OFFICIAL REPORT
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Criminal Justice Committee

Wednesday 22 February 2023

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 22 February 2023

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CRIMINAL JUSTICE COMMITTEE

6th Meeting 2023, Session 6

CONVENER

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

DEPUTY CONVENER

*Russell Findlay (West Scotland) (Con)

COMMITTEE MEMBERS

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

*attended

THE FOLLOWING ALSO PARTICIPATED:

Keith Brown (Cabinet Secretary for Justice and Veterans)
Teresa Medhurst (Scottish Prison Service)
Neil Rennick (Scottish Government)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 22 February 2023

[The Convener opened the meeting at 09:02]

Transgender Prisoners and Scottish Prisons

The Convener (Audrey Nicoll): Good morning, and welcome to the sixth meeting in 2023 of the Criminal Justice Committee. There are no apologies this morning. Our first item of business is consideration of the Scottish Prison Service's urgent case review and the housing of transgender prisoners. I refer members to paper 1.

I intend to allow around 45 minutes for this session, after any opening statements. I welcome Keith Brown, Cabinet Secretary for Justice and Veterans, Mr Neil Rennick, director of justice at the Scottish Government, and Ms Teresa Medhurst, chief executive of the Scottish Prison Service.

I invite Ms Medhurst to make some brief opening remarks, followed by the cabinet secretary.

Teresa Medhurst (Scottish Prison Service): Good morning, convener and committee members. Excuse me—I have a bit of a cold, so I will try to work through that as we go through the session.

Thank you for inviting me this morning. I hope that the session will allow me the opportunity to provide you all with greater clarity and understanding about how the Scottish Prison Service manages all people in our care. Although I know that the focus today is on the management of transgender individuals, my priority remains the health, safety and wellbeing of everyone who visits, lives in and works in our prisons, some of whom—[*Temporary loss of sound*.]—as well as the most marginalised and vulnerable in our society.

The SPS has a proven track record of managing complex people. Society in general is subject to constant change and, in time, those changes impact on our own prison communities and affect how we manage those in our care. That requires us to evolve and adapt our operations to meet new challenges and changing dynamics.

Every person sent to us by the courts comes to us with their own history and life circumstances that define them as individuals. That is why an individualised, person-centred approach is fundamental to our role as custodians and our position within the wider justice sector as a modern prison service. Daily, prison officers have to manage a range of often conflicting demands and risks presented to them by the individuals we care for, who can range from someone who belongs to a known serious and organised crime group to a first-time offender about whom we have little or no knowledge.

Decisions on the management and placement of individuals, including transgender individuals, are made on an individual basis, informed by a multidisciplinary assessment of both risk and need. Such decisions seek to protect the wellbeing and rights of the individual, as well as those of the people around them, including staff, in order to achieve an outcome that balances risks and promotes the safety of all people who live and work in prisons.

As part of our approach to operational risk assessment, proportionate management controls, such as removing an individual from contact with the wider population or additional security measures, will be introduced where new information suggests that that is necessary. Such decisions are not taken lightly. When such measures are required, the key consideration is always safety rather than punishment. That balanced approach helps to manage a perceived risk or threat, while continuing to support the wellbeing of the individual, with the aim of integrating the person into an appropriate mainstream location as soon as practicable.

The population dynamic, which is constantly shifting and changing can be affected by both internal and external factors. That requires a responsiveness using well-established and practised operating systems in managing intelligence, profiling risks, making tactical interventions and applying an individualised case management approach through managing our policies and practice. The foundation of that approach is the relationships that exist and are developed between our staff and those in our care. Those relationships are key to creating a solid foundation for delivering effective services. Staff support people through difficult times, guiding them through their journey in custody and preparing them for an eventual return to society.

I have more than 30 years' operational experience working in prisons. They are unique environments and unlike other parts of the public sector. I have been the governor in charge of both male and female estates and have managed both trans women and trans men in custody. I also led the development of our transformative women's strategy in response to the Dame Elish Angiolini report in 2012, which is delivering a step change in how we manage women in our care. Our trauma-

informed and innovative strategy is supporting women to regain their independence and to learn skills that will support the best possible chance of a successful return to their communities.

The SPS remains committed to providing person-centred care to our entire population, including managing identified risks that are not exclusive to transgender people in custody. That is supported by our staff, who continue to demonstrate long-standing expertise and a strong track record in the management and care of an increasingly complex prison population.

Finally, I reiterate the point that I made at the start of my statement: my priority remains the health, safety and wellbeing of our staff and everyone in our care.

The Cabinet Secretary for Justice and Veterans (Keith Brown): Thank you for the opportunity to be here today to answer questions regarding the management of transgender prisoners and the recommendations of the urgent case review. There have, of course, been concerns expressed about the issue. It is important to provide assurance around the safety of all people in the care of the SPS.

In a democracy, it is perfectly legitimate to raise questions and seek assurance. However, the wider discussion around gender identity has risked stigmatising transgender people, which will have a real and direct impact on both transgender people and the broader community of which they are part. As MSPs, it falls on us to provide responsible, rational and compassionate leadership. I hope that the committee would agree that it would be abhorrent if any legitimate scrutiny of the matter was allowed to fuel the view that trans women somehow pose an inherent risk to women. That is clearly not the case, and I remain concerned that that view is even further marginalising trans individuals.

As in any discussion involving the criminal justice system, we must also never forget that the victims who will be affected by these instances are also affected by the things that we say. That is true of the specific case to which the lessons learned review relates, and I pay tribute to those women for their bravery.

As I said in Parliament, I am keen that the discussions around the issues and the lessons learned review are calm and founded on fact. I am confident that, approached in that way, you will be reassured around both the lessons learned and the wider management of individuals in the care of the Scottish Prison Service.

I commend the SPS's expertise—you have just heard some of the bona fides of the people involved in that process—and their track record of managing the risk posed by individuals in their care.

A number of high-profile individuals have been discussed in the media and mentioned in Parliament. I am also aware that there are other transgender individuals in the prison estate who have been living in their allocated establishment for lengthy periods of time without any issue or concern.

It remains a long-standing principle of the Scottish Government and the SPS that we do not comment on individual cases, and although that approach has been particularly challenging in this instance, I do not consider it appropriate to forensically examine the details of every individual case in a public forum.

The current SPS policy around the management of transgender individuals has been in place from 2014. On 29 January this year, as a result of the specific circumstances of the case that has been mentioned, I announced that a number of interim measures had been decided by the SPS. First, no transgender person with a history of violence against women, which includes sexual offences against women, who was already in custody would be moved from the male to the female estate. In addition, no newly convicted or remanded transgender prisoner with any history of violence against women would be placed in the female estate. Any case that required such a move would be in exceptional circumstances and would require to be approved by ministers.

A lessons learned review into the circumstances of the Isla Bryson case was also conducted by the SPS, and I am very grateful to the Prison Service for doing that work and for its conclusions and recommendations. Although the full report will not be published due to the significant amount of personal data relating to both the individual and SPS staff, I wrote to the committee on 9 February in that regard and I published a letter and key recommendations from the SPS. It might be helpful to mention briefly some of the key points in it.

As we have heard, Teresa Medhurst confirmed that SPS policy was followed during each decision-making process and risk assessment. Most significant, she has also confirmed that at no time during that period were any women in SPS care at risk of harm as a consequence of the management of the individual. I am mindful that that assurance points to the effective operation of SPS practice and the existing policy.

Teresa Medhurst has also confirmed that, after the initial risk assessment procedure and multidisciplinary case conference that were undertaken in terms of that policy, the individual concerned was transferred to and remains in the

male estate. As additional assurance, I advise that full multidisciplinary reviews are also currently under way for each transgender person who is in custody.

The Scottish Prison Service indicated that the protective measures that were originally put in place would be amended to take account of the lessons learned review and developing operational experience. Critically, it remains the case that any transgender person who is currently in custody and who has any history of violence against women, including sexual offences, will not be relocated from the male to the female estate. However, the SPS has decided that any newly convicted or remanded transgender prisoner, not just those with a history of violence against women, will initially be placed in an establishment that is commensurate with their birth gender. That wider measure reflects operational practicalities, which I am sure that Teresa will be able to talk to if you require. In the light of the lessons learned review highlighting the lack of available information sharing at the pre-custody and post-admission stage, that is a precautionary approach that I commend. Again, in exceptional circumstances in which a move contrary to those measures is required, ministerial approval will be required and sought.

A key area for improvement from the lessons learned review is for improved information sharing and communication between justice partners and the SPS to allow for advanced alerts to ensure that there is a clearer approach to the transfer of transgender individuals from the court to SPS custody.

The review also supported the current approach to individualised risk assessments and the balancing of rights, but it highlighted the need to consider improvements to the admissions process, particularly around the weight attached to an individual's offending history.

Teresa has indicated that she has accepted those recommendations and that the SPS has started work to action them. The SPS has confirmed that the lessons that have been learned will also feed into its on-going review of its policy on the management of transgender prisoners.

As we have heard, the management of any group of prisoners involves an element of risk; clearly, that is not unique to prisoners who are transgender. The approach that the SPS takes must be based on its legal obligations and on the human rights and trauma-informed approach that it takes to all those in its care. Crucially, it must protect the safety of all prisoners and staff.

Along with the chief executive, I am happy to answer any questions that the committee has on these issues.

09:15

The Convener: Thank you very much. We will now move to questions. I intend to allow 45 minutes for members to ask questions.

Russell Findlay (West Scotland) (Con): I echo what the cabinet secretary said: we are not suggesting that trans women inherently pose some kind of threat. The issue has always been about predatory men exploiting gender self-identification. Indeed, that is why we are here to talk about this particular case.

A victim of this male-bodied double rapist—and his wife—has said that his claim to be trans is a "sham". Cabinet secretary, you told the BBC that, in this case, you need to accept that people identify as women. Nicola Sturgeon has repeatedly been unable to answer this particular question in relation to this individual. Kate Forbes has said:

"No rapist can be a woman. Isla Bryson is a man".

Who is right?

Keith Brown: I am not here to discuss other people's views. I am here as the Cabinet Secretary for Justice to answer questions about the Prison Service's policy. I would say—

Russell Findlay: But if this goes to the heart of—

Keith Brown: Let me finish my point. You have asked a question.

Russell Findlay: We have very little time.

Keith Brown: If you have other questions, you can ask them after I have finished my answer, please.

Russell Findlay: Okay. Given the amount of time that we have, I do not want to—

The Convener: We are here to discuss the specifics of the lessons learned review. I would be grateful if you could refine your questions to focus on the review.

Russell Findlay: Okay. The reason why I think that my question is relevant is that it goes to the heart of where we are now. The Prison Service is conducting a review. If senior politicians in the governing party all give different answers to a very basic question about this particular offender, that is germane to the issue. Cabinet secretary, if you are not prepared to answer the question, that is fine and I can move on, but I can give you another opportunity, if you like.

Keith Brown: I was trying to answer, but you would not allow me to answer. That was the point that I was trying to make. Can I try to answer now?

Russell Findlay: Okay. Who is right in terms of definition?

The Convener: You are asking the same question. I ask you to ask another question.

Keith Brown: Convener, I am happy to answer the question, but I would like to try to get through my answer before being interrupted, if possible.

As justice secretary, my responsibilities for the prison estate are, in my view, what are germane here. Prison rules—this addresses the point that Mr Findlay has made—state that people are

"able to self-declare that they are transgender and are supported to express the gender (or non-gender) with which they identify, with staff using correct pronouns."

It is important to mention that, because those are the rules in England and Wales, which are underpinned by United Kingdom legislation over many years. That is the process that is followed by prisons in Scotland.

Russell Findlay: When did you find out that this particular prisoner had been sent to a women's prison?

Keith Brown: I found out when it became evident from the media. I am not normally uniformly told of every prisoner who is sent to prison.

Russell Findlay: Even though this was quite a high-profile and on-going High Court case, and people were aware of the issue, nobody had informed you.

Keith Brown: I have just answered that question.

Russell Findlay: Once the transfer became known about, you initially defended the decision. The following day, the First Minister announced that the prisoner was being removed. Do you now regret defending the decision initially?

Keith Brown: At the time, I said to the Parliament that I had faith in the basis on which the Scottish Prison Service deals with prisoners who are transgender. It has an extremely strong track record on that. It has managed to protect women, other prisoners and staff. I expressed that support for the Prison Service at the time, and I am happy to express it again now.

Russell Findlay: On 31 January, you told the Parliament that

"The SPS was, of course, aware of ministers' views—it would be, frankly, bizarre if the SPS had not been aware of ministers' views".—[*Official Report*, 31 January 2023; c 16-17.]

You said that in relation to the decision to remove the prisoner from the female estate. How exactly were those views made known?

Keith Brown: As you have mentioned, there was a substantial degree of publicity around that. Obviously, ministers have discussions with officials and the agencies for which they have responsibility.

As I say, the process that was followed in this case is the process that is always followed, and I have faith in that process. There is very little evidence to suggest that how this individual prisoner was dealt with would have been different in any other circumstances.

I repeat the point: I have faith in the Scottish Prison Service's ability to deal with the issue. Changes, which I mentioned in my opening statement, have been announced to provide further reassurance, and I think that that was the right thing to do.

Russell Findlay: How were the Government's views made known to the Prison Service?

Keith Brown: I have just explained that, convener.

The Convener: Perhaps I can—

Russell Findlay: I am not entirely sure that we know how the Government communicated to the Prison Service its dissatisfaction with that prisoner being in the female estate. The partial review that we have in front of us does not explain that, so it is a perfectly reasonable question. Perhaps the Prison Service could tell us how the Government made its views known.

Teresa Medhurst: During a conversation with officials, I was asked about where we were in the case management of that individual, because the case management process applies almost immediately, particularly when somebody is held in segregation. It was during that conversation with officials that I was made aware of ministers' views on the situation.

I will make this very clear: the placement of prisoners, unless it is a policy matter, is an operational matter for the SPS. In respect of the initial placement of the individual, and the subsequent decision to move the individual, those decisions were taken by operational people. They were in no way ministerial decisions; they were decisions for operational people in the SPS.

Russell Findlay: Going back to the contact, was that conversation instigated by Government officials?

Teresa Medhurst: It was a telephone call to me, yes.

Russell Findlay: Was the call from the justice directorate?

Neil Rennick (Scottish Government): It was from me.

Russell Findlay: And it explained that the justice secretary and the First Minister had concerns.

Teresa Medhurst: It explained that there were ministerial concerns in Government and that there was a requirement to understand where we were in the process. That is what I was asked, and I checked where we were in the process.

As I say, in relation to the decisions that were taken in respect of an individual case, which we should not be discussing, any decision on the operational placement of an individual is for the Prison Service.

Russell Findlay: The representation that was made to you was more general—as in, "We have these concerns"—and was not a suggestion that you should act in a certain way.

Teresa Medhurst: No; there was no suggestion that I should act in a certain way. General concerns were raised about the individual, and a request was made to better understand where we were in the process.

The Convener: I will move things on, so that other members have the opportunity to ask questions. If we have time, I will come back to that issue.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Good morning. For clarity, Ms Medhurst, how long has the Prison Service been managing transgender prisoners in Scotland?

Teresa Medhurst: To the best of my knowledge, for at least 15 years. That has included trans men and trans women. I have experience of managing transgender prisoners in the male estate and in the female estate.

Rona Mackay: In the lessons learned review, you said that

"newly convicted or remanded transgender prisoners will initially be placed in an establishment commensurate with their birth gender."

Is there a timescale on that? Does the individual have to appeal to be moved to a different prison?

Teresa Medhurst: The cabinet secretary's statement on 29 January gave a clear indication of the types of offences that should be debarred from that initial placement in the female estate. In order for me to effect that operationally, I need to develop a standing operating procedure.

That takes time, because a range of factors around the admission process need to be considered. We are doing a detailed piece of work with our partners on the information that we receive on admission, which will inform the standard operating procedure. Once that standard operating procedure has been developed, we will implement it, and that should provide a more nuanced position with regard to effecting the intention of the cabinet secretary's full statement, as opposed to the blanket approach that we have to take, which is a preventative measure.

Each individual will undergo a case conference as soon as is possible. Normally, we try to pull together a multidisciplinary case conference on an individual at the point of admission when we know that they are a transgender individual and on the following day, in an effort to gather as much information as possible. If circumstances arise in which we consider that the individual does not meet the threshold, we can assess the best location for that individual, using all the information that is available to us, given the needs of the individual and the risks to them and to others.

Rona Mackay: What I am trying to get at is whether the individual has the right to appeal against the decision on where to send them.

Teresa Medhurst: As with any decision that is taken on an individual in custody, there are always rights of appeal. We have a complaints process. The individual can go to the complaints ombudsman. There is also the opportunity for judicial review, and they can write to their local MSP. There are a number of avenues for them to make an appeal. There are mechanisms in place that allow people to challenge the decisions that we take.

Rona Mackay: For clarification, you talked about setting up the operating procedure. In the interim period, what would happen to a newly remanded or convicted transgender prisoner? Would they go to an establishment for prisoners of their birth gender?

Teresa Medhurst: Yes.

Pauline McNeill (Glasgow) (Lab): Good morning. The key question is: how do we move forward? However, I want to understand how we got to this point. That is important, because a lot of things went wrong.

I will start with the cabinet secretary. I have not raised this directly with you, but I have raised it with other ministers and with the SPS. I expressed my concern when the Katie Dolatowski case was live. Why did ministers not raise the issue with the SPS before now, given that, as we heard in answer to Russell Findlay, your officials phoned the SPS? I ask that question because I am sure that, as cabinet secretary, you are aware of the profile of women offenders. One statistic from the McMillan research is that 85 per cent of women offenders have reported adult sexual physical abuse. I am sure that you know all this.

Therefore, my first question is: why did ministers not raise the issue before now? We are talking

about a policy that has been in place since 2014. For the sake of completion, I will quote Rhona Hotchkiss, who was vocal well before the decisions in question. She said:

"it is always an issue to have trans women in with female prisoners and ... the presence of male-bodied prisoners among vulnerable women causes them distress and consternation."

Given what you have said, do you think that it is time to change the balance of the policy? Were you aware that women's groups were not consulted on the design of the policy?

Keith Brown: The policy was designed in 2014. It remained relatively uncontentious for most of the period up until now. As I have said, I have confidence in the system that is there, notwithstanding the changes that I announced. I think that those changes in policy were pretty consistent with what the Prison Service does already. Therefore, I do have confidence—

Pauline McNeill: But, with respect, that is not what I am asking. I know that you have confidence in the system. I am asking you directly whether you were aware that, when the policy was developed, women's groups were not consulted. Did anyone tell you that?

Keith Brown: I was not in post at that time. Teresa Medhurst will know about that far better than I do. However, you mentioned Rhona Hotchkiss's concerns. I have spoken to other governors, not least the current chief executive of the Scottish Prison Service, who do not share her views. The people I have spoken to have lengthy experience of dealing with transgender prisoners and I tend to rely on their advice, because I think that they are the experts in that area.

09:30

Pauline McNeill: Sorry—I am not trying to be difficult; I am just trying to get to the bottom of this. As the Cabinet Secretary for Justice and Veterans, does it concern you that we have had a policy in place since 2014 that women's groups have not been consulted on, even though they have raised concerns about it? Going forward, would you want to make sure that that changes?

Keith Brown: I know about and can speak to current policy, because I am involved in the process as a cabinet secretary. In the review that is currently taking place, people are being consulted with, including female prisoners, which is important, as well as other interest groups. I cannot speak to what you are asking about, as I was not in post as Cabinet Secretary for Justice and Veterans in 2014. I think that it is important—

Pauline McNeill: So, you were not aware that women's groups were not consulted? I am not trying to give you a trick question.

Keith Brown: I have heard that said before, and I think that it has been said in the chamber. I was aware of that. Because I am now in post, I am concerned with making sure that the current review of the policy takes into account the most important groups. In relation to that, the views of women prisoners are of particular importance. The Prison Service is undertaking the review and the consultations. You may want to hear from the person who is in charge of that review.

Pauline McNeill: I do, in a minute. I am really just trying to get some clarity. That is all that I am trying to do.

In balancing the rights of everyone—and I note what you have said about the importance of balancing the rights of trans people—would you agree that Rhona Hotchkiss is not talking about the possibility that women might be at risk, but that she is saying that the privacy and dignity of women in prisons are also important?

Keith Brown: I have heard other governors say otherwise and that they think that the privacy and dignity of women in prison can be accommodated within the way that they deal with transgender prisoners. I have confidence in that view, but, of course, it will be subject to the current review.

Pauline McNeill: Thank you.

I will ask Teresa Medhurst a similar question, as I am trying to get to the bottom of this. I know that you were not governor for the whole time period. You have probably heard the interview with a former prisoner who said:

"My whole time in prison"

I was

"on constant high alert, my nerves were frazzled with fear. These incredibly violent men were walking around the communal shower area naked and sometimes"—

I apologise for the language—

"clearly aroused. Myself and other women were in cubicles with only a curtain to protect us. I was shaking with fear."

I raised that issue with the deputy governor. I have to confess that I was shocked at the defence of the policy at the time. If there is going to be change, I would welcome it.

What is your view on her comments? I was told, first, that what she said was not true. Secondly, I was told that women are not at any risk and that there are separate showering arrangements. However, that does not seem to bear out the testimony of women prisoners.

Teresa Medhurst: In all our prisons across the estate, we have a range of different types of high-

risk individuals who are in our custody. In any prison on any day, there are always protocols for how people are dressed when they come out of their cellular areas. That must meet an acceptable standard, because we have mixed gender staff groups across all our prisons. It is not appropriate for people to be wandering about in a communal area either partially or fully unclothed, which is probably why there was some surprise at the claims that were made. I am not saying that the person who was interviewed did not experience that, but I would also be surprised at that. Our communal areas also have cameras and we have access to closed-circuit television.

I have to say that it would shock me if someone was in that state of fear for that length of time, and I would be very concerned about it, but I would also be surprised if staff were not aware of it, because staff are incredibly experienced in the relationships that individuals—particularly women—have. They are always looking out for vulnerabilities, changes in behaviour and changes in relationships. There is a very well-established protocol that ensures that, where issues arise that require to be dealt with or challenged, staff will do so, and they will do so in a firm manner.

Pauline McNeill: You seem to be questioning what was said. Again, I point to the statement that was made by Rhona Hotchkiss, the former governor of Cornton Vale. She said:

"... it is always an issue to have trans women in with female prisoners."

That means that it affects not only one prisoner. Do you accept what Rhona Hotchkiss said?

Teresa Medhurst: I have governed the same establishments that Rhona has, and in my experience, there are very clear protocols and restrictions placed around individuals, particularly when an individual is in custody for the first time. There is also clear testing around how relationships are developed with that person, and trans individuals—

Pauline McNeill: So, what was said is not true. The problem I have is that, every time I ask a question, I get management speak in response, and it is the same with the deputy governor. I am trying to get some clarity. Rhona Hotchkiss has been the governor of Cornton Vale, so do you think her assessment is fair?

Teresa Medhurst: If that is Rhona's assessment, and she has evidence to back it up, then, of course, I want to hear it and I welcome her input.

Pauline McNeill: Is it not the experience that you had?

Teresa Medhurst: It was not the experience that I had. We had a trans woman and the women were incredibly supportive of her, curious about her and incredibly understanding, so the experience that I had is different.

The Convener: I will move on to questions from Collette Stevenson, and then I will bring in Katy Clark.

Collette Stevenson (East Kilbride) (SNP): Thanks, and good morning. I want to look at the lessons learned review, which is currently under way. Have you considered looking at other countries that are outwith the UK for examples of good practice in the treatment of transgender prisoners and other vulnerable prisoners in prison estates?

Teresa Medhurst: There has been extensive consideration of other jurisdictions as part of the current review. We have considered His Majesty's Prison and Probation Service, which is closest to us, and also systems in Canada and New Zealand. We have also considered the research, policy and evidence that are available from across the globe, so all of that informs good practice. However, it is important to note that there are cultural differences between us and other jurisdictions, so it is important that we pay attention to the views and perspectives of interest groups—as Rona Mackay and Pauline McNeill mentioned—and the public. There was a public consultation as part of that review, and we have pulled all of that evidence together with the voices of our staff and those in our care—both non-transgender and transgender individuals.

Collette Stevenson: Does the policy in its current format meet with the standards of the Optional Protocol to the Convention Against Torture?

Teresa Medhurst: I am afraid that I do not have the answer to that question.

Neil Rennick: The prisons inspectorate is part of the national preventive mechanism, which is responsible for overseeing the implementation of OPCAT, and it does inspections and monitoring of our prisons in line with OPCAT.

Collette Stevenson: Is the inspectorate fairly comfortable with the policy in its current format?

Neil Rennick: No issue has been raised with me, certainly. I do not know whether anything has been raised with Teresa Medhurst.

Teresa Medhurst: The inspectorate obviously has access to all our policies. It visits all our prisons, and can do so at any time. A number of our prisons have transgender individuals within their care, and nothing has been raised with us around the current policy or practice.

Collette Stevenson: Would the inspectorate raise issues, if there are any, on a regular basis with each prison?

Teresa Medhurst: That would come either through the independent prison monitors who are allocated to each prison, if they considered that there was any practice or issue that required to be raised, or through the inspection reports, which are published a few months after each inspection.

Collette Stevenson: I will just quickly ask one more question. Sorry, convener, but I will finish on this.

Will you consult on the review with the inspectorate and each of the prison monitors and seek feedback from them?

Teresa Medhurst: The review has sought the views of a wide range of not only public sector organisations but third sector organisations and interest groups, which would include the inspectorate.

Collette Stevenson: Thank you.

Katy Clark (West Scotland) (Lab): I want to go back to the lessons learned review and what actually happened on 24 and 25 January. The facts as we understand it are that, when the offences took place and when the individual was initially charged, they were a man and had not self-defined as a woman at that point, but thereafter they self-defined as a woman. You say that the outcome of the review is that the 2014 policy was adhered to. Obviously, we have not seen the full lessons learned review; we have just seen a summary, but the summary is that the policy was adhered to. However, I think that you are also saying that the multidisciplinary assessment had not taken place as of 24 or 25 January.

That is our understanding of the position. What we do not understand is why the individual was not transferred to Barlinnie and held in segregation there pending the multidisciplinary risk assessment.

Teresa Medhurst: The cabinet secretary, in his introduction, referred to our inability to discuss individual cases, and that would apply in this case. What I would say is that with any—

Katy Clark: Can I interject? You are an experienced witness, and you have appeared in front of the committee on many occasions. We need answers. I am not asking you to talk about individuals. You say that the policy was adhered to.

Teresa Medhurst: Yes.

Katy Clark: Given the facts as we understand them, which I think we all agree on, and given the situation on 24 and 25 January—we do not need to talk about the individual—why was that person not transferred into the male estate and held in segregation there pending the multidisciplinary risk assessment?

Teresa Medhurst: That is what I am trying to explain, Ms Clark.

When a decision is made or an outcome reached at court, the individual is then passed on to GEOAmey. As our contractor, it will try to ensure that, where possible, all relevant information is provided to us as a Prison Service, and the Prison Service is then required to make a judgment based on that information.

If you look at the policy, you will see that it says that, where an individual identifies in a social gender, consideration is given to where that individual is to be located. Our processes, and the way that we manage individuals mean that we have to assess and determine where best to undertake those assessments on each occasion. However, the safest way to undertake those assessments is through an operational decision, and an operational decision was taken on the placement of that individual.

Katy Clark: Are you telling us that the policy from 2014 has been that an operational decision is taken on the basis of how the individual defines themselves at that point, irrespective of whether a multidisciplinary risk assessment has taken place?

09:45

Teresa Medhurst: As can be seen through all the information that we provide, it is about a range of factors. That individual identifies in whichever social gender they choose to do so—that is just one factor but, as the policy states, it is a factor that needs to be considered. We also have to look at safety. We have a range of measures that we can put in place, which include special security measures—protecting people by putting limitations around what they can and cannot do. The other way that we can do that is by placing them in segregation and identifying the most suitable segregation point for that individual.

We take such decisions on a daily basis, and they will always have to be taken in advance of a multidisciplinary case conference because, at the time of admission, there is no time for a case conference to take place. For that conference, we require medical input and we might require social work representatives. If the individual is transgender and had been working, for example, with medical experts such as the Sandyford clinic, we might ask for representation from it. That all takes time so, at the point of admission, we will not have such a conference and we always have extremely limited information, so people have to

make a best-case decision based on the information that they have.

Katy Clark: What factors would be taken into account? We know that, on this occasion, it was not somebody who had lived as a woman for many years because, at the time of the offence, they had not self-defined. At some point during the legal process, did their status change? Do you know that? Was that fact available at the time and were the offence and the conviction taken into account in the operational decision that was taken?

I am not asking you to focus on the individual; I am asking you to focus on how those issues are dealt with and what factors would be taken into account, given that you would not have all the facts, as you would not have had the multidisciplinary assessment.

Teresa Medhurst: Any information that we have from the court—that information would be limited—and any information that we have on the individual would be taken into account. That would all be factored in to the decision, but it is an almost immediate decision. People weigh up the different elements—it is not an algorithmic approach, but they weigh up every element of information that they have and reach what they consider to be the best decision given the circumstances.

Katy Clark: I am not asking you to refer to individuals, but at what level within the service would that decision be taken? Who would take that decision?

Teresa Medhurst: Sometimes, decisions are taken by individual establishments and senior leaders in those establishments. On occasion, they might ask for support from headquarters and from more senior people, and that might include input from others who have expertise.

Katy Clark: I am not asking you to identify individuals, but at what level was the decision taken in the case that we are discussing?

Teresa Medhurst: It was a decision that was taken in conjunction with headquarters.

Katy Clark: The 2014 policy has been under review for a number of years and you have gone through a very quick lessons learned review in relation to this particular incident. Have recommendations been identified in the lessons learned review that were not identified in all the review work that has been happening over the past few years in relation to the 2014 policy?

Teresa Medhurst: The review of the 2014 policy was committed to in 2019 and some early scoping work was undertaken at that time, but then the pandemic hit, and it was only in 2021 that we were able to create the capacity to commence the review.

Concerns have been raised about how long the review has taken, but there have been—

Katy Clark: We do not have a lot of time, so maybe you could answer the question, which is about whether recommendations were identified in the lessons learned review that were not recognised in that very long process.

Teresa Medhurst: The formulation of the recommendations from the review is still under way, and the work that we have undertaken as part of it will be used to inform that process.

Katy Clark: Convener, given that witnesses have said that they are not aware of concerns that have been raised before, can I briefly ask whether they are aware of some concerns that are currently being raised?

The Convener: You can do so if it is your final question, because other members are waiting to come in.

Katy Clark: I will be very brief. There are three issues that I want to put to you about which concerns are being raised. First, in relation to individuals currently in the estate, we understand that individuals will no longer be moved. Where fresh charges are brought, if those charges are of a violent or sexual nature and regardless of whether the charges relate to crimes against boys, men, girls or women, what approach will be taken?

Concerns have been raised with us, as politicians, about searches. For example, there are concerns about women prison officers being asked to conduct searches on individuals with male genitalia and, indeed, male prison officers being asked to conduct searches on trans men with female genitalia. Concerns are also being raised about the safety of trans men on the estate and the duty of care that you have when trans men are being kept on the male estate. Are you aware of those concerns and will you either respond today or get back to us after the meeting on those issues, given that you are saying that you are not aware of them and given the fact that it is people within the system who are raising those concerns with us? Are you aware of those concerns?

Teresa Medhurst: I am aware of some of those concerns, but I am more than happy for us to respond to some of those, Ms Clark, because I am not aware of all of them.

Katy Clark: Okay—thank you.

Jamie Greene (West Scotland) (Con): Good morning. I will open my questioning with some consensus on what the cabinet secretary said about the fact that we need to be careful not to stigmatise an entire community for the actions of a small group within that community. However, we are perfectly entitled, and it is entirely appropriate,

to ask specific questions about what has happened, given the very understandable public interest in the matter.

I might be a bit more simple and direct in my line of questioning in the hope that we get through this more easily. I ask quite straightforwardly: who made the decision to house Isla Bryson in the female estate?

Teresa Medhurst: As I said, that decision was taken by headquarters.

Jamie Greene: Who is headquarters? Is it a person or a chain of command?

Teresa Medhurst: I am not at liberty to say that. Normally, there are local and national processes and people seek advice through their channels into headquarters, and that is what was done on that occasion.

Jamie Greene: Somebody must have signed off the decision.

Teresa Medhurst: Ultimately, the position is that I am accountable for all decisions within the organisation, so you can say that it was me.

Jamie Greene: Okay, so the buck rests at the top—I understand that.

Teresa Medhurst: Yes, absolutely.

Jamie Greene: Therefore, given the current policy and any future changes, as that individual is no longer in that location, were you in effect overruled by Scottish ministers on a decision that you were ultimately in charge of?

Teresa Medhurst: No, absolutely not.

Jamie Greene: At what point in the decision-making process did it ever seem appropriate to house a rapist in the women's estate, and has that ever happened before?

Teresa Medhurst: I will come to the second point first. To be honest, I am not aware of a similar case, but I would need to check that and come back to you. Could you reiterate your first point, please?

Jamie Greene: It is a wider point. As we look to move forward and offer some clarity to the public on the issue, at what point—at any stage of proceedings—was it ever felt or deemed to be appropriate to house someone who had been convicted of the crime of rape in the women's prison estate? Why, in anyone's logical thinking, would that ever be appropriate?

Teresa Medhurst: I understand the public concerns and I understand why you have raised that question. In my responses to Ms Clark, I tried to set out that a really complex set of issues require to be considered in relation to the risks that someone might pose, including to themselves, and in relation to the needs and rights of those individuals and others. It is not a simple process. At the point when someone is making a decision on the location of an individual, they will have extremely limited information and will make the best decision at the time, given the circumstances and our policy position.

Jamie Greene: That in itself is a problem. What do you mean by "limited information"? Surely, you should have access to fulsome information about that individual. That person has gone through quite a lengthy court process and there was undoubtedly an element of public interest in the case. At what point does the nature of the crime for which someone has been convicted become a primary factor in decision making? Clearly, it sounds as though it was not in this case.

Teresa Medhurst: I will respond in general terms. There are circumstances in which people are charged with offences, convicted of offences and bailed for offences, and who, at the point that they come to court, come to us with little or no information. It is not the case that a lot of information is available to the SPS. That has been recognised in the lessons learned review, and that is why we are undertaking a review and speaking to our colleagues in Police Scotland, the Crown Office and Procurator Fiscal Service and the Scottish Courts and Tribunals Service. They might have more information about someone, but that does not come through to us at the time. There is something around the sharing of information—that is why we are developing a memorandum of understanding—and the way in which that is communicated could be improved on. That is why we are in discussions with partners.

Jamie Greene: The current position is that no transgender offender who has been convicted of a crime of violence or sexual violence against women or girls will be placed in a female prison. I presume that those who commit other types of violence and domestic abuse are not currently and will never be held in the female estate. Is that something on which you can give assurances, or is that a temporary measure?

Teresa Medhurst: On the intent that the cabinet secretary announced on 29 January, we have actually taken a more precautionary measure at the moment—

Jamie Greene: At his directive, though.

Teresa Medhurst: Yes.

Jamie Greene: Under ministerial directive.

Teresa Medhurst: Yes, under ministerial directive. That measure is that no one who is newly convicted of violence against women in the broadest sense will be admitted to a female prison. Therefore, the measure that I have taken

until we can develop a standard operating procedure is that anyone who comes into custody from now on will be allocated to an establishment that is commensurate with their birth gender, as opposed to their social gender.

Jamie Greene: I understand that, but I do not think that it really answers the question. I will put the question directly to the cabinet secretary. Is that a temporary measure, or will it become a permanent feature of how the process works?

Keith Brown: I think that you have heard that there is a lessons learned review on the particular case that has been mentioned and that that will feed into a larger review. The larger review will determine how we go forward.

I restate the fact that the policy that the SPS carried out was, first and foremost, to ensure the safety of all prisoners. The SPS has a very good track record of making sure that that is the case. Therefore, if somebody was admitted to a female prison—it is worth bearing in mind that we have both women and men in many of our prisons—they were held in segregation, to minimise the risk to other prisoners and staff. On top of that, we have provided the additional direction, which you have just mentioned, to make sure that people go to part of the male estate in the first instance.

I should say that there is an exception to that, which we stipulated to the Prison Service, which was that in any case where the SPS felt that it was imperative that that should not happen, it should get ministerial approval. That is the same as in other jurisdictions, such as England and Wales. That is the current situation. The overarching review will take things forward.

10:00

Jamie Greene: I understand. Ms Medhurst, are there currently any trans women prisoners in the women's estate who have been convicted of crimes of violence against women?

Teresa Medhurst: Excuse me, I am struggling at the moment.

My answer would be that there are not. I am looking at Neil Rennick for some help on that. Obviously, we are going through the reviews at the moment.

Jamie Greene: There are only five trans women in the women's estate in total, so you must know.

Teresa Medhurst: Then yes, that is the case.

Neil Rennick: Our understanding is that there are currently no trans women in the female estate who have live convictions for violence against women.

Jamie Greene: So, the answer is that there are none. That is reassuring.

Finally, what effect does the possession of a gender recognition certificate have on your decision making? There is still a bit of ambiguity as to what the decision-making process looks and feels like. I know that you have spoken about it, I understand the rationale and I know that you have been doing it for a very long time. The actions of prison staff in handling such sensitive issues are to be commended. That is all a matter of public record. However, it is still unclear how you go about taking such decisions. I am intrigued by the effect that a legal document such as a GRC would have on your decision making, compared to the effect of someone making a different kind of declaration that does not have that legal recognition—that might include those who have gone through some form of transition.

Teresa Medhurst: The position with regards to a gender recognition certificate is that it would be considered as a factor—an important one—during the multidisciplinary case conference and would be taken into account when a decision is reached both on the management plan for the individual as well as the location. However, it would not necessarily override other risk factors that were more compelling.

Jamie Greene: Thank you.

The Convener: Rona Mackay has a supplementary question.

Rona Mackay: I am conscious of time. Would newly remanded prisoners who go to the establishment of their birth gender be segregated as a matter of course or could they be segregated if they requested it? I am thinking about their human rights in a situation where they have not been convicted of anything.

Teresa Medhurst: That is a concern because, obviously, we do not want to disproportionately segregate people who are trans, whether they are trans women or trans men. Developing a standard operating procedure, looking at the memorandum of understanding with other justice partners to gather as much information as we can, will help to inform that decision. Equally, we need to take on board the wishes of the individual and assess how comfortable they feel in their environment and whether we need to provide additional protections. That also relates to the location. For example, if someone was going into Edinburgh prison, which is a large establishment with various parts of the estate held for remand prisoners, sex offenders, short-term prisoners and so on, a decision might be taken not to put them in with other remand prisoners if it were felt that they might be safer somewhere else.

Each establishment will need to operationalise the standard operating procedure and look at individual cases on their own merits.

Rona Mackay: Would the person's wishes be taken into account?

Teresa Medhurst: Absolutely.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good morning. I was going to ask about the effect of a GRC, but you have already covered that in response to Jamie Greene.

You will obviously be aware that the Gender Recognition Reform (Scotland) Bill passed through Parliament weeks before this situation came to light. I know that the bill has not become law because of the current situation with the UK Government. Nevertheless, did the process and passage of the bill have any impact on the decisions around the situation that has led us here today?

Teresa Medhurst: My understanding, from the work that we have been conducting both in relation to the review and following the progress of the bill, is that the position on the gender recognition certificate would not substantially change. There would be no effect on us, and we could therefore still fulfil our obligations in the way that we have been doing, looking at each individual case and assessing that as one element in relation to balancing risk, needs and rights.

On whether there are any further considerations that need to be taken into account given the position that the cabinet secretary has stipulated regarding those individuals who have convictions for violence against women, we still need to work that through.

The Convener: We are just about coming up to time, but, in recognition of the importance of and interest in this issue, I am happy to bring in a couple of final questions. I will start with Russell Findlay, who I know has a question, and then I will bring in Pauline McNeill.

Russell Findlay: I would like to ask about the SPS review, which is a work in progress. The report was initially due to be published last summer, I think. This is a two-pronged question. Would there be any value in, or are you considering, publishing the report as a draft document initially, in order to give various bodies the chance to feed back and respond to it, or will it be published as a final work?

Secondly, given that the report has already been delayed, will it be delayed further until the new First Minister is in post? Will that have any bearing on it?

Teresa Medhurst: I had certainly not anticipated that there would be a delay because of a change in First Minister. There is likely to be a further delay because of the additional work that we are now having to apply because of the lessons learned and the additional measures that we are now putting in place.

With regard to the process of publication, there have been no final decisions, given the nature of the public interest. Although we have tried as far as possible to undertake an extensive consultation, I understand that there is a high degree of interest in our new policy, so we will still need to work through what that looks like and how best to present it. That will include understanding how the cabinet secretary wants the process to be applied.

Russell Findlay: What is your latest estimate of when the report might be published?

Teresa Medhurst: Well, to be honest, it is really difficult to give you anything definitive. I would like it to be done as soon as is practicable, but even the standing operating procedure that we have been working on will not be developed as quickly as I would have hoped, because there are other partners involved in processing that.

Russell Findlay: Is it likely to be published this year?

Teresa Medhurst: I would be very disappointed, Mr Findlay, if it was not definitely published this year—and sooner rather than later.

The Convener: Finally, I bring in Pauline McNeill.

Pauline McNeill: This is—I hope—a straightforward question. It follows on from Katy Clark's question about who made the decision and all that. I am not trying to get you to say who made it, but I did not understand something.

There is a segregated unit in Barlinnie for sex offenders; I have actually been to the cells for individual solitary confinement. Why did the decision maker not just hold the prisoner in the segregated unit in the estate for assessment? That is a really important question, to answer now or to come back to the committee on at some point.

Is the problem that the 2014 policy is a self-ID policy, so you did not have a choice? It is really important to get to the bottom of that. If we want to move on from this, and if there are genuine lessons to be learned, we need to know why.

This seems like an obvious and sensible question that any member of the public would ask. Why did the prisoner need to go to Cornton Vale to be assessed and segregated? We have heard that there was no risk to women, but they could have been segregated somewhere else. I have a clear question. Why did the decision maker not

hold Isla Bryson in another part of the male estate until a decision was made—albeit that I might not have liked the decision?

Teresa Medhurst: The decision was made based on the circumstances and the information that was known. Segregation was clearly a factor in the decision, and the segregation unit that was used was the segregation unit at Cornton Vale. The decision was made based on all the information that was known at the time, and—

Pauline McNeill: When you say "information", do you mean that they had self-identified? Can we be clear about this? Please do not give me any more—

Teresa Medhurst: The policy is very clear—

Pauline McNeill: Can you be clear with me?

Teresa Medhurst: —about identification of social gender.

Pauline McNeill: That was the reason.

Teresa Medhurst: Although there is not an automatic right to be in the female estate, that is one of the factors that is considered. On the basis of the information—

Pauline McNeill: I am sorry, but that does not make any sense. If that was one factor, would it be fair to say that the decision maker could, under the policy, have said, "Okay. I have looked at that. This person has self-identified as a woman. I'm going to segregate the person in Barlinnie until we decide where the person is going to go"? Could that have been a decision or not?

Teresa Medhurst: That could have been a decision.

Pauline McNeill: The decision maker chose not to do that.

Teresa Medhurst: That is correct.

Pauline McNeill: Do you know why?

Teresa Medhurst: As with all operational decisions, the decision maker, having considered the information that they have and the information that they do not have, makes the best decision to protect—

Pauline McNeill: They checked that with headquarters.

Teresa Medhurst: —both other people and the individual. They make the best decision that they can make based on the information that they have, and with knowledge and understanding of the information that they do not have.

Pauline McNeill: I know what you are saying but, given that headquarters signed off the decision, what would have been the risk in segregating the prisoner elsewhere? Surely, there would have been no risk. I do not know whether there is a segregation unit in Greenock, but I know that there is one in Barlinnie. What would have been the risk in doing that?

Teresa Medhurst: It is very difficult, from an operational perspective, to second guess a decision that somebody has taken. That—

Pauline McNeill: I am sorry, but I am not accepting that. You have already told the committee that the decision was signed off by headquarters, so nobody second guessed. Which is it? In evidence to the committee, you said that the decision was signed off by headquarters. Am I right?

Teresa Medhurst: You make a decision—

Pauline McNeill: So how was it second guessed?

Teresa Medhurst: What I am saying is that, sitting here today, several weeks down the line, we clearly know and understand more about the individual and the case.

Pauline McNeill: You are talking about hindsight.

Teresa Medhurst: Yes. That is what I meant.

Pauline McNeill: Okay. I am sorry. I was confused by the phrase "second guess". You are talking about hindsight, with us knowing what we all know now.

Thank you for that.

The Convener: On that note, I bring the session to a close. I thank all our witnesses for attending the meeting.

There will be a short suspension to allow for a changeover of officials.

10:13

Meeting suspended

10:17

On resuming—

Subordinate Legislation

Parole Board (Scotland) Rules 2022 (SSI 2022/385)

The Convener: Our next agenda item is oral evidence on a motion to annul a negative Scottish statutory instrument. I refer members to paper 2.

I welcome back to the meeting the Cabinet Secretary for Justice and Veterans, Keith Brown, and his officials, Ms Sandra Wallace, parole policy manager, and Mr Nicholas Duffy, senior principal legal officer, who joins us online.

I invite Jamie Greene to speak to and move his motion.

Jamie Greene: I thank the committee clerks for scheduling this item in today's meeting. We have a very busy agenda today, as proceedings have already shown. I also thank the cabinet secretary for attending for what, hitherto, would have been an unnecessary appearance. Nonetheless, it is an important one.

I will be honest in saying that a lot of what I have already said on the issue is a matter of public record and is in the *Official Report*, so I will not repeat it all. I gave some serious consideration to my motion to annul the SSI that we were presented with prior to the parliamentary recess. It is not a decision that I took lightly—in fact, it is the first time that I have done it in my seven and a half years in the Parliament. However, I felt that, on this issue, it was entirely appropriate and would be beneficial to the committee.

There is very little in the original SSI with regard to Parole Board rules that I disagree with. There are some very sensible changes in the SSI, but there are two reasons why I wanted to bring it back to the committee for debate and I am looking forward to hearing members' thoughts. First, I believe that it is a missed opportunity by the Government to change Parole Board rules for the benefit of victims of crime in relation to the way in which some practices are managed. Secondly, this is the only method to bring it back—[*Interruption*.] Should I carry on? The blinds are going up and finally letting some light into the room.

The Convener: Perhaps we will just pause for a moment.

Jamie Greene: I know that the cabinet secretary has a panic button under the desk, but I did not realise that it did that.

I will get into the main detail of my motion to annul. I am grateful to the Parole Board for Scotland for writing to the committee with a robust and informative response. I thank John Watt, the chairperson of the Parole Board, for that commentary. If I had not lodged the motion, we would not have received that communication and I believe that that vindicates my decision to bring the matter back to the committee.

I will not go through all the elements of the Parole Board (Scotland) Rules 2022. However, I would like to make the point that because it was presented to us as a negative instrument, the only option available to me was to lodge a motion to annul. There is no opportunity—as there is with other pieces of secondary legislation—to have a proper debate ahead of making that decision, or to amend the instrument in any way. There is no such mechanism available to us. Given that we are looking at such important issues, the Parliament, and the Government, in the way in which it introduces secondary legislation, might want to reflect on that.

We often pass primary legislation with promises that secondary legislation is well scrutinised. However, it is not. The fact that I have to go through this process in order to scrutinise an instrument, take evidence, get more information on it and hear what the cabinet secretary and the directorate have to say is evidence that the current process is not always fit for purpose.

I want to look at a few specific issues that I raised at the previous meeting and reflect on the responses that the Parole Board has given. The first issue relates to what we call Suzanne's law. I declare an interest: members and the cabinet secretary will be aware that I have completed a consultation on a proposal for a member's bill. That is relevant to today's discussion, because much of the content of the Parole Board rules that the Government is seeking to amend through the statutory instrument would have a direct effect on the potential content of my bill and the admissibility of some of its elements. That is why it is important to me that we get to the root of the issues.

I raised the issue of Suzanne's law, which is in effect a process by which an individual cannot be released from custody or imprisonment if they have failed to disclose where a victim's remains have been disposed of prior to release. We all know about the tragic incident to which the name of the law relates. As always, our thoughts are with the victim's family. Like many similar so-called laws, there is a victim of violence or abuse, who is often female.

The historical position of the Scottish Government was that it would be sympathetic to the introduction of some form of Suzanne's law where that was technically possible. I welcomed that at the time, as did victims organisations. The

changes that are made in the SSI that was presented to us seemed to offer a version of that, but it is clear from the response that we received from the Parole Board that that is not the case.

The Parole Board states that it

"may take into account a failure"

to reveal the whereabouts of a victim, and that that will be a factor in its decision making. However, I presume that that is something that the board would have done anyway—or is that a new factor? Therefore, is that a substantive change in the decision-making process?

The Parole Board then refers to the point that it is almost irrelevant anyway, because the primary test of whether someone should be released is set out in the Prisoners and Criminal Proceedings (Scotland) Act 1993, which states that the test is that

"the Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined."

If the answer to that question is that it is no longer necessary, the prisoner is released, and that is the prime consideration. All other factors are certainly part of that decision-making process, but the board makes it clear that

"a failure to disclose the whereabouts of a body can only be considered in the context of that overall assessment of risk"

to the public. Therefore, there is an argument that it would be virtually impossible to implement Suzanne's law meaningfully in any shape or form under these rules without a substantive change to the 1993 act.

The Parole Board believes that amendment of the 1993 act would be required to bring this policy change into force. Therefore, although it does not form part of this instrument, the question that I would pose to the cabinet secretary is whether the Government is willing to review the 1993 act in respect of that, if such a change could be made and, if the Government is not minded to do so, why not?

The Parole Board also refers to its role in all this. If, in the scenario where a prisoner refuses to reveal the location of a victim, there is an automatic barring of release, that would in some way negate the role of the Parole Board in any decision making, because that would be the primary factor, with everything else coming second. The Parole Board also observes that such a policy may not be compliant with the European convention on human rights and I am sure that that will be used as a defence in relation to such a change.

What I am trying to probe here is what the Government's current position is, because I do not know. Historically, justice secretaries were a little more forthcoming about this and I hope that the Government will understand why I think that it is an important change. If it becomes apparent that the Government is not willing to or, for legal reasons, is unable to progress such a policy change, naturally, it will remain as part of my forthcoming member's bill as I go on to the drafting stage. However, if the Government is willing to work with me on any changes, it could easily be removed from that proposition.

One of the changes in the rules that we were asked to look at is around the information that is given to those who sign up to the victim notification scheme. The Parole Board makes what I think is a valid point about making sure that those who have signed up to part 1 of the VNS do not receive certain types of information that they do not necessarily want to receive. Victim support organisations have been quite explicit in their evidence that not all victims want information about what is coming next. However, there are many victims who do, and there are many who feel that they are being let down by the current process. It is important to get that on the record.

I do not necessarily disagree with the board about the change; I understand that wider changes to the VNS are outside the remit of the instrument. However, I would like an update from the Government as to what potential changes to the VNS would make it a much more compassionate, informative and trauma-informed service than it is at the moment, because it is clearly failing many victims of crime.

The other substantive issue that was raised in proceedings and responded to by the board is that of victim observations in parole hearings. In Russell Findlay's excellent members' business debate yesterday on victims awareness week, the BBC programme "Parole" was mentioned. It was a fascinating insight into decision making in other parts of the UK, but something that we often hear is that there is a lack of transparency in the parole system here in Scotland.

Certainly, the victims we have spoken to—not only as a committee but individually as members—feel that they are very much excluded from the process and that even when they are able to observe the process, many have had difficulties in doing so. They feel that they are afforded little to no opportunity to have any meaningful participation, and I think that it is important.

10:30

I understand the Parole Board's defence that, if we were to confer rights on victims not just to observe but to participate in a parole hearing, that

would change the game somewhat. I understand that. The board says:

"As the Board operates as a court, if a victim were allowed to present an oral statement to the tribunal, fairness would dictate that the prisoner ... would be able to cross examine the victim."

I do not know how legally robust that assertion is, but it is something that I would like to test.

However, there is a wider point, which is that, whether we like it or not, many victims tell us that they do not feel that their needs and views are properly taken account of when decisions of parole hearings are made. That is a valid criticism, which we should be mindful of.

I am not necessarily saying that victims should be able to give oral statements in live proceedings at a parole hearing, which might not be suitable for all victims of crime, but there should be some form of meaningful participation that informs the board's decision making. That would be a step ahead of the present position, whereby victims are simply allowed to observe. The ability to observe gives victims no rights to participate; they can simply sit there and listen. I think that there is still work to be done there.

The Parole Board raised some minor and technical issues, with which I have no problem whatsoever, and, as I said, there are other parts of the SSI around the risk management plan that I do not have a problem with. Other members have talked about prisoner preparation and other issues that the Parole Board responds to. I understand that the VNS issue is for a wider governmental review and does not necessarily fall within the remit of the Parole Board.

I am not trying to be difficult by raising the issues that I have raised. I put on the record the fact that there is nothing in the rule changes that I disagree with. However, I hope that the debate has given us an opportunity to air some of the issues, which we should have been able to do before having to make a decision on the instrument. I thank members for their forbearance.

The Convener: Thank you. Could you move your motion?

Jamie Greene: Would it be possible to let other members contribute before I decide whether to move it?

The Convener: If you move it now, I will ask you later whether you intend to press or withdraw it.

Jamie Greene: Okay.

I move,

That the Criminal Justice Committee recommends that the Parole Board (Scotland) Rules 2022 (SSI 2022/385) be annulled.

The Convener: I invite the cabinet secretary to respond.

Keith Brown: Thank you for giving me the chance to make a contribution in support of the Parole Board (Scotland) Rules 2022 and to debate the motion that Jamie Greene has just moved.

I understand that the committee had some concerns—Jamie Greene said this—about the amount of time that it has had to consider the rules. It is important to make it clear that, as SSI 2022/385 was laid in December and will come into force in April, the full 40 days that are required by Parliament for parliamentary consideration to take place have been provided. The issue of whether the committee wanted to consider the matter prior to that is not one that I have a say on.

I am sure that the committee will appreciate the need to provide the new rules and procedures for the Parole Board. The previous rules date from 2001, so they are more than 20 years old. In that time, they have undergone multiple amendments, which has led to them becoming more complex and inaccessible. They are in need of change. Making them as clear and understandable as they can be seems a sensible thing to do.

The new rules bring a new and simplified structure to the Parole Board's rules and align some common processes. For example, all oral hearings on parole cases will now follow the same procedure. The new rules also introduce procedures to clarify existing practice and improve processes. They aim to provide the Parole Board with effective and transparent procedures that help with the smooth running of Parole Board business.

If we were to annul the rules, as Jamie Greene proposes, that would mean that we would lose all the benefits that they would bring, such as avoiding retraumatising victims. For example, new rule 9(2) allows a victim statement to be withheld from the dossier that is given to the prisoner, if they should wish their views to remain private and the Parole Board considers that it should be treated as non-disclosure. That would be lost if the instrument were to be annulled. The rules will also ensure that victims will be given only the information that they signed up to receive when they registered with the victim notification scheme, which is a point that Mr Greene addressed.

The new rules will improve the process for prisoners by ensuring that they are better prepared for a hearing. They provide for a new procedure to allow the Parole Board to appoint a representative for prisoners if they lack the capacity to appoint one themselves.

It is important to note that the rules have been developed with the Parole Board to ensure that they are workable and fit for purpose. They build on consultation with the public that was carried out

last year, and they reflect our engagement with other stakeholders, including, importantly, Victim Support Scotland, the Risk Management Authority and the Law Society of Scotland.

I will cover a couple of Mr Greene's points. He spoke about the whereabouts of the body of a murder victim not being revealed and asked whether we have any proposals to change the law in that regard. Importantly, criminal law already permits failure to disclose a body to be taken into account when sentencing. It also contains an offence of defeating the ends of justice and that can and has been used in cases in which a murderer has failed to disclose the location of their victim, as it was in the Suzanne Pilley case when sentencing David Gilroy.

The court can take into account all charges when sentencing to ensure that a suitable sentence is imposed to account for all criminal conduct. The role of the Parole Board is to assess when a prisoner, having served the sentence that was handed down by the court, might be released without posing a risk to the community. I think it right that decisions on risk and release are made on a case-by-case basis by the independent Parole Board, which can take into account all relevant information.

Denying parole to someone solely on the grounds of their not revealing the location of a victim's body might also—Jamie Greene mentioned this—create ECHR issues. For example, a proposal that required a prisoner to be held indefinitely until they provided certain information—if we leave aside the fact that they might not know or remember the information in question—might not be compatible with article 3 ECHR rights, which prohibits inhuman or degrading treatment. Therefore, life sentences require to include safeguards against indefinite detention without possibility of release.

The proposal also appears to be inconsistent with existing safeguards for human rights that form part of sentencing and parole processes. It suggests that prisoners would be detained for longer than the punishment part that the court imposes, with no possibility of parole due to lack of co-operation. That might cause issues of arbitrary detention contrary to article 5 of the ECHR and might interfere with the right to silence, which article 6 protects. Therefore, the proposal touches on fundamental human rights.

To answer Jamie Greene's question directly, the Government has no plans to change legislation in the way that he has suggested.

Jamie Greene also mentioned his proposed member's bill. As I have said before, I am more than happy to discuss this and other issues as part of that process.

I covered the issues in relation to victim notification earlier in the statement. However, the Parole Board has indicated that it will prepare guidance for its members on the new rules before they come into force on 1 April 2023, unless, of course, Parliament votes to annul the rules.

For the reasons that I have mentioned, and for a number of other reasons that time prevents me from mentioning, I think it important that the rules are passed. I urge Mr Greene to withdraw his motion to annul. If that does not happen, I urge committee members to oppose the motion.

I am happy to answer any questions that the committee might have.

The Convener: I will open the floor to questions. I will bring in Katy Clark, to be followed by Russell Findlay.

Katy Clark: I will keep my contribution relatively short. I do not have any objection to the rules that the cabinet secretary is proposing. However, I welcome the fact that Jamie Greene has lodged a motion to annul the instrument. As the committee has discussed on previous occasions, many of us feel that this is a missed opportunity. The committee would have liked to have been involved in the discussion at an earlier stage and we felt that we came to the matter quite late, because the process and the procedure are such that we, as the Parliament, are not able to amend the rules.

I do not have any objection to any of the rules that are being put before us. Although I welcome Jamie Greene's motion, I am not minded to vote for it. It has given us the opportunity to highlight some of the issues. Indeed, as Jamie Greene said, as a result, the committee has been furnished with considerable extra information, which is very useful.

A far wider debate about the role of victims needs to take place. That means a debate not only about their meaningful role in parole hearings—as Jamie Greene suggested—but about the experience that victims have had for generations: they receive a lack of information, feel excluded from the process and find out about issues accidentally and at a later stage than they would wish. Collectively, the Parliament is aware of those issues; yesterday, there was a debate on victims' rights.

Although I am not minded to vote for Jamie Greene's motion, the fact that it has been lodged is welcome. As he said, the committee and the Parliament often look at enabling legislation and we are asked to vote for it on trust that the regulations that come thereafter will be acceptable. However, there is not really a proper process for scrutiny of the subordinate legislation that follows.

I do not want to give the impression that I think time has been wasted by this motion having been lodged, because even if there are not significant problems with the specific rules, they represent a missed opportunity, and it is important that the committee puts on record that we want more to be done in relation to the issues that they raise.

Russell Findlay: I support Jamie Greene's motion and agree with his comments, and indeed, Katy Clark's comments about there being a missed opportunity in relation to victim involvement in and contribution to Parole Board hearings, but I have nothing in particular to add to that.

My interest lies in Suzanne's law, which I have had an interest in for a number of years. I happen to have been a witness in the trial on the murder of Margaret Fleming, whose remains have never been recovered and whose two convicted killers have shown no signs of disclosing where they are. Such situations are appalling for families to live with: killers exercise their on-going power, which causes relentless retraumatisation of families who would desperately like to have closure.

In December of last year, I became aware of a BBC news report—and other news reports—about the Scottish Government apparently bringing in Suzanne's law. The BBC report said:

"A change to Scotland's parole rules could mean that killers are denied release if they do not say where, and how, they disposed of victim's remains."

I was delighted because that seemed like good news, and it sounded as though what all of the families and campaigners have been calling for was coming to pass. However, when we saw the new rules, it became apparent that their content fell significantly short of the publicity that was generated by them. That is no criticism of the BBC or other media; I think that they were presented with the information in a certain way.

I have been in contact with the family of Arlene Fraser, who was murdered in 1998. Her killer is in custody. Her remains have never been found, and her family understandably supports Suzanne's law. When I saw the SSI, I pointed out to the family that what was reported about it was not the reality. I received a response back from Arlene's sister, who said:

"To be honest, I was quite disappointed."

That was a direct—and quite understated—quote.

It is worth pointing out that when such headlines are generated—perhaps through a Scottish Government press release—it can give false hope to families and further retraumatise them. It might give the impression that Suzanne's law is coming into being, when in fact it is not.

I thank Jamie Greene for lodging the motion because as a result, John Watt has provided the committee with a very detailed and honest take on the situation. He said that, in essence, for failure to disclose to be "a determinative factor" in consideration of release, a change to the Prisoners and Criminal Proceedings (Scotland) Act 1993 would be required.

I am disappointed to hear the cabinet secretary say that he has no intent of passing Suzanne's law by revisiting that 1993 legislation, but I look forward to working with Jamie Greene to see whether there is a way to introduce some provision that is ECHR compliant. The issue has arisen in other jurisdictions in the UK; there is Suzanne's law in Scotland, and there are various other laws elsewhere in the UK, which have all taken the names of female victims, because in almost all these cases, the victims are female.

10:45

Jamie Greene's motion has been fantastic in flushing out the truth of the matter, however, I am not minded to vote for it. I am not sure whether he intends to press the motion, but that is obviously up to him. We do not want to throw the baby out with the bath water, but it has been a useful exercise to find out the truth.

The Convener: I will shortly invite the cabinet secretary to make any further comments as he wishes. However, I will stay with the issue of revealing the whereabouts of a victim's body. The cabinet secretary specifically referred to some of the circumstances where there are ECHR rights considerations. Would that include a situation where, for example, an individual who has been convicted of a murder is unable to disclose the whereabouts of a body? That could be because of a health condition that that person has, or, as the cabinet secretary mentioned, because they cannot remember: they might remember the broad area, but they cannot be specific about it because of the passage of time. Essentially, including a requirement to reveal the whereabouts of a victim's body as part of the parole hearing process is akin to having two bites of the cherry, given that the refusal to reveal the whereabouts prior to sentencing would have already been taken into account when the sentence was imposed.

Keith Brown: You raise two important points. In my opening statement, I mentioned that it is not possible to be sure that someone genuinely cannot pass on the information disclosing the location of a victim's body, which I think is one of the reasons why the motion butts up against the ECHR. For me, the more profound point—and it is well for us to explain our rationale for such decisions—is that I believe that the court, when handing down a sentence, is the right place to

consider issues such as a wilful refusal to reveal the location of a body. I agree that that information is vitally important for the victim's family for the reasons that we are familiar with, and I think that it is reprehensible for a person to withhold that. However, the court can take that into account. My view is that we are asking for the Parole Board to take on the functions of sentencing, because it could continue to set the sentence beyond that which the court had handed down; not least the punishment part of it.

As I have said, I am happy to listen to other points of view. If people are unhappy, they can annul the rules or they can introduce legislation to amend the Prisoners and Criminal Proceedings (Scotland) Act 1993. I do not want to be too definitive about it, but it seems to me that that would butt up against the ECHR's provisions, which is my position and that of the Government. As ever, I try to be open-minded if others have a different point of view.

As a point of clarification, England and Wales do not have Suzanne's law or its counterpart, as has been suggested: there is no provision that does that. The Parole Board for England and Wales would have to take those matters into account, but it does not have the requirement to do that in a way that has been suggested by those people who are proposing Suzanne's law.

I cannot be held responsible for BBC stories. There was a story in the media saying that I had misled the Parliament last year, which was completely fallacious. It was reported in all media outlets and there were virtually no corrections. Quite rightly, I cannot govern the media. However, I accept some of the points that have been made about improvements to the victim notification scheme. That is why we are having the review. It is independent, but it can receive representations. I encourage members, in particular Jamie Greene who has an interest, to make representations, which will subsequently be taken into account. I genuinely think that we can do more to improve the victim notification scheme, although we have to be mindful—as we have been in the rules under discussion—not to overstep the mark in such a way that we retraumatise people who do not want to have that information for perfectly understandable reasons. I will leave it there.

The Convener: Thank you, cabinet secretary. I thank John Watt of the Parole Board for the briefing that he provided to committee members, as it was helpful in informing today's debate.

Russell Findlay: I have a small point that is worth putting on the record in relation to legislation elsewhere in the UK. The Prisoners (Disclosure of Information About Victims) Act 2022 was an act in England and Wales and has been put into use in specific cases.

The Convener: Thank you very much.

Our next agenda item is formal consideration of a motion to annul a negative instrument, the Parole Board (Scotland) Rules 2022. I refer members to paper 2 and invite Jamie Greene to comment on whether he wishes to press or withdraw the motion.

Jamie Greene: I do not want to stretch this out too long. I thank those members who have contributed and the cabinet secretary and his officials for attending today and offering their point of view.

I want to comment briefly. On the change to rule 11 on matters that the board may consider, the policy note states:

"the Board may, in applicable cases, take into account amongst other matters, any failure to reveal the location of a victim's body ... this matter may be considered where relevant, but does not change the underlying test for release applied by the Board."

To me, that still does not make sense. I wonder whether somebody might provide further information—it could be done in writing after today's meeting. I still cannot see how that could meaningfully be taken into account or be a factor for consideration if there is no change to the overall test. Essentially, if somebody refuses to reveal the location of a victim's body and it is evident that they are doing so willingly as opposed to through inability, will that make any material difference in the decision making around whether parole is granted? It seems to me that the answer to that question is no, which is why people are disappointed.

I question how meaningful the change is. I park that here because, through that change, we have given some of those victims' families a false sense of hope. I cannot see any meaningful application of the provision through which the status quo would change.

My views are on the record. Based on the feedback that I have had, including from my colleague, I will not push the matter to a vote.

Motion, by agreement, withdrawn.

The Convener: I thank the witnesses for attending this morning. We will pause momentarily to allow the cabinet secretary to leave.

10:53

Meeting suspended.

10:56

On resuming—

Priorities in the Justice Sector and an Action Plan

The Convener: Our next item of business is consideration of the committee's action plan. I refer members to paper 3. I intend to go through the paper section by section, just to confirm whether members have any comments, wish to make any amendments or, in fact, disagree with the assessments of progress to date.

The first section is on "The impact of COVID and recovery". Do members wish to flag anything?

As members have no comments, we will move on to the section on "Prisons and prison reform". It might be worth mentioning or including reference to the Promise, particularly in the part on women and children. In March 2022, there was an update on the Promise. Given that it is supporting young people who are care experienced and, ultimately, seeks to reduce the number of young people in care, it might be worth including that for reference.

Jamie Greene: I do not disagree with any of that.

I have a further point, which is about an update on the issue of young people being held in adult institutions. I am not sure what the current number is. I know that the number is always quite low, but it might be helpful to get an up-to-date number.

I recall that a commitment was made—I think that it was after I raised the issue in the chamber—to provide more analysis on the future of the barnahus model and the volume or capacity that might be required. That would perhaps kick off capital investment projects quite early on, which would be helpful given the timescales for that sort of thing. My understanding is that work is being done to provide some forecasting on that, which would inform decision making. At the moment, we have one barnahus, but I do not know whether that is one of three, five or 12, or whether that is it. That issue is not necessarily relevant to this year's cash flow, but it is relevant to future years.

11:00

It is valid to raise the issue of secure care and secure accommodation. I have recently had some local casework on the issue. There still seems to be disparity around how many places are available, who is filling those places and where the funding for them is coming from. Anecdotally, I know of providers of such services who claim that there is capacity in the system and do not understand why there are young people in the adult prison system. It seems to be a funding issue and a follow-the-money situation, so much so that they are taking people from south of the border to keep their head above water financially. That does not seem to make much sense. When we write to the Government, perhaps we could chuck that point in.

The Convener: Thanks. We have taken a note of that suggestion so that we can follow that up.

Katy Clark: It is clear that there has been considerable investment in the women's estate, with the opening of the two new community custody units and the new prison in Stirling, which we are yet to see. Given what we know about women's offending patterns and the different nature of the women's prison population compared with that of the male estate, do we need to assess whether those new facilities provide more appropriate facilities for women? I wonder whether we should incorporate their special needs, healthcare issues—which we are aware of—parental responsibilities and medical needs into that assessment. Particularly once Stirling prison is open, I wonder whether we should review whether the women's estate delivers on the objectives that have been set over many decades.

The Convener: Thanks. Those are all relevant updates. I think that there is support from members for facilitating a visit to Cornton Vale once it is ready to receive visiting groups. We will pick that up.

This is perhaps not totally relevant to this section, but it is relevant to the action plan. I recently attended a meeting of the cross-party group on health inequalities, at which Wendy Sinclair-Gieben provided an update on the work to address health inequalities in prisons. She made the point that, in relation to the inspection work that she undertakes, her desire is that there will be an opportunity to undertake a review of the healthcare model in prisons, which members would agree is highly relevant to women. That is something to note.

The Scottish Drug Deaths Taskforce has done quite a bit of work on recovery cafes for its report, but I do not see an awful lot of specific reference to recovery cafes. We should monitor progress on that action.

Collette Stevenson: I have a comment rather than a request for further information. It is an observation on the report. The progress that has been made on in-cell telephony is a good news story. We will get regular updates on how it is being rolled out and its benefits, but any feedback on that would be very much welcome. It is a very good thing, and I congratulate the SPS on taking that forward.

The Convener: Thanks. That is noted.

We will move through the action plan. We are on page 10.

Russell Findlay: "Residential rehabilitation", which starts on page 7 and ends on page 9, mentions a variety of funding. Audit Scotland talked about that recently, saying in essence that there is a lack of clarity around how that money is being spent. Given that lack of clarity, there is a lack of ability to evaluate the effectiveness of that spending. I do not know whether that is the place for that point, or whether there is somewhere further on where it would be more relevant, but it is worth making.

The Convener: We can note that and insert it at the relevant part of the action plan.

Russell Findlay: From recollection, the update report was in March last year, then there was a follow-up around October.

The Convener: Okay.

I have one final addition, at the end of page 7, under "Residential rehabilitation". There was a recent statement on residential rehab by the Minister for Drugs Policy—back in January this year, I think—which provided an update about an £18 million commitment to develop stabilisation and crisis care services and align those with detox and rehabilitation. We could get more information on that from the *Official Report*.

Are there any more specific issues around prisons and prison reform?

Jamie Greene: When I briefly popped out, did you cover recovery cafes?

The Convener: Yes—as in, there was not much of an update.

Jamie Greene: I am looking for clarity on funding and on whether they would be a feature of every institution.

The Convener: Okay.

We move on to "Misuse of drugs and the criminal justice system", which is on page 17.

Fulton MacGregor: Convener, I thought that we were doing it page by page; my mistake.

On "Under 18s/Secure care", which is on page 12, I welcome the fact that the committee will be looking at that aspect of the Children (Care and Justice) (Scotland) Bill. I expect that the rest of the bill will go to the Education, Children and Young People Committee.

However, I also want to say at this stage that I have had a meeting with the hope instead of handcuffs campaign. Other members may have been contacted by it as well. It does work on the way that young people are treated during their transportation to secure care. It might be worth thinking about that campaign for an evidence session, around the time of that bill. I know that we will talk about that at another stage, but I just wanted to raise that and to encourage members to meet the campaign group.

The Convener: I agree. That is a helpful suggestion.

Jamie Greene: I should declare an interest, in that I have also had a meeting with that group, as have others. It is very effective at lobbying.

I understand that there is a commercial interest behind the campaign. It is entirely appropriate that we note that. Nonetheless, to give it the benefit of the doubt, it has a genuine interest in the issue of transportation. This is certainly not the first time that the committee has raised the issue of the contract involved in that service, and some reservations have been expressed about it. To be fair, I put some questions to the campaign about the scenarios in which it would be entirely appropriate to restrain a young person—for their safety or the safety of staff and others around them—and I think that there is an acceptance that that possibility should remain in place.

Action needs to be based on evidence. If there is genuine evidence of inappropriate behaviour, that should come to our attention, but it should be a matter of public record rather than hearsay and gossip. If there are genuine examples of young people having been inappropriately managed, people should be forthcoming with those so that the Government can address the issue directly rather than it becoming an issue based on hearsay, in which we have no idea of the truth of the matter. However, the campaign made some valid points, which it is important to raise.

The Convener: Thanks, Jamie. I am happy to look at an opportunity to do that.

Russell Findlay: This is just a small point. Page 13 makes reference to

"the Scottish Sentencing Council's recently published guidelines for sentencing young people."

I think that it would be better to be a bit more specific, perhaps by including a link. It should say the date when those guidelines were published and when they were brought into effect, because I am not entirely sure when that was.

Katy Clark: I want to pick up on the issue that Fulton MacGregor raised about the use of handcuffs. I suspect that he knows far more than I do about the rules and guidelines that exist in terms of residential care in children's homes and so on, but as far as I understand the issue, the regulations that exist in some settings do not exist in the transportation setting. It would be useful to have a briefing on that in order to get some detail on the issue before we start taking any evidence

on it. I do not have the relevant background and I think that it might be helpful to the committee if, rather than ask witnesses about it, we were given copies of all the regulations that exist in various settings.

I wanted to raise an issue about remand, which comes up on page 13. It relates to some of the evidence that we have seen in relation to the Bail and Release from Custody (Scotland) Bill. The remand rate for women is even higher than that for men—the rate of male unconvicted prisoners approaches 30 per cent of the prison population while, for women, the rate is 35 per cent to 40 per cent. I was quite alarmed when I learned that.

I know that the committee has had difficulty getting data around offending patterns, and I think that it might be useful to incorporate in our work the idea that we need to have a better understanding of who is in the prison population, both on remand and in the general population. It would be good to be able to track the differences that occur over time. My impression is that there are now more violent prisoners and prisoners who have been charged with or convicted of serious sexual offences such as rape and child sexual abuse, including historic cases, but we need to have a better understanding of that. Perhaps that could be incorporated in the work programme, because trying to get that information has been like pulling teeth. I know that the Scottish Parliament information centre has tried to provide what is available but, without more information, it is difficult for us to scrutinise the situation.

I also want to highlight the differences between the male estate and the female estate. We need to have an understanding of both.

The Convener: On the point about monitoring the remand population, your impression is probably correct. I am certainly happy to consider some work around monitoring remand populations outwith the scope of the work on the Bail and Release from Custody (Scotland) Bill, which will conclude shortly. I am happy to consider that point further, because it is clearly a pressing issue that we have been grappling with.

Russell Findlay: I have a slightly different point to raise on the remand issue. The box on page 13 begins by saying that

"Remand numbers are not falling significantly",

but it ends by saying that

"the number of people held on remand has fallen by 9%"

within 12 months. Arguably, that is a significant fall. Perhaps the opening line could be reworded to be a bit less subjective. "Remand numbers remain steady" or something like that might be better.

The Convener: That is a fair point to raise. The action plan is almost a chronology of developments, so I am not overly worried about the fact that the sentence does not seem to fit—things fluctuate and change as time goes on. However, if you would prefer an update, that is absolutely fine.

Jamie Greene: On that point, I agree that there is a contradiction in saying that remand numbers are not falling and then saying that they have reduced by 10 per cent. I appreciate what you say about fluctuations, but 10 per cent is quite meaty. I know that, if the Government were using that statistic, it would hail the reduction as a success and would not say that the numbers were constant.

The wider point that Katy Clark is making is that the information that is set out needs to be seen in context. That is, what is important is not just the fact that the numbers are falling but what is happening as a percentage of the overall prison population—that is an important measurement.

However, that does not really take into account two factors. The first is the crime profile of those who are being held on remand, given that the lion's share of them are remanded on charges that would require solemn proceedings and are therefore more serious. It also does not take into account how many of the remand population of 25 to 29 per cent—the numbers fluctuate—are on remand because of delays to trials. I do not know whether it is 10 per cent, all of them, some of them or half of them. There may be a cohort of people who are held on remand but would not be had their trials come to pass. We need to be cognisant of that as well.

11:15

The Convener: I am conscious of the time, and we still have a number of agenda items to work through. We will circle back to the section on the misuse of drugs, which starts on page 17. There are no particular updates or additions to that, so I move us swiftly on to the next section, which starts on page 23 and is on violence against women and girls. If there is nothing that members wish to highlight on that, the next section is on victims' rights and victim support, which begins on page 28.

Jamie Greene: Can I clarify something? I know that we are skipping through these sections quickly. For the record, I agree with all the suggestions in the last column, which makes points about what the committee could ask the Scottish Government, the Convention of Scottish Local Authorities or the third sector to do. Because we are skipping past pages, it is important that we

give the clerks our consent to carry on with that work.

The Convener: I totally agree with that. Quite a lot is coming out of our discussion, so the clerks will update the action plan accordingly on our behalf. If members want to make any technical additions to the action plan, I am happy for them to contact the clerks direct with those updates.

The next section is on reducing youth offending. It begins at page 32.

Jamie Greene: We are heavily skipping pages now, but I wanted to raise the issue of access to court transcripts. I do not know where that fits in.

The Convener: It is one of our coming agenda items.

Jamie Greene: I will shut up, then.

Katy Clark: I have a point about youth offending and community justice solutions. We will probably discuss this in more detail when we talk about the Bail and Release from Custody (Scotland) Bill. The intention on the shift towards community justice under that bill is clear but those budgets are getting cut for the year starting in April.

The committee needs to examine how that money is spent and how even a relatively modest increase might reap rewards. I wonder whether we should consider incorporating that into the action plan. It is likely that the bill will be passed, but there is a risk that nothing will change unless there is a structural shift in where the money goes. We might want to monitor that more heavily than other areas that we are considering, particularly given that we have spent so much time scrutinising the bill.

The Convener: Thanks, Katy. I am happy with that, and we have taken a note of that suggestion.

Where did we get to? We were on page 32. The final section, which is on page 36, is on legal aid.

Jamie Greene: I am sorry—we are skipping ahead. On deaths in custody, on page 34, are we content as a committee that that issue has been followed up by analysis of where the Scottish Government agreed with our recommendations? The Government pushed back and said that it had

"no intention to create an online centralised system where delivery of the recommendations can be tracked."

Are we content with that response, or do we want to push the Government further on that? It is still a very live issue, unfortunately and tragically.

The Convener: That is noted. We can follow that up to get an up-to-date position on that.

If there is nothing else, we will bring this item to a close. If members want to make additional comments on the action plan, I am happy for you to link directly with the clerks—if it is more of a technical update. I appreciate that we have worked through that quite quickly.

We will return to our action plan later in the year to see what further progress is being made to deliver on the recommendations and actions that we have set out.

Policing and Mental Health

11:21

The Convener: The next agenda item is consideration of correspondence from Police Scotland, the Scottish Police Authority, the Scottish Police Federation and the Association of Scottish Police Superintendents on policing and mental health. I refer members to paper 4 and invite comments on the correspondence, any suggested follow-up that members wish to see and the proposed actions set out in paragraphs 24 and 25.

Before members come in, for the record, I say that I am pleased that we have had the opportunity to consider this important issue and that there is support for the work on policing and mental health, and support for it to continue and develop. As such, the proposed actions in the paper are, I feel, a way to ensure that the work continues. Indeed, I know that the SPA is keen to have a role in that.

With that, I am happy to open up the discussion to members.

Russell Findlay: I absolutely welcome the fact that this issue is being talked about. However, the Scottish Police Federation makes some quite worrying points about the position of Police Scotland, which it describes as

"defensive, in denial and suggests 'nothing to see here'."

That chimes with my experience of trying to raise a number of cases of suicide of police officers, where we have established that none were the subject of fatal accident inquiries. Police Scotland does not record the numbers of deaths, let alone carry out any form of inquiry into them. In their responses, Police Scotland and the SPA still do not seem to be addressing that.

I know that it is uncomfortable, but the officers and former officers who have come forward to me who have either considered taking their own lives or attempted to take their own lives, or the families of those who indeed have taken their own lives, all draw direct links to the officer's experience of the lack of support from the police. We are talking about issues that are due to what police officers have experienced or, even worse, to protracted regulatory or disciplinary processes that they feel were unfair or unjust to the point at which they were in such dire straits and such a desperate mental state that they believed that suicide was the only option.

As shocking as that is, in many of these cases, the individuals made their feelings known to Police Scotland. If we think back to when the issue first arose at the committee a couple of years ago, the responses from Police Scotland and the Scottish Police Authority set alarm bells ringing. For all that they appear to say all the right things about consideration of the wellbeing of officers, which is great, they are falling well short of acknowledging the scale of the damage that has been done, which could yet cause serious problems.

On action plans, we have a response from the Crown Office explaining that none of the cases has been subject to a fatal accident inquiry. Is there any mechanism that we can explore to give an officer who has died from suicide the same rights as someone who has died in custody and who is therefore automatically subject to a fatal accident inquiry? In the cases that I am aware of, such an inquiry would highlight serious issues about the pressure that those officers were under. I do not want to point fingers or lay blame, but I want us to realise how serious the situation is and learn from it. If we do a superficial exercise, nothing will change.

The Convener: We have taken some notes on that, so we will come back to it.

Jamie Greene: I want to start with the section on Police Scotland. It is a great summary, and I thank the clerks for it.

Page 4 of paper 4 suggests actions, and they seem to be that we ask the SPA to do some work. We first need to take a step back and go straight back to Police Scotland. Paragraphs 5 to 8 of paper 4 show that the committee—I am now putting this on the public record—is unhappy with Police Scotland's response and we have more than enough opportunity to go back to Police Scotland.

Paragraph 5 states:

"The response does not include an explanation as to why the officers who the Committee spoke to did not receive the expected standard of advice and support."

In paragraph 6, we complain that Police Scotland's response does not address key issues that the committee raised. In paragraph 7, we also say that the point about

"the inadequacy of the employee assistance line"

is not addressed. In paragraph 8, the committee requests details about when

"the court scheduling system redesign will be in place"

and say that that information has also not been provided.

Therefore, Police Scotland has not responded to some very specific things, and we should give it a second chance to do so before we escalate the questions. I am happy to include the SPA in our correspondence, but we should go straight to Police Scotland and explain that we are unhappy with its response. Let us be up-front about that, uncomfortable thought it might be.

We could also include the challenges that the SPF has raised. I know that Police Scotland will read the response from the SPF but, if Police Scotland is not asked to answer that, it does not have to and probably will not. I would like Police Scotland to respond directly to the concerns raised by the SPF, such as the one mentioned in paragraph16, which is that

"the SPA bases its oversight on evidence provided by Police Scotland"

but not necessarily by officers directly.

That is a key point. In other words, the SPA seems to be marking its own homework by responding to evidence given to it only by Police Scotland, which is, of course, accountable to it, but not necessarily by going directly to staff associations or organisations to get feedback. We need to sanity check whether what the SPA is hearing from Police Scotland marries up with the truth on the ground. That is perhaps a criticism of the SPA.

Paragraph 17 refers to specific complaints about

"the strategic commitment to wellbeing from Police Scotland"

and the mainstreaming of that policy. It notes that the SPF believes that there is

"either a failure to operationalise the programme or a failure to operationalise the right programme."

Again, we could invite Police Scotland or the SPA to respond to that.

11:30

I do not disagree with what we are asking the SPA to do around data collection and how it could better engage with officers and their representatives from the union or otherwise on whether that could be beefed up, as those are valid points, but they are not necessarily the main criticisms that we want to pose.

Although the paper is quite short, the committee has clearly expressed our unhappiness at the response that we have had from Police Scotland. I think that we need to challenge that. That is my only plea.

Rona Mackay: I agree with Jamie Greene, in particular regarding paragraph 16, which states that

"The SPF raises a concern that the SPA bases its oversight on evidence provided by Police Scotland",

and that the SPF does not have much input. I agree that we should take up that point.

I do not agree so much with Jamie Greene's first point about going back to Police Scotland. We have been there, and Police Scotland knows that we are not happy with the response, as does the SPA. The SPA governs Police Scotland, so the onus is on the SPA to get this right for the police and for us, and to give us the information.

Paragraph 11 states:

"In response to the Committee's request, the SPA undertook an urgent review of the number of cases where officers and staff retired due to mental ill health ... The SPA confirms in their response that additional resources have been assigned and are having a positive impact on reducing the number of officers awaiting approval".

We have had no update on that urgent review, so we do not know what the outcome was.

Paragraph 11 goes on to note that

"The SPA's People Committee is to consider the outcomes of the review at its meeting of 28 February".

It might be timely, therefore, for us to contact the SPA and ask what the outcome of the review was. I am not sure of the value of going back to Police Scotland, because I think that we will just get the same response.

The Convener: Does anyone else want to come in quickly?

Russell Findlay: I have a quick question on paragraph 16, to which Jamie Greene and Rona Mackay both referred. There is perhaps a more fundamental issue about the creation of Police Scotland, which is coming up to its 10th birthday. The short history of both the SPA and Police Scotland has been tumultuous, to say the least. At the very beginning, there were serious questions about both the ability and the willingness of the SPA to hold Police Scotland sufficiently to account, and indeed, in the early days, about political meddling, which has now been pretty much acknowledged.

I go back to the specific issue. In May 2021, the committee raised the issue of officer suicides. In September 2021, we got a letter in which the SPA said that, based on the information that was available at the time, there was nothing to suggest that any of the recent cases was caused directly by the pressure of work.

The SPA took the information from Police Scotland—it took Police Scotland at its word. That response was disingenuous, to say the least because, in some of those cases, the officers had made known their difficulties with the on-going processes that they were being put through.

That one brief letter highlights the problem of the SPA showing a lack of curiosity, or robustness, in respect of holding Police Scotland to account and asking difficult questions about difficult subjects.

The Convener: I see that no one else wants to come in.

I thank members for their comments, which are all perfectly valid. I will try to summarise the points that have been made. Russell Findlay raised some key issues around the commentary on police suicides and some of the previous responses that we have had, including the correspondence from the Crown Office on police suicides.

Jamie Greene proposed that we go back to Police Scotland to ask further questions, including on the Scottish Police Federation's comments. Please correct me if I have picked that up wrongly—I have been scribbling down notes. Some other issues have been raised, too.

Part of the reason for the actions that have been set out in paper 4 is that I do not want us to simply get into a chain of correspondence. However, in view of the comments and points that have been made, I ask members to indicate whether they are happy for us to go back to Police Scotland on the specific issues that have been highlighted. Are members happy for us to take that away as an action?

Russell Findlay: In the letter that we send, could we perhaps ask for some more data? When we had a police witness before us, we asked about the number of officer suicides. He said that he would come back to us, but he has not done so. We have since corresponded with the police, but they have shown no sign of providing that information. Therefore, I suggest that we ask specifically for that information, and that we ask how many of those officers were subject to on-going internal processes.

I would also like to know, in the light of the fact that we have raised the matter publicly and in writing with the SPA and Police Scotland, whether they have revisited the SPA's acceptance that there is

"nothing to see here",

when, in fact, it is clear that there is something to see.

Jamie Greene: Thank you for your proposal, convener, which I think is a good move. I agree—I do not think that there is any merit in getting into a game of letter tennis, but if it gets to the point where we are expressing unhappiness about the responses that we are getting, we cannot simply park the issue.

There is another issue on which we could ask for a more regular update—that of officer retirement and churn, which is an issue that I have struggled to get information on. I appreciate that the police do their own analysis on officers who exit the force—there will be exit interviews and so on. I have chucked some questions on that into the system, but it has been very difficult to obtain data. It is important that we get that data so that we can get underneath the skin of why people are retiring. Is that simply to do with early retirement and changes to the rules around that, or are there mental health and physical health issues at play? What reasons are being given? Are we keeping a watching brief on the churn rate relative to the number of officers in the system, the average age and so on?

The police or the Government should make an effort to be proactive in keeping the committee informed of the data in that regard. It does not matter what it tells us, but we need to know what picture it paints, because that will have a massive effect on the number of officers available.

The Convener: I agree. I think that it is really important that, alongside whatever we decide to do, we support clear arrangements around data collection, because that is fundamental to tracking progress on the range of issues that we have highlighted.

Rona Mackay: I agree with what you have said about data collection—that is crucial. I have no objection to our going back to Police Scotland; I simply the question the worth of that.

I definitely think that we should go back to the SPA to get an update on the review that it is doing. We should also ask about the point that is made in paragraph 16 of our paper, which is about why the SPF does not really have a voice at SPA meetings and why the SPA takes Police Scotland's evidence as read. In other words, we should ask the SPA how robust it is being with its governance. I would like us to see whether we get anywhere with that.

The Convener: I am happy with that suggestion.

I ask members for an indication of their view on going back to Police Scotland to ask some further questions. Rona, I know that you—[*Interruption.*] Do members agree that we should do that?

Members *indicated agreement.*

The Convener: Do members agree with the actions that are in the paper in relation to the SPA? Those actions have an important role. Despite some of our comments and views on the SPA in our scrutiny, are we nonetheless happy to accept the proposed actions?

Members *indicated agreement.*

The Convener: I will bring in Stephen Imrie in case I have missed anything; I do not think that I have.

Stephen Imrie (Clerk): No; we are fairly clear on writing a letter to Police Scotland on the various issues that have been raised, and on taking forward the actions in paragraphs 24 and 25.

Russell Findlay: I put on the record that His Majesty's Inspectorate of Constabulary in Scotland has just issued its terms of reference for a thematic review into policing mental health in Scotland, and it is due to publish that, according to its initial report, in July. Presumably, it is asking the same questions that we are asking, and it will perhaps have greater access to a lot of this stuff than we do. In the context of all this, that is vital.

The Convener: That is a helpful update. Thanks for that.

Before we conclude the item, I place on record the committee's thanks to David Hamilton, chair of the Scottish Police Federation, for bringing the issue to our attention. As we know, David is moving on from that role, so on behalf of the committee, I wish him well in his future endeavours and whatever challenges he moves on to.

Virtual Trials

11:41

The Convener: Our next item is consideration of correspondence from the Lord Justice General, the Scottish Courts and Tribunals Service and the Scottish Government on virtual trials. I refer members to paper 5 and open it up to members for comment.

Katy Clark: This is very interesting. With the exception of the use of juries in cinemas, which has been pointed out by Lady Dorrian, and which I had not really thought of as virtual trials, although they obviously are, the main thing that comes through is how few virtual trials are taking place. Lady Dorrian's comment that there has been no appreciable difference in the figures for conviction, acquittal or plea rates in the cases that had juries in cinemas was interesting. I suspect that we have probably seen that data in a different way in a different place, but we have not necessarily thought about where the juries were.

It is striking how few virtual summary trials have taken place. If any more long-term proposals were made, we would need a far more substantial evidence base. That is the position that the committee should take if any proposals come forward for something more substantial in legislation, which may happen. It is important to put down a marker that it should be evidence led, but at the moment the sample is too small.

Jamie Greene: I want to flag some of the comments in the letter from the SCTS. The third paragraph of the letter, which is on the first page of paper 5, states:

> "Despite the increasing numbers of domestic abuse cases across our courts (they currently make up 23% of all Aberdeen sheriff court's summary complaints registered this financial year), there are currently no further virtual summary trials scheduled at this point."

The letter then explains the reason for that, which seems to be a problem with solicitor participation, but that does not really explain what the challenge is. Is it that solicitors are not available, not willing to participate or expressing opposition to it? It is unclear.

11:45

I appreciate that, about halfway down the page, the letter also talks about the general point that we are moving to a more face-to-face world again and away from doing things virtually. It says:

> "as people return to more day to day physical interaction as we recover from the pandemic, momentum is waning."

That seems to me to say, "We gave it a try and it was okay, but the world is sort of back to normal,

so no one really wants to continue with it." To me that sounds like, whatever your view on virtual trials—I separate those from virtual evidence giving or virtual juries, which are a different application of technology—the SCTS is not 100 per cent behind doing much more on virtual trials.

There seems to be an unwillingness in the sector to see benefits in virtual trials. I think that the SCTS quoted 58 as the total number of motions for a fully virtual trial. Not many of them went on to be virtual. In fact, about half of them were converted to in-person trials, so the request was not granted or the decision was made not to proceed with a virtual one. As Katy Clark says, the information is limited. It was only a limited trial, but that does not reek to me of a positive outcome or positive feedback about the measure.

Collette Stevenson: The response is interesting. It is almost as if the SCTS is saying, "We have tried it out so let's move on." However, we are looking at budget cuts and there are huge efficiencies to be made in virtual trials. In particular, prisoners could attend court virtually rather than the likes of GEOAmey having to be used so that they can attend.

There seems to be some push-back against having virtual trials. I made that observation on our visit to Glasgow sheriff court. There are a variety of reasons why we could have virtual trials. The police have to use up their rest days, but they could attend virtually and, in that way, they would not need to be replaced, depending on how long the trial lasts. There are a huge number of efficiencies to be made by carrying on with virtual trials, notwithstanding the impact on complainers.

Pauline McNeill: It is probably important to get to the bottom of that, but I will make observations on the points that Colette Stevenson made. In custody cases, not everybody is held in the same place. That is one of the practical points for lawyers. You have a right to see your lawyer but, if they are not in the same court, as used to be the case, there are practical issues with that.

I am not in favour of proceeding to virtual arrangements unless we can be satisfied that the quality of the connection is good enough. We would need to ask what investment the Scottish Courts and Tribunals Service is prepared to make in that. As I mentioned previously, in one of the custody hearings that I sat in on, I found the quality really poor. I guess that, even with a high-quality arrangement, we would need to run some pilots to see how it feels for the jury not to be in the room if we run a full trial virtually.

It is interesting to note that there has been no change in the overall conviction rates. That is always a good premise to work on.

I take Colette's point on the appearance of police officers at court. Whether we use virtual trials or other measures, we have to reduce police time in court. That is one of the reasons why we introduced preliminary trials. The idea of preliminary proceedings was that the witnesses were not required. Prior to that, police officers would be sitting in court. All the disruption and delays in the court system are impacting on police officers, who have to use their rest days and so on. The point about police time is an important one that we can maybe return to, given the other budget discussions that we will be having about the importance of maintaining police numbers. I just wanted to add that in for the record.

I am not against using more virtual approaches in the commissioning of evidence. I am quite impressed with that, because I have seen the Victim Support Scotland facilities, as I mentioned in the victims awareness week debate yesterday. The facilities look like a high-quality and quite satisfactory arrangement. There are other requirements to check—that there is nobody else in the room, for example. It looks pretty solid but, in moving forward to a different arrangement from the physical one, we need to be satisfied that all those things are present.

The Convener: Thank you, Pauline. The issue that you raise about police officer abstractions for court is a very important one. For example, in the north-east division recently, I think that 150 officers were cited for court on a Monday morning. That number will reduce with trials going off, but that is a lot of officers and it has huge implications for operational policing.

Russell Findlay: I do not want to sound negative or as though I am always complaining, but we have asked these basic questions of witnesses in this committee. We have asked how many virtual trials have taken place, what the nature of the crimes were, and what the disposal rate was and how that compared to disposal rates in the non-virtual courts. However, it is only now that we are finally getting something like what we have been looking for and getting some data, and it is slightly underwhelming. It perhaps reveals what we suspected, which is that there is a kind of half-hearted attempt to do this.

It is worth bearing in mind that the SCTS could spend millions of pounds creating all the bespoke centres with all the best technology available, but if the judiciary and the defence lawyers do not like it, it will not happen. That is the very point that is being made in the paragraph that Jamie Greene identified at the outset. It may be that I am wrong; it may be that they are all for it and it is just that there have been technical difficulties. However, I think that it has probably been because of a reluctance on the part of the judiciary and defence

lawyers and that, frankly, is where the power lies. I do not think that the SCTS can force anyone to embrace this.

The Convener: I agree 100 per cent with those comments. I think that it is for the reasons that you have just set out and I think that you are right that this cannot be mandated practice. We referred earlier to the practice note, which informs people about what is expected but does not have a role in mandating practice, which makes it more difficult.

Jamie Greene: I know that you always cover what you plan to do next at the end of the discussion, so I may be pre-empting you, but I feel, given what we have heard, that it is entirely appropriate for us to go back to the SCTS. I do not see the point of writing to the cabinet secretary, because his short response says that it is an operational matter and that it is not for him to comment on it. Therefore, let us go straight to the heart of the matter and hear from the horse's mouth what the difficulties are and what the general feeling is. I would like to hear more about opinions rather than just the facts from the SCTS.

Equally, I am not convinced that we have enough information on the outcomes of virtual trials—I know that the numbers were limited, but if you were a research data analyst trying to work out whether virtual trials produce different outcomes, I am pretty sure that you would not be able to come to a conclusion based on what we have received; from an academic point of view, it is impossible to say whether virtual trials have been successful.

The Convener: I will pull things together. Very few such trials have been undertaken despite the support for the notion of virtual trials, and members have highlighted some relevant points. We need a much more substantial evidence base. It is concerning that momentum is waning, if that is the case. The fact is that the reality seems to be at odds with what is happening in our court system.

There are good points to raise about budget implications for virtual trials. Issues such as the quality of connections are practical matters, but they are important nonetheless. It is good to see better use of a virtual option for taking evidence on commission; that was highlighted in some of the correspondence that we received.

For next steps, I propose—I am not sure whether all members will agree with this—that we note the discussion that we have had today and note that the matter will be the subject of further consideration in the forthcoming criminal justice reform bill. However, Jamie Greene's last comments suggest that he would prefer to go back to the SCTS with some further questions.

Jamie Greene: Only if members are minded to do so; that takes us back to the possibility of a ping-pong scenario. The SCTS has tried to respond to us with a lot of information, but it has not fully answered the question—it is perhaps a question of perception—as to whether the trials have been successful and what challenges it faced in trying to implement those trials.

As other members have mentioned, we do not know what the experiences were in other parts of the judiciary, and whether those were positive or otherwise. That is what I want to unearth.

The Convener: Thanks for that. I still propose that we note the discussion today and that we await the introduction of the forthcoming criminal justice reform bill. I note Jamie Greene's comments and his preference, but if committee members are agreed, I propose that we note the discussion.

Jamie Greene: We do not need to write to the SCTS, so members are welcome to agree.

The Convener: Thank you for that permission. Are members agreed?

Members *indicated agreement.*

Access to Court Transcripts

11:57

The Convener: We move swiftly on to our next agenda item, which is access to court transcripts and consideration of the Scottish Government's response on that issue, which we recently raised. I refer members to paper 6. Once again, I invite any views from members on the correspondence.

Russell Findlay: Ellie Wilson is a rape victim who has been very vocal, and has been campaigning, on this subject. I declare an interest, as she used to work for me. In the past couple of days, she has made it known that she has now acquired some of the transcripts that she was seeking, but she had to resort to crowdfunding to make that affordable. I do not know what the costs were, but I think, from what the committee learned previously, that they were quite significant.

In the response from Keith Brown, there is at least some acknowledgement that this is an important and serious issue. One could be cynical and say that putting information on a webpage to explain that there is a process is not great progress, but it is progress. It shows that people have somewhere to begin.

Keith Brown talks about the potential route of making a subject access request as opposed to seeking a full transcript; I do not know how that would work in practice. He also talks about exploring new technology. I assume that he means software that transcribes automatically, which I have used; it is perhaps not as good as it will ultimately be. It has been talked about and considered, but where we go next, I am not entirely sure.

The Convener: Thank you for that. Jamie Greene wants to come in.

Jamie Greene: Thank you, convener, for allowing me the chance to raise this point. I put on record my thanks to Ellie, who contacted me as well on the matter, for the very public work that she is doing. It cannot be easy for her, as a survivor of a crime of that nature, to talk about it in the public domain and in the media. It is important, because when people do that, others listen.

The issue that I have with that letter is that, at the end, it says:

"In a proactive effort to improve transparency",

the SCTS will publish information, including costs, depending on

"what type of transcript is required."

The only thing that is becoming more transparent is how onerous and expensive the process is. If nothing else, that ambition has been fulfilled.

12:00

However, I have a question, which the letter does not answer, about the contract and tender, and I take real issue with the second paragraph of the letter. We have been raising this issue since this committee was set up after the most recent election. It came on to the agenda quite early and we have raised it numerous times. The letter says:

"The current contract is due for renewal imminently and ... the procurement timescales do not allow for adjustments to be made to the tender on this occasion".

How on earth did we get into that scenario? We have been flagging this issue with the cabinet secretary for more than a year. We have now discovered that the contract is being renewed, presumably on the same terms and at the same costs. Nobody knows what those costs are, we do not know what the tender is valued at, we do not know who operates the tender and we do not know what the procurement process was. Had that been identified to us a year ago, perhaps we could have asked the Government to change the criteria of the tender or to be a little more transparent about the process. All that the letter says to me is that either the contract has been extended or renewed without any due tender process, or, if there has been a tender process, it has been on the same terms as the last one, which is completely unacceptable.

The letter says:

"The product of this work will then be reflected when the contract is next out for tender."

When is that? How long is the contract? Is it for one, two, three or five years? Will we have to wait until the next session of Parliament to revisit the issue that we have been banging on about, simply because the Government has shooed through another contract with no questions answered? I find that unacceptable. The letter raises more questions than answers. It is a shame that the cabinet secretary is no longer here to answer the questions, because I would like some answers about how on earth we are in a situation where the contract has been renewed at exactly the same onerous costs, so that we are back to square 1 and we have kicked the issue back into the long grass. That is all that we are going to get any time that we raise the issue again. It is unacceptable.

The Convener: Does anybody else want to come in very quickly?

Katy Clark: I will be brief. I find it bizarre that we have discussed this so many times but are none the wiser about what the issues are. As I have said before, I suspect that the issues are about substantial cost. I used to work in the courts, so I know that getting transcripts was very expensive, although that was a long time ago. I suspect that very substantial costs are involved and that is why

it has been difficult to get progress. I do not understand why the cabinet secretary and the Scottish Government are not sharing that information with us, so that we could have an informed discussion and debate. I do not understand why there is not more straight talking and transparency. I am guessing what the issues are, because that information is not being provided to us, and we are getting meaningless correspondence from the Scottish Government.

The Convener: Russell Findlay has a final point to make.

Russell Findlay: I will go back to the point that Jamie Greene made. I presume that the number of people who seek transcripts is not huge, so would it really have made a significant difference to the cost of the contract? It is maybe an academic question, but if we are writing to the Government anyway, and unpicking or asking for details about the tender, it is perhaps worth including questions of that nature.

Rona Mackay: I am not disagreeing with what has been said, because we do need to ask questions, to see whether the Government can shine any light on the issue. The second last paragraph says that the SCTS will

"make information available on their webpages",

which will include costs and information on how to get transcripts. Although I think that that is a move forward, questions still need to be asked.

The Convener: Thank you for that. I concur with the comments that members have made.

To pull things together, I propose that we write to the cabinet secretary to ask for more detail on the scope of the new contract and to ask why that detail could not have been provided earlier, as Jamie Greene pointed out.

There is scope for us to build more of a case around the provision of transcripts for those who seek copies. It might also be helpful if we were to ask, for example, Scottish Women's Aid and Rape Crisis Scotland—which will be interested and following the matter—for an update on how easy or challenging it currently is for individuals to obtain copies of transcripts. Is there still a significant cost or has anything changed in that regard? It would perhaps be helpful for us to get some insight into that.

Are members happy with that proposal?

Jamie Greene: I do not want to carry on too long on the subject but, yes, you are right that we should ask those questions, and you can copy my comments from the *Official Report* and stick them in a letter to the cabinet secretary. I know that the clerks will cover all those issues in the questions that we ask, in order to get the answers that we need. Whether or not we get a response is another matter.

However, if we are where we are and it transpires that, because the contract has been renewed or extended, the status quo remains for a period of years and not months, can the Government do anything in the meantime? I am quite keen to probe that, perhaps in the same letter. I do not think that the numbers are huge, so I am not asking for millions of pounds. Is there an interim solution or mechanism whereby the Government could make funds available to support victims who require access to transcripts? That fund could be delivered or administered by a third party, such as one of the charitable organisations or other publicly funded organisations that work with victims. The funding could come from the proceeds of crime money, which is often hotly disputed. That would be a perfect way to spend that kind of money. In future, no one should have to crowdfund in order to get a transcript. We are talking about peanuts. I know that it is still thousands of pounds but, if we are stuck with the contract that we have, surely the Government could find a few bob from somewhere to create a fund to support those individuals in quite stressful situations. In the future, if the cost comes down and the service becomes cheaper, that will be super and the Government will have done a good job in changing that. However, in the meantime, we still need to do something.

The Convener: I am happy for us to incorporate that into correspondence to the cabinet secretary. Obviously, the criminal justice reform bill is coming forward, and I would be very surprised if the new contract and the process around that were not incorporated into the bill.

Are members happy with what we have proposed?

Members *indicated agreement.*

The Convener: That concludes the public part of our meeting.

12:08

Meeting continued in private until 13:06.

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