



OFFICIAL REPORT
AITHISG OIFIGEIL

Public Audit Committee

Thursday 6 June 2024

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

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

Thursday 6 June 2024

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
EXPIRING PRIVATE FINANCE INITIATIVE CONTRACTS	2

PUBLIC AUDIT COMMITTEE
18th Meeting 2024, Session 6

CONVENER

*Richard Leonard (Central Scotland) (Lab)

DEPUTY CONVENER

*Jamie Greene (West Scotland) (Con)

COMMITTEE MEMBERS

Colin Beattie (Midlothian North and Musselburgh) (SNP)

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

*Graham Simpson (Central Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Kerry Alexander (Scottish Futures Trust)

Adam Jobson (Scottish Prison Service)

Teresa Medhurst (Scottish Prison Service)

Peter Reekie (Scottish Futures Trust)

Neil Rennick (Scottish Government)

Lorraine Roughan (Scottish Prison Service)

CLERK TO THE COMMITTEE

Lynn Russell

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Public Audit Committee

Thursday 6 June 2024

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Richard Leonard): Good morning. I welcome everyone to the 18th meeting of the Public Audit Committee in 2024. We have received apologies this morning from Colin Beattie.

The first item on our agenda is for the committee to consider whether to take agenda items 3, 4 and 5 in private. Are we content to do that?

Members indicated agreement.

Expiring Private Finance Initiative Contracts

09:00

The Convener: Our major item for consideration this morning is a look into how expiring private finance initiative contracts are dealt with, which is something that the committee has delved into over the past few months. I am very pleased that we have a line-up of people who will, I hope, shed some light on that process, how it is working and how it might work in the future.

I am very pleased to welcome Neil Rennick, the director general for education and justice in the Scottish Government; Peter Reekie, the chief executive of the Scottish Futures Trust; Kerry Alexander, the director of infrastructure, finance and programmes at the Scottish Futures Trust; Teresa Medhurst, the chief executive of the Scottish Prison Service; Lorraine Roughan, the project executive for His Majesty's Prison Kilmarnock; and Adam Jobson, the director of organisational development at the Scottish Prison Service. You are very welcome.

We have quite a number of questions to put to you this morning, but before we get to those, I invite Neil Rennick and Teresa Medhurst to make brief opening remarks.

Neil Rennick (Scottish Government): I welcome the Auditor General's paper "Investing in Scotland's infrastructure". The paper is right to highlight the expiring privately financed contracts in Scotland and the importance of individual public bodies assessing and preparing for the impact of their expiry. Given the number of privately financed contracts that will come to an end in the next few years, this is a very timely discussion.

HMP Kilmarnock was the first privately financed and run prison to move into the public sector in March this year, when the contract that was signed back in 1997 came to an end. I commend Teresa Medhurst and her colleagues for all the planning, preparation and engagement that took place ahead of the transfer, and for the on-going process to bring HMP Kilmarnock and its staff fully into SPS operations, which, I am sure, the committee will explore.

A number of PFI contracts with an education and justice interest are due to end by 2030. Each PFI contract is different and it is the responsibility of the individual public body to manage the contract and to plan and prepare for the end of the contract. In general, the Scottish Government is not involved directly in that process.

However, there are consistent lessons to be learned and applied by bodies that are managing

the process, and I am grateful for the guidance and support that the Scottish Futures Trust provides to help public bodies to prepare for the expiry of PFI contracts. I am reassured that the bodies that have contracts that are closest to ending are engaging with that process in order to consider the financial and practical implications.

I am happy to answer the committee's questions on those issues.

Teresa Medhurst (Scottish Prison Service): Good morning, convener and members of the committee. My colleagues and I are very grateful for the opportunity to meet you today to discuss, from an operational perspective, HMP Kilmarnock moving to SPS and the public sector prison estate from a design, construction, management and finance PFI contract.

I also welcome the Auditor General's comments and I appreciate that areas have been highlighted—namely the steps that were taken to prepare for the transition of HMP Kilmarnock and the lessons that have been learned that can be shared with other public bodies that are currently preparing for the end of PFI contracts that are within the director general for education and justice portfolio.

On Sunday 17 March, I marked the successful transfer of HMP Kilmarnock to SPS management after careful transition planning through a project structure. I know that the prison is safe, secure and well run, with strong links to its community. I am also aware that there are likely to be many areas of good practice at Kilmarnock that we now look forward to learning from, as well as looking forward to sharing with Kilmarnock the good practice from other public sector prisons.

We are continuing to work on a phased approach to bringing Kilmarnock into SPS fully as a public sector prison, including welcoming staff to the SPS and ensuring that the operating model continues to develop. We are also taking steps to enhance working conditions for staff and to develop services for the people in our care.

The success of HMP Kilmarnock's transfer is the result of the positive and continuous engagement that we had with Kilmarnock Prison Service Limited and Serco, particularly Serco staff on-site in Kilmarnock, from the very commencement of the project. The work continues post-transition.

We understand the importance of lessons learned and will endeavour to share our experiences to date on the transition of the prison. We also remain keen to support other organisations that will be facing a similar transition process in the future as more PFI contracts expire, although I appreciate that the Kilmarnock contract is the only PFI in Scotland to include design, build,

operation and finance. I hope that today I can provide the committee with a greater understanding of the successful transition and I welcome any questions that the committee has.

The Convener: Thank you very much, indeed. Can I ask an opening question of the director general? Did you say that the Scottish Government is not directly responsible for the process? You are the accountable officer, are you not? Your responsibility is to make sure that there is value for money in the outcomes from the process.

Neil Rennick: Absolutely. We are aware of that. We are not, however, involved in direct management of private finance contracts and we are not directly involved in the process for making decisions on what to do as the contracts come to an end. We have an interest in and overview of how education and justice bodies are managing the process. I am very grateful for the work that the Scottish Futures Trust does in ensuring that there is consistent guidance and support for bodies in managing their way through that process.

The Convener: I am sorry to repeat myself, but I presume that you are the accountable officer who is responsible for the economy, efficiency and effectiveness of processes including these and their outcomes.

Neil Rennick: That is right, but that is in the context of responsibility being delegated to local government, which operates schools; to the Scottish Police Authority and the Scottish police service, which runs the police training centre; and to individual colleges. They make operational decisions and look at their estate as a whole. They are responsible for the estate and will consider PFI contracts in that context.

I have an overarching responsibility particularly to ensure that bodies are preparing effectively for the process of contracts coming to an end, managing through that, then engaging with my finance and infrastructure colleagues within the Scottish Government to look at lessons more broadly around PFI and other finance models across the public sector.

The Convener: Thank you for that. We will get into a bit more of the detail of that as the morning develops. I invite Willie Coffey to open the questioning.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning, everybody.

First, I will put on the record what a fantastic job Serco did at Kilmarnock Prison during the period of the contract, which has been the past 25 years, and particularly in recent years under the direction of Craig Thomson. I was happy to be part of that

process over many years and am still part of the transition process.

I would like to get a flavour, perhaps from Neil Rennick to begin with, about the transition process itself. When did the transition process begin? When will we see it completed? Of course, there are a number of issues to discuss with you about the process itself. Could you give the committee members a flavour of the transition process and the key issues and themes that had to be covered?

Neil Rennick: Absolutely. Theresa Medhurst and her colleagues will be able to talk in much more detail about how the process was managed.

It was always known that the PFI contract for HMP Kilmarnock would come to an end and it was known when it would end—in March this year. It was also always known that ministers had a view that prisons should be run and managed within the public sector, but that, regardless of that, the contract would end in March this year.

My understanding is that the first discussions between the Scottish Futures Trust and SPS started as long ago as 2014-15 and that there were more detailed discussions more recently, going into 2019. A project team was set up in 2022 and there was a condition that independent consultants would undertake analysis of dilapidation. That process has been running for a number of years in preparation. Advice was provided to ministers, who first signalled in 2019 the intention that the prison would come into the public sector. A final decision was announced, I think, in 2022.

Willie Coffey: Could you and your colleagues describe particular issues that we are currently dealing with in the transition process? There is perhaps an expectation that when a transition is announced it can happen overnight, but we know that that is not possible. I would be obliged to you—I am sure that all committee members would be interested—if we could hear what the main issues are in the transition process. Are there issues about salaries, conditions or staffing, for example? Could you give us a flavour of what you have had to face?

Teresa Medhurst: I will hand over to Lorraine Roughan, as the project executive. She has been operating in post since mid-2022 and set up the project structure with a number of key workstreams, which covered everything from buildings to staffing to costs and so on.

Lorraine Roughan (Scottish Prison Service): The easiest way to explain this is that we split the project into two phases. The first phase was everything that we needed to do to ensure the successful handover and completion on the weekend of 16 and 17 March. That was

fundamentally about ensuring that we could welcome the staff who were in HMP Kilmarnock into the SPS and make sure that we had in place the mechanisms to pay them, and about ensuring that we kept the operational stability that existed in Kilmarnock Prison and which, as Willie Coffey referenced, had been enjoyed for the previous 25 years. Phase 2 is mainly about making sure now that we change the operating model and adopt the new operating model that we want to put in place.

As our chief executive mentioned, phase 1 touched on every aspect and department of our organisation. The main themes, as you can imagine, were around dilapidation and making sure that the building—the asset—was returned to us as we envisaged it should be returned and as the contract set out.

There were operational aspects to ensure that, from a Scottish Prison Service perspective, the staff knew what was needed and the operating structures were still in place to ensure that operational stability continued.

Another huge workstream was organisational development and making sure that we welcomed the staff, that all the processes and procedures were in place to pay them, that learning and development were understood, and that we knew what the structures would be and what roles and responsibilities staff would be undertaking from 17 March.

As Teresa Medhurst said, we started that work in earnest in June 2022. We worked through our project structures on all the things that needed to be done to get us to that initial weekend, which was very well organised. I must thank all my SPS colleagues, my Serco colleagues and KPSL for their dedication and commitment. Everybody did what needed to be done to ensure that our agreed principles were fulfilled.

Willie Coffey: On staff terms and conditions and salaries throughout the management structure, have we managed to achieve the transition almost immediately? If we are still in the process of doing that, can you explain to the committee why it could not be achieved immediately after the transition process in order to ensure that the new salary structures and so on were implemented as quickly as possible?

09:15

Teresa Medhurst: I will comment on that first and I will then hand over to Adam Jobson, who has more of the detail. There are legislative drivers in how the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply and how we obtain information from a private contractor related to our staff group. We enjoyed a very good relationship with Serco but, nevertheless, not all

the information was available until, probably, February of this year.

The main priority for us, given that staff need to be paid, was to ensure that our payroll system was set up so that all staff would continue to be paid at the end of March and on an on-going basis. There were other things that we also thought were really important. Staff were put on to the civil service pension scheme. There were things around staff breaks. Staff breaks on the back shift and at weekends were not in place, which was not something that we would support as an organisation. We think that people should have regular breaks. We therefore put a number of things in place immediately. For some other things, we needed information and we needed to speak to staff.

The two operating models of the private sector and the public sector are distinct and different. The private sector works on the basis of a contract arrangement, whereas in the public sector we do not have contracts to work to. We work to key performance indicators. We need to better understand what is required, using not just the information that we had pre-transition but also information from the staff about the roles and responsibilities that they have been undertaking, and try to map them to the roles and responsibilities that we understand within the SPS. That will take a little time. There have been some really good discussions with our trade union partners, but it will take a number of months for us to see the on-going work through to completion.

Adam Jobson, would you like to say a bit more about that?

Adam Jobson (Scottish Prison Service): Yes. It is important to note that this was always part of the plan, as Ms Roughan set out. The phase 1 plan, on operational stability, was about making the changes that we needed to make in the SPS, but it was not about changing everything. It was not about harmonisation with our target operating model, as we call it, which we always said was going to happen further down the line. We committed to that happening within 12 months of transfer, and we have always communicated that that was our intention. More recently, with the support of the unions, we have communicated that that will take place on 1 December. A number of reasons have been set out to explain that and why we always planned it that way.

The committee should not forget that the TUPE legislation is there to protect staff who are transferred, and we have to honour their terms and conditions as they are. That is not to say that we cannot offer them our terms and conditions, and we have always been clear that that is what we want to do. There is no guarantee that they will accept them, although our feedback from

engagement with the staff group is that they are looking forward to coming over and benefiting from our terms and conditions.

The points that have been made about the work that needs to take place are also important. There is a process and a pathway. There are technical things and we have to make sure that we get them right. We want to make sure that there is an equality impact assessment and that we look at the gender pay gap and the difference between the lowest and highest salaries. We are looking at all those things now that we have the pay data that we did not have in previous years during the planning process.

The big difference between our operating model and the Serco operating model is that we have two tiers of prison officers. We are working with the unions on how we offer Serco staff the opportunity to take up either post, depending on their preference, and what training and support we will put in place. Also, because our terms and conditions involve people working fewer hours, with breaks and more leave, we need to have additional staff to allow for that. We are therefore also engaged in a recruitment exercise to get our numbers up to allow us to safely move over to our operating model. We have recruited 18 prison officers since the handover, and they have come in on our terms and conditions, as is required.

We have to accept that this is a transitional period. We are glad that people are keen to come over to our terms and conditions. We want to get through the process as soon as possible, but we have to do it safely and stick to that planned approach.

Willie Coffey: It sounds as if one of the lessons to be learned is to begin that discussion and negotiation about terms and conditions and TUPE transfers a little earlier in the process, so that the staff could look forward to the earliest possible change at the transition point rather than waiting, potentially, up to another year. Is that a fair comment or would it be impossible to do it earlier?

Adam Jobson: Those discussions take a lot of work, but there are also other things that we need to do. We need to recruit people, which has been difficult in previous years, although we are currently having more success across Scotland. I do not think that we would ever have set out a plan where we said, "We will take over this prison. We'll have digital and we have other things that we know we need to change on day 1, and we'll change the whole operating model as well." It could turn out we face increasing population pressures and so on at the same time.

As much as there is a lot of work that we need to get through, we always wanted to have a

smooth transition rather than a big-bang change in moving Kilmarnock into the SPS operating model.

Teresa Medhurst: Everybody in prisons works on routines. The staff work on routines. The prisoners work on routines. Whenever we are making changes, we try to make them as slowly as possible and make sure that people are communicated with effectively and that they know and understand what is expected of them. Because this is the first transition of this nature—although we linked with colleagues in His Majesty's Prison and Probation Service in England and Wales to understand and learn from their models—the priority was to make sure that the prison could still function, that staff were not confused about what the expectations of them were and that they were still familiar with their routines.

As we work through the rest of the year up to 1 December, we have the opportunity to make small incremental changes over a longer period to ensure that they do not disrupt or undermine the operation of the prison, particularly given that we are experiencing significant population pressures across the estate at the moment.

Willie Coffey: I have a question for Neil Rennick or perhaps Peter Reekie about the overall costs. When will we know the final cost of the transition process? When will we know the future costs of operating Kilmarnock prison in the public sector compared with the private sector? The public will always want to be assured that they get value for money from anything that we do.

Neil Rennick: Teresa Medhurst or Adam Jobson will correct me if I am wrong, but my understanding is that, once the transition phase has been progressed through and we understand what the arrangements will be—I hope that that will be by the end of this year, going into 2025-26—we will know the on-going position on the operating costs of the prison in the public sector. Is that fair, Teresa?

Teresa Medhurst: Yes. There are still a number of costs that need to be finalised and worked through. We have a budget for the prison for this year. I am happy to write to the committee later this year with the confirmed costs for this year and the predictions for future costs, if that would be helpful.

Willie Coffey: Is there an exit cost associated with this PFI?

Teresa Medhurst: What do you mean by—

Willie Coffey: Some PFI contracts automatically incur an exit cost when they come to an end. Is there an exit cost in this case?

Teresa Medhurst: No.

Neil Rennick: There is with some others, but not with this one.

Willie Coffey: I am glad to hear that. Thank you.

The Convener: Could I pick up on Mr Jobson's answers? You have existing staff who were employed by Serco on certain terms and conditions of employment, and you have recruited new people to work at the prison who are on different terms and conditions of employment, specifically with fewer hours, more breaks and more annual leave. Presumably, that could be a cause of some conflict if existing long-serving staff see that people that they are working alongside are getting much better leave and break arrangements. How are you managing that operationally? If I am on a shorter working week than somebody else, how do you manage that? Also, how are you managing the potential for conflict between one group of workers and another?

Adam Jobson: I can comment on the cultural part and then Lorraine Roughan can comment on how people are deployed.

We recognise that there will be this period, given the nature of the prison coming into the organisation, and we have to be very sensitive to that. I suppose that one way of explaining it is that, without the new people coming in, we could not move over to our operating model, offer our posts to the staff who are working there and resolve the situation that you have just described. We are not bringing people on detached duty from other prisons with high salaries and supplements and so on to boost the numbers. We are bringing people into the organisation at the start of their prison careers—on fewer hours, but at the lower end of the salary scale—to learn from those people at Kilmarnock who have been working so well over the years. We will then transition the whole establishment and give everyone the opportunity to come into SPS posts.

We cannot offer people jobs on Serco terms and conditions. We do not want to do that. We want to get the numbers up and do everything else that we have been talking about this morning so that we can get the Serco staff over to our terms and conditions.

The Convener: I am struggling a little bit to understand why you could not have got the Serco staff on to those superior terms and conditions at a much earlier point. Why are they having to wait until December?

Teresa Medhurst: The issue is that our jobs do not directly match to the job roles that exist at Kilmarnock. We therefore have to identify and work through with each individual member of staff what their experience and skill set is and what

additional training and support they might require in order to be able to land on the SPS roles and responsibilities. That is an important element, because we do not want to make staff feel disaffected because they have not been engaged or involved in the process as regards which role they end up in.

We have two distinctive operating roles for staff—C-band roles, which are operations officers, and D-band roles, which are mainly regimes and residential roles. When SPS moved to that model, we had the same experience. Some people preferred to be at the operations level and some people wanted to have more prisoner contact and have those residential and regimes roles. We have to be sensitive to the wishes of the staff group.

The other point is that, as Adam Jobson said earlier, we do not have the required capacity at present. We will be offering more leave and a shorter working week, and we need to have the additional staff in order to allow us to move to the different operating model. If we did not have that capacity, we would not be able to offer that to existing staff.

Neil Rennick: SPS colleagues will confirm that we are following the TUPE legislation, which applies not just to PFI contracts but more broadly to how staff transfer from one employer to another. We obviously have to comply with that.

The Convener: Yes. I understand that you are not in breach of the TUPE regulations. You could continue to pay the staff at the Serco rates and employ them on the Serco terms and conditions. Our point of interest here is that, given that these are the people who make the prison work or not work so how they are treated is quite important, there are questions about how that is working and whether it could be done in a different way. Could it be done in a more accelerated way, given that we understand that there are some issues around capacity?

Neil Rennick: I entirely agree with what you say about the importance of the staff. That is the culture that SPS follows. SPS colleagues will confirm that there was an extensive process of engagement with staff, including one-to-one engagement, in the run-up to the process so that they were aware of how it would be managed.

The Convener: Okay. I am going to bring in other members of the committee. I will bring in Jamie Greene, and Graham Simpson may also have a question on the subject.

Jamie Greene (West Scotland) (Con): My questions are slightly different, convener, so if Graham Simpson wants to go first, that is fine.

The Convener: Okay. I call Mr Simpson.

Graham Simpson (Central Scotland) (Con): Will you remind me—I did not quite catch it—what change is taking place on 1 December?

Teresa Medhurst: That is what we are calling harmonisation. The transitioning of staff into SPS roles with SPS terms and conditions, should they choose to do so, will be completed by 1 December. That was agreed with our trade union partners towards the end of last week and communicated to staff in Kilmarnock this week.

Graham Simpson: How many staff have agreed to do that?

Teresa Medhurst: We do not know how many. We think that it will be the majority. One-to-one conversations took place with staff between, I think, the end of last year and the beginning of this year, but, clearly, they need more information about the roles and responsibilities in order to make informed choices so that they can transition and transfer at the level that they feel is commensurate either with their skill set or with their ambition.

09:30

Graham Simpson: Are you still working out what the new roles might be so that you can offer them to existing staff?

Teresa Medhurst: We know what our roles are in the SPS. The process is about identifying the roles and responsibilities of the existing Serco staff, because Serco does not operate a similar model, and then it is about mapping their skill set, experience and ambition on to our roles and responsibilities.

Graham Simpson: Compared with Serco's model, is your model radically different?

Teresa Medhurst: Yes. The private sector and public sector operate distinctly different models.

Graham Simpson: At a very simplistic level, the role is to look after prisoners. In what way are the models different?

Teresa Medhurst: As we said earlier, the Serco model is based on prison custody officers, while ours is a two-level prison officer model, which comprises operations officers, and residential and regime officers. Those areas of work and roles carry different responsibilities. We have specific training requirements for residential staff on case management, trauma-informed practice and so on. We place different expectations on our staff and they are expected to meet different training requirements. That is not wholly the case, because there are similarities in some of the training. Serco staff previously would have undertaken "Talk to Me" training, and control and restraint training, in the same way that our staff do.

However, we do not have the information to understand more fully what other training elements they would undertake, while we have clear requirements for our staff in relation to the training that they are expected to undertake not just as they transition into roles but annually or three yearly.

Graham Simpson: What is a residential and regime officer? What do they do?

Teresa Medhurst: In our world, a residential officer is someone who works continually in the hall areas and undertakes on-going case management with individual prisoners. The role is about relationships and about supporting prisoners in their rehabilitative journey, including making sure that they can access services and support. Regime staff are involved in activity areas, and they deliver qualifications and training across a range of areas.

Graham Simpson: Would it be fair to say that the Serco staff were more generalist and that your staff are more specialist?

Teresa Medhurst: I do not think that it would be fair to assign it in that way. As I said, the private sector just operates a different model.

Graham Simpson: Okay. You pay more than Serco.

Teresa Medhurst: Yes.

Graham Simpson: You are having to take on more staff.

Teresa Medhurst: Yes.

Graham Simpson: Ultimately, costs will increase. Have you worked out what that increase will be?

Teresa Medhurst: The contract commenced in 1997, and the prison opened in 1999. The contract has spanned 25 years. Yes, the budget for this year compared with the cost of the contract for last year is greater. However, we would have had no option to extend the current contract and, given that the contract was signed off in quite different financial times and circumstances, I do not think that it would be fair to ascribe a similar comparator to what the contract might cost this year. We would have had to retender the contract and, therefore, I think that the costs would have been considerably higher. However, it is difficult to say that because, clearly, we are not doing that.

Graham Simpson: No, I am not talking about retendering contracts. I am just trying to get clear in my mind what the difference in staffing cost is between what you have been paying and what you will be paying.

Teresa Medhurst: I could not give you the costs of the staffing part for the contract, because

what we paid was for the full contract. I cannot break down the costs of the contract into staffing, running costs and so on. The figure is the totality of the contract price that we paid annually.

Graham Simpson: Okay.

The Convener: It would be useful for the committee if you could give us the comparison of the overall cost under the old model and the overall running cost under the new model, so that we can get an understanding about whether a transfer from a PFI-style contract into an in-house arrangement costs more or is about even. It may vary from situation to situation. Mr Rennick also has responsibility for schools, for example, so it may be that these issues are not so acute in other parts of the public sector where PFI transitions are likely to take place.

I also have one other issue to raise with you. For the record, Teresa Medhurst, are you saying that, on 1 December, there will be a big bang and that is when everybody in HMP Kilmarnock will move over to the SPS' terms and conditions, or is there a period leading up to 1 December in which different cohorts will transfer to the new terms and conditions under the new contract?

Teresa Medhurst: I ask that Adam Jobson responds to that.

Adam Jobson: We are still working through the detail of that. First, as Ms Medhurst said earlier, it is an offer to move over to our terms and conditions. We cannot make any assumptions that everyone will do so, but we are hoping that they will move over to our terms and conditions and take up post. If they do, they will have those terms and conditions on 1 December. There may be some transition in terms of how people are deployed, training and so on, so it might not be a big bang on 1 December, with everything looking different in terms of the prisoners' days. It is about staff terms and conditions. At the moment, the plan is to move people over collectively on 1 December.

The Convener: On 1 December, not by 1 December.

Adam Jobson: Yes.

The Convener: Thank you very much. I bring in the deputy convener.

Jamie Greene: My first question is to Teresa Medhurst. I appreciate that you may not want to answer this, but I will give it a try anyway. Did you want to take ownership of HMP Kilmarnock?

Teresa Medhurst: That is an interesting question, Mr Greene.

Jamie Greene: There is no right or wrong answer.

Teresa Medhurst: Kilmarnock ran well, as Mr Coffey indicated earlier. I welcome Kilmarnock into the public sector and bringing it into the operation of SPS.

Jamie Greene: Mr Rennick, you are next, I am afraid. Back in 2022, when I sat on the Justice Committee, I asked a similar question about the difference between privately run prisons and Government-run ones, and the response from His Majesty's chief inspector of prisons response was that HMP Kilmarnock

"is the cheapest prison in Scotland"—[*Official Report, Justice Committee*, 9 November 2022; c 8.]

to run. My initial question is: was the decision to move the prison into public ownership based on value for money or was it solely a policy decision?

Neil Rennick: There are different elements to that. The first element is that there was no option to continue with the contract as it was. It had a time limit, and it came to an end in March. Our assessment was that we could not extend the contract beyond that date. We did not have the option of carrying on with that contract at that price; that option was not available to us.

We had discussions with the SPS about the prison coming into the public sector. One of the factors that we were discussing was the benefit of having the prison in the public sector and managing it with the rest of the SPS estate. There were practical benefits of the prison being in the public sector, but we were also aware of ministers' commitments, stated publicly over many years, that they believed that prisons should be owned and operated by the public sector. That was reflected in the decision that was taken.

What we cannot do is and what we did not do was look to undertake a full retendering process, which would have placed significant demand on the SPS, resulted in significant cost just in running the process and placed significant burden on those who were tendering for it, knowing that there was no intention to continue with the contract or, in fact, to tender a completely new contract for HMP Kilmarnock to be run as a private prison, given that key elements of the contract included the original construction and that had obviously come to an end.

There was a range of factors to consider, but the context was that ministers believed that the right choice was for that prison to come into the public sector and be run as a part of the wider public sector estate. Similar decisions have been taken elsewhere. A number of private prisons in England and Wales have come into the public sector over time for different reasons. That was the context in which we were operating.

Jamie Greene: Just to be clear, it was not a performance-related issue. There were no operational issues. It was solely, as you said, a policy decision. I will not use the word "political", as that would not be fair on you, but it was certainly a ministerial decision that the Government wanted to go in that direction of travel, irrespective of the cost.

Neil Rennick: I was not aware of any performance issues with HMP Kilmarnock. The contract was coming to an end. My understanding is that the original contract was designed to come to an end and that the prison would then be owned by the SPS.

Jamie Greene: As the Public Audit Committee, we obviously have an interest in money, and I am still struggling to get my head around any comparison. I am yet to see, on paper anyway, what the prison cost to run in an average year under Serco and what it will cost to run under SPS. We do not have that comparison, which I think is unfortunate.

What we know about the figures is that the average cost per prisoner is around £52,000 a year under Serco's direction and management. Can you tell me what that number will look like under the SPS? Is it higher or lower?

Neil Rennick: As Teresa Medhurst said, we are still waiting for the final figures around that. We publish the average cost per prisoner, but it is important to say that the cost per prisoner varies across different establishments depending on their size and set-up. There is no single cost per prisoner for individual prisons. Obviously, we have to take account of the fact that there is headquarters support from the SPS to individual prisons, which was not the case under the private contract. You are right that one of the issues that we want to look at is how the cost of HMP Kilmarnock, once it is fully in the public sector, compares with the equivalent public sector prisons. My hope and understanding is that it will be broadly in the same range as similar public sector prisons. If not, that is something that we would discuss jointly with Teresa Medhurst and her colleagues.

Jamie Greene: Did your directorate do any modelling of what the potential financial impact on the public purse might be? It is easy to say that we should wait and see what it costs, but that is the mop-up after. Should that work not have been done before the transfer?

Neil Rennick: Work and engagement was undertaken during 2024-25 around what the costs would be. We factored that into our overall budget decisions and the allocation of the budget to the Scottish Prison Service. We were aware in broad terms that there were very specific costs

associated with the transfer over time, such as costs for the surveying of the buildings ahead of transfer and legal costs, and we reflected that, but we accepted that there had to be a bit of flexibility within that to take account of the transition. We know that, come 2025-26, we will be in a clearer position as to what the on-going costs of the prison are. To be fair, there can be variability across PFI contracts because some of those are index-linked, for example, which can impact on the costs over time. We constantly have to adjust for that as well.

09:45

Teresa Medhurst: I can give you some indicative figures, but, as I alluded to earlier, I will also write to you to give you more context.

The operating budget that we have allocated for Kilmarnock for this year is £20.13 million. Clearly, there is still some variability because we still have a number of things to work through, not least of which is around where the final staff costs will lie. We did a projected forecast of what the Serco cost was likely to be, and that came in at £19.1 million. However, I add the caveat that that would be for 500 prisoner places. We have been purchasing additional places—there is a mechanism for additional prisoner places to be purchased through the contract—and that brings an additional cost. Unlike SPS prisons, there are some additional costs but we do not have a pricing mechanism for that. Prior to the contract ending, we had taken out an additional 96 places, which brought the numbers to 596 and the cost to £20.53 million. We have gone over that, unfortunately, due to the pressure on numbers, but were we to take the maximum number of places, that would increase the cost again to just more than £23 million.

Jamie Greene: In your previous appearance before the committee, which I will not revisit, we talked quite extensively about the pressures on the prison population. Where is HMP Kilmarnock in that regard? Is it one of the ones in the red? Is it nearing capacity? Do we have any issues there?

Teresa Medhurst: As I indicated at my previous appearance, Kilmarnock is sitting in the red, but that is because of the staffing profile. As Adam Jobson said earlier, we have had issues with recruitment. We have now managed to recruit additional staff, but there are still some pressures, not just because of the numbers but because of the staffing pressures at Kilmarnock.

Jamie Greene: You have more prisoners and fewer staff. That does not sound like a good mix.

Teresa Medhurst: We have gone over the 596 position and we are still recruiting into Kilmarnock. It is operating safely and stably but it is sitting at the red risk at the moment.

Jamie Greene: Finally, I guess that what matters is outcomes. The prison is not a hotel; the issue is not just about turnover and the number of people who come through it and how much it costs to run it. What analysis has been done of what benefits may be reaped from the prison being under the control of the SPS rather than Serco? For example, what is the staff to prisoner ratio before and after the changeover? What do the reoffending rates look like? What are the rehabilitation rates? What do the drug and contraband figures look like at HMP Kilmarnock versus the average for the rest of the estate? It would be useful to see those sorts of metrics and that analysis. Have you done any of that work?

Teresa Medhurst: We have biannual business reviews in all our prisons. Kilmarnock has recently had its business review—in fact, it was held this week. However, the contract definitions that contained performance measures are different from those of the SPS and are only just moving into the SPS key performance indicator and business review arrangements that we know and understand. We will be able to compare and contrast some statistics, but we would need to write to you separately with the sorts of details that you are looking for.

Jamie Greene: That would be helpful. I know that we said that the focus is on money but it is important to bear in mind that we are dealing with people.

My final question is about an issue that came up towards the end of last year. When Serco left the prison, did it take all the body-worn cameras away, or do the staff there at the moment still have them?

Teresa Medhurst: We have retained some systems and services. We have not retained body-worn cameras. We are running a pilot across three establishments in SPS that involves a different model of the use of body-worn cameras. The body-worn cameras in Kilmarnock were deployed at a rate of one per hall, and that is not how we are deploying the pilot in SPS sites. The cameras were quite old and we are looking at kit that is much more modern. What we did, though, was invest in the staff alarm system and other aspects, which Lorraine Roughan can tell you about.

Lorraine Roughan: We also invested in upgrading the existing blind spots in the radio system as there was no working staff alarm system for non-operational staff or those who were not carrying a radio. We decided that we would not keep the body-worn cameras because, as Teresa Medhurst said, it is a different model from the way of operation that we are looking to move to, and, instead, we chose to invest in the alarm system for all staff.

Jamie Greene: Just to get this right, there are people who had body-worn cameras but who no longer have them. What has been the feedback from the officers about that? Are they happy about that removal or are they upset about it? Do they feel less safe?

Lorraine Roughan: We have not had any direct feedback from staff about feeling less safe because of the removal of body-worn cameras. We communicated the decision to them at the time that decision was made, quite a number of months before the transfer, and I have not heard anything from staff to say that they were overly concerned about the removal of the body-worn cameras when we said that we were upgrading the other systems and fixing some of the known blind spots with the radio system.

Jamie Greene: You cannot go through a supermarket without being greeted by somebody with a body-worn camera. It seems odd that our prison staff do not have them.

Teresa Medhurst: As I say, we are piloting body-worn cameras across three sites. Once the evaluation has been completed, we will look at what the implications are across all SPS prisons.

Jamie Greene: Thanks for the update. I will come back in later with some PFI questions.

The Convener: We will now move into the second half of this morning's session. Mr Reekie and Ms Alexander, we may come to you with some questions that we would like you to answer. My first question, though, will be targeted at Mr Rennick. As I understand it, eight PFI projects within the education and justice division are due to end before 2030. This came up when Willie Coffey was asking you questions in relation to HMP Kilmarnock. Do any of those contracts have exit fees attached to them?

Neil Rennick: I understand that three of them have exit fees attached.

The Convener: Okay. Mr Reekie, in your broader survey of PFI contracts, are you aware of the quantum of PFI contracts that are coming up over the next few years that have these exit fees?

Peter Reekie (Scottish Futures Trust): We know all the contracts that are coming to an end, but some of the exit fees are fixed, some are negotiable and some are based on market prices at the time—they are contractually different in different cases. It is not possible to give you an exact figure for what the exit fees or the final bullet payment would be until all those contracts have come to an end and been settled.

The Convener: Do you know how many of those contracts that are coming to an end between now and 2030 involve some kind of costs? Kerry Alexander might be able to help with that.

Kerry Alexander (Scottish Futures Trust): Of the expiring PFI contracts on the Audit Scotland list, nine have some form of payment to be negotiated or a capped payment to be made.

The Convener: Okay. The BBC carried a story with the headline "PFI 'buy back' deals to cost taxpayer millions". I do not know about the figure of millions of pounds, but it referred to 11 PFI contracts. However, you think that the figure is nine. Can you comment on that?

Kerry Alexander: Looking down the Audit Scotland list, there are nine. SFT's focus is on the accommodation projects, and we do not look at Scottish water or transport. It may be that there is a cut-off line somewhere there that means that that number is 11 rather than nine; I just had a quick look down the list that I know that the committee has been provided with in advance of today.

The Convener: That is helpful. Could you clarify what purpose is served by an exit fee? We have learned this morning that there was not one in the case of Kilmarnock prison. Why on some contracts are there exit fees? Why would you negotiate an exit fee?

Kerry Alexander: It very much relates to those very early projects. At the time, for some of those early projects, to make sure the risk transfer worked, the technical roles to enable the risk transfer to the private sector meant that the public body would grant a lease. Often, that was done through a lease structure—sometimes a very long-term lease, such as a 100-year lease—and then the private sector would create a sublease to allow the education or health services to take place. What was required as part of the contract was that the public sector could either walk away from the lease or could buy out the lease structure. Those mechanisms meant that there had to be a buyout payment, which was negotiated as either a residual value payment or a payment valued with reference to the state of the market—there are a number of different ways of calculating it. That is how the exit fees came about, but they are not part of the later ones because the requirements for risk transfer meant that that fell away, as the land stays in the ownership of the public sector throughout the duration of the contract.

The Convener: Again, I am struggling to understand under what circumstances the public sector would walk away from a lease. If you have a hospital that is 25 years old, you will not abandon it, presumably. I suppose that there may be circumstances where you might do that, but it is highly unlikely, is it not? In comparative terms, it will still be a relatively new piece of infrastructure that is running as part of the health service. I am struggling to understand why, under those circumstances, walking away would be considered

an option and, therefore, why there is this exit fee premium to be paid.

Kerry Alexander: It is sensible to ask what the situation was at the time to enable those contracts to be transferred to the private sector, and the mechanism that I have described is the one that was in place to do that. You are right that, in the vast majority of cases, it is likely that a school or health service, for example, will continue. There could be situations in which, say, small accommodation buildings are no longer needed or were part of a disposal strategy, but you are right that, on the whole, you would anticipate that the leases would be on-going. As I say, that was the practice in the very early stages of PFI, but it has since stopped.

Peter Reekie: In the context of the competitive pressure at the time, 25 years ago, everybody who was bidding for those projects knew that the structure involved a payment through the life of the contract and a payment at the end. The competitive tension at the time would have caused bidders to consider whether they wanted to lower their price for the 25 years, based on getting something in the end. We do not know what views bidders took and how much higher the price would have been over the 25 years had there not been the additional payment at the end. That was the competitive process back then.

As Kerry Alexander said, that structure was needed in order to deliver the additionality, under the accounting rules at the time, to transfer that risk. Exactly what financial arrangements bidders made based on the tendering opportunity that they were given were a matter for them at the time. However, the total cost to the public authority when that procurement was made would have been based on an assessment of those different elements of the cost.

The Convener: Okay. One of the other variables on these contracts is that some have so-called secondary periods, which is, as I understand it, an extension of the PFI contract. Can you tell us what your understanding is of how many of those are in the system or we are likely to face between, for example, now and 2030?

Kerry Alexander: I do not have the exact number that have secondary periods. We could follow up on that. I know that there is a small number of them on the list. If you need further information on those, we can provide it.

10:00

The Convener: That is helpful. I am conscious of the fact that, the last time he was here, Mr Reekie told us that there are only three people in the team looking at PFIs, so I recognise that there might be some capacity issues. However, if you

could supply us with that information, that would be helpful.

In a similar vein, is retendering an option in any of these cases? That is probably more a question for Mr Rennick. Do you look at a range of options in the lead-up to the expiry of one of those PFI contracts? We rehearsed the issue a little bit in relation to the Serco contract at Kilmarnock, but in more general terms, wearing your value-for-money hat, is that a consideration?

Neil Rennick: On any of those contracts, the contracting authority will be aware that the contract is due to come to an end and will be considering a range of options for how to take that forward and how to act beyond the end of the current contract. For the ones that are the most imminent, we know that that process has been gone through. Subject to anything SFT colleagues say, it could not be the same contract, because the contract for the construction and the management maintenance has come to an end. However, it would be perfectly open for a public body to consider, for example, having a private contract for the maintenance of an asset. Part of the consideration would be where that fitted within the wider management of their estate as a whole. For example, for schools or colleges, there would be a consideration of how that fits within the overall management of schools or colleges in a local authority area. One of the considerations would be whether a private contract is a good fit and is helpful in how the public body manages its overall estate.

The Convener: I want to revisit a question that was asked earlier. Is it a policy position of the Scottish Government that, on expiry of the PFI contracts, they will all transfer into the public sector?

Neil Rennick: I am not aware of that being a policy decision. It is important to say that, apart from prisons, Scottish ministers are not the contracting authority for the vast majority of the PFI contracts that sit within the education and justice interests. Individual bodies are, and they will make the decisions on the management of their estate, including on any PFI contracts that are coming to an end.

Our policy is that we would want those bodies to seek advice and learn lessons. As I said at the beginning of the session, I am grateful for the work that the SFT does to ensure that that advice is available, but the bodies draw on other legal, contractual and private advice, too, and look at that as part of their overall operational responsibilities.

The Convener: I want to explore that dynamic a little bit more, particularly your relationship with the minister or the cabinet secretary, for example. As

the Public Audit Committee, we are interested when we hear about a written authority being sought by civil servants from ministers. Last year, we had such a case with the decision to continue with the procurement of MV Glen Rosa, as it is now called—at the time, it was vessel 802—from Ferguson Marine Port Glasgow. The only other instance in recent memory went all the way back to 2007, and that was a decision by the justice secretary at the time not to proceed with the construction of Low Moss prison under PFI. Presumably, the civil service advice was against such a move and, therefore, a written authority was required. Is there any possibility of such conversations being had or outcomes being reached as the PFI contracts expire?

Neil Rennick: I have to say that Low Moss was before even my time, so—

The Convener: It was before my time, too, Mr Rennick, but these are instructive lessons from history.

Neil Rennick: It is important to say that, because the Scottish Prison Service is an agency, legal responsibility rests with Scottish ministers with regard to those contracts and decisions. That is distinct from other PFI contracts, where the contracting authority, whether it be, say, a local authority or a college, is separate from Scottish ministers. The involvement and role of the civil service will be different in that process, but, clearly, we have an overview to ensure that public bodies as a whole look for value for money.

With the colleges, for example, I know that the Scottish Funding Council is engaging with those that have private finance or non-profit distributing contracts on the process that they follow in that respect. For example, it is engaging with Ayrshire College on its plans for the Kilwinning campus, the contract for which is due to end in the next year or so.

The Convener: As you have mentioned East Ayrshire, I am bound to go into the broader issue of the East Ayrshire community hospital. The then First Minister Nicola Sturgeon announced that that hospital was going to be taken back into NHS Ayrshire and Arran earlier than the time scheduled in the PFI contract, and I think there has been an estimate of the additional cost. If that issue fell to your department, Mr Rennick, would there not have to be a conversation between the minister—in that case, the First Minister—and you as the accountable officer as to whether that was the right decision?

Neil Rennick: I am aware that, over time, a very small number of PFI contracts in Scotland and England have ended early. If there were financial implications for the portfolio, I would say yes, there would be a conversation about how we would

manage that and what the implications might be, and the reasoning for the decision would be considered, too.

However, the issue has certainly not come up in my time. Obviously, we have looked at, for example, HMP Addiewell, which is quite an expensive contract, but we have never reached the stage of considering buying out the contract. Had that been the case, though, there would have been a thorough process to look at the financial implications.

The Convener: My final questions are predominantly for Mr Reekie and Ms Alexander. First, on the capacity of the Scottish Futures Trust, are you able to give advice to the extent that you would like? Indeed, what form does that advice take? You are, in a sense, an investment arm. What advice are you giving Mr Rennick and other directors general as well as other parts of the public sector, including people such as Ms Medhurst? What does your advice cover?

Peter Reekie: Our role overall is to support those authorities to deliver the best outcomes, including financial outcomes, as these contracts come to an end. As you have said already, we have a small team, and they provide commercial support by drawing together the authorities and helping them form communities of interest—that is, people who are doing the same thing. After all, a council that is doing something in a certain area might not be so joined up with the next council along the way that might be doing the same thing. We help them share the knowledge that way.

In the past, we have provided specific support on particularly complex generic issues, for example, on the refinancing of PFI contracts, which as you will be aware comes up from time to time. Our commercial background allows us to help with some of the consideration of such matters. With the hand-back programme, we have activities that provide advice and guidance, and Kerry Alexander can talk you through them.

Kerry Alexander: We have a collaboration hand-back network to which we invite anybody who has a project coming up to expiry within the next five and up to eight years; after all, for some hospital projects, you will need to look earlier than five years. We invite people along to that network, which meets quarterly and provides a peer-to-peer forum to allow people to hear from each other. Lorraine Roughan has been along to one of the meetings, and I am sure that everyone would love to hear more from her at a future date.

Besides that type of forum, we look at getting in early and going through sets of key questions on the areas that we would see as conditions for success. For example, what are your thoughts on your governance and leadership on this issue?

What do you understand about your asset and your contract? In what ways have you considered the future service that you will deliver from the asset at the end of the contract? Will it be the same service? We have talked a lot about Kilmarnock prison, but that is a very specialist case, given its operational services. There is very little of that in the rest of the accommodation estate that we are looking at.

Part of our work also includes sharing materials such as typical risk registers and project plans that people can adopt. We set people up and give them the tools that will allow public bodies to take on these issues.

I would also point out that, although we have been talking about the SFT team, in the health sector we are just one half of a larger team. That team also includes NHS Scotland Assure colleagues, who are focused specifically on this issue and have, for example, their own end of contract manager. Therefore, as far as the health sector is concerned, we do the work that I have talked about, but alongside NHS Scotland Assure.

The Convener: Thank you.

Do you, from your horizon scanning, have any information that you can share about when you expect a particular surge in the number of PFI contracts reaching their expiry dates? Are you confident that we have the capacity to deal with any years in which there might be a particularly high volume?

Peter Reekie: Quite a big peak of activity is due in the latter half or towards the end of the 2020s. Bearing in mind that we are still five years out from that, what we have been doing last year and this is to help people gear up for that peak. We expect to continue our work in that respect, but individual authorities are, in some cases, planning different resource profiles over that period.

There will be a need for people with these skills to deal with the peaks at those points. For example, we have worked with NHS Highland and the Highland Council to help them put in place arrangements for sharing a project management resource that can span two contracts and bring in those learnings. There are ways in which we can make best use of our resources by providing templates and guidance that allow people to work effectively and efficiently—Kerry Alexander has mentioned the collaborative networks, for example—but it is undoubtedly the case that, over this period, authorities will have to build up their teams. We are seeing them do so, and we will try as best we can to help them get the right people in place and get the best value from these contracts, but more resource will be needed.

The Convener: My final question is for Mr Rennick. Looking at the scale of all this, I think that

the total value of these contracts is £9 billion and that around half of that is in schools, is it not, which is your responsibility?

Neil Rennick: Yes.

The Convener: Do you have any sense of when demand will be greatest on the capacity of that part of the public sector that you have oversight of?

Neil Rennick: We are aware of that. Indeed, the Scottish and UK Governments publish information on all the PFI and NPD contracts, so we know exactly when each is due to come to an end over the next few years and all the way through into the 2040s. It is spread out over time. Obviously there is a distinction to be drawn between NHS projects and the ones in education and justice, which tend to be spread out across different organisations. Because they are managed by individual local authorities manage them, the responsibility is spread over different bodies.

I am very conscious of the pressure on SFT to provide guidance. Obviously, we hope that, as we pass through this period—and as more schools, for example, go through the process of the ending of a PFI contract—any lessons learned can be applied to other schools and knowledge can be shared more widely.

I think that, over the next few years, the maximum number to be dealt with is three schools projects and one Police Scotland project, all of which fall in 2026-27. That is the peak that we are aware of, but it is spread across different bodies, each of which will have their own teams to manage the process and to draw on the guidance from SFT as well as other sources. We know that they are speaking to other bodies not just here in Scotland but elsewhere that have already been through this process.

The Convener: Thank you. I am conscious of the time and I know that two other members of the committee want to come in with some questions. I will turn to the deputy convener first and then I will bring Mr Simpson in.

Jamie Greene: I will shrink my questions into two. Mr Rennick, you will be aware of the constraints on the Government's capital investment. A number of infrastructure projects have been paused and there will be no investment in them. Much of that decision will have direct consequences for your portfolio and new schools and prisons, for example. Other portfolios across the health sector, housing and so on will feel the same.

In the scenario in which the Government is saying that it does not have the cash to build this stuff up front, is there now an expectation that a shift to a different financing model will be

inevitable? In other words, the private sector will stump up the cash up front and the Government will simply pay them back over a very long period of time. I appreciate that might not be the political thing to do in terms of the ministerial direction of travel, but from a value for money point of view, should that be considered?

10:15

Neil Rennick: You specifically mentioned schools and the prison estate. Scottish ministers have already committed to the construction of HMP Highland and we are waiting for the final business case on HMP Glasgow, but both of those are proceeding, using traditional capital funding from the Scottish Government. That is the approach that is being taken to the prisons that are in the pipeline just now.

You will be aware that we have followed two separate programmes for schools—schools for the future and the more recent learning estate improvement programme. A number of months ago, towards the end of last year, we confirmed phase three of the LEAP, which will deliver a further 47 school projects once it is completed. That is being progressed through an outcome-based model where the local authority builds the school and the Scottish Government provides an on-going revenue stream based on particular outcomes such as maintenance and net zero in the running of the schools. We already have models in place for schools and prisons.

Across the Scottish Government as a whole, you are right that the projection, which was reflected in the budget, is that our capital budget is likely to be constrained in the coming years. Ministers have said that they are open to looking at other models, including the mutual investment model. I understand that, although they have not confirmed it, ministers have indicated that the MIM is being considered as an option for the dualling of the A9, so ministers are clear that those models are available.

Because of inflation and other pressures, there is pressure on our capital budgets, so it is becoming more challenging to implement our capital plans. Ministers have indicated that they are reviewing plans for capital investment and that there will be an update on that later in the year, linking into the budget process.

Jamie Greene: That gets to the nub of my question. When times are good and there is money in the bank, the Government can easily decide that, because it has the cash, it would rather fund this stuff directly either through Government borrowing or through capital that it has in reserve and that it would want to try to avoid or to minimise private investment where

possible because of the repayments, interest and other costs associated with it, and that is not the direction of travel that it wants to take.

However, as you have just outlined, we are now in very different times. Constraints on capital investment mean that there is less money to go around. In that scenario, if, for example, I knocked on your door tomorrow and said, “I am happy to build a replacement for HMP Greenock or HMP Dumfries”—both of which are in desperate need of replacement—would the door be open to the models out there and could a deal be done, or is it just simply a case of the Government wanting to spend only what it has?

Neil Rennick: As it stands, the major capital projects that sit within the education and justice portfolios are the two prisons and the Dunfermline campus.

Jamie Greene: I am using that as example of new investment, new money, new build and the model that might accompany that scenario.

Neil Rennick: That has not been discussed with ministers at this stage, but obviously part of the review of our capital plans will not just be looking at what those capital plans are but at how they will be financed going forward.

Jamie Greene: We look forward to that.

My second question is about PFI contracts, where there is still a bit more digging to be done and other members might do that. I am still a bit confused about how many such contracts are coming to an end in the next couple of years and what the cost to the public purse will be. We may revisit that before we end this evidence session, but do you expect those contracts to come to a natural end or are ministers mooting an early contract termination on some of them? There is a difference there and I presume there is a cost.

Neil Rennick: Again, I am only aware of the education and justice areas. I am not aware of any proposals to end the contracts early. We know exactly when they are due to come to an end, which will be phased over the coming years.

Jamie Greene: Natural termination is the direction of travel, at least in your directorate?

Neil Rennick: Yes.

The Convener: There was an announcement recently about Falkirk schools, presumably by Falkirk Council. Is that a proposal to bring them in house earlier than the expiry date of the PFI?

Neil Rennick: I would need to double check. My understanding was that it was about them coming into the public sector when the current contract is due to end during 2025-26, not early.

The Convener: Okay, that is fine.

Graham Simpson: Mr Rennick, what will be the cost of bringing the Police Scotland College in East Kilbride back into the public sector?

Neil Rennick: I understand that Police Scotland has a programme team looking at a range of different options for the Jackton training centre and the cost will depend on the option that is chosen. I think that is due to come back in 2026-27, so that process is still being gone through. As far as I am aware, there is no figure yet for what it will cost. As I understand it—again I will triple check—a payment related to the Jackton centre would have to be made.

Graham Simpson: Are we talking millions?

Neil Rennick: I will double check to see if I have it in my notes. Yes, I will need to double check whether that is in the public domain, but there is a figure in the low millions.

Graham Simpson: Millions of pounds?

Neil Rennick: Yes.

Graham Simpson: Okay. I think this question applies to all the contracts that are due to end and that have a payback attached to them. What happens if there is no agreement? If the public sector just says, "That is far too much. We cannot afford it. Go away"?

Neil Rennick: SFT colleagues might want to come in, but my assumption is that what happens and what the requirements are within the circumstances specific to each contract will be set out in each contract. I understand that there have been positive discussions with the contractors on Kilmarnock and the other projects that are due to come back into the public sector. That engagement is happening. Again, SFT colleagues will be able to confirm that.

Graham Simpson: Mr Reekie, do you know the answer?

Peter Reekie: The contracts are all different. I do not know the details of them all, but generally the contract requires the parties to come together to negotiate the position. Many of them will have an arrangement whereby the public authority is entitled to simply walk away and not use the asset, to leave that asset on its remaining long lease with the private sector partner for the ones that have that extended lease period. What will happen in practice is that the parties will come together under the arrangements that we have been talking about and, if it is subject to negotiation, negotiate it, or if there is a figure in the contract, decide whether to pay it.

Graham Simpson: I am afraid that that is very simplistic. Let us take the Police College in East Kilbride as an example. Police Scotland is up against it, financially—I mean, it cannot even

renew police stations or police cars. If Police Scotland is expected to pay millions of pounds at the end of that contract, there is surely a risk that it will not be able to afford that final payment. So, what happens in that case?

Neil Rennick: I understand that the Jackton training centre is being looked at as part of the wider review of Police Scotland's estates. The value of that asset and whether to continue with it in the longer term would be considered as part of that wider estates review, which is done for lots of other elements of the police estate as well.

Graham Simpson: So, it could close.

Neil Rennick: I would not want to speculate, as I understand that Police Scotland is looking a range of options for what is the best for the future of the estate as a whole, which would include the training facilities.

Peter Reekie: Our advice is always to start with a consideration of what is the longer-term service need and what is the longer-term asset need that goes with that service need, and then to build that into the thinking about what you do at the end of a contract term, and starting that consideration early is the right thing to do.

Neil Rennick: The important thing to say is that the issue is not a surprise. It would have been factored into the contracts and the planning for them.

Graham Simpson: That is the risk, is it not, with these contracts? It all sounds good right at the start, but we get to the end and suddenly the financial situation is different. As I say, Police Scotland is not awash with cash, so we could get to a position in 2026-27 where it says, "We cannot afford the payment. We are going to have to hand this asset back."

Neil Rennick: I would not expect that, for any of the bodies, that decision would be taken at the point of the ending of the contract. The reporting around Falkirk Council's schools is that it is already factoring into its capital plans what the cost would be of bringing the schools into the public sector. I know that Police Scotland will be doing the same with the options that it is looking at. The issue is being factored in and planned for because the organisations are aware of it.

Graham Simpson: Convener, I was just looking at the BBC article that you referred to, with the list of 11 projects that are due to end and which would require a payment to be made. Six of those are in the health area, including a number of hospitals. We do not have the people with the relevant expertise here today, but I am just putting on the record that I think it would be worth the committee delving into those contracts. One of the hospitals—University hospital Wishaw—is in the

region that we both represent, but there are others that we could look at. It might be worth our doing further work on that, but, as I do not expect the witnesses who are before us today to answer questions in that regard, I will leave it there.

The Convener: We have the chief executive of NHS Scotland coming before the committee before we break for summer recess, so we could consider the issue then.

My parting question is around lessons learned. Teresa Medhurst, I know that you and your colleagues are still in the middle of the transition but, even at this early stage, do you think that there are things that you might have done differently? Lorraine Roughan, when you go to Kerry Alexander's collaborative workshops and share your experience, what are the dos and don'ts that you would take to that kind of get together?

Lorraine Roughan: One of the things that we talked about around the issue of dilapidations was the timing of the final survey. We knew that, contractually, we had to do it by the anniversary of the final year. The question is, do you do it a little bit earlier in order to give yourself more time to manage the outcome, which risks the asset then degrading a little bit and you missing an opportunity to understand that, or do you wait until the end, when you will have more certainty about the asset? A year sounds like a long time, but it is not a long time to do the survey, share the survey, understand the outcomes and build in time for the work to be done. One of the things that we shared in the handback forum in April was the negotiated outcome that we had in collaboration with the retention allowance that was in our contract.

Some work is being done on the asset now, post contract, through a legal tripartite agreement between us, Kilmarnock Prison Services Limited and Serco. Once that is complete, it will signal the release of some of the retention, and that has worked very well for us. We did not envisage that at the start of the project; it came about by osmosis through the process, but it has worked well for us as a group. So, there are things that probably need to be considered in terms of the timing of some of those large pieces of work and where you might be able to go. Some of the work that we did in that regard was helpful in terms of the replacement of some of the big assets.

10:30

Another important point is that the contract is of its time and was very light on anything to do with digital. We knew that there was equipment in place but there was no real set guidance for us on how to manage that. Therefore, SPS has invested quite heavily in our own digital network in

Kilmarnock, and replacing some of the equipment that was there, along with some of the changes. We did that working collaboratively with KPSL and Serco, without some of the contractual guidance, and we took some pragmatic decisions around that.

However, even though you have planned all of those things, you are still transferring everything on one night. You can never get away from that frenzied activity that happens over that period, which, for us, was between new year and the middle of March. Even if you plan for years, you will still face that, and you need to be resourced and prepared for that. We had huge organisational support because we took away pretty much everybody in digital services for about two weeks in the run-up period and there were constraints in relation to what might be done by other people elsewhere. It was a huge, concerted team effort and phase 1 was a good piece of work.

The Convener: That is very insightful. Does anyone else want to come in with lessons learned, or things that we can do in relation to future examples of PFI expiries?

Peter Reekie: I would extend the point on digital to information in general. We have provided some guidance to relevant authorities on the different types of information that are involved. Although the contract might talk about the condition of the asset—the bricks and mortar—that you want back, it often does not say much about what information should come with that, so it is a good learning point. Obviously, the services are much broader in the Kilmarnock contract than they are in many others.

Another thing that we are trying to build in relates to the point that the contracts were of their time. If the contract specifies the replacement of major plant items, we will want to look at replacing them with something that is fit for the future and helps that asset to move to net zero. That is quite a big consideration in these assets. We do not want to replace something with whatever the equivalent would have been 25 years ago. Instead, if that money is going to be spent, we want to spend it in a way that takes the asset on its journey to net zero. Therefore, as well as including information in the handback process, we are also bringing in wider issues such as net zero.

Kerry Alexander: When we do our early engagement, we talk to estate teams to find out whether everyone knows where their contract is and what is in it and to find out about their survey work. The big jump comes after that early stage of deciding what you might want from your survey and moving into the phase in which somebody owns, leads and manages the project and says, "I am going to make this happen." That is something that we have seen work well. With the

appointment of a person into that role in that last phase—when there is the real push during the run-up—there needs to be somebody who is on it. The Kilmarnock project has been a good example as to how things have worked.

The Convener: Mr Rennick, do you want a final word?

Neil Rennick: I would just thank the committee and Audit Scotland for having raised this issue. It is incredibly timely as we start a very long journey for individual bodies to manage this process, and learning lessons from SPS and others is helpful.

The Convener: Before we finish, Graham Simpson has one other question about the mutual investment model.

Graham Simpson: Mr Reekie, the mutual investment model has been mooted as a way of funding part of the A9. Have you managed to have a look at the mutual investment model, and what do you see as the differences between that model and what has gone before?

Peter Reekie: In 2019, we produced a report that suggested to the Scottish Government that, if ministers wished to use a model that brings in private finance to deliver additionality of investment that is paid for out of long-term revenue budgets—that is, what has been known as the different varieties of public-private partnership—the mutual investment model would be the best value version of that to use at the moment.

The model was developed in Wales. The Welsh Government was going to adopt the non-profit distributing model that we had used, which is a profit-capped form of PPP. However, as you may recall, the European accounting standards changed in the middle of the 2010s, so that model with the profit capping could no longer deliver the additionality, because, in the terms of the day, it would have been brought back on balance sheet for the public sector.

The mutual investment model has been looked over by the Office for National Statistics and found to still be, to use those terms again, off balance sheet and able to deliver that additionality. It is a similar approach to a long-term PPP. It works on a profit-sharing basis, with the public sector taking a small proportion of the equity in the project and, therefore, being able to share in the returns to the project. That difference between the NPD model's profit capping and the mutual investment model's profit sharing is what allows the mutual investment model to continue to be used. We have recommended that the Scottish Government could take that approach. So, yes, we have looked at the issue, and we can forward a link to that report, if you want to see it.

Graham Simpson: In relation to the A9, which is the only project that I am aware of for which that approach has been suggested, although there might be others, it struck me that what is actually happening is that you are getting the private sector to fund part of the road and then getting the public sector—that is, the Scottish Government—to pay the private funder so much every year for the use of the road. You could call it a rent-a-road scheme. However, what happens at the end of that? Is there is still a final payment.

Peter Reekie: No, there would not be.

Graham Simpson: There would be no final payment?

Peter Reekie: It is similar to the NPD projects. None of them have a payment at the end.

Graham Simpson: It is reliant, of course, on finding a private sector partner who actually wants to take part.

Peter Reekie: Yes.

The Convener: Unfortunately, Graham Simpson's intervention means that everyone else now wants to come back in. I am going to make this the very final question. Willie Coffey started it all, so I am going to invite Willie to ask the very last question in this morning's session.

Willie Coffey: The current Scottish Government is saddled with that historical PFI legacy, and the ratio of cost to delivery with PFI is roughly five-and-a-half to one. Does the mutual investment model offer a better ratio of repayment for the public? Paying something like five-and-a-half times more for the capital cost of the construction of a school, hospital or prison probably seems excessive to the public as well. Peter Reekie, you mentioned the profit-sharing aspect of MIM. Can the public look forward to a better ratio of return on that kind of investment in the future?

Peter Reekie: All the models include the design, build, finance and maintenance of an asset. In the case of the prison, the operation of the facility is also included. The unitary charge that is paid over 25 to 30 years is for design, build, finance and maintenance, so, in a way it is not fair to compare that with the cost of just design and build under a capital project, because you need to think about the finance and maintenance as well.

In the paper that I have pointed to, we set out what we expect the ratios will be. However, that paper was done with the interest rates at that time, and these long term projects are very sensitive to the interest rates of the day, so I would not want to speculate on the total cost of future design, build, finance and maintenance costs because of that sensitivity around the finance element.

You will be aware that, after the global financial crisis, there was a sustained period of low interest rates, so the overall cost of finance over 25 years would be structurally lower than it was for some of the PFI deals that were signed when interest rates were higher. With regard to what the interest rates might be when future deals are signed, I would not be sitting here now if I could speculate on that.

Willie Coffey: It was a good try.

The Convener: We are in the middle of a general election campaign, Mr Reekie, so who knows what the future might hold.

I thank our witnesses this morning for their input. It has been very useful to us and the committee will have a continuing interest in this area, so I thank you for giving us some of those introductory lessons. We may go on to future phases of analysis and audit in the area, and I am sure that the Auditor General will be taking some notes from this morning's session, too.

I now move the meeting into private session.

10:40

Meeting continued in private until 11:11.

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

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

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba