



OFFICIAL REPORT
AITHISG OIFIGEIL

Criminal Justice Committee

Wednesday 9 November 2022

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

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

Wednesday 9 November 2022

CONTENTS

	Col.
PRE-BUDGET SCRUTINY 2023-24	1
NATIONAL CARE SERVICE (SCOTLAND) BILL	28
CORRESPONDENCE	29

CRIMINAL JUSTICE COMMITTEE

28th Meeting 2022, Session 6

CONVENER

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

DEPUTY CONVENER

*Russell Findlay (West Scotland) (Con)

COMMITTEE MEMBERS

*Katy Clark (West Scotland) (Lab)

*Jamie Greene (West Scotland) (Con)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

*Pauline McNeill (Glasgow) (Lab)

*Collette Stevenson (East Kilbride) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Wendy Sinclair-Gieben (HM Inspectorate of Prisons for Scotland)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 9 November 2022

[The Convener opened the meeting at 10:00]

Pre-budget Scrutiny 2023-24

The Convener (Audrey Nicoll): Good morning and welcome to the 28th meeting in 2022 of the Criminal Justice Committee. We have received no apologies for this morning's meeting.

Our first item of business is pre-budget scrutiny of the Scottish Government's forthcoming budget for 2023-24. I refer members to papers 1, 2 and 3. I welcome to the meeting Wendy Sinclair-Gieben, who is His Majesty's chief inspector of prisons for Scotland.

We will move straight to questions and I will open with a general question. What are your overarching thoughts on the implications of a potential flat cash resource settlement for the next few financial years?

Wendy Sinclair-Gieben (HM Inspectorate of Prisons for Scotland): It is extremely concerning for the Scottish Prison Service and for justice overall. The reality is that the Prison Service holds the most dangerous, violent and vulnerable people in our society. A good proportion of those people are also victims, and a good proportion have significant mental health issues. Over four years, a flat cash settlement will reduce the overall budget hugely. I am deeply concerned that many human rights breaches will occur, that we risk a prisoner disturbance and that staff numbers will be reduced to such an extent that we will end up with humane containment instead of the protection of community safety.

If we bring people into prison and do nothing with them, we will release them back into society angrier than they were when they came in. That is not appropriate. As a person in the community, I would like to think that the Prison Service is working with those people to reduce the risk when they leave. A flat cash budget has massive implications for society, the individuals in prisons and the staff.

The Convener: My next question is similarly overarching, but it is specifically about the implications for the capital budget. I am interested to get a general overview from your perspective of current and future budgets for the Prison Service.

Wendy Sinclair-Gieben: We see ageing infrastructure in a goodly number of prisons, such

as Barlinnie, Perth, Highland and Dumfries. Greenock prison is shocking. I do not think that, as a nation, Scotland should spend a huge amount of money on building new prisons in order to cope. I would much rather that we looked at radical justice reform to see whether we can reduce the prison population so that we can close the old prisons and not have to replace the infrastructure.

Prisons are hugely expensive. A 2002 report said that the cost of recidivism—somebody going back through the courts and into prison—is £200,000. If we can reduce that and stop people going to prison, we will save a lot of money. That is not to say that we should in any way prevent from going to prison people who, frankly, deserve to be there, but there are better ways and means of reducing our infrastructure in order to meet demand.

The Convener: Committee members are particularly interested in the issues around the capital budget and the prison estate. I will ask just one follow-up question. Thinking ahead about budget provision into the next year, what are your main concerns about the older section of the prison estate?

Wendy Sinclair-Gieben: Two prisons give me considerable concern. One is Greenock. For those of you who have not visited it, I note that a vast number of cells there are out of use because damp comes in and makes them uninhabitable. The roof regularly suffers from water ingress and the team is having to effect repairs. I think that the cost of maintaining Greenock prison outweighs its value. It is expensive, but the site is a good one and the opportunities for redevelopment could put money back into the Prison Service.

Barlinnie is our biggest prison and it copes with overspill from every other site; if there is an issue anywhere else, the surge goes there. The cells are small. I would not like to live in such a tiny space for 22 hours a day with a total stranger. Against that, the prison is well run and organised. However, it costs a fortune to maintain the building each year because it is old. The plumbing is worrying, and, when I went there, I was stunned by the extent of dilapidation in basic elements of the building.

Every effort is made to keep the cells and living areas clean, tidy, well decorated and so on. However, when someone walks around at night, a little family of rats will go with them, and, if they walk down to the chaplaincy, plaster dust will land in their hair. It is just a question of time before the building collapses. We will then be stuck, because it is the biggest prison in Scotland. I worry about that.

The Convener: You have given some stark evidence there. I will hand over to committee members who have questions.

Pauline McNeill (Glasgow) (Lab): Good morning. I have both a local and a regional interest in Barlinnie prison, which you have spoken about. For the record, and to add to what you said, I note that it has only five cells that are suitable for disabled prisoners, that there are no shared spaces for prisoners to sit and converse with others at mealtimes and—this is quite shocking—that prisoners have to eat all meals in their own cells. Where there are two prisoners to a cell, that might breach the standards on space.

I imagine that not much can be done about the situation right now, but how concerned would you be if the timetable for the new build were to slip? Have you had any discussions that would give cause for concern about that timetable? I appreciate that it is in the hands of the Scottish Prison Service but, given what you have said, I imagine that you have a strong interest in it, too.

Wendy Sinclair-Gieben: There is every possibility that the timetable will slip, because it will be difficult for the team to source materials and labour to enable it to meet the timeframes. That is true of all building projects at the moment. The team is certainly managing the situation well. The new HMP Glasgow looks quite exciting and it has been future proofed, which is a good thing. I hope that the timetable does not slip. Equally, Barlinnie has been coping and, if the timetable for its replacement does slip, it will go on coping—that is the way that it is. I do not know whether you have looked at the maintenance budget for the old prisons, but it is really quite shocking.

Pauline McNeill: Do you see any options in the short term other than finding alternatives to prison, which you have said we need to do?

Wendy Sinclair-Gieben: If we have a radical rethink and consider aspects such as executive release and remand, I think that we can reduce the prison population considerably.

Katy Clark (West Scotland) (Lab): You picked out HMP Greenock in particular and you described the conditions there as shocking. In your report last year, you said that it was in urgent need of replacement and was clearly

“ill-suited to a modern prison system.”

However, also last year, the cabinet secretary said that it was unlikely that the Scottish Prison Service would be able to commence such a replacement before 2025-26.

Our calculation is that the cuts that we are considering for the justice sector will be in the region of 20 per cent over the coming years. If the forecast was 2025-26 last year, that suggests that

it could be some time before there will be any serious proposals on Greenock prison's replacement. Is that a massive concern? What will be the implications of a lack of substantial investment, given the current condition of that prison?

Wendy Sinclair-Gieben: We are going back to inspect Greenock next March. If it is in the same condition that it was in at our previous inspection, I will pull in the Health and Safety Executive. It is still one of the best prisons, because staff and prisoner relationships and the things that they achieve are really excellent. It is a small prison and the prisoners could be dispersed elsewhere. I do not think that they would be very happy about that, because they are close to home, but there are possibilities. It is a shame that the planned HMP Inverclyde was not continued.

Katy Clark: That is helpful information.

You have said clearly that you believe that there is a need for radical reform of justice. Politicians have been arguing for that since the creation of the Scottish Parliament and before it. They have said that there is no need for a full women's prison in Scotland, that that is not the right way to dispose of woman prisoners and that prison is also not the right way to deal with the offending behaviour of many male prisoners. Those debates have been going on for many years. Why has the radical justice reform that you have spoken about not happened? Why has it been impossible to drive change in the system? What are your thoughts on that?

Wendy Sinclair-Gieben: I have many thoughts, some of which are not polite.

There is a cultural reluctance. Scotland has a punitive culture, to some degree, and there is an “aye been” culture. The reality is that it would require significant research to look at that. It is very easy to tell someone to look at Halden prison in Norway or to look at Holland, which has reduced its prison population by 40 per cent and decriminalised various drugs. However, we are not Dutch and we are not Norwegian. We are Scottish, and we need a justice reform agenda that is particularly suited to us and to no one else.

It is difficult to do that when you are firefighting. The prison and justice services have been firefighting for some time. There is a backlog in the courts and there has been overcrowding. Never mind the pandemic and what is happening at the moment. There has been a degree of firefighting for the past 10 years, and it is difficult to stand back from firefighting and ask what we could do.

Some years ago, I took a brief look at what would happen if we took out of prison all the people who were there for offences that were related to substance use but did not include

violence or domestic abuse. How many prisoners would that get rid of? How much would that reduce the numbers in prison? The current approach is to see substance use as a health problem rather than as a criminal one. That is something to look at.

Deep justice reform needs to be done despite the firefighting, but it really must be Scottish. We need to think about what is best for Scotland. If we end up thinking that having a very high prisoner population is the right way forward, we have to invest in that.

Katy Clark: You have said very clearly that some people have to be in prison because the nature of their offence or their violent nature means that they must be incarcerated. We all accept that that is the case and that there is a need for prisons, but I think that we also believe that there are people in prison who should not be there. We have been trying to get data on that so that we can better understand who is in prison and what they are there for.

How good is our data? The committee is very interested in having the data so that we can take a view on what could be achieved by looking at other disposals, although it is clear that there are some people for whom the only possible disposal is incarceration.

Wendy Sinclair-Gieben: Some people are also there as a place of safety because there is no in-patient bed for them. Some people with significant mental health issues are identified as needing to be in-patients but are held in prison because there are no in-patient beds. There are repeat offenders who go into prison time and time again, for whom prison is not working. Perhaps we need to look at why that is.

10:15

The data that we receive is good. The problem is that the justice system is not digitised or jointly digitised so it is hard to see where people come in. I will give a simple example. At Polmont, the staff ask people as they come in whether they are care experienced, and they ring all the local authorities that the young people come from. The percentage of people who self-identified or were identified by social services as being care experienced on the way in was about 16 per cent. However, when the staff at Polmont went round the local authorities, they found that the actual percentage was about 46 per cent.

How can we judge the data unless we do the data mining? There is a lot of data that we do not get. Another good example is data on how many hours a day people are out of cell for. The private sector has bar codes and computer systems and the staff there will key something in—tickety-tick—

and give us the information. However, that is not the case in the public sector, where gathering the information is onerous and time consuming. The data that we receive is not wholly accurate and it is not rich enough for us to be able to mine it for the information that we need.

Katy Clark: When we spoke to judges, they said that women prisoners, and particularly women appearing from custody, are given custodial sentences for almost paternalistic reasons. The judges do not know what else to do. They are not convinced that prison is the right way to deal with a particular woman offender but—

Wendy Sinclair-Gieben: There is no other option.

Katy Clark: Yes. Also, women tend to get longer sentences than men for similar offences. Do you have any thoughts on that? Prison is not necessarily the right solution, but it also has massive budgetary implications.

Wendy Sinclair-Gieben: It does, but I absolutely love the new women's custody units, which are a step forward in thinking. I would love to see more supervised bail. I am also delighted that we at last have a family rehabilitation centre.

There is no arguing that some women still need to be in prison. That is always difficult to manage, but it is also important to have a greater number of cheaper community options that allow informed decision making and give decision makers options. There are people with tonnes of expertise who can advise you on that more wisely than I can.

Jamie Greene (West Scotland) (Con): Good morning. Thank you for your written submission. I will start with a quotation from it, which backs up something that Teresa Medhurst told us last week. You say:

"It is difficult to avoid the conclusion that"

a flat cash settlement—I am paraphrasing—could lead to a

"rapid deterioration of safety."

Last week, Teresa Medhurst from the Scottish Prison Service said that it would

"impact on things such as violence and vulnerability."—*[Official Report, Criminal Justice Committee, 2 November 2022; c 46-47.]*

What exactly do you mean by your comment? How would a flat cash settlement affect the volatility of a prison?

Wendy Sinclair-Gieben: You have to look at the historical research on prison disturbances. If you look back to the Learmont and Woodcock reports and others—Lord Justice Woolf's report is particularly interesting—you will see that they

found that there was a confluence of issues that then exploded.

We almost had such a confluence in January, with the potential for an industrial relations strike; the potential for the Huawei in-cell phones being removed; the potential for the 300 free minutes being removed; the high cost of living meaning that families cannot support their loved ones in prison as well as they did previously, or visit as often; and the prices in the prisoners' canteen for the bits and pieces that they buy for themselves having gone up when wages have not.

There can be a confluence of issues on the staff side, too. With the cost of living increase, we know that staff who work in prisons are already using food banks. There are questions about a sense of legitimacy. Staff are asking whether what is happening to them is fair and whether they are getting the same pay rise as, for example, nurses or the police.

We get the same legitimacy issue with prisoners. If we are unable to run the extras in prison—which are not really extras—such as the offending behaviour programmes, visits, extra gyms and bringing in community groups, which all cost money, what then? A sense of legitimacy will be lost. Morale can be low because, frankly, staff are tired—they are exhausted after the pandemic. The confluence of all those things almost exactly matches the findings of research that took place after previous prisoner disturbances.

Everybody is working towards ensuring that that will not happen—there is no argument about that; the amount of work that is being done is huge, but it is a risk, and we would be naive not to think of it as such.

Jamie Greene: In its evidence, the Scottish Prison Service said that a flat cash settlement would mean that it would need to revert to near-Covid-type lockdown scenarios in prison, and pretty much get rid of all the good stuff—rehabilitation and the involvement of third parties including the third sector—that ensures that people come out of prison better than they were when they went in. It said all that would cease to exist. Is that a concern?

Wendy Sinclair-Gieben: It is a huge concern. If someone is already volatile, violent and dangerous and nothing is done with them in prison, they will be released feeling angrier. It is a mistake for community safety.

Jamie Greene: That sounds worrying.

I want to touch on two local issues. The first is HMP Greenock. As Katy Clark mentioned, it is disappointing that there are no plans for a replacement for it. I understand that such things come at huge capital cost; we learned that the

cost of HMP Highland has already nearly trebled and that costs will probably rise further. Such things tend to cost a lot more than was initially estimated, but it sounds nonetheless as though things are quite dire in Greenock. Do you have the power to shut it down? If you do not, which other agency has that power?

Wendy Sinclair-Gieben: I do not have the power to shut the prison down. I could recommend that it be shut down, but that is as far as I could go; I do not have any powers in that regard. My role is not like that of the Care Inspectorate.

Jamie Greene: If you were not happy with what you saw, or you felt that shutting the prison down was the best option, would you recommend that it be shut down?

Wendy Sinclair-Gieben: Unfortunately, yes—I would happily make that recommendation.

Jamie Greene: Where would all the prisoners go?

Wendy Sinclair-Gieben: There are not that many. My job is not population management, but the women could be moved to HMP Polmont and the men could be moved into HMP Kilmarnock, HMP Low Moss and HMP Barlinnie.

Jamie Greene: That would not be ideal.

Wendy Sinclair-Gieben: No, it would not be ideal, because it would take them away from their families.

Jamie Greene: Indeed. There are two privately run prisons in the estate. What is your general view of the privately run prisons versus the publicly run prisons?

You will be aware that the Government has chosen to take HMP Kilmarnock back into—presumably—public service. We have struggled to get any justification for that decision, and the argument seems to be around cost. However, you said that we might not have full sight of all the detail that we need. Would you say that HMP Kilmarnock is currently good value for money? What is the situation there?

Wendy Sinclair-Gieben: It is the cheapest prison in Scotland.

Jamie Greene: Why do you think the Government would want to take HMP Kilmarnock back in-house to SPS?

Wendy Sinclair-Gieben: Ideology.

Jamie Greene: In what respect?

Wendy Sinclair-Gieben: In the sense that the Government does not want private sector providers running things for the public sector.

Jamie Greene: Do you think that the Government would do that even if a better service was being run more cheaply?

Wendy Sinclair-Gieben: I think that that is the ideology. That is what I am guessing, anyway.

I have to declare an interest, because I used to be the governor of Kilmarnock and I also used to work with Serco. HM inspectorate of prisons for Scotland is completely neutral on public versus private prisons. We inspect them and do everything in exactly the same way.

I recused myself when we inspected HMP Kilmarnock because I felt that it was inappropriate for me to be a part of that. If the inspection came back with a good report it would be my fault, and if it came back with a bad report it would also be my fault.

Jamie Greene: I understand, but when you go in there—in your independent neutral role—to inspect the prisons, what do you see when you go into HMP Addiewell or HMP Kilmarnock compared with what you see in other prisons?

Wendy Sinclair-Gieben: We are in the middle of inspecting Addiewell, and I would like to wait until we finish the inspection before I make any comment on it. Kilmarnock is a well-run, well-organised, safe and good prison.

Are you aware of how much it will cost to transition it into the public sector?

Jamie Greene: I am not, but I would love to know.

Wendy Sinclair-Gieben: I could only make a wild guess, but I suggest that you ask Audit Scotland to look at that. The cost is certainly in the millions.

Jamie Greene: Would you be prepared to go on the record with an estimate, today?

Wendy Sinclair-Gieben: I would rather not, but when I transitioned HMP Blakenhurst back into the English prison service in 2000 it cost £10 million to £12 million, or thereabouts.

Jamie Greene: The cost will be in the tens of millions. I am sure that the committee will discuss that in more detail, and with the Cabinet Secretary for Justice and Veterans.

My final point is about women in prisons. In the submission, you said:

“Women in particular are at the extreme end of the waiting times and if requiring high secure in-patient treatment are transferred to England”.

Is that a capacity problem in Scotland?

Wendy Sinclair-Gieben: Yes, it is. The Barron review recommended that the state hospital re-establish itself to be able to take high-secure

forensic women who, otherwise, have to go to Rampton hospital in England.

Jamie Greene: Does that mean that there are facilities in Scotland, but they are full, or that there are no facilities?

Wendy Sinclair-Gieben: At the moment, the state hospital does not take women. The Barron review looked at that and suggested that it should, in the future, take women.

Jamie Greene: What are the consequences of sending people to England?

Wendy Sinclair-Gieben: The psychiatric care is good, but people are away from family, friends and a familiar environment.

Jamie Greene: Thank you. That is helpful.

I will let other members come in; I might come back in later.

The Convener: We will come back to questions about private prisons.

Pauline McNeill: I have a question to follow on from Jamie Greene’s questions. Of all the alarming things that I read in the committee papers, the one that jumped out at me was what you had to say about the heightened risk of prison disturbances. You did not mince your words.

Wendy Sinclair-Gieben: I really think that there is a heightened risk, but I am well aware that everybody is aware of that risk. The Prison Service has been working flat out to develop contingency plans, and has been looking at extreme measures, in case they are necessary, involving the police. The Scottish Government is aware of the situation and is looking in every way at how it could mitigate it and ensure that it can prevent a disturbance and, if one happened, what it would do to manage it.

Pauline McNeill: I am sure that you are absolutely right. I wanted to get that on the record and make sure that I have understood correctly. You have said that

“Adverse prisoner reactions are both traumatic and costly”.

In your submission, you said that

“The cost of the prison riots in England between April and May 1986 was estimated by the Government to be”

in the region of

“£5.5 million”

and that

“The riot in HMP Birmingham in 2016 ... cost the Government and the private operator £6 million”.

From what you say in your submission, there is a financial consideration as well as a public safety consideration, so I want to get you to speak to that. Do you have any further concerns? You have

put it in your submission, so I have to draw the conclusion that it is a big concern of yours that we might face that possibility, if the budget is not adjusted.

Wendy Sinclair-Gieben: Yes. I think that the Government is under real pressure financially and will have to take tough and hard decisions, but community safety really worries me. The current recidivism rate is not very hard to tackle. I find it difficult to get the exact figures, but if we gathered the statistic on the number of people who return to prison within two years, it would be quite an interesting one that we could benchmark with many other countries. To what extent is the work that is done in prison the reason why people do not come back into prison? If we take all that work away, we will be putting people who will commit more crimes back into the community.

At the end of the day, the victims are important. It is not just people in the community who are the victims of crime; many people who are in prison—particularly women—are also victims. It really worries me that, if we strip away all the good stuff, we will release back into the community—most prisoners are released back into the community—people who are angry, which is not fair on the community.

10:30

Pauline McNeill: The Criminal Justice Committee still has to have a discussion about how it will respond. It might mention, among other things, the issue that you raised about the extras that prisoners get keeping the prison regime quiet or in check. I picked up the word “legitimacy” quite strongly. Given what you have said, if the committee were to say in its report that it felt that the Government should take those important factors in your submission into account when it is considering what it might strip away, would you be pleased to read that?

Wendy Sinclair-Gieben: I would be absolutely thrilled.

The Convener: I will test Fulton MacGregor’s patience; I will bring in Rona Mackay, then hand over to Fulton.

Rona Mackay (Strathkelvin and Bearsden) (SNP): I have a quick follow-up on Pauline McNeill’s line of questioning about the high risk of prison disturbances and so on. Could you clarify what would lead to such a situation? Would it be lack of purposeful activity or more restrictions? What impact would lack of finances have? Could you outline a few instances?

Wendy Sinclair-Gieben: Prisoners who were on remand pre-Covid were not entitled to go to many activities, and were certainly not entitled to

be paid for them. That is in prison rules. We are already taking people who are tangling with the criminal justice system—they have already got themselves into prison on remand—but we are not tackling criminogenic need. Obviously, we cannot tackle the offending behaviour, because they are still innocent, but we can tackle issues relating to substance misuse, education, work ethic, housing and legal issues. There is much that we can do. If we say to the convicted population, “We’re restricting your ability to go to the gym, go to work and do all the other things,” then the criminogenic factors that have led those people to tangle with the police in the first place will not be addressed, which means that they are, frankly, likely to go out and do the same things again.

I always think of me and chocolate—I am a complete chocolate addict. I give it up now and again, then go back to it. I have never actually altered my behaviour enough to give up chocolate. If I cannot do that, what hope has a person got if they live in a part of society where poverty, drugs, lack of education and lack of a work ethic are indicators of why they are tangled in the criminal justice system. That is the captive audience theory, which I believe in.

Fulton MacGregor (Coatbridge and Chryston) (SNP): My question goes back to Katy Clark’s line of questioning a wee while ago about reform and how some upcoming reforms, which the committee will consider, could link into the budget process that we are here to talk about.

We will very soon be starting work on the Bail and Release from Custody (Scotland) Bill, which you will be aware of. It is intended that it will make a big impact on the prison population, although we will need to wait to see how it pans out. A bit later in this session, we will see the proposed criminal justice reform bill, which will be on a mixture of various things that have been talked about for a while, as Katy Clark said.

I do not want you to speak about those bills, as such, because they will go through the normal process, and work on the Bail and Release from Custody (Scotland) Bill will be starting soon. Have you any early thoughts—yours or thoughts from discussions with the Prison Service—about how those bills might impact on budgets, or is it too difficult to say, just now?

Wendy Sinclair-Gieben: I am hoping that the Bail and Release from Custody (Scotland) Bill will lead to a reduction in budget because there will be alternatives for decision makers such as putting tags on people, bail hostels or residential rehab, so that people do not have to go to prison. All those are cheaper options, so I hope that the bill allows the possibility of reducing the budget properly.

I have not done any of the financial working on that: frankly, I do not have the time or the expertise. However, to me, it is self-evident that, if we can reduce the remand population and increase the bail and tag populations, we will achieve an overall reduction in the budget. I am therefore broadly in favour of that approach.

Fulton MacGregor: The Government seems to be moving in that direction; we will scrutinise and vote on the bill as it comes through Parliament shortly. Has the flat cash settlement come too early for that bill's operation, or is there a hope that it could, inevitably, reduce the budget, which is perhaps why there is a flat cash settlement for the Prison Service?

Wendy Sinclair-Gieben: Would not it be wonderful if that bill could reduce spending enough that the settlement was flat cash for only one year? I have not done an impact assessment, and I do not think that anybody else has done one. It needs to be done. I think of justice as a pipeline: I ask, when something is put in at one end, where the impact will be further down?

The problem with alternatives to remand is that the return on investment will not be fast enough for a flat cash budget. That is what worries me.

Fulton MacGregor: Thank you for that.

Convener, I have another area of questioning, but I do not know whether you want me to do it just now, or—

The Convener: Maybe we should wait until later, if it is on a separate issue.

Fulton MacGregor: It is.

The Convener: Okay. I will bring you in later. I now bring in Russell Findlay, then I will come in with some questions about efficiencies.

Russell Findlay (West Scotland) (Con): I will continue the line of questioning on Greenock prison. You said something along the lines that, if you go back in there and it is in the same condition as before, you would bring the HSE with you. You then suggested to Jamie Greene that, if it was particularly bad, you would be willing for the prison to be closed down, if need be. Does the HSE have the power to do that?

Wendy Sinclair-Gieben: It does, I think; however, I am not able to say under which regulation. I would need evidence to back up my recommendation, which is why I would need the HSE.

Russell Findlay: Is that the first time that you have even considered the likelihood of having to close a facility?

Wendy Sinclair-Gieben: Yes.

Russell Findlay: Why has it got into such a poor state?

Wendy Sinclair-Gieben: I am not sure why. When I spoke to the facilities maintenance manager at the last inspection of Greenock, he was not sure, either. There is a problem with damp coming through the walls, and they do not know why, or why they cannot stop it. They have put huge effort into all sorts of technical solutions to identify why it is happening.

Russell Findlay: I spoke to a prison officer who echoed much of what you said about the state of the facilities at Barlinnie. They speculated about how much money is currently being spent on it. You might have referred, in passing, to how much is being spent on keeping it functional. Do you have figures? Is that throwing good money after bad, or is there no real option and nothing else that can be done?

Wendy Sinclair-Gieben: I do not have the figures. Any figures that I had would be phenomenally out of date. Yes, the reality is that, at the moment, that is throwing good money after bad. However, there is no option. Nowhere else in the prison estate could cope with the numbers, if Barlinnie were to be closed. In addition, it is a well-run, well-organised and slick operation. We have to wait for HMP Glasgow to be ready.

Russell Findlay: When is that expected?

Wendy Sinclair-Gieben: In 2026.

Russell Findlay: Is that likely?

Wendy Sinclair-Gieben: It is likely to slip to 2027.

Russell Findlay: Convener, may I also ask about Kilmarnock?

The Convener: Yes.

Russell Findlay: I will quickly summarise what you have said about Kilmarnock prison. It is being transferred into public ownership. Currently, it is very well run. You believe that the decision was ideological.

Earlier this year, I had a conversation with some prison officers who represent staff at Kilmarnock. They said that it costs in the region of £20,000 per annum to keep a prisoner there, whereas it costs about £38,000 to keep a prisoner in the public estate. They also said that Serco had offered to build a 300-bed replacement facility as part of a continuation of the contract, but the Government rejected that. They could not understand the logic behind that.

Is the deal done, or is there any way of going back on it or revisiting it?

Wendy Sinclair-Gieben: I feel very awkward because I am an ex-Serco member of staff.

There is, of course, a way of going back on that. Given that you are looking at a flat cash budget for three or four years, you could delay the transfer for three or four years. You would need to negotiate with the special purpose vehicle and Serco to do that. That would not negate the belief that it is the right thing to do, but you could delay that while you have financial concerns.

Russell Findlay: So, given the extreme budget realities that the Scottish Prison Service faces, that is doable. It is possible to pause the transfer, at least in the short term.

Wendy Sinclair-Gieben: Yes.

Russell Findlay: You have referred to Audit Scotland and the cost of the transfer. Aside from staff wages, one cost that has been overlooked is pension costs. Are you able to quantify that in any way? Have you spoken to Audit Scotland directly about that?

Wendy Sinclair-Gieben: Yes, I mentioned that to Audit Scotland because I felt that it should be looked at. When we have a fiscal challenge, any costs need to be examined.

Let me explain why the transfer will cost so much. Private sector staff, in particular in Serco—I used to work there—work 40 hours a week. Prison Service staff work 37 hours a week. That is a three-hour shortfall. To put the staff on to Prison Service terms and conditions, more staff will be needed to cover the three-hour shortfall.

Private sector staff get free meals. You will have to buy that out. Their children get Christmas parties. You will have to buy that out. You will have to replace all the uniforms and the information technology. You will have to rebrand the place. You will have to train every member of prisoner-facing staff. Private sector staff cannot use batons, but prison officers can and must be able to use them. You will have to put all that training in place.

If Kilmarnock prison runs on lower staffing levels than the unions would like—I cannot speak on their behalf—you might get a demand for additional staff on top of the staff whom you will have to get because of the three-hour gap. Private sector staff also have shorter holidays, so you will have to cover all of that.

That is where the costs come from.

Russell Findlay: This is probably impossible, but can you provide a figure?

Wendy Sinclair-Gieben: No. You will need to get that properly costed. To pluck a figure out of the air, I think that you are looking at £10 million to £12 million. Although that is not a huge amount in

the overall prison budget, it is a lot. Remember that, when you have a design, construct, manage and finance—DCMF—contract, you are buying the building as well. There has been a 25-year mortgage so, when you look at costs, you need to bear in mind that mortgage capacity.

Russell Findlay: I will make a final point on that quickly.

The Convener: Very quickly, because there are a number of other questions.

Russell Findlay: Serco is offering to build a new facility, but I presume that, if the transfer takes place, given the budgetary issues, there will not be a new facility.

Wendy Sinclair-Gieben: I think that, if the Prison Service wanted it, it could pick up the facility. The problem is that it would have a mortgage cost included in it.

Collette Stevenson (East Kilbride) (SNP): I will touch on what Russell Findlay said about the transfer of Kilmarnock prison. Forgive me if I am wrong on this—perhaps you could clarify it, Ms Sinclair-Gieben—but if the private staff from Serco were to be transferred over to His Majesty's service, would pension costs be involved? I am certain that, when staff are moved over under the Transfer of Undertakings (Protection of Employment) Regulations, pensions are ring fenced so that they are outwith TUPE. It costs significantly more for such pensions to go into public pension schemes.

10:45

Wendy Sinclair-Gieben: That would certainly add to the costs—you are absolutely right.

Fulton MacGregor: I want to follow up on Russell Findlay's line of questioning. That would almost create a conflict. The committee and the Government will want to try to find ways to save costs, but many of the cost implications of the transfer seem to be for factors that most of us would support. You mentioned offering more training, better holidays and better pay. As politicians, we would want to support those aims. In the interests of time, I am really just looking for your comment on that point. I can see that you have been considering it.

Wendy Sinclair-Gieben: I think that the pay is comparable. We asked staff at Addiewell about that just yesterday. From memory—do not quote me on this—they said that the pay for a basic grade prison officer there is the same as that offered by the Scottish Prison Service, or comparable—that was the word that they used.

Fulton MacGregor: When many of the projected cost implications relate to improvements

to people's working lives, it is difficult for us to be against them.

I, too, have heard that Kilmarnock prison is very well run. That is worth noting.

The Convener: I will bring in Katy Clark, who will pick up on the private prisons aspects.

Katy Clark: Some of what I was going to ask about has already been covered.

Is it fair to say that the main reasons for Kilmarnock prison's being cheaper to run are the staff terms and conditions and the staffing levels there? You said that the pay might be comparable but that some of the other terms and conditions might be less beneficial for staff at Kilmarnock than for those in the mainstream prison estate. My understanding of the staffing levels at Kilmarnock, based on what I have heard, has always been that they are poor, particularly at night. Therefore, the reason for its being cheaper to run is that it employs fewer staff in addition to those staff having poorer terms and conditions. Are those the main reasons? I ask because you obviously have a level of knowledge about the place, given your previous role there.

I have a further question about Kilmarnock prison, but perhaps you could respond to that first.

Wendy Sinclair-Gieben: Sure. I cannot talk about the pay with any accuracy, but staff there certainly have a longer working week—by three hours or so—and fewer holidays. There is no question about that. As for staffing levels, we must remember that it is a modern prison. I know that it is not modern any more, but it was when it was built.

Katy Clark: It has closed-circuit television and so on.

Wendy Sinclair-Gieben: Comparing the staffing levels for a modern prison with those for a Victorian one would be unfair—it would be like comparing apples and pears. Although the staffing levels at Kilmarnock prison might appear low, you would have to compare them with those at Low Moss and Grampian rather than try to compare them with those of any other prison.

Katy Clark: That is because it has technology such as CCTV in place. I understand your point.

You might know about the staff contracts for Kilmarnock, and perhaps about those for the other private prisons. We have been told—this has also been my own understanding—that guaranteed cost of living increases are built into such contracts. Given the challenges that we now face across the prison estate because of the size of the proposed budget cuts, will the private sector prisons have a level of protection from those while the mainstream estate will have to bear a greater

share of them? Is that your understanding of how things are likely to operate?

Wendy Sinclair-Gieben: Yes.

Katy Clark: That is helpful to know.

The Convener: I will come in now with questions about efficiencies. What are your views on whether the Scottish Prison Service has scope to put efficiency savings and measures in place? Those could be through, for example, investment in alternatives to custody, which we have already discussed, or spend-to-save projects.

You indicated that you are very sighted on current research on prisons in Scotland, so could you give us your views on whether efficiency savings might not be only about saving money, but could be an opportunity to enhance Scotland's prison estate and bring in some contemporary practice?

Wendy Sinclair-Gieben: I have always been a huge fan of information and communications technology, so when I ran a number of prisons in England I introduced technology into them.

As an example, in the good old days, when you collected keys, there was someone behind a glass door and you would drop a tally down and collect a key and a radio. That required two members of staff and it was done all day, so three members of staff were needed. Introducing the key vend system, which was one of the first things to be introduced, meant that there was an immediate staff saving; the system is also safer.

Then I introduced in-cell telephony in England about 20 years ago—am I that old? Anyway, that is now coming into all the prisons in Scotland, and it is really important in letting people keep in touch with their family. People need to be able to speak to their family at the right time—to say goodnight to their kids, phone their mum in outer Mongolia or whatever—so having in-cell telephony is just common humanity, and it is really lovely to see that coming in.

I think that the next stage should be in-cell computers. I do not mean that people should be surfing the web, but if they start a class in the education facility, they should be able to continue working when they are locked in at night. They could also book their own visits, choose from the menu, buy their own canteen goods or put in a complaint.

Such things also reduce the administrative burden. When we introduced them in one of our prisons, we saved £4,000 a month on paperwork, which was a huge cost saving on stationery. The phones and computers paid themselves off in two years, so they were an investment to save.

There are also other advantages. If a person books a healthcare appointment the nurse could phone them in-cell, ask how they are and triage them over the phone. Social work could talk to people and they could talk back. People could do computer-based cognitive behavioural therapy.

There are huge advantages. The big one is that if a person has been in prison for 27 years and cannot use a smartphone or does not know how to access stuff on the web, they will be in trouble. These days, being able to do your own research and go online to do things is an absolutely essential skill. I sometimes think that just using a washing machine requires a degree in technology now. Technology is therefore one area.

A lot of creativity happened during Covid. One example was that prisoners told us they quite liked being locked up in the evening because they felt safe. They said that they like having enough activity during the day, but in the evening there could be family visits, bearing in mind that a lot of kids are at school and cannot come during the day. It would be better to have actual, purposeful activity at night, rather than random recreation—everybody out playing pool, for example. How many of us do that at night?

Efficiency savings can be made, but they have to be done jointly with other alternatives. If we lock down every prison at night—from six o'clock or seven o'clock onwards, say—people have to be able to use the phone, continue learning and come out of their cell in the evening to see their kids.

Let us look at video technology. On video courts for example, why are we transporting so many people to court who are then not required and have to be transported back? We should look at what technology can do to develop efficiency savings.

The Convener: I have a follow-up question that relates to that—it might stray slightly from the subject of the budget, but I am going to ask it anyway.

You gave some examples of interactions with healthcare staff and prison staff. My slight concern is that, in certain care settings, overdigitising and the overintroduction of technology can sometimes separate staff from people who are in their care. I have personal, family experience of that. I am interested in your views on decision making when it comes to making improvements and efficiencies and, at the same time, maintaining the really important elements in the prison setting, one of which is face-to-face interaction with staff.

Wendy Sinclair-Gieben: Covid was so successfully managed, and people were prepared to tolerate locked-up conditions, not only because it was seen as legitimate—they could see on

television that it was happening to everybody—but because of really good staff-prisoner relationships. That makes a big difference. I would be very concerned if the staff-prisoner relationships were compromised by a flat cash budget.

Do I think that digitisation compromises those relationships? No, I do not. If we remove from the staff the administrative burden of getting the canteen sheets and requests in and transcribing all those on to a computer, and the prisoners do that for themselves, not only do we build personal responsibility but we free staff time from mundane administrative tasks.

One of the things that really needs to be capitalised on is those staff-prisoner relationships, which are about integrated case management and working with people through their prisoner journey and out the other side. When we look at the desistance theory, time and again, people say that they stopped offending because they had a really good relationship with somebody. That made me change my whole life and thinking. Sometimes people say that it was because of a girlfriend, but an awful lot of those good relationships are with staff, so freeing up time for them to do more of the case management and less of the administrative burden is absolutely worthwhile.

I do not know whether you have looked at Lelystad prison in Holland, but it has a pre-release centre that is completely digitally run. It was very cheap to build and is very cheap to run. There are 300 prisoners and three staff, but it works only because, in the previous part of those prisoners' sentences, they had strong relationships with staff. Now that they are on the pre-release journey and on the way out, they need to build relationships with their families and communities, so it is a very different concept.

The Convener: Thank you, Wendy; that is really interesting.

We are almost at the end of the hour but, if you are happy to bear with us, there are more questions that members would like to ask. I will hand over to Rona Mackay, who will pick up on mental health.

Rona Mackay: I would like to ask a wee bit more about health and mental health, which we have touched on.

Your submission states that

“Discussion on alternatives needs to take place between Health and Justice around the safe and appropriate location of prisoners with mental health issues.”

I am thinking particularly about the number of women prisoners concerned, and you have been very outspoken about that. I read a shocking statistic that 80 per cent of women in prison have

brain damage due to domestic abuse. Clearly, prison is no place for them. Can you expand on what you mean by “alternatives” to prison? How can they be achieved, given the current financial pressures?

Secondly, you also said that you approve of “consideration of a dedicated aged care prison facility”,

which, I presume, is to deal with the number of older prisoners in what is an ageing population. Can you expand on that? In an ideal world, what could be achieved? Realistically, given the financial pressures, what can be achieved?

Wendy Sinclair-Gieben: The women’s custody units are a huge step forward, and Scotland is going to be really proud of them. A number of people—for example, the chief inspectors of prisons in England and Western Australia—are asking to come and see the units. They are delighted that we have got that far and they want to come and see them in action.

If you visit a prison and go down to the segregation unit, you will see significant evidence of mental ill-health. Whether those people are capable of being treated is not a decision that we can make; it is clearly a clinical decision. However, you do not have to be anything other than a compassionate human to go and see for yourself. The number of prisoners with mental ill-health who are being held in segregation is really disturbing in many ways.

11:00

I have always felt that we should be able to have a step-up, step-down facility for mental health, which would be something between a prison and a state hospital, or somewhere in a prison that would be—to use the old-fashioned term—an asylum for people who are mentally unwell and cannot cope in the community or in prison. There needs to be some thinking about that, and we also need to think about whether it could be a cheaper alternative.

Mental ill-health is worrying. There appears to be a massive problem in the national health service in relation to waiting lists and beds for those with mental health problems, and the safe option for the community is that those people end up in prison, which is sad.

Rona Mackay: What would you like to see put in place for women who do not have severe mental health issues but who clearly need holistic care, so that they do not automatically go to prison for more minor offences that are caused by mental health issues? They need care, but not necessarily in what are serious institutions.

Wendy Sinclair-Gieben: There really needs to be a step-up, step-down facility that caters for that precise group of people, of whom there are vast numbers in prison. Prison is expensive, as is psychiatric care. We could have a step-up, step-down facility, like the old-fashioned bail hostels, where people are supervised and supported. The family rehab centre for substance misuse will, inevitably, also have people with mental health issues, because comorbidity is a huge issue. That centre is a huge step forward. Hooray—let us get that going as something else that we can be proud of.

Rona Mackay: A number of third sector agencies do a lot of good work with women, particularly when they are being released from prison.

Wendy Sinclair-Gieben: They do.

Rona Mackay: The other part of my question was about the dedicated aged care prison facility. Are you suggesting a separate prison for older prisoners?

Wendy Sinclair-Gieben: Yes. The reality is that the vast majority of aged care people are there because they are on longer sentences and are ageing in prison—more historical sex offenders come with long sentences. It is a real problem, so there is a need to recognise that we must deal with it. If a person is wheelchair bound and has dementia, I am not wholly sure that they need the very secure confines of a prison; there could be an alternative.

Rona Mackay: You talked earlier about radical prison reform. Would you see that as a core part of it?

Wendy Sinclair-Gieben: Yes, very much so.

The Convener: Does Jamie Greene want to come in on that?

Jamie Greene: I think that Rona Mackay has covered it. I did have a question about your comment about having a separate prison for those with physical medical difficulties. We saw some of that in practice when we went to Saughton, where we saw how difficult it is and how the modifications that are needed in old buildings mean that a dedicated facility might serve that purpose better. However, if we are not building prisons in Dumfries or Greenock, it is hardly likely that we will start building for specific cohorts.

Wendy Sinclair-Gieben: However, we could convert areas of prisons or look at putting a fence around an old people’s home. It is about that kind of thinking.

Jamie Greene: That is radical.

Wendy Sinclair-Gieben: People who are physically disabled or have dementia, or both, are

hardly likely to escape, so do they really need high security prisons? I think that there are opportunities.

Jamie Greene: Unfortunately, Covid taught us that many care homes felt like prisons for many of their patients.

We are talking about pre-budget scrutiny and, in your opening comments, you mentioned not just prisons—although we have focused our comments on them—but the wider justice sector. All areas of the justice sector face the same potential outcomes; that applies to community justice, the police, the Crown Office and other stakeholders, who are all cogs in the wheel.

If we end up with the Government finding extra money to give to some of those services, on the back of evidence that has been heard in this committee, it is likely that much of that will simply get sucked up in pay rises, because pay is the largest source of outgoings for many such organisations. Do you have any concern that, even if we are not looking at flat cash and there are some additional year-on-year rises in their budgets, all of that will indeed be sucked up through negotiations with workers, or to avoid industrial action—which there is potential for across the board—and none of the good things that any of them wants to do will happen, even given such an increase in the budget? What is your advice to Government about that?

Wendy Sinclair-Gieben: I do not have such a concern, because there is a committed collection of people who are intent on justice reform. Community Justice Scotland, the Scottish Courts and Tribunals Service, the Crown Office and Procurator Fiscal Service and the police are all keen for justice reform. They would all like the remand figures to go down, people with a mental illness to be handled differently and the prison population to come down, without in any way inhibiting the ability of the police to catch and convict or the ability of sheriffs to send dangerous people to prison.

Covid had the advantage of developing creativity. If we let that creativity run, and if we look at four or five costed options that will reduce costs but bring about better facilities, I really think that that can be achieved.

Jamie Greene: The problem is that much in the upgrades or improvements that those people are asking for costs money, and will require a capital budget that very few of them believe they will get. With all the good will in the world, an increase in the resource budget will keep people happy, but it will not necessarily be invested in the things that they need. That is the concern.

Wendy Sinclair-Gieben: There are ways and means around that. There are times to look at the

third sector and times to look at what we already have and how it can be repurposed. It requires a radical rethink. A think tank could be got in and, at the end of two days, could come up with three or four ideas that get costed. It is possible to repurpose what we have in a cheaper, more cost-effective and better system.

The Convener: Collette Stevenson has some questions about transport.

Collette Stevenson: In your written submission, you touched on the current contract for the prison transport service, saying that

“the ... cost model is no longer fit for purpose.”

You mentioned, for example, court backlogs, increased hospital bed watches and virtual courts. Will you expand on that and on what we can do better?

I understand that the current contract is for eight years. Getting out of that contract would be an efficiency in itself, if you like. Will you explain and expand on that?

Wendy Sinclair-Gieben: Currently, GEOAmeY is failing. It is as simple as that. I am not saying anything that everybody does not know. It is failing in the number of hospital escorts that it is not achieving, the number of times that it is late at court and the number of inter-prison transfers that it is not achieving. I worry about the hospital appointments that are being cancelled. That has the potential to be very dangerous. The Prison Service is picking up on that. It will have to look—and it is looking—at the contract to see what it can do.

GEOAmeY is struggling to recruit and retain staff. It is down by so many staff that it cannot run the service. Unfortunately, it is seen as a stepping stone to the police and the Prison Service—it trains up staff, who become really good and who then disappear. I do not envy it. It has every intent to do as well as it can, but it is not succeeding at the moment and has not done for some time. Its performance has been very much a sine wave, which is worrying.

If the contract is not working, there has to be a plan B. The contract will allow for a plan B, so the Prison Service will have to think carefully about what that plan B will be. It will have to think about whether it will step in and take over the management of the service, cancel the contract or amputate various services and run them itself and about how much each of those options would cost.

The Prison Service is considering that now because GEOAmeY and the SPS want to improve service delivery. It is not just a single problem. You can fine GEOAmeY all you like but, if it still means that the hospital transport is cancelled, the impact is huge. Therefore, they are looking at the issue

together to try to resolve it. There are contractual ways and means to make that happen.

Collette Stevenson: I know from being an ex-independent prison monitor and picking up some casework to do with—

Wendy Sinclair-Gieben: And a good IPM, by the way.

Collette Stevenson: Thank you—taught by the best, believe you me.

A few of the cases that I picked up were to do with transportation. You mentioned the ageing demographic of the prisoners. When they are transferred—if someone is in Shotts and has to go up to court in Inverness, for example—they are stuck in a cage in that transport and could be sitting there for quite a length of time. How can that change? What is the impact on their human rights?

Wendy Sinclair-Gieben: It is huge. Unfortunately, we are in the middle of looking at that. We are developing a series of case studies of concern, such as a 16-year-old being held in a van for five hours before he gets to Polmont at 10 o'clock at night or a woman being transported up to Wick for a five-minute court appearance and then back.

The continued growth of video courts is one of the options to address that. It has to be. I know that there is some reluctance about that but, if you talk to prisoners—the ones I can speak to; I cannot speak to the ones who walk in off the street—it is clear that they much prefer going to a video court than having to get up early in the morning, travel in a van, sit around in a court custody unit for a five-minute court appearance and then travel back in a van. They just do not like it.

I know that there are some barriers to using video courts. I know that the defence briefs would rather speak to the accused face to face and be there beside them in the court. Depending on the diet—obviously, if it is a solemn jury stage, they would need to be there in person—you could radically reduce the amount of prisoner transport by greater use of video courts.

Collette Stevenson: Do you know offhand the cost of the contract for GEOAmev?

Wendy Sinclair-Gieben: No, but I think that it is a matter of public record. I think that you can look at it.

Russell Findlay: I have a question about your submission, which refers to a growing cohort of prisoners from serious organised crime groups. That brings about particular problems, not least the pressure that is brought to bear on staff to smuggle contraband, the risk of increased

violence and the need to keep such prisoners apart. My understanding is that, at the moment, two organised crime groups are sent to two separate prisons, but your submission calls for consideration of

“an SOCG strategy for accommodation.”

What might that look like and what has been the SPS's response to your suggestion?

Wendy Sinclair-Gieben: Absolute agreement. It is considering the matter right now. It is taking its top security people and the prison governors and looking at exactly what can be done. Although the situation currently concerns two major crime groups, that could expand to three or four and then what would we do? The numbers are growing.

The SPS is looking at the model in England—I think that it is called MARSOC. It has also asked its research teams to look abroad and see what other countries are doing. It is taking the matter seriously and taking the suggestion forward.

England has a huge number of prisons. When the English first hit very serious offenders, they developed what they called the dispersal system so that those offenders were dispersed into an estate with highly trained staff who had higher security levels. Scotland does not have the breadth of establishments that would allow us to have a dispersal system, but the SPS certainly needs to have a serious and organised crime strategy and it is developing it.

Russell Findlay: Just for clarification, what is MARSOC?

Wendy Sinclair-Gieben: I think that it stands for multi-agency response to serious and organised crime.

Russell Findlay: Right. I was not sure whether it was a word or an acronym.

11:15

The Convener: Finally, Fulton MacGregor has a question about the interchange with justice partners.

Fulton MacGregor: I was not sure whether you were going to bring me back in, convener, given that Wendy Sinclair-Gieben has already touched on this issue in response to earlier questions.

Throughout the pre-budget scrutiny process, I have been asking other panellists about the interplay with other agencies. I know that you have touched on this already, but if everyone—the Prison Service, the police, community justice and so on—gets a flat cash settlement, what impact will that have on the SPS budget?

Wendy Sinclair-Gieben: That is an interesting question. When we look at the criminal justice board and all the other aspects that work together—and they really do work together—the Prison Service can often be hidden at the bottom of the pile. It is not as big or as visible as the police, which can make things difficult, but with everyone coming together and beginning to look at the whole process and issue, it is no longer the poor relation in the justice field. That is wonderful, and I think that it will achieve what it needs to achieve.

Fulton MacGregor: Thank you.

The Convener: I will just bring the session to a close—

Wendy Sinclair-Gieben: Can I make one last comment, convener?

The Convener: Of course.

Wendy Sinclair-Gieben: I would appreciate it deeply if you recognised that I cannot speak on behalf of the private sector and that we are completely neutral on this.

The Convener: That is noted and on the record. Speaking of information on the record, I should also highlight that the reported cost of the eight-year contract with GEOAmev for prisoner escort services was £238 million.

I thank Wendy Sinclair-Gieben for a very informative evidence-taking session. If members have any other questions that they wish to ask, we can follow them up in writing.

We will have a short suspension to allow the witness to leave.

11:17

Meeting suspended.

11:26

On resuming—

National Care Service (Scotland) Bill

The Convener: Our next item of business is to review the evidence that has been submitted to the Health, Social Care and Sport Committee on the National Care Service (Scotland) Bill and to decide whether we wish to take further evidence. For example, one of our options is to schedule a one-off evidence session on the criminal justice-related provisions of the bill. I refer members to paper 4.

Do members have any comments on the proposal to run an evidence session? Do you agree that that would be appropriate?

Russell Findlay: Given that one in five of the written submissions to the lead committee relate to criminal justice, it makes perfect sense that we should take a proper look at it.

The Convener: Members are indicating agreement. Fulton?

Fulton MacGregor: I agree with that as well. It would certainly do no harm for this committee to look at the issues. We might need to have a wider conversation about how we feed back to the Health, Social Care and Sport Committee, but, given that community and criminal justice comes under our remit, it is appropriate for us to hold a one-off session.

The Convener: Thank you, Fulton. As no other member wishes to comment, I confirm that we are happy to have arrangements put in place for a one-off evidence session. I will ask our clerking team to assist with that.

Correspondence

11:28

The Convener: Our next item of business is to discuss recent correspondence that the committee has received. I refer members to paper 5, in which the clerks have suggested some ideas on how we might take forward the various issues that are highlighted. If members have specific comments on or suggestions in regard to either pieces of correspondence, please come in.

I will take each letter in turn, starting with the one from the Cabinet Secretary for Justice and Veterans on facilitating peaceful assemblies in Scotland and the work that the short-life working group has done on that. Do members want to make any points, or is the committee happy to note the letter's content?

Collette Stevenson: Obviously, that is a big issue in central Scotland compared with elsewhere, in light of the sectarianism that goes on there. I know that it is quite significant even in East Kilbride.

11:30

One thing that I want to note is that some civic and interfaith groups—the local chapel and churches are involved, for example—are working together to set up activities that are aimed at stopping sectarianism in schools. The groups have approached community councils and local authorities to seek more funding to deliver those to pupils in first and second year, because it is a big issue.

I know that I am slightly digressing from the issue of marches and parades, but all aspects of sectarianism have an impact. Those groups use a good model: they transport pupils to different areas or they teach them about the impact that sectarianism has.

In relation to the letter, I want some clarification on where the Government is trying to move the model to.

The Convener: Thanks, Collette. I do not think that there is anything wrong with highlighting some of the good work that is going on in communities.

Jamie Greene: I thank the working group for its work on a difficult and sensitive issue, not least for members who represent communities in the west of Scotland.

It is unclear from the letter what will happen next around some of the proposals. I have concerns about the suggestion that decisions will be taken at microlocal level. I also have concerns about whether local authorities will have new or specific

powers in relation to marches and processions, and about what the consequences of that might be. We could have quite disparate outcomes, with certain types of marches allowed in one part of the country but not in another, for example. That would leave matters open to the vagaries of how different councils operate, depending on whether, for example, they are more member led or official led. We also need to bear in mind that councils come in different shapes, sizes and political colours.

I would like to get a bit more information, as it is a little unclear from the cabinet secretary's comments whether he supports the proposal to give more powers to local authorities. He only says:

"I am keen to explore what, if anything, is possible and desirable"

in relation to the working group's conclusion on that.

The cabinet secretary uses the phrase

"improvements could be best handled by local partners",

but the letter does not state who those local partners would be and what statutory roles they would play in making decisions.

Some people are disappointed that we will not have a Northern Ireland-style parades commission. I understand that the number of parades that take place is much lower in Scotland than it is in Ireland, but the consequences are often not dissimilar.

I ask that we are kept up to date on the issue. I would find it really helpful to get from the cabinet secretary any information on the Government's direction of travel.

The Convener: Okay. Thanks, Jamie. Like you, I certainly got the impression that local management and participation in decision making around processions and parades is where the cabinet secretary is coming from. I mentioned to colleagues earlier that the issue is not as significant in the north-east as it is in other parts of Scotland. However, what has been suggested makes sense to me, so thank you for your comments.

Jamie Greene: I will just add that, if the process is revised, it is unclear who the ultimate arbiter would be or what appeals process would be in place if, for example, organisers of such events felt that a decision had been made wrongly at local level. If there is no national consistency, how would that be presented at local level? Those issues need to be cleared up.

Fulton MacGregor: Obviously, the letter and the work of the working group were about parades, specifically. However, people feel that

some of the disruption to the community is sectarian, so the work is part of another attempt to address that stain on Scottish society, although, ultimately, it has led to no firm conclusions. In that regard, there is likely to be disappointment. However, there is likely to be understanding of that, too—when I heard about the working group, I thought that that might be the outcome.

I am a wee bit disappointed that the working group and the cabinet secretary's response were focused on Glasgow. Although that is right because everybody from anywhere in Scotland would know that Glasgow is the most impacted place, Lanarkshire must be a very close second. Reference is made only to "some Local Authorities". Possibly, that does not take into account the impact that sectarianism is having on communities such as Coatbridge, Airdrie, East Kilbride, Motherwell, Hamilton and Larkhall. Maybe that could have been recognised a bit more.

Local authorities, the police and others are doing all that they can to achieve a balance between observing human rights, including the right to parade, and preventing disruption to communities. If we are to move forward, we must continue supporting our local partners.

Those are simply comments rather than points for action, convener.

Rona Mackay: I would like a wee bit of clarification, too, including on Jamie Greene's points about other parties, as well as on the timescales. How long will it take to come to a conclusion? It is a wee bit vague.

The Convener: That is fine—thank you for that, Rona.

I am happy to propose that we write to the cabinet secretary to raise those matters. In his letter to the committee, he said that he will write to us again

"in due course to update ... on progress in taking this work forward",

but there would be no harm in our going back in the interim and raising members' specific points. Is everyone content to do so?

Members *indicated agreement.*

The Convener: The second letter that we received is from the Solicitor General on the Rangers Football Club case. Members will see the recommendation that has been made in our papers, but I will open up the discussion to allow you to comment.

Russell Findlay: It is worth noting that the letter has been with us for almost two months but that we have been unable to refer to it until now. Its contents cover the latest twist in the malicious

prosecution scandal. I was interested to read the confirmation that £15 million has been paid to the administrators but that that has been done with "no admission of liability" by the Crown Office and Procurator Fiscal Service.

Last week, we heard from the interim Crown Agent, John Logue, who said that the pay-outs now stand at £51 million. We should put it on the record that the £15 million mentioned in the letter is part of that £51 million rather than on top of it. Mr Logue also confirmed that the Scottish Government has effectively signed a blank cheque for any future pay-outs. Of course, that has happened against a background of warnings about extreme budget cuts being made across the justice system. It is also worth noting that we were told about the £15 million pay-out only because it had been reported by a newspaper.

The entire scandal has spanned the reigns of three Lord Advocates, starting with that of Frank Mulholland and moving on to that of James Wolffe and now that of Dorothy Bain. It has caused significant reputational damage to the Scottish justice system. However, there appears to be a strange and worrying lack of meaningful contrition, explanation and accountability. Should we consider calling the two previous Lord Advocates to give evidence about what has happened?

The Convener: Okay. At the end of the meeting, I will come back to members who have raised specific points.

Pauline McNeill: If ever there were to be a case for changing the rules of privilege in the Scottish Parliament to include questions that are sub judice, it would be this one. I understand why it is so, but I do not think that it is good enough that we cannot get accountability for the decision. I agree with Russell Findlay that the case has brought the Crown Office and Procurator Fiscal Service into complete disrepute. We have been unable to ask any questions and it is now a long time since that all happened. I am beginning to worry about the quality of the answers that we will get.

I totally support the notion that, whenever we can do so, we should ask the Lord Advocates to come to the committee. The committee needs to be the body to question the Crown Office on how such a decision could ever come to pass. Who else will do so? The money is an issue to some extent, but at the heart of the matter is the question of why our Crown Office and Lord Advocate took a decision that, on the face of it, now seems highly questionable and which has been described as involving a malicious prosecution against the directors concerned. We need answers on what was behind that decision. The sooner we can get those, the better.

The Convener: Thank you very much indeed. Does anyone else want to come in?

Jamie Greene: I will briefly recap an issue. The letter almost implies that £15 million is the settled amount, but the figure is nowhere near that, and nor is £51 million necessarily the end of it. At the end of her letter, the Solicitor General stresses that “proceedings remain live”; there might be other discussions and the £51 million is certainly not a cap on the liability.

On the financial side of things, it was helpful that the Crown Office made it clear last week that the money was not coming from its budget at a time when such budgets are under such pressure or are facing cuts. However, the question remains as to where the money is coming from. It is all very well saying that the Scottish Government will underwrite it, but which bit—which directorate—will do the underwriting? Does the Government take out insurance on such matters? At a time when ministers are keen to stress how difficult things are for it financially—which I totally understand—it is perfectly reasonable for us to ask where £50 million-plus of public taxpayer money will come from to subsidise the payment to the claimants.

Aside from the money—which is an important issue; it is actually a hell of a lot of money—there are other questions that lie alongside all this and which we have never really got to the bottom of. Why were the decisions taken in the first place? Why has no one ever been held to account? Russell Findlay mentioned that, too. A huge amount of taxpayer money has been spent, but, to my knowledge, no one has lost their job or properly apologised. A number of individuals have, rightly or wrongly, become overnight lottery winners as a result.

The Government must accept that, to restore trust in the Crown Office and its independent decision-making process, even with regard to historical decisions, some form of inquiry that is as independent as it can be must be held at some point. Whether that should happen in this parliamentary session or the next, I do not know, but I do not think that that faith can be restored until those questions are answered.

The Convener: Thanks, Jamie. Do you want to come in, Rona?

Rona Mackay: First of all, an inquiry would cost more money, so are we just going to add to what has already been lost? I am struggling to know what the committee’s purpose is here. Do not get me wrong—I am not disputing what has been said about accountability and all the rest—but, given that this is a complicated issue that goes back a bit and given where we are with it, is there

anything that we can usefully add? Those would be my thoughts.

Russell Findlay: It is worth noting that the Scottish Government has already committed to having an inquiry, to add to the proliferation of inquiries that we have already and which are costing a small fortune in themselves. Could the committee, in advance of an inquiry ever happening, seek evidence from and speak to those directly involved? I do not think that we should rule out anything like that—it is perfectly within our gift.

The Convener: Thank you very much, everyone. Those comments have been helpful, and it is important to get members’ views on the record.

I very much recognise the concerns that members have expressed about what went wrong, and I note that Ruth Charteris says in her letter that she is very committed to supporting

“future public accountability, including the expectation that there will be a form of judge-led inquiry in due course.”

My view is that we should wait for the outcome of that and perhaps find out a little bit more about the timescales for it.

In response to Jamie Greene’s point, it is important that we seek some reassurance about who is paying for all this. I note that the cabinet secretary is coming next week, and we might be able to ask him some questions in and around the issue.

That would be my proposal at the moment. Are we agreed?

Members indicated agreement.

The Convener: That completes our public business. Our next meeting is on Wednesday 16 November, when we will hear from the Cabinet Secretary for Justice and Veterans as part of our pre-budget scrutiny and in relation to the United Kingdom Government’s Northern Ireland Troubles (Legacy and Reconciliation) Bill.

As previously agreed, we now move into private session.

11:45

Meeting continued in private until 12:49.

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