



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Criminal Justice Committee

**Wednesday 10 November 2021**

**Session 6**



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### **CRIMINAL JUSTICE COMMITTEE**

#### **10<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:**

Keith Brown (Cabinet Secretary for Justice and Veterans)

Donald McGillivray (Scottish Government)

Neil Rennick (Scottish Government)

##### **CLERK TO THE COMMITTEE**

Stephen Imrie

##### **LOCATION**

The David Livingstone Room (CR6)



## Scottish Parliament

### Criminal Justice Committee

*Wednesday 10 November 2021*

*[The Convener opened the meeting at 10:00]*

### Decision on Taking Business in Private

**The Convener (Audrey Nicoll):** Welcome to the 10th meeting of the Criminal Justice Committee. Apologies have been received from Pauline McNeill.

The first agenda item is to decide whether to take in private items 4 and 5, which are consideration of today's evidence and our work programme. Do we agree to take those items in private?

**Members indicated agreement.**

## Pre-Budget Scrutiny 2022-23

10:00

**The Convener:** The next agenda item is consideration of the spending priorities in the justice sector for 2022-23. I refer members to papers 1 and 2. I am pleased to welcome our witnesses, whom I am delighted to see in person. From the Scottish Government, we are joined by Keith Brown, the Cabinet Secretary for Justice and Veterans; Neil Rennick, the director of justice; and Donald McGillivray, the director of safer communities. We very much appreciate the time that you have taken to join us.

I invite the cabinet secretary to make a short opening statement.

**The Cabinet Secretary for Justice and Veterans (Keith Brown):** Thank you, convener. As ever, I am grateful to the committee for the chance to contribute to its pre-budget scrutiny work. I know that the committee has met a number of our justice partners over the past few weeks, and I welcome the opportunity to continue discussions on the budget.

Members of the committee will have heard the Chancellor of the Exchequer's recent budget announcements. Although some of the announcements are welcome, overall, that budget does not deliver for the people of Scotland. The headline announcement was a significant increase in the Scottish block grant but, in reality, the Scottish Government faces a cut in its day-to-day funding for each year of the spending review period compared with the position in 2021-22. Scotland's capital grant allocation shows no change between 2022-23 and 2023-24 and a reduction between 2023-24 and 2024-25.

That comes in addition to the challenges of Covid, which have patently not gone away, and the on-going impact of the United Kingdom Government's decision to leave the European Union. Both issues have had significant impacts on our justice sector. I echo the views that have been expressed by members of the committee and previous witnesses in commending the impressive work that has been done by those who work in the justice system, particularly over the past 18 months, in responding to those challenges.

Despite those pressures, I remain ambitious for our justice system. In September, the Government published our programme for government, which sets out how we aim to transform the justice system in a number of areas over the next five years. I will highlight a number of key areas for the justice portfolio.

As I said, Covid-19 has not gone away; it continues to affect our daily lives. I continue to be impressed by justice agencies' commitment to working together to mitigate the consequences of Covid and to find creative solutions to the challenges while, at the same time, delivering longer-term reforms. Innovations such as the use of remote jury centres in cinemas, the remote balloting of jurors and some court hearings being done online demonstrate the innovative approach that has been taken by our justice partners.

We have committed to providing £50 million this year to drive forward the recover, renew and transform programme. Although we see optimistic signs of recovery, with court activity returning to pre-Covid levels, I do not underestimate the distress that is caused to the victims of crime by unavoidable delays in cases being resolved. The continued recovery of the system remains a key priority for the justice portfolio.

We must ensure that we do not simply try to recover to the place that we were before the pandemic started. Even before Covid, despite the overall downward trend in crime, we were experiencing growing numbers of cases in our solemn courts and increasing complex needs among the population in our criminal justice system. The pandemic has given us the opportunity to think about how we can do things better, which can mean doing things differently to drive improvements for the future. That is not just about technology improving efficiency; it is about ensuring that there is a culture that places the needs of people at the heart of the system in a way that reduces trauma.

We are working on a new overarching justice strategy that will take forward that approach. We will continue to focus on the needs of victims through a range of actions, including the establishment of a new victims commissioner, a review of the victim notification scheme, consideration of recommendations from Lady Dorrian's report on improving the handling of sexual offence cases and consideration of other areas of the justice system.

On policing and public safety, we have committed to protecting the police resource budget in real terms for the entirety of this parliamentary session, as we did throughout the previous session. That provides a stable position from which Police Scotland can plan to improve service delivery and enhance the safety and security of people and communities across Scotland.

As a progressive and humane society, we will be working to continue to shift the balance between ineffective short-term periods in prison and robust community alternatives. That will be underpinned by on-going investment in the expansion of community justice services that

support diversion from prosecution, alternatives to remand, and community sentencing, which evidence shows are much more effective at reducing reoffending.

Next spring, we will develop and launch a new national community justice strategy that sets out clear aims with an emphasis on early intervention, and encourages a further shift away from the use of custody. Where imprisonment is the only safe recourse, we will continue to modernise Scotland's prison estate, and have committed to invest more than £500 million over this parliamentary session.

I have already alluded to the challenging outlook for public sector finances and the difficult decisions that my cabinet colleagues and I will face before the final budget decisions are taken. The Cabinet Secretary for Finance and the Economy has confirmed that she will publish the 2022-23 Scottish budget on 9 December, alongside a framework for a multiyear resource spending review.

I am happy to answer your questions on the budget for the justice portfolio.

**The Convener:** Thank you, cabinet secretary. We will move straight to questions. I ask that members keep their questions as succinct as possible, given that we have a fair bit of ground to cover. Russell Findlay has questions about Covid recovery.

**Russell Findlay (West Scotland) (Con):** Good morning. For the sake of the record, I will pick up on what was said about the UK Government's decision to leave the EU. The decision was in fact the result of a referendum—the decision was made by the electorate, not the Government.

On Crown Office funding, last week, we heard evidence from the Crown Agent, David Harvie, that digital transformation is funded by capital, the budget for which has been flat for 10 years. The Crown Office has identified significant opportunities for improvements with investment, yet the capital budget is expected to rise by around only £500,000 next year, and remain at a standstill thereafter. Is that sufficient to clear the huge backlog that exists and give the Crown Office and its partners the required infrastructure to tackle the backlog?

**Keith Brown:** I do not like to start off on a point of disagreement, but the decision to leave the EU was not a decision of the people; it was a decision of the Government. The referendum was advisory; therefore, the decision was taken by the Government, not the people. The decision certainly was not taken by the people of Scotland, who voted 62 per cent against Brexit.

In relation to improvements, you mentioned that capital has been flat over the past 10 years. I will

ask Neil Rennick to comment on the Crown Office, whose budget is dealt with separately from the budgets that we have been discussing so far. As there have been flat and reducing capital allocations from Westminster, it is not a surprise that budgets in the Scottish Government's sphere also feel that pinch.

There are many aspects to how we attempt to address the backlog, and I acknowledge that it is a huge issue for us. The figures that came out last night on the backlog of cases in England and Wales are scary, and I acknowledge that it is also a serious problem for us. This year, we have put in money for technological changes, including remote balloting of juries and remote juries more generally, but those are not the only way in which we intend to deal with the issue.

Neil might want to comment on some of the detail on the Crown Office budget.

**Neil Rennick (Scottish Government):** As the cabinet secretary says, the Crown Office budget is negotiated separately from the main justice budget. It is directly negotiated between the Lord Advocate and the Cabinet Secretary for Finance and the Economy.

We absolutely agree on the potential and benefits of investment in technology. For example, last year, we invested an additional £3 million of capital spending in modernising court technology, which helped court business to continue during the pandemic. A couple of months ago, we announced £10 million of investment in the digital evidence-sharing capability, which is an exciting development that will improve the sharing of information across the whole justice system and, we hope, help the efficiency of case processing, including from the police to the Crown and then into the courts.

We absolutely support investment in technology.

**Russell Findlay:** Are those sums for the Crown Office?

**Neil Rennick:** They are for the justice system as a whole. They came through the main justice budget, although we provided some additional funding from that budget last year to help the Crown Office to deal with the impact of Covid.

**Russell Findlay:** Is the Crown Office satisfied with the fairly modest rise in the capital budget? Have you had any feedback from it? Is it content?

**Keith Brown:** As Neil Rennick said and I have tried to say, the Crown Office will discuss that separately with the Cabinet Secretary for Finance and the Economy. It is a separate budget. The Lord Advocate has been before the committee in the past. She will discuss her budget.

I cannot speak for the Crown Office but, generally, we would like far greater apportionment of capital spending, even if it comes down to using the Scottish Government's borrowing powers—there is a real case to be made for increased borrowing powers. There is much that we could do. We can spend to save. If we spend wisely on capital, we can make future reductions in our resource budget.

It is not unfair to say that we would all like more capital spending. The Crown Office would have to speak for itself in relation to that.

**The Convener:** We will move on to questions on policing and the Scottish Fire and Rescue Service. I will ask about the funding provision for the 26th United Nations climate change conference of the parties—COP26. We are still in the middle of that unique and, so far, extremely successful event, but it has had a budget implication for Police Scotland.

We recently visited Gartcosh and spoke to the chief constable. Having got the policing budget on track in recent years, he is keen for it not to be unsettled. Can you reassure me that the UK Government will meet its obligation to fully fund the policing of COP26, including any legacy costs? We are aware that there were some lessons learned from the G8 event at Gleneagles. Some UK provision was made for the budget implications of that, but it did not cover the final costs. I am interested in the plan for COP26.

**Keith Brown:** Mr Findlay's question in the chamber yesterday provided me with an opportunity to say that the policing of COP26 has been superb. I know that we have to look at some particular actions but, overall, it has been superb. I say that because other justice and UK partners have been extremely impressed by the way in which Police Scotland went about the preparation, which was detailed and carried out over a long period. I thank the police for that.

We have made clear our expectation that the UK Government will bear all costs, including legacy costs, related to holding COP26 in Glasgow. That is the commitment that we were given originally. It was done through a memorandum of understanding that was agreed between the Governments and that records the participants' agreements on financial and contractual liability for COP26. It includes funding for police, fire and ambulance services.

I am generally quite satisfied with the assurance framework that is in place, which is the means by which we negotiate about planned expenditure for COP26. We will hear from Donald McGillivray on that, but it has worked well.

10:15

One area where we did not reach full agreement was legal aid. That related to the weekend and out-of-hours work that has to be covered and, in that respect, the additional fees to be paid to solicitors acting on behalf of anyone who might be arrested. We have, I would say, reached a compromise position, given that we did not get everything that we wanted from the process.

All of the funding is for identified spending that is associated with hosting a safe and secure COP, and no funding will come from the arrangements beyond COP expenditure. For the committee's information, Police Scotland secured around £60 million of funding up to the end of October to cover the known direct costs of policing COP26 as well as accommodation for the sizeable number of mutual aid officers coming from elsewhere in the United Kingdom. Because that is covered directly by the UK Government, none of that funding will come through us to be reclaimed.

The overall costs of policing the event will be known only post conference, when all relevant costs will be known and finalised. The assurance processes that I have witnessed seem fairly satisfactory to me but, as Donald McGillivray has been more intimately involved than me in this matter, it might be worth hearing from him.

**Donald McGillivray (Scottish Government):** We are in a good position overall. Police Scotland, various other bodies, the Scottish Government and the UK Government have gone through a fairly formal process of assessing the cost estimates that were made by the bodies involved. The bodies prepared business cases that then went through a formal approval process. The police business cases have made good progress, with a good level of approval for funding already in place but, as the cabinet secretary has said, there will need to be a wash-up at the end of the event to find out what the actual costs are against the estimates in the business cases as approved. Inevitably, there will be a discussion at that point about how the actual costs recorded by Police Scotland and other bodies stack up against the business cases that were approved, but as far as we are concerned and as things stand, we are in a good place.

**The Convener:** That was helpful. I will bring in Katy Clark, who has some follow-up questions on COP26.

**Katy Clark (West Scotland) (Lab):** As you have said, the financial position is not yet clear, but, once the conference is over, is the cabinet secretary willing to give a statement in the chamber on the full budgetary implications of COP26 and, in particular, whether the UK Government has fully reimbursed the Scottish

Government? Moreover, although the overall view is that the policing of the event has gone well, there has, as the cabinet secretary has said, been concern over particular actions such as the use of kettling at the demonstration in Glasgow. Is he willing to come to the chamber and give a full statement once all the facts are clear?

**Keith Brown:** I would love to be in the position of directing what the chamber does, but that is a matter for it to decide. For my part, I am more than willing to discuss not only the point that the member has rightly made about whether the budgetary situation has been properly and satisfactorily dealt with—I would say that at this stage we have a high level of confidence that that is the case—but the wider issues that I tried to address in the topical question that was asked yesterday.

There have been two cases of what the police would call moving containment, the purpose of which is not to keep people in a fixed place for a period of time but to move them somewhere else. I have discussed the issue with the police on a number of occasions, and I have been advised that that action was taken because, had they left behind the people who wanted to lock themselves on to things or to sit down, the entire demonstration would have ground to a halt behind them, with consequences for public safety. For that reason, the people in question were asked to move to one side. I am also told that, during that period, liaison officers were talking to the people in the containment area.

My latest update, which I received this morning, is that there have been more than 400 events at which people have made their feelings known, and there have been only one or two at which there have been one or two issues. There were no incidents at all at last Friday's very big rally involving young people, and, as far as I am aware, no one has been seriously hurt during the entire conference, which is something that I am not sure can be said of previous COPs.

What I think has been masked a little bit is the extremely positive relationship that has developed between the police and many of the protest groups. Nevertheless, these are legitimate areas for consideration. The independent advisory group headed by John Scott, which includes Friends of the Earth Scotland, Aamer Anwar and a number of other people, met on 5 November to discuss, I think, a complaint from Friends of the Earth Scotland among others. Because the group is independent, I am not on it, but I am told that the discussion was very constructive. The group met again yesterday, but I am still to get a read-out from that.

By and large, the event has been extremely well policed. Police Scotland has taken a very

proactive approach to engaging with groups that it knew were coming to COP, and it has tried to keep that going. The arrest of Nessie aside, the Rainbow Warrior was allowed to advance much closer to the event than it had been permitted to do at previous COPs. The police did not intervene when people took part in the lock-on on George V bridge, and, to their credit, the protesters allowed one lane to be kept open for emergency vehicles. There has been a lot of accommodation. I do not think that we could have asked for much more in that regard.

It is right that any actions of the police should be scrutinised. That has happened through the independent advisory group. Another route that can be taken is that of police complaints. So far, the policing of COP has been extremely successful, but such matters should be discussed, and I would be happy to make a statement to the chamber on the subject at a future point.

**Katy Clark:** In relation to contracts that Police Scotland enters into, another area of controversy has been the contract with Sri Lanka, which I think is due for renewal next March. Is it necessary for Police Scotland to raise external funds in that way? What is the process in relation to that? What is your involvement in that decision-making process?

**Keith Brown:** I have very little involvement in that. The police have the autonomy that they asked for and that the Parliament granted them. Collectively, as a Parliament, we have agreed that the police should have independence from direct ministerial involvement in such matters. The police should not be subject to ministerial direction in relation to their operational actions. Such decisions are for the chief constable, although, of course, there is oversight through the Scottish Police Authority.

As far as the particular contract to which you referred is concerned, there is quite a role for the Foreign Office, which is involved in the process and under the aegis of which the relevant scheme is delivered.

Obviously, I have discussed the matter with the chief constable. For my part, I am totally behind the view that Police Scotland is a human rights-based organisation. It is probably a human rights-based organisation to a much greater extent—as, I am sure, it would concede—than it has been previously. It is very mindful of that fact.

Whatever people's view on the activity in question—some people think that it represents an attempt to make sure that proper policing methods are used and that policing is done properly, with accountability, and that that is a good thing to spread around—it is Police Scotland that has taken the decision. The work has not been carried

on for two reasons, the first of which is to do with Covid; the second is the suspension of the relevant UK programme. The activity has not been going on for some time. In fact—I stand to be corrected on this—it has not been going on for the entire time that I have been doing this job.

The accountability for the contract to which Katy Clark referred rests with Police Scotland and the Scottish Police Authority.

**Katy Clark:** I would like to follow up on that, because there are serious human rights implications. There are many countries in the world that Police Scotland could enter into contracts with that, unfortunately, have appalling human rights records. It is clear that there are issues of public policy at stake. The Scottish Government has to have a position on the matter, especially given its responsibility for Police Scotland.

Do you accept that Police Scotland should not enter into contracts with Governments that have a record of serious human rights abuses?

**Keith Brown:** There is a strong argument to be made for that, but there is also the argument that we would want to try to improve situations in which human rights abuses have taken place. I think that it would be Police Scotland's point of view, although it would have to speak for itself in this regard, that, if it could improve the performance of other police forces such that they would take human rights into account, that would be a benefit.

However, you are right to say that there is a reputational issue here, too. I think that Don McGillivray would like to come in on that.

**Donald McGillivray:** I simply point out that a human rights assessment is part of the Foreign Office's approval process for funding the deployment of police overseas through the programme that the UK Government funds. As the cabinet secretary described, the Scottish ministers have a very limited role in that. There is a formal role in approving the deployment of officers overseas, but that was done quite some time ago in relation to the Sri Lanka operation, which, as the cabinet secretary said, has been suspended for some time.

The main human rights assessment is done by Police Scotland and approved by the Foreign Office. The role for the Scottish Government is a much more limited one that is simply to do with the approval of overseas deployment.

**Katy Clark:** On another issue, what discussions has the cabinet secretary had with Police Scotland and the Scottish Police Authority about the use and financial cost implications of non-disclosure agreements? Obviously, he will be aware of the

concern that such agreements are sometimes used to hide unacceptable practices.

**Keith Brown:** That is a good question. As I am sure the member knows, the ability to enter into that kind of agreement is recognised by ACAS—the Advisory, Conciliation and Arbitration Service—and it is a legitimate process. I have not discussed the non-disclosure agreements with Police Scotland or the SPA, because they are the accountable bodies in relation to the issue. Whether to use such agreements is a matter for them. ACAS recommends confidentiality agreements for claimants' and employers' solicitors to record the agreement that is reached between the parties. It is, of course, for Police Scotland, with the oversight of the SPA, to determine any compensation payments.

I should say, however, that such agreements should not be used to cover up extremely bad practice such as discrimination and harassment. It is important that we have the disinfectant, if you like, of publicity around that. There is a role for the agreements, and I think that all public bodies enter into them. ACAS, which speaks for different interests, including those of trade unions, says that there is sometimes a role for those agreements. Sometimes, it is what the participants want. However, if the member is saying that such agreements should not be allowed to obscure bigger issues that we have to try to address, I agree with that.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** I have a brief supplementary question on COP26 funding. You have made it clear that there is a good process in place for recouping the direct costs of COP26, and the committee has heard that from the police, too. I give credit to the UK Government and the Scottish Government for working together on that. However, in a previous session, an issue was raised about the unknown and longer-term consequences of COP26. Is there an arrangement in place for those? One issue that springs to mind is that there could be an impact on staff when the supporting officers from the rest of the UK return to their divisions. Another issue is that, because we have hosted the summit, there might be renewed activism in the country. Obviously, that is a good thing and we all want it, but it might result in extra pressures on policing. That sort of thing might have an impact for the next few years. Will the discussions on the issue be on-going, and will they incorporate that point?

**Keith Brown:** Again, I will bring in Don McGillivray on that, but I will first give another example. For some time in advance of COP26, all leave was cancelled for the police in Scotland, which will have consequences as people get their leave entitlement back, and that will continue

beyond COP26. From talking to the police and, where necessary, the UK Government, I believe that there is an understanding of the cost. However, it becomes more difficult to attribute costs such as those that you mention. You are right in saying that increased activism is a good thing, and the police will have to respond to it.

Going back to previous questions, I do not want to speak too soon, as we still have three days of COP26 to go, but I think that Police Scotland's reputation will be enhanced, notwithstanding the issue with kettling, which has been mentioned, and a number of other incidents such as when, early on, a decision was made to have local people, including women, walk through Kelvingrove park in the dark. That was wrong and the police have apologised for it. There are things to learn from the experience, but my feeling is that Police Scotland's reputation will be incredibly enhanced internationally after the event, if things go as well as we hope they will for the next three days. That will bring opportunities as well, although these things are hard to quantify at this stage.

Of course, it is not just about the police. The Scottish Fire and Rescue Service had quite a bit of work to do in the run-up to COP26, and those costs are being covered as well. There are also costs for the Scottish Ambulance Service. As I said, we are pretty confident about the nature of the arrangements that are in place, and we are hearing from our justice partners that they are confident about that, too.

Don McGillivray might want to say more about legacy costs.

**Donald McGillivray:** The process is a formal one that looks at business cases. The costs involved have to be those for which the organisation can make a tangible estimate—that is the way that it works. Therefore, it covers overtime and I am pretty sure that it takes into account the effects of creating a backlog of leave and the costs associated with that.

It also covers wider things. For example, the Police Investigations and Review Commissioner—PIRC—was able to submit a bid for potential costs for her organisation. When there is a tangible cost that can be estimated, the process works well. Some of the things that were described are harder to estimate at this stage, and we will understand whether it is possible to make an estimate and a business case for those only later in the process.

**Fulton MacGregor:** I have been reassured.

10:30

**Jamie Greene (West Scotland) (Con):** I will start by asking you to clarify something that you

said in your opening statement about the overall budget, because it puts the justice budget into context. I understand that the block grant for 2022-23 will rise from £36.7 billion to £40.6 billion—a £3.9 billion uplift—which is derived from £3.4 billion in resource funding and £400 million in capital funding. That seems to contradict your opening statement. Could you clarify that?

**Keith Brown:** I am not the Cabinet Secretary for Finance and the Economy, but the difference, which is apparent from our different interpretations, is that the figure that you give for the current year excludes Covid consequentials. It is obvious that Covid is not finished. I think that committee members would ask that we continue to make more money available to deal with the backlogs, which tells you that Covid is not finished. That accounts for the difference and means that there is a reduction, because the only way that you can start from that figure is by using last year's base budget and not the one that includes Covid consequentials.

**Jamie Greene:** That is an important point, because the uplift in Covid consequentials to the Scottish budget was around £15 billion. It strikes me as unreasonable to expect that that level of increased funding, which was unique to the circumstances at the beginning of Covid, would necessarily set the benchmark for future budget years. It would be better to do a year-on-year comparison with a normal budget year in which there is an uplift in core funding as opposed to comparing core funding to Covid-related funding. That conflation has been made, and I am happy for the Scottish Parliament information centre to do some investigation into it and to inform members accordingly.

On the back of that, I turn to the capital funding budget. I want to touch on Police Scotland's budget, because it is an important one to delve into and we took a lot of evidence on it. Can you explain how this year's budget, or at least your asks of the finance secretary, will inform Police Scotland's five-year capital investment plan? The figure that it gave us in its written submission is a

"total requirement of £466m with major and essential investment in the DDICT strategy, consolidating and improving the Estate and modernising the Fleet".

Police Scotland's understanding is that the Scottish Government's capital spending review, which was published in January,

"suggests a funding level that is approximately £218 million short over a 5 year period".

Can you update the committee on whether there will be a shortfall in Police Scotland's capital budget?

**Keith Brown:** First of all, you have to define "shortfall". If you are comparing what Police

Scotland says that it asked for with what it will end up with, I am not sure that that is a shortfall.

**Jamie Greene:** Those are the words of Police Scotland.

**Keith Brown:** To go back to the first point, it is incontrovertible that overall grant funding from the Treasury is falling. I have that as a quote and I am happy to source that for SPICe or anybody else. The exchange that we are having exemplifies the fact that politicians choose the figures that best serve their purpose. That is true, but you cannot deny the fact that Covid did not stop when that budget started. There are huge continuing Covid costs across Government. It is disingenuous to try to take those costs out to get to a lower budget starting point, but that discussion will continue.

The police budget has increased over the years, despite the fact that we have had major cuts to our capital budget over the past decade. In the past three years, there has been a substantial increase, which has resulted in the capital budget staying at about £45 million. We have recognised some additional demands from the police, including £10 million for greening the fleet.

We are ahead of the budget by a few weeks and these things are under discussion, so I cannot be too specific about how the budget will turn out or whether the police will be satisfied. The simple fact is that we have to work within constrained circumstances, and whatever budget is finally agreed—I am hopeful that it will be no less generous to the police than budgets have been in the past, given the constraints that we have—it will be for the police and the SPA to work out how to apportion that capital budget.

It might be useful for the committee to hear from Don McGillivray on one or two other points, convener.

**Donald McGillivray:** I will add a detail to what the cabinet secretary said about the profile of the capital budget. Looking at the numbers, I note that the capital budget for the police has approximately doubled since 2017-18. When we have been able to provide additional capital to the SPA in the past few budgets, we have done so. That is the picture that I would set out.

**Keith Brown:** Under the new procedure, the committee will write to me with its budget asks. That is where it will get quite interesting, because the committee will have to say, for example, which capital budgets it would cut in order to fund an increased police budget. That will probably create a richer pre-budget experience than we have had in previous years.

**The Convener:** Have you finished your questions, Jamie?

**Jamie Greene:** No. May I carry on? Sorry, but the police budget is a big topic.

Police Scotland states in its written submission that its five-year capital investment proposal

“would improve conditions and equipment for the wellbeing of officers and staff”

and

“enable a better service to be provided”.

It states:

“A lower settlement would require prioritisation to meet health and safety needs”—

in other words, the statutory requirement on the police—but would not allow it to deliver much-needed improvements to the fleet, to ICT and to the police estate, which many people said in their written submissions is not fit for purpose.

I return to the point that, for Police Scotland to fulfil its five-year plan to deliver and maintain the policing levels that we currently enjoy, it will need £466 million. Your capital spending review from this year suggests that it will get £218 million less than that. That is the shortfall that we and Police Scotland are talking about. If it does not receive the funding settlement that it is expecting or asking you for, which of those projects are unlikely to be delivered? Which aspects of police transformation and renewal will we not see in the next five years as a result of that capital ask not being met?

**Keith Brown:** Once again, the difficulty is that this evidence session is about a process in which we have not fixed the budget.

In general terms, as I have said before, when we allocate the budget, we have to prioritise, and the extent to which we are willing to listen to what the police say their needs are is evidenced by the fact that we have increased their capital budget, as has been mentioned, and met the specific request for £10 million for investment in greening the fleet. Additional moneys have been given for body-worn cameras and various other initiatives.

We are very receptive to what the police say, but the simple fact is that, when the overall grant funding from the Treasury is falling, we have to make difficult decisions. In relation to that, it will be really useful for me to see what the committee believes the priorities should be. If we increase the police budget, will the committee or the member say that we should reduce the fire service budget or the education budget? These are the difficult decisions that we have to make.

I think that the police understand that point. We expect them to put forward the things that they want to see, and, of course, they will want to do that. However, when we finally agree the budget, it will be based on, first, the amount of money that we have to spend and then on the fact that we

expect that the police and the SPA will work out their priorities within that budget, because that is their statutory responsibility. As I said however, we are ahead of the budget just now.

**Jamie Greene:** My other questions relate to other areas of the budget, so I am happy to come back in later, convener.

**The Convener:** Thank you. I will bring in Russell Findlay and then Collette Stevenson.

**Russell Findlay:** Going back to some of the points that Katy Clark raised, although I am mindful that this evidence session is on the budget, I note that there were predictions before COP26 that there could be up to 300 arrests per day. That has not transpired—the most recent figure that I have seen was that there were 50 arrests in the first week.

Police Scotland previously told the committee that the total policing bill would be in the region of £150 million. Over the past week, the streets of Glasgow have often resembled the Edinburgh festival rather than the end of days. Is there any sense in policing circles that there might have been a bit of a misjudgment and that the costs could have been more modest? I know that it is a difficult call, but do you have any thoughts on that?

**Keith Brown:** It might be that, as you said, the end-of-days scenario—whoever put that forward—and the estimate of the budget are not where we end up. As I think that we have said already, that will be a process that we go through. It is not only the efforts of the police that need to be funded, but those of other agencies.

I am very willing to say that the police have an extremely difficult job. If they have intelligence or an expectation of a serious threat to public order, you want them there in numbers. If that threat does not transpire, they will, of course, be open to the accusation that they have, if you like, overplayed their hand. I do not think that they can win in those circumstances. I have been going to demonstrations for my entire life. If I was on a demonstration and saw that there were insufficient police numbers to deal with something that happened, I would be critical of the police. Therefore, they need to err on the side of caution; more than that, they need to act on the best intelligence that they have. Who is to say that the two things are not related? Some people who might have been bent on serious disorder—and there was serious intelligence on that—might have seen the police planning that was going on and thought, “No, we are not going to do that.” I will not be the first in line to criticise the police in that regard.

As to the cost, we do not know about that yet. As you suggest, it might come in below what has been suggested, but that would be a good thing.

You are right to highlight the number of arrests. We had to estimate that ourselves, because we wanted things such as legal aid cover. That number of arrests has not transpired, and in large part that is due, first of all, to the conduct of protesters and to the engagement between protesters and the police, as well as police planning. Let us not look for failure here. We have three days to go, and a lot could still happen. It has been a very successful event so far.

I want to point out the different challenges that the police face. No previous COP meetings have taken place right in the middle of a relatively small city—they have been on the outskirts of Paris or elsewhere. Therefore, the police have planned effectively to deal with an extremely difficult situation and they have done really well.

**Russell Findlay:** I have a quick point about budgets. Jamie Greene has already questioned some of the language used about UK Government funding to the Scottish Government and the contentious use of the phrase “major cuts”, which we strongly disagree with. You referred to borrowing powers. The Scottish Government has the ability to borrow. In 2020-21, it planned to borrow £450 million but actually ended up borrowing £200 million. If you are not using the borrowing powers that you already have and you have cited issues with borrowing as a reason for being unable to do the things that you would like to do, why not use those powers initially?

**Keith Brown:** To be honest, that question is more for the Cabinet Secretary for Finance and the Economy than it is for me. However, it is also about the nature of the borrowing that can be undertaken. We must all bear in mind the fact that the borrowing must be paid back, so there is an impact on future resource budgets. Beyond my party, there is relatively broad consensus that neither the borrowing powers nor the fiscal framework are now suitable, if they ever were. That is evidenced by the fact that the financial framework is being looked at again this year—it was due to be looked at under the previous agreement between the Governments. There is room for better distribution of resources and for capital borrowing powers that more properly reflect the Scottish Government’s range of responsibilities.

Jamie Greene made a very sensible suggestion that we should let SPICe look at that, but it is my and the Government’s position that overall funding from the Treasury is reduced in the forthcoming budget. That is absolutely my position and I am happy to defend it. If it is asked, and depending on how it is asked, I am also happy to see what SPICe has to say to that. However, that is the Government’s position.

**Russell Findlay:** We will just have to agree to disagree, but thank you.

**The Convener:** I will bring in Collette Stevenson, and then I will come back to Jamie Greene, to ask questions about the Scottish Fire and Rescue Service.

10:45

**Collette Stevenson (East Kilbride) (SNP):** In recent weeks, we have seen the impact of climate change in Scotland—I highlight the recent damage to two bridges in Annan. Sea levels are rising and damage is being done by flood water. Obviously, that is impacting on the Scottish Fire and Rescue Service, which is having to respond to an increase in incidents. What discussions has the Government had with SFRS on the budget priorities for 2022-23, given the increase in the number of such incidents?

**Keith Brown:** Within our portfolio split, it is Ash Regan who deals with the Scottish Fire and Rescue Service. However, I recently had a productive discussion with its chief executive and chair. Modernisation is a big part of the challenge that the fire service faces. You will be aware that, in the past couple of years, the discussion has been about firefighters providing a broader role. That discussion is still under way.

We have continued our commitment to support the delivery and modernisation of the fire service. Last year, for 2021-22, we gave it an uplift of £8.7 million for resource, which brought the total budget to £343 million.

On the new challenges, or emerging challenges—I am not sure that they are entirely new, because, we have seen extraordinary flooding, for example, in recent years—we will carefully consider any new proposals from the fire service.

I know that the statement that I made about overall grant funding will be challenged—Mr Findlay and I agree to differ on that—but I am not sure that there is a difference of opinion on capital funding. Capital funding stays unchanged for the next two years and falls after that. That is in the context of a base that is historically low. That factor is in the background. However, we have maintained the fire service’s capital budget at £32.5 million a year.

We have also provided funding of £2 million this year to support a range of projects to improve building efficiency in the SFRS estate. Mr Greene’s point about the police estate is a big issue for the fire estate, too; I do not shrink from that.

It is also true to say that Transport Scotland, which is another arm of Government, continues to

provide additional funding to support electric vehicle charging infrastructure and the switch over to low-carbon fleet vehicles. That measure is related to climate change.

We remain receptive to the fire service's asks, notwithstanding the overall budget position.

**Collette Stevenson:** Given what you have said about the increase in the budget and whatnot, do you consider that the fire service will be content with the forthcoming budget?

**Keith Brown:** I am again being asked to speak for justice partners who can best speak for themselves, whether that be the Crown Office, the police or the fire service. I am sure that each will have ambitions that will outstrip the available resources. We have to prioritise—that is just the nature of government.

On those aspects that we can identify as needs, you have quite rightly identified how climate change is changing the demands on the fire service, and we have to be responsive to that as far as we can.

I do not know whether Don McGillivray wants to say any more about the fire service.

**Donald McGillivray:** Like the cabinet secretary, I engage regularly with the SFRS chair and chief fire officer. The current budget is not a topic of strong discussion—the discussion is mainly around the future potentially expanded role of the fire service, and what the cost and funding arrangements for that will be. That is the main focus of the discussion at the moment, but, obviously, in advance of a budget, it is impossible to say where we will land on that.

**Collette Stevenson:** Thank you. I have no further questions.

**The Convener:** We move on to Jamie Greene, and then we will move to questions on prisons.

**Jamie Greene:** Thank you, convener. I also have questions on prisons, but I will let others lead on that.

I will continue the line of questioning on the SFRS. Although the SFRS did not express a view or opinion on the budget, it provided statistics in its written submission, saying:

“As acknowledged in the report by Audit Scotland (2018), to bring its property, vehicles and other assets across Scotland up to a minimum satisfactory condition ... the SFRS requires an average annual investment of £80.4 million. The actual average annual investment over the last three financial years on property, vehicles and equipment was £30.2 million.”

Therefore, although the SFRS has not expressed an opinion, it has enlightened us about the reality of its budget. Does that mean that its assets are not in the minimum satisfactory condition? How

confident can we be that future budgets, particularly for capital spend, will ensure that we have a fit-for-purpose Fire and Rescue Service over the next 10 years, which is what the service asked for?

**Keith Brown:** I hate to have to repeat myself. We have not set the budget yet, and in setting it we will listen—we are listening—to the points that the Fire and Rescue Service made. In the discussions that I have had with the service directly—and I think that the same is true for Don McGillivray—there has been a lot of discussion about the estate and, in particular, whether assets are fit for purpose and appropriate or whether we would say that there should be further rationalisation.

It is worth saying that, in addition to using the capital budget that we can give the service—and we can give it more only at the expense of someone else, such as the police—the service is able to draw down capital receipts from the sale of its properties. The service has plans in that regard. I do not know whether it has appeared before the committee; it might be able to say more on that. That will help with the capital resources that it has to invest in new facilities.

In relation to a previous question, the discussions that I have had—like Don McGillivray's discussions—have not centred hugely on the issue; the service has been most keen to speak about changing demands and the changing nature of the service. We have to try to facilitate those changes and give the service the capital support that it needs if it is to make them, but we have to do that from a lower budget, as I said—certainly in year 3 of this spending settlement.

We are listening to the Fire and Rescue Service. We will present our budget, and I will be interested in committee members' views on the priorities in the budget envelope. If the committee supports a capital budget for the Fire and Rescue Service that is two and a half times the current budget, I will be interested to hear where the committee thinks that the money should come from. That is the kind of question that the Government faces and which the committee will face, too.

**Jamie Greene:** Thank you for that clarification. I am not sure that there is much of a precedent for the committee telling the Government what more to spend and where the money should be cut from, but if that is the new budget scrutiny process I will be happy to engage in it.

If the SFRS is being asked to do more, as it is being asked to do—and we have heard concerns about that from management and the unions—that must be backed up with investment and, in this context, resource investment, whether we are

talking about the requirement for training or the requirement for additional assets. If the budget remains static, as it has been since 2017, and there is no more investment up front, the service will find it difficult to offer a wider range of services. What discussions have you had with the service about what will be asked of it and how much more might be required from the budget allocation to help it do what is asked?

**Keith Brown:** As I said, I have spoken to the Fire and Rescue Service directly. That was a broad, wide-ranging discussion that touched on, for example, asset management and ambitions for the service. Officials probably speak to the service daily, and the minister with direct responsibility speaks to it, too. Those are the discussions that have taken place. I do not think that, so far, you have mentioned any area of which the Government is unaware or that we have not discussed with the Fire and Rescue Service at a senior level.

You said that the service is being asked to do more; I think that it is a little more nuanced than that, in that the service is being asked to do different things—as is evidenced by Collette Stevenson’s question about climate change leading to different demands of it. We are partners in the change process.

I might be wrong, but I thought that the budget scrutiny process required the committee to say which priorities should apply. In any event, I think that that is right. It is not possible just to go through each line of the budget saying, “More should be spent on that, and on that”, while pretending that that would have no consequences for other parts of the budget. Scrutiny such as I am describing probably leads to a better budget process than we have had in the past. I mean this sincerely: if the committee has a strong view that a particular budget line should have more resource than another, for whatever reason, I am keen to listen to you. I am sure that the committee is aware of this but it is worth saying that although the budget will be allocated by portfolio, after it has been published there will be quite a lot of discretion for me to reflect on the priorities that the committee identifies.

**Jamie Greene:** I am sure that that is something that the committee will consider, convener.

**The Convener:** Before we move on to the subject of prisons, I want to pick up on something that I think you said, cabinet secretary, about the rationalisation of fire stations. Can you expand on what that might mean? The thought that came into my head was that it might include the closure of stations, but perhaps you can correct that for me.

**Keith Brown:** I might ask Don McGillivray to come in on that. As everybody knows, there has

been a process of rationalisation of police stations over the years. As those in the Fire and Rescue Service would tell you—as they have told me directly—some fire stations are perhaps not in the right place. I was in one last week on my own patch, in Alloa. Sometimes, they are not in the right type of buildings, given the new equipment.

I do not know whether Don McGillivray wishes to say more on that.

**Donald McGillivray:** The fire service essentially inherited a set of buildings that were in place under an eight-brigade regional structure, but it is now a national service. Things are at a fairly early stage, but the service is in the process of reviewing its footprint and considering what the right national footprint is for a national fire service.

As the cab sec said, the fire service inherited a lot of pretty terrible 50s, 60s and 70s local authority buildings, and there is a real question as to whether they can ever be upgraded and made fit for purpose for a modern fire service. There are a number of factors there as the service feeds into the question of what its future estate and footprint look like. I think the fire service would give a commitment that, while it is at a relatively early stage in developing that thinking, there would be wide-ranging consultation and engagement with people before it starts making any decisions on those issues.

**The Convener:** It would perhaps be helpful for the committee to be kept up to date on that.

**Collette Stevenson:** You touched on capital receipts in relation to the repurposing of some buildings. Has there been any discussion about police stations, fire stations and prisons having a role to play in district heating systems in the future?

**Keith Brown:** I would respond on that more generally. We might come on to discuss the replacement for Barlinnie, for instance. I hate to use this expression, but how such things can be the most energy efficient is much more baked in from the start now. I am aware, from my previous area of responsibility, that that is being done in relation to housing. I do not know whether district heating is specifically being considered in this context, but reducing the carbon footprint is certainly factored into any new build.

I go back to a point that the convener made. In my area, we have one police station in Clackmannanshire, and it has now moved into the council headquarters. That would not be suitable for a fire station, for obvious reasons, but we would want our public bodies—the police, the fire service and the Scottish Ambulance Service, too—to think more cogently about working together on some things. That can massively reduce costs and increase efficiency. Where there are new facilities,

that would allow for initiatives around district heating systems or otherwise reducing the carbon footprint. For the fire service, one such area will be the electrification of the fleet. I imagine that that would be a big area for the service.

**The Convener:** I am conscious of the time, and I want to move on to some questions on the prison estate and the Scottish Prison Service.

Although we acknowledge that there is a strong case for reducing the use of imprisonment as an option after conviction, we have a pressing situation with overcrowding, the changing demographic in prisons and buildings that are no longer fit for purpose or that do not meet the needs of the prison population.

Following the discussions that you have had with the Scottish Prison Service about making improvements to the prison estate, can you give some indication of timescales for replacing some parts of the current estate that are no longer fit for purpose? If there is a need to provide funding earlier to facilitate that, would that be feasible and possible to do?

11:00

**Keith Brown:** We have committed to investing more than half a billion pounds—£545.7 million—in improving the prison estate. The committee will know, from looking at our capital programme, exactly which prisons we are talking about replacing or upgrading. In the latter part of your question, you might have been referring to prisons such as Greenock and Dumfries that we have not been able to commit to replacing as we do not have the resources to do so. In those circumstances, however, we have been carrying out improvements across the piece. Indeed, even in prisons such as Barlinnie, which we are going to replace, we are making substantial improvements to the current facilities.

The fact is that much of the prison estate is pretty Victorian. In fact, I would compare the situation that it is in with that of the school estate back in 2007. Schools were in an appalling state, but things have been pretty much transformed since then. Moreover, we need only think of what has happened to our road network, with the Queensferry crossing, the Aberdeen western peripheral route or the dualling of the A9, which is progressing. There have been major changes to the infrastructure in Scotland, but, because of finance, we just cannot do everything all at once.

On whether funding can be brought forward, I remember that, five or six years ago, it was not unusual to have additional mid-year capital funding allocations, and we in the Government were often asked to quickly compile a list of shovel-ready projects—I was going to say “oven

ready”, but that term has been kind of abused—that could be advanced quite quickly. We know what we would like to do with Dumfries, and we have an idea about what to do with Greenock. Greenock is an interesting case, given the other investments that could be made with regard to, for example, the police and the college there.

We are ready to go, but we can go only on the basis of the capital funding that we expect to receive. That is what the current capital programme is based on.

**The Convener:** With regard to plans to modernise the prison estate, we would be keen for approaches to prevent the historical overcrowding in prisons in Scotland to be built into the process. Can the prevention of overcrowding be addressed in the redesign of the prison estate, with issues that we have been discussing such as the changing demographic being taken into account?

**Keith Brown:** You make a very good point. On Monday, I was in Perth prison—to my surprise, I was released the same day. If you have been to that prison, you will know that it is a collection of buildings of different ages, and the size of a cell in one part can be different from the size of a cell in some of the older parts. That and other modern expectations of prisons need to be factored in to what we do.

For example, in other prisons, women’s cells have showers built in, but that is not the case for the other 96 per cent of the prison population, who are men. We therefore need to factor in those new expectations with regard to cell size and, indeed, security. Mr Findlay has repeatedly raised the serious issue of drugs in prisons, and the question is whether we can bake into the design of a prison something to address that. There is also the issue of district heating and other ways of making prisons as environmentally friendly as possible.

We are trying to do that sort of thing, with, for example, the issue of cell size being closely considered in relation to Barlinnie. Of course, such things are done at a certain point in time. It might well be that, in 10 or 15 years, we will have different expectations, but we need to ensure that we are up to the minute as far as possible with regard to people’s expectations and sensible thinking on such matters.

**The Convener:** Thank you. As you have just mentioned the issue of women prisoners, I will bring in Rona Mackay.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** Following on from the convener’s questions, I want to ask about the new women’s custodial estate. I believe that there are about 230 places for women in the new estate but, just now, there are approximately 400 women, including remand prisoners, in prison. Will you comment on

the capacity of the new estate? I would like to think that it has been made that size because fewer women will be sent to prison—I really hope that that is the case. Has there been any thought or planning on whether there might not be enough space in the new women's estate?

**Keith Brown:** I will ask Neil Rennick to come in shortly. Your question prompts me to recall that I did not really answer the convener's previous question on capacity.

As you said, we are looking at the other end—at how many people we put in prison. Shortly, we will have something to say on proposals that we want to bring forward in relation to remand and release. It is about sending the right people to prison—those who need to be in prison and will benefit from being there rather than in an alternative non-custodial diversion. That has to be part of the hard calculation that we will make as to what the future prison population will be.

In any event—the convener made this point and it is behind your question, as well—we should not end up without capacity, which has happened in the past. For example, Texas released tens of thousands of prisoners overnight, including many who had been convicted of drug offences, because the state could not cope with the prisoner population. Furthermore, the Supreme Court of California told the state that it had to release thousands of prisoners overnight because there was 200 per cent occupancy in the prisons.

We want to ensure that we have the right number of cells and facilities for people, but we also want to ensure that people go to prison when that is the best place for them to be and when it is where society needs them to be. There are two parts to the equation.

Specifically on women's provision, the justice secretary before last made a judgment based on the best information that he had at the time. Neil Rennick, who was in post then, might want to say more.

**Neil Rennick:** When the plans for the new female estate were announced, the ambition was very much to ensure that the estate was forward looking and trauma informed. The plans that have been developed by the SPS are tremendously exciting, particularly the plans for the two new and innovative community custody units in Glasgow and Dundee and for the new national prison at the existing site at Cornton Vale. However, we always knew that we also had to continue to focus on trying to reduce the number of women coming into prison. That has been reflected in the work that we have done in extending the presumption against short sentences and expanding the availability of electronic monitoring, and in the work that we are doing just now on bail and remand and whether

we can reduce the number of people coming into prison on remand.

On capacity, in addition to the new facilities, there are existing spaces for women in Grampian, Edinburgh, Greenock and Polmont. It was always understood that we would keep that capacity under review as progress was made with changes to the overall number of women coming into prison. That continues to be the case.

**The Convener:** I will hand over to Jamie Greene, then I will bring in Collette Stevenson.

**Jamie Greene:** I want to ask a more fundamental question about the prison estate. I appreciate your comments on HMP Greenock. I think that everyone accepts that elements of it are not fit for purpose; Her Majesty's Inspectorate of Prisons for Scotland has made that clear. Although we are a long time away from getting a replacement, it is important that any funds that can be are allocated to make immediate improvements, which would be most welcome by the staff and inmates. That is a parochial point, but it is an important one to make.

I will now look at the wider issues. I spoke in the previous committee meeting to Teresa Medhurst about a medium to long-term plan for the prison population. We know that the annual average population is sitting at quite a high number—the latest figure that I have is that there are more than 8,000 inmates. The figure has risen quite sharply over a number of years. In the context of the large backlog of court cases, of which a large percentage are for quite serious crimes—more specifically, those are of a sexual nature or involve gender-based violence—and because of the good work that the police and other agencies are doing to tackle the rise in serious organised crime, Ms Medhurst seemed to imply that the prison population is expected to rise further. It takes four, 10 or 15 years to build new estate. Is the allocated budget geared up to that potentially quite sharp, immediate rise in the prison population?

**Keith Brown:** That is a good question. We are actually at a lower level than that—I think that the figure is around 7,550. That is the figure that I saw in the latest update this week. However, the figure fluctuates, so it might have changed by a few.

You are absolutely right that we have seen a substantial increase in the use of remand. All parties have expressed concern about that, and we will introduce proposals to try to help with it. That is placing a big demand on prisons. There are different demands on the Prison Service because of how people on remand are treated. That is a current and pressing pressure on the prison population. You are also right that, as the backlog of cases is cleared, the number of

convicted prisoners will increase, which will also increase the prison population.

It is hard to estimate the figures. The formulas that were used in our analysis up until Covid are no longer particularly useful during the time of Covid. You mentioned a figure of 8,000. That was true last year, but the figure has reduced as a result of Covid. The analysis is more difficult at the moment.

We are trying to tackle the matter in two—or possibly three—ways. We are trying to reduce the number of people who go to prison, where that is appropriate. We will shortly introduce proposals for consultation on bail and release—earlier, I referred to “remand and release”, but it is actually “bail and release”. I hope that we will get a constructive response to that, just as we have had in discussions in the chamber on those pressing issues. Pauline McNeill has raised those issues, too.

The other issue is about what happens in prisons. Following the committee’s visit to Saughton, Mr Findlay has acknowledged the different pressures in prisons. There are various serious organised crime groups, and it takes up space to ensure that there is segregation, if that is the right word. There is also the issue of vulnerable prisoners.

The demands on prisons are increasing. It is hard to quantify that, but we want to ensure that we have appropriate facilities for everybody. That is why, over the past 15 years, and to an extent before that, there has been an improvement in prison facilities. We are mindful of the issue and we keep a close eye on the population.

We know that a population increase is coming, but there are things that we can do, not least in relation to remand, but also in relation to people who may benefit from a different disposal, whether that involves community justice, rehabilitation or mental health treatment. Getting the right people in prison is one thing. We are mindful of our responsibility to house the people whom the courts send to prison.

I do not know whether that fully answers your point, but that is our current thinking.

**Jamie Greene:** You make fair points. It is difficult to model the situation. As you say, given the scale of the congestion in the courts and the nature of the trials that are likely to come through the system, on which we have heard evidence, there is an expectation that non-custodial options simply might not be suitable in a large chunk of those cases. Therefore, there is an expectation that the prison population will rise. I presume that there are limitations on what you can do. You can magic up only so much space in the prison estate, so there will be overcrowding, eventually. Do you

foresee a California-type scenario in which you simply must release people because of overpopulation?

**Keith Brown:** The Californian authorities were told to do that by the Supreme Court. We would want to avoid that. We want to try to remain in control of the situation rather than be told to do that. I cannot imagine the UK Supreme Court telling us to do that, but we do not want to be in that position. It is therefore important that we anticipate the situation as best we can. You are right that the backlog of cases and the nature of those cases—in particular, those involving sex crimes—will result in more people being in prison.

Despite some of the political banter that we have about the presumption against short sentences, people in the current prison population are serving longer in prison than was the case previously, partly because of the nature of their crimes. We have also had a big increase in historical sex offences, and we are accommodating a lot of people in relation to that.

We do not want to be forced by anybody to release prisoners; we want to try to manage the situation as best we can.

**The Convener:** I will hand over to Collette Stevenson and then Russell Findlay. I would like to bring this session to a close at 11:30. We have a few additional issues to pick up, so we will see how much we get through, given the time. I ask for succinct questions and answers.

11:15

**Collette Stevenson:** How do you respond to the call from Her Majesty’s chief inspector of prisons for a fundamental review of the provision of purposeful activity in prisons, and to the expectation that additional resources will be required, given the challenges that we face currently?

**Keith Brown:** The first thing to say, as I mentioned in relation to another question, is that we are not through Covid. It is a very fluid situation right now. Some prisons are going back to a two-shift system, which has allowed them to increase the amount of purposeful activity that is taking place. It would be interesting to hear more from Neil Rennick on that.

Irrespective of whether we are talking about carrying out a review to the terms that Wendy Sinclair-Gieben, the chief inspector, has called for, or whether we are talking about the prison service looking at the situation holistically and at what it is able to do—part of the approach is driven by whether there is an outbreak of Covid and what the public health regulations are in a particular prison, given its facilities—the situation is very

fluid. However, we are very much seizing on the need to increase purposeful activity to at least its previous level.

Notwithstanding that—I think that the chief inspector recognises this—some of what has happened around access to telephones and mobile phones has been of huge benefit, although there has quite rightly been a lot of discussion about the tampering of devices. There has been a massive number of calls to the Samaritans from within prisons. The ability of families to talk to prisoners, especially at a time when prisoners cannot have the same amount of purposeful activity, has been really important as well.

We are cognisant that people being denied purposeful activity is a situation that cannot persist. Neil Rennick will have more to say on that.

**Neil Rennick:** Back in 2019-20, when looking at the medium term, the then chief executive of the SPS identified the need for additional resources of £24 million because of the growth in the prison population and the demands that that was creating. The Government met in full that amount, which has been added to since through revenue funding.

As the cabinet secretary has said, during Covid, there had to be adjustment to how the day was organised in prisons. The vast majority of establishments have now moved back to the previous arrangements, and that is opening up the possibility of further purposeful activity.

The other issue that the chief inspector identified in her report is the importance of our continuing to try to provide alternatives to prison, to create the capacity for the Prison Service to manage the population that it has. As the cabinet secretary has said, that is one of our key priorities. For example, the £50 million that the Government has committed to in the Covid recovery programme and the money that is going to courts to allow them to deal with their backlog includes an extra £11.8 million this year specifically for community justice. That is to try to expand the capability to have alternatives to prison so that we ensure that we reflect that pressure in the system.

**Collette Stevenson:** Okay. I have no further questions.

**The Convener:** I will bring in Russell Findlay, and then Katy Clark can come in briefly.

**Russell Findlay:** I will be very quick. The cabinet secretary read my mind when he mentioned prison phones. We will not reheat everything that has been said about mobile phones and the problems that have been caused by some of them, but, in Teresa Medhurst's evidence to the committee, she said that that model was not adopted in Addiewell and

Kilmarnock because of the hard-wired infrastructure in those modern prisons. With that in mind, have you sought to ensure that similar infrastructure will be part of the new prisons in the pipeline, to provide safe and secure communications down the line?

**Keith Brown:** Yes, and I think that that has been borne in mind even in prisons that are not scheduled for replacement but where new capital works are going on. Beyond that, in-cell telephony is being looked at for those prisons as well. As you have indicated, the hard-wired options are easier to manage and they make it easier to avoid some of the problems that we have had with the mobiles that were issued. That is being taken into account.

**Katy Clark:** Cabinet secretary, have you made an assessment of the percentage of the prison population that actually needs to be there, and of whether we are adequately funding alternatives to custody? You mentioned that a new strategy will be announced next year. Is it practical to shift resources from prisons into alternatives? What percentage of the prison population should perhaps have been dealt with in another way?

**Keith Brown:** I could not give you a percentage, but I think that we could give an anecdotal indication. If you talk to Teresa Medhurst—or perhaps you saw the recent programme, “Guilt”; I know that that is fiction, but it was based on a lot of research—you will find that prison officers say that there are people in prison who they feel should not be there and whose needs they are not equipped to deal with.

We deal with the fact that the courts have sent offenders to prison. It is our responsibility to accommodate them. The question is how we go forward.

On your point about community justice, we cannot take money away from the Prison Service—the vast bulk of which is wages in any event—and put it towards something else, so we have to find money for an alternative. Where that alternative is community justice, I think that that will require further investment.

We have to give courts confidence in such disposals before they will use them. The same is true for electronic monitoring and other alternatives to prison that might be more suitable for people. We must make that provision available and credible to courts before it will be used. The question is how we can ensure that more people get such disposals. There will always be people who are a danger to society or whose disposals have a punishment element that must be reflected in prison sentences.

There is a saying that prisons should have a narrow entrance and a wide exit but, right now, we appear to have the opposite. However, we cannot

change the fact that, if a court has sent somebody to prison, they are there to serve that sentence. We would not shift such people, but the way in which we go forward is to ensure that we have alternatives so that people can go to the right place.

**Rona Mackay:** On alternatives to custody and community justice, the emphasis will be on third sector organisations, whose involvement will be even more crucial than it is now once such disposals are expanded. In the previous parliamentary session, the Justice Committee called for multiyear funding settlements for third sector organisations, as is the case in the health service, for example. The benefits of that are obvious, such as security and forward planning. Is there any chance that the Government will consider multiyear funding for the new policies that are being introduced so that third sector organisations have security?

**Keith Brown:** That is a good point. For many years, the Scottish Government has asked the UK Government to move away from single-year budgets and the late notification of the budget.

We have tried to reflect the point in the funding for victims services, for which we have announced a three-year funding package. As is the case with all such matters, if other things happen, it might be possible to increase funding, so bear that in mind. However, I understand the point that many third sector organisations must make plans, including for facilities, well in advance of each funding year. Multiyear funding is under consideration not only in victims services, but across the justice portfolio and the whole of Government.

There are some situations in which we would not give multiyear funding, but I think that the point has been accepted. We have argued for that position from the UK Government, so we cannot really argue against other organisations wanting the same stability.

**The Convener:** I am watching the time, but we have two or three final questions that we would like to ask. Fulton MacGregor will ask about community sentences.

**Fulton MacGregor:** Thank you, convener. I will try to be brief.

Cabinet secretary, you said in response to Katy Clark that you predict that we will need more investment in community services. I welcome that. You are right. Will you expand on the current Government thinking on that? There has already been an uplift but do you envisage a greater one? How might it link into some of the other policy areas that you talked about, such as the use of remand and reducing the prison population?

**Keith Brown:** We want to have in mind the victims of crimes in relation to community services and the use of remand. If an offender is given a community sentence—that will not be because the Government says so but because a court orders it—an identifiable victim of that crime can have a continuing concern, so we are considering what more we can do to ensure that victims are kept up to date and assurances are given. That also has an interrelationship with things such as electronic monitoring.

Although community justice is often termed “soft justice”, the simple fact is that reconviction rates are lower for people who are put on community sentences. If, as we all agree, we want less crime in society, with fewer people being affected by crime, and fewer victims, we should do what is most effective. In some cases, community sentences are the effective response. I acknowledge that that has been substantially disrupted during Covid. However, we want to make sure of that effectiveness, both through the review of how community justice is currently working, which we are obliged to carry out under the Community Justice (Scotland) Act 2016—you will have seen that the Public Audit Committee has made a number of pretty trenchant observations about what is currently happening—and through considering the relationship with the new national care service, on which a consultation has just finished. All those things play into the fact that community sentencing has a vital role.

Whatever people’s political differences, they have to look seriously at anything that they think can reduce crime and reconviction, and at whether somebody will benefit more from that than they will from being in prison, for example.

**Fulton MacGregor:** I agree with much of what you have said. However, I often think that the issue of what victims want, and comments about tough and soft justice, are a discussion that is had at political level rather than on the ground.

I refer members to my entry in the register of members’ interests. As a criminal justice social worker for years, my experience was that, primarily, victims wanted the offence not to be repeated on somebody else, particularly if it was a less serious offence. In all those years, I did not come across a lot of people who were demanding and shouting for prison sentences. People wanted good outcomes for the whole community.

Will you be looking at the pandemic’s implications for the budgeting for community sentences? I recently spoke to some ex-colleagues who said that there has been a real shift in how community payback orders are being delivered. I am sure that the Government will pick up on that. I see that Neil Rennick is nodding, so he has obviously heard about this. People are no

longer able to come into offices as easily, or are saying, “I can’t go into the office, because I want to protect myself from Covid”, which is fair enough. That is putting extra demand on services. Will that be taken into account as we try to deliver good and effective community sentences that the public and victims can have faith in?

**Keith Brown:** Yes. I made the pretty obvious point previously that Covid has not finished with us yet, and we have to continue to take that into account in whatever we do. However, looking beyond Covid, we want to aim at the best suitable system, which is why we are having the review of community justice. I know that the committee will look at that as well. We have to acknowledge that, notwithstanding Covid, we have further to go on the issue. We have to consider how community justice is best dealt with and how it interacts with the national care service, which is important. However, it requires more investment.

Neil Rennick might want to come in on that.

**Neil Rennick:** I will just briefly confirm that, exactly as Fulton MacGregor described, the experience of front-line staff is that some elements of community justice have worked well through the adjustments that were made for Covid, but that other elements have not, and that they are working to learn lessons from that.

Another development that we have made is the establishment of a funding group with the third sector, local authorities and Community Justice Scotland, to look at how we make the most effective use of the resources that are available for community justice. That will pick up on the specific points that Mr MacGregor raised about the evidence on what works well and the best way for us to use the resources as we come out of the pandemic.

**The Convener:** I move on to Rona Mackay, who has questions about secure care for children, and then we will finish with a couple of questions on victims.

**Rona Mackay:** I think that everyone is agreed that we have to keep children out of prison. I will ask about the current funding model for secure care for children. I am aware that the money does not come from the justice budget. I am also aware that you, cabinet secretary, are meeting the director of a secure care unit in my constituency next month.

Will the funding model be looked at? The committee heard about that issue in last week’s evidence session, and the current situation seems odd, to say the least. The model is not adequate in the view of the people who are delivering secure care, so is that on the agenda?

11:30

**Keith Brown:** Yes, it is, although, as you said, only a proportion of that money comes from the justice budget. Substantial progress has already been made on the issue of children in the justice system. Since 2000, the number of under-18s who were proceeded against in Scotland’s courts has fallen by 81 per cent. The number of under-18s in custody—again, that is a justice system response—has decreased by 79 per cent, and there has been an 81 per cent reduction in children who were referred to the children’s reporter on offence grounds.

We are, however, looking closely at the future funding of secure care. Officials are discussing specific proposals with the Convention of Scottish Local Authorities and other partners. At this stage, that process can be summarised as being about investing in change—as you suggested in your question—guaranteeing accessibility and also keeping The Promise. I expect to be able to provide a further update early next year, at least on the justice elements of that, if the committee would find that useful.

**The Convener:** Thank you. We would like to be kept updated on progress on the secure care funding model.

We will bring the evidence session to a close with some final questions on victims. The questions should be as brief as possible.

**Russell Findlay:** In 2021-22, the budget for Victim Support Scotland and witness support was cut from £18.7 million in the previous year to £18.2 million. Does that give the impression to victims of crime that they are not always given due consideration? There is sometimes a perception that the system is geared towards the rights and considerations of those who commit crimes.

**Keith Brown:** That is contrary to what I have said, for example, in relation to the three-year funding for the victims fund that we are producing. That funding provides certainty and amounts, I think, to around £18 million in its own right. *[Keith Brown has corrected this contribution. See end of report.]* I have mentioned victims a number of times. In answering Fulton MacGregor’s questions, I mentioned a number of proposals in relation to community justice and how we can do more in the system about people on remand. It does not necessarily mean giving more money to victims organisations but, instead, considering how we can do more to take into account the needs of victims. For example, we might be able to do more for the victim of somebody who is released on bail by using electronic monitoring and providing more information, so it is not all about headline funding.

The victim surcharge fund will increase over time. So far, the fund has allowed £157,000 to be shared among victims of crime, and we expect it to increase over time to £1 million a year. We also have proposals for a victims commissioner to be appointed. Establishing any commissioner's office takes up a fair bit of money and is a big commitment, but we have said that the appointment of the commissioner will not affect the money that otherwise goes to victims organisations. I think that we have a good track record on victims, whether that is the victim surcharge fund or our commitment to look further at the victim notification scheme and expand into different areas. At the very start, I mentioned our emerging justice strategy, which puts victims at the very front.

**Neil Rennick:** In the time that I have been justice director, since 2014, funding for victims organisations has gone up from £5.6 million to more than £18 million, which is a significant increase over the medium term.

On the point about the change in funding this year, we had a very specific programme of £2 million a year over three years. That was targeted funding that we were providing from the justice portfolio to support the improvement of forensic medical examination facilities for victims of sexual offending, which was a really positive example of us working collaboratively with our health colleagues. The chief medical officer's task force was driving forward improvement in services for victims of sexual offending, and we provided time-limited capital funding from the justice portfolio budget.

That three-year programme came to an end in 2021. Following the passage of the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill through Parliament at the end of the previous parliamentary session, the on-going management and funding of those facilities was clearly set within national health service responsibilities. Therefore, revenue funding for victims increased, but the reduction was because that fixed three-year period of annual funding of £2 million came to an end.

**Russell Findlay:** How much will the victims commissioner cost?

**Keith Brown:** It is not possible to say definitively, but we can probably get a good idea from looking at the establishment of previous commissioners' offices. The establishment of the office of the Scottish Veterans Commissioner, which I was heavily involved in, might give you an indication of the cost. That can be readily obtained from SPICe.

**The Convener:** Mr Greene has a final question. Please be super-quick, Mr Greene.

**Jamie Greene:** Just to put that in context, the justice budget is about £2.9 billion, and we are only now, at the end of the meeting, talking about supporting victims with a budget of £18 million. Therefore, you can see why, relatively speaking, to the outside world, it may seem that the focus is in the wrong place.

I am glad that you mentioned the victim surcharge fund, because your Government's expectation was that it would generate £1 million a year—that was in your 2016 manifesto. We know that it has generated only £157,000. Why has there been such a shortfall, and what confidence can we have that, in future, it will generate meaningful amounts of money to support the victims of crime?

**Keith Brown:** I am happy to get further information on that and to provide the member with a detailed response. Obviously, it is predicated on the value of fines for convictions, and there has been a pretty big disruption to that process in our court system. I imagine that that accounts for it, but I am happy to look into it further and to provide any other relevant information, if that would help.

**Jamie Greene:** Yes, please.

**The Convener:** I thank the cabinet secretary, Mr Rennick and Mr McGillivray for their attendance. We appreciate your time.

We will take a five-minute break before we move on to the next agenda item.

11:36

*Meeting suspended.*

11:44

*On resuming—*

## **Control of Dogs (Scotland) Act 2010**

**The Convener:** The next agenda item is consideration of a letter from the Minister for Community Safety on the Scottish Government's plans for the control of dogs and a review of existing legislation. I refer members to paper 3 from the clerks.

Before I ask members for comments, I would like to put on record our condolences to the family of Jack Lis, in Wales, who sadly lost his life earlier in the week.

The control of dogs is clearly a very serious matter, and I am pleased that the minister has responded to our questions on what is being done to update the legislation in that area as a result of the then Public Audit and Post-legislative Scrutiny Committee's post-legislative review of the 2010 act.

The minister's letter indicates that the Scottish Government is committed to reviewing the Dangerous Dogs Act 1991, with a view to introducing legislation in this parliamentary session. That is to be welcomed, but we need to keep an eye on the timetable for that.

The minister's letter also states that she will introduce a statutory instrument to establish a control of dogs database. I believe that that Scottish statutory instrument will be considered by the Local Government, Housing and Planning Committee, because it relates to local government powers.

Do members have comments on the content of the letter?

**Katy Clark:** I reiterate and endorse what the convener said about the 10-year-old child who was killed in Wales this week. The issue continues to be a massive one in Scotland, particularly for postal workers, so I suggest that the committee encourages the Government to introduce legislation at the earliest opportunity. I know that the Government is already involved in discussions, but I ask that, in particular, it involves the Communication Workers Union—and within that the voice of postal workers—in the process.

**The Convener:** That is noted—thank you.

As there are no further comments, I suggest that we note the content of the letter and that the SSI is being taken forward by a different committee, and that we keep under review the timetable for the review of the Dangerous Dogs Act 1991. Are members happy with that?

**Members indicated agreement.**

**The Convener:** That concludes the public part of the meeting. Our next meeting will be on Wednesday 17 November, when we will seek to agree our budget report and a number of reports from our round-table sessions.

We will move into private session for the final agenda item.

11:47

*Meeting continued in private until 12:53.*

## Correction

Keith Brown has identified an error in his contribution and has provided the following correction.

**Keith Brown:**

*At col 34, paragraph 6—*

*Original text—*

That is contrary to what I have said, for example, in relation to the three-year funding for the victims fund that we are producing. That funding provides certainty and amounts to around £18 million in its own right.

*Corrected text—*

That is contrary to what I have said, for example, in relation to the three-year funding for the victims fund that we are producing. That funding provides certainty and amounts to around £30 million in its own right.

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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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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