



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Criminal Justice Committee

**Wednesday 20 April 2022**

**Session 6**



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**CRIMINAL JUSTICE COMMITTEE**

**14<sup>th</sup> Meeting 2022, 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

**CLERK TO THE COMMITTEE**

Stephen Imrie

**LOCATION**

The David Livingstone Room (CR6)



# Scottish Parliament

## Criminal Justice Committee

Wednesday 20 April 2022

*[The Convener opened the meeting at 10:30]*

### Priorities in the Justice Sector and an Action Plan

**The Convener (Audrey Nicoll):** A very good morning, everybody, and welcome back from the Easter recess to the 14th meeting in 2022 of the Criminal Justice Committee. We have received no apologies. Katy Clark joins us online.

Our main item of business today is consideration of the responses from different organisations and individuals to our report on priorities for the justice sector in this parliamentary session. I refer members to papers 1 and 2.

Members will see that we have received responses from the Scottish Government and various other bodies. We have also received a further response from one of the survivors of rape and sexual offences whom we had the privilege of meeting recently. That person has made a specific request about fees for accessing court records, which I would like to come back to.

Do members wish to make any comments on the responses that are set out in paper 1 before I turn to paper 2 and the progress report on delivery, which is a consolidated action plan in table format?

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** I want to ask about women and children in the justice system. I would like to know a bit more about the timescale for building in the recommendations in Lady Dorrian's report "Improving the Management of Sexual Offence Cases". I apologise if that is in the table; I might have missed it. What recommendations will be at the forefront of the timescale?

It would be helpful for the committee to know a bit more about the women's justice leadership panel. The minister is coming to my cross-party group in June, so we will know about that, but it would be useful for the committee to hear about the work that is going on, what it is hoped will be achieved and the timescale for that.

**The Convener:** That is fine. I think that we will cover that a bit in the action plan, but that is certainly noted. Thanks very much.

Are there any other comments on the submissions in paper 1?

**Jamie Greene (West Scotland) (Con):** I am not sure whether this relates to paper 1; it is hard to keep track sometimes. My question relates to the Lord Advocate's response to our letter on naloxone use. Is that an appropriate issue to raise?

**The Convener:** Yes.

**Jamie Greene:** Thank you, convener.

We wrote to the Lord Advocate and the Crown Office about the potential for police officer liability if an officer was involved in the administration of naloxone. We asked whether the Crown Office could make it clear whether it perceived any potential or theoretic liability if, for example, someone were to approach the procurator fiscal's office with a complaint, and whether it would deem it to be in the public interest to pursue that in law, or even whether that was something that could be pursued in law.

The response states:

"It is for the Police Service of Scotland through training and policies to provide comfort and confidence to officers in relation to their legal liability".

I find that a slightly odd comment to make. I am not sure which bit of Police Scotland's training policies would address the issue of legal liability. Surely that would be for the Crown to decide, and not for the police service through its human resources and training processes.

I understand the point. There is a similarity with, for example, the good faith use of other medical interventions by police officers, but it would be fair to go back to the Crown Office and ask whether, in that theoretical scenario, there would be the potential for liability if a police officer administered the drug.

I would also be interested to hear the response to that comment from the Scottish Police Federation, which represents a large number of front-line officers, and whether it is content that the current Police Scotland training policies are adequate to provide reassurance to its members.

**The Convener:** Your remarks are noted. I am certainly not going to attempt to anticipate any of that, but we can take what you have said forward.

Do members have any other comments about the submissions, or are we happy to move on? I found the Police Scotland submission quite comprehensive, and I was very pleased to see reference to the draft strategy that it is developing with regard to violence against women and girls. I would quite like to hear a little bit more about that, but I am sure that that information will be provided down the line. I was also pleased to hear about the multi-agency seminar on the draft strategy that

was convened by the Scottish Police Authority and which included a broad range of stakeholders.

It is good to see that some progress has been made on Police Scotland's stalking and harassment standard operating procedure and that training has been delivered to police officers—I could be wrong, but I think that it was provided to detectives—by the Suzy Lamplugh Trust. I am interested in knowing whether that training will happen regularly or whether it is just a one-off, given that it would be of value and relevant to officers as they change roles and responsibilities. I was pleased to see those updates from Police Scotland.

**Pauline McNeill (Glasgow) (Lab):** I want to raise a few issues, convener.

First, with regard to the submissions and the issue of violence against women and girls, it is really quite important that we draw our analysis not just from the statistics—after all, everybody is on the same page in acknowledging the seriousness of the issue. I have already discussed these matters with Keith Brown and Ash Denham and there is no particular disagreement. However, a view has to be taken on where we are, as a society, with the issue. It is now 2022, and violence against women and girls is arguably worse.

I know that Rona Mackay is convener of the cross-party group on the issue, so she is more of an expert than I am, but the work that I have done leaves me deeply concerned about the sexual harassment and so on that girls are facing in schools in 2022. The figures are astonishing. What I would like to see in the vision is a recognition of how severe the situation is and, as a result, an important connection being made between the justice portfolio and some other portfolios. Obviously, the justice portfolio cannot cover all the work that needs to be done to correct all of this, particularly with regard to young boys, young people and men. Having listened to all the debates on the matter and the comments made by many members, I do not think that there is any disagreement; I would just like to see some recognition of the seriousness of the situation.

Secondly, on the vision, if you like, for legal aid, I recognise the progress that the Government has made, but what the committee has been hearing loud and clear, and what members have been seeing in their mailboxes, is that there is concern about a deficiency or gap with regard to representation by defence lawyers. A recent case that was highlighted involved a young man awaiting trial, who was sent back to the cells because he could not get a defence lawyer. The policy is perhaps a costly one, but, in my view, we need something in the vision that means that we

do not have to wait until 2023 for the situation to be addressed.

**The Convener:** I would certainly pick up your point about legal aid. I do not know whether it is just a coincidence, but I have had a number of constituency inquiries about access to legal aid by victims of domestic abuse being challenged. It is a pressing issue, and it is important that we get updates on it.

**Russell Findlay (West Scotland) (Con):** With regard to legal aid, the committee had asked the Scottish Government to look at the role of the Public Defence Solicitors Office and whether that could be expanded to address the long-running dispute involving criminal defence solicitors doing legal aid work.

On page 11 of his submission, Keith Brown recognises the value of the PDSO. However, it is only when we turn to paper 2 that we see that, in response to our request, the Government

“indicated it was grateful for the role played ... but there was no commitment to a review”.

That just seems a little bit short sighted, perhaps; no explanation is really given as to why. Saying no is fine but it would be nice to know why.

**The Convener:** Okay. That is a point that we can easily take away. Thank you very much. Jamie?

**Jamie Greene:** Once you start us, we do not stop, convener. I apologise. However, there is a lot in the paper and it is our first day back. I appreciate your forbearance.

The letter from the Crown Agent goes through our recommendations in great detail. It would probably merit a little bit of written analysis in due course. Some of the points that the committee made are broadly accepted and some very comprehensive responses are given; for others, that is perhaps less the case.

Two issues stuck out for me. One was our question about the role of the Crown Office in the victim notification scheme and its relative success. The response seems to imply that that is not really its responsibility but that it will keep an eye on what the Government says in terms of its proposals. That is fine, but the committee thought that the Crown Office had an important or substantive role in the VNS and it seems to think otherwise. We would not have asked the question in the first place if we did not think that the Crown Office had a role to play, so the next question that I would ask is, if it is not responsible, who is?

At paragraph 307 of our report, the committee asked the Crown Office for

“details of how outcomes, such as reducing re-offending rates, are to be captured.”

Again, there is a very short and polite response, which is that

“The application of sentencing guidelines ... is for the judiciary only.”

I would therefore ask which bit of the judiciary is responsible, as sentencing guidelines are a relatively new feature of the justice system in that respect.

Finally, to pick up on Pauline McNeill’s point, we would not really be doing justice to the evidence that we received from the survivor if we did not refer to it in today’s meeting. I read it last night. There may be elements of it that individual members or the Government would disagree with in terms of some of the policy proposals, but it was quite sharp and pointed and I do not think that it can go ignored.

I will just quote briefly from it. The survivor says:

“I truly believe that everyone here thinks that they want to help end violence against women—but your inaction is violence against us.”

If that is how someone feels, it is true to them and perhaps to others, too.

On the third page of the submission, there is a long bullet list of recommendations that the survivor, who has broad experience of the justice sector, would like us and the Government to consider. I know that many of those have already been looked at in Lady Dorrian’s review and that the Government will respond in due course, but I think that the committee needs to put those recommendations, along with other comments that are made in the submission, front and centre in our work.

It is fair to say that, for many years, we and others have been going around in circles on this, and that is a point that was made, quite valiantly, in the submission. The survivor states:

“This is an emergency and urgent and drastic reform is required.”

That sums up where we are at, and I hope that the committee will make swift progress.

**The Convener:** Thank you. I will come back to the submission from the survivor in relation to a specific point that is made in it.

**Pauline McNeill:** This is a short debate on the substantial set of papers put before us, so I think that we are probably all holding back a wee bit in terms of prioritising. I am not going to give all my thoughts—I just want to put that on the record.

10:45

I note Jamie Greene’s comments with regard to the Crown Office and Procurator Fiscal Service’s submission, and I want to raise a more general

point just to find out what other members’ experiences have been. I do not feel that we are getting the data that we need from the Crown Office to support our examination of some of the issues that we are being asked to look at, and I do not feel that there has been transparency. A point that has come through loud and clear in relation to delays is that the Crown Office will be deciding which cases it is going to prioritise, and a big concern for me is the lack of transparency around that. I cannot disconnect the vision from the fact that we are coming through a pandemic that will cause the delays to continue.

For future reference, I would like—with anyone else who might be like-minded—to approach the Crown Office and ask for a little more information, now that we are, hopefully, coming out of the pandemic and beginning to tackle court delays. I do not think that it is unreasonable for us on behalf of our constituents and the people whose work we are trying to scrutinise—those in the Crown Office and the justice department—to get some insight into concerns that we will have over the next two years about the prioritisation of cases.

I will say no more than that, but I do not want to leave the matter there. Given that we are in public session, I put it on the record that I want to come back to the matter, because I am pretty certain that the committee will have concerns as things move forward and we try to get through these horrendously long delays. The Crown Office will, of course, want to protect its right to make its own decisions—and rightly so; I am not attempting to interfere with that—but I do not think it unreasonable for us as politicians and legislators to ask for a little bit more co-operation from the Crown Office and Procurator Fiscal Service to let us do our jobs.

**The Convener:** Thank you, Pauline. Those very valid points lead us to paper 2, which sets out in table form the recommendations that we identified as part of our work on the action plan. [*Interruption.*] Excuse me—I have to clear my throat. Please give me two seconds. [*Interruption.*]

On the basis of what we have discussed, we should move to paper 2. We have perhaps already covered some of the points that are relevant to it, but, as I have said, the paper sets out the recommendations that we made with regard to the action plan, the key issues that we identified and the progress that has been made on each this session. Obviously some of the issues are longer term, and some are shorter term. I hope that we can pick up some of what is discussed in the paper.

I do not want this to be a tedious process, but I propose that we go through the table section by section and members can make comments or raise concerns, particularly with regard to the

assessments that have been included in the table and which the clerks have assisted with. I think that we would acknowledge that they are, to some degree, subjective, but I hope that this approach will allow us to monitor areas where progress is being made and areas where we might need to push harder from here on in.

Moving on to the table, which is in the annex to paper 2, I will take each of the specific areas in turn, starting with “The impact of Covid and recovery”. Do members have any points to make?

**Collette Stevenson (East Kilbride) (SNP):** On Covid recovery and prisons, we asked for a detailed plan for the reinstatement of purposeful activity in prisons. I know that a paper came forward previously that extended the approach in light of Covid and the fact that there were a lot of staff absences due to it. However, I would like to get more meat on the bones and maybe even have HM Inspectorate of Prisons for Scotland come back in, if possible, as it inspects and monitors purposeful activity in the prisons. We would not get a full picture from the Scottish Prison Service. It would be good to bring the inspectorate back in, to see the stats and maybe where there are pitfalls in different prisons in the estate.

It is really important that purposeful activity and the rehabilitation programmes are brought back in. That is crucial.

**The Convener:** I wonder whether we can also ask for a written update from the inspectorate. We can see from the first couple of pages of the table that we do not have updates on quite a number of the issues relating to prisons that have been identified. We need to ask for an update.

**Rona Mackay:** Similarly, I would like to ask about the commitment on the use of mobile and video technology for contact with family and friends. I think that we heard during evidence sessions that there were plans in that regard, but I note that that is marked “To be decided” and that there is currently no information about it. We could get an update on when it will be decided whether that technology will continue to be used.

**Jamie Greene:** For the benefit of people who are watching and are not sure what we are staring at on our desks, the table is publicly available.

The table says:

“No information from the SPS currently provided”.

That is the answer to the question whether the Scottish Government agreed to the recommendation. That is the first point. Are we waiting for the Scottish Government to respond or for the Scottish Government to ask the SPS to respond to it or to us, or is the SPS responding to us directly?

I would prefer quite a detailed plan from the SPS. I think that the SPS should provide a Covid recovery plan to the committee that addresses each of the points, because there are more than half a dozen specific asks of the SPS. I am not fussed whether that comes through the Government or directly from the SPS. However, as an organisation, the SPS has a direct and quite important responsibility to come to the committee directly and say, “We hear what you’re saying.” We published the document months ago, and the SPS has had plenty time to look at it. We are now in the coming-out-of-Covid phase—we can see that from the arrangements in the room today—and I am really surprised that we have not had even a relatively short document from the SPS that responds to each of the points.

I think that we should press the SPS through the means that are available to us, and even perhaps set out a timetable for when we would expect such a document. That we should be sitting here with a table that says, “To be decided”, or saying that we do not know or have not heard is not a good place to be at this stage, and it will not provide any comfort to anyone who reads the paper.

**The Convener:** I assume that members agree that we should write to the SPS and ask for a prompt reply. I do not know whether members feel that it would be appropriate to set a timescale for that. Are members happy for us to do that?

**Members indicated agreement.**

**Rona Mackay:** The section on women and children refers to the work of the women’s justice leadership panel. At the end, it says:

“The Scottish Government’s Vision for Justice ... refers to the opening of the Bella Centre in Dundee and the Lillias Centre in Glasgow.”

If we ever have a gap in our schedule, it might be good for the committee to visit either of those places.

**The Convener:** I have the same note on my action plan. I would be very interested to hear more about that provision, and I think that it is appropriate to ask for more detail on the women’s justice leadership panel.

**Russell Findlay:** At the beginning of this document, it states that, ordinarily, the Scottish Government would respond to each point. Jamie Greene has already mentioned that the Scottish Prison Service has not responded to some significant items. Apparently, the protocol between the Parliament and the Government is that the Government would normally respond point by point. I do not know how unusual it is, but it feels as though there are quite a lot of big gaps in here.

I have quite a few points to make. Are we working through the document chronologically? Is that the plan?

**The Convener:** Yes—I thought that that would be the easiest approach.

**Russell Findlay:** Of course. I just wanted to make that general point. I do not know what we can do about that.

**Stephen Imrie (Clerk):** A suggestion is made in the body of the text of paper 2, in paragraph 11, that the committee could go back to the Government to ask it specifically to address each of the recommendations and clarify whether the Government agrees with them.

The convener said that our assessment was “to some degree, subjective” because we were not able to do a direct read-across between the committee recommending X and the Government responding accordingly. We had a 10-page response, from which we had to infer whether the Government supported the recommendation.

The suggestion that the convener makes to the committee in paragraph 11, which you can decide on later on, once you have been through paper 2, is for the committee to go back to the cabinet secretary and ask him to go through each of the points in turn—and, indeed, to go back to the Scottish Prison Service and anyone else to follow up where we do not have the information at the moment.

**Russell Findlay:** We cannot assume that omission is disagreement, so I think that it is important that we go back and ask again.

**Collette Stevenson:** Sorry—I am just wondering whether we gave the Government the table in the form that it is presented to us. Did we give it the table to populate the responses?

**Stephen Imrie:** When the committee published its report, the report contained the action plan as an annex. The report, with the table, was given to the Government and the request was made for it to address each of the recommendations in turn in order to find out whether it agreed with those recommendations. Similarly, the report was provided to the Scottish Prison Service, the Crown Office, Police Scotland and the Scottish Police Authority—our main justice partners.

Some of those organisations, such as the Crown Office and the police, responded to the report, while others, such as the Scottish Prison Service, have not yet responded. The Scottish Government did not respond on a point-by-point basis. I think that the minister’s letter explains why—the Government has published “The Vision for Justice in Scotland” and we were referred to that.

However, the suggestion that the convener makes in paragraph 11 of paper 2 is that, in order to make it easier to track progress on the recommendations—this picks up on the deputy convener’s point that we were not sure whether omission was disagreement or whether it was simply the case that the Government had not addressed that particular point—it is probably better to go back and check that with the Government. That will make it easier for progress on the recommendations to be tracked on an on-going basis.

**Jamie Greene:** There are two separate issues. The format in which the recommendations were provided is public, so the Government and officials can look at that. The first question is whether the Government agrees or disagrees with each recommendation. If it disagrees with a recommendation, that turns the “Progress against delivery” column red and that is a closed matter, because we cannot monitor progress on something that has not been agreed to, as a point of principle.

Secondly, if a recommendation has been agreed to, or partially agreed to, which may be the case in some instances, it is for the committee to decide, based on the evidence provided directly by Government or indirectly via an agency, whether we are confident that the recommendation is being delivered as agreed by the Government. It is for us to then fill in the “Progress against delivery” column appropriately.

11:00

Although it is helpful to be pointed in the general direction of the wider policy document, because it probably contains a lot of detail that might help us, I have to say that that is a one-off document, not a working document, whereas the document that we are discussing is a working document—in other words, a live document. The only things that we would have to agree by mutual consent with the Government are the parameters by which we will monitor progress and whether that will happen every few months, every six months or whatever, but the Government needs to know that, as we carry out our formal work as a committee, we will regularly revisit this list and agree—or disagree, as is our prerogative—on whether we think that it and its agencies are meeting the objectives.

As Mr Findlay has pointed out, we cannot yet decide on those issues that are marked “To be decided”, because we do not have the evidence and have not had a response from the Government. I will give it the benefit of the doubt and another chance to come back at our next meeting, but I do not want to leave it too long before we have another such review. That might give the Government—and the officials who will

probably write much of the response—some time to take the more thematic approach that we have created to what were recommendations, which I think is easier for the wider public to understand. I, as I think we all do, simply want people out there to be able to look at this document and say, “Good—I am glad to see that progress is being made,” or “I am disappointed that progress is not being made.”

**The Convener:** Thank you for that. The only point that I would make is that this is the first time that we have revisited the action plan. I like the document visually, and I think that it is helpful for the public in allowing them to go in and get a broad idea of where we—parliamentarians, the Government and others—are in relation to various issues. This is a changing document, and I hope that its colours will change over time but, at this stage, I am comfortable with where we are. However, it is helpful to hear members’ comments and suggestions so that we can make the document as useful and as valuable as possible.

Pauline, did you want to come in?

**Pauline McNeill:** Stop me if I am coming at the wrong bit, convener, but I wanted to mention specialist courts.

**The Convener:** We will come to that in a moment. Did you want to come in at this point, Rona?

**Rona Mackay:** Pauline McNeill has just asked the question that I was going to ask.

**The Convener:** In that case, we will move on. I thank members for their comments on the section on Covid recovery.

I am aware that we might have covered some points that will arise as we move further into the document, but I suggest that we move on to page 7 of paper 2 and the section on prisons and prison reform. I know that some comments have already been made on women and children in prisons, but I think that Fulton MacGregor wants to come in here.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** With regard to remand, which is the first issue that is highlighted, I wonder whether it would be worth mentioning in the “Notes and additional information” column the extra £3.2 million that has recently been announced for diversion from prosecution. I know that it is mentioned somewhere else; in fact, I have just scrolled down and seen the reference to

“a further £3.2m for bail supervision schemes”.

I am content that it is mentioned in the document, but I wonder whether the first box in that section might be the best place to put it. I think that that would make the point more clearly—although, if

anyone disagrees with me, I say again that I know that reference is made to it elsewhere. However, the first box is about remand, and the key issue in that respect is getting

“details from the Cabinet Secretary on how he plans to tackle remand numbers”.

As he has made an announcement on that very matter, it should be mentioned there.

**The Convener:** That is a fair point.

We have talked a little about women and children, and Rona Mackay has already mentioned the Bella and Liliias centres. I am quite keen on the suggestion that we arrange a visit at some point, if we can fit it in.

**Rona Mackay:** That would be good.

**The Convener:** Moving on to page 8, I have to say that what jumped out at me was the issue of residential rehabilitation and “funding for improved provision”.

Back in March, there was a debate in Parliament on a person-centred, trauma-informed public health approach to substance use in the justice system. Reference was made to funding support and plans for residential rehabilitation. We might be able to provide an update on that in the plan.

**Jamie Greene:** Are we still on page 8?

**The Convener:** Yes.

**Jamie Greene:** Great. My colleague Russell Findlay might disagree, because he has been passionate for a long time about the issue of the photocopying of prisoner mail, but my interest is in the three issues in the middle of page 8—recovery cafes, residential rehabilitation and throughcare—and the fact that we are not quite sure who is responsible for those. There is an indication that throughcare is

“an operational matter for SPS.”

Of course, the Government would say that, as it wants to maintain the independence of the operation of day-to-day activities.

However, if we take a step back, there is a much wider point, which is what the Government’s strategy is for people who go into prison with mental health and addiction issues, and what the link is between those issues and reoffending rates. The fact that we are asking for improvements to rehabilitation, funding and throughcare identifies that there is a problem. Again, it is not acceptable to be told “No information provided” and “To be decided”. We are being told “We don’t know” or “It’s not our responsibility.” It is not good enough for the Government to say, “Oh, that’s an operational matter for the police, the SPS, the

Crown or the courts.” We are asking the Government and it should get the answer for us.

“Tackling drug use in prisons”, on page 9, is probably the next big issue, which leads to the point about photocopying mail. It is all very well marking as green the fact that there has been a practical change in one element of that process, but what is the wider strategy? Although that may be an operational matter for the SPS, I would see it more as a Government policy matter, given the scale of the issue and the fact that the prison service is diverse and run by different operators through different operational means and contracts. Tackling drug use in prison is a big issue that has been a running theme in this committee and others, but the table on page 9 just says:

“No information from the SPS currently provided”.

I know that this is our first session on the action plan, but those are the sorts of big issues that I would expect to see a lot more detail on.

My final point about page 9 is a personal expression of disappointment about HMP Greenock—I declare a local interest—and our specific ask around the five-year investment strategy. Large chunks of the prison estate are vastly out of date, and we know how long it takes to procure, rebuild, renovate and renew the estate. I do not think that we can wait another five years before the conversation on that even kicks off. However, that is an issue that individuals can press the Government on.

**Collette Stevenson:** I have a suggestion, based on Jamie Greene’s points. David Strang, who is heading up the Scottish Drug Deaths Taskforce, was previously chief inspector of prisons. If the committee is so minded, we could get him in to provide an update, particularly on throughcare. Having worked with him in the past, I know that he is particularly keen on throughcare and transition for prisoners. I would be really keen to hear what progress has been made by the task force, particularly in the area of justice.

**The Convener:** I was not entirely sure what the status of throughcare was. I think that we all agreed that it was a priority. Again, I am conscious that we are at a relatively early stage—that is not at all making excuses.

On the three points that Jamie Greene raised, I am optimistic that updates are available—it is just that we have not received them. We need to press for them, and I am happy to do that.

Moving on to page 9, Jamie picked up on the estate issue. Would you like to come in, Rona?

**Rona Mackay:** On the “Under 18s/Secure care” section, this might be a bit premature, but I am keen to know whether that issue will be dealt with in the children’s care and justice bill. Do we have

any idea of when—in what year—that bill might be introduced and whether that issue would be part of it? I think that it is very important for the ability of over-18s to remain in secure care if they do not have long left on their sentence, rather than being immediately transferred to an adult prison, to be included in the bill. As I said, it might be a bit premature, but it would be good to get an idea of that.

**The Convener:** Agreed.

**Stephen Imrie:** It is my understanding that that is likely to be in the children’s care and justice bill, and that that bill might be introduced as part of the next legislative session. Of course, I am not party to the Government’s programme for government in September, but I will try to find out a bit more information about that bill, its likely provisions and whether we can expect to see it soon, and then I will let the committee know. However, it is my understanding that that recommendation is likely to be addressed in the bill, so although we say that such a provision “may” be in the bill, we are fairly confident that it will be in the bill.

**Rona Mackay:** Thank you.

**Pauline McNeill:** A key issue that seems to be missing is the fact that some children, such as William Lindsay Brown, were sent to Polmont prison because no secure accommodation was available. There is crossover with the issue of deaths in custody in that case. I presume that that will be covered in the bill.

**Jamie Greene:** Given that the bill is not imminent and the Parliament has had a short debate on HM Inspectorate of Prisons for Scotland’s comments about where people are sent to, I would find it helpful to understand the Government’s position on where people go and under what circumstances. There is a little bit of confusion as to whether, as a matter of principle, or as a blanket position, no one under 18 would ever be sent to HMP Polmont, for example, or whether there are circumstances when it would be an appropriate place for them to go to. If the Government is simply ruling that out, we need to know what its plan would be. It begs the question as to who goes to which institution under what circumstances and for how long.

I know that legislation is coming down the line, but, given that this is a live discussion, it would be helpful if the Government set out its current position, because people are sentenced frequently. If that identifies that there is a gap in, for example, secure care accommodation—that is why people are being sent to Polmont—the committee can press the Government to take action on the issue more quickly.

I do not think that it is appropriate to wait for the bill, as we are currently implying that we will do, to

see what the Government is proposing. It would be helpful to understand where the Government sits in response to the comments that the wider public have made around the issue. We have pressed the issue in the chamber, but I feel that it is not quite clear exactly where the Government sits at the moment in terms of the suitability of certain places for certain crimes and people.

**The Convener:** Okay. I do not have an issue with that. It is one of the more pressing issues that we have a constant interest in monitoring, so I am quite happy that we go back to ask for some clarity around that.

We will move on to page 10, if everybody is happy with page 9.

**Russell Findlay:** There is reference to a revised serious organised crime strategy. “The Vision for Justice in Scotland” says that the strategy is to be finalised by spring 2022. Is there any way of getting an update as to when that might be published and whether it will be a public document? That would be helpful to know.

11:15

**The Convener:** Okay—thank you.

We have already spoken about purposeful activity, so we will move on to page 11. We have spoken a little bit about the misuse of drugs and the criminal justice system already.

**Russell Findlay:** I am a bit confused about what the table says about civil recovery. Forgive me if I have not seen the information that it says has been provided—perhaps the clerks can point me to that after the meeting. We know little about how much is recovered or whether it is possible to measure if that amount is sufficient.

**Stephen Imrie:** On pages 8 and 9 of paper 1, there is some information from the cabinet secretary on civil recovery, including figures on how much the civil recovery unit has recovered since 2006. If that is not sufficient for members and you are looking for more information, the clerks can follow the matter up for you. Members can take some time to look at that and get back to us after the meeting. We can ask for more information, if what is provided is not sufficient, if you want it in a different form or if you want additional statistics.

**Russell Findlay:** I notice a running theme: a tendency for the Government to amalgamate numbers for a bunch of years and present them without enabling us to break them down year by year, to see whether there is any pattern or direction of travel. It might be useful to get a table with the amounts recovered by year.

**Jamie Greene:** This might be more of a structural point. We have marked that issue as completed in the table: we asked for information and it was given, so it is completed. However, the question is whether we are content with the information and whether the objective of our recommendation has been achieved. Therefore, I would refrain from turning to green the “Progress against delivery” box in the table until the committee has discussed whether it agrees that the information is sufficient or whether the matter is still a work in progress.

**The Convener:** We need to keep that issue open. That is fine.

We move on to page 12, which covers “Long-term actions”. Again, I refer back to the recent chamber debate. It might be relevant to include some of the updates from that in the table.

On trauma training, I noted the update in Police Scotland’s submission on that issue. I think that the training is being delivered by NHS Education for Scotland, which I was pleased to see.

We move on to page 13. Jamie Greene has a point and then Russell Findlay can come in.

**Russell Findlay:** It might be the same point.

**Jamie Greene:** You go first, Russell.

**Russell Findlay:** We have already stated that we have not had responses to a lot of stuff, but there are so many unanswered questions as to where safe consumption rooms might be, including whether they would be mobile or in communities, and about tolerance zones around them. That seems to be a big omission.

**The Convener:** When we took evidence separately from the Minister for Drugs Policy and the United Kingdom Minister of State for Crime and Policing at the joint committee meetings that we held, there was quite a bit of discussion about safe consumption rooms. That is relevant to that point.

We move on to violence against women and girls—*[Interruption.]* I beg your pardon, Jamie.

**Jamie Greene:** I am pleased to say that my point is not the same as Russell’s. I want to ask about diversion funding in general but also as a matter of principle. The table notes budget increases in that area. Two things are missing from the information. There is clear divergence in the range, volume and quality of diversionary activity that takes place across local councils. That is a piece of work in itself.

I would also be keen to hear a response from the Convention of Scottish Local Authorities and others as to whether they believe that that level of funding will enable them to meet what is being asked of them. Clearly, the number of people who

come through the system is outside their control, and although any budget increase is welcome, the amount seems relatively small.

On whether diversion will be successful, the proof is in the pudding. The issue is not just about diversion funding; it is about whether diversion meets its objective as an alternative to prosecution. The delivery of that is largely through local authorities. Whatever your views are on that, it is clear that, when you unearth what is happening on the ground, the picture is diverse. In some places, the policy seems to have been done very well; in others, it has been done less well, to be honest. The committee needs to look not just at the Government's promise of money, but at how the policy is being delivered and whether we are content that it is meeting its objectives.

**The Convener:** Thanks for that. We will move on past page 13.

**Rona Mackay:** We mentioned Lady Dorrian's report at the start of the meeting, and we were going to chase up the date for the completion of the work of the multi-agency group. I do not understand part of the notes in the table, so perhaps a wee explanation is needed. It states:

"The ... Vision for Justice indicates that the timescale for this is 2022, leading to a consultation on the Police Complaints, Investigations and Misconduct Bill in 2022".

I am not sure what the connection is with Lady Dorrian's report.

**Stephen Imrie:** I might need to go back to Government officials to clarify the matter, but I suspect that elements of Lady Dorrian's report relate to how the police investigate allegations of violence against women and girls, that that might lead to changes in practice in how the police deal with that, and that it is the Government's intention for some of those changes to be made through the police complaints, investigations and misconduct bill, which we might see in the coming months. If the committee is content, I am happy to go back to clarify that point and to ask specifically what Police Scotland-related changes we can expect to see from Lady Dorrian's report, what the vehicle is for how those changes will be made and when those will be made.

**Rona Mackay:** Great—thank you.

**The Convener:** That takes us on to pages 14 and 15. I am conscious of time. I point to pages 16 and 17. We have spoken about the review of service standards, and I am pleased to see reference to the stalking and harassment SOP and the training from the Suzy Lamplugh Trust. That is of value.

**Russell Findlay:** It is worth noting that, in relation to victims, there was no response from the

Crown Office, the Scottish Courts and Tribunals Service or the Parole Board for Scotland on—

**The Convener:** On the Moorov doctrine?

**Russell Findlay:** No, on the review relating to victims and witnesses. I do not know whether that is a problem or not. It is fine that the police have responded and appear to have told us what they are doing in relation to stalking, but the issue goes much deeper than that. It is about the courts, the lack of communication, the Crown Office and decisions that are made but not communicated. There is no response on that. That would not reassure a victim.

**The Convener:** Maybe we should pick that up. It is a good point.

Pauline, do you want to come in?

**Pauline McNeill:** I have two points. I want to highlight one of the actions in relation to Lady Dorrian's report. We recommended:

"Improved communication with complainers, including the provision of a single trauma-informed source of contact".

That makes total sense, given the evidence that we have heard, but I do not know whether, at this point, we might want to register that we would like to know more about that. I am never clear about the relationship between the police and Victim Support Scotland and the work that it does. I would just like to mark that for future reference. Also, given the evidence that we had from complainers, we may also want to hear more about

"The expansion of advocacy support services".

On specialist courts, I understood that the specialist court proposal would allow for 10-year sentences, but the key issue column in the table says that, if a specialist court were to be established, it

"could have unlimited sentencing powers".

I do not recall the Government suggesting that the sentencing powers would be unlimited. I remember the committee questioning whether a specialist court should be able to give a maximum sentence of 10 years. I have no problem with the principle but that was not what was said to the committee. That was my understanding, anyway.

**The Convener:** That is my recollection, as well, so I would not disagree with that.

I am conscious of the time, so I will keep us moving through the document. We are up to page 18—

**Pauline McNeill:** Just before we move on, I note that, on the use of the Moorov doctrine, which is in the section on "Long-term actions", the table says:

“sheriffs and judges should ensure that juries understand the consequences of applying the doctrine”.

I do not recall who was in my group, but a lack of understanding about that was a big issue. It is my understanding that the Moorov doctrine is used more commonly for good reason: to try to get convictions. The Crown Office said that it did not agree with our recommendation. However, that does not square with what is in the table about sheriffs and judges. It is not for the Crown Office to say whether sheriffs and judges should explain the doctrine.

I accept the Crown Office’s point that it would be undesirable for prosecutors to discuss hypothetical situations—I am okay with what it has said in that regard. However, there needs to be separation in relation to the role of sheriffs and judges.

I am absolutely clear in my mind that it is a good thing to explain to juries the implications of applying the doctrine so that juries are clear about that, and I am totally fine with that not being explained by the Crown Office. However, those are two separate points and they should be in two separate boxes, otherwise there will be confusion on that very important issue.

**The Convener:** That is helpful. I will move us on to page 18.

**Russell Findlay:** The progress box on “Codes of Practice” is green—it is marked as “Completed”. I do not want to ruin anyone’s happiness, but there has been no response from the Lord President or from the Scottish Courts and Tribunals Service about complaints and how people might get redress—not in relation to judicial decisions, but in relation to conduct issues. I do not know whether they just did not choose to respond or whether there is any desire to go back to them to follow up on that.

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

**Russell Findlay:** There have been some historical issues with the judicial complaints process, which resulted in the first judicial complaints reviewer, who said that the role was pretty toothless, standing down. It is worth seeing whether anything has changed.

**The Convener:** I will move on to the section on “Victims’ rights and victim support”. I will just go through the table section by section now instead of page by page, in the spirit of time keeping. The section starts on page 19. Is there anything in it that anyone wants to raise?

**Jamie Greene:** On the victim notification scheme, the comment is that our recommendation was agreed to “In part”. The column on “Notes and additional information”, refers to the work of the victims task force, a review of the victims commissioner for Scotland and so on. When do

we expect the Government to come back to us? What format will that be in? Will it be a report, a parliamentary debate or legislation?

Given that there are a lot of wide and varied issues—although I do not want to go into all of them in detail today—around the VNS and other aspects related to supporting victims, I would like to know whether the Government will come back with a specific victims strategy, and what the format and timescale of that will be. That might take the pressure off us to chase up on individual points.

11:30

**The Convener:** If there is nothing else on victims’ rights, we will move on to “Reducing youth offending”.

**Russell Findlay:** Sorry—I have one thing to add.

**The Convener:** On you go.

**Russell Findlay:** On page 20, the table says that the Parole Board for Scotland did not respond to our recommendation. Recent data suggests that people who had applied to attend parole hearings had all, I think, been turned down. It would be nice to know what is going on.

**The Convener:** Thank you. We move on to page 22 and the section on “Reducing youth offending” and “offering community justice solutions and alternatives to custody”. Does anyone have anything to raise on that? If not, we will move on to page 26 and the section on legal aid.

**Pauline McNeill:** Can I clarify something? Death in custody is covered on page 24. There is a statement about the cabinet secretary accepting all the recommendations on 2 February and providing an update by the summer of 2022. I have nothing to say about that, other than to highlight the importance of that statement.

If I recall correctly, accepting all the recommendations means that deaths in custody would be dealt with more quickly and that, regardless of whether there was a police investigation, immediate access would be provided to all the relevant information. I am very surprised that neither Police Scotland nor the Crown Office has said anything about that. That would mean that two things would be running in parallel. Let us look at recent cases in which there might have been criminal behaviour, such as the Allan Marshall case. If there had been “unfettered access” to the prison and the staff to find out what happened, would that have sat well with the current arrangements, which is that we wait to see whether there is a fatal accident inquiry or a police prosecution?

I am in favour of the recommendations, but I was expecting clarification to be provided on whether those two processes can sit alongside each other. Given the number of deaths that we have had in custody, that is quite an important issue.

**Russell Findlay:** Picking up on Pauline McNeill's point, there has been a 60 per cent increase, year on year, in deaths in custody. Each of those is subject to a fatal accident inquiry, but those inquiries are beset by chronic delays that predate Covid. Some of them can take years. Very few of them make any form of recommendation in respect of deaths in custody—I think that 90 per cent of them do not. What is said in this part of the table feels slightly superficial, as so much of the Government's response does, because of the volume and the huge amount of ground that is being covered. It will be very interesting to find out what the Government's update says in summer 2022, how thorough and detailed that is, and whether it is a tinkering or a serious attempt to do something about the issue.

**The Convener:** Thank you. Finally, does anyone have any points to make about the section on legal aid?

**Jamie Greene:** I can cover page 26—*[Interruption.]* Excuse me. Everyone has a frog in their throat this morning—it is because we are all sitting close together.

Looking at pages 26 and 27, the first box is about information on the Government's plans. We have identified that more clarity is still needed on the short-term measures that will be taken. Obviously, the issue is playing out in the wider domain, but there is still substantial disagreement between the sector and the Government. It is an area that we need to keep a close eye on, and we could invite representation from all parties to update us on their views on the matter. It is all very well reading about it in *The Times*, but it would be nice to hear from those concerned in a formal committee setting.

The other issue relates to the role of the PDSO. I was not going to butt in on the point that Pauline McNeill made about the Moorov doctrine but, in its response, the Crown Office made it very clear that it does not believe that it is the procurator fiscal's role to inform complainers of potential outcomes and scenarios and why or how a certain outcome might arise. That shows the importance of the PDSO and its potential role in improving that. If the Crown Office is going to say that that is not its job and that it would be inappropriate for that to be part of the prosecutor's role, that begs the question of whose role it is.

The fact that the relevant recommendation has not been agreed to leaves a gap. I think that the

committee should consider pushing the Government on that. If the Crown Office is not the right body to better inform complainers, what is? How are we going to address the issues raised by the Moorov doctrine question?

**The Convener:** It is a complex part of the law and it is important that people understand the implications.

**Pauline McNeill:** I have strong feelings about the PDSO, based on past experience. I am not against it in principle, but successive Governments have tinkered with it. I would prefer to see something that deals with both the PDSO and the issue of legal aid rates. I think that, as a nation, we want to have a criminal justice system that serves the interests of the accused. We should not lower the quality of representation just because we have reached a point where we have a problem that has been building up over a number of years.

It is important that the Government recognises that point, regardless of any progress or on-going discussions. I would like the Government to say, as part of its vision, that it believes that that principle is important. I think that the Government has said that, but it is important, whichever path we take to resolve the issue—which might involve the provision of more public funding—that the principle should continue to apply. What kind of justice system would it be if an accused person did not have the best quality of representation or a choice of representation, or if they had deficient representation?

**The Convener:** That brings us to the end of our discussion of the action plan. I appreciate everyone's comments.

Before we leave this agenda item, I turn to paragraphs 11 to 13 of paper 2. Do members agree that we should take forward those suggestions? They include the suggestion from the survivor we met, whom Jamie Greene spoke about earlier, who suggested that we should raise with the Lord President the issue of the fees that are charged for accessing court records. Do members agree to pick that up and take it forward?

**Members indicated agreement.**

**Russell Findlay:** I have past experience of trying to obtain court transcripts. It is not easy; indeed, it can be almost impossible. I am not surprised by the survivor's experience. I wonder whether the process is designed not to be easy. I do not see any good reason why transcripts should not be freely available.

**Collette Stevenson:** When we visited the High Court, I asked the Lord President about why sentencing statements are on the website. It is not clear what the survivor is asking for. Is she asking

for transcripts or for everything that relates to the case? I looked at the Crown Office website. I might be wrong or I might not have looked in the right place, but there seems to be a lot of information there to do with criminal appeal cases and very little about other cases. How and why is that information published? Is there an issue with confidentiality? There is no rhyme or reason. I would like more information about what is in the public domain.

**The Convener:** That is not clear and perhaps that should be part of the request that we send to the Lord President.

**Jamie Greene:** The idea that a victim should have to pay £3,000 or £4,000 to get access to records is utterly ridiculous. Everything that we have said this morning will be online by 9 o'clock tomorrow.

On the wider point about what we do next in relation to the discussion that we have just had, a number of issues have been raised, not just on the suggestions in paragraphs 11 to 13 of paper 2, which were made before we had the discussion. I would appreciate it if the clerks could help us to collate those issues so that we can write to the Government about the general feedback that we have given today.

**The Convener:** I thank members very much. We are a wee bit over time. I appreciate members' comments. We will return to the action plan before the summer recess to find out what further progress is being made on the points that we have picked up and the recommendations that we previously made.

## Subordinate Legislation

**Crime (International Co-operation) Act 2003 (Freezing Order) (EU Exit) (Scotland) Regulations 2022 (SSI 2022/95)**

**Firemen's Pension Scheme (Amendment) (Scotland) Order 2022 (SSI 2022/79)**

**Police Pensions (Commutation) Amendment (Scotland) Regulations 2022 (SSI 2022/80)**

**Police Pensions (Scotland) Amendment Regulations 2022 (SSI 2022/101)**

**Firefighters' Pension Scheme (Scotland) Amendment Regulations 2022 (SSI 2022/103)**

11:40

**The Convener:** Our next agenda item is consideration of five Scottish statutory instruments. I refer members to papers 3 to 5. For the record, I remind members that I am a former police officer with Grampian Police and Police Scotland.

Paper 3 relates to the Crime (International Co-operation) Act 2003 (Freezing Order) (EU Exit) (Scotland) Regulations 2022 (SSI 2022/95), on which we need to make three decisions. We need to decide whether we agree with the Delegated Powers and Law Reform Committee that the use of the negative procedure is appropriate and that the Scottish Government is correct to assess the instrument as being of low significance for the reason that it contains minor and technical changes and relates to continuity of law without making any change to policy. We also need to decide whether we have any further comments to make on the instrument.

Do members have any comments to make or are they content?

**Rona Mackay:** Do you mean on everything?

**The Convener:** No—just the first instrument. Are members content?

**Members indicated agreement.**

**The Convener:** Paper 4 covers the next two instruments—SSI 2022/79 and SSI 2022/80. Does members have any comments to make? If not, we will consider the SSIs as coming into force.

**Pauline McNeill:** Members might be aware that there was recently some press coverage on the changes to the police pension. I have already

written to the chief constable about the matter. I believe that he is concerned about the exodus of police officers, which is totally understandable, because the changes—which I understand are legally necessary—encourage them to go. We are going to lose hundreds of police officers who have reached the age of 50.

Although I think that I am correct in saying that, according to the policy note, there is no additional cost to the public purse, it would be remiss of us not to note that the SSI relates to something that is of deep concern to running our police service. It is understandable that police officers will take retirement, but there will be a huge skills deficit in Police Scotland. I suggest that, at a future point, we might want to think about how the committee addresses that with the Government and Police Scotland.

11:45

**Russell Findlay:** To continue on the media stuff, I do not know if there is any detail on this, but I have been told that something like 20 to 30 per cent of those who could apply—which is about 1,700, I believe—were expected to apply, but it turns out that 80 per cent of them have applied. That has serious potential implications.

**The Convener:** I am certainly aware of the recent media coverage, and the inferred link between the two issues. It is probably appropriate for us to monitor that.

**Jamie Greene:** I will not oppose the SSI—who am I to stand in the way of someone's retirement? However, we could request that the Government and Police Scotland outline their strategy on recruitment and provide some data, including on the time lags involved. We could ask about increases in intake at the Scottish Police College and when those people could become operational, so that we can look ahead to ensure that there will not be a lag in resource at Police Scotland. We need to keep our eye on any potential for that.

**The Convener:** We could ask about what recruitment mitigation is being put in place.

Is there anything else? Otherwise, we will consider the SSIs that have just gone through—

**Pauline McNeill:** I have a point of clarification, following on from what Jamie Greene has said. I am not suggesting that I would vote against the instrument. In fact, I do not think that we can, theoretically, as we are discussing a legal requirement. Would it make any difference whether we voted for or against the instrument? Do you see what I am saying? It feels as though our hands are tied. Even if I was inclined to vote against the instrument—so that we could establish the timeline and so that I knew exactly what I was

voting for, as a legislator—I feel that there is a legal requirement on us. The note before us does not say that, however. It would be helpful to get that—

**The Convener:** Could the clerk come in to clarify that?

**Stephen Imrie:** I should clarify that, if any member wanted to suggest that the instrument should not come into force, they would be required to lodge a motion to annul the instrument at the chamber desk. The committee is required to report on the instrument by 27 April. If someone is minded to suggest that the instrument should not come into force, they will need to speak to the chamber desk between now and 27 April in order for that to go on next week's agenda. Without a formal suggestion being made that the instrument should not come into force, it will come into force. If any member does not want the instrument and its provisions to come into force, they will have to lodge a motion to annul it before 27 April, so that the committee can consider the matter.

**The Convener:** Thank you.

Are you content with that, Pauline?

**Pauline McNeill:** I am content with that—and I am not intending to take such action, by the way. However, given what we already know, we need to know what the legal position is. What is the point of lodging a motion to annul if we have a legal obligation? The measures arose from a court case.

Russell Findlay is quite correct: press reports suggest that 80 per cent of the police officers concerned have already applied, with 1,700 people being eligible. Can you imagine that? I feel that the note before us does not reflect the enormity of what the Parliament is being asked to sign off. I kind of feel that we have no choice, but it is important to say how we feel. What choice do we have?

**The Convener:** I accept the points that you make, which are obviously shared by other members, so I am happy for us to pick up the issue offline and consider it more closely. It is a very valid issue to raise.

**Collette Stevenson:** Referring to what Pauline McNeill has been saying, the instrument before us is the first of two pieces of subordinate legislation that are coming through. It might be worth pursuing the matter to get answers to some of the questions that she has raised. There are two aspects to it, but the heart of it relates to the McCloud judgment and the need for levelling up, given the discrimination that came about.

**The Convener:** That brings me on to paper 5, which covers the final two related instruments—SSI 2022/101 and SSI 2022/103. Do members

wish to make any comments over and above what we have already discussed? Otherwise, we will consider the SSIs as coming into force, while agreeing to consider further offline the potential unintended consequences of the measures.

Are members happy with that? Are we in agreement?

**Members** *indicated agreement.*

**The Convener:** That completes our consideration of the Scottish statutory instruments before us, and that concludes the public part of our meeting.

11:51

*Meeting continued in private until 13:10.*

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