



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Public Audit Committee

Thursday 1 February 2024

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

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

Thursday 1 February 2024

CONTENTS

DECISION ON TAKING BUSINESS IN PRIVATE	Col. 1
SECTION 22 REPORT: "THE 2022/23 AUDIT OF THE SCOTTISH PRISON SERVICE"	2

PUBLIC AUDIT COMMITTEE

4th Meeting 2024, Session 6

CONVENER

*Richard Leonard (Central Scotland) (Lab)

DEPUTY CONVENER

*Sharon Dowey (South Scotland) (Con)

COMMITTEE MEMBERS

*Colin Beattie (Midlothian North and Musselburgh) (SNP)

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

*Graham Simpson (Central Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Stephen Boyle (Auditor General for Scotland)

Michael Oliphant (Audit Scotland)

Tommy Yule (Audit Scotland)

CLERK TO THE COMMITTEE

Lynn Russell

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament Public Audit Committee

Thursday 1 February 2024

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Richard Leonard): Good morning. I welcome everyone to the fourth meeting in 2024 of the Public Audit Committee. The first item on our agenda is for committee members to consider whether to take agenda items 3 and 4 in private. Are we agreed?

Members *indicated agreement.*

Section 22 Report: “The 2022/23 audit of the Scottish Prison Service”

09:30

The Convener: Our second and main agenda item is consideration of the Auditor General for Scotland’s section 22 report on the Scottish Prison Service, which was released in December. I welcome our witnesses. We are joined this morning by the Auditor General, and alongside him is Michael Oliphant, who is an audit director at Audit Scotland, and Tommy Yule, who is a senior audit manager at Audit Scotland.

We have a large number of questions to ask you about this morning’s report but, before we get to those, I invite the Auditor General to make a short opening statement.

Stephen Boyle (Auditor General for Scotland): Many thanks, convener, and good morning, committee. I am presenting this report on “The 2022-23 audit of the Scottish Prison Service” under section 22 of the Public Finance and Accountability (Scotland) Act 2000. The external auditor issued an unqualified opinion on the financial statements of the Scottish Prison Service for 2022-23. My report brings to Parliament’s attention issues that relate to the Scottish courts custody prisoner escorting services contract, which is managed by the SPS on behalf of justice partners. It also draws attention to wider concerns about projected increases in the prisoner population and their impact on the prison estate.

I highlight the following areas from my report. The first is on the prisoner escorting contract. The Scottish ministers awarded the contract to GEOAmey in March 2018 for an initial period of eight years. In recent times, GEOAmey has been unable to achieve the staffing levels that are required to effectively deliver the required levels of service. Between July and September 2023, only 62 per cent of prisoners who were due in court arrived on time, and only 65 per cent of non-court escort services, such as hospital transfers or police identification parades, took place on time. The SPS has taken action to support improvement in GEOAmey’s performance, including financial support to aid staff recruitment and retention, but that is expected to take a further six months to take effect.

The second area of focus is on Scotland’s prisoner population. In 2022-23, the average population was 7,426. By mid-November last year, it had increased to 7,948, with the SPS now forecasting that the population will further increase to more than 8,000—8,166—by the end of March this year. That puts extensive pressure on the

prison estate, which requires significant investment for it to be fit for purpose.

Those issues cannot be resolved by the Scottish Prison Service alone. Close collaboration between the SPS, the Scottish Government and its justice partners will be required to ensure that prison services can be maintained in a safe and secure environment.

As ever, my colleagues and I will do our utmost to answer the committee's questions.

The Convener: That is a useful thumbnail sketch of the three principal themes in the report, which we will consider in detail this morning. I will hand over to the deputy convener, who has questions about the courts custody prisoner escorting service.

Sharon Dowey (South Scotland) (Con): Good morning. The prisoner escort contract is managed by the SPS on behalf of the justice multiagency liaison group, which consists of the SPS, the Scottish Courts and Tribunals Service, the Crown Office and Procurator Fiscal Service and Police Scotland. Do you know what input those organisations in the justice multiagency liaison group had into the terms of the GEOAmev contract before it was awarded by the Scottish ministers?

Stephen Boyle: You are absolutely right about the partnership arrangements. As I mentioned in my introductory remarks, the contract runs through to 2027 and is experiencing challenges; it will take a multiagency approach to resolve the issues. I will bring in Michael Oliphant in a moment to set out the background to the awarding of the contract a bit more.

It is at the heart of today's report that an effective resolution needs to be found given the scale of the challenges that the contract is facing. As is touched on later in the report, the SPS and its partners are already beginning to think about their arrangements for the next iteration of the contract, should there be one—that remains one of the options at the disposal of the SPS. Reflecting on the lessons from the previous awarding of the contract will be important to inform the stability of the service into the future.

I will pause and invite Michael Oliphant to set out a bit more detail for the committee.

Michael Oliphant (Audit Scotland): The agency partners that you highlighted have been involved from the start and are regularly involved. The Prison Service manages the contract on their behalf, but the partners are involved in monthly performance meetings around the service reporting requirements of the contract.

We have seen changes since the contract was awarded, particularly during and after Covid.

Partners have been involved in discussing all aspects of the criminal justice system, from police identification parades to prosecution services and so on, through to the numbers that are going through the court system. One of the changes has been the additional High Court docks that were required to be serviced during that time. It is very much seen as a partnership approach, with each organisation having its own direct interest in ensuring that the contract is served as best as it can be.

Sharon Dowey: Did you say there that they are having monthly meetings?

Michael Oliphant: There are monthly performance meetings, yes.

Sharon Dowey: Does that involve—

Michael Oliphant: Sorry, I will correct myself. The MALG—which includes the Scottish Prison Service, Police Scotland and the Crown Office, as well as the Scottish Courts and Tribunals Service—has quarterly meetings. There are monthly meetings to manage the contract that involve people from the Prison Service.

Sharon Dowey: Right, okay. That brings me to my second question. The report highlighted the importance of SPS and its partners working together, with support from the Scottish Government, to consider all options available to ensure the safe and effective delivery of prisoner escorting services. The SPS seems to have had a change in service since the initial contract was brought in, so is it looking at the way that it operates, as well, to see how it can assist GEOAmev?

Michael Oliphant: Absolutely. A number of changes have had to be made, particularly around the flow of staff through courts, such as the introduction of virtual courts to support the court recovery programme. Fewer people are being transferred from custody to courts because of a number of the interventions that the court recovery programme has brought in, which involve, for example, the earlier sharing of evidence to try to resolve cases earlier, before a trial is needed. All those changes have impacts on the contract and its demands.

Stephen Boyle: I will add something that I hope is relevant. There are clear interdependencies in the effective management of the contract. As Michael Oliphant has mentioned, the conditions have changed since the contract was awarded, undoubtedly as a result of the impact of Covid. As the committee considered last year, the Scottish Courts and Tribunals Service plans to address the court backlog also had a bearing on the delivery of the contract in terms of volumes. The court transfer demands that were placed on custody officers before Covid would have been fairly

predictable and stable, but that is no longer exactly the case. It is central to GEOAmeys position that the environment in which the contract was awarded is not replicated in its entirety post-Covid. The flows of prisoners are different.

Other aspects are relevant, too. You mentioned working with other partners. One of the things that we touch on in the report is hospital appointments and so forth, and the clash between prisoner hospital appointments, which tend to be timed early in the morning, and prisoner transfers to court, which typically also take place at that time. The Prison Service has taken steps to engage with the national health service to see whether something can be done that can work for both sides. As we have seen, that is still a work in progress. There are opportunities to make the contract more efficient, but I am not sure that that addresses the more fundamental point that the environment is quite different from what it was when the contract was first awarded.

Sharon Doweys: Is the SPS continuing that engagement? The report said that the majority of hospital appointments were at half past nine and that the SPS had engaged with the NHS. However, that is obviously not helping GEOAmeys, because we are still sitting with the majority of appointments at half past nine. Is there constant engagement there?

Stephen Boyle: As far as we understand, that is an on-going conversation that is not yet resolved to ensure the safe and effective delivery of the contract. We recognise that there are multiple pressures within the NHS, and that there will not be one single reason why the SPSs wishes have not been accommodated, but it is an outstanding matter.

Sharon Doweys: The report also states that the contractual arrangements for GEOAmeys differ between Scotland, and England and Wales. Are you aware of any issues or concerns with the service that GEOAmeys provides in England and Wales? Are there the same problems there, or is it a different contract with different issues?

Stephen Boyle: I will bring in my colleague in a moment. Our scope means that we have not looked at the fundamentals or the detail of the contract arrangements in England and Wales compared to Scotland. At a high level, our understanding is that the contract in Scotland is broader than the one in England, as the prisoner escort service contract here includes an additional range of services whereas the contract in England, as Michael Oliphant can clarify, is primarily for court transfers.

Michael Oliphant: Effectively, they are different contracts. The contracts in England predominantly cover transfers from custody to courts, and police

custody. In Scotland, there are additional elements, such as detainment at healthcare facilities and special escorted leave—funeral escorts, and escorts for educational or employment opportunities as part of parole arrangements. There is a whole host of additional services. Some of them are quite staff intensive for GEOAmeys compared with some of the route transfers. For example, hospital detainments and bed watches require a certain level of staff, 24 hours a day. Sometimes, the demand is difficult to predict. The contract allows for up to eight bed watches per day, but we have seen fluctuations to sometimes well over 20. It is a very staff-intensive part of the contract for GEOAmeys, which is one of the reasons that it cites for the contract being financially unsustainable.

Sharon Doweys: The report states that “the operating environment has changed”

since GEOAmeys was awarded the contract in 2018. Is that one of the issues? Are there others? It sounds as though the ageing population and the fact that the prison population is going up are adding to the problems.

Stephen Boyle: Factors around the wider pressures on the Scottish Prison Service are absolutely relevant. Drilling down into the nature of the contract, the post-Covid demands on the prison and court services, such as tackling the backlog and the interaction with the virtual trials that Michael Oliphant has mentioned, are another factor.

Perhaps most fundamental of all is that GEOAmeys has not been able to sustain the anticipated staffing levels in order to deliver the contract effectively. It is fair to say that the question of how attractive prisoner custody officer roles are in comparison to alternative jobs is at the heart of this issue. At a high level, the general rates of pay that the prisoner custody officer roles attract are comparable with what someone could earn in a supermarket, for example. Bearing in mind their conditions, these are demanding and responsible jobs—that is not to say that supermarket jobs are not, but the custody officer roles come with an additional level of stress and scrutiny. A combination of factors, such as changing aspirations and employment patterns, has meant that GEOAmeys has not been able to sustain the numbers to safely deliver the contract.

I am sure that we will speak further about some of the steps that the Prison Service has taken to try to sustain the contract. Specifically, the Prison Service has made an additional investment to try to arrest the decline in staffing levels, and it is providing financial support to GEOAmeys to try to sustain numbers and then increase them back to the level of staffing that was required. Michael

Oliphant might want to say a bit more about some of the detail behind that.

09:45

Michael Oliphant: A key aspect of the contract is that it is volume based, so the more activity GEOAmeY undertakes, the more income it can generate. We have seen that, as some of the interventions to support the court recovery programme have taken place, the number of routes from custody to courts has fallen quite dramatically in comparison to pre-Covid levels. The other parts of the contract that I mentioned—hospital detainments, bed watches, supporting and servicing court docks and court cells—are quite staff intensive. That volume increase does not offset the loss from the route transfers to courts, so, overall, GEOAmeY has lower income and higher costs—staff costs, overheads, fuel and so on. A key aspect of the contract is for the provider to have operational flexibility to accommodate that, but when staffing levels drop 20 or 25 per cent from where they should be, that flexibility is removed to the point that it is very difficult to manage the base service provision. The fundamental problem is that GEOAmeY does not have enough staff to service a contract that needs to be flexible.

Sharon Dowey: So, it is labour intensive and the money for the tasks that GEOAmeY is doing is going down. Unless the contract is changed, would somebody else who took it over just have the exact same issues?

Stephen Boyle: There will be an element of speculation on our part to address that properly, but it is important context for the committee that, when the contract was first tendered in 2017-18, GEOAmeY was the only bidder, so other potential providers will have made their own business assessment of how sustainable the contract was and what it looked like into the future.

As we touch on in the report, the Prison Service is considering where to go next with its partners. It will need to get a rounded view of what a sustainable contract is, whether it is one that is offered to the market or whether there is an alternative way of delivering it through public services. What is clear is that, in its current guise, it needs a different path. The current path that the Prison Service is following is one of additional financial support to GEOAmeY to keep it sustainable.

A variety of approaches have been deployed, such as financial penalties or financial support—we are largely in additional financial support now. However, looking into the future, the Prison Service and its partners will need to consider those factors for future contracts.

Sharon Dowey: One of your key messages is that

“several actions to support improvement in GEOAmeY's performance”

included

“issuing improvement notices and applying financial penalties of around £4 million”.

The report goes on to say that

“SPS is now taking more direct action including financial support to support GEOAmeY to aid staff recruitment and retention”,

which seems a bit of a contradiction—the SPS is fining GEOAmeY and then giving it financial support. To what extent may the application of service credits, totalling more than £4 million, have contributed to GEOAmeY's claim that the contract is financially unsustainable?

Stephen Boyle: We are reporting the facts in the report. Exhibits 1 to 3 set out the service performance of the contract, some of which coincides with the application of service credits or fines, and then, as we have seen more recently, the application of financial support.

As we mentioned in opening remarks and in the report, the Prison Service expects that it will take a further six months before it can assess whether the financial support levels of £1.8 million in 2022-23 and £2.2 million planned thereafter will have an impact on service performance. The service credits application did not fundamentally change the reduction in performance, which is why the SPS has arrived at a point where it is asking whether more of a financial incentive might lead to a better contract performance, if fines are not working.

Sharon Dowey: The report also states:

“in August 2022, the SPS implemented a moratorium where it would not impose certain service credits”.

What areas does that relate to?

Stephen Boyle: I will bring Michael Oliphant in to share a bit more detail on that.

Michael Oliphant: The detail in the contract divides the service credits into three categories. The first is about outcomes, which are the most significant issues that might arise from poor performance. If poor performance led to missed appointments or delays to court proceedings, a penalty per prisoner could apply. If a prisoner is at large or dies in GEOAmeY's care—and the death is not connected to natural causes—certain service credits have to apply. Service credits for things such as injury by prisoners, death and prisoners at large are not covered by the moratorium.

Some aspects, such as the provision of documentation and services that have to be provided to the prisoner, including food, water and access to medical advice, are not covered. The moratorium covers things such as late arrivals that do not impact on proceedings, which do not automatically generate a financial penalty. Thresholds apply, albeit in a points-based system, and, once they breach an overall threshold, a penalty will apply. That is based on a formula that is driven by the percentage of the transfers that take place.

Sharon Dowey: I note that the report said that it would take six months to see the impact of that and whether it had been successful.

Michael Oliphant: It would take six months to see the impact of what is called the pass-through funding that the Prison Service has given to increase the pay rates of GEOAmev staff. The reason why it is described as “pass-through” is that it is deliberately designed to be passed directly to staff, so that the pay rates can increase by 17 per cent to take them above a competitive level compared to other equivalent employers and some of the big retail employers that have lower pay rates.

Sharon Dowey: I think that there was something in the press last week about staff having to pay back money for their training. Do you know whether that is still happening? Is that part of the contract for GEOAmev?

Michael Oliphant: I do not know whether it is part of the contract. Quite a lot of organisations that have a training element to a contract can include clauses under which, if someone leaves early within the contract, they might have to pay back a proportion of the training, but I do not know the specifics of that in this case.

The Convener: You have drawn a parallel—a wage comparator—with supermarkets a couple of times. However, the genesis of the contract is that it was outsourced work that was previously carried out by prison officers and Scottish Prison Service staff. Given the nature of the work that is involved, would a better comparator not be with the pay rates that the Scottish Prison Service pays its own staff?

Stephen Boyle: That is a fair argument. It is perhaps worth clarifying that, if the roles that prison custody officers play are not available, the only alternative for the Prison Service is that a prison officer or a police officer carries out the function of transfers.

It is perhaps not for me to judge the relative rates that are fair for individual roles. However, considering the responsibility that is afforded to prison custody officers, I can understand why the Scottish Prison Service has arrived at the point

where pass-through funding has been necessary, as Michael Oliphant describes, to give more certainty and security for the safe delivery of the contract.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): On the issue about potential financial support for GEOAmev, I note that it has just filed its accounts, which were signed off in September 2023. They show that the company reported a profit of £2.6 million, it paid out dividends of more than £4 million and it has cash reserves of £11 million. Why are we talking about financial support going to a company with figures such as that?

Stephen Boyle: Ultimately, it would be for the Scottish Prison Service to come to a view as to why it arrived at that decision. If I was speculating, I would say that there will be aspects of the organisation’s business that will not apply to the effective delivery of the contract, and the Prison Service will have reached a view that there needed to be a financial intervention to sustain the contract. As we have described it, the application of fines or service credits was not having the desired effect. Without alternatives being explored, we are getting into the realms of the sustainability of the contract.

As we have seen in other circumstances, private sector providers can resign from a contract. I would be taking an additional leap and speculating as to whether that would be an alternative, but it is undoubtedly a risk that the Prison Service would have considered.

The Convener: I invite Colin Beattie to put some questions to you.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Auditor General, I initially want to cover staffing levels and so on, which we have touched on already. Let us look at paragraphs 20 to 22. Paragraph 22 discusses

“a decrease of between 20 and 25 per cent on required levels.”

There is also a comment about “comparatively low pay” and you have made a comparison with supermarkets. It seems to me that there are only three possible reasons for that. Either there are no staff to recruit, with a shortage of staff in the market and difficulties with retention; the staff levels have been dropped in order to make the contract financially sustainable for the company, as deliberate policy; or, leading off from the possibility that staff levels were cut by the company to make the contract sustainable, and linked into that, there has been a deliberate suppression of salary levels. Later in the report, you mention increased salary levels being offered in order to recruit staff. Why was that not done earlier?

What, in your opinion, is behind the decrease in staffing levels? Was it deliberate? Is it the market? What is it?

Stephen Boyle: We have not seen any evidence of a deliberate attempt to make the contract unsustainable. That is not our understanding. Michael Oliphant can provide the committee with a bit more insight on our understanding about the engagement that the Prison Service has had with GEOAmeY on a quarterly basis.

Our impression remains that there are on-going attempts to sustain the delivery of the contract from the Scottish Prison Service and their partners and through the Prison Service's interaction with GEOAmeY. We do not believe that there has been a deliberate manipulation of prison custody officer numbers to try to generate more profits. There are more fundamental issues that the disruptive nature of the pandemic has caused to the volume of the delivery of the contract—together with changing working patterns, people's aspirations and what they want by way of pay, terms and conditions and the environment that they work in. Most significantly of all, the jobs are very demanding, but they do not attract high levels of pay. In that environment, turnover will be higher.

On the steps that the Prison Service has taken in more recent times, I can see that there is a logic to the provision of additional pass-through funding to go into the pay pockets of prison custody officers.

10:00

However, with regard to the other circumstances that you have set out, I am not sure that we are seeing any manipulation in that respect. As I said, it might be useful for the committee to hear more from Michael Oliphant about the nature of the Prison Service's engagement with GEOAmeY.

Michael Oliphant: We see quite sharp fluctuations in staffing levels with GEOAmeY. As the report mentions, the staffing complement was at appropriate levels to begin with, and the service was provided to agreed levels. We find that GEOAmeY can recruit okay, but retention can be difficult. We saw the numbers come back up to about 660 whole-time equivalents in October 2022, but they fell quite sharply thereafter. It is about not just recruitment but retention. Levels of attrition are quite high.

The SPS has daily engagement with GEOAmeY, because there is a system in which appointments are booked for prison transfers to hospital appointments and to support court docks, court cells and so on. When those do not happen, it is known about, and there is daily communication

between the SPS and GEOAmeY as to the reasons why.

On staffing levels, the Auditor General mentioned comparisons with the retail sector. It is fair to say that the Prison Service is also competitive in terms of the staff that it employs. We have seen examples in which staff have gone from GEOAmeY to be employed by the Prison Service. In fairness, we have seen them go in the other direction, too.

There are a number of moving factors, but it always comes back to the fundamental point that the company was not paying staff enough to keep them. Pay rates were low by comparison, which generally means that people will not stay for the periods for which they are needed.

In addition to what the Auditor General said, the roles are probably not very attractive, given some of the risks and physical demands that are involved.

Colin Beattie: Michael, you touched on hospital appointments. I highlight paragraph 29, which says:

"705 hospital appointments were recorded as GEOAmeY failures. Of these, 561 were cancelled by the escort due to resourcing issues. Eighty-six appointments did go ahead late".

However, the report also says that we do not seem to know much about the impact of those cancellations on the prisoners or on the NHS.

The NHS is geared up to receive prisoners for hundreds of appointments that are suddenly cancelled, presumably at the very last minute. The impact on NHS efficiency—we can look at NHS Forth Valley, for example—is not insignificant. Are there any plans to assess the overall impact of those delayed and cancelled NHS appointments, both on the health of the prisoners and on the NHS?

Stephen Boyle: I am not sure that we know anything further to what we state in the report: that that is an issue that needs to be tackled, for all the reasons that you have set out. It is certainly an area that impacts on not just the health of the prisoner but the efficiency of the contract, and it has an effect on the operation of both organisations.

You are right to mention NHS Forth Valley. The situation that you describe will have a particular impact on that health board, given—as we touched on in our discussions with the committee last week—the additional weighting of prison facilities in that board area. It is an area on which the committee might need to follow up directly with NHS providers.

Colin Beattie: I think that it probably is.

To move on from staffing levels, I note that the contract is, obviously, going to be retendered. What steps are the SPS and its partners taking to ensure that the contract will take account of all the external factors that are believed to be impacting on the current contract? In other words, how will they ensure that we do not head down the same path again? I realise that we will not—I hope—have Covid creating a disruptive factor, but, nevertheless, I would like to know how they are approaching that.

Stephen Boyle: I will bring in Michael Oliphant to say more about the lessons from the current contracts and the application of those lessons to future arrangements. There is a contract unit in the Scottish Prison Service; it is gearing itself up for the next iteration of the contract. Bear in mind the fact that we are potentially four years away from that—*[Interruption.]* My apologies, the next contract will be in 2026. There is also an option to extend the contract for an additional four years.

Colin Beattie: Who has that option?

Stephen Boyle: Ultimately, I think that it would be for both parties to decide whether they wished to extend the contract. As we set out in the report, that is all set against sustainability issues for the contract. The Prison Service and wider justice partners will need to fundamentally think through what is required of the contract and what variation arrangements exist within it—whether it is application of service credits or additional funding and what the triggers would be for either of those factors.

There must be a balance between the effective performance operation of a contract, value for money for public spending and the safety and security of prisoner transport. Those are the factors that will need to be weighed up, and that is our expectation and understanding of what the contract unit in the Prison Service and its justice partners are now doing.

Colin Beattie: I believe that the contract actually ends in January 2027, and tendering is expected to start in 2024. That seems an awful long way in advance, but perhaps that is how long it takes. I presume that you have seen nothing yet on what the approach will be.

Stephen Boyle: Michael Oliphant can clarify that, but the current work will be the early preparatory work to ready the Prison Service for tendering arrangements at the time when it becomes appropriate for it to go to market.

Drawing on the experiences of the last time that the contract was tendered, it is fair to say that, for a contract of that complexity, having only one bidder is not a place in which any public service provider wants to find itself. You want choice to be available so that you can make a balanced

assessment of price, quality and service provision. I am sure that the Prison Service will be considering those factors as it readies itself and gears up for market testing over the next two years.

Colin Beattie: Will you be in a position to monitor the contract and the bidding process as that work goes forward?

Stephen Boyle: Yes, I am absolutely delighted to confirm that that is our plan. Given how central the contract is to the effective operation of the Scottish Prison Service and the justice system more widely, that will remain part of our work.

Colin Beattie: What support is the Scottish Government providing with regard to that process?

Stephen Boyle: Do you mean with regard to the contract tendering?

Colin Beattie: Yes.

Stephen Boyle: Again, Michael Oliphant can say more about the role that the Scottish Government is playing in supporting the contract unit in the Prison Service. There is expertise in the Scottish Government; indeed, I think that the procurement team has appeared before the committee in recent evidence sessions. That is all available for the Prison Service to draw on, especially recognising that the Prison Service is an executive agency of the Scottish Government, so there is a close working relationship between the two. Michael might want to say—

Colin Beattie: That is available, but is the Prison Service actually going to avail itself of that facility?

Stephen Boyle: If Michael does not know that, we can come back to you on the precise role that the Government is playing.

Michael Oliphant: It is just too early to say, because the discussions will be starting around now. We would expect the Scottish Government to be involved.

A key aspect of consideration, whether it is part of a retendering exercise or other options for escorting prisoners, is the fact that the policies that the Scottish Government makes have a big impact on prisoner numbers. For example, there are more longer-term prisoners as a result of there being no automatic release. That impacts on prisoner numbers and on the supporting services that need to be provided by, in this case, GEOAmev for hospital appointments, transfers and so on. Therefore, I would expect the Scottish Government to be round the table at those discussions.

The early discussions really need to look at what the contract hopes to achieve. To be fair, and without getting too ahead of ourselves, it will be

radically different to what is currently in place, because of the problems that have existed with the current contract. We will have to wait and see how that ends up with regard to the time for any new contract to commence. We will keep an eye on it.

Colin Beattie: I will move on to the final couple of questions. In paragraph 37, reference is made to the greater number of older prisoners in the system. At last week's evidence session on NHS Forth Valley, comment was made about the ageing prison population and the increased pressure on the NHS as a result of that. What is the impact of a greater number of older prisoners? What level of support is required? There seems to be an implication that we should have a care facility in prisons. A number of reasons, such as sentencing and historical sex abuse cases, have been put forward to explain why the prison population is so much older. How is that impacting on the NHS and the SPS?

Stephen Boyle: You are right, Mr Beattie, that we touched on that briefly in last week's evidence session. The committee might have seen news coverage over the past few days, including comment from Governor Beal from Glenochil prison, that highlighted the emerging challenges that the Prison Service faces with an ageing prison population. You set out the reasons why there are now many older people in Scotland's prisons, which were not designed to cope with a much wider range of age profiles.

We also discussed briefly last week the fact that the NHS provides healthcare services in a prison setting, but the Prison Service is responsible for care provision. Many older prisoners will require care services, including personal care, and that is now the responsibility of the prison service. I note Governor Beal's suggestion that the prison estate needs to evolve so that it can provide not just secure prisons but, perhaps, secure care facilities.

As we set out in the report and our infrastructure briefing last year, capital budgets are incredibly challenged. The Prison Service, the Government and partners will now need to prioritise what services the Prison Service offers to Scotland's prisoners. Again, drawing on Governor Beal's insight, it is clear that the current estate is not designed to cope with the changing profile of prisoners.

Colin Beattie: You said that the Prison Service is responsible for providing care. I presume that the prison officers have not been trained in that particular area. Do prisons bring in resources from outside—people who are qualified to provide that care?

Stephen Boyle: It might be interesting for the committee to hear from Michael Oliphant and

Tommy Yule who, as part of their external audit work, went to Glenochil prison to learn more about the challenges and circumstances that the prison is dealing with.

Michael Oliphant: We could see some of the challenges directly. Some of it is down to the basic daily routines, such as washing, feeding and clothing, and there are also more fundamental things, such as services for palliative care, support for prisoners with dementia, and mobility issues. As the Auditor General mentioned, there are no accessible cells in some Victorian prisons, so that provides a different dynamic to the care that is provided to prisoners, particularly in relation to the group of the oldest prisoners in the system, who are growing in number as a result of longer sentences. You mentioned the historical sex abuse cases, which mean that people are entering the prison system later in life. It is a big change in dynamic for the Prison Service to manage.

I imagine that prison officers are able to provide a certain element of support, but the Prison Service has to bring in specialists to deal with the more complicated issues, if I can put it like that.

10:15

Colin Beattie: There is a cost to the Prison Service in bringing in services. I am trying to understand the impact on prison officers and the Prison Service of providing that care. Are Prison Service resources used or are independent resources brought in? You seem to be saying that the latter happens only for the more extreme cases and that the Prison Service deals with the day-to-day stuff, for want of a better expression.

Michael Oliphant: It is probably a combination of both. Glenochil prison, for example, has healthcare facilities on its estate, which means that prisoners will have medical and dental appointments on site. As we have already covered, it is more disruptive when prisoners have to be taken to external healthcare facilities, as that involves prisoner transfer. There will be a demand on prison staff to support transfers and so on, but the direct care will be provided by professionals who are brought in or to whom prisoners are taken in order to receive attention.

Colin Beattie: You mentioned prisoners who have dementia. I presume that, at some point, they reach a stage at which it is not even clear to them that they are in prison. Is there a process whereby such prisoners are transitioned into an existing care facility outside the Prison Service?

Stephen Boyle: It is our understanding that prisoners' health conditions will be considered as part of the process of considering their suitability for the environment that they find themselves in at certain points of their sentence. Beyond that, the

detail of how that is applied is probably a matter for the probation service and the Scottish Courts and Tribunals Service to take a view on—they are perhaps better placed to inform the committee's interest in that issue.

Colin Beattie: I am simply trying to understand whether the realities of the situation are looked at sensibly.

My final question is on the prison estate. Among the issues that have been reported on the condition of the prison estate are underspends in the capital budget and savings that have been made from reduced planned maintenance. Do you have any particular concerns about that? Those findings seem odd, given other comments that have been made about the estate.

Stephen Boyle: I will bring in Tommy Yule to say a bit more about the application of the capital budgets. There will be local factors to do with the availability of contractors to service particular aspects of the estate.

Our conclusion is that the estate is under pressure with regard to maintenance and—as Michael Oliphant mentioned—its suitability to provide a modern prison service. We reasonably draw on the conclusion of the chief inspector of prisons that 35 per cent of Scotland's prison population is still housed in Victorian or Victorian-age prisons. We still have prisoners who are sharing cells. The suitability and durability of those environments, and the extent to which they are consistent with human rights, are concerns that the chief inspector has drawn attention to.

That said, it is absolutely the case that there has been considerable investment in the prison estate. Four new prison facilities have been built over the past 20 years, but there is a way to go. There still needs to be an evolution of requirements, given the changing nature of prison and the longevity of the estate in the round.

There is undoubtedly work to be done in this area, but Tommy Yule might want to say a bit more about the application of the budget.

Tommy Yule (Audit Scotland): We noted that additional funding is being provided in the 2024-25 budget to progress development at HMP Glasgow—the replacement for HMP Barlinnie—and HMP Highland, which is taking over from HMP Inverness. An additional £70 million of capital funding is being provided in this year's budget; the total capital funding in 2024-25 to support that is £167 million.

As the Auditor General highlighted, refurbishment and redevelopment work has been on-going over the past 20 years not just on the new facilities that the Auditor General mentioned but on community facilities to support female

prisoners prior to their release and on refurbishing the prison estate.

There is still a fundamental issue, particularly with HMP Barlinnie, which is an ageing prison. The Prison Service relies on it for surge capacity, so when there are fluctuations in the prison population, Barlinnie is asked to provide the flex. The age and condition of the building increases the risk to the SPS of failures in how it would manage that in such cases.

Redevelopment work is on-going, but it is worth noting that the HMP Glasgow project has been on the major capital project list for a number of years. It is just a case of getting the funding in place for that, and I believe that the Prison Service is hoping to have that this year.

Colin Beattie: Barlinnie is clearly a priority.

Very simplistically, we are talking about there being an underspend on the capital budget. That was the case in 2018-19. I presume that the underspends are not real underspends—they are just money that has not yet been paid out for on-going contracts and so on. Is it as simple as that?

Stephen Boyle: That is a pretty fair assessment. Underspends will be consumed as the Prison Service moves forward to tackle the challenges that the estate is presenting. There is not yet enough capital available to tackle everything that the Prison Service requires to tackle in its estate. Effectively, what you are describing is timing differences.

It is fair to mention that capital investment is being applied, particularly to the new prison facility in the Highlands. Ministers have a significant decision to make about the timing and the cost of the replacement for HMP Barlinnie in Glasgow. Work is progressing on that. It is our understanding that ministers will consider it following their assessment of the business case. Those are the key challenges.

Colin Beattie: Is there a timescale for that?

Stephen Boyle: As I understand it, it is due this year, Mr Beattie. I am not sure that we can be any more precise than that.

I read—as I am sure that the committee did—the director general for the Scottish exchequer's submission to the committee on the major capital projects update. We hope to see a position laid out when the Government publishes its next medium-term financial strategy and the accompanying infrastructure investment programme, which is due in May this year. If the precise detail is not laid out at that stage, I hope that it will be in 2024.

Colin Beattie: I have one last question. Previously, reference has been made to reducing planned maintenance to make savings. That, of

course, is really just pushing the problem into the future. Are you satisfied with the programme of maintenance that is in place for the prison estate?

Stephen Boyle: That level of assurance is beyond what I can offer the committee this morning. There are clear challenges in the prison estate. Issues have been highlighted, primarily by the reporting of the chief inspector of prisons, which draws attention to unsatisfactory conditions within the prison estate. That is not to say, however, that the money that is available is not being spent properly. It is both of those things. The money might be well being spent appropriately, but the budget is not enough to tackle all the requirements of the estate. Our audit work is not drawing attention to inappropriate capital spending, but what is being spent is not yet tackling what effectively needs to be a transformative approach that addresses the fact that 35 per cent of Scotland's prisoners are still residing in Victorian-era accommodation.

Colin Beattie: References to savings being made by reducing maintenance is slightly historical, in that that refers to several years ago. Is that still the case now? You can have any sort of budget, but if you are going to make savings out of that by cutting the maintenance—

Stephen Boyle: I will bring in Tommy Yule because he looked at that in a bit more detail during the audit. Overall, the financial position of the Prison Services is challenged. It has had additional financial support in the 2024-25 revenue budget and additional capital has been provided.

Colin Beattie: Maybe you can comment on the fact that—

The Convener: Colin, we are short of time. You have had about three last questions, so I will have to ask that we move on and invite Graham Simpson to put some questions.

Graham Simpson (Central Scotland) (Con): Mr Beattie has mopped up rather a lot in that session, including some questions around Barlinnie and its replacement.

Auditor General, you said that we are expecting a business case for HMP Glasgow sometime this year. So we will get a business case, but then the funding has to be approved and so on. How long do you think that it will be before we actually have a new prison?

Stephen Boyle: It would probably be unhelpful for me to speculate about when that will happen. In paragraph 55 of our report, we set out that consideration of a replacement for HMP Barlinnie has been on-going for more than 10 years from the first iteration of its inclusion in the infrastructure investment plan in 2011; it was also in the more recent plan in 2015. We do not know

when that new prison will open. We also do not know what its final cost will be.

In relation to the plans as they exist currently, it is reasonable to say that costs will be more than they were when figures were last attributed to them. That is because of known factors, which we have seen with regard to many other capital projects, such as build cost inflation, the availability of labour and external factors such as the conflict in Ukraine. Those have all led to capital projects costing more.

The committee will be familiar with the fact that the Government is looking at its prioritisation, and the publication of its next infrastructure investment programme will be key in setting out where HMP Glasgow—in terms of consideration of the business case, based on existing designs or otherwise—sits alongside the Government's other priorities. We look forward to its publication.

Graham Simpson: If the committee has the Prison Service in to give evidence, we could ask it questions about that.

I want to go back to some of the things that you spoke about earlier. Pay rates and the differential pay rates for prison officers and people who work for GEOAmev was mentioned. I just had a quick look and I see that the starting salary for a prison officer is £24,700, rising to £28,400 after three years. Do you know what GEOAmev staff are being paid?

Stephen Boyle: I will ask Michael Oliphant whether we have that detail. It might be helpful to make a comparison with the application of the flow-through funding for the 17 per cent increase in hourly rates.

Michael Oliphant: I do not have that information to hand, but we can see whether we can find that out in order to make that comparison.

Graham Simpson: That would be useful, because that issue has come up. We made the comparison between what GEOAmev staff and supermarket workers or Prison Service staff are paid, for example. It would be useful to know what the difference is.

Stephen Boyle: That is absolutely fair. We can commit to come back to the committee on that point. Mr Beattie touched on our previous report on the Prison Service in 2019 and some of the challenges with staffing levels. The key feature of that report was the application of ex gratia payments. Therefore, it is not necessarily the direct comparison that the hourly rate suggests for the staff who work for GEOAmev or for those who work for the Prison Service.

The committee will recall some of the issues in relation ex gratia payments, including the doubt about their application, the control environment

around that and the totality of that. Therefore, even allowing for pay rate growth, which we have seen over recent years, the Prison Service made ex gratia payments totalling £6.3 million in 2022-23, which was a jump of 46 per cent from the previous year.

That echoes the judgments that my predecessor made about the challenges that the Prison Service was facing. Staffing levels are still largely the same. Although prison custody officers might move to SPS employment, that does not address the overall sustainability of the service.

I am happy to make the comparison that you suggest, Mr Simpson, but a range of factors are driving the sustainability of staffing levels in the Prison Service.

10:30

Graham Simpson: I will leave that with you.

You said that GEOAmeY could resign the contract. Is that correct?

Stephen Boyle: Any contract includes the opportunity for the provider to resign from it, but with the potential application of penalties and termination arrangements that would be set out in the contract.

Graham Simpson: Is there a risk that, given the problems that it has had for several years, the contract could fail?

Stephen Boyle: It is not much of a stretch to say that there is a risk that any contract could fail. That is especially the case given the level of challenges with the contract and the fact that we are highlighting risks to its sustainability. The Prison Service will have to carefully manage that factor with its partners, in conjunction and through dialogue with the service provider GEOAmeY.

Graham Simpson: Did you speak to GEOAmeY at any point?

Stephen Boyle: Yes, we did. We engaged with it. Michael Oliphant can say more about the engagement that we had. I reassure the committee that, when we publish any report, if it makes reference to any organisation, as part of our processes, we bring that to the organisation's attention through fact checking and take an opportunity to engage with it.

Michael Oliphant: There is nothing more to add to that. We shared the content of the draft report with GEOAmeY and invited any comments on factual accuracy, as we do with all our reports. The managing director at GEOAmeY got back in touch with some comments that we considered and reflected in the final draft.

Graham Simpson: What is GEOAmeY's position on the situation?

Michael Oliphant: To be fair to GEOAmeY, it accepts that performance has been poor. It accepts that staff numbers have not been sufficient. It would be difficult for it to dispute otherwise. It might have a slightly different view on the circumstances behind the situation or the impact of the changes to the contract as a result of Covid. Those are big factors, but, as I said, the main one is that GEOAmeY has not had the staff to service the contract. It accepts the failings, but its focus will be more on the changes to the environment as a main cause of them.

Graham Simpson: Did the problems start occurring because of Covid or around that time, or were there problems before that?

Stephen Boyle: In general terms, that is a fair conclusion to reach. The report touches on that. There were initial teething problems with the contract, which were resolved, whether through service credit application or improvement notices. In general terms, the contract performed as intended before the pandemic, but the disruptive nature of that situation, for the reasons that we have set out to a degree this morning, resulted in its not operating as intended and in risk to its overall sustainability. Michael Oliphant might wish to elaborate on that.

Michael Oliphant: I agree with that. Some of the earlier teething problems simply related to the flexibility that is required with the contract, such as supporting hospital appointments at the same time as transfers to court or the demands of hospital detainments and bed watches. Those were the initial teething problems that you would probably get at the start of any contract until it beds down. However, Covid certainly had an impact. Prisoner numbers dropped during that time because court cases were not coming through, but they have gone back up in many cases. As I have said, it is a volume-based contract, so the more activity that GEOAmeY undertakes, the more income it can generate from it.

Graham Simpson: What does an improvement notice involve?

Michael Oliphant: It is, in effect, a letter that the Prison Service will send to GEOAmeY that lays out the areas of the contract in which it has underperformed. There is no real trigger for it, other than the Prison Service taking the view that GEOAmeY has underperformed in an area.

The point of improvement notices is to encourage a short and sharp recovery and a reaction, which we saw happening with the first improvement notice that was issued, on hospital appointments. However, they are not designed to address the quite seismic failures in service

performance that we have seen. The subsequent improvement notices are still live; the issues have not been resolved.

One of the problems with the subsequent notices has been that, in order to address one area—for example, hospital appointments—GEOAme staff would be transferred to support that part of the contract, but the service level would drop in other areas. Some of the subsequent notices address the point that improvements are required in certain areas, but that should not be to the detriment of matters that are the subject of current notices. However, we got to the point at which such notices were not having any effect, the real problem being a lack of staff.

Graham Simpson: Which areas are still outstanding?

Michael Oliphant: The first one, in relation to hospital appointments, has been resolved. All the subsequent notices are still live. I refer to paragraph 29 of the report. A notice relating to contractual data accuracy and verification was issued. Further notices were issued in December 2022, on hospital appointments; in February 2023, on police identification parades; and most recently, in June 2023, in relation to supporting court cell and court docks delivery. As I understand it, those are still live.

Graham Simpson: That is quite a list. What will happen if those matters are not resolved?

Michael Oliphant: It is all part of the same discussion. Nothing is specifically tied to an improvement notice. As I have said, such notices are designed to prompt action to improve within 14 days or over a longer period of time, with an action plan. However, we have not seen quick recovery in response to improvement notices; the problems are more fundamental than that.

Stephen Boyle: The Prison Service has changed tack in its approach to arriving at a sustainable contract. As Michael Oliphant said, it could continue to issue improvement notices and service credits, but it is clear that it has reached a view that such an approach will not lead to a sustainable contract and better service provision. As we have discussed, it is now in the position of applying flow-through funding. We will have to wait another six months or so to see whether that is successful. However, there are fundamental risks to the sustainability of the contract, and I think that the Prison Service is taking a reasonable approach by using service credits, improvement notices and additional funding.

Over time, the Prison Service will have to decide how sustainable that approach is. Is it delivering value for money in respect of public expenditure and service performance? With its partners, the

service will have to choose whether it will continue to do that for the duration of the contract or whether there should be an intervention. If it does not pursue the alternative financial support, ultimately—we have seen this with other public contracts—there will come a point at which intervention is required, when the contract is not being carried out according to the terms and conditions so the termination arrangements will apply. However, that is not without risk. The question that the Prison Service will face will be: who will step in, and will that come with additional public expenditure and potentially better performance? Those will be judgments for the Prison Service.

Graham Simpson: Finally, do we have any idea how many court cases have been impacted by the issues with the contract?

Stephen Boyle: Michael Oliphant might have that information. We can certainly refer to prisoner transfer issues affecting court appearances, police identification parades and hospital appointments. In paragraph 29, there is a specific example of the implications of that being felt across the justice system, which involves a solemn case being interrupted due to the prisoner not arriving on time. Beyond that, if we do not have the precise details, we can certainly check our records and inquire further with the Scottish Courts and Tribunals Service. However, Michael Oliphant might know more.

Michael Oliphant: Our focus, particularly in exhibit 1, was on performance on the percentage of court arrivals on time. If we look at performance in the third quarter of 2023, we can see that, in total, there were about 18,700 movements for court arrivals. The performance against that was 61.6 per cent, which is a good 26 or 27 per cent below the target. That involves prisoners not arriving on time. I do not think that we have the data—I imagine that the Prison Service will have it—on whether delays to proceedings resulted. If delays to proceedings did result, a service credit penalty would have been applied. In some cases, if the prisoner does not arrive on time but that does not delay proceedings, a points application is applied before a threshold is reached.

Tommy Yule: I do not believe that we have any figures, but our work identified that there have been changes to the Scottish court recovery programme due to issues with the GEOAme contract. For example, the roll-out of more localised virtual custody hearings had to be delayed because GEOAme was unable to service that part of the contract by supporting the courts with that. As I have said, we do not have any specific numbers, but we know that that is having an impact.

Graham Simpson: Will you be able to get the numbers?

Tommy Yule: We can certainly ask.

Graham Simpson: That would be quite useful.

The Convener: Before we leave the subject of improvement notices, you referred in paragraph 29 of the report to an improvement notice that was served in May 2022. You said that the notice

“also highlighted significant issues in relation to the accuracy of verified data to assure SPS that billing information is correct.”

That rang an alarm bell for me and reminded me of instances—south of the border, admittedly—in which Serco and G4S had responsibility for community payback schemes and were charging the Government for prisoners whom they claimed they were tagging who were either dead or back in prison. Is anything of that sort of order going on here?

Stephen Boyle: I do not think that we are drawing a direct analogy in terms of concerns about the regularity of expenditure, which is effectively what you are describing in Scotland. However, it is an important concern that the Prison Service has not been assured about the provision of the contract. The improvement notice is an important statement therein but, compared with what was reported in England, we are not seeing details of the same scale of issues in Scotland.

Michael Oliphant might want to add a bit more to that.

Michael Oliphant: That is a very important part of the contract, because it obviously drives out what the invoicing and payments will be. As I said earlier, information relating to verification of data is one of the performance measures that is not subject to the moratorium because of its importance. That needs to be accurate.

There are still concerns. As I have said, those things are looked at every day because of the number of prisoner movements, the support to court services and so on. If things do not happen, that gets noticed. There is a monthly billing arrangement in place and a reconciliation of that is done. That is still an issue, but I do not think that it is as fundamental as the issues that the convener has highlighted.

10:45

The Convener: We are quite pressed for time, so I will move straight to Willie Coffey.

Willie Coffey: I want to stick for a wee minute on the question of getting prisoners to appointments on time, whether that is court, hospital, identification parade or whatever. What is the real reason behind that? If a prisoner is due to

be at something and there is a time clash, it is impossible to get them there, and more staffing and money will not change that. Has something happened to the timing and scheduling of all those things? Is it a post-Covid increase in activity, or is it to do with catching up on the backlog? Is that a factor in the issue, Auditor General?

Stephen Boyle: You are right, Mr Coffey. There is a range of factors, but some intuitively feel more straightforward to resolve than others. As we have touched on, NHS appointments are coinciding with when staff would be expected to support court attendance. That feels like something that should be able to be resolved. Other factors, such as increased volume in respect of court backlogs, will be more challenging, but you would expect the Prison Service and its NHS partners to be able to find a resolution on hospital appointments. I say that from a perspective of not knowing the detail and understanding that there will be complexities and challenges in parts of the public sector.

If we look at the exhibit that Michael Oliphant referred to a moment ago, we can see that the volume of court arrivals is stepping up. Leaving aside performance for a second, you can see the impact that the pandemic has had. In 2021, there were 13,000 court arrivals, and that jumped to nearly 19,000 in 2023. Volume and availability of staff are factors, but some of these things are more challenging than others to resolve.

Willie Coffey: I see in the report that there might have been a request to the NHS to help with scheduling. Has that been rejected? Do we know the reasons why? Is work on-going to resolve that problem?

Stephen Boyle: Our understanding is that it is unresolved. The detail of the factors behind that are probably best explained by the Scottish Prison Service and the NHS.

Willie Coffey: Other members talked about the potential for the contract to fail overall; the 62 per cent, 65 per cent and 61 per cent performance rates for key activities in the contract might be a factor in that. In case that were to happen, what are the SPS, the Government and everyone else doing by way of contingency to ensure that we can continue the service that we need?

Stephen Boyle: That is fundamental. Michael Oliphant can say a bit more about the scenario planning that is under way, which is key. Although the Prison Service can apply improvement notices, service credits and flow-through funding, there is no guarantee that those will be successful. It has a joint venture with GEOAmev, but those decisions will be driven by shareholder expectations and management executive decisions by that company.

As you will know, Mr Coffey, there is precedent for a private sector provider to resign from a public sector contract. The Scottish Prison Service and its partners still have an obligation to make this work. As I mentioned earlier, the roles that are provided by prison custody officers can only be replicated by prison officers or the police, and that is the type of scenario planning that they need to think about to ensure the safe operation of the service in the event of termination by either party.

I will pass to Michael to say a bit more about the detail.

Michael Oliphant: The performance stats that we have highlighted have been a driver for the Prison Service and its partners to look at the contingency arrangements that they might apply, whether that is for other providers to step into the contract, to default or to terminate. They have concluded that it is in the best interests of the contract to continue but for the service to improve.

The Auditor General highlighted a couple of points. Police officers could step in to provide support for police ID parades and prison officers could support prison transfers, but there is no equivalent in the courts to support court docks and court cells. Only prison officers and police officers are trained in control and restraint measures, so GEOAmev provides that service. Therefore, there would be an absence to be filled. Would you fill it with prison officers or police officers, or would you try to get another third party provider? Those options are all expensive, not only in terms of the additional immediate money that would be required but in terms of what it would mean for the business-as-usual services that are provided by Police Scotland and the Prison Service.

We have found out that, even at the moment, due to service failures, the Prison Service is providing up to 20 full-time equivalent staff a day as substitutes to make some transfers, particularly higher-priority transfers for hospital appointments that need to happen at a certain time.

Willie Coffey: Members have mentioned several times the issue of general prison population numbers. Auditor General, you have explained that the numbers are going up. To what extent are those increasing numbers due to unpacking the backlog of court appearances, longer sentences being imposed for certain offences, improving clear-up rates and so on? Are we seeing the unravelling of the Covid impact on those numbers, and do you expect the numbers to begin to level off or reduce at some point?

Stephen Boyle: All those factors are relevant, particularly tackling the backlog. As we have explored to a degree already this morning, the approach to historical sexual offences is also impacting on the size, age profile and complexity

of the prison population in the round. I will bring in Tommy Yule to say more about the factors behind that and the management that the Scottish Prison Service is applying to what is fairly sophisticated forecasting in order to have an idea of the demands on it.

There is no doubt that there are complexities in that, because it is not a straight equation of X number of prison places and projected requirements for those. That is due to the complexity of managing the prison estate and particular prisoner types, which is not just about the age profile but the need for different types of accommodation and segregation for those who are convicted of serious organised crime, for example. Those prisoner types all have to be housed in different environments.

Tommy Yule has already made a point about surge capacity. Typically, that is used in HMP Barlinnie to provide support where capacity is required beyond the operational norms. However, that also has implications with regard to, for example, rehabilitation, work programmes and educational arrangements. Again, Tommy can set that out in more detail.

Tommy Yule: All the reasons that the Auditor General has mentioned are relevant—longer sentences, increased links to serious organised crime groups and the rise in the number of convictions for historical sexual offences. I also highlight the Prisoners (Control of Release) (Scotland) Act 2015, which ended the automatic early release of long-term prisoners. Previously, that kicked in after someone had served two thirds of their sentence. In essence, that has meant that people are staying in custody for longer.

With regard to the challenges that the Auditor General referred to, in the report, we set out the operating capacity that the prison estate is working to. We continue to try to establish the true capacity because capacity is not a specific number; it is more likely to be a range of numbers, and it will depend on various factors, including the type of prisoner who is being accommodated.

The Auditor General mentioned the use of double occupancy in cells but, before those in custody can be put in such accommodation, a detailed risk assessment is undertaken, which takes into account the type of crime committed and who someone could be accommodated with. It goes without saying that, if there is a higher proportion of prisoners who can occupy those cells, the true capacity will be higher but that, if there is a higher risk profile, the true capacity will be lower. There are many complicated factors that feed into that figure.

Willie Coffey: I presume that the SPS is reviewing all this, especially the capacity issue, if

the numbers go up in the way that you have described.

Stephen Boyle: Yes, it is, Mr Coffey. That is a key part of its management of prisoners and its estates.

One of the points that we have highlighted is that it is getting harder to do that with the estate that the SPS has. One of the key conclusions from the chief inspector of prisons was that, as the prison population increases, the levers that are available to the SPS are reducing. Surge capacity is an option, but it reduces activity that is aimed at rehabilitation, whether that is vocational or educational activity, which, although increasing, is still below pre-Covid levels.

As part of our audit, we looked at the operational performance of the Scottish Prison Service. Tommy Yule, Michael Oliphant and other colleagues drew attention through their audit to the fact that, although the environment is challenging, there are some positive signs of performance. The number of assaults by prisoners on other prisoners is reducing, as is the number of assaults on members of staff. We referred to those factors in the previous section 22 report.

The overall status, however, is that the service is under pressure. As the prison population grows, there are challenges in managing the estate and the sustainability of the service.

Willie Coffey: On the flip side of that, Auditor General, your report has not quite touched on the Government's efforts to reduce prisoner numbers using effective measures such as bail and remand, sentencing and e-monitoring. Have you had a chance to assess the impact of that yet, or are we still unravelling the backlog? We are still at that peak at the moment, but can we hope to see the measures that the Government has been introducing for a wee while now begin to have an impact, with the numbers becoming more manageable?

Stephen Boyle: There is certainly a timing factor, Mr Coffey. The dominant factor is addressing the backlog in the courts. As we saw, during Covid, there was a significant reduction in the prison population and a presumption against short sentences and so on.

That remains a key area of interest in our work. The committee will recall that, in the summer of 2021, I produced a briefing paper on community justice arrangements in Scotland, and we will return to that area in our future work programme. We will do that bearing in mind the challenges that the Scottish Prison Service is facing, which we set out in today's report, and how the totality of the justice system is operating effectively. I am pleased to confirm that that remains part of our interest.

Tommy Yule: We are still looking at the numbers, including the longer-term trends, and the Scottish Prison Service now publishes weekly figures detailing the number of people in prison. In the past 10 years, the number of women prisoners has reduced by around 100 and the number of young people in custody has also reduced significantly in that time. However, the number of adult males continues to increase. We are therefore seeing a reduction in overall numbers through the number of women prisoners and young people in custody, but there is not yet a reduction in the number of adult males in custody.

The Convener: I have a couple of questions to finish up this morning. Touching on that last subject, you are right, Auditor General, as always. You gave evidence to the committee back in September 2021 about the briefing that you had prepared on where we had got to with the Government's stated policy of shifting to more community justice options. The evidence that was set before us at that time was that it is hugely less expensive for the state, and that the reconviction rate was noticeably different. Of those people who had served a sentence of a year or less in prison, 49 per cent were likely to reconvict within a year, whereas, in comparison, those serving community-based sentences had a reconviction rate of 30 per cent, so there was quite a marked contrast in the outcomes.

At that time, you told us that there was a lack of progress in shifting the balance in sentencing. Two years or more on, where do you see that? It obviously has a direct effect on the prison population.

11:00

Stephen Boyle: There is no doubt that that is the case. You are quite right that custodial sentencing is far more expensive and, in some circumstances, leads to poorer outcomes. We also talked in that session about the huge disruptive effect—which is, to an extent, understood and expected—that custodial sentencing can have in relation to family relationships, employment opportunities and health prospects.

We are not yet in a position to draw a conclusion about the application of the Government's plans around community justice, because the numbers are skewed by the court backlog and the intent to move to a more stable position. As I mentioned to Mr Coffey, it is clearly part of our area of interest in terms of the sustainability of the service, future prospects and value for money, so it is our intention to come back to it. In the short term, if we have more detail, we can come back to you in writing, but it remains part of our work programme for the future.

The Convener: Great. That would be helpful, because it is a component part of this discussion.

The other thing that is not new—you have already alluded to it—is that Audit Scotland produced a section 22 report on the Scottish Prison Service back in September 2019. Our predecessor committee was so concerned, it is fair to say, about what that report said that it undertook its own inquiry and brought in its own witnesses to try to get to the bottom of things. When I read that report, which came out four years ago, it looks as though a lot of the issues that it covers are the same issues that we are discussing today. They remain, by and large, unresolved. One of the issues contained in the report is that, according to the then Auditor General, HMP Barlinnie

“presents the biggest risk of failure in the prison system”,

and the report warns that

“there is no clear contingency plan for accommodating the 1,460 prisoners”

that it then held. Has there been a contingency plan for HMP Barlinnie?

Stephen Boyle: Tommy Yule might be able to say a bit more about the specifics of the plan, but before I address that point, I will add a couple of things. The issues that my predecessor set out in her section 22 report in 2019 are largely the same as the overall issues that the Prison Service is facing today. My section 22 report focuses on three specific issues—the prison numbers, the estate and the sustainability of the contract.

However, the work that Tommy Yule and Michael Oliphant have carried out as part of their annual audit, which underpins the section 22 report, shows a high degree of consistency with the findings that the previous auditors made as part of their work, including on staffing numbers, the estate, the application of ex gratia payments, and overall performance, which is at the margin, together with the suitability of and vulnerabilities in the Victorian estate, which the chief inspector of prisons has more recently referred to. Those are all issues that the Prison Service and its partners need to resolve. It is important to stress that the Prison Service on its own cannot resolve the challenges that the service is facing, given their scale.

On the specifics of the contingency planning for HMP Barlinnie, short of the longer-term contingency plan, which is ultimately to build a new prison in Glasgow, Tommy Yule may have more detail. If not, we may need to engage with the Prison Service itself on that point.

Tommy Yule: As the Auditor General has set out, the size of HMP Barlinnie and its importance to the prison estate is such that, as I understand it,

it is very difficult to have detailed contingencies in place. It would require the movement of prisoners to other facilities that at present are not available. That is not to say that the Scottish Prison Service is not doing anything to manage that risk. It is on the risk register, and action is being undertaken constantly to manage it. However, in the absence of any new facilities, it will be a challenge for the service.

That goes back to Mr Beattie’s earlier question. The Scottish Prison Service has had the replacement for HMP Barlinnie on its capital plan for a number of years, but it needs approval from the Scottish Government. My understanding is that the Scottish Government is looking at the business case. The potential stumbling block is that the price and costs need to be bottomed out before it can approve the project, but it hopes to achieve that later this year.

Michael Oliphant: The risk of failure of HMP Barlinnie needs to be seen in the context of the work that the Prison Service is doing to try to reduce the prison population. The Prison Service is doing quite a lot of work around repurposing the estate. Tommy Yule mentioned the different trends in the rise in adult prisoners and the decline in female and young offenders. Therefore, if you need less capacity for females and young people, you can repurpose that part of the estate. Part of the women’s regional facility at HMP Edinburgh was repurposed to house male prisoners, with the females housed elsewhere. There is the option to extend the use of electronic monitoring and to review the operation of the court recovery programme with regard to the pace of recovery, for example.

Those options exist, but in the case of the failure of HMP Barlinnie, you would be looking more at emergency options—the use of alternative accommodation, temporary or emergency release, police cells and things such as that. Those are the possibilities in relation to the more extreme case.

The options that I referred to do not relate only to HMP Barlinnie; they are being considered as part of addressing the escalation in prisoner numbers in an ageing and challenging estate.

The Convener: One of the particular risks that is attached to Barlinnie is the impact of the conditions on prisoners’ mental and physical health. In turn, that could potentially lead to litigation that is linked to human rights and equalities issues. Have you made any assessment of that? Is there a risk of a judicial review or some kind of litigation against the Scottish Government?

Stephen Boyle: Again, Michael Oliphant might want to come in on that. Those issues are factors in the consideration of the Prison Service’s financial assessment. There is quite a history to

that, as you will recall, convener, with regard to prisoners' claiming that their rights have been breached and the resultant financial implications. That goes back all the way to the slopping out that was required of prisoners and the financial implications of that.

In the current environment, the issues that you raise are a live risk. The situation is perhaps not as extreme as that which was experienced in the 1980s, but the chief inspector of prisons—as I recognise that I have mentioned a few times this morning—has drawn attention to the fact that 35 per cent of Scotland's prison population is in Victorian-era accommodation. That brings additional risks: the presenting issue of human rights but also, downstream, a financial risk to the Scottish Prison Service.

In normal environments, we expect organisations to consider whether they are able to quantify a risk and set out the proximity of the risk in accounting standards: whether that needs to be provided for, how it is being managed on a risk register or, indeed, whether there is a disclosure requirement. Again, Michael can say more about how precisely the Prison Service is treating that risk.

Michael Oliphant: It is a big risk. Each individual case would need to be looked at on its own in order to make any assessment of whether it is likely that a case will be brought and the financial impact of that. However, the risks do not end there. One of the key risks that has been looked at is prison instability and unrest. There is the reputational risk that would come with that and the greater strain on prison staff, which we have touched on in relation to other aspects this morning.

The Prison Service is open to those challenges. The longer those Victorian prisons remain in the estate, the higher those risks become. Those risks would not go away completely but they are higher because of that.

Tommy Yule: I will build on what Michael Oliphant has said. Moving away from the financial and litigation risks, our report discusses the restricted regimes that are in place. Those mean that for people in custody there are employment opportunities in prisons and there are training opportunities, with college courses provided. However, those opportunities are limited. The more that prisons go above their intended operating capacity, the higher will be the demand, but the supply does not alter with that. That will therefore have an impact on prisoners' ability either to demonstrate core skills so that they can move on to the next stage of their sentence or to demonstrate that they are ready for release.

The Convener: Auditor General, a couple of times this morning, you have used the expression that many of the issues that we have discussed cannot be resolved by the SPS alone. How would you see collaboration among the SPS, other affected public bodies and the Scottish Government working in practice?

Stephen Boyle: This is a multifaceted issue. We know that good working relationships are in place and that multi-agency engagement takes place among the Prison Service, the police, the Scottish Courts and Tribunals Service and others. On a different spectrum, of the issues that we have discussed, the NHS issue feels like one that could perhaps be resolved more easily than some others.

On the application of sentencing, and community justice, we have also discussed the feeling that examining the estate will be key unless there should be a step change in prisoner numbers or sentencing. You are right to reference the community justice paper's finding that, at that point, Scotland still had the highest prison population in western Europe. If that trend continues, the financial and performance risks will require investment in the estate, which in turn will need effective engagement with the Scottish Government and, as ever, consideration of capital and revenue budgets and so forth, so that there is a long-term plan.

It is relevant that, in their report, the auditors drew attention to the fact that the Prison Service still has work to do on its medium-term financial strategy. That will require effective collaboration with and support from the Scottish Government, because the scale is different from that of other organisations.

Those are all factors that the Prison Service and its partners will need to negotiate and navigate in the course of the next few years.

The Convener: Thank you. We have covered a lot of ground. We would like to have got to even more, but time has been against us. I thank the Auditor General for his evidence and Michael Oliphant and Tommy Yule for their contributions. They have been valuable in illuminating what is, for the committee, quite a serious section 22 report into the current state of the Scottish Prison Service.

With that, I draw the public part of our proceedings to a close. The committee will now move into private session.

11:13

Meeting continued in private until 11:35.

This is a draft *Official Report* and is subject to correction between publication and archiving, which will take place no later than 35 working days after the date of the meeting. The most up-to-date version is available here:
www.parliament.scot/officialreport

Members and other meeting participants who wish to suggest corrections to their contributions should contact the Official Report.

Official Report
Room T2.20
Scottish Parliament
Edinburgh
EH99 1SP

Email: official.report@parliament.scot
Telephone: 0131 348 5447
Fax: 0131 348 5423

The deadline for corrections to this edition is:

Monday 4 March 2024

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

