



OFFICIAL REPORT
AITHISG OIFIGEIL

Criminal Justice Committee

Wednesday 8 February 2023

Session 6



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CRIMINAL JUSTICE COMMITTEE

5th Meeting 2023, Session 6

CONVENER

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

DEPUTY CONVENER

*Russell Findlay (West Scotland) (Con)

COMMITTEE MEMBERS

*Katy Clark (West Scotland) (Lab)

*Jamie Greene (West Scotland) (Con)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

*Pauline McNeill (Glasgow) (Lab)

*Collette Stevenson (East Kilbride) (SNP)

*attended

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 8 February 2023

[The Convener opened the meeting at 10:00]

Budget Scrutiny 2023-24

The Convener (Audrey Nicoll): Good morning, and welcome to the fifth meeting in 2023 of the Criminal Justice Committee. We have no apologies this morning, and our first item of business is consideration of the Scottish Government's response to our pre-budget scrutiny report. I refer members to paper 1.

I intend to allow about 25 minutes for this session, and I will open it up to members for discussion and agreement on any follow-up, as required. In the spirit of efficiency, I start by asking Russell Findlay for any comments that he would like to make.

Russell Findlay (West Scotland) (Con): Convener, could you come back to me, if that is okay?

The Convener: I can. Collette?

Collette Stevenson (East Kilbride) (SNP): I am fairly okay in terms of the capital budget. I would like to get clarification on that, particularly in the light of the fact that HMP Greenock is a cause for concern, given what we have heard previously in evidence sessions. Apart from the capital spend, I am fairly comfortable with everything else.

The Convener: Okay—thanks very much. Jamie?

Jamie Greene (West Scotland) (Con): I have a few different items to discuss, but I do not want to impinge on other members' opportunities to speak. Perhaps I can kick off the conversation on some of them, at least. The first one is the cabinet secretary's response in relation to the budget for the Scottish Police Authority and police budgets. I want to probe a little bit into that.

There is quite an important clarification from the cabinet secretary about the part of our report on police budgets. When we took pre-budget scrutiny evidence, it was made quite clear to us that there would be a direct knock-on effect on police numbers in proportion to a flat cash settlement or a real-terms cut in the budget, depending on how you phrase it. It is an area I probed into quite vociferously. In the cabinet secretary's response, he writes that, in the committee's report,

"you stated that I said that I have no intention of cutting police officer/staff numbers."

We put that in the report in the context of the evidence that we took that there would be a reduction in front-line officers or back-office staff. The cabinet secretary has replied that he thinks that that is an "inaccurate reflection" of what he said.

I need to look at our report to check what we wrote, but that was certainly the essence of what he said in committee. We might have misquoted him, or he might think that we did, but that was very much what I thought he said. I believe that other members thought that as well, which is why we put it in our report. The cabinet secretary has come back and said that, actually, what he said was that he had

"no intention of overseeing a budget for the police force that results in 4,000 officers leaving."—[*Official Report, Criminal Justice Committee*, 23 November 2022; c 12.]

That is welcome, as that is not a position that any cabinet secretary would want to be in, but that seems to fall quite short of a commitment that there will not be a reduction in police officer numbers. It is unclear whether that leads us to surmise that there is a potential reduction in officer or staff numbers and whether, if that were to be the case, the cabinet secretary would be content with that, given that he has watered down his position.

I appreciate that the next part of the cabinet secretary's response says that an additional £80 million of resource has been allocated to policing. I presume—and this can be clarified—that that is resource budget and not capital budget. It is unclear whether that is intended to meet any percentage pay rises that are asked for or settled on, given that we do not know the final outcome of negotiations on that.

My fear is that, even with the £80 million, we do not have evidence of what it will translate to. If the £80 million just gets swallowed up in an inflationary pay rise, we will be left with a static number of police officers. If that amount is not enough to cover any pay rise, there will still be a reduction in the number of police officers; we could still lose front-line police officers. That situation needs to be looked at percentage by percentage, by which I mean what would pay rises of 4 per cent, 5 per cent, 6 per cent and 10 per cent look like?

It is a matter of concern, and it is not clarified by just chucking a number into the response and diverting away from it by saying that those are operational matters for the chief constable. Although they are, we should be evidence led when we scrutinise budgets, and I do not see how we can marry up that statement. There might not be 4,000 officers leaving, but a substantial number of officers still might leave. I do not know what effect the money will have, where it will go in the

service or how it will be spent. It is a bit late, now, of course, but the letter has provided more questions than answers.

I have other comments on other parts of the response—specifically around the Scottish Prison Service and legal aid—but I will stop there in case other members want to talk about the police budget.

The Convener: Thanks, Jamie. I will come back to the issue of the wording in the cabinet secretary's response to our report. Rona Mackay has her hand up, so I will go to her first.

Rona Mackay (Strathkelvin and Bearsden) (SNP): I have a supplementary question. I understand what Jamie Greene is saying, but I think that he is overthinking it a wee bit.

We would need to see the *Official Report*, but what was said in the committee's report could have been taken out of context, slightly. It is perfectly reasonable for the cabinet secretary to say that those are operational matters and that he would not take control of them. I think that that is what it is about, but I appreciate that Jamie would like more information about where the money will go. However, that is surely up to the chief constable.

The Convener: While we are on the subject, my interpretation of the comments that the cabinet secretary made in his reply, which are at the bottom of page 3 of paper 1 and go into page 4, is that it is more about the interpretation of the wording that was recorded in the *Official Report* of that meeting, which is replicated in our budget scrutiny report. What he said is reflected accurately in both of those documents—the *Official Report* and our budget scrutiny report. However, he referred to the fact that, in paragraph 77 of our report, we paraphrased what he said—as Jamie Greene has noted. My view is that there was no intention to mislead in regard to the exact phrase that he used or to misrepresent what he said in committee. However, it seems to have resulted in him feeling that it was necessary for him to highlight what he felt might be interpreted as an inaccurate account of what he said. It was my intention to raise that with members.

Jamie, you have set out your views on the wider issue of the police budget. Pauline McNeill, would you like to come in on that point?

Pauline McNeill (Glasgow) (Lab): I do not for a minute think that the cabinet secretary intended to mislead the committee. However, I totally agree with what Jamie Greene has said, and I took what the cabinet secretary said to mean the same as what Jamie thought. I was really pleased when the cabinet secretary said that, and what is said in the letter does not make sense to me.

My understanding is that the chief constable said that, if there is a flat cash budget, that will result in about 4,000, or whatever the figure was, people leaving the police force—well, not leaving, but I assumed that that meant people would need to be allowed to leave or that there would be cuts. However, the cabinet secretary rephrased it by writing:

“I said that I had ‘no intention of overseeing a budget for the police force that results in 4,000’”—

that is okay so far—“officers leaving”. Do you see the distinction that I am making? That does not make sense. I thought that the issue was not that 4,000 officers would leave but that we could not fund 4,000 officers.

The Convener: My interpretation of the cabinet secretary raising the issue is that, as Rona Mackay said, it is ultimately an operational decision for the chief constable to make. The cabinet secretary said in the evidence session that he had

“no intention of overseeing a budget for the police force that results in 4,000 officers leaving.”

The concern that the cabinet secretary raises is that the paraphrasing of that statement misrepresents what he said. I do not want to get caught up in the minutiae of what is in our report by way of a paraphrase set against what he actually said. If there are still questions on the budget, I am happy for us to go back to the cabinet secretary with those questions, because it is an important issue.

Stephen Imrie, do you want to come in with anything over and above that?

Stephen Imrie (Clerk): If it helps the committee, I looked into that when we saw the response from the cabinet secretary and have discussed it with the convener. As far as I understand the point that the cabinet secretary is trying to make at the bottom of page 3 of paper 1, in your report—or letter—that you published a few months back, at paragraph 67, you quoted the cabinet secretary directly from the *Official Report*. You quoted the cabinet secretary saying that he had

“no intention of overseeing a budget for the police force that results in 4,000 officers leaving.”—[*Official Report, Criminal Justice Committee*, 23 November 2022; c 12.]

However, in the conclusion of your report, at paragraph 77, the committee paraphrased that with the following statement:

“The Committee welcomes the statements from the Cabinet Secretary that he has no intention of cutting police officer/staff numbers”.

I think that the cabinet secretary's point in his letter to you is that he is not the person who cuts police numbers, and that that is a matter for the

chief constable. He did not want that confusion and wanted to be clear that he had said that he had no intention of overseeing such a budget, whereas we had paraphrased that, perhaps inferring that decisions on police numbers are for him to make, and I think that he was drawing that to the committee's attention. I hope that that helps.

Jamie Greene: I understand what the cabinet secretary has said. I know what we said and what he said, and I know what he is now saying. I do not think that he has changed his position, and I am not accusing him of doing so.

I am less interested in that and more interested in the context and the content of what he says. It is welcome that the cabinet secretary will not preside over a budget that will result in 4,000 officers leaving. Nobody wants to lose 4,000 officers. The inference from our exchange was that there would not be a cut of that nature. Whether the cabinet secretary or the chief constable makes that decision is irrelevant. He goes on to say that he has found some cash in the pot, which, again, is welcome. No one has a problem with that. The cabinet secretary might not be content with presiding over a budget that results in 4,000 officers lost, but I do not know whether he would be content with losing 3,000, 2,000 or 1,000 officers. We do not know that, so there are unanswered questions.

If it is correct that those are operational matters for the police and not the cabinet secretary, we should be asking Police Scotland what the £80 million will be spent on, and whether, in that context, it is still considering a reduction in officer numbers. I say that because officer numbers are at their lowest levels since 2008, so any suggestion that they will drop any further should be a matter of concern for the committee.

The Convener: The key thing there is how the additional funding will be used. That is perhaps a question for Police Scotland as well as for the cabinet secretary. Is that right, Jamie?

Jamie Greene: Yes. It is all about officer numbers. What we want to know—or what we should want to know—is whether we are still looking down the barrel of a reduction in officer numbers, or will there be a flat settlement to maintain officer numbers? Indeed, is there sufficient budget to increase officer numbers? It would be welcome news if that were the case. However, we do not know.

10:15

The Convener: Are members happy that we write and ask those questions? I think that they are legitimate, and we can write to the cabinet secretary and to Police Scotland on those points, if the committee is agreed. Are we agreed?

Members indicated agreement.

Katy Clark (West Scotland) (Lab): Just to make a small addendum to that, I note that it would be helpful to get clarification on the position with civilian police staff, too. In the past, because of the political contention of cutting officer numbers, civilian police staff have taken a disproportionate hit, which has quite a significant impact on the service. Perhaps that could be incorporated in the letter.

We need to make the point that, initially, when we started this conversation a number of months ago, we were looking at cuts to justice budgets in the region of 20 per cent. There has been significant movement on that. Although there are still big real-terms cuts to justice budgets, they are not in the region of the levels that we were considering initially. I suspect—I hope—that that is partly a result of some of the work that we have done, with the cabinet secretary making strong representations and fighting his case, presumably.

We are not looking at as bad a picture as we would have thought at the beginning of the process, but we are still looking at drastic cuts. I think that we were going to ask the Scottish Parliament information centre to clarify the nature of those cuts so that, rather than an exchange of party-political points, there is an agreed acceptance of what we are talking about when it comes to the cuts that the justice sector is facing. They are significant.

It is clear that there could be ways to spend less money on the justice system, and the obvious example is prisons. Our putting so many people in prison is very expensive, but there have been none of the structural changes in the budget before us that would be necessary to enable real long-term cost savings. That is a discussion that we are having in relation to the Bail and Release from Custody (Scotland) Bill as we consider how we put money into other parts of the justice sector to allow custodial sentences to be used less. That is always a point worth making.

I echo the points that have been made on policing. Pauline McNeill might say more about that, but I want to pick out a couple of points, starting with the capital budget for prisons. We have heard evidence that it is a lot cheaper to house people in newer prisons. I visited Greenock prison two weeks ago, and it is quite clear that there is an urgent need for capital spending to be made available to Greenock. If that does not happen, there is a risk that Greenock will not be able to stay in operation. That is a specific issue, which has been highlighted to the committee by the chief inspector of prisons. It is a huge cause for concern. A number of us here represent West Scotland, and, as well as the justice issues, a big

economic impact would result in the Inverclyde area if that prison were to close.

We have had strong representations from the Fire Brigades Union in relation to capital spending and regarding the carcinogenic nature of many of the toxins to which firefighters are exposed. There has already been the tragic death of a firefighter this year at the Jenners fire, which brings home the risks of that employment. A number of other firefighters who were there were hospitalised, and we know that the cancer and leukaemia levels among firefighters are far higher than among the general population, as a result of their exposure at work.

More than 100 fire stations do not have proper sanitation facilities, and we must highlight that as something that needs to be given far greater priority.

The Convener: Quite a range of issues were covered there. Are there specific points that you would like the committee to go back to the cabinet secretary on, or did you just want to put those points on the record?

Katy Clark: In the letter that we are writing, I would like to highlight the civilian police staff point and the issue around Greenock prison. I have already written to the cabinet secretary about that, but I think that it would be useful if the committee were to raise the matter, too.

There is also the issue to do with capital spend for fire stations. I believe that the fire service is in breach of its duty of care and its duty to provide safe systems of work to firefighters. Work is urgently required to bring fire stations up to health and safety standards and to ensure that firefighters can wash after being involved in incidents.

The Convener: I do not disagree with those points.

I note that the cabinet secretary's response says that he is looking at a capital budget of £97 million for the Scottish Prison Service to continue its modernisation programme. That is welcome and very necessary, and it goes back to the point that Colette Stevenson made earlier about clarity regarding capital budgets.

Pauline McNeill: I have one additional point, which goes back to the issue of the police budget. We need to know how the £80 million additional resource squares with the cabinet secretary's statement that he has

"no intention of overseeing a budget for the police force that results in 4,000 officers leaving."—[*Official Report, Criminal Justice Committee*, 23 November 2022; c 12.]

I do not know what £80 million actually means, but I would be concerned if £80 million did not

represent a figure that would prevent 4,000 officers from leaving. Should we pursue that with the Scottish Police Authority or with the cabinet secretary?

The Convener: Our intention in writing to the cabinet secretary and to Police Scotland was to get some clarification on what that spending will look like. Will it be used largely to settle pay deals? It would be appropriate for us to follow that up, if you are happy with that.

Pauline McNeill: Yes.

Russell Findlay: I have two observations about what has been said so far and two quick points to make.

Katy Clark is bang on in respect of the fire service. The acting chief fire officer told us that he needed something like £0.5 billion just to bring infrastructure up to standard as a result of year after year of not having enough money to do so.

I also totally understand Jamie Greene's point. Although the cabinet secretary did not state that it was his intent to reduce police numbers, that may nonetheless be the outcome. I think that we have agreed a way to deal with that.

I have a point about the Scottish Police Authority. The cabinet secretary said that there is £45.5 million

"for investment in police assets including the estate, fleet and technology."

That is not a lot of money to pay for all of that.

In December, Police Scotland said that it would finally be rolling out body-worn cameras for its officers. Police Scotland is the only force in the United Kingdom not to have such cameras—except for a few hundred for specialist firearms officers.

I want to understand that. That was described in the media as a £20 million programme over five years. Does it follow that, in 2023-24, £4 million will go towards providing body-worn cameras? I would like some clarity on the speed with which the body-worn cameras will be delivered, because that is crucial to helping police officers primarily but also to public confidence. It would be worth getting a breakdown of the numbers and an explanation. I know that spending that money is an operational decision, but the media stuff is not very clear.

My second point is about the Scottish Prison Service. As far as I can see, there is no reference whatsoever to the fact that HMP Kilmarnock is now, or is on the cusp of becoming, under the direct control of the Government, with all the costs associated with that, and that HMP Addiewell is about to follow. The cabinet secretary's response mentions the

“costs of private sector contracts”,

but I do not know whether that means contracts such as the one that we touched on for the provision of food and dairy produce to prisoners. Running HMP Kilmarnock and HMP Addiewell will end up costing a huge sum of money. There will be staff costs, the responsibility for infrastructure and maintenance, and staff pensions. It would be useful to know where that money will come from and how much that will cost.

The Convener: With regard to the SPA budget, I note the information that has been provided regarding the figure that has been allocated for

“police assets including the estate, fleet and technology”,

as Russell Findlay has just outlined.

The committee has been interested in body-worn cameras for quite some time, and we received an update from the cabinet secretary—I would not care to guess when exactly that was, but it was fairly recently. Again, that is an operational decision for the chief constable, but there is general support for such cameras to be introduced and rolled out. I do not think that there has been any further update on that, has there?

Stephen Imrie: No. I believe that the cabinet secretary might have updated Parliament on body-worn video cameras in response to a question in the chamber or a written question. Were the committee minded to ask for an update, that could be incorporated in the letter to the cabinet secretary.

The Convener: We could ask for an update on that specific issue.

Russell Findlay: There may be things that I have not seen, but the media report in December said that it would take five years. That is a long time, if it is going to take that long for all officers to have the kit.

The Convener: Five years to wait for that to be rolled out.

Russell Findlay: Many other police forces have moved on to second-generation and sometimes third-generation kit, which is even more efficient.

The Convener: Does Stephen Imrie want to come back in?

Stephen Imrie: If it would help, I can clarify that point. The update was given in a written answer dated 24 January. I will circulate that to members so that they have the latest update.

The Convener: On the issues that Russell Findlay raised about the Scottish Prison Service, I am happy to write back with further requests for clarification. The point about private sector contract costs and some of the challenges that are linked to inflation and increasing prices is

reasonable, because that is having a significant impact. I am happy to write about the other points that Russell Findlay raised about HMP Addiewell and HMP Kilmarnock.

Russell Findlay: The issue is what the cost will be, and from when that will apply.

The Convener: We will seek further detail on that.

Would Fulton MacGregor like to come in?

Fulton MacGregor (Coatbridge and Chryston) (SNP): Thank you, convener. There is a bit of an echo here, but I hope that you can all hear me okay.

Katy Clark may have stolen my thunder a wee bit. I saw the reply in quite a positive light, from a committee point of view. When we were taking evidence towards the start of the process, we were—as Katy Clark said—looking at really bad cuts, and the picture looked bleak. However, as the cabinet secretary has outlined, he has, as things currently stand, been able to invest in the justice system. To be honest, I think that the committee can take some credit for that. I just wanted to strike a positive note, because we could have been having a very different conversation today. The conversation now is around the edges of things rather than about the overall picture that we were first looking at.

In addition, we have to remember that we are at a very early stage in the budget process, so there might even be scope for further good news, if we want to put it like that.

I read the letter quite positively—I thought that we might have been in a worse position by this point. I therefore echo Katy Clark’s comments. I had already pressed my button to speak as she was speaking, otherwise I would not have said anything. I wanted to put that on record anyway.

The Convener: Thank you for that. Does Collette Stevenson want to come back in?

Collette Stevenson: Yes. Perhaps we can also seek clarification regarding the paragraph that begins at the bottom of page 5 of the clerk’s note, under the “Justice Transformation” heading. It goes on to talk about “blue light collaborations”. I am not quite sure what that means. It seems that the Government is viring money from the police reform budget over to cross-justice reforms. Can we seek clarification on that point?

The Convener: That was something that I had flagged in my own head. I would be interested to know a wee bit more about what that £5 million reform budget will be used for. A wee bit more detail would be very welcome. We will incorporate that into our correspondence.

10:30

Jamie Greene: I want to pick up on some of my other points, some of which have been touched on by other members.

I hope that Fulton MacGregor is wearing a seat belt—otherwise, he will end up with a blue plaque on the tree next to his car.

I am glad that Fulton MacGregor is positive about the cabinet secretary's reply, but there is nothing positive about uncertainty about police numbers. They are not around the edges of the budget; they are absolutely core to delivering good public safety.

I echo the comments about body-worn cameras. That is about the minutiae of operational matters, but that is a big detail. It is inconceivable that officers should have to wait years for fairly simple equipment that is standard in other forces. That is not going to go down well at all with officers on the front line.

On the fire budget, my colleague Russell Findlay pointed out the massive capital backlog. The response says:

"We have maintained the £32.5m capital budget".

I assume that "maintained" means that the budget is still what it was. In other words, there has been no increase at all, which means a real-terms cut in the capital budget for the fire service.

I do not know how on earth that will go any way towards solving some of the problems that Katy Clark identified, which we have already debated in the Parliament. Those are quite serious and urgent matters. I know that we cannot magic up new fire stations overnight and that they take time to properly procure and build. That needs to be a longer-term project. However, I am pretty sure that many existing fire stations could do with an injection of cash to make them at least semi-fit for purpose. It is absolutely deplorable that we send our firefighters into the situations that we send them into and expect them to work in those conditions. I am willing to be corrected—the cabinet secretary is happy to correct me on other matters—but if it is a flat cash settlement for the fire service, it will come as a disappointment to it.

On prisons, notwithstanding the convener's comments, I question the

"£97m in capital funding to continue the modernisation of the prison estate."

The response goes on to say:

"This will include ... the completion of the new female national prison at HMP Stirling."

I am afraid that I do not think that that is new money. Again, I am willing to be corrected if that is the case, but surely that will just be the next

tranche of the procurement and building costs of the prison, and it would already have been known to us prior to the revised budget. I do not think that it is new magic cash. It is probably going some way towards resolving payments to those who are building HMP Stirling, as the response seems to imply.

There are major issues around HMP Greenock. I know that we have asked about it many times and that we have been given the honest answer that there simply is not enough money in the pot to do anything there, but it will close if things go on as they are. If it does not receive cash in any shape or form, it will inevitably close. That is not scaremongering, as was reported in local media; it is a real possibility.

We have not discussed legal aid. I was quite intrigued by the cabinet secretary's response. I am not sure that it was meant to be read in this light, but he said:

"In addition, following positive engagement with the legal profession, we will bring forward regulations in the New Year to further increase and reform Legal Aid fees."

Nobody in the legal aid profession whom I spoke to thought that the engagement was positive or was happy with the outcome of that engagement. In fact, the Scottish Solicitors Bar Association is on the record as saying that it is better than nothing, but it does not really go far enough. That has been echoed by many others in the sector.

There is a little bit of head-in-the-sand syndrome in the cabinet secretary's response. It is unclear what the additional budget will look like in fees versus what the solicitors think is required to continue to provide services. We are now starting to see the very real effects of the financial problems in the legal aid sector. Members are probably aware that people in Orkney, for example, have little to no access to practitioners and that that is repeated throughout the country. Again, we have been raising that issue for many years, and I do not take much that is positive away from the cabinet secretary's statement.

The last point, which is an important one, is on victims. There is a welcome announcement on multiyear funding for some of the third sector organisations. A committee on which I sat in the previous session of the Parliament did a huge piece of work on that. That certainty of funding is welcome.

On the bairns' hoose model, my understanding—I am happy for the clerk to correct me if I am wrong—is that a report was due to the Parliament to outline the plans for future bairns' hooses. I think that the Government was doing a piece of work to identify how many would be needed and how much budget would be required to roll that out. That piece of work is overdue, but I

could be corrected on that. That report would be helpful. I do not think that the roll-out will happen in the next financial year anyway, even if the report had been released, but it would give us an idea of what is happening down the line with that. I appreciate that getting the first bairns' hoose off the ground is the priority, and I support that.

The Convener: We have covered a wee bit there.

On the Scottish Fire and Rescue Service funding, it is pretty clear that there is an interest in whether what has been provided is sufficient. I think that it is £32.5 million for the capital budget, and I think that the mood in the room is that that is probably not sufficient, given the scale of reform or modernisation that is required. We could write to the Scottish Fire and Rescue Service to ask how it will be spent and, importantly, what the shortfall might be on it. I suspect that there will be a shortfall and that it might be significant.

If members agree, I am happy that we correspond with the Scottish Fire and Rescue Service on that.

Katy Clark: The Fire and Rescue Service is receiving a slight cut—I think that it is roughly £400,000—whereas other areas are getting slight increases. I appreciate that we are focusing on the capital budget but, when things need to be done, there is often a discussion about whether the cost needs to come out of revenue or capital spending, so it is surprising that the Fire and Rescue Service is getting any cut at all, given some of the debates that we have had in the Parliament. There are clearly long-term underfunding issues and we seem to be going backwards. That point should be incorporated in our correspondence.

The Convener: Yes.

We will pull the discussion to a close in a moment but, to go back to the Prison Service, we can ask for some detail on the £97 million spend, which is set out as the capital budget for modernisation, taking into account the comments that Katy Clark and others have made.

Are members happy with that follow-up?

Members *indicated agreement.*

Rona Mackay: I agree with all the points that have been made. I am really pleased about the multiyear funding for victims services.

I am also pleased that the modernisation of the prison estate and the new female prison will go ahead. Jamie Greene asks whether it is magic cash or new money. I do not know whether it is either of those but, to be honest, the fact that it will happen is the main thing, from my point of view.

The Convener: That is fine. Thank you very much.

Subordinate Legislation

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

10:39

The Convener: Our next agenda item is consideration of a negative instrument: the Parole Board (Scotland) Rules 2022. I refer members to paper 2. Do members have any questions on the instrument?

Russell Findlay: I would like to raise a couple of things. On page 4 of our note on the rules, there is reference to a provision whereby the Parole Board for Scotland could consider whether people convicted of murder or culpable homicide make known the whereabouts of their victims' remains. My colleague Jamie Greene has been calling for such a provision, as have I, and it indeed will form part of his forthcoming bill.

What puzzles me is that the note goes on to say that

“this matter may be considered where relevant, but does not change the underlying test for release applied by the Board”.

It is effectively a superficial tweak. The rules say that the Parole Board can consider that, but it will have absolutely no effect. That begs the question: why bother? That should either be done with intent or not done at all. It seems to be a bit of a sop. I know that such cases are rare, but there are a significant enough number of them, and there are families who, right now, do not know where their loved ones' remains are, while prisoners serving a sentence do know. If there was a meaningful way of motivating prisoners to disclose that information, by virtue of what has been called in Scotland Suzanne's law—it has other names elsewhere in the UK—it should be deployed.

I have a second point, regarding victims, who are referred to page 5 of our note. I have two things to say. First, I underlined the part that says:

“these changes are intended to prevent any victim getting information or contact that they do not wish to have and which may cause distress or disruption.”

In my experience at the committee, I have not heard any meaningful evidence that that is really an issue; the issue is largely about crime victims having to battle to get information, even where they have engaged with a victim notification scheme, which the Government admits is not doing its job and which is subject to an on-going review.

The evidence that we have heard is that there are barriers, and people have to be proactive. It is all very impersonal, and there is sometimes almost

a sense of hostility towards victims trying to get basic information. It would be interesting to see when the victim notification scheme review is due, and it would be curious to see what the Government says about it. Clearly, it is not working.

The Convener: Okay—we have noted those points.

Pauline McNeill: There is quite a lot contained in the Scottish statutory instrument, and in ploughing our way through it we come across a number of fairly significant issues. We have a very short procedure for commenting on something that could be extremely important.

I wish to highlight two issues. The first is covered on page 4 of our note, which refers to risk management plans and says:

“There is also a new addition to the rule on decision summaries (rule 34) which provides that the Board must give reasons for a decision where it differs from the recommendations in a RMP. These provisions ensure that the most recent assessment of risk is available to the Board in their consideration of such a case and that they articulate their reasoning in reaching their decision.”

When I read that, I thought that that was quite an onerous responsibility for the Parole Board. If we have an authority with expert opinion that makes a recommendation, it will be quite onerous for the Parole Board to set out why it has gone against that. That is just an observation.

The point in the policy note about prisoner preparation says:

“A provision has been added to the rules to assist the person concerned to be better prepared for a parole hearing.”

I do not think that there is any mention about literacy issues. I thought that that should perhaps have been mentioned.

The Convener: Which paragraph of the note are you referring to?

Pauline McNeill: That is at the end of page 4. The policy note covers the preparation of prisoners for parole hearings, which seems a good thing. It says:

“This allows information to be obtained from the person concerned in advance to assess whether they are ready to proceed.”

I do not know whether or not this is relevant, but it has occurred to me that some prisoners will have literacy issues. If a new rule is to be introduced about preparation, it might be worth mentioning that it should include support for any literacy issues.

10:45

Jamie Greene: My first point is maybe a wider point. This is quite a big SSI and we are looking at it in the context of the negative procedure, which, as members know, gives us limited options. For example, it is impossible for us to amend it; such matters are outside of our control because of the primary legislation that the rules are connected to. Had the instrument been subject to the affirmative procedure, we could have heard from the cabinet secretary and his advisers on it, taken evidence on it and done other things with it rather than being left with the only option of annulling it, which is unhelpful, because there is some good stuff in it.

However, there are things in the rules that are not so good, and that is what I wanted to point out. The point that my colleague Russell Findlay made about matters that the board may consider around release was absolutely correct. The issue is specifically about someone who has been convicted of murder or homicide and whether they have failed to reveal the location of a victim's body. This is a real missed opportunity. The issue will feature in my member's bill, which is yet to be drafted, unfortunately, and it featured heavily in my consultation. The overwhelming response to that was that there should be an overt rule on the matter with regard to the test for release. The policy objectives just say that the rule

“does not change the underlying test for release”

but revealing a location might be a factor that is taken into account. I presume that it already was a factor, so the rules do not seem to make any change there.

Had I been given the opportunity to amend the rules, I would have made them stronger. The Government has missed an opportunity to introduce Suzanne's law through a simple procedural mechanism that would go a long way towards serving justice to the families of those victims.

The second point is about the final paragraph on page 5 of the policy note, which talks about changes to the rights and roles of victims in all of this. The provision simply allows for victims to observe parole hearings. Again, that is a missed opportunity. It still does not give victims the opportunity to make meaningful representation during those hearings, which is a long-standing issue. The rules could easily have been altered to allow victims to speak or have a voice during parole hearings, and I have felt strongly about that for some time.

Furthermore, that paragraph talks about those who are registered with part 1 of the VNS who do not want to be involved with the Parole Board process. I question the evidence on that. How many chose not to be involved in that process?

How many victims or their families were subject to poor communication from the VNS and were notified so late or out of the blue that they were unable to participate in the process, or unwilling to because of retraumatisation? We know that uptake of the VNS is poor because of its opt-in nature. Again, there is a missed opportunity to look at opt-out versions of the scheme.

We also know that a number of people who asked to participate in—when I say “participate” I mean “observe”—parole hearings were rejected. I would have liked to have seen some numerical evidence about that. How many people asked to attend a parole hearing and were rejected? I have only anecdotal evidence but the figure is certainly in the dozens, and I have tried to get some more information about that in the past few months. A number of people were denied access to those hearings, especially when the process went online.

Should the Parole Board rules be explicit and make it clear to victims way in advance and up front that they have the absolute right to observe hearings unless there is good reason for them not to or a reasonable objection is raised? It should not be a matter of discretion for the person who is in charge of that Parole Board hearing. I have more questions about that.

I am disappointed that we are being asked to shoo through a negative instrument when it concerns important matters that could have empowered victims of crime and is failing to do so.

The Convener: Does anybody else want to come in?

Katy Clark: I ask for clarification on the timeline for the SSI and whether there is scope to take some of those issues up with the Scottish Government. It seems like a missed opportunity not to try to get some of the matters incorporated. I appreciate that this is probably the end of a very long process, but we have not been engaged with the process, so it would be appropriate to enter into correspondence to raise those issues and see whether this is an opportunity that can be taken.

The Convener: I bring in Stephen Imrie on that point.

Stephen Imrie: It is not for me to talk about correspondence; that is your decision. I point out that the SSI will come into force on 13 February, so, with recess pending, there is probably not scope for it to come back to the committee. The SSI will come into force on 13 February unless any committee member or other member lodges a motion to annul, but there is nothing to stop the committee seeking further information or making the points that you have made in various letters, if that is what you choose to do.

Jamie Greene: Can I clarify something, convener?

The Convener: Yes.

Jamie Greene: This is not the first time that we have been put in the position of being asked to review legislation days before it comes into force. Especially ahead of a recess, there is no opportunity to discuss the matter until after the SSI has come into force.

It would be a different matter if there were clear policy differences or matters of opinion in the SSI that would be suitable to oppose, but there is little to oppose. There is nothing in the SSI that I disagree with, and it seems to make some sensible changes, but there are things that could have been done differently or better, and things that should have been added to the SSI. That is where the matter is unclear. If our only option is to lodge a motion to annul, we would lose the 70 per cent of the SSI that is comprised of good bits if we have a problem with the other 30 per cent. That is the unfortunate position that we are in.

In this scenario, there is no point in stopping the SSI going ahead, but I wonder how we can raise those issues. They could perhaps be dealt with in a further SSI, which I am sure that the Government could find an appropriate way to get to us in good time. We should stress to the cabinet secretary that we should have had a paper on the SSI weeks ago.

The Convener: That covers what I was going to suggest. The points that members have made are valid, and it is not just one or two points; we have picked up issues across a number of the specific areas in which the SSI is relevant. I am grateful to members for highlighting their concerns and thoughts, and we now have them on the record.

To sum up, unless anyone is planning to lodge a motion to annul, which we have spoken about, we have no further recommendations to make, and we will proceed as planned. It is important that we use the opportunity to draw to the attention of the Parole Board and the cabinet secretary the matters that have been raised. Perhaps we can incorporate further work on that at a future point. I am grateful to members for raising their points.

Are members content not to make any recommendations to the Parliament on the instrument, with the caveat that we do some further work on the points that have been raised?

Members indicated agreement.

The Convener: Fulton, can you confirm that you are happy with that?

Fulton MacGregor: Yes.

The Convener: Short and sweet.

Russell Findlay: What options are available to us? Can we lodge some kind of motion?

The Convener: Do you want to speak to Stephen Imrie separately on that, or do you want to do that just now? Do you want clarity on something?

Russell Findlay: If it needs to be acted on now, can we do that just now?

Stephen Imrie: In essence, the process is for any member to speak to the chamber office and lodge a motion to annul. I can speak to you after the meeting about the details of doing that. That would probably have to be done fairly swiftly. Arrangements would then be made for that motion to be considered and debated. It would need to be done fairly imminently; you would need to do that in the next day or two. I will catch you at the end of the meeting, if that helps, and we can go through the process.

Russell Findlay: Thank you.

The Convener: Thank you very much. That concludes the public part of our meeting, and we will move into private after a short comfort break.

10:55

Meeting continued in private until 12:47.

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