's regulations, which allowed us to make changes to prison rules to

respond to the pandemic by curtailing the amount of time that prisoners spent outside in the fresh air, were set aside at the end of September. We now ensure that everybody gets their hour's exercise.

We have learned from the experience. Our public health colleagues were very clear about the effect of isolation on people. Now, even when we have to isolate people, we do that in cohorts, so that they can still access fresh air.

We would not want to be in a position in which we breach human rights—that is absolutely not where we want to be. The measure felt really, really uncomfortable, not least because, when people—outwith cellular confinement—are unable to spend lots of time outside, their not having access to that hour was important. That is particularly true as we come into the winter months, so I share your concerns.

Going forward, to allow people to have double access, people can opt into gymnasium sessions. Everyone is offered regular access to the gymnasium, depending on where they work and where they are located. It can be just as important to have activity that allows people to come together to play sport and exercise. However, again, there are challenges with that. Those things are not necessarily as accessible for older people and people with social care needs. Therefore, we have been looking at ways to flex and change what gymnasium and sport activity we offer. In the summer months, we also try to extend our offer of opportunities to be outside to evening arrangements as well, so that people can have a second opportunity to get outside.

**Pauline McNeill:** Thank you for that. I will not pin you down on anything specific, but what is your general sense of what is needed? Is it additional staffing or additional space? As you say, the gym is not suitable for everyone. During the pandemic, some of us preferred walking, or had to walk. Perhaps more people do that now. Getting out in the fresh air just to be in the fresh air or to get exercise is vital, particularly for prisoners. Is this a staffing issue, a shift issue or an estate issue? Where could we make changes?

**Teresa Medhurst:** Such changes would require changes to staffing and the estate, because of the need for spaces. Traditionally, our prisons were built with exercise yards. Although people walk around them, they are not particularly pleasant places to walk, if I may say that. They are also large areas. One of the lessons that we have learned from the pandemic is that prisoners and staff feel much safer with the smaller cohorts that we have had to establish to manage the spread of the virus. Therefore, that kind of arrangement would probably be best supported by more staff and more facilities.

**The Convener:** I would like to move on to issues around purposeful activity—Collette Stevenson wants to come in on that. I will then bring Pauline McNeill back in to look at issues around drugs.

**Collette Stevenson:** I touch again on the call from Her Majesty's Inspectorate of Prisons for Scotland to review purposeful activity, including her expectation that additional resources are needed in that regard. You have touched on the challenges that you have faced from absenteeism. What are your thoughts on that? Where are you headed on that issue?

Key to that is delivering a more modern approach, with a prison estate that offers job opportunities for progression. I know that HM Inspectorate of Prisons for Scotland is keen to review the offending behaviour programmes as well.

From a human rights perspective, too, under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, purposeful activity is key. What is happening in that regard? Can you give me more detail?

**Teresa Medhurst:** I appreciate that question, because you have alluded to a modern prison system; I would certainly like the SPS to achieve more modernisation, and purposeful activity is at the core of that.

In my opening statement, I alluded to our having to look at our service delivery through a public health lens. We are acutely aware of the multifaceted health issues that our population have and suffer from, and we know and understand that, for us to support people while they are in custody, there needs to be a broader range of health interventions and support on offer to them, as well as better preparation for their release.

However, that also comes in the context of the current arrangements; it would be really helpful if somebody could tell me when the pandemic will be over. The current arrangements are such that we need to maintain smaller groups of people and keep social distancing in place; we are designated as complex settings.

From my perspective, the way to open up opportunities would be to increase our digital offer, including in-cell technology, to alleviate some of the pressures that people face while they are in custody, and allow them to access supports and services at a place and time when they are ready to access them. A more self-directed approach, with individual choice, is definitely a more meaningful way to deliver services to those in custody and to allow them a greater range of and access to the supports and services that others

experience in communities but that we cannot currently consider in prisons because of the restrictive nature of what we can deliver.

**Collette Stevenson:** I am delighted to hear that you want to move towards a more modern approach. Can you tell me a wee bit more about the amounts that are in the budget to resource that?

**Teresa Medhurst:** Part of the issue, as the Crown Agent alluded to earlier, is that we are all revising our financial plans. Certainly, SPS did not have a finalised digital plan, and our financial plan also needed to be finalised. We need to revisit that in light of the experience that we have had over the past year and a half and of the additional pressures that we are now facing, to ensure that all those pressures and the opportunities that we need to take forward can be properly scoped and accounted for in the budget as we move into future years.

The digital strategy, as was, focused on much more modest changes. We need to be much more ambitious now, and that is certainly where I would anticipate taking our digital strategy in years to come.

**The Convener:** We have about 15 minutes left, and I am aware that Rona Mackay has to leave slightly early. I will move back to Pauline McNeill in relation to issues around drugs, and then come on to Rona Mackay.

12:30

**Pauline McNeill:** I will not rehearse all the issues that you have already discussed with other members about drugs in prisons.

Some police officers in Police Scotland have been trained to administer Naloxone. Has any such provision been made in your staffing, and do you think it would be useful for your staff to be trained in administering Naloxone?

**Teresa Medhurst:** We have trained our staff in how to issue Naloxone, which is available in prisons. We also have prisoners who are trained as peer supporters, and people who leave custody are provided with Naloxone kits. I have heard stories from people who, unfortunately, have come back into prison that they have prevented deaths after being released due to the Naloxone training and equipment with which they have been provided.

**Pauline McNeill:** That is helpful. I note that, in virtually all the cases in which Naloxone has been administered, it has saved lives, so I welcome your answer.

**The Convener:** I will hand over to Rona Mackay to look at issues around secure care, and then to Collette Stevenson.

**Rona Mackay:** My question is probably for Gerry O'Donnell. It is about funding for secure care facilities for young people.

You will be aware that there is a Scottish Government policy move, which I thoroughly endorse, that all children under 18 will be held in secure care rather than go to a young offenders institution such as Polmont. The funding model has been causing problems for some time, and the submission from HM Inspectorate of Prisons for Scotland refers to the importance of adequately resourcing secure care to receive children under the age of 18. It says that a "different funding model" will be required.

The inspectorate says that, at the moment, the model requires the facilities

"to maintain full capacity and spaces are routinely taken by children from England to meet the financial imperatives."

I know that to be true, because there is a secure care facility in my constituency.

What is your view on that point? I do not know whether you feel that you are in a position to comment, but are you aware of it?

**Gerry O'Donnell:** I should say that I have only been with the SPS for five weeks, so my knowledge is limited. It might be better if Teresa Medhurst answers the question.

**Teresa Medhurst:** I am aware of the work that is going on just now, and having 16 and 17-year-old children in prison is of concern. Unfortunately, secure care is not my area of expertise, so I am not able to provide any comment on the issue. I am sorry.

**Rona Mackay:** That is fine. I just wanted to put on record that there is a sea change happening, and that the funding could possibly change.

**Collette Stevenson:** I believe that a review was carried out by the Children and Young People's Commissioner Scotland, as well as by the inspectorate, on secure care for children. It is looking at the long-term strategic view. Gerry, I understand that you have only been in post for a short time, but the issue is not new and it has been raised before in the SPS. Have any reserves been put in place or adjustments been made to the budget due to the potential change in policy?

**Gerry O'Donnell:** We are in the process of determining the budget for next year. We are working with the Scottish Government on it and identifying a number of initiatives. If there is a change in the model, we might consider it.

**Teresa Medhurst:** The financial model for secure care does not sit with SPS. I am sorry if I did not understand your question, Ms Stevenson. We hold a small number of 16 and 17-year-olds on the prison estate. They are held at Polmont. The funding model for Polmont, which holds young people and women, is far more generous than for other parts of the prison estate, but we have responsibility only for the prison estate and not for secure care facilities or the funding of those facilities.

**Collette Stevenson:** Do you know roughly how many people in that age group are held at Polmont?

**Teresa Medhurst:** I can give you the figures as of last Friday. I have them here and I just looked at them. The numbers over the past year have been no more than 20. The number on Tuesday of 16 and 17-year-olds held at Polmont was 17.

**Fulton MacGregor:** My colleague Collette Stevenson has probably covered my question because it is in the same area.

If 20 people in that age group were moved into secure care, it strikes me that there would be a budget implication—in a positive sense—for the prison service. It would also be positive that those young people would be in secure care. Is that something that you would consider in relation to that budget, or would it stay with Polmont because it is currently a Polmont budget?

I apologise for my question being similar to Collette Stevenson's question.

**Teresa Medhurst:** Although we can provide the cost per prisoner place, that is a complex figure to achieve because it includes staffing resource and the cost and overheads for buildings, so it is difficult to extrapolate how that would equate to the 16 and 17-year-olds and take that figure out of the budget. We have not considered or been asked to move those young people into secure care. We want to ensure that we have the right services and supports in place to ensure that we provide appropriate care.

**Jamie Greene:** You might need a pen and paper for this question, which is a question about the prison population that we should have perhaps covered at the beginning. I am keen to hear how you forecast the model for that and what the forecasts look like. I appreciate that you are a demand-led service. The reason that you might need a pen and paper is that the statistics are quite stark; there is a backlog in the courts of more than 50,000 cases and we have heard evidence this morning that there will be a 50 per cent increase in indictments over the next two years. We know that 70 per cent of High Court cases relate to serious sexual crimes, and it is natural to assume that non-custodial sentences might not be

the outcome for such cases. Against that backdrop, do you expect that the prison population in Scotland is likely to massively increase over the next five years and, if so, by how much?

**Teresa Medhurst:** The figures that the Crown Agent provided this morning are stark and are of concern to the SPS. That is the case in a number of areas that the Crown Agent made reference to, including serious sexual crimes and serious organised crime. Although, as you alluded to, not all those cases will pull through to prisons, a significant proportion of them will. There has been a significant increase in our remand population, and the profile of people on remand suggests that those are the most serious cases. It is highly likely that those will pull through into our convicted population.

On the modelling, I have not taken notes and I am not an analyst, so I would find it difficult to comment, but the modelling that the Scottish Government has been trying to undertake has been challenging because of the number of different moving parts in the system and the different ways in which things can play out.

I anticipate that we could be heading towards population levels that we saw in 2018-19. I am not sure when or how long it will take for the population to rise, but that is where I would anticipate us being in the next few years.

**Jamie Greene:** I am sorry to push on this, but it is really important from a budget point of view.

Surely, as a service, you must have numbers. I appreciate that there are lots of moving parts and lots of known unknowns, but there are also the knowns, some of which have been expressed today. We know the reoffending statistics, for example; we know how many people end up back in custody within one, two, three or four years of leaving it. There are trends and statistics that you can draw on.

You have limited capacity—a limited amount of space and a limited number of people who you can hold in the system—so surely some modelling must have been done in order to know whether you will reach that capacity at some point and, when you do, what happens then. That is so important, because we know that we are 10 or 15 years away from having new prisons in some parts of Scotland. That is why I am pushing for the forecasting.

Are we going to hit record highs in the prison population, and is there physically enough space to accommodate all the people you are asked to keep under your care?

**Teresa Medhurst:** The question that you initially asked me around population projections and predictions is for analysts. This is really the

Scottish Government's area, not mine, but the analysts have indicated that the normal trends that we have seen and that we would normally rely on are no longer relevant in the pandemic world. The world has completely changed, and that is why it has been so difficult to tie down predictions around a likely rise and how long that is likely to take. I am sorry that I cannot answer your question but, as I say, I am told by Scottish Government analysts that those are reasons why it is difficult.

The other question, on modelling, I can answer. Modelling was undertaken in 2019 because of the population pressures, which gives ramp-up figures for where we can increase capacity across the estate. That refers to quite a complex set of scenarios, but we do have that.

We have been revisiting that in the light of the pandemic, however. Clearly, pressures are placed on us around the continuation of outbreaks, and there are higher associated risks where we have a reduction in single-cell occupancy. We are currently looking across the estate to identify ways to increase capacity and to identify how we could safely increase the population levels.

I would caveat that with the point that whereas, in the past, we might have had increased capacity to accommodate additional population pressures, because of where we are in the pandemic and because of pressures around reoffending supports and services that have been made available to us, we would now require additional investment to ensure that we could support people on their rehabilitative journeys. That is not something that we would necessarily have asked for previously, but we would certainly require investment on that for the future.

**Jamie Greene:** That sort of does not answer the question, but I appreciate the reasons why you cannot.

**The Convener:** I suggest that, in relation to the question on projected population numbers, you could perhaps follow up in writing for us.

**Teresa Medhurst:** Yes.

**The Convener:** I will draw this evidence session to a close. Thank you both for coming along today. If there are additional bits of information that you would care to share with the committee in writing, please do so.

I endorse the comments made by members today to acknowledge the work that all prison staff have been involved in, particularly during Covid—and, hopefully, coming out of it. We very much appreciate it. Thank you very much for attending today.

That concludes the public part of the meeting. Our next meeting will be on Wednesday 10 November, when we will complete our pre-budget

scrutiny and hear from the Cabinet Secretary for  
Justice and Veterans.

12:45

*Meeting continued in private until 13:05.*

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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