



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Public Audit Committee

**Thursday 8 June 2023**

**Session 6**



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**PUBLIC AUDIT COMMITTEE**

**17<sup>th</sup> Meeting 2023, Session 6**

**CONVENER**

\*Richard Leonard (Central Scotland) (Lab)

**DEPUTY CONVENER**

\*Sharon Dowey (South Scotland) (Con)

**COMMITTEE MEMBERS**

Colin Beattie (Midlothian North and Musselburgh) (SNP)

\*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

\*Craig Hoy (South Scotland) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Stephen Boyle (Auditor General for Scotland)

Lynsey Davies (Audit Scotland)

Mark Taylor (Audit Scotland)

**CLERK TO THE COMMITTEE**

Lynn Russell

**LOCATION**

The James Clerk Maxwell Room (CR4)



# Scottish Parliament

## Public Audit Committee

Thursday 8 June 2023

*[The Convener opened the meeting at 09:00]*

### Decision on Taking Business in Private

**The Convener (Richard Leonard):** Good morning. Welcome to the 17th meeting of the Public Audit Committee in 2023. We have apologies from Colin Beattie.

The first item on our agenda is to agree—or not—to take agenda items 3, 4 and 5 in private. Do we agree to do so?

**Members** *indicated agreement.*

### “Criminal courts backlog”

09:00

**The Convener:** Agenda item 2 is consideration of the report produced by Audit Scotland into the criminal courts backlog. I welcome to the committee Stephen Boyle, Auditor General for Scotland, who is joined by Mark Taylor, audit director and Lynsey Davies, audit manager, both from Audit Scotland.

As usual, Auditor General, we have a number of questions that we would like to put to you. However, before we do that, I invite you to make a short opening statement.

**Stephen Boyle (Auditor General for Scotland):** Thank you, convener, and good morning. The Covid-19 pandemic created a large backlog of criminal court cases waiting to be heard. Since then, significant progress has been made by the Scottish Government, the Scottish Courts and Tribunals Service and their partners in reducing the overall backlog.

Throughout the pandemic, partners in the criminal justice system identified innovative solutions to support recovery, including the use of remote jury centres in cinemas. The SCTS also made very effective use of data modelling to inform decision making about the effects of the backlog and to help identify solutions. That included the introduction of the courts recovery programme in September 2021, which helped increase Scotland's criminal court capacity and reduce the backlog.

In September 2022, the number of outstanding scheduled trials peaked at more than 43,500. That is more than double what the SCTS considers as its normal operating capacity level. That figure has reduced month on month since then, and it stood at just over 28,000 in February 2023.

The pandemic backlog of summary cases—such as common assault, domestic abuse and breach of the peace—is reducing, and the courts service estimates that it is on track to be cleared in March 2024. However, the backlog of solemn cases—such as serious assault, murder, rape and sexual offences—peaked in January of 2023, but it will take until March 2026 to clear that.

It is important to acknowledge the impact of the backlog on victims, witnesses and the accused, who are experiencing longer waits for their cases to be heard. Average waiting times for solemn, more serious, cases have doubled since the pandemic, and currently stand at between 43 weeks and 53 weeks. Some of those crimes disproportionately impact on women and children.

The Scottish Government published “The Vision for Justice in Scotland” in February of last year, but the supporting three-year delivery plan for continued recovery and reform of the criminal justice system has been delayed until summer 2023. It is important that the Scottish Government finalises and publishes that plan as a priority.

My report makes recommendations to the Scottish Government and the Scottish Courts and Tribunals Service as they work to reduce the backlog and reform the criminal justice system. Lynsey Davies, Mark Taylor and I look forward to answering your questions this morning.

**The Convener:** Thank you; that statement set the scene very well. You mention at the start of the report that you have a plan to monitor progress against the report’s recommendations. Can you tell us a little bit more about how you plan to do that monitoring work?

**Stephen Boyle:** Yes, of course. I will say a bit about the report specifically, and also about further work that we might do on the justice system. I will ask Mark Taylor to say a wee bit more about some of our wider arrangements, if that would be helpful.

You will see that we made recommendations on page 6 of the report. We thought carefully about them. Sometimes we make recommendations to individual bodies, and other times they are wider. In this instance, they cover both the Scottish Government and the Scottish Courts and Tribunals Service.

We use a range of mechanisms, but we have not settled on the ones specifically for this report, given that it is fairly fresh. We like to set out who our recommendations are for and the timescales for them. In this report, some of the recommendations are shorter than the committee would see in a typical report, as it covers the next three to six months up to 12 to 18 months.

We have mechanisms open to us, such as a follow-up report and reporting through the annual audit of organisations or impact reporting mechanisms. We are finalising our options but, given the fact that we have a short timescale, we will settle on them fairly soon during the rest of this year so that we can take stock of the progress that the Government and the SCTS is making.

One of our core recommendations is about the publication of the three-year delivery plan, which is expected in the summer. We will therefore track that and report publicly on progress on that front.

If the committee would find it helpful, Mark Taylor can say a bit more about the wider work we are doing on recommendations and impact monitoring.

**Mark Taylor (Audit Scotland):** You will recall that when we came to speak to the committee

recently about the Auditor General’s work programme, we touched on our impact and insights work, which builds on the work that we have always done to follow up our recommendations a bit more systematically and pull out more of what that tells us across the piece to give them a bit more visibility. As part of that work, we will pilot a number of approaches. We will shortly publish a report about city and region deals that looks back at the recent joint report between the Auditor General and the Accounts Commission and the impact that it has had. That will give the committee the opportunity to see some of that work in practice.

The trick is to get the balance right between the work programme being dominated by looking back at all the work that has already been done and us getting into new areas.

**The Convener:** We see a lot of your reports and I thought that it was interesting that your recommendations in this one are aligned with timetables. You have got things that you expect to happen within three to six months, over the next 12 months and then over the next 12 to 18 months, and I think that that is a useful way of addressing some of the challenges that you have identified. It seems to me to be quite innovative and very useful.

Have you agreed those timescales with the Scottish Government and the Scottish Courts and Tribunals Service?

**Stephen Boyle:** All of our reports are shared with the relevant bodies. For all of our performance audit reports, we write to the relevant director-general in the Scottish Government to give them the opportunity to fact check and comment. That is part of our standard arrangements.

I would be grateful for your feedback, convener. In making a recommendation, we all expect to follow the SMART—specific, measurable, achievable, relevant, and time-bound—principle. Having clear timetables gives the public body the opportunity to consider the recommendations and what is reasonable and realistic, and then we can have that follow-through, so that what was asked for and what was delivered are clear.

All of the recommendations in today’s report can be seen in the context of what is achievable. From a public audit perspective, there is not a great deal of merit in us making a recommendation, however clear or appropriate we think it is, if the public body has the sense that it is just not achievable. We have tried to align recommendations with timescales in today’s report.

Lynsey Davies can say a little bit more about the clearance arrangements and the engagement that

we have had with SCTS and the Government on this.

**Lynsey Davies (Audit Scotland):** We shared the draft report with the Scottish Government and the Scottish Courts and Tribunals Service at the clearance stage, and that included the time-bound recommendations. No comments were received about them or issues identified with them.

**The Convener:** The report addresses the response during the pandemic and the lockdown, and all the restrictions that were in place at that time. Willie Coffey has a series of questions on that, but I will ask one before I turn to him.

One of the things that happened during that time was that the sheriff court system was consolidated into 10 hub centres and the JP courts were also incorporated into that. We had 10 hubs and they were asked to consider essential business. Could you tell us how essential business was defined?

**Stephen Boyle:** You are right, convener. As we set out in the report, we moved from, I think, 39 hubs to 10 across the various sheriffdoms in Scotland.

On the prioritisation, there are a number of steps. Lynsey Davies can set them out in a bit more detail for the committee. I will say a word or two before that.

We have seen in the report that, in the early stages of the pandemic, the system came together through a range of governance and prioritisation mechanisms that considered how it could continue to deliver the responsibilities of the courts and justice system at the height of the pandemic. It is not that long ago but memories can have faded over the past year and a bit as we came out of the lockdown. However, you will recall that there were two national lockdowns, prolonged social distancing and a sense not just that that could bring about severe pressure in the courts system but, because Scotland's justice system is interconnected, of what it might mean for the number of people held on remand, the waits for cases to be heard and the associated human cost on people who experience the justice system.

One of the innovations was about how to continue the throughput and bring it down into a hub model. Perhaps we will say a bit more over the course of the meeting about some of the other innovations that supported that. However, Lynsey Davies can set out the situation with regard to prioritisation.

**Lynsey Davies:** Priority was given to the custody trials because, in legislation, the accused are supposed to be heard by the court on the next lawful day. Therefore, the hub courts prioritised that sort of business in the initial stages of the lockdown.

**The Convener:** Thank you. I turn to Willie Coffey, who has more questions on the Covid response.

**Willie Coffey (Kilmarnock and Irvine Valley) (SNP):** Can you tell us a bit more about the initial responses to Covid, particularly the digital or electronic transformation of documents, which you say in the report was successful? How did that work, and is that still in place?

**Stephen Boyle:** Good morning, Mr Coffey. Lynsey Davies is probably best placed to set out some of the digital and evidence-sharing arrangements that were one of the innovations to which we refer in the report. I am sure that she will want to say a bit more about the use of data.

The committee regularly considers how well data is being used across public bodies in the delivery of public services. Today's report is a welcome change of tone. We have seen through our audit work, and the Scottish Courts and Tribunals Service has set out, that data was used effectively. The service deployed data modelling to support the delivery of the courts service and the prioritisation. It used scenario planning to set out what would happen if some of the innovations that are set out in the report were not used and it has transparently reported the use of data.

That has all built up into some of the specific examples that we cover in the report. Lynsey Davies can talk the committee through that.

**Lynsey Davies:** The digital solutions that were implemented included the installation of videoconferencing facilities in police custody suites to allow the accused to appear remotely. That was initially done to prevent the transportation of accused who presented with Covid-19 symptoms but was then used more widely even when symptoms were not present.

The conduction of criminal court business by electronic means also allowed for the establishment of the virtual summary trial pilots, in which victims and witnesses were able to give their evidence remotely outwith the courtroom. That also allowed for the remote jury centres to be established, whereby the juries were removed from the courtroom.

**Stephen Boyle:** I will add one point to that. One of the barriers to effective working across partners and the use of data is data sharing arrangements not being in place. At paragraph 34 of the report, we state that that was part of the thinking in the recover, renew, transform programme, which was one of the overarching arrangements that set out how services would be delivered in the criminal court system.

09:15

Again, the committee will be familiar with many examples of data-sharing arrangements between public bodies not being in place. However, as we have seen, in this case, that was supported by the Scottish Government's justice analytical services division, and that continues to be the case as the SCTS looks to further reduce the backlog and as part of its thinking around transformation.

**Willie Coffey:** I was discussing the report with the procurator fiscal in Kilmarnock last week, and she was talking about the presentation of digital evidence, which has led to early disclosure of evidence and seemed to turn the backlog around pretty quickly. It has always been possible to do that, but Covid made us do things that we had not considered possible before, and that seems to have been a particularly successful thing to do. I wonder whether that process will continue to be embedded at the heart of the system to further reduce the backlog.

**Lynsey Davies:** The Coronavirus (Recovery and Reform) (Scotland) Act 2022 was brought in last year, and I can double-check to see whether those provisions are still in place.

One project that we mentioned in the report is the digital evidence sharing capability—DESC—project. That was being worked on pre-Covid, but the Government announced this year that it has been piloted in Dundee, with a view to a further, nationwide roll-out later this year. Essentially, that creates a unified digital system for evidence sharing between the court staff, prosecutors, defence agents and police, so that they can handle and access the evidence as well. That is an important part of the on-going summary case management pilot, which relies on disclosure of evidence to the accused and their defence agent, so that they are more informed of the case against them. In domestic abuse cases, that evidence disclosure is automatic, so the DESC system will help with the timely provision of that evidence.

**Willie Coffey:** Yes, you certainly mentioned that, but I wonder whether that system is available to us in the solemn cases. You said that the backlog was still pretty high. Is that process usable in solemn cases?

**Lynsey Davies:** I would need to double check the information on that and get back to you, if that is all right.

**Willie Coffey:** Your report also tells us that the pace that was required by the emergency Covid response highlighted good collaboration among all the partners in the initial stages of the pandemic. What is your evidence base for the conclusions that you have reached? You also note that there was a failure to “fully document” plans and outcomes. How are you able to reach a conclusion

if you do not have a documentary evidence base to look back on?

**Stephen Boyle:** Both things are true of the report. We all recall the early stages of the pandemic when public services tried to sustain services. We have already touched on the fact that, pre-pandemic, the court service had invested and upskilled in data in a way that some other public services had not. It was able to use that expertise to deliver and sustain services and to model scenarios. The court service worked with its partners to really look at what the scenario would be if it did not explore innovations such as remote jury centres, remote balloting and the evidence sharing arrangements that Lynsey Davies mentioned. If the service had not done that work, the system might have become overwhelmed, so it would have taken many years to hear cases, and there would have been all the human cost that that situation brings.

It is also true that decisions were taken at pace at the start of the pandemic. As we have also set out in earlier reports on Covid, that is to be expected, but today's report does not give an entirely clean bill of health on some of the decision making and governance arrangements.

As we look forward and touch on some of the latter stages of the pandemic, we see that not all the governance was as effective as it should have been. The role that some critical parts of the governance system played was not as comprehensive as it could have been. In particular, we mention advisory groups, which tend to be comprised of representative groups, victim support arrangements and the use and application of equality impact assessments, which still has some way to go.

There is still some work to do on applying all those into a rounded and effective governance model for some of the vital transformation arrangements that are still planned, but that does not detract from what we say at the start of the report that, at real pace, in a time of crisis, the Scottish Courts and Tribunals Service and its partners worked well to sustain the system and allow it to continue functioning.

**Mark Taylor:** I will briefly go to the root of your question, Mr Coffey. This is a bit of a generalisation but, often, in the audit business, we are reliant on evidence of work in progress and governance. As the Auditor General says, that is really important. In this circumstance, the speed of the response was such that we were able to look at the actions that were achieved, which involved multiple partners, and their implementation. There is really strong evidence from us about how, for that to occur, collaboration took place.



**Willie Coffey:** You say clearly in your report that the backlog has an impact on victims and witnesses. Other than providing some additional funding to assist, is any other support, such as advocacy, required from the Scottish Government to assist victims and witnesses to get through the process?

**Stephen Boyle:** I have a couple of things to say but I will limit my response to an extent.

I mentioned that the use of some of the advisory groups for the reform was a necessary and welcome part of considering how services would be delivered during the pandemic and in the future, but they were not fully deployed. Victim Support Scotland, Rape Crisis Scotland and other groups that represent people's experiences of the justice system were not used to the extent that we might have expected and would expect as part of the transformations. I mentioned how that was applied in the equality impact assessment. As I mentioned in my opening remarks, women and children are disproportionately affected by some of the crimes that are related to the backlog.

The place of victims and witnesses in shaping the system and consultation with stakeholders are vital components of ensuring a shared understanding and effective consultation on how services should be delivered. Funding is one mechanism but having the voice of users as part of shaping the system matters, too. Ultimately, it will be up to the Government and the court service to decide how they make best use of, and engage with, people who have a stake in the justice system.

**Willie Coffey:** Thank you very much. Convener, I hope to come back in later.

**The Convener:** I will bring you back in later.

I call Craig Hoy to put some questions to the witnesses.

**Craig Hoy (South Scotland) (Con):** Good morning, Mr Boyle. Obviously, prison overcrowding is nothing new. You have previously reported that the prisoner population in Scotland exceeds the capacity of the Scottish prison estate. To what extent are the backlog and, particularly, the number of prisoners being held on remand—sometimes for extended periods—impacting on the existing and long-standing pressures in the Scottish Prison Service?

**Stephen Boyle:** I bring to the committee's attention the point that the number of prisoners held on remand increased by 14 per cent over the pandemic. Time spent on remand, which is a linked statistic, also increased.

In paragraph 79, we highlight some of the equalities considerations of remand further, when we state:

“According to prison population statistics, in 2020-21 the proportion of women on remand was 30 per cent and the proportion of young people was 48 per cent, compared with 25 per cent of men.”

We have not looked into the background of those statistics, but they are relevant and the Scottish Courts and Tribunals Service and the Government will want to consider them.

I can add more detail to my answer. Last year, we produced a report on the workings of community justice in Scotland, which said that Scotland has one of the biggest prison populations per head of population in western Europe. We are thinking about what all those factors mean for the justice system that Scotland wants to have, for some of the intended post-Covid reforms and for our own work programme. There are pressures on the prison estate and the Scottish Prison Service. All of that is in our thoughts as we consider future audit work.

**Craig Hoy:** What, if any, assessment has been made of the extent to which the high and growing number of people being held on remand has an impact on those individuals? For example, how does that affect their mental health, earnings, employment or future housing arrangements?

**Stephen Boyle:** Those are the factors that we identified in our community justice briefing paper. Sentencing, or being held on remand, has an impact on people's life chances. Those factors are relevant.

You ask what work is being done on that. That should clearly be part of any work done by the Government, the court service and community justice authorities. They should work in connection with the multi-agency partners that support people with experience of the justice system.

The subject was not within the scope of this audit, but we retain an active interest.

**Craig Hoy:** Paragraph 29 on page 17 of the report states that, through the Coronavirus (Scotland) (No 2) Act 2020, the Scottish Government extended the maximum time for which an accused person can be held on remand prior to trial without the court granting an extension. Can you tell the committee a bit more about the time limit extensions that the Scottish Government introduced? How are they different to the limits prior to Covid, particularly for those being held on remand?

**Stephen Boyle:** I will ask Lynsey Davies to set that out in detail for the committee. There is more detail, but that paragraph sets out the time limits before Covid, what the 2020 act meant and what the implications might have been, had that not been in place. Although we do not use the expression in the report, we are looking at what might have happened to the effective functioning

of the justice system had some of those provisions not been considered.

Lynsey can talk more about that.

**Lynsey Davies:** As the report says, the limits were introduced because, without them, applications to extend time limits would have to be made to the court on a case-by-case basis, which would have taken a significant amount of court time.

There has been mixed feedback about the effectiveness of the limits. They were necessary at the beginning but, as time has gone on, they seem to be having a negative impact.

I can get back to you with information about what the exact time limits were, but the Coronavirus (Scotland) (No 2) Act 2020 extended them and they are still in place through the Coronavirus (Recovery and Reform) (Scotland) Act 2022. Those temporary provisions are due to expire in November this year, but there is the potential to continue the provisions for up to a further two years, until November 2025.

**Craig Hoy:** If my memory serves me correctly, you said that the backlog for less serious cases should be cleared by spring of next year but is likely to continue until 2026 for more serious cases. Does that point to an imbalance of provision between the High Court and lesser courts?

**Stephen Boyle:** That is not a judgment that we reached in the report. There are a number of factors, and Mark Taylor may wish to say more about them.

There was significant progress in reducing the backlog of less serious cases. That allowed us to reach a judgment in our report that the overall backlog fell to the extent that, in response, the Scottish Courts and Tribunals Service and the Scottish Government shifted resources to tackle the backlog in solemn cases.

That is not as straightforward, because they are clearly a different style of case. They require more input from the legal profession, the collation of evidence and so on. There are different views on how achievable that is. Some of the key stakeholders—criminal lawyers and the Law Society of Scotland—have expressed views on how achievable it is to shift resource from summary cases to solemn cases.

09:30

We have not considered in detail the imbalance that you mentioned. The report looks at how the Government managed the backlog. It will take until 2024 to reduce the backlog to the normal operating capacity level of around 20,000 cases.

That is what the Scottish Courts and Tribunals Service anticipates for less serious cases in 2024. There is something of a split in the solemn cases. The High Court cases target is 2025, and the target for the totality of the solemn cases, including sheriff solemn court cases, is 2026. Much of that will come about with the transformation innovations that the Government is thinking about. Maybe Mark Taylor can touch on that.

**Mark Taylor:** I will pick up on the number of cases in each part of the system. The vast majority of cases are, of course, summary cases. On the logistics of running courts, a case is a case to a certain extent, although they last for different lengths of time. The focus on summary cases initially allowed the overall volume of cases to be brought down. The consequence of that, increasing case numbers and the additional complexity of the solemn cases, as we set out in exhibit 6, is that those numbers have continued to grow. They have, we all hope—the evidence supports this—only very recently begun to turn a corner and dropped back down.

As the Auditor General has said, the court service was very aware of that in its modelling, and it has taken action to try to address it by redirecting resource to try to bring down those numbers as part of its overall plans.

More generally, on the wider vision for justice and the ambitions that are set out for it, we talked in the report about the need to translate those into specific plans. Specific plans will need to address the issue of how the plans for the wider range of ambitions for the justice system translate to addressing some of the issues that continue to be faced. That is why we said in the report that it is really important that the Government sets out those specific plans as soon as it can.

**Craig Hoy:** I am going to use very much layman's terms, and I am sure that procurators fiscal will be aghast at this. Is there any sense that procurators fiscal are going soft on less serious crimes, and those are simply not going to court? Is there a bit of jiggery-pokery and deal making to bring down the numbers in a quicker fashion than might otherwise have been the case before Covid?

**Stephen Boyle:** I will be really careful. We have not seen any evidence of that. However, it is important that that was not really a factor in, or part of the scope of, our audit work, which looked at how the Scottish Courts and Tribunals Service and the Government worked to manage the implications of Covid-19 for the criminal court service in Scotland.

As Lynsey Davies mentioned, there have been some innovations. Remote and digital evidence

sharing has allowed both sides in criminal cases to see the facts more quickly than they would have done beforehand. It is reasonable to say that the foundations of some of those innovations, although the innovations were triggered by the pandemic, were in place beforehand. Some of the factors in why cases are growing were also relevant before the pandemic. There was a growth in solemn cases before the pandemic. Although the pandemic was the key driver and catalyst for most of that, there were legacy issues prior to it.

To answer Mr Hoy's question, we have not seen any evidence of that.

**The Convener:** There is no evidence of jiggery-pokery. I am glad to hear it.

**Sharon Dowey (South Scotland) (Con):** Good morning. The report states that the Scottish Courts and Tribunals Service was well placed to lead the early modelling work that informed decision making on tackling the criminal courts backlog, as it had access to large amounts of data and the appropriate skills and expertise in-house. Will you tell us more about the in-house skills and expertise and how they were used?

**Stephen Boyle:** Yes. Good morning, deputy convener.

You are right. We set that out in paragraph 37 of the report. That the Scottish Courts and Tribunals Service used data well is a key feature. I do not wish to overstate the point, but it is a welcome departure from some of the findings in reports that we have done in previous years. I know that the question of how well public bodies use data—in and of itself but to support decision making—is a keen interest of this committee and its predecessor. At a time of crisis, that investment and expertise allowed the SCTS and its partners to use modelling to forecast what the service would look like without intervention and to plan how it would sustain the provision of court services at the earlier stages of the pandemic.

In relation to skills, I will turn to Lynsey Davies to set out some of the history around how the SCTS was better able to deliver services than some other public bodies.

**Lynsey Davies:** Ahead of the pandemic, the Scottish Courts and Tribunals Service was already collecting large amounts of data, such as the number of cases that came to court, how many of those cases proceeded to an evidence-led trial and how long those cases took, which allowed the SCTS to use its in-house analytical team to progress on to modelling—as the Auditor General has said, it looked at what would happen to the backlog if no action were taken and showed the impact of particular interventions on the backlog.

The SCTS also worked with other criminal justice partners, which we mentioned in the report. There was close liaison with the Crown Office and Procurator Fiscal Service to inform the modelling on the number of cases that were coming through. It has been a collaborative effort, but the SCTS was well placed from the get-go.

**Sharon Dowey:** The modelling initially suggested in 2021 that the courts service was aiming for a backlog target of 390 High Court trials and 500 sheriff court solemn trials in order to return to normal. The report that you have now published states that the targets have shifted to 567 High Court trials and 1,892 sheriff court solemn trials, which is quite a change in the goal posts. Do you know why the courts service has done that?

**Stephen Boyle:** There are a few factors, one being that the volume of more serious cases was increasing before the pandemic. Lynsey can say a bit more about that.

I should say that what is considered to be the backlog of cases was not the sole focus of our audit. Our overall judgment is that the backlog has reduced to around what it was before the pandemic, but some trends existed prior to it, with some cases taking longer and an increasing volume of solemn cases.

We refer to a few of the factors in paragraph 78, which mentions the availability of forensic reports, witness availability, parties' appearances at court and some of the adjournment factors that are a feature of the courts system's functioning. We have not analysed the specifics of how all those factors interact and what that means for what is seen as the normal operating capacity of the courts service. The SCTS would perhaps be better placed to set out the rationale for a manageable operating capacity for the courts service post Covid.

**Sharon Dowey:** The report highlights the use of data and the early modelling work that the Scottish Courts and Tribunals Service carried out. Is that modelling work still being used to inform decision making as work continues to address the backlog?

**Stephen Boyle:** The very short answer is yes. It is our understanding that that modelling work will be a sustained feature of how the SCTS will manage its operations.

**Sharon Dowey:** Do you know whether any modelling has been undertaken to establish what the backlog is likely to be if no funding is put in place to support the work to address the backlog?

**Stephen Boyle:** I am not sure that we do. I will turn to Lynsey in a second to explore whether any further scenario has been planned. It is a very important point. The assumption is that £40 million

will be used over the course of the current year's budget—2023-24—to continue to make inroads into the backlog. As we have touched on already, the full backlog will not be processed until 2026.

Like many public bodies, the Courts and Tribunal Service receives an annual budget, so it does medium-term financial planning, and its assumption is that it will continue to be funded to deliver its recovery programme and to work on the innovations that it set out in "The Vision for Justice in Scotland". However, there is a really tight fiscal position, and the Scottish Government will have to make difficult choices as it sets out its budget for next year, 2024-25.

The Deputy First Minister, in presenting the medium-term financial strategy to the Parliament in the past couple of weeks, set out the fact that there is a challenging fiscal position, which will require prioritisation and choices for the Parliament towards the end of this year as it considers its budget. However, the assumption remains that funding will continue to be available to support the delivery of the Covid recovery backlog for criminal court cases. Lynsey Davies might know whether progress with and without funding has been modelled.

**Lynsey Davies:** I believe that the modelling reports to date have shown the impact on the backlog if no action were taken. The most recent modelling report from September 2022 showed what the impact would be of switching the additional resources that were in place for the summary courts towards the solemn courts. Funding is in place for that for 2023-24, and that switch was made in April this year.

**Sharon Dowe:** Is there enough funding? Last year, it was reported that the courts service was told that justice is no longer a priority for Government ahead of the budget. Has the court service been told something similar for subsequent years? Does the current settlement represent the service being a priority?

**Stephen Boyle:** It is for the Government to determine its priorities, and not everything can be a priority. How that translates into individual funding allocations for different public bodies or public services is a matter for the Government to set out for the Parliament later this year, as it considers its budget for 2024-25. Ultimately, it is not just about the continuation of the delivery of services as they are currently being delivered. The outcomes that will be delivered as a result of some of the planned innovations need to be set out clearly. Will they produce efficiencies and so forth? Towards the end of the report, we set out that all the planned innovations must be mapped out to show what additional outcomes are intended to result from them and what efficiencies will be delivered.

We would say that both those factors need to be considered: the current funding and the fact that services do not remain the same. Therefore, does building on some of the modelling and better use of data produce efficiencies? On what that means for provision of service next year and the year after, the assumption on the part of the Courts and Tribunal Service, as we understand it, is that it will continue to be funded on the current basis, which allows it to project that it will clear the backlog completely by March 2026.

**The Convener:** I will bring Willie Coffey back in now because he has more questions about some of the innovations that were developed during the course of the pandemic.

**Willie Coffey:** Stephen Boyle, in the report, you referred to the remote jury centre model. There was an initial pilot scheme, which was extended, and it cost £12 million to service the model. There is the usual Public Audit Committee question about value for money around that particular initiative. Have you been able to assess that?

**Stephen Boyle:** With regard to the remote jury centre, we have not considered in isolation the narrow point on the delivery of value for money. However, we have reached a wider judgment that some of the innovations allowed the Courts and Tribunal Service—Scotland's justice system—to continue to function effectively over the course of the pandemic. It is fair to say that the innovation was welcome, building on some of the foundations that we have already touched on today, such as the use of data, the prioritisation of the use of cinemas because of their physical capacity, which supported social distancing, and some of the data security factors that were relevant in cinemas.

That, as part of the wider investment of £100 million over the course of the pandemic, allowed the function to perform well and significantly reduce the backlog. However, we have not made a narrow value-for-money judgment on the use of cinemas.

**Willie Coffey:** Cinemas and theatres were perfectly set up for that purpose. Do you envisage cases appearing at a cinema near you in the future, or is that experiment done and dusted?

09:45

**Stephen Boyle:** The use of remote jury centres in cinemas has now ended. It was a necessary component of the provision of justice while there were restrictions on people being in confined spaces during the pandemic.

If we have any further insight, Lynsey Davies can offer it. If not, we can come back to you in writing.

**Lynsey Davies:** The Scottish Courts and Tribunals Service started to decommission the remote jury centres in the summer of last year. I believe that two are being retained for the next couple of years just to help with reducing the backlog.

The centres were seen as a temporary recovery measure, but the Scottish Courts and Tribunals Service has said that the model is already developed should there be a need for social distancing again or, perhaps, in trials in which there is a risk of jury intimidation, when it would be beneficial to keep the jury remote from the courtroom. There is potential to use them again, but there are no current plans to do so.

**Willie Coffey:** The use of remote balloting by jurors seems to have been welcomed by everyone who participated in it. I think that that facility has been made permanent now. Is there anything else that was done as a result of the pandemic that you suggest could also be made permanent?

**Stephen Boyle:** You are right about remote balloting, Mr Coffey. It is also now a permanent feature.

On introducing other efficiencies, I would say that those two examples are the most uncontested of the innovations that were introduced during the pandemic. Our report also refers to the use of virtual trials and highlights some pilot exercises that took place in the north-east for domestic abuse cases. There is more mixed feedback on those. There were some reservations from the legal profession about the appropriateness of entirely virtual trials and the amount of preparation time that is required for solicitors. Other views were expressed about how well justice is served in an entirely remote environment.

The pilots of entirely virtual trials were relatively small scale as part of the suite of innovations that the courts service intended to introduce at the start of the pandemic. That feeds into some of the wider considerations about where the justice reforms should go next. There is a range of views about how appropriate some of the reforms are, how effective they will be, what efficiencies they will provide and how that might rub up against the effective delivery of justice. Those are the types of factors that the courts service and the Government will need to consider and consult on widely before taking the next steps.

**Willie Coffey:** You talked a few times about there being up to 20,000 outstanding scheduled trials. That seems quite a high number, but you have explained that that is the norm, which I was not aware of. Is any consideration being given to keeping the 10 hubs going to try to reduce that number more quickly, or will we revert back to the 39 sheriffdom locations that you mentioned?

**Stephen Boyle:** I will ask Lynsey Davies to pick that up if we have any more insight.

**Lynsey Davies:** I do not have much more to say on that. The 39 sheriff courts are still in operation. They reopened in June 2020. We do not have information to hand on the potential future for the hub courts.

**Willie Coffey:** Okay. I hope that we can come back to that, convener.

My last question is about the impact of adjournments. We all know that they are part and parcel of the justice system, but were there any significant impacts due to Covid that meant that frequent or more prolonged adjournments took place? If so, how was that resolved?

**Stephen Boyle:** That is not something that we considered in detail as part of our audit but, as I said to the deputy convener a moment or two ago, we refer to the impact of Covid as one of the factors in why cases are growing and why there has been some rebasing of post-Covid capacity levels.

More directly, adjournments have a significant human impact. Our report touches on the experiences of people who have interacted with the justice system. Adjournments can cause repeated trauma for witnesses, accused people and victims as they prepare to give evidence and are then stood down, only to be brought back into that scenario. I am sure that why adjournments happen will form part of the Government's, the courts service's and stakeholders' considerations for reform, and they might wish to consider innovations. However, that was not a detailed focus for our work this time.

**Willie Coffey:** Will others examine the issue of whether that had a negative impact on the system?

**Stephen Boyle:** I ask Lynsey Davies to say whether we can add anything on that.

**Lynsey Davies:** There is probably not much else that we can say on that. In the report, we recognise that the pandemic increased the number of adjournments and delays, which then increased victims' and witnesses' feelings of uncertainty. We are not in a position to say what further work to examine adjournments might be planned by partners.

**Willie Coffey:** Thank you very much for your responses to those questions.

**The Convener:** One of the issues that you have alluded to, and which jumped out at me from the report, was what you describe as a failure to consistently apply equality impact assessments. You have mentioned the recover, renew, transform advisory group, which I think you said

included organisations such as Rape Crisis Scotland and Victim Support Scotland. Why were they not involved in equality impact assessment work? Was such work simply not carried out at all?

**Stephen Boyle:** I think that I can answer that up to a point, although the question of why equality impact assessments did not feature prominently might be better directed to the courts service and the Scottish Government.

We reported that such assessments were not a feature, and our engagement with Victim Support Scotland and Rape Crisis Scotland really pointed that out. We also drew attention to the fact that the crimes that are considered most regularly are the more serious ones that disproportionately affect women and children and other minority groups, so we would have expected that equality impact assessments would have featured more prominently as part of the implementation and development of such a significant policy. We made recommendations and conclusions to the effect that such assessments need to feature much more prominently as “The Vision for Justice in Scotland” and the three-year delivery plan come into place.

**The Convener:** Earlier, we spoke about the prioritisation of cases. When the number of hub courts went from 39 to 10, some prioritisation had to be exercised. Was there no equalities impact assessment, or was no equalities sieve applied to the prioritisation work at that point?

**Stephen Boyle:** If you will excuse me for a moment, convener, I will find the relevant paragraph reference.

In our report, we noted that a criminal justice board was set up to enable the justice system to deliver courts service arrangements. The board drew on partners from across the justice system, but it still did not undertake the full consideration of equalities issues that we would have expected: neither the prioritisation nor the future innovations featured as prominently as they could have done. There is some mitigation for that in the earlier stages of the pandemic, when there was an inherent focus on pace in delivering and sustaining a service. However, we formed the judgment that that aspect did not feature as prominently as it needed to. I am surprised at that.

**The Convener:** Do you get a sense that that aspect is now factored in and that it will become much more of a feature of the work that is carried out?

**Stephen Boyle:** Ultimately, that is our sense, but we want to see evidence to that effect, through the delivery of the delivery plan and the future arrangements that the Government, the courts service and its partners will take forward.

**The Convener:** In the report, you mention other weaknesses over and above the failure to carry out equality impact assessments. You set those out in paragraph 83. Again, they stand out as areas of significant concern. You say that the Scottish Government and the criminal justice board

“did not agree clear plans, outcomes and success measures”

for the recover, renew, transform programme; that

“the RRT advisory group was not given the opportunity to be sufficiently engaged”

in that programme; and that the advisory group did not seem to get full access to decision making.

You also say that

“wider public reporting of the programme was limited”;

that there was inconsistency; that minutes of the criminal justice board meetings were not produced; and that the results of a lessons-learned exercise appear not to have been adopted.

We would expect such rudimentary elements of operation to be met but, according to your report and findings, that was simply not the case. Will you elaborate a bit more on why that was?

**Stephen Boyle:** You are right. We would set out those fundamentals of good governance in any project, especially one of transformation, given the importance of the justice system to people’s lives.

We reached the judgment that those are weaknesses in the delivery of the recover, renew, transform programme. Earlier, we said that, in its early stages, the project was moving at pace and some mitigations might be allowed for, but that, as we moved into the delivery of services over the latter stages of the pandemic, there were still gaps in governance to support decision making and to map it through to outcomes. The lack of effective recording of decisions and minute taking, the important fact that, despite its vital role, the advisory group was not sufficiently engaged, and the fact that lessons-learned exercises were not applied have led us to the judgment that those weaknesses need to be addressed so that the public and stakeholders can have confidence in the delivery of the justice system and—most importantly, given the context of some of the innovations that are planned—in that system’s being supported by good, clear and transparent decision making.

**The Convener:** Has work begun on addressing those weaknesses?

**Stephen Boyle:** Our understanding is that the courts service and its partners recognise the commentary as accurate. It is now for the courts service and its partners to satisfy themselves that

effective governance is in place and that weaknesses have been addressed. We expect to see that as the three-year delivery plan is published and as future decision making is taken forward. As we said at the start of today's meeting, we will follow up on that.

**The Convener:** Thank you. We might follow up on that as well, as we consider our next steps.

Craig Hoy has a final series of questions.

**Craig Hoy:** The report states that the three-year delivery plan is

“critical for ensuring work continues to modernise the criminal justice system, and that it both meets and reflects the needs of people in Scotland, such as women and children”—

which you alluded to earlier—given that the present system appears to impact them disproportionately negatively.

The plan was due to be published in August 2022. Why was it not published then, as you mentioned in your opening remarks? What is the revised timetable for its release and implementation?

**Stephen Boyle:** I am not sure that we have terribly much more detail as to the reason for the delay in the publication of the delivery plan that underpins the vision for justice. We know that there will be factors to do with capacity that will be relevant, alongside consideration of some of the wider justice reforms—for example, some of the bills that have been published. However, it is for the Scottish Courts and Tribunals Service to set out why there has been a delay.

On top of that, the delivery plan needs to be transparent, monitored and mapped to outcomes. Before today's session, we checked whether there was any further detail but, as far as we understand, it is still due to be published in the summer of this year.

10:00

**Craig Hoy:** Obviously, if the delivery plan is still a work in progress, it is probably fair to assume that the proposals in it have not yet been fully costed—that process might be on-going. Given that £40 million has been allocated in this financial year to the recovery, renewal and transformation of the criminal justice system, to what extent should we have reservations about whether that money will be allocated or spent in the most effective or appropriate way?

**Stephen Boyle:** We would always want to be assured that public money is being spent effectively. I, Audit Scotland and this committee have a key role to play in those assurance arrangements. As you rightly indicated, a delivery

plan should, as well as setting out ambitions, map what will be spent and what the outcomes and any associated financial implications will be. Although that has sometimes been the case, many times it has not.

There needs to be consistency of publication so that the expectations of users of the justice service about what the plan will mean for them at all stages of the justice system can be met. Until it is published, we will reserve judgment about how effective the delivery plan looks.

**Craig Hoy:** Paragraph 91 of the report states that advisory group arrangements for the transformational projects that support the vision for justice in Scotland “are still being discussed”. It goes on to emphasise the importance of ensuring that

“the views of a wider group of stakeholders continue to inform decision-making and ensure that equalities issues are fully considered.”

Can you provide an update on what stage those discussions are presently at?

**Stephen Boyle:** I am not sure that we have terribly much more to add, other than to make the point that a range of views exists among stakeholders about the appropriateness of reforms. As well as the important role that advisory groups will play, significant representative groups among the legal profession can advise on the reasons for some of the changes and how appropriate those changes will be. What matters is that all those voices are heard through detailed and clear consultation arrangements. It is particularly important that the voices of victims groups, which represent people's experiences of the justice system, play into the reforms and innovations that are being proposed.

**Craig Hoy:** I assume that all the views and experiences of a wide range of stakeholders will be important to mitigating the risks in the system. The report mentions that the Scottish Government, the Scottish Courts and Tribunals Service and partners recognise the key risks to reducing the backlog and to achieving longer-term and much-needed transformation. It states:

“Ongoing and effective involvement of a wide range of stakeholders will be important to both mitigate and manage these risks now and in the future.”

Are you aware of what steps are being taken to mitigate those risks while all those other interventions are taking place?

**Stephen Boyle:** We understand that engagement is happening across the different stakeholder groups between the courts service and the Scottish Government as part of the consideration of the reforms. However, that is happening at a high level. The courts service is

probably better placed to update the committee on the detail of how those discussions are progressing.

**Craig Hoy:** If, for any reason, the three-year plan did not come out during the summer, what risks do you think that that would pose for the transformation agenda in the Scottish Prison Service and the Scottish Courts and Tribunals Service?

**Stephen Boyle:** We make the point in the report that the delivery plan is a vital component when it comes to the detail of how some of the ambitions in the vision for justice will be implemented. We would expect the finances and the anticipated longevity of some of the innovations and associated outcomes to be set out more clearly.

The strategy and the delivery plan ought to go hand in hand. We mention the fact that it was intended that they would be published closer together than will be the case. The delivery plan's publication has been delayed; the longer the delay, the more challenging it will be to set out clearly and transparently the intended outcomes and benefits from the vision for justice, so we make the call that the plan should be published urgently.

**Craig Hoy:** Thank you.

**The Convener:** That concludes our questions. I thank the Auditor General, Lynsey Davies and Mark Taylor for their evidence this morning.

10:04

*Meeting continued in private until 10:31.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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