



OFFICIAL REPORT
AITHISG OIFIGEIL

Criminal Justice Committee

Wednesday 2 November 2022

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot or by contacting Public Information on 0131 348 5000

Wednesday 2 November 2022

CONTENTS

	Col.
PRE-BUDGET SCRUTINY 2022-23	1
CORRESPONDENCE	49

CRIMINAL JUSTICE COMMITTEE

27th 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

THE FOLLOWING ALSO PARTICIPATED:

John Logue (Crown Office and Procurator Fiscal Service)

Eric McQueen (Scottish Courts and Tribunals Service)

Teresa Medhurst (Scottish Prison Service)

Gerry O'Donnell (Scottish Prison Service)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 2 November 2022

[The Convener opened the meeting at 09:31]

Pre-Budget Scrutiny 2022-23

The Convener (Audrey Nicoll): Good morning and welcome to the 27th meeting in 2022 of the Criminal Justice Committee. We have apologies from Katy Clark.

Our first item of business is pre-budget scrutiny of the Scottish Government's forthcoming budget for 2023-24. I refer members to papers 1 and 2. We will hear from two panels of witnesses. I give a warm welcome to our first panel: Eric McQueen, chief executive of the Scottish Courts and Tribunals Service; and John Logue, interim Crown Agent with the Crown Office and Procurator Fiscal Service.

We will move straight to questions and I will kick off with a general opening question. Before we get into more detailed questioning around the specific implications of the indicative flat cash settlement, I am interested to hear your initial reaction to the Scottish Government's proposal that there may be a flat cash resource settlement for the next few financial years.

Eric McQueen (Scottish Courts and Tribunals Service): From our point of view, the flat cash settlement is not a viable position in terms of how we operate the courts. We have serious concerns. It is not just about efficiencies, which have been a big part of our business over the last number of years. Going down to the flat cash route would cut into our core service delivery and seriously jeopardise where we want to go in terms of reform.

During the pandemic, the funding from the Scottish Government has been first class. We have been incredibly well supported through loss of income of about £50 million, digital investment of about £10 million and Covid planning funding of about £5 million. We have had a good level of funding again this year that has helped us through some of the challenges around pay, particularly with the cost of living, and increased funding to help us put a pay deal in place. Up until now, the funding has been positive, particularly the funding that is in place for the court recovery programme—the overall package of £50 million—which is included in the resource spending review for future years. That, again, is something that gives us some comfort.

The fundamental issues with where we are going with the cost of living and inflation are that we see potential gaps of about £30 million over the four-year period. That £30 million would be nigh on impossible to realise without impact on core service delivery. That is primarily because of the inflation impact, where we see an annual inflation increase of about £3 million. Part of that inflation is on services, but it also involves increased energy costs and, particularly, the expectation around future pay settlements.

We have tried to set out in our written submission the areas where we think that a flat cash settlement would have most impact and we have also tried to say that there are opportunities for how we could provide a more effective service with the continued investment. Some of the ideas are around reform, particularly in relation to Lady Dorrian's review of sexual offences. The work that is now being undertaken in the summary case management pilot and other areas that we are looking at around virtual custodies and the potential of a different way of dealing with domestic abuse cases will provide not just a more effective service and, hopefully, a more efficient service, but a better system for complainers, witnesses and accused who take part in it. We are keen to make sure that this is not an opportunity that is lost and results in us being set back.

The court recovery programme has been a major part of our work over the course of the past 18 months. As we reported last week, we have taken 10,000 cases off the backlog in the space of the first year of the recovery programme. We now want to extend that programme to the next stage. With summary business largely coming back on track—we expect we will be back there by March 2024—we want to move and expand the programme now and add further courts into the solemn business in the High Court and sheriff and jury courts.

That will be challenging for the system as a whole. It is not just about capacity; it is very much about people—staff, judiciary, the legal profession and John Logue's staff in the Crown Office and Procurator Fiscal Service, because, essentially, there will be significant strain. We are pretty much now pushing to a place where we are at a maximum capacity level but if we go into it with our eyes open, keep it under regular review and listen to the feedback, we can get through it. That will make sure that we get the solemn programme back to a more acceptable level by March 2025 for the High Court and March 2026 for sheriff and jury courts. Those areas are within the spending review, which is positive, but if our core budget is being reduced, it compromises our ability to deliver on that programme.

We are having these discussions today about a spending review that has been produced for four or five months now. At the same time, we are having discussions with the Cabinet Secretary for Justice and Scottish Government officials about the type of funding that we will require for future years. In a sense, it is almost as if there are two slightly different discussions taking place. My hope and expectation is that we do not end up in the flat cash situation and that we find a way of putting in place an affordable budget that allows us to carry on with recovery and with the transformation that we all want to see across justice.

John Logue (Crown Office and Procurator Fiscal Service): The best way that I can answer your question is to recognise how the Crown Office and Procurator Fiscal Service has come to this point. That starts with a number of years of what was recognised by the Scottish Government as significant underfunding in our budget allocations, which has been addressed in the past few years. That has been done by working with the Government to be transparent and share with it detailed evidence about what the challenges were, our commitment to reform and our ability to make savings where we could do so. Members of the committee will be aware that the consequence of that is that the budget for the fiscal service increased from just under £110 million a few years ago to a budget of approximately £175 million this year.

Our position in considering the resource spending review is to start from that point, to recognise the achievements, the things that we have been able to do with that increased investment—I am happy to talk in more detail about those this morning—and to affirm that our ambition is to keep going with that work. We do not pretend for a moment that the job is done in relation to that increased investment—there are still things that we want to do and things that need to improve, and it is important that we recognise that. We need to continue in that direction.

Therefore, our position on flat cash and the RSR is that, without the continued investment and the recognition by the Government of the breadth, the detail and the importance of the work that the fiscal service does, the progress that has been made in the past few years would be at risk and we would not be able to fulfil that ambition to keep going.

In general terms, the consequences for the system as a whole rather than for the fiscal service as an organisation would be that the system would be slower than anyone would like it to be. Our ambition is, through reform, to keep trying to improve the way in which the system operates. Flat cash undoubtedly would result in the system being slower. It would be a system that would not

be as informed about trauma and the impact of trauma as we would like it to be, and it would be a system that would not be able to focus on the victim and provide the services that victims need in the way that we would like to do. Those are the issues in general terms, and I am happy to discuss them in more detail.

The Convener: Thanks. We will move straight to members now.

Collette Stevenson (East Kilbride) (SNP): Good morning. In a similar vein to what you were discussing, the predicted shortfall in funding for the Crown Office to 2026-27 places significant pressure on meeting your key objectives, such as the five-year commitment to clear the Covid backlog, delivery of your staff pay parity award, and delivery of the work of the Covid deaths investigation team. How difficult will it be to deliver those commitments?

John Logue: It would be very difficult in the context that we are talking about, because a number of the things that you have mentioned have been specifically recognised as requiring additional funding. For example, the Scottish Government has providing funding for additional staff to deal with—from our perspective as the prosecutors—the additional courts that are required to clear the backlog. Specific funding has been provided for that, for the establishment and expansion of our Covid deaths investigation team and for the three-year pay parity deal that was negotiated with the unions. We are in year 2 of that, so there is another year to go. Those are all specific lines of funding that were identified and provided for. In the absence of that funding, things become very difficult. That is part of the recognition that the Government provided in responding to our business case for each of those items, that these things required additional funding.

Collette Stevenson: Would Eric McQueen like to comment?

Eric McQueen: We tried to set out in our submission that, if we ended up in a position with a flat cash budget, particularly if that is what was projected over a four-year period, we would have to plan for a funding shortfall of somewhere in the region of £30 million. I am quite clear that, if that is where you want to be over a four-year period, there are different steps that you might take rather than trying to deal with a particular end-year deficit.

Our problem is that the vast majority of our funding is already pre-committed. More than 70 per cent of our funding is about staff and buildings, and other parts of our funding are dependent on specific court requirements. There are very few areas of our funding where we have flexibility to

turn things down or to release further savings without starting to eat into the court programme and reduce the court programmes. We have indicated that we might have to reduce summary and civil business by up to 25 per cent, cut back on the £3 million that goes into the budget to pay for part-time judiciary and look at the unpalatable option of reducing staff numbers. Those are the hard things that we would be faced with considering. They are not things that we are planning for at the moment. Our working assumption is that we will work through the budget considerations with the Scottish Government and we will somehow achieve a settlement that is both affordable and sustainable for our business. However, as I said, they are the difficult issues that we would have to consider.

Our primary rationale would be to try to protect, as far as we could, the most serious cases, trying to protect the jury business and the sheriff courts and the High Court, but we would have to look seriously at what resources we could devote to areas such as summary criminal business, civil business and tribunal business, and accept that there would have to be extended delays. That would have a significant impact. Some 95 per cent of domestic abuse cases are prosecuted in the sheriff courts. Extending timescales and reducing the support that is available would have a significant impact on a large number of complainers and witnesses across the country.

It is not somewhere that we want to go but, being realistic, given that we do not have flexibility within the budget, eating into areas of core business are some of the only options that would be available to us.

Jamie Greene (West Scotland) (Con): Good morning, gentlemen. I want to follow on from what you have just said and ask about the Scottish Courts and Tribunals Service.

In your submission, you go into some detail on your scenario planning for a flat cash settlement. Can you elaborate on some of those potential scenarios, particularly with regard to the 25 per cent reduction in sheriff court sittings, which sounds like quite a lot; the 10 per cent reduction in tribunals; and the potential closure of three or four court buildings? I am concerned about the effect of those reductions on what we already know is an immense backlog. What would the implications be in that respect?

Eric McQueen: I am equally concerned; indeed, I would probably be even more concerned if those things were to become reality. We have had to look at which areas of business this would have the least impact, but the fact is that the least of impacts will still be significant.

Reducing the summary criminal court programme by 25 per cent would allow us to release staff that we put there and reduce the judiciary—not the permanent judiciary but the part-time judiciary that we bring in—and would save somewhere in the region of £3 million a year. However, it would extend the timescale for cases significantly, and we also reckon that it would add somewhere in the region of 4,000 cases per year to the existing trial backlog and that within a very short period—probably over three years—we would return to the level of backlog that we had at the start of the pandemic. Essentially, therefore, it would be a reversal of all the good work that has gone in over the past two or three years. It is not a scenario that we are actively planning for; we are just setting out the options that need to be considered.

Similarly, because our budgets are so tight and constrained, another option might be to look at court buildings. We carried out a major review of the court estate eight or 10 years ago, and we believe that what we now have in place is a court estate that is fit for purpose for the 21st century. There is therefore no evidence to suggest that we should change from the court estate that we have at the moment. However, if we truly found ourselves having to find efficiencies in the region of £30 million, we might have to revisit some of that, change some of the assumptions and come back to Parliament to ask for its agreement to close court buildings. It is not part of our planning, we are not actively working up any scenarios and we have not identified any court buildings, but it is something that we would need to start looking at.

The important thing about all these options is that, even if they were taken forward, they are relatively long-term measures. These are not savings that you could turn round and realise in the space of a few months. Restructuring the court estate and reconfiguring staff will take a significant time to achieve, and I have to say that, today, I am not sure how we could in one year achieve the £10 million savings or close the gap that is anticipated in the first year.

Jamie Greene: Just to clarify, then, is the expectation at the moment that the backlog of court cases will return to normal levels by 2025 or 2026?

Eric McQueen: For summary criminal business, our projections are that it will return to the pre-pandemic levels by March 2024. In some courts, we think that it will be earlier than that. It is one area where we have made really good progress; indeed, the bulk of the 10,000 cases that have come off the backlog has been largely summary business. At the moment things are heading that way, and we are very comfortable that we will be at that point in March 2024.

The situation with solemn business in the sheriff court and the High Court is more challenging, because business levels have been increasing. We used to have an average of 85 indictments a month in the High Court; the expectation is that that will go up to 100. In fact, it hit 100 for the first time last month. As for solemn business in the sheriff court, we normally had about 450 indictments per month, and that will increase to about 600 per month for probably three years. The level of business in crime of a more serious nature is being reflected in the courts.

Our plan is to move resources from the summary programme into the solemn programme, which will effectively increase capacity in the High Court by about 40 per cent and for solemn business in the sheriff court by 50 per cent from pre-pandemic levels. We are looking to max out available capacity to make sure that we can return things to a reasonable baseline level in the High Court by March 2025 and in sheriff and jury cases by March 2026.

Jamie Greene: That is according to the current funding scenario, but with a flat cash settlement, would we be talking about 2026, 2027 or even 2028?

Eric McQueen: The scenario with a flat cash settlement would depend on a couple of things. First, there is a flat cash settlement, but I also point out that, within the resource spending review, there is a commitment to continuing with the £50 million funding for the recovery programme. If that is the case, we will still prioritise that resource for the sheriff and jury courts and the High Court to ensure that we maintain that programme as far as possible.

The area that would see the biggest impact in such a scenario would be summary criminal business, in which we would see an escalation in outstanding trials that might take us back to where we were at the start of the pandemic. In short, we would look to maximise the priorities in solemn business, while taking a risk on summary business essentially by allowing timescales and the number of trials to increase.

Jamie Greene: I will come back in later, convener.

The Convener: I call Pauline McNeill, to be followed by Russell Findlay.

Pauline McNeill (Glasgow) (Lab): Good morning. Whichever way you look at it, the situation is extremely bleak. Indeed, that is what you are telling the committee, and it is also clear from your submission.

Am I correct in saying that the closure of three or four courts, if it came to that, will save only about £4 million?

Eric McQueen: Absolutely.

Pauline McNeill: So even in the best scenario, in which you would save £22 million by 2026-27, shutting courts is not going to take you far.

Eric McQueen: Absolutely—and that is the point that we are making in the submission. There is a limit to how far we can go in delivering these savings. Even taking some very unpalatable measures would take us only a certain distance. At the moment, we do not have a set of savings on the table that would deliver £30 million by the end of four years; in fact, trying to deliver that would take a seismic change in our structure and estate.

As a result, we are trying to look at this through a different lens—that is, the real possibilities of what we can achieve. There are two major things that I would note in that respect: first, Lady Dorrian's review of sexual offences, which could dramatically change the way in which sexual offence cases are dealt with; and, secondly—and just as important—the summary case management pilot in which John Logue has been heavily involved in leading and which is fundamentally about addressing the significant churn in the system. We are still in the position that we were in last year, when there were about 33,000 guilty pleas in summary cases; in many cases, intermediate diets were set, trials were set and witnesses were set, only for 5,000 trials to proceed. An enormous amount of work has been done on 31,000 cases in which eventually the plea was guilty, and the whole point of the summary case management pilot is to identify how we can exchange information and disclosure at a very early stage, how we can have active case management and how we ensure that trials are set only for cases that need to be resolved. A tremendous amount of work is going on at the moment to drive efficiencies and we need to ensure that, with the budget settlement, we do not end up in the position of being unable to take forward some of these things that will have real long-term benefit.

Such an approach could make enormous savings. About 400,000 witnesses are cited for cases annually, but very few end up giving evidence, and only one in 10 police officers cited to give evidence in a summary trial is required to do so. There is enormous scope to make real savings and to change whole-system costs through summary case management, which is why we are keen to keep a strong focus on the good things that we can do to change and reform the system and to avoid getting into a position where we are simply cutting budgets and doing things such as closing courts, reducing court sitting days or cutting staff that are not in the interests of the system or of justice. That is not where we want to end up.

Pauline McNeill: Based on what you have said, then, is it fair to say that, in making reforms, you quite often need to spend money at the beginning to save money at the end? Is that something that the Government should consider? I know that there is the £50 million for the recovery programme, but would you say that reforms could receive funding at the beginning of all this if it could be demonstrated that savings would come towards 2026 or 2027? Is that fair?

Eric McQueen: Yes. Indeed, the whole premise of our approach to and discussion with the Government at the moment is that we need to avoid budgets being salami sliced. Instead, we want to be able to invest in things that will make a tangible difference not just to the court system's efficiency but for the benefit of all the participants within it. The summary case management pilot is an excellent example of that.

Pauline McNeill: You have mentioned reforms with regard to Lady Dorrian's review, including single-judge trials and a number of other innovations in that respect. These particular proposals are about trying to reduce delays and help recovery; indeed, that is the Lord Advocate's position. There are so many women and children victims waiting for their cases to be heard in court, and such an approach would allow you to make progress. However, how can the committee judge whether such reforms are not simply being done on the basis of financial savings? You can see where I am coming from. It is all very well putting in place innovations to make the system more efficient, but I would be deeply concerned if we were making reforms just to save money in a way that was not in the interests of justice.

Eric McQueen: I share exactly the same concerns. However, that is not the intention at all. Lady Dorrian's review of sexual offence cases was not at all about financial constraints; it was about changing the whole experience for complainers and victims in rape and sexual offence cases. That has been the whole drive behind it. The by-product of ending up with a more efficient and effective system is that it benefits the overall funding situation. As you have said, the funding situation should not be a driver in this—and, indeed, the driver is exactly the one that Lady Dorrian set out at the start of the review.

Similarly, saving money is not the driver in the summary case management pilot. The driver is to make the system efficient and effective, ensure that we make best use of the resources available to us and limit the number of cases set for trial to those that genuinely need a trial to resolve them. By doing so, we limit the impact on and the citing of a vast number of civilian and police witnesses who will never be required to give evidence in court.

The by-product is perhaps to make things more effective and cheaper to operate, but the fundamental thing is that we improve the efficiency of the system by reducing timescales for settling cases and using the most expensive resources to deal with the cases that genuinely need a trial in a much shorter timeframe. I am absolutely on all fours on this: we should not be doing things simply to drive efficiencies. We should be doing things that improve the system, with the by-product of having a more effective and efficient way of operating.

The Convener: Some members will ask specific questions about Lady Dorrian's review later. On the back of Jamie Greene's question, I will bring in Russell Findlay. Fulton, is there something that you would like to pick up, too?

Fulton MacGregor (Coatbridge and Chryston) (SNP): I had a supplementary to Pauline McNeill's question, but it has partly been covered. I would still like to ask it, but I can come in later.

Russell Findlay (West Scotland) (Con): In the letter from the court service I see that there are projections on the proposed settlement, with a realistic funding gap totalling about £60 million over four years and a pessimistic projection of more than £81 million. We know that inflation in Scotland, the European Union and the US is running at around 9 or 10 per cent, so, hopefully, the worst case will not come to pass and it will be more like the optimistic projection rather than the other two scenarios.

Eric McQueen: To clarify, those are not individual years; it is the cumulative effect.

Russell Findlay: Yes, that is the four-year total.

Eric McQueen: The £30 million is the total of the four years.

Russell Findlay: Yes. Given the financial pressures that would come with even the most optimistic projection and given the backlog that already exists, has there been any discussion between the court service and the Crown about dealing with the summary cases more efficiently with non-court disposals, which is a direction of travel in the justice system anyway? Specifically in light of the budget pressures, has that been talked about? Both of you can answer that.

Eric McQueen: Yes, we have said in the submission that is worthy of looking at. Are there more opportunities for diversion initially even from police in initial reporting, and other opportunities for the police to divert cases without going through prosecution? On alternatives to courts, are there options with different work orders or fiscal fines that could be considered? During the pandemic,

the opportunities for those were much more limited but it is fair to consider the idea.

John Logue can speak from the Crown's perspective, but I think that part of the issue is that there has been a quite significant reduction in the types of cases at the very lowest level that normally would have attracted these types of disposals. Although there are fewer cases coming through the summary side, they seem to be of a more serious nature. The biggest predominant factor—

Russell Findlay: Presumably drug possession is no longer—

Eric McQueen: —in summary business is domestic abuse. John Logue probably has a more apt answer than me, though.

10:00

John Logue: The way that I would answer that question is to provide the committee with reassurance—you should have had this from correspondence throughout the course of the pandemic—that the change in the emergency legislation that introduced a higher rate of fiscal fine has been used proportionately in a relatively small number of cases. The committee receives regular updates on the data that demonstrates the way in which those increased powers have been used by prosecutors.

It would be wrong to imagine that the answer to the budget is suddenly to transfer cases out of court that should be in court. They are there because it is right that they are in court. It would be wrong as prosecutors to start doing different things with those cases just because there is a backlog. There are other ways in which we are working very hard to address the backlog. With the exception of the additional powers that Parliament gave to prosecutors in relation to fiscal fines, the changes that the committee could see in the use of direct measures by prosecutors are driven primarily by changes in the nature of offending and reporting of cases by the police.

Russell Findlay: From that answer, it sounds as if there is not an active discussion about a change of policy or suchlike.

John Logue: At no point during the pandemic have we as prosecutors sought to put forward a position that the answer to the backlog is to take cases out of court that should be in court and do something else with them. The Lord Advocate gave an assurance to the committee this time last year that there is no proposal on the part of prosecutors to take no action in cases as a result of the pandemic. Cases will continue to be dealt with in the way that we judge to be right, according to the public interest.

Russell Findlay: Going back to focus on summary cases, you have spoken, Mr McQueen, about the fact that one in 10 police officers cited for summary cases do not give evidence. That is a monumental waste of their time. It takes them away from communities when police budgets, as we heard last week, are under extraordinary pressure. You used the word “churn”. This has been a blight in the justice system and the court system for years. Given that there are tens of thousands of summary cases where work is done and a guilty plea is ultimately reached and all that work has not been needed, why on earth has there not been a better grip on this until now? What can be done? Is it a question of too many organisations all blaming one another? Does the blame lie with the Crown, with the courts, with the judiciary, with defence lawyers? Why are these figures so appalling and these delays so built into the system? What can be done apart from continually recognising it and talking about it?

Eric McQueen: I do not think that it is a case of blame; that is just how the system has evolved over the years. However, there is now a concerted effort to address that. There is now a project board in place that is chaired by the sheriff principal. It involves the Crown and the police, the SCTS and the legal profession. There are three pilots schemes up and running in Paisley, Hamilton and Dundee, where the emphasis is on much earlier disclosure and trying to case manage and drive the cases out at a very early stage. The early results, based on the first few months of the pilots, show a positive outcome of more guilty pleas coming through in all of those courts, with an increase in the first month of between eight and 13 percentage points.

John Logue sits on the project board for that and might want to say more about some of the early progress.

John Logue: The answer to your question, Mr Findlay, is that there have been attempts for a number of years in the justice system to deal with the issues that you are talking about. This has not been ignored by any means. The issues that you have described have been properly recognised and action has been taken. Better use of digital technology has helped with that in recent years. I will say a bit about that in relation to the pilot courts in a moment.

It is also fair to recognise that the pilots that started in September this year are an update and a modification of a reform that started in January 2020. You do not need me to explain to you in any detail why that had to come to a sudden stop in February 2020. However, the time during the pandemic was not wasted. That was the point at which I became involved in the project. Eric McQueen is right to indicate that one of the

significant changes this time is that the project is led by the judiciary. That has made a significant difference. Not only does that give the judiciary a role in shaping the reforms and how they are to be implemented but it should—going back to Pauline McNeill’s question—give the committee confidence that these are not reforms designed to save money. I am confident that the judiciary in Scotland would not be interested in reforms to save money. They are interested, as the law officers are, in reforms that make the system work better.

The pilots undoubtedly show, even after only two months—September and October—very encouraging signs of progress. For example, in relation to the number of police witnesses cited, which was one of the issues of concern you highlighted, in one of the pilot courts the number of police witnesses that prosecutors had to cite to come to give evidence in trial dropped by 50 per cent in one month.

My challenge to the justice system as a whole is to imagine that type of benefit scaled up in every court across the country every month of the year. This is a pilot—a reform—that offers one of the most significant opportunities for improving the way in which the courts work in my experience of almost 29 years as a procurator fiscal.

You heard from Police Scotland, and it is right to pay tribute to the role of the police in those reforms. Again, I go back to a point that Pauline McNeill made. This reform is not being driven by increased investment by the Government and it does not require additional money to be spent. This is about changing the way that courts work and the people within the courts work. That is about doing things differently. From the point of view of the fiscal service, we have not received any additional funding to make this reform work. We are finding ways of reallocating our attention and our people to make this happen.

Police Scotland has done the same. I am coming back to the point that I made earlier about digital improvements. One of the reasons why these reforms become more powerful as time progresses is that Police Scotland has been able to put in place new ways of working with us as prosecutors. At the same time as it gives us the report as prosecutors, it is now giving us key evidence in the case. For a domestic abuse custody case, that could, for example, include the statement of the victim, perhaps photographs of any injuries that the victim had suffered and the place where the assault took place and any video evidence that the police have secured at an early opportunity. We are now getting that on the morning of the custody case with the report from the police.

Those of you who have experience and an understanding of the criminal justice system will know instantly what a difference it makes to have that. That is being done digitally. That was not available in January 2020 and certainly was not available before that. It is an interesting example of how you can see that time has not been wasted and we have been able to take advantage of unexpected developments and interruptions, use that time well and take advantage of other opportunities that come through better use of digital technology.

The consequence of that is that, in September, we received just more than 300 pieces of digital evidence from the police through a digital secure website. Previously, the police would have had to burn that evidence on to a disk or a pen drive. That would be 300 pen drives and disks that would have to be moved around and brought to us. We would not have got them at the time of the report, and we would not have them for the case calling in court. We would then have had to copy them and hand the copies over to the defence. That has all gone in these pilots. That potential is hugely significant and becomes an important part of how we can improve the system and we can demonstrate to you and the Government and to the public that it is still possible, despite the wider difficulties at the moment, to make real improvements in the way that courts work.

Going back to the point that Pauline McNeill made about how you as a committee have confidence that the process is working, you can have confidence not only from that early reduction in the number of police officers being cited but from the fact that more cases are being resolved at the beginning. That represents fewer cases having to be prepared for trial and fewer witnesses being cited. That is an immediate outcome within days or weeks of the case starting. That has to be better for the victim, and it has to be better for the accused and for the court, when it is sentencing the accused, for that to be done at a point that is proximate to the offence having taken place. That must be a more effective way of dealing with the issue.

All of that is an attempt to answer your question. This issue has not been ignored or left. A lot of work has been done. It started in September and the potential is enormous.

Russell Findlay: I am sure that we are all looking forward to seeing the statistics from the pilots and how they work out.

I want to go back to the point that Pauline McNeill raised about the 7,000 Covid deaths being subject to investigation. A unit has been set up to deal with that. I presume that the process will not involve a full fatal accident inquiry for each death.

Is that correct? If it is, is there any public outcome in relation to the deaths?

John Logue: The unit is still being set up—what I mean by that is that it is being expanded: the Scottish Government provided additional funding this year of about £2 million to allow us to expand it to the point where we feel confident that it will be of the right size to deal with the scale of the increased reporting of deaths. As is the case with any other death investigation, the conclusion of the investigation could result in a number of outcomes, one of which might be that there is no further investigation required. The role of the team and the investigators then would be to communicate that to the nearest relatives of the deceased. Alternatively, it may be that there would be a fatal accident inquiry, and, again, there would be communication with the nearest relatives and interested parties in relation to that.

We will ensure that there is transparency in relation to the work of that team over the coming two years. We indicated to the Government that we thought that the work of the team would carry into the next financial year, 2023-24, and the following year. The funding has been provided for this year and, as part of the budget discussions for next year, we will have a discussion with the Government about the need for that work to continue. To give you an idea of the scale of the work, we are aiming to build a team that will have between 90 and 100 members of staff in it. Not all of them are lawyers but many of them are. The Lord Advocate has appointed two senior counsel to provide direction to some of the more complex investigations that are being carried out.

On your question about the outcomes being public, in so far as we can respect the privacy of individuals and families, we will be transparent about the work that that team does

The Convener: Before we move on to other areas of questioning, I will stay with Mr Logue and pick up on Mr McQueen's point that the bulk of the budget is taken up with staff costs. I assume that the position is similar in the Crown Office and Procurator Fiscal Service. I am interested in the options or scenarios that you are looking at in the budget, however difficult they may be. Are there implications of maintaining staff costs but having to adjust things such as recruitment, or having a pay freeze or that type of scenario?

John Logue: The Procurator Fiscal Service's position is very similar to that of the court service. The latest figure is that about 76 to 77 per cent of our budget is spent on our staff. To link to the point that I made at the beginning, it is important to recognise that our staffing complement has grown from just under 1,600 to 2,200 members of staff in April this year—those are full-time equivalent figures. That is a simple demonstration of the

consequence of the investment. It has required a lot of recruitment effort and a lot of investment in training and in bringing people into the organisation and equipping them.

10:15

Much of the remaining 23 to 24 per cent of our budget is taken up with the cost of providing forensic pathology and toxicology and the cost of running our estates. Each of those takes up roughly 5 to 6 per cent of our budget, and they are the two largest non-staffing expenditure items. Beyond that, there is contractual spend in relation to all the costs that go with running an organisation that is spread around the entire country, plus the costs of operating our operational casework, the cost for witnesses and the cost of preparing and investigating cases.

It will be obvious from that that, if we find ourselves in a situation in which our budget does not allow us to continue operating in the way that we have been for the past two or three years, the only control that we have over our costs is to reduce our recruitment. As a consequence of there being no compulsory redundancies, we would be responding to staff who choose to leave for various reasons. Staff do not all leave from one place or at one time, so we would end up with gaps opening up in different places. That is a very poor way to respond to a change in the shape of your workforce, because it is not being done in a planned way or in the way that we have been able to plan our increase. The inability to recruit would be the most significant implication of a funding level that did not meet the very particular needs that we have discussed.

The Convener: What would be the potential impact of that recruitment freeze?

John Logue: In what sense do you mean "impact"?

The Convener: In essence, I mean the impact on service delivery.

John Logue: We cannot change the work that we deal with. If we have fewer staff, the consequence is that fewer staff will have to handle the work that previously was dealt with by a larger group of people. That would have obvious consequences on the speed with which cases can be progressed and the speed with which investigations can be carried out. Frankly, it would inhibit us and would probably prevent us from doing the things that we would like to be able to do in the next few years around expanding our contact with victims.

I will give an example of that. We have spent quite a bit of time talking about the summary case management pilots in the three courts, and one of

the reforms that we have introduced in addition to that is that prosecutors in each of those courts are now calling the victim by telephone in every domestic abuse case that calls in court, within two weeks of the case calling. That is to build on and supplement the contact that our victim information and advice staff provide.

That is an example of our reallocating our resource and front-loading at that stage, and we hope that the benefits will mean that we can do that in many more cases. At a very early stage in domestic abuse cases, prosecutors can now have a conversation with the victim, introduce themselves, explain what is happening and give them an indication of what to expect. Sometimes, that has turned into an opportunity to gather more evidence and information that has been helpful to the case.

That is a clear example of how we think that we can continue to improve. I am sure that the committee can well understand that, if we have fewer staff and potentially an increasing workload, as it has been for a number of years, we just will not be able to provide that service in the way that we hope to.

The Convener: Thanks very much.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Good morning. I first have a couple of questions for Mr Logue. You gave us good news about the success of the pilots that you described and said that they have helped a lot. If I understand correctly, you said that many of the things that have happened did not require extra funding and seem to be operational matters that have been successful. I therefore struggle to understand why they would be compromised in the sense that you mentioned. I am sorry if that is naive, but I want you to clarify that.

In your earlier statement, you said that things still need to improve, and you have probably covered that in what you said to my colleague Russell Findlay. You said that one of the issues is that your practitioners would not be trauma informed. I am struggling to understand why that would be the case if your current staff have had trauma training. Were you talking about training or incoming staff? Could you please clarify that, too?

John Logue: I am happy to do so. On the first point, although the reforms in the summary case management pilots have not required additional funding from the Government, they have required us as an organisation to change the things that people do. For example, prosecutors who are taking the initial decisions on a report as to whether to prosecute now have more evidence to consider. They are not just reading a report that contains a summary from the police; they also have to read the victim statement and perhaps

look at photographs and consider videos. All of that is a good thing to do, because it produces a better-considered decision by the prosecutor at the beginning, and we are all in favour of that. However, it takes extra time and capacity for that work to be done.

Rona Mackay: Does that cost more?

John Logue: It costs more, but we did not ask the Government for the funding for that. We were able to redirect resource within the organisation to allow that to be done. There would be a consequence of unwinding the benefits of the increased investment and the increase in staffing that I talked about. We were able to do that because we had benefited from the increased investment, so we had additional staff investigating deaths and sexual offences and communicating with victims, and we had extra staff dealing with the recovery courts. That made it possible for us to redirect resource.

Rona Mackay: Are you saying that you would have to reduce the staff who are involved in that?

John Logue: My fear is that, if the organisation has to reduce its size in an uncontrolled way because of reduced funding, it would be much more difficult to take that approach. Because the success of the pilots is so apparent after the first month, we will do everything possible to make sure that we can continue to deliver that success. The potential of what could be achieved is obvious to all of us. Therefore, I am not offering up the pilots as an example of something that would have to stop; I am offering that to you as an example of how, despite the difficulties that we are facing—the backlog has correctly been described as the professional challenge of our lifetimes, and I completely agree with that—there is still potential for reform. However, we have to recognise that that takes time, investment and training.

On your second point about trauma, I need to clarify where we are as an organisation. A lot of work has been done on that in the justice system and is still being done. A framework is being developed on trauma and how to understand its impact and respond to it appropriately. In the middle of November, we will launch a mandatory training programme for all our staff. That is the first stage in a programme of work that we have planned because—to again go back to the increased investment—we have been able to expand our training capacity in the organisation. That is one thing that has benefited from that.

We have a programme in relation to trauma but, as you can imagine, that requires staff to have the time and capability to become more informed before they can train others, and the time to develop the training. There is also the operational impact of rolling out that training. All of that has a

cost. My general point is that the Procurator Fiscal Service does not face that challenge on its own. There is a need for the system as a whole to be better trauma informed, but it seems to me that, although that is a perfectly legitimate ambition for the system to have, it is the sort of thing that becomes much more difficult if there is uncontrolled reduction in resource across different parts of the system.

I hope that I have explained why such a reduction would make things more difficult. I hope that I have also been able to give you an understanding of where the Procurator Fiscal Service is in that process. It is not an immediate thing.

Rona Mackay: It is a long-term process.

John Logue: Yes, it is long term. I am no expert on the matter, but my understanding is that it will take some time for everyone in the system to be better informed and to understand how they respond with the knowledge of trauma in relation to an individual.

Rona Mackay: Mr McQueen, to go back to Pauline McNeill's point about the key reforms in Lady Dorrian's review, I am keen to explore how and why those will have an impact. Do you have a separate budget for those reforms, and has that been evaluated? Have you already received money to implement the reforms, and are you now saying that you could not use that money for that? That is a very basic question, but could you clarify the issue?

Eric McQueen: It is fair to say that the implementation of Lady Dorrian's reforms is still in the fairly early stages. The Scottish Government is now trying to look at the overall implementation and an implementation group has been formed—it had its initial meetings over the past few months, and is trying to set out the programme of change that is required. Not all of that change requires legislation. Some parts of Lady Dorrian's reforms can be taken forward through operational changes, and that is being considered.

The aim is to consider which aspects require legislation and then bring that before Parliament. That stage will involve looking at the overall costs and allocating budgets. Therefore, budgets have not yet been allocated for the implementation of the reforms. That would be additional funding on top of the budgets that we are talking about today.

Rona Mackay: Would that not be an operational priority decision for you to make, once you get your lump sum?

Eric McQueen: It would be an absolute priority—it is certainly one of our top priorities. Part of our funding comes from Government. For our resource budget, the best part of £100 million

comes through in funding. We also retain civil income and a certain amount of the criminal fines, all of which comes to about another £46 million. A big part our funding—in any given year, it could be between £20 million and £50 million—comes from in-year funding from Government to support specific legislative changes and reforms. On top of the budget, there is on-going discussion with Government about when additional funding is required for further changes.

For example, we are in discussion with Government at the moment about extending evidence-by-commission suites across the whole of Scotland. We have four main centres now where suites are in place, and we want to expand that so that the suites are available in each of the sheriffdoms. Therefore, on top of the budget discussions that we are having, we are in discussion with Government about funding coming through at some stage next year to allow us to expand the evidence-by-commission capacity, which is a key part of Lady Dorrian's review.

No budgets have been allocated for that as yet. Part of the big change would come when changes in legislation come through, but we are discussing incremental funding elements to take forward the parts that can be achieved without legislation.

Rona Mackay: It sounds as if you know where you want to go and what you want to do. Is it fair to say that your budgetary concerns are about staff? I know that that is an overview.

Eric McQueen: Staff and inflation are our two major worries. Most of the issues with the funding gap are driven by cost of living pay increases for staff and the concerns about inflation and energy costs. In recent years, funding for those matters has come from Government as part of the settlement. In the budget for 2022-23, we were given an extra £4.2 million by Government, which offset the pay and inflation costs. In essence, for the remainder of the period, we need the process to continue whereby we are properly funded for inflation and pay and, on top of that, we are properly funded for the reform programmes and the changes that come through, such as those resulting from Lady Dorrian's review.

Pauline McNeill: You have answered some questions to help us to understand the innovations and reforms. Some of those will require legislative change. Some are controversial and they may not see the light of day, but that is a matter for another day.

I will be honest. I am slightly clutching at straws in asking you this question, but it is in my mind. It seems obvious to me that, if the Government put a bit more money up front now, some of the changes, at least, could bring savings even without staff reductions, or with no compulsory

redundancies. Is any modelling being done on the figures in that regard? Let us say that you asked the Government to give you X million pounds so that you could front load some changes and you said that you could then deliver savings in future years. Is that discussion taking place?

The reason why I ask that question is that, should we decide to say that we are concerned and suggest something to the Government, we will be required to say where the money would come from. That is the trick in the question that we have to answer. Can you provide any modelling on savings in future years?

10:30

Eric McQueen: We can do that through time. I am probably grasping at the same straws that you were grasping at in the question. However, quite a lot of work has been done through the criminal justice board, which brings together the key organisations, in relation to what the future reform programme looks like, where the benefits to the system are and the rationale for taking those things forward. We are now trying to get into the stage of understanding properly what the cost benefits are. That relates to your point about modelling.

Why would we take a certain thing forward? Fundamentally, we would take it forward because it will improve access to justice and delivery of justice and because investing in that area rather than others will have financial benefits and advantages. That is part of the thinking that will take place in the work of the criminal justice board, which will help us to look at what longer-term investment will be needed from Government.

Russell Findlay: I have two unconnected questions—one for each of you. The first is for the court service.

In your letter, you mention the income that is generated from civil court business, which is about £46.5 million in the current year. You may recall that I wrote to you earlier this year about a court press agency that accesses certain information for an annual fee. It was a fairly nominal fee of £350 per annum, but the agency has been informed that that will rise to £34,000, which is an increase of over 4,000 per cent. You were kind enough to reply and you said that that would be looked at as part of a broader review that was to begin last month.

I am curious to know whether there has been any progress on that front and whether there is any sympathy given how extreme and, to be frank, unworkable such an increase would be.

Eric McQueen: I can certainly say that there has been sympathy. We do not want to be in the

position of preventing access to information simply because of cost. That review is under way and we will come back to you on it as soon as it is completed.

Russell Findlay: Thank you. My other question is for the Crown Office and it is about the Rangers malicious prosecution scandal. Can you tell us how much the total bill now is for compensation?

John Logue: Yes. As of yesterday, the litigation had reached a stage where the costs have increased to just under £51 million.

Russell Findlay: It was reported in the media that the bill is now over £60 million. Is that incorrect?

John Logue: I am advising you of what the cost is. I am afraid that I have no control over how the media choose to portray things.

Russell Findlay: It may be that further costs are expected or have been agreed to but the money has not gone out the door.

John Logue: There is always a degree of speculation about such matters. I recognise that, but I am afraid that the general position remains as it was explained to you by the Lord Advocate. You will understand that there is still on-going litigation, which limits what I can say. However, as of yesterday, the litigation had reached the stage where I am now publicly able to confirm the cost that I mentioned.

Russell Findlay: For clarity, given the budgetary pressures in the Crown Office, does the Government's commitment to meet the costs of compensation refer to all compensation? Does it refer only to compensation up to this point, with the rest of it being up for discussion, or is it open ended?

John Logue: The position remains as was confirmed to you last year by the Lord Advocate. The costs associated with the litigation will not be met from the fiscal service budget.

Russell Findlay: Does that include any additional compensation that may arise from the same matters?

John Logue: I am not saying that there will be more compensation paid, but my understanding is that there are none of the limits that you were describing in terms of that arrangement.

Russell Findlay: It will therefore not impact on Crown budgets in any way.

John Logue: That is correct.

Russell Findlay: Okay. Thank you.

Fulton MacGregor: Good morning, panel, and thanks very much for your evidence so far. I looked to ask a supplementary question earlier

about Lady Dorrian's work, which the committee is very interested in and supportive of, but it has been covered. I am actually glad that the convener did not bring me in, because I would have stepped on my colleague Rona Mackay's toes. I wanted to clarify that point.

I have two broad questions that are not really related. First, do you have any idea what the impact might be on revenue that is raised through fees in civil court cases if the current inflationary cycle continues beyond 2023? What impact could that have overall?

Eric McQueen: We could see an increase in civil cases. When there are financial challenges and things are tightened, it can tend to increase litigation. That has been seen in previous times when there have been financial crises. We are not seeing that at the moment because it is still at the very early stages. At the moment, civil business is probably slightly behind where it was at the pre-pandemic level. Equally, however, that has been a continuing trend for quite a number of years now. It seems to have bottomed out at a level over the past four or five years.

I think that there is potential for an increase in civil cases, depending on where the financial crisis goes and how it drives litigation.

Fulton MacGregor: You said that the service will continue to prioritise criminal cases, and particularly the most serious ones. I think that everybody would agree with that and there would be no argument about it. That implies that the civil stuff might take more of a back seat, for want of a better expression. However, civil cases create a revenue stream for you as well. If they take a back seat but they create revenue in an already constrained budget, have you thought about how that could play out?

Eric McQueen: We have put the options on the table. We will have to consider in detail what the impacts will be if we take them forward. It is quite clear that, if we had to restrict some of the capacity for civil business, it would elongate some of the timescales. At the moment, the timescales for civil business are pretty good. There could be an accepted position where some civil cases would take slightly longer.

At the same time, however, we continue to drive change and innovation in the way that we do civil business. John Logue made that point earlier in relation to criminal business. More and more civil business is moving online, and the expectation is that, over the next 12 to 18 months, we will move to a position where all civil actions that are raised in Scotland can be raised online. We will largely take paper out of the system. In addition, a new case management process is coming in to improve the system.

We hope that we are arriving at a point where we have a civil business system that has been modernised and is more efficient. For that reason, taking some of that capacity out in future years might not impact in the same way that it would on summary criminal business. It is about the modelling. We need to look at the two things as a whole.

Fulton MacGregor: My other question is about the interplay between different parts of the justice sector. I have asked previous panels about that, and we will hear later from the Scottish Prison Service, which is another key player.

When you make budget decisions and consider ideas, do you take into account some of the things that you might have heard from the police and the fire service last week—and that you might hear later from the Scottish Prison Service—to do with how everything is interlinked? If they all get flat cash settlements, how does that impact on you?

Eric McQueen: In all honesty, the biggest beneficial change that we have seen, which is a particular result of the pandemic, is the increased interaction, collaboration and openness. The criminal justice board was formed in the very early stages of the pandemic and it brings together the key organisations. We continue to share almost fortnightly the challenges that are being faced and the impacts of reform and innovation. We look at those things from different perspectives and we fully take into account the impacts of different organisations on things that we are driving forward.

A simple example is that, as a result of that, we have put in place a process in the High Court whereby the police and expert witnesses can give their evidence remotely. That has no significant benefit to the court, but it is obviously of significant benefit to the police and expert witnesses. Having heard from the police about the pressures on them, the constraints around managing officers' time and the impacts on overtime, we have been able to put in place a quite straightforward solution that has immediately benefited them. That is a low-level example, but it is a good example of the way that we are sharing, listening and reflecting on what we can achieve.

I would equally extend that to the legal profession. In the past, our relationship with the legal profession was probably not the best, to be quite honest. During the pandemic, that changed significantly. The things that we are discussing this morning are also raised in the discussions that we have with the Faculty of Advocates and the Law Society of Scotland about the impacts of the pandemic, reform and how we can try to take things forward. That has been key in the discussions about where we can go with the recovery programme in future. We are really

listening to the concerns of the Faculty of Advocates and the Law Society of Scotland about the availability of counsel and solicitors and the impacts on them.

If anything, that whole collaboration has improved dramatically over the past two or three years. We absolutely want to hang on to that for the future.

Fulton MacGregor: You described that as a low-level example, but it is a really good one. In my days as a criminal justice social worker years ago, I would be down at the courts. Police officers were often there for the whole day and they would say, “This is the third time this month that I have done this.”

Eric McQueen: Absolutely. As I said, that process has been put in place in the High Court. We want to expand it next year to the sheriff courts because, although it is a low-level change for us, the impact for the police is enormous.

Jamie Greene: I want to bring the conversation back to the budget, as pre-budget scrutiny is the purpose of our evidence session. I refer our witnesses to the forecasting and modelling evidence that they gave in their submissions. I will start with the Crown Office and Procurator Fiscal Service. In its evidence, the service states that the budget resource that it needs

“to deliver justice, tackle case backlogs, investigate COVID deaths and to maintain pay parity ... is as follows”.

From the table that you have provided, I estimate that a cumulative figure of £766 million will be required to perform those duties. A flat cash settlement would deliver £680 million. That is a shortfall of £87 million. You go on to state that that would affect your ability to meet your statutory obligations. What are your statutory obligations? What will an £87 million shortfall look like as regards your ability to deliver services?

John Logue: I think that the figure that you have provided is a cumulative one across the years.

Jamie Greene: I am quoting back to you the numbers that you gave us. You said that, in year 1, you would require £190 million, in year 2, £195 million, in year 3, £192 million and, in year 4, £190 million. That is obviously way above what is on offer in the flat cash settlement.

John Logue: Yes. I am simply making it clear that the figure that you have quoted is not in our letter. You have added up the figures for a number of years.

Jamie Greene: Indeed.

John Logue: I say that so that I understand what you are asking. Our statutory obligations are to investigate deaths and to investigate and

prosecute criminal offences. What I have tried to do this morning is give an illustration of the ways in which that would be impacted by a flat cash funding allocation.

Jamie Greene: In the table, you have presented the proposed allocation as a flat cash settlement of £170 million per year for four years. On top of that, you detail the cost of various functions, the first of which is the Covid deaths investigation team. The cost of that is on top of the £170 million. When it comes to budget time, if the Government presents you with more than £170 million—between £170 million and £190 million—which of those functions will you be able to deliver and which will you not be able to deliver? I refer you to page 19 of the papers.

John Logue: You will understand that the discussions with the Government about next year’s budget are still to take place. I have difficulty in answering your question precisely without knowing what the figure is. I think that you are asking which choices we would make if the figure is between £170 million and £190 million, given that, for example, the required funding for next year is £189 million. That would really depend on the figure. It is very difficult to pick and choose at this stage.

We set out the figures in that way because we thought that it would be helpful for the committee to understand the basis on which we will approach the issue with the Government, which, as I indicated earlier, is that we want there to be complete transparency, not just with the Government but with the committee, about the costs that we anticipate next year. We have set things out in that way over a number of years, not in order to add up the various figures and arrive at another figure, but to demonstrate that some of those costs apply for certain periods—they are not necessarily on-going, permanent costs. That is why, for example, the cost of the Covid death investigations is shown as applying for two years.

10:45

In the items listed there, we cannot choose, for example, not to investigate Covid deaths. We are not in the position of saying to you or to the Government that if we do not get the funding, there are certain things that we will not be able to do. We are talking about the consequences of having to do those things, alongside everything else that I have mentioned this morning, within the flat cash settlement. Those things become more challenging, in the sense of there being more work for fewer people; things will take longer and the extent to which we can support victims and witnesses will suffer.

I hope that that answers the question. The table does not represent a list of things from which we would select. It represents our best view at this stage of the modelling of where we think that costs will arise and the choices that will have to be made once we know what the budget is. We will be happy to share that with the committee at the time.

Jamie Greene: That is interesting confirmation. You say that certain costs will have to be met. I presume that the cost of that would be deducted from any £170 million cash settlement. For example, because you have an obligation to investigate Covid deaths, the £4.5 million cost of that would come out of the £170 million, so you would have £165 million left. If, for example, the Government gave you £175 million, once the Covid investigation costs were taken away from that, you would be back to £170 million again. That is what I am getting at.

John Logue: Yes, I think I understand the point that you are making. That is a perfectly acceptable way of viewing those figures. You are saying that if we have to do the Covid deaths investigation work—we do have to do it—but we have to do it from out of the £170 million, that will have an impact. We are not going to choose not to do the work because we receive a flat cash settlement of £170 million.

Jamie Greene: I want to move on to the Scottish Courts and Tribunals Service. In the submission that you made last year as regards your budget requirements, you made a request for £145.7 million. The final budget that was delivered was £133.5 million, which was a shortfall of £12 million on what you requested. Looking back, did that have any effect on the work that you did last year? That will help us to get a feel for might happen if you experience a similar shortfall this time round.

Eric McQueen: As I explained earlier, our funding comes in different ways. Part of it comes through the budget settlement in the budget bill. On top of that, there is in-year funding that comes through subsequently. The vast majority of the gap that was made up was achieved through the in-year funding.

There are some things that cannot be agreed at the time of the budget bill. The funding discussion carries on throughout the year. We have two opportunities—at the autumn budget revision and the spring budget revision—to go back to the Government to explain why those demands are still in place and to make sure that we secure the appropriate funding for them.

As I have said, this year, our core resource funding from Government is £100 million, and we have additional funding of about £40 million coming in through the in-year budget revisions.

Jamie Greene: To clarify your projections—my colleague Russell Findlay covered some of this—you modelled three scenarios: realistic, optimistic and pessimistic. Initially, I had the impression that you had modelled on the basis of a realistic outcome, but the commentary in your submission tends to lean more towards a pessimistic outcome. Where do you sit on that scale at the moment? Whether your outlook is realistic, optimistic or pessimistic, there is still a funding gap in each scenario.

Eric McQueen: The problem that we have is that, given the way things look at the moment, the pessimistic scenario is probably the best one that is possible. We do not think that the optimistic scenario or the realistic scenario is possible. The modelling was done at the time that the resource spending review was published. Since then, we have had the explosion of the cost of living crisis, and we all know which direction inflation is heading in at the moment.

What we have presented is probably the best-case scenario as we see it at the moment. Obviously, the impact will be very dependent on where the economy goes over the next few years, but our modelling projections are currently based on the pessimistic scenario.

Jamie Greene: That does not sound very positive.

I want to ask you about one other issue—maintenance, for which you use your capital budget. We have talked a lot about the large chunk of people's budgets that goes on resource and pay and, indeed, future pay increases, which is a whole other ball game that we have not discussed yet, and the complications of the effect of that on your budgets, but capital budgets are also important. For example, you say that if you receive no increase in your core capital funding, that would run the risk of safety-related incidents and also make it virtually impossible for you to meet your carbon reduction ambitions. Will you elaborate on that?

Eric McQueen: Yes. Our fixed capital budget from the Government is currently £8 million a year. In recent years, through in-year funding, that has been increased to a minimum of £15 million. We see that as being almost the minimum level that we can operate on, so discussions are going on at the moment. Our capital budget provides mainly for our estate side but also for digital investment. That has been enormous, particularly over the course of the past few years, as we have completely changed our whole digital infrastructure.

We try to invest about £5 million to £6 million a year to deal with backlog maintenance. Every organisation has backlog maintenance. At one

stage, we had backlog maintenance of £40 million to £50 million. Currently, we are just on the right side of £30 million, so our backlog maintenance has come down quite significantly. Again, that has happened as a result of the in-year funding that the Government has provided, which has allowed us to get to that position. At the moment, we are in a reasonably good position because our backlog maintenance is manageable. The level that we are able to invest each year is sufficient. If we have to make significant cutbacks and we eat further into that budget, there is a risk that we will find that the backlog maintenance starts to increase.

As I have said, it is in a manageable position at the moment. We have never had any significant issues. There have never been any building failures, but it is clear that if we do not provide the necessary level of investment, it can quickly turn the other way. We certainly do not want to end up in the position that we were in eight or nine years ago, when we had backlog maintenance of £40 million to £50 million, so we see that as an absolute priority for continued investment.

We have made incredible progress over the past 10 years on carbon emissions. Between 2010 and 2020, our carbon emissions reduced by half. That was achieved through the installation of solar panelling in a large number of our courts, and by improving insulation, replacing boilers and changing controls. We have had a good level of investment that has got us to a good place. That has been more challenging over the pandemic period. All our air conditioning has been running at 100 per cent, in order to provide fresh air continuously. That has really impacted on our energy usage. Our level of reductions has dropped slightly, and we want to get back on track.

We have a number of courts that we are reconfiguring with new levels of insulation, new controls and new boilers. We want to test the theory, as far as possible, of how we can move those courts to a net zero-type environment. I imagine that that will require a sizeable sum of investment over the next 10 or 20 years. We are trying to set out what the sensible stepping stones, and the sensible level of investment, would be. Our current budget would not allow us to make that investment. That is not a criticism of Government, because we have not yet presented the case for what that investment should be, but we are flagging up the fact that we anticipate that it will be sizeable if we want to make sure that we can realistically stay on the journey to net zero.

As a starting point, our core capital budget of £8 million is certainly not sufficient for our requirements. Our view is that that would need to move to at least £15 million, which has been the level of funding that we have received in recent years.

Jamie Greene: I am sure that that will be noted by the Government and that you will make your case diligently.

My final point is on an important general theme. A lot of the work that the committee does is centred on outcomes for the general public, including victims of crime. Notwithstanding the evidence that we took last week, what I take from your written submissions is the warning about the risk to the victim-centred approach that your organisations currently take. Any loss of skills or expertise or staffing resource would put massive pressure on that and would perhaps undermine much of the effort that you are making to move towards a more trauma-informed practice of working.

What reassurance can you give the public that, even though you are staring down the barrel of difficult budgets over the next few years, should it transpire that you experience real-terms cuts, victims will still remain at the heart of the justice system, no matter what happens? I am sure that many people who are watching this session will be worried and concerned about the direction of travel.

Eric McQueen: That is why, from a courts perspective, we want to limit the likelihood of that occurring as far as we possibly can. If we end up in that situation, our priority will be the more serious crimes. That goes equally for things that we mentioned in the submission, such as the approaches that we want to bring in for domestic abuse. As I said, 95 per cent of domestic abuse cases are prosecuted in the sheriff court. We genuinely believe that there is an opportunity to find a very different way of dealing with those cases. By using virtual technology and virtual summary trials, we can completely transform the whole experience and the whole journey. That would not come at significant cost. We want to bring that in to make sure that we can keep the benefits and maximise the experience for complainers and witnesses who are coming through in those cases.

John Logue: From the perspective of the fiscal service, the sort of difficulties that you describe would not change the priority that we would give to victims and the place that they would have in our work. It might make that more difficult to do, but the priority and the place that they have would remain the same.

The Convener: That brings us nicely to the end of our allocated time. I thank you both for attending. If any members have follow-up questions, we will send them to you in writing.

We will now have a short suspension to allow for a changeover of witnesses.

10:55

Meeting suspended.

11:04

On resuming—

The Convener: Welcome back, everybody. I welcome our second panel of witnesses: Teresa Medhurst, the chief executive of the Scottish Prison Service, and Gerry O'Donnell, its interim director of finance. I invite Ms Medhurst to make an opening statement.

Teresa Medhurst (Scottish Prison Service): Good morning, convener and members of the committee. My colleague Gerry O'Donnell and I met you last year to discuss the SPS budget, and we welcome the opportunity to respond to your request for evidence on the implications of the resource spending review.

I will start by recognising the significant fiscal pressures that the Scottish Government faces and the implications for all public sector bodies, which face difficult choices and decisions relating to the scale and shape of service delivery, given the financial constraints.

The SPS is similar to other justice sector organisations in that we operate 24/7 for 365 days a year. However, as I outlined in our written submission, the difference in our context is that we are very much demand led. I am not in a position to scale back on service delivery without there being consequences to effectiveness and an impact on those in our care and on our staff.

The role of the SPS is to keep in secure custody all those committed by the courts, whether on remand or for a determined period up to and including a life sentence. We operate 15 prisons, two of which involve private sector contracts, and we provide care for about 7,400 individuals. In addition, we support all activity into and out of our establishments. That can relate to new admissions into our care, escorts to and from court and people being liberated back into communities. Last year alone, that activity resulted in in excess of 20,000 movements.

Population turnover is a notable difference between the SPS and other justice colleagues. It is essential for officers to create rapport and build relationships with those they care for. Without that, we run the real risk of having hostile working environments or, worse, operational instability. Such relationships were never more critical than they were during the pandemic, when officers remained a constant protective factor and supported those in our care through restrictions, changing guidelines and uncertainty.

Although population turnover makes our role as custodians more challenging, our biggest

challenge has become the increasing complexity of the individuals who are placed in our care. We have always cared for vulnerable individuals, but specific needs are becoming more complex, exacerbated by issues such as substance use, trauma and adverse childhood experiences. It should be noted that, as well as caring for vulnerable individuals, we look after those who present extreme risks due to their involvement in serious and organised crime, which adds a further complexity to our area of expertise. A multifaceted and sophisticated approach is therefore required in order to mitigate risk and navigate through the mire of complexity associated with polar opposite groups, while continuing to meet the needs of the main cohort.

As we continue to transition out of the pandemic and into a stable period of recovery, we must be mindful of the fragility of all of our stakeholders. Staff are indicating that they are tired after a prolonged period of high alert and are concerned, as we all are, about the cost of living crisis. Those in our care are likely to have the same concerns for themselves and their families.

Since the resource spending review announcement, we have been working closely with the Scottish Government to monitor variables that might have an impact on our service delivery, such as inflation and the rise in energy costs. Despite those uncertainties, we remain committed to the regulatory and inspection framework that governs our service delivery and to meeting the basic decency obligations that are supported by human rights legislation.

As Mr Findlay quite rightly pointed out last year, our officers do an incredible job. That is why we must remain fully focused on meeting their needs, as well as the needs of those in our care, by exploiting all opportunities to rationalise our delivery in a way that can drive down our cost base.

I look forward to taking questions.

The Convener: Thank you very much.

Jamie Greene: I will start by looking at some of the budgetary pressures and the scenario planning that you have done. You are quite clear in your submission that

“Due to the nature of our functions there is no or at most, very limited, opportunity to the scaling back of our operations without significant risk to health and welfare support ... reputational damage, the loss of”

services

“and risk to operational stability across the estate.”

Will you elaborate on what you mean by that?

Teresa Medhurst: Each prison operates on the basis of a defined population mix and size,

although those numbers can flux and change. In addition, our staffing complements, which are agreed with our trade unions, provide not only safety but a range of facilities, services and supports for rehabilitation to ensure that people transition back to their communities as positively as possible.

Were we to have to scale that back in any way, we would have to retract our services. We would look at our core functions and those that we are legislatively required to deliver. For example, we have a minimum threshold in relation to access to meals, access to exercise in the fresh air and so on. From there, we expand by providing additional services—purposeful activity such as work and rehabilitation programmes. In addition, we provide other services to support people in their social endeavours during association and so on.

We would have to retract, in a phased way, activities that were not seen as being essential and go back to providing only those that were deemed to be essential in meeting our legislative requirements. In doing so, we would be restricting the time that people have in association or out of their cell, and restricting engagement in purposeful activities. We would also need to flex by moving staff from the roles and responsibilities for which they have applied to roles that support the daily operation of establishments. Therefore, those staff could become disaffected and look at other options.

That would create a fluctuating position. We could be in a position of delivering only what is essential under prison rules. That would have significant implications for rehabilitation and progression, and it would also come with legal implications. We had to do such things during Covid because of the nature of the pandemic and the need for infection control. As we move out of the pandemic phase and into more stable operating environments, we could clearly use lessons that we have learned to make improvements, were we to be put in a similar position again. However, there would be significant and broader implications as a result of such restrictions becoming the norm again and providing that environment in our prisons.

Jamie Greene: That all sounds quite concerning. It sounds as though you are saying that a flat cash settlement would lead to Covid-like conditions within the prison estate in relation to the services that could be offered. Of specific concern would be the loss of rehabilitation services, purposeful activity and interaction with other services to deal with mental health and addiction problems, for example. Would all of that activity be scaled back to allow you to simply maintain basic safety within the prison estate?

11:15

Teresa Medhurst: That would require to be done in a phased and planned way, which we obviously did not have the opportunity to do during Covid. What happened would be very much dependent on what the actual budget figures were. When we get a budget settlement, we need to consider our options, and we will use our learning from Covid to determine the highest priorities.

An increasing concern relates to the complexity of the population, because it is likely that more investment will be required in that area. For example, we are experiencing increasing social care costs and costs associated with serious and organised crime. Positive outcomes from other parts of the justice sector have resulted in about 8 per cent of our population being involved in serious and organised crime, which means that we need to develop a strategy, and having such a strategy in a custodial environment could come with additional costs. Therefore, investment will be required in some areas, which will have implications for any disinvestment across the estate.

Jamie Greene: I struggled to find a forecast for the next couple of years in your submission, but, reading between the lines, I note that you say that, for 2023-24, you require an uplift in your budget of £40 million to maintain existing services. I presume that that is just for one year. What does the figure look like for the next couple of years over the period of the RSR? How does that equate to what you are forecasting as your budget requirements? In other words, what is your total ask of Government versus what the RSR says will be delivered, if it comes to pass?

Teresa Medhurst: The issue for the SPS—this is similar to what others who have presented evidence have said—is that, even since the RSR was published, the position has fluctuated because of the changing nature of the pressures relating to energy, pay and inflationary costs. We have been monitoring the situation fairly closely, and things have shifted in this year alone.

I ask Gerry O'Donnell to come in on the overall impact over the four years.

Gerry O'Donnell (Scottish Prison Service): In our submission, the figure of £40.8 million for next year is based on an assessment of cost pressure this year rolling into next year. Since last year's budget, we have obviously had significant increases in inflation and the cost of living. We have a net cost pressure of £14.5 million this year. That is being addressed in the spring budget revision, but the pressure will roll into next year.

We have challenges in the next year. More than 21 per cent of our costs relate to private sector contracts, and we are contractually obliged to

provide price increases based on retail prices index and consumer prices index numbers, which are quite high at the moment. That is pushing up the number for next year. We also have modest increases associated with pay assumptions and such things. That is the number for next year.

The figures for following years are based on an assumption of, on average, about a 3 per cent uplift in our overall cost base. That will be challenging if the current economic factors continue.

Jamie Greene: The figure for next year is £40 million, and the figure for the following year will be that plus 3 per cent.

Gerry O'Donnell: The figure is £40 million, and we are looking for a further £15 million the following year.

Jamie Greene: I will let others come in. I may come back to the issue of pay later, though, if that is okay.

Collette Stevenson: We have touched on the increased costs of utilities and I think that Teresa Medhurst mentioned that your costs have gone up by something like 47 per cent this year. Where are you with regard to procuring a fixed rate with utility companies? Everyone has to deal with the impact of increased energy costs, but I do not know whether that framework has ended, from a public service point of view. Could you touch on that?

Teresa Medhurst: With all of these cost pressures, particularly around inflation, we have to understand that, even where we have procured contracts for things such as food, for example, our contractors are experiencing real pressures. Therefore, revisions have to be made to ensure that we can continue with those contracts and procure the services that we need. There are contextual elements to the issue, and we need to continue services—the food one gives me most cause for concern. Where our contractors are still able to provide those services, we need to be able to meet their needs in part, because of the nature of the inflationary pressures and how that is impacting on them as service providers.

Gerry O'Donnell: We procure our utilities through a Scottish Government contract, as do many other public sector bodies. We have forecasts of what the figures will be for the following year—they will become clearer early next year. We understand that the costs will not be as high as they were this year, but that there will still be an increase.

The 47 per cent increase is a net increase, and is for electricity and gas combined. Unfortunately, SPS is a heavy user of gas. That is our primary heating system in all our establishments.

Collette Stevenson: In your submission, you talk about the estate. In trying to meet net zero, have you considered using the replacement for the Barlinnie prison in Glasgow—which will be a brand-new bit of your estate—as a district heating system, where you would be supplier and provider? That would generate income for you as well.

Gerry O'Donnell: I do not know the exact detail of what is going on in that regard. I know that the issue of creating a district heating system as part of the project has been discussed. The replacement for Barlinnie is still in its early stages; the contract was awarded this year for the design of an establishment. Replacing Barlinnie will reduce our scope 1 CO₂ emissions by 21 per cent. It is a project that will substantially contribute to our moving to net zero.

Teresa Medhurst: Ms Stevenson, you are right to raise the point and it is something that we will consider. We considered the idea in relation to HMP Highland, construction of which is under way at the moment. It is an issue that is relevant for all of our projects and major builds. HMP Highland will be the first net zero prison, and that is certainly what we intend to achieve with HMP Glasgow, which is a much bigger build as well.

Russell Findlay: I want to continue the questions around SPS's energy costs and usage. It is something that we do not really think about, but it represents the equivalent of providing heating and light for 10,500 family homes. It is clearly a huge amount of the budget.

Your submission says that the costs for 2022-23 were 47 per cent higher than the costs for the previous year. Coincidentally, the Crown Office submission also refers to energy costs. It says that for 2022-23 they were largely offset by the Scottish Government securing advance purchase, which meant that it did not suffer to the same extent. Do you know if that is a separate scheme? Is that something that you are not part of? It may just involve particular Government buildings or it might be that I am misunderstanding the position, and that, indeed, you were part of it but you still experienced a 47 per cent increase.

Gerry O'Donnell: I believe that we are part of the same procurement contract. I do not know the detail with regard to the other body. The figure that we gave relates to our baseline and where our budget was, and I can only say that, for us, there was a 47 per cent increase in our spend from last year to this year.

Russell Findlay: Is there an optimum temperature that is required either by guidance or by law in the prisons?

Teresa Medhurst: We must comply with health and safety legislation—we comply with the law for

heating offices and so on. The difficulty for us is that, particularly in our older buildings, when the heating is turned off and on it takes quite a time before the heating is mobilised. If you go through a cold spell, you turn the heating on in order to meet that minimum threshold. Then, if milder weather comes, do you turn it off again or do you keep it on? Clearly, we do not want to waste fuel. We try to be as fuel efficient as we can, but the systems take time to restart and decommission.

Russell Findlay: Is there a temperature that is required for prisoners?

Teresa Medhurst: I do not know the answer to that off the top of my head.

Gerry O'Donnell: It is something that we have raised. First, the prisons are old establishments and it would be difficult to have zoning that would enable different parts of the building to have different temperatures. We also have situations where the clothing that prisoners may be wearing for anti-ligature reasons and so on might be lighter. That means that there are some areas that we have to keep at a higher temperature than would probably be normal, because of health and safety reasons.

Teresa Medhurst: I honestly do not know the answer to your question. I have not come across a requirement for a certain temperature for prisoners. There is certainly a required temperature for staff offices. The thresholds that I am aware of are more around cell size and so on, but I can have a look at that.

Russell Findlay: Yes, I was just interested in whether that has been looked at, given the massive cost increase.

The Convener: I would like to come back to a comment that you made in your opening remarks, Ms Medhurst. It relates to the growing proportion of the prison population who are vulnerable in terms of age, complex medical and personal care needs and so on. I am interested to hear more about what the likely impact of that might be on that group of prisoners in terms of resourcing the necessary staff, training, case management and trauma-informed approaches. I am interested in a bit more commentary on the implications of pressure in that regard.

Teresa Medhurst: The increasing health complexities are broad in range and do not relate solely to age—there are social care needs for some of our younger population. We see an increasing number of people coming into custody with neurodevelopmental issues. That complexity is where there are greater needs around not just support from our national health service colleagues with case management and training, but also much more intensive training for our staff group.

Clearly, when you are asking staff to flex in and out of a multiple range of different roles, the training demands are much greater. There is a requirement to invest in training for staff and ensure that they are equipped. As a result of the ageing population, there are requirements for additional support for training around, for example, people who are suffering from early onset dementia and so on. With regard to how we manage that and what the impact will be, we try to protect those who are most vulnerable and ensure that we prioritise the support to them as far as we can, depending on resource constraints.

11:30

The Convener: Last year, the committee visited a prison and saw for ourselves the challenges that exist around caring for the cohort of prisoners who have dementia and other physical medical conditions. From a capital budget perspective, what might be the implications for your ability to improve and reconfigure the prison estate to ensure that their needs are met?

Teresa Medhurst: We have a maintenance budget and we prioritise how that budget is spent. We access some of the equipment through our NHS colleagues; it is not solely for us.

There is an increasing challenge in terms of numbers and the complexity of care that is required with regard to not only social care but palliative care. Prisons are built as secure facilities, so the way that care is provided requires adaptation. Over the years, we have adapted cells as funding has become available and the need has arisen, but I can foresee that there will be more challenges around how we can deliver that over the next few years, depending on what the budget position is likely to be.

Rona Mackay: Good morning. I want to ask about the impact on capital spending in the prison estate and how that could be impacted by a potential shortfall in funding. I was quite alarmed to see in your submission that considering immediate rationalisation of the women's estate could be one of the measures that you must consider—I am not saying that you said that you would do that. Can you expand on that and also say what impact it would have on the replacement for Barlinnie and so on?

Teresa Medhurst: I am sorry for alarming you, but that was actually a positive statement. The consequence of opening the two community custody units this year and opening the new national facility next year is that not all the current accommodation for women is being fully utilised. Therefore, it would be incumbent on us to look at what kind of accommodation we require for women across the whole estate, bearing in mind

that we currently have women in HMP Grampian, HMP Greenock, HMP Edinburgh and HMP Polmont. With the new facilities, we can look at how best to utilise the facilities for women and how best to support them. The idea does not involve deprioritising women in custody; it involves rationalising the accommodation that currently exists. As a result of the opening of the new facilities, we will have more accommodation than we require for women and, therefore, we can release some of it for use for men, where there is a bit more pressure on our population.

You are looking confused.

Rona Mackay: I am a bit confused, to be honest with you. We visited the Liliaston facility, which was great, and I know the Bella centre is open in Dundee. They are quite small and do not take a lot, so I am not quite following how using them could free up more accommodation.

Teresa Medhurst: At the moment, the current accommodation for women is not being fully utilised, so those two new facilities and the national facility will give us slightly more spaces than we are currently using in Cornton Vale.

Rona Mackay: That new facility is not under threat?

Teresa Medhurst: No, it is not under threat. The existence of those new facilities and the fact that the number of women in custody has come down over a number of years—we are still sitting at around 280, I think—enable us to look at where the best facilities for women are and how we can rationalise that estate and release some of that accommodation for use for men, as there is more pressure in the male estate. It is not a case of overcrowding the accommodation; it is about ensuring that we are using the facilities and maximising them.

Rona Mackay: Will the roll-out of the new custody units go ahead as planned?

Teresa Medhurst: Yes.

Rona Mackay: I took entirely the wrong meaning from your use of the word, “rationalisation”. I apologise for that. As far as Barlinnie and future planning goes, would that be put on ice or would HMP Glasgow still go ahead?

Teresa Medhurst: The capital funding comes through the infrastructure investment plan. The replacements of Barlinnie and Inverness are in the five-year plan. This year’s funding, was used in the initial stages of that plan to award the contract for HMP Glasgow, but there is a potential gap in capital funding coming up later.

Gerry O’Donnell: In 2024-25 and 2025-26.

Teresa Medhurst: Yes, and the Scottish Government is aware of that.

Rona Mackay: Is that not when HMP Glasgow is supposed to be up and running?

Teresa Medhurst: That will be in 2026. There are capital pressures in later years that need to be resolved, but the Scottish Government is aware of that and it understands that we will require additional funding for HMP Glasgow.

Russell Findlay: Your answers have partly covered the ground that I was going to ask about, but I have a question about the estates. In your submission, you say that the budget for the next four years amounts to about £440 million, which is mostly about building prisons but is also to do with the cost of providing cables for internet access, phone lines and so on.

We already know that Stirling prison is three years late and that the replacement for Barlinnie is due to open in 2026, with HMP Highland due to be finished in 2024. Last week, Police Scotland told us that inflation on building costs is much higher than general inflation—I think that the figure that we were given was around 30 per cent. You have already suggested that, in the final two years of the projections, you are expecting an overrun. Can you quantify that? Do you have any idea what the figures will be and where the money comes from? Has Government committed to meeting those costs or will the building have to stop or compromises have to be made?

Teresa Medhurst: There are a number of questions there, Mr Findlay, and I will try to answer all of them. The committed funding that we have already commenced is in the budget that we have been given in this year’s budget and for next year.

There are funding pressures, as we have experienced with the build for HMP Stirling. I am not sure whether that project is three years late—I would have to check that—but I know that it was subject to additional inflationary pressures. We have inflationary pressures for HMP Highland, and we have shared that information with the Government. We have a cost envelope for a replacement for Barlinnie, but that initial cost profile has yet to be finalised. Until we have that final position, it is difficult to say what the gap in funding is likely to be. We expect to have that in the next few weeks.

Russell Findlay: Does 30 per cent inflation sound probable?

Teresa Medhurst: Yes. Certainly for HMP Highland, I think that the additional cost pressure was somewhere between 25 per cent and 30 per cent, so the figure of 30 per cent seems likely.

Russell Findlay: Is a serious conversation required with Government about HMP Glasgow?

Teresa Medhurst: Yes.

Pauline McNeill: Good morning. I read in the notes that you have provided that

“Approximately 21% of the SPS Resource budget is for payments to the private sector for the provision of 2 private prison establishments”.

That seems to be quite a high figure, but you go on to say that the

“contracts have contractual built in Inflation mechanisms based on CPI and RPI increases.”

The two private prisons are getting an increase of 11.4 per cent. It seems to be grossly unfair that the public sector prisons must operate within a budget that is being reduced by 7.8 per cent, but private prisons under the service will benefit by 11.4 per cent. Is that right?

Gerry O'Donnell: There are not just the two private prisons contracts. There is also the court custody and escort service, so there are three contracts.

Teresa Medhurst: The contracts are set using the pricing index. That is part of the arrangements at commencement of the contract. Therefore, the additional cost pressures that we will experience because of inflation will have to be addressed from within our budget, which puts pressure on the amount of resource that remains for running public sector prisons.

Gerry O'Donnell: The HMP Addiewell contract was signed in 2008. For several years the RPI was running at a low percentage, so it is unfortunate for us that it is now at a high percentage.

Pauline McNeill: It must be acknowledged that no one thought in 2008 that inflation would reach double figures, but it has. Is there any scope for going back on the contracts, given the extraordinary circumstances that we are all living in, and notwithstanding the line of questioning of my colleague Russell Findlay about the cost of energy, let alone of running the estate? Is there any scope for asking whether we really want to put such extraordinary pressure on the public sector when the private sector is not feeling pain that the public sector is feeling.

Teresa Medhurst: There are different circumstances for each contract. The HMP Kilmarnock contract is coming to an end and will come back into public sector operation in 2024, so we are moving into the last year and a half of that contract. The contract has run very well and operates and functions well; we are content with the arrangements around HMP Kilmarnock.

We are experiencing real pressures around contract delivery with GEO Amey, partly because of changes in how justice is working now, with virtual courts and so on. We are working closely with GEO Amey to manage a way through the

pressures, but it has been a challenging time for it. It must diversify and deliver, through the contract, aspects that we did not anticipate. For example, hospital detentions have gone up; they are much higher than they were previously, which is having an impact on the overall operation of the contract. We are working closely with GEO Amey because we understand that there are limitations around the contract budget and how that has been applied to their performance. That is a separate construct.

As Gerry O'Donnell said, the HMP Addiewell contract was awarded in 2008. There is the potential to have discussions with Addiewell around the cost pressures that we are experiencing and the implications for the contract. I have certainly said internally that we probably need to have discussions with GEO Amey and get it to the table in order that we can understand better whether there is room for movement.

Pauline McNeill: You said that there are pressures on the contract with GEO Amey. Does there being more virtual court appearances mean that it is not moving prisoners, so there is a cost saving?

11:45

Teresa Medhurst: The situation is quite complex because people are required as much as vehicles. The vehicles are only one element; it is also about cover with people. People covering virtual custodies and court and people being needed on vehicles has created added complexity that GEO Amey is struggling with. We are trying to work with it to simplify things where we can and are working with the Scottish Courts and Tribunals Service in particular to resolve tensions and ensure that performance becomes much more effective.

Pauline McNeill: I understand. I am thinking of a scenario that I know about, in which some prisoners from London Road police station, let us say, have to go to the sheriff court on first appearance, whereas previously they would have taken all the prisoners to one place. That answer was helpful.

Fulton MacGregor: Good morning and thanks very much for your evidence, so far.

My question is along the same lines as Pauline McNeill's, and is about HMPs Addiewell and Kilmarnock, so a lot of it has been covered. I was looking back to 2016 and I found a question that I asked, to which the answer was that the private finance initiative payments on Addiewell were going to cost taxpayers nearly £1 billion. I assume—going back to your answer earlier—that the cost has gone up from that. It is an absolutely ridiculous amount.

Can you confirm that with RPI currently at 12.6 per cent you will be liable for something approaching 14 per cent of the cost of HMP Addiewell? On the back of what you said about HMP Kilmarnock, is it time, or are there plans afoot, to bring Addiewell back into the public sector, as well?

Gerry O'Donnell: I will answer the first part. The contract does not get a straight RPI uplift. There are different elements of the contract. The biggest proportion of the contract is RPI plus 1 per cent, but there are elements that are fixed cost. We have calculated that there will be about a net 11 per cent increase next year.

Teresa Medhurst: The contract for Addiewell runs until 2033. As I understand it, it is for 25 years, so there is not an option to break into it any earlier.

Fulton MacGregor: That is what I was going to ask about. You have already covered the matter, so excuse my naivety. Is there no way out of the contracts? Is that basically it?

Teresa Medhurst: There would probably be significant penalties as well as reputational damage, because when you sign a contract for 25 years people anticipate that that contract will be fulfilled. I imagine that there would be significant penalties, as a consequence.

Fulton MacGregor: I understand the penalties argument, but on reputational damage, I think that the public knowing that we were talking about billions in taxpayers' money would negate that argument. I accept it if the cost of coming out of such a contract will end up outweighing any benefit that might be achieved. I understand that.

Gerry O'Donnell: Our status as an executive agency prevents us, at the moment, from buying out the contract. Possibly a non-departmental public body would have an opportunity to do something. There is that aspect to consider, as well.

Fulton MacGregor: The final question that I want to ask is one that I asked the previous panel and the panels last week. It is about your interlinking with the other justice agencies. You heard this morning's evidence, and I assume that you tuned into the police's and the fire service's evidence last week. You all seem to say very similar things; it is a very bleak picture, and there is no getting away from that. Have you thought about how a flat cash settlement will impact on the police, the courts service—from which we have heard this morning—the Scottish Fire and Rescue Service and other criminal justice agencies? How do you take that into account in your budget considerations?

Teresa Medhurst: As my colleague Eric McQueen mentioned earlier, the justice board has been in operation since the start of the pandemic and we have used that as a positive vehicle for discussions on budget implications and the resource spending review. Clearly, because we are all facing very similar challenges, the need for us to work more effectively collectively becomes increasingly pressing. The relationships and understanding, which I outlined earlier, that have grown and developed over the past two and a half years will stand us in good stead in helping to shape where we can collaborate more effectively and be a more joined up justice sector, in order to meet the challenges that we face.

Collette Stevenson: Good morning.

In a written submission to the committee, Wendy Sinclair-Gieben, His Majesty's chief inspector of prisons, raised concerns that a flat cash settlement for the Prison Service might be insufficient to meet the minimum requirements. You touched earlier, with Jamie Greene, on rehabilitative programmes and purposeful activity, and on the fact that the 20 per cent of the prison population who are currently on remand do not get those things, and some of them are locked up for 22 hours a day. I know that that was a challenge during Covid, but what are your views on that? There is the potential that we are contravening prisoners' human rights.

Teresa Medhurst: I wrote to the committee a few weeks ago to outline some of the changes that took place during Covid. That included my mentioning the shift in respect of the remand population, in that particular establishments have opened up much more activity to people who were on remand, because there was more capacity to do so. There is more opportunity for prisoners on remand to be involved either in work or in purposeful activity of some shape or form. There is a much wider offer and there is certainly much greater focus on health and health interventions, including support for recovery from substance use and so on. Such different shapes and offers are available across prisons.

I have read the chief inspector's submission and I understand her concerns. There are always tensions, but for me that is more the case because of the restrictions of the past two and a half years. We have not been able to support people's rehabilitation as we would have done previously, because we have been responding to the pandemic. That makes it more critical that how we reinstate services, how we shape them and how we support people are as effective, if not more effective, than services were prior to the pandemic.

We are learning from the pandemic. For example, a lot of the feedback that we have had

through contact arrangements in prisons has suggested that prisoners feel much safer in smaller cohorts. They feel much more able to engage because they know the people around them and feel that they will not be as open to bullying and intimidation as they would have been previously. As we reinstate services, we are looking at how that can be done using much smaller groupings in a much more manageable way in order to effect greater change in people because they feel more comfortable and more relaxed about engagement.

Although—as per the descriptor that I provided for Mr Greene earlier—constricting services, commensurate with the staffing profile and budgets, is something that we have to do, we need to look at how best to manage that, depending on where the highest risks lie. There are areas that I would absolutely want to protect and ensure that we could improve on, through learning from the pandemic.

Another thing, for me, is that in our workforce profile—this it is very welcome—we now have far more women in the service than we have ever had. Our working arrangements need to reflect a more modern approach—a workforce-demand approach. People are looking for much more flexibility in their working arrangements, so there are aspects and elements of our working practices in our prisons and support services that we must look to reshape and change in order to ensure that we remain an attractive employer. We must ensure that what we do supports a different operating model, going forward.

Collette Stevenson: I will touch on how things are at the moment. My understanding is that prisoners are locked up Friday to Sunday, from 5 o'clock on Friday, and are limited in terms of the purposeful activity that they can do in the prison estate. Is that because of reduced staff? You have touched on looking at a more modern workforce and being more flexible. Is that something that you would look at in relation to the weekends, when prisoners are locked up from Friday night through until Monday morning?

Teresa Medhurst: The weekend regimes have not really changed much over many years; there are some prisons that might lock up at teatime on a Friday, so I would have to check that. Most do not: most prisons will be open until half past 8 or 9 o'clock on a Friday evening.

Over the weekend, the core day will be 8 am to 5 in the evening, but there will be a period during the day when people will be locked up—say, after lunchtime. We normally have services: there might be gym activities, and third sector groups such as Alcoholics Anonymous and others might come in at the weekend. However, the amount of activity at the weekend has always reflected society, so

weekends have been down time, as opposed to activity time. The main bulk of activity has always been Monday to Friday.

Evenings and weekends have been association time. It has become very clear over the past two and a half years that prisoners and staff do not want that free association time, so we will look at what happens Monday to Friday and will apply that to the weekend, in looking at how much more productive we can be and at the types of engagement.

It is not just about the harder-edged elements such as criminogenic need and so on. There is also a social aspect to people's rehabilitation and health that needs to be improved. Many such activities could be hosted at weekends, so yes—we need to look at full seven-day operating.

Jamie Greene: I want to follow on from my previous line of questioning around scenario planning. Is there any concern from the Prison Service that, due to the events of the past two and a half years, during which you admit that the rehabilitation service that you would like to have provided has been lacking, coupled with the real potential for reverting to a Covid-like clamp down on what happens in prison, that might create a pressure pot leading to increased violence in prisons, further attacks on staff or even the potential for rioting?

Teresa Medhurst: Reverting to a such a situation would very much be dependent on budgets. Clearly, that is not somewhere that we would want to be and I do not think that the Scottish Government would want us to be in that situation, either. Protecting the public and keeping people safe is not just about keeping people behind closed doors; it is about providing such supports through criminogenic need and rehabilitation.

12:00

The relationships between our staff and our population are positive, and I think that HM chief inspector of prisons for Scotland would reflect that. Despite the two and a half years that we have had, those relationships have strengthened because of how they have been able to grow with those restrictions. There has been more time for staff to spend with those in our care and therefore build much more meaningful relationships. For me, that gives a solid platform to move forward with any restrictions that we might have to impose depending on our budget.

There is evidence from England and Wales—I think that the National Audit Office has produced a report; the HM chief inspector of prisons for England and Wales also produces reports—that reflects that disinvestment can have an impact on

things such as violence and vulnerability. In relation to where we are at the moment, that is not a concern that I have for prisons just now.

Jamie Greene: That is important because, over the past four or so years, more than 100,000 working days have been lost due to staff absences. That it mostly to do with mental health, although it also to do with physical attacks as well, so that is clearly already an issue for staff.

Will you give me an indication of what staffing levels are like currently? What is the scale of vacancies or understaffing in each custodial institution and across the spectrum of the estate?

Teresa Medhurst: I cannot give a breakdown by establishment, but I can certainly provide that across the operational side of the organisation. At the moment, we are running at about 110 vacancies, which is a vacancy gap of about 3 per cent. That is lower than we would normally carry, but, as with other parts of the public sector, we are experiencing challenges in recruitment, including ensuring that we have sufficient people coming through, attracting sufficient people and having the capacity to support the on-going recruitment challenges.

We have learned from our experience. This year, there has been much more bespoke recruitment activity. For sites that are experiencing greater vacancy gaps, there have been a lot of recruitment fairs. We have also reached into lots of communities that we probably would not have reached into previously. I am hopeful that that will increase the diversity of our organisation, particularly our staff group. That is paying dividends in developing more positive relationships and a better understanding of prisons; it is also providing us with the potential means to improve our workforce profile.

Jamie Greene: Last week, we heard quite clearly from other justice partners that a flat cash settlement or a real-terms cut in your budget would equate either to a reduction in head count or to a pay freeze. It is as simple a choice as that. In your scenario, which of those is most likely, given your commitment to a pay award that is above the public sector pay policy? What are the effects of any potential pay freeze or a reduction in staff if either of those scenarios play out?

Teresa Medhurst: The pay negotiations are on-going; they have yet to conclude for this year. Pay for this year and subsequent years is a concern. A reduction in staff would be very difficult to achieve, given our population profile and the arrangements that we have in a complemented position. Equally, it would be incredibly difficult to achieve a pay freeze. That would create significant challenges in our industrial relations environment and could

result in some form of action by any one of the constituent trade unions.

Jamie Greene: What sort of action?

Teresa Medhurst: It could be up to and including industrial action.

Jamie Greene: Do you mean a strike?

Teresa Medhurst: Yes.

Jamie Greene: Are they able to do that?

Teresa Medhurst: Yes.

Jamie Greene: I appreciate that, in your submission, you mentioned energy and food costs, but those are 4 per cent and 2 per cent of your overall budget, whereas pay is 60 per cent of your budget and therefore the lion's share of your costs. You say that

“a flat cash position ... would require restraint on pay increases and a review of the current employee operating model.”

You suggested that neither a reduction in staff nor a pay freeze can take place, but it sounds like both would have to take place. I still do not understand what a flat cash settlement would mean for pay and staffing numbers.

Teresa Medhurst: Any changes to our operating model or to our workforce model would require engagement with our trade union side. That would likely take time. I have no doubt that there would be areas on which we would agree and those on which we would not. I do not envisage that we could achieve a change either in the current year or in the next financial year. Our reaching agreement on both those elements could be achieved only in the short to medium term.

Jamie Greene: It sounds as though you might not have any choice, though. You get what you get with finances for resource budgets, so it will be one or the other, will it not?

Teresa Medhurst: We do not know what we will get yet. Once we know, that is the point at which I will need to consider what the implications are, what options are likely to achieve a balanced budget and what options would take longer to achieve.

The Convener: That brings us to the end of the session, so many thanks for your attendance this morning. If there are any other issues that members want to raise, we will follow those up in writing.

We will have a short suspension to allow our witnesses to leave.

12:06

Meeting suspended.

12:09

On resuming—

Correspondence

The Convener: Our next item of business is to discuss correspondence that the committee has received recently. I refer members to paper 3. You will see that our clerks have suggested some ideas of how we may want to take forward the various issues. I will open it up to members to raise any points or make any suggestions.

I will take the letters in turn. The first is correspondence from the Scottish Prison Service on the cost of the women's estate.

Jamie Greene: This is probably something that we should have asked Teresa Medhurst about while she was here, as there is a budget element to it.

Although Teresa Medhurst has answered our question in her written response, we were not just looking for the numbers. One of the things that came up in our discussion on the topic was about the ability to compare costs across the different estates. I have no idea whether £5 million is good value or poor value for money. Given what those premises are doing—we have seen them—I am sure that that is all very worthwhile. However, we know that they can facilitate quite a substantially lower number of people. Are the £5 million costs for housing 10, 30 or 100 women? How does that compare with the estate historically or to other types of custody units?

It would have been helpful to get more detail around that to make that comparative analysis. That was the reason for the question; we did not just want to know about the numbers.

The Convener: When we visited the Liliacs centre, I think that it was mentioned that an evaluation process was potentially going to be undertaken. I suppose that that would be to monitor outcomes and to look at the effectiveness of the unit. Jamie Greene raises a good point. I am certainly keen to understand the cost benefits arising from the two new units.

Pauline McNeill: I was just saying to Rona Mackay that things could not be any bleaker. I have never heard anything like that in all the time that I have been here.

On the evidence that we have from the Crown Office and Procurator Fiscal Service—

The Convener: We are discussing correspondence to the committee. If you do not mind, just park that thought and we will come back to it.

Pauline McNeill: Sorry.

The Convener: You are very enthusiastic.

We are discussing correspondence that the committee has received. The first piece of correspondence relates to the update on the women's estate. As there are no other queries, are we content to write back to the prison service to thank it for its correspondence and to take forward Jamie Greene's suggestion in doing so? We will monitor developments around the benefits and evaluation of the unit.

Members indicated agreement.

The Convener: The second letter is from the Wise Group on the issue of medical prescriptions on liberation. Would members like to make any comments?

Rona Mackay: At face value, the Wise Group is saying that things have got better. The matter does not seem to be as much of a problem as it was when the committee visited the group's offices in May. I am not sure where we can go from here.

Throughcare is another issue. I do not have anything constructive to say about that.

Russell Findlay: It is worth noting that the committee has done well, particularly Pauline McNeill, who identified the issue during the visit, and pushed to raise it, as did Rona Mackay. It shows that simply by our asking questions and intervening, we can make a bit of a difference.

Towards the end the letter, the Wise Group talks about former prisoners who do not have a fixed address and cannot register with a general practitioner. What might be done about that? I am sure that there is no easy fix, but it is certainly a significant matter that probably requires a bit of attention.

12:15

Pauline McNeill: When I read that, it made me think about how challenging it is to get an appointment with a GP within five days these days. My concern is that, if the approach is rigid, some people will fall by the wayside. What happens also depends on what day people are released from prison and what system their GP has. I wonder whether there is some flexibility around the five days.

Jamie Greene: I was not going to comment. However, I am currently dealing with a lot of casework from constituents who have not been released from prison, who do not have addiction issues, who are not prescribed methadone and who are waiting three or four weeks for a GP appointment.

What will happen when that five-day prescription runs out? That is the crunch point. After they pass

those five days, a person's medical issue might become an emergency. At that point, if they cannot be seen by someone and they cannot get a prescription, where do they go? My fear is that they will revert to illicit drug taking, rather than continue with a prescribed methadone programme, as they will have done while in custody.

We need more detail. As we know, the NHS runs the service; the prison service no longer provides that service. Therefore, the matter has moved from the justice portfolio to the health portfolio. The health secretary needs to respond on the issue.

Collette Stevenson: The Wise Group has said that people who are unable to get a GP appointment within those five days are presenting at accident and emergency. That is putting additional pressure on to A and E. Recently, the message has been that, unless it is an emergency, we are not to present at A and E.

I know from making inquiries into recent casework that, as part of the health secretary's winter resilience plans, letters will be sent to all GPs asking them to open up appropriate appointments again. I am getting a lot of casework in which people are saying that they are unable to get GP appointments. The issue affects more people than those coming out of prisons.

Rona Mackay: All of us can get a prescription online quickly or a repeat prescription with a phone call. Is there not some provision that could be made for released offenders to do that as well? As you say, the issue is critical, otherwise people might be left high and dry after five days. We do not have to suffer, as we can get a repeat prescription by going online or phoning, so why would they be excluded from doing that?

The Convener: I was quite heartened to read that it sounds as though the release process has improved. However, as the Wise Group articulates in its letter, the difficulties outwith prison gates seem to be the challenge and, as you have all articulated, access to GPs is an issue.

I am aware through contact with NHS Grampian in my constituency role that there is an endeavour to encourage the general public to embrace new ways of working in terms of their not necessarily always requiring to see a GP for a health concern. There are other options, such as nurse practitioners, that the public can be signposted to and can access. In the context of this issue, might that be considered so that people who are vulnerable, have addiction issues and are on release from prison can similarly be signposted elsewhere?

On that note, as per the recommendation in the committee paper, should we write to NHS

Scotland? We could copy the Wise Group's letter to it and raise some of the concerns that we have discussed this morning.

Jamie Greene: In addition, we could keep the Parliament's Health, Social Care and Sport Committee abreast of what we are doing. It might be something that it wishes to consider quickly in its agenda.

The Convener: Absolutely. We could perhaps also keep Angela Constance, the Minister for Drug Policy, informed as well.

Do members agree to that approach and to share the information with relevant committees?

Members indicated agreement.

The Convener: That completes our public business for today. Our next meeting will be on Wednesday 9 November, when we will continue taking evidence as part of our pre-budget scrutiny process.

12:20

Meeting continued in private until 12:54.

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.

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

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba