



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Criminal Justice Committee

Wednesday 5 June 2024

Session 6



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CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
EMERGENCY RELEASE OF PRISONERS AND OTHER KEY CHALLENGES IN SCOTLAND'S PRISONS	2
SUBORDINATE LEGISLATION.....	51
Sheriff (Removal from Office) Order 2024 (SSI 2024/148)	51

CRIMINAL JUSTICE COMMITTEE

23rd Meeting 2024, 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)
*Sharon Dowey (South Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Rona Mackay (Strathkelvin and Bearsden) (SNP)
*Pauline McNeill (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Professor Sarah Armstrong (University of Glasgow)
Paula Arnold (Prison Governors Association (Scotland))
Ian Bryce (Parole Board for Scotland)
Phil Fairlie (Prison Officers Association Scotland)
Wendy Sinclair-Gieben (HM Inspectorate of Prisons for Scotland)
Lynsey Smith (Social Work Scotland)
Kate Wallace (Victim Support Scotland)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament Criminal Justice Committee

Wednesday 5 June 2024

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Audrey Nicoll): Good morning, and welcome to the 23rd meeting in 2024 of the Criminal Justice Committee. There are no apologies. Fulton MacGregor joins us online.

Agenda item 1 is a decision on whether to take in private agenda item 4, which is a discussion of the evidence that we will hear this morning. Do members agree to take that item in private?

Members *indicated agreement.*

Emergency Release of Prisoners and Other Key Challenges in Scotland's Prisons

09:30

The Convener: Under agenda item 2, which is our main item of business today, we will consider the proposals for an early release of prisoners and other key challenges in Scotland's prisons. This is a preparatory session for next week's appearance at the committee by the Cabinet Secretary for Justice and Home Affairs and the Scottish Prison Service.

I welcome our first panel of witnesses to the meeting. They are Professor Sarah Armstrong, who is professor of criminology at the University of Glasgow; Kate Wallace, who is chief executive officer of Victim Support Scotland; and Lynsey Smith, who is chair of the justice standing committee at Social Work Scotland. I thank you all for agreeing to provide evidence to the committee.

I refer members to paper 1. I thank Families Outside and the Howard League Scotland for their written submissions, which have been very helpful.

I intend to allow around 60 minutes for the evidence session. I will begin with a general opening question for our panel members. I will start from the left, bringing in Professor Armstrong first, and then work across the panel.

As you know, the cabinet secretary proposes that we release up to 550 prisoners earlier than anticipated, because of an emergency situation. She is proposing other measures for later on, via new primary legislation, to cover long-term prisoners. In general terms, what are your views on the proposals? Will they be enough, or should an alternative way forward be found, particularly for the longer-term approach?

Professor Sarah Armstrong (University of Glasgow): The proposals are being phrased as "emergency releases". Do we need the releases? My most recent research is concerned with deaths in custody and the impacts of those on families, and, right now, I would say that prisons are not safe. The level of deaths has been going up quite considerably. That began in 2019, it was amplified during the pandemic and it continues.

Prisons are not safe, to the extent that you are having to reduce the prison population to create a greater amount of safety for the people in prison—both those working and living there—and I would think that some kind of urgent measure is needed. Will reducing the prison population by 500 in a fairly rapid way have any longer-term impacts? I doubt it. After the emergency releases happened during Covid, the prison population went back up

and then increased at a faster rate. It is a safety-valve measure, and I very much agree with your suggestion that longer-term measures must be taken. I can certainly talk about those.

In some ways, the longer-term measures have as much to do with other parts of the criminal justice system as with prisons. It has to do with the police and the kinds of arrests that they are making; it has to do with the Crown and the routine opposition to bail; it has to do with the courts, the way that we sentence and the way that sentences have become ever more punitive, reducing the incentives for sentences to be a process of building hope and rehabilitation; and it has to do with the Parole Board for Scotland, which continues to have an extremely low recommendation-for-release rate.

All those things are factors that play into why Scotland has a criminal justice population that is way out of proportion with those of its neighbours of a similar crime and population profile. The population is, proportionally, two to three times bigger than those of Ireland, Finland, Norway or Denmark, and there is no reason for that.

In looking at deaths in custody, as far as I can find in the records, we see that Scotland has, proportionally, more drug deaths in prison than any other prison system that produces records on that. As a criminologist, it looks to me as though we are using a very expensive criminal justice system as a primary means of addressing a drug problem—and we are doing that badly, which is creating safety issues for everybody who is inside that system.

The Convener: That is a really helpful introduction to set the scene a little. I know that members will come back to the longer-term systematic approach that we need to look at.

Kate Wallace, I put basically the same question to you. Do you think that the measures that are being proposed for the short term will be effective, and what are your initial comments on the longer-term approach?

Kate Wallace (Victim Support Scotland): We agree that the measures are not a long-term solution to the issue. We have grave concerns about the approach that is being taken, which we think will result in more victims. We saw that the last time, during Covid, as has just been explained. Within a six-month period, more than 40 per cent of those who had been subject to emergency release had reoffended. We have grave concerns and, like the previous speaker, we do not think that it is a long-term measure.

We are well aware of the high levels of anxiety that the announcement has caused to victims—unnecessarily, for many. It has resulted in an increased volume of calls to our helpline and on

our services, and I know that other organisations have faced the same situation.

We had hoped for safety planning and risk planning for victims and for support planning to run alongside release, but the timescales that are being discussed and the approach that is being taken will not allow for those things this time round.

The Convener: I have a follow-up question on that. You might be aware of some correspondence that the committee has received from the cabinet secretary, outlining a proposed plan for the release process. In the letter, she refers to prescribed organisations that would have a role in supporting victims in relation to the release of prisoners. Victim Support Scotland is one of those organisations. Are you reassured that that is sufficient? From what you said just a moment ago, it sounds as though you have concerns about whether that will be adequate.

Kate Wallace: It will not be adequate—certainly not this time round. An information-sharing agreement is being worked on between the Scottish Prison Service and organisations that are named in the secondary legislation. However, I have not even seen a draft of that yet.

On the timescales that we are talking about, I note that the onus will again be on victims to come forward to raise their concerns and that we will then have to request from the Prison Service acknowledgement of whether the prisoner in a victim's case is a named person on the list for emergency release. All of that will be so close to the wire in terms of when prisoners are due for release that we need to be realistic and recognise that any meaningful safety planning or support planning will not be achievable this time round. I am pretty disappointed, given the lessons that we said that we would learn from the previous time.

The Convener: Thank you for that. I will bring in Lynsey Smith now.

Lynsey Smith (Social Work Scotland): On the first question, I agree that the measure is necessary. It will not resolve the long-term issue of the prison population, but it is necessary at the moment to buy us some time. Reading through the papers, I note that the impact that the prison population is currently having on prisoners and on staff working in the Scottish Prison Service is well documented.

I absolutely welcome the other proposals that are being made in relation to the home detention curfew and considering how to work with long-term prisoners. Kate Wallace mentioned the learning from the Covid pandemic, during which we enacted emergency provisions to release prisoners early. For me, there is a marked difference this time round, because we are not

living in a Covid society. We had a high return to custody from that cohort, but we were dealing with severe restrictions, so folk were not able to access services as they would do now.

It is well documented that prison does not create good outcomes for people, and people do return to prison who have previously served custodial sentences, but we are in a different time than we were the last time round. During the Covid emergency release, really good processes were put in place with partners about managing the lists, if we want to call it that; a number of sectors worked collegially to manage those cases. Although there were a number of challenges last time round, such as times when a drug death happened really quickly after release, local authorities, partners and the SPS reflected on the process.

There is learning. The early conversations that we have had with partners in local authorities, the health service and the SPS show that, with that learning behind us, we are already in a better position.

The Convener: My next question is on that issue, after which I will bring in other members. You have had the Covid experience, so to speak, and, as you said, there has been positive learning from that, we hope. Do you feel that social work services across Scotland—criminal justice social work in particular—are ready or have had time to prepare for the proposed release?

Lynsey Smith: We are working at pace—there is no getting away from that. I have another meeting today with the SPS to have further discussions about the lists. Each of the establishments is setting up multi-agency groups to facilitate the release.

We will have to take extraordinary measures to meet the requirements, but there is a willingness to do so. We absolutely want to stand together with our SPS colleagues and others in the justice system to ensure that we are able to deliver this safely, with victims absolutely at the forefront.

At the moment, it is an additional ask on a system that is pressured, as are other local authority public sector services, but we have commitment. We had a Social Work Scotland conference yesterday, to which the chief executive from the SPS and Cat Dalrymple came along. The spirit in the room was that we want to not only support the process but work towards getting more robust arrangements in place to manage the population.

The Convener: I know that members have a lot of questions, so I will bring in Katy Clark and then Russell Findlay.

Katy Clark (West Scotland) (Lab): You have all referred to lessons learned from Covid and to lists. Do you have a clear understanding of what types of prisoners are likely to be released? Do you consider that those prisoners will be the least risky and those that are most likely to not reoffend when they get out?

I will go to Sarah Armstrong first. I have heard everything that you have said about the long-term measures that are needed. However, if you were to go down that release path, do you think that the approach that is being taken is targeting the prisoners who are most likely to be appropriate for release?

Professor Armstrong: It is really hard to say, because there are exclusions—that is, people who will not be released—but the matter of who will be released is less clear, except by time. On that issue, however, I would say that releasing somebody a day earlier, or even 45 days earlier, than their sentence is neither here nor there in terms of what their risk was on day 1 or day 45.

I see now, without any emergency releases, that the way that some releases happen does not necessarily support a throughcare type situation. For example, somebody who was coping with an addiction issue had a city mission worker ready to pick him up on release to take him for his script, take him to his apartment and buy a loaf of bread for his first night. However, the prison decided to release him two hours early without telling anybody, so he was lost to the system again and then went back in prison. That shows the everydayness of the kind of risk that prisons deal with.

09:45

I object to the tone that is being used about preparing to release people who are all going to be coming out anyway. Metaphors that we are more used to hearing about toxic waste are being employed, as if there was some kind of dangerous cloud that was coming out, with talk of whether we are ready and whether it is a disaster. Rather than a focus on risk, I would like consideration of what supports are in place for everybody who comes out, whether under emergency release or not.

As far as I can see, you cannot really tell which specific people will be released from the way that the statutory instrument is phrased. I think that it will come down to the judgment of the people who are closest to the prisoners, which is the staff working with them. I assume that, after working closely with people, they are in the best position to know who is risky and who is not.

Katy Clark: But will they be the people who will make the decisions? It is a legislative process, so it will not be assessed by people who work closely

with the individual prisoners. It will be a more crude process. Is that your understanding?

Professor Armstrong: My understanding is that it is timed by someone's sentence.

Katy Clark: Exactly.

Professor Armstrong: However, there is a number on it, so it is being rationed and someone will have to make decisions. There are more than 500 people, potentially, who are within 90 days or 180 days—whatever it is—of release, so there will be some rationing and decision making. I assume that there will always be some discretion at play.

Katy Clark: Does any of the other witnesses want to come in on that?

Kate Wallace: I will come in, and perhaps Lynsey Smith will add to this. As I understand it, the process is based on time. The length of the sentence time has been doubled compared with the last time that this happened, so it is a four-year sentence or less, which means that there will be people on the list who are in prison for fairly serious—very serious, in some cases—offences.

However, a number of things are being done to look at risk assessment. There is also the governor's veto, which, as the committee will well remember, was in part included in the legislation due to our lobbying. Governors will have an ability to veto if they think that someone is a risk, and the legislation is very clear on how they should determine that. That is my understanding of how the process will work.

Obviously, we still have concerns about risk and the safety of victims. We worry about the message that is being sent, because Sarah Armstrong is right: we know more about the people who will be excluded because of the criteria than we do about those who will be included. Basically, that is because it is to do with the length of the sentence and the time that is left, after taking away the exclusions. Therefore, potentially, there will be people who have been found guilty of culpable homicide. There will definitely be people who have been found guilty of serious assault. Those people will be included in the figures. However, as we have just outlined, there is a process going on to look at the list of people and at the criteria around risk.

Lynsey Smith: As for the list at the moment, we have identified those who could be in scope, and the list is, I think, currently sitting with Police Scotland, which will go through it to identify any concerns. The Risk Management Authority will also go through the list in relation to the risk assessment, and prison-based social work will look at the list again to check social work records across local authorities.

That will give more historical context of any social work involvement, and it will take into account any current social work involvement with a family, if an individual has a family or children. We would co-ordinate with other social work colleagues in relation to any concerns, as we would normally do. That information will then be fed to the governor, who will have a final say on who is being released. A number of levels of scrutiny are being built into the system and, because of the pace of the process, that is all ongoing. We hope that, at this afternoon's meeting, we can start to scrutinise the lists from a social work point of view. We have staff teed up to do that.

Russell Findlay (West Scotland) (Con): I want to pick up on something that Lynsey Smith said about the previous early release during the time of Covid and the restrictions then. If I understood you correctly, Lynsey, you said that the high reoffending rate that we saw then might partly have been due to the fact that the support that might exist now was not in place then. Is my understanding of what you said correct?

Lynsey Smith: There was support, and partners took extraordinary measures. There were lockdown conditions in place and, rather than having staff pick people up, we organised taxis, and we arranged for people to be transported to housing that had been put in place to make the transition as smooth as possible. People came out to shops shutting down and communities not operating as they would normally do. General practitioners were contacted by phone, and people would potentially have had contact with their addiction worker by phone. Prescriptions would get picked up.

The key services were still operating. However, a number of the recovery communities were not up and running, because—

Russell Findlay: That might go some way to explaining the reoffending rate.

Lynsey Smith: Yes. Obviously, there is the question of finding evidence to support that, but it was indeed a different time.

Russell Findlay: Is there not a flipside to that? If people were restricted in their everyday movements, they had less opportunity to commit crimes.

Lynsey Smith: There were restrictions, but there was still drug dealing going on, and people still required to obtain funds for any substance misuse. Although you could argue that society was shut down and was operating differently, and opportunities to offend were reduced, when someone who comes out of prison is so isolated—

Russell Findlay: Yes. The emergency release proposal has been signposted for the best part of a year now. Just last summer, the governor of Scotland's biggest prison talked about a catastrophic incident and said that it was a question of when, not if. A succession of senior SPS people have issued similar warnings.

In the letter that the committee received from the Cabinet Secretary for Justice and Home Affairs last week, she said that the Scottish Government was working on information-sharing agreements between the Scottish Prison Service and four prescribed groups. Those groups include Kate Wallace's organisation—Victim Support Scotland.

Kate, earlier, you said that you have not even seen a draft of such an agreement. Despite the fact that we have had a year of knowing the direction that we are heading in, your organisation—and, I presume, the other three organisations concerned—are still pretty much in the dark. Is that correct?

Kate Wallace: Yes. We have not seen a draft of the information-sharing agreement. From my point of view, we have had less involvement in the current process than we did in the process that happened during Covid. The last time round, during Covid, there was no legislative set of criteria, but it became very clear to SPS colleagues very early on that the index offence—the offence for which a person was in prison—in no way related to risk.

For example, it is now in the criteria that people who are in prison for domestic abuse offences are excluded, but there will be a number of people who are in prison for other offences but who have a significant history of domestic abuse. That is where the process that Lynsey Smith has mentioned becomes really important.

We are concerned that the involvement of our organisation, and others like ours, has happened very late in the process. We understand that we will not see the list—it will not be shared with us. We will have to request that information for individual cases. Our concern about that is for victims who will not be aware that the perpetrator in their case is going to be released. Given the low uptake for the victim notification scheme, which the committee knows a lot about, we are concerned that very few people will know to come to us. We will do our best to find out whether the perpetrator is going to be released.

Russell Findlay: So crime victims will see in the news that there will be a mass release of 550 prisoners who are serving sentences of under four years. Those prisoners will include people who have committed sexual crimes and acts of violence.

Kate Wallace: Well, if they are on the sex offenders register, they will be excluded.

Russell Findlay: Right. They might have committed sexual crimes in the past, but the index offence would not include sex offences.

Kate Wallace: No.

Russell Findlay: However, the prisoners who are released could include other people who have committed acts of violence and other serious crimes. You are saying that, at that point, victims would have to approach one of the four organisations—I am referring to Kate Wallace's organisation and the other three—and ask for information, and then you would need to go to the authorities to ask for that information.

Kate Wallace: Yes. Victims have two routes. If they are already a member of the victim notification scheme, they might be able to go through that route. I believe that work is being done to expedite the victim notification scheme process. They can join that, or they can come to the organisations that are listed, of which we are one.

Russell Findlay: What is the rough ratio for that? Do you expect the victim notification process to be in place for most of the 550 cases?

Kate Wallace: No.

Russell Findlay: Will it be in place for some—a fraction—of them?

Kate Wallace: The take-up of the victim notification scheme is very low, as I think the committee has heard before. We are looking at communicating quite widely with people to make them aware that they can come to us, but that approach will be extremely limited, given the timescales that apply.

Russell Findlay: They might come to you, but they cannot possibly know whether their offender is being considered for release until they engage with you and you go through the process with them.

Kate Wallace: Yes—exactly.

Russell Findlay: According to Lynsey Smith, a list of the offenders who could potentially be released has been circulated to Police Scotland and the Risk Management Authority. Could the Government be more proactive and share that information with your organisations?

Kate Wallace: Potentially, but that is not the way in which the act is worded, nor is it the way in which the information-sharing agreement is being constructed, as I understand it.

Another issue is obtaining feedback from victims to inform the intelligence process around risk and

the assessment of whether an offender should be considered for release or whether a governor's veto should apply. There is a missing step in that process, too, and the timescales are not allowing for it. I am currently waiting for Police Scotland to give me the contacts for intelligence, but it might, for example, be the case that a victim has been intimidated by a prisoner and is concerned about their safety when that prisoner is released. At the moment, there is no clear mechanism whereby we can feed that information into the process.

Russell Findlay: In such a situation, the victim would rely on the police—who would be looking at the information behind closed doors—to know about their case and to assess the information in the right way for them.

Kate Wallace: Yes.

Russell Findlay: One other issue that arises from what the Government intends to do, aside from the proposed mass release, is consideration of time spent on electronically monitored bail. Two days spent on such bail would equate to one day off a subsequent prison sentence—or, at least, a sheriff would be required to consider that possibility. Your organisation opposed that proposal, and the Scottish Conservatives attempted, unsuccessfully, to amend it. We know that up to 550 prisoners are likely to be released early, but has the Scottish Government shared with you any sense of how many of those prisoners that specific measure might apply to?

Kate Wallace: No—I have not had any contact with the Government about that.

Russell Findlay: Can you give me any form of estimate or guess?

Kate Wallace: No, I cannot. I do not have a clue.

Russell Findlay: One of our concerns was that that approach would incentivise someone who is on electronically monitored bail to delay their court proceedings, which would cause further trauma to victims and witnesses. The offender would know that if there were eventually to be a prison sentence, they would have been able to chip away at their time served. Is that still a likelihood?

10:00

Kate Wallace: I am not close enough to that to be able to answer that question at the moment. We share your concerns and have others. We have significant concerns about the effectiveness or otherwise of electronic monitoring, especially when it relies on radio frequency rather than GPS. Our main concern about that is that victims are left to police their own situation and their own safety and security. The committee is well aware of that.

Russell Findlay: Why is GPS not used?

Professor Armstrong: GPS is a more expensive and potentially more intrusive way of monitoring. Someone who is on bail has not yet been convicted of a crime, so proportionality is important.

I am not aware of any research evidence from anywhere in the world that suggests that people on electronic bail are having a good time, or that getting a sentence discount incentivises them to delay court proceedings. I have never heard of that, even as a plausible scenario. I do not know whether you have heard something or whether you have some research evidence.

Russell Findlay: You would have concerns about the proportionality of using GPS.

Professor Armstrong: I would have concerns about the way that remand is currently used in this country. People are held on remand for long periods of time, and they have much less access to programmes and services that they might have access to in the community. Scotland has a real problem with its excessive use of remand. The suicide rate is much higher for people who are on remand than it is for people who are sentenced. I would have thought that, if we are concerned about the safety of people who live in Scotland, we would want to do something to protect their safety through the use of mechanisms such as bail, instead of using remand in the way that it is currently being used.

Russell Findlay: If electronic monitoring is being used successfully—

The Convener: I want to bring in other members. I will come back to you if there is time, because I know that that is an important issue.

Next, we have questions from Sharon Dowe and then Pauline McNeill.

Sharon Dowe (South Scotland) (Con): My question goes back to the issue of electronic monitoring. Lynsey Smith, you said that there is a marked difference from the previous time when people were released early, because we are not living with Covid restrictions. Do you think that the people who are released early should be put on electronic monitoring?

Lynsey Smith: Not necessarily. If we are considering the use of electronic monitoring, perhaps that person should not be released early. We tend to use electronic monitoring in bail situations. For example, if someone is involved in offending behaviour in the evening, we might consider restricting them to their home between 7 pm and 7 am to try to reduce that offending behaviour and to assure the court that the person is being closely monitored at that time.

I do not think that electronic monitoring is necessary. As Professor Armstrong has just explained, people need adequate support, housing and services to be put in place to meet any complex needs that they might experience. For me, that is the most important thing for someone who is released as part of this scheme.

Sharon Dowey: I was going to come to that next. We already know that, when people are released from prison, there can be issues with housing, medical supplies, getting a bank account or sorting out benefits. Families Outside made the comment:

“For some families, the return of a parent or other family member from prison is not always a positive experience. A lack of notice about the upcoming releases can make the experience even more stressful for families and, in some cases, may place them at risk of harm.”

Is enough support provided when people are released early? We are doing this at pace. What are the concerns?

Lynsey Smith: Community resources are really challenged across the board. A number of local authorities have announced housing emergencies. We cannot get away from the resourcing challenges.

The people in this cohort will be looked at individually and partners will put measures in place to support their release. The approach would not have been so co-ordinated if they were to be released at their sentence end date. In other words, they are getting the co-ordinated approach that everyone who is released from prison should get.

Therefore, there are a huge number of positives. Although we are working at pace, we will look to identify support. Kate Wallace spoke about gate pick-ups to help the person make the journey from prison to pick up keys for a temporary furnished flat, for instance, or to go and meet their addiction worker. We will co-ordinate that response, alongside partners.

However, we are challenged. The housing that is out there at the moment is not what we would choose for someone who is reintegrating back into society, but we will work to ensure that folk are given the best opportunity and that they are not homeless and roofless upon release.

Sharon Dowey: Will conversations happen in advance to make sure that somebody who is going to be released will not be released unless there is safe accommodation for them to go to? I have heard stories where somebody has been released and it has not been until 4 o'clock that afternoon that they have known where they were going to stay that night. Will there be conversations with family members if there are

instances in which family members might be concerned about a person's early release?

Lynsey Smith: Yes. If someone was returning to a family home, or to the home of their mother or father, we would look to have a conversation with those family members about that. We will build that into the process. Again, that is something that would not normally happen for short-term prisoners but, because of the measures that we are discussing and our desire to support people in moving back into the community, and to help families who were not anticipating an early return to the home, those conversations will take place.

In relation to the homelessness question, because of the homelessness crisis, there will be quite a lot of occasions on which the person will not be returning to their own flat or a temporary furnished flat and will instead be going to bed-and-breakfast accommodation.

Sharon Dowey: When someone is released early, will they have restrictions on them, and, if they breach those restrictions, will there be consequences, such as an automatic return to prison?

Lynsey Smith: There will be no restrictions on them at all. Obviously, there will be support in place if the person chooses to take that option, but there will be no restrictions.

Sharon Dowey: Would you support the use of electronic monitoring? I gather that you do not think that that is necessary for people who are released from prison early at the moment.

Lynsey Smith: I do not know what else it would add.

Sharon Dowey: I am just aware that we already have a presumption against short sentences and in favour of bail being granted rather than someone being held on remand, and I am thinking about the consequences of that, and about a victim knowing that the prisoner is going to get out of prison anything from a month to six months early. It might be better if the court could say that the person should be subject to electronic monitoring or given a community payback order rather than just being released without any other penalty.

Lynsey Smith: If that approach gave a level of comfort, I could see it being used for that reason— at least, an argument could be constructed in that regard. However, in relation to supporting someone in the community on their release from a short-term sentence, I do not think that it is necessary.

Pauline McNeill (Glasgow) (Lab): There are a lot of issues to wrestle with here, and it is important that we understand the impact of the measures.

Professor Armstrong, there are trends in other countries that suggest that more people are being imprisoned, although you highlight that Scotland seems to be at the top of the league table for many of those factors. We have longer sentences, but we also have a continued use of short-term sentences, a reduction in home detention curfew and the ending of automatic early release, and, as you said, the Parole Board is slow at releasing people. There are lots of factors there. Is it your view that it could have been predicted that those factors and policy decisions would result in our arriving at our current position, with an exceptionally high prison population that we cannot cope with?

Professor Armstrong: The short answer is yes. The restriction of the use of home detention curfew, in response to an extremely tragic and horrible situation, has had an impact on prison populations. Similarly, the ending of what was called automatic early release—I do not think that that is quite the right phrase for what it actually is—essentially just about doubles or increases by a third the time that people stay in prison, so it should not have been too hard to work out the maths and predict that it would increase the prison population.

The various presumptions against short sentences have had some impact but, when the policy was first brought in, some sentences that would have been for three months turned into four-month sentences, and we are now starting to see even short sentences coming back up. It seems like everything is geared towards increasing the prison population rather than trying to increase support or do other things that might be possible.

Sharon Dowey's question about whether there should be restrictions on people leaving prison through the early release programme was interesting. In some ways, we are all under the restriction of not committing crimes and, if we commit a crime, there is a consequence for that. However, if you add things on to that, such as electronic monitoring and payback orders, that comes with a cost, and investing in that choice of restriction requires that you take money away from something else, such as housing. Moreover, it creates added ways in which people can end up back in the system. We have seen in prior research that the restriction of movement that comes with electronic monitoring, which typically involves a 7-to-7 curfew, can be problematic for people, and one breach of that is a strike against them and is likely to send them back to prison.

The more we impose extra rules and restrictions on people, the more likely people are to fail. Instead of negative restrictions, it would be good to see some investment in positive supports and

the kind of work that Lynsey Smith is trying to set up.

Pauline McNeill: You pointed out to the committee that the risk is the same if prisoners are released 45 days earlier or whatever, but do you think that there would be an impact on prisoners who might otherwise have been on some kind of programme in the prison during that time?

Professor Armstrong: At the moment, the number of prisoners who are on any kind of programme is pretty small. In some ways, the prison system is still in the Covid period, because prisons still have restrictions and lockdown measures that are similar to what happened in the pandemic.

The research that we have done on people in prison shows that there is a huge amount of despair and hopelessness, which is reflected in the rise in drug overdoses and suicides that we are seeing. Therefore, I am not sure that I see that they would lose something by leaving prison. The kinds of programmes that people might be doing in prison have equivalents outside, whether they involve drug treatment, addiction support or other kinds of services, and we know that those programmes are likely to have a better impact outside prison than in prison.

Pauline McNeill: Kate, you said that people who were convicted of culpable homicide might be a category of prisoner that is released. Is that because of the sentencing around culpable homicide?

Kate Wallace: Yes. As you are probably aware, sentences for culpable homicide vary quite widely, and there is a possibility that there will be people who have been found guilty of culpable homicide in the cohort that we are discussing. I am trying to illustrate the fact that the four-year sentence length is not short—it is not what I would call a short sentence, and I am not sure that members of the public would call it that, either.

Pauline McNeill: I think that that is true.

I noted what you said about the lack of engagement with Victim Support Scotland, which is concerning to me. What would Victim Support Scotland want to see in order to make the measures safe? I picked up the points about victim notification and all of that, and I think that Lynsey Smith said that there would be some filtering out of certain offenders because, even though they are in for one offence, they might have a relevant history of offending behaviour. Is there anything else that it would be helpful to do in relation to filtering people out in order to reduce risk?

10:15

Kate Wallace: The timescales make it difficult this time round. The first thing to say is that we agree that the more appropriate services are put in place for prisoners on release, the less likelihood there is of them reoffending and, therefore, the less likelihood there is of more victims being created. We support that.

In an ideal world, however, we would prefer to see work being done between the statutory agencies and the third sector in particular at a much earlier stage, so that mechanisms could be created to help to gather information from victims. I understand what Lynsey Smith says about social work and having conversations with families when there could be a problem with release, but will those families feel able to say something to statutory services? We know that, often, they do not. A key gap has been missed around third sector organisations that are engaged with families being better placed to have a relationship with those families and able to gather that information and feed it back into the process.

For me, running support planning and safety planning for victims alongside release planning for prisoners and giving both things equal importance from the beginning of the process would have been the best way forward. I spoke to the committee about that previously when we talked about bail and release. We will not be able to achieve that with the timescales and the approach that is currently being taken. We will do everything that we can to help, and we have said that, but we need to be realistic about it.

Some of the issues will be around perceived risk and some will be about anxiety that is being created among victims. As I said previously, we have already seen an increase in the number of phone calls to our helpline. We knew that that would happen, because it happened last time, but some of the risk will be more than perceived—it will be real.

Pauline McNeill: Lynsey, there are so many tranches, and I suppose that the first tranche could be more than 100 prisoners. Is there a figure for that?

Lynsey Smith: I do not think that there is a figure yet for the first tranche. It will be spread out over four tranches.

Pauline McNeill: We are expecting up to 500 prisoners to be involved, so it could be quite a big number. Given what has been said, every victim should be notified, but, as Kate Wallace said, that will lead to anxiety for those victims, whether the risk to them is perceived or real. Do you think that it is possible to identify the support that every prisoner in the first tranche would need in order to make the public and victims feel safe?

Lynsey Smith: That is the intention in the work that we are doing at the moment. We are able to identify those who are going to be released across the country to different local authorities, and the intention is that an assessment is done of each person's needs. For example, if they have on-going addiction issues that continued to be present during their time in custody, if they are homeless, or if they have any mental health or other on-going health issues, we would look to support each individual with reintegration and to link into community services. We also have mentoring services to provide them with a bit of additional support with attending appointments and any meetings that are required.

Pauline McNeill: Will additional resource be required to do that? You said that the needs of every single person on that list will be assessed.

Lynsey Smith: There probably is additionality, but I think that it is more about the co-ordination. If a person who is being released today has mental health or addiction issues and they are coming out homeless, they will require all those services. At the moment, there is not good co-ordination ahead of release, so they will be accessing those resources. We are looking to co-ordinate them.

Pauline McNeill: Co-ordination is important. All the intentions and services might be in place, but it is about their co-ordination. Do you think that oversight is also important? When the public hear that 500 prisoners are going to be released in four tranches, there will be a lot of concern about that. That concern could be satisfied by the knowledge that there will be oversight of each and every one. Should there be some kind of national Government oversight, given that prisoners are going to be dispersed across different local authorities? Would that be possible?

Lynsey Smith: There is oversight at the moment. We attend a Government-led group that has oversight of all the partners.

Pauline McNeill: So there will be national co-ordination.

Lynsey Smith: Yes.

Kate Wallace: It was said earlier that every victim will be notified, but they absolutely will not. The current process does not come from a place of trying to ensure that every single victim of every single prisoner who is going to be released will be notified of their release. The onus is on victims to come forward and ask for information. We have concerns about those people who will not be aware and, therefore, will not come forward. We expect that that will be the majority of people, given that we know from the numbers that there is a low take-up of the victim notification scheme.

In addition, as the committee has highlighted, there is a lack of information about who is going to be released. I understand that, but I want to make it clear that there is not a process running that identifies every single victim in every single case and comes to each organisation to see if they can reach out. That is not the process—it is the other way round. Victims have to come to us.

The Convener: Professor Armstrong, I know that you have to leave at 10.25. I will bring in Rona Mackay, and I suggest that she starts with any questions for you.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Good morning. Yes—I will start with Professor Armstrong, as I know that she has to leave.

My long-standing concern is about the number of women in prison and the number of prisoners who are remanded. At the beginning of the meeting, you stated your concerns about that. There is a long-standing issue. Why do you think, in theory, that that is the case? Is it because there is not enough support? Why are the courts remanding and locking up so many women?

Professor Armstrong: I do not actually know what the systematic reason for that is. Our current research is concerned with deaths in custody and the fatal accident inquiries into those deaths, so I spend a lot of time looking at those cases. A very sad case was the death of Caroline McLeod, who was so unwell that she had to be wheeled in before the sheriff. The Crown opposed bail and the sheriff remanded her. She was sent directly from the court cells to a hospital, where she sadly died.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has twice come to Scotland and criticised its treatment of women in prison. I just do not understand why, after the publication of both of its reports, which were quite scathing, the same thing continues to happen.

There is a lot of good will. There is a current evaluation of the community custody units in Glasgow and Dundee—there have been some issues with those. The situation is quite complicated, because women prisoners are a small group and, within that, there are women serving many different sentences. Nevertheless, as Elish Angiolini's "Commission on Women Offenders" report said so many years ago, how many of those women need to be in prison? How many are a threat to public safety, and how many need some sort of treatment and support?

I saw that the 218 project in Glasgow has been shut down. In an age of post-austerity, post-Covid cuts, the first things to go are those ancillary services, rather than the statutory services. That is

a real loss, and I think that we will see the impacts for some time to come. That is true for young people as well, as we are seeing some horrific instances of young people's harmful conduct.

I see that the committee has the Prison Governors Association (Scotland) and the Prison Officers Association Scotland coming in next. One thing that we know is that you cannot build or staff your way out of the situation. I point out that in 2011-12, when the prison system again had more than 8,000 people, it had £100 million less in its budget, and fewer beds and staff, and there were half as many deaths in the prison system. Putting money into the prison system is not going to solve the issues, particularly regarding women in prison, which is a very concerning issue.

Rona Mackay: There are currently 353 women in the system, and 134 of them are on remand. For the record, does the emergency release system affect remand prisoners?

Sarah Armstrong: I do not believe that it will go to remand, which is why, in my opening statement, I suggested that some of the answers lie outside the prison system. When remands come in for shoplifting, that instantly says to me that there is an alcohol or drug issue, and I wonder whether there is a choice or an opportunity to do something different, rather than putting somebody in such an expensive resource.

Rona Mackay: Just briefly, because I know that you have to go, do you think that the agencies and, say, the prison and court establishment are working well enough together to solve the issues?

Sarah Armstrong: I am really curious to know whether the courts, police and the Crown Office and Procurator Fiscal Service are aware of, and make any decisions on the basis of, the capacity that different parts of the system have. Therefore, I am not sure about that.

Rona Mackay: Thank you.

The Convener: If you would like to ask more questions of other witnesses, that is fine, Rona. Professor Armstrong, we will just let you slide out.

Sarah Armstrong: Thank you for being accommodating, convener. Thank you, everybody.

The Convener: Thank you for coming.

Rona Mackay: Kate Wallace, the exchanges that you have had with my colleagues have answered some of my questions. You have said that the onus is on the victim to come and inquire about what support there will be. Do you have any sense of how many victims know that this will be happening in a few weeks' time?

Kate Wallace: We know that, when the cabinet secretary made her statement in the Parliament, the number of calls to the helpline and the number

of concerns raised with our local services increased at that point. There has been some level of awareness, from that perspective, but, at the moment, I do not have a sense at all of numbers.

We have been trying to be clear with all our people about the criteria for exclusion, so that, if somebody comes forward with a concern and the perpetrator is on a sentence of more than four years, for example, we know that we can alleviate some of the concern, at least in terms of the emergency early release. That is what we have been doing.

Rona Mackay: How do you think you are able to reassure the people who will contact you or who have contacted you with their concerns? Are you able to reassure them that they will be safe?

Kate Wallace: Do you mean about whether the perpetrators in their cases are on the list?

Rona Mackay: Yes.

Kate Wallace: We do not know enough to be able to give that reassurance.

Rona Mackay: But, if they say to you that their offender could be on it because they are serving less than four years, can you say in general what support will be there for them?

Kate Wallace: No, because we do not have any information about specific prisoners or what will be put in place. In those cases, we would concentrate on providing support for the victim in terms of their experiences and in doing some safety planning with them to help to reassure them. Our focus would be on the victim's situation, because we are not entitled to get any information about the prisoners, apart from whether they are on the list. Well, I believe that, if we ask whether a specific prisoner is on the list, we will get a yes or no answer. That is it—that is all the information that we will have.

Rona Mackay: Would you get a breakdown of the types of crimes of certain prisoners who are being released?

Kate Wallace: No, that is not my understanding of it. However, if we have contact with a victim, we will know from them. If they ask us whether the perpetrator in their case is on the list, and the answer comes back as yes, we will know from the victim about the crime.

Rona Mackay: Yes, you will know from them.

Kate Wallace: We will also know from the victim about, as Lynsey Smith was talking about, the history and the previous situation. As I have said, an index offence is potentially not an indicator of risk, in some cases.

Rona Mackay: That is interesting.

Lynsey Smith, I would like to ask you pretty much what I asked Sarah Armstrong. Is there enough interagency working going on at this stage for what will happen in a few weeks? What I am really asking is whether the system will be able to cope.

Lynsey Smith: I think that it will, and I think that there is enough work. I see evidence of that—I am part of interagency working nationally and locally. I am head of service for justice social work in Glasgow, and, as a health and social care partnership in Glasgow, we are already meeting to look to ensure that we have adequate resource in place to support the release. The biggest challenge for us is housing, but we are working together across the third sector and our statutory partners.

The Convener: We are just about up to time, but I have a couple of members who want to come back in. Are the witnesses okay to stay for another five minutes or so? Thank you. I will let Katy Clark and then Russell Findlay come back in.

10:30

Katy Clark: I have a factual question to ask. We have some figures in relation to the prison population. I will put this to Lynsey Smith, because you seem to have the most information about what the Government is planning and intends, from its dialogue with you. Do you have an understanding of the numbers in the cohort who could potentially be considered, which is prisoners sentenced to four years or less who have not been convicted of a domestic abuse or sexual offence? Do you have a broad understanding of what that figure is? I do not think that we have been provided with it.

Lynsey Smith: I cannot quote figures. I will talk about rough figures. My understanding is that there were around 700 prisoners in scope initially and, after taking out the exemptions, that came down to 550, and that is to go through further scrutiny.

Katy Clark: So it might well be that a large number of those prisoners are not suitable, for whatever reasons. Your understanding is that it might not be 500 or 550 who are released and that it could be less. Is that correct? Is that your understanding?

Lynsey Smith: Yes, it could be. I do not think that there will be 550, because the governor veto will be applied.

Katy Clark: Right. If there are problems with prison capacity, will there not be pressure to try to reach as high a number as possible?

Lynsey Smith: I do not get a sense from any of the conversations that I have had with any justice partners that anybody is willing to take any risk.

The pressure to alleviate the prison population pressure is obviously significant, but I do not get the impression that any risk will be taken.

Katy Clark: I will not ask my next question, because I think that we are running out of time. I will just leave it.

Russell Findlay: The committee has received a submission from the Howard League Scotland about the proposals. It says that the mass emergency release will be effective only

“for a very short period of time.”

It says that the Scottish Government’s implementation of the emergency measures that are available to it under the Bail and Release from Custody (Scotland) Act 2023 is “cherry-picking” and that not implementing proper release planning and throughcare support, which it suggests is not happening, will only lead us back to more reoffending and the potential for another mass release down the line. Do you agree with that assessment, and do you think that, in all likelihood, we might be here again?

Lynsey Smith: I do not feel qualified to answer the question on whether we will be here again. I know that work is taking place at the moment to look at HDC and the release of longer-term prisoners.

The analysis was that we could see the trajectory that we were on in relation to the prison population, but the spike that we saw over the two-month period was not predicted. We are in a really uncertain time. The backlog of the courts is still being worked through, which seems to be a contributor to the situation. However, I understand that there is work at pace that is looking at other options—longer-term and more sustainable options.

Russell Findlay: Kate Wallace, will we be here again?

Kate Wallace: That is our concern. Our concern is that, unless other work is undertaken, we will be here again. We have raised those issues. We have concerns based on what happened last time—albeit, I agree that we were in a Covid situation last time round. However, we think that there is potential for that to happen again. The cabinet secretary herself has acknowledged that, which is why she is looking at other measures.

As I have said, my overwhelming concern is to ensure that we do not create more victims through the processes that we go through and that we involve organisations at an early stage in planning so that victims can be supported.

Another aspect is that trust and confidence in the justice system is pretty much at an all-time

low. That has decreased dramatically during Covid.

We have to take care with messaging. We have asked specifically about public messaging, because the release sends a message to people about who is being prioritised in the system, especially given that we know that more victims were created the last time this happened.

The Convener: We will draw the session to a close. Thank you both for coming. It has been a very helpful session. We will have a short suspension to allow for a change of witnesses.

10:35

Meeting suspended.

10:38

On resuming—

The Convener: Our next panel of witnesses is Wendy Sinclair-Gieben, His Majesty’s chief inspector of prisons, HM Inspectorate of Prisons for Scotland, who joins us remotely; Phil Fairlie, who is deputy general secretary of the Prison Officers Association Scotland; Paula Arnold, who is governor of HM Prison and Young Offenders Institution Stirling and vice chair of the Prison Governors Association (Scotland); and Ian Bryce, who is legal vice chair of the Parole Board for Scotland. Thank you all for joining us and for agreeing to give evidence. Wendy, I hope that your connection will stick with us and will let you come in.

I will allow around 60 to 70 minutes for this evidence session. To get the discussion under way, I begin with a similar question to the one that I asked of the first panel. As you all know, the Cabinet Secretary for Justice and Home Affairs proposes the release of up to 550 prisoners earlier than anticipated, because of an emergency situation, and she proposes other measures later, via primary legislation, to cover long-term prisoners. I will bring in Wendy Sinclair-Gieben first, then I will move along the panel from my left to my right. What are your views on the proposals? Will they be enough, or—particularly in the context of the longer-term approach to the prison population—should an alternative way forward be found?

Wendy Sinclair-Gieben (HM Inspectorate of Prisons for Scotland): Good morning. First, apologies for the intermittent network. I am sitting in HMP Grampian and there appears to be a problem in the north-east.

Secondly, I just want to take the opportunity to thank everyone, given the incredible pressure that they are under—not only the Scottish Prison

Service front-line staff but its management, the Scottish Government, the courts and the police. We are impressed with that.

The public and victims have a right to expect that, when someone is sentenced, they will serve that sentence in an environment that is safe and in which they will work hard to reduce the criminogenic factors that got them tangling with the police in the first place. Currently, because of the overcrowding situation, it is impossible for the Prison Service to manage the health, safety, welfare and rehabilitative commitment that we, the public and victims have a right to expect. There is therefore a real need for a crisis response, a short-term response, a more medium-term response and a long-term response. The planning for that should involve not only the Prison Service and all the other justice agencies, but agencies such as scrutiny bodies, families and third sector bodies that work extensively with victims and with prisoners.

A crisis response is called for, and it is unfortunate that we have to do that again so soon after the previous crisis response. However, as I set out in 2020, if it is important for the judiciary to send all those people to prison, although we cannot build our way out of a crisis, we should certainly accommodate those people in humane, rehabilitative environments. We are not doing that.

Phil Fairlie (Prison Officers Association Scotland): I agree with every word that the chief inspector of prisons just said. From the point of view of prison officers, we welcome the reaction of a crisis response to the crisis of overcrowding in prisons right now. Something had to give. Something needed to be done.

We welcome the introduction of early release, but it is very much a short-term solution, and I hope that it is the start of a series of things that need to come to tackle the situation in the longer term. All that it will do is give us a little breathing space, and not much more.

We are not yet sure as to the numbers that will be released. I recognise and absolutely understand the reasons for the safeguards that are in place when it comes to who cannot be considered, but that has an impact on the numbers that we are talking about. That is right, and I understand that we must have those restrictions, but we will get a bit of breathing space and not much more—which will be for a short period of time, as things stand. Much more than that needs to follow.

The Convener: Will you broaden out your answer on the impact? In her remarks, Wendy Sinclair-Gieben touched on that. What is the impact on prison officers and staff? We know that they have a really important role, through their

relationships with prisoners. How is that impacted by the practicalities of the situation that they find themselves in at the moment? A lot of the time that they would have devoted to things such as supporting purposeful activity is now much more challenging. In addition, will you outline your main concerns on prison officer welfare?

Phil Fairlie: You will understand that, given the numbers that we are talking about, prisons are hectic, busy and fraught environments at the moment. There are often increasing temperatures and breakdowns in relationships. I do not think that I have ever seen a chief inspector's report that has not made reference to the importance of the relationship between the staff and the prisoner population. It is what keeps prison moving; it is what keeps the place safe and secure.

10:45

It is not about numbers. We can look at the number of staff compared with the number of prisoners, but it is not a numbers game; it is about relationships and being able to deliver the needs. We are simply not able to do that.

For the first time in a very long time, I am hearing staff now talking openly about not feeling safe in their place of work. Some staff are saying that for the first time ever. They are going in unsure of their position, and they are not feeling as confident, competent or able to deliver what is required of them. They are feeling pressures that some of them have never felt before and that others have not felt for a very long time. Some of the staff have been in the system for 30-odd years, and they recognise some of the clues and cues that come from the atmosphere and the environment. They are feeling a bit more threatened and a bit less close to the prisoner population in terms of their relationships, which is what keeps things calm and ordered inside a prison.

All of that is starting to feed into the staff environment. They are going into their work exhausted, because the daily routine and the regime inside a prison are stopping us getting to the bits that really matter to the public in terms of the end product. Staff time is being taken up by that, and it is in a different environment now. There are a lot of niggles, fall-outs and confrontations, not just between staff and prisoners but between prisoners, and it is the staff who are responsible for getting in there and sorting it out.

It is a different environment, and a much more challenging one for the staff. At the moment, 30 or 35 per cent of our staff who are off work are off for mental health-related illnesses, which are coming from prolonged exposure to that kind of

environment. You would expect me to say this as a trade union representative, but we have a significant number of staff of an older age group, who have been there for a very long time. There is a natural impact that comes from working in that environment over a long period of time. To get to 45, 50 or 60 years of age while being exposed to that is having a significant impact on the mental health of staff and their ability to continue in the role.

There are two issues. First, it is about the ability to maintain relationships and keep the prison working in a safe and secure way. Secondly, there is a long-term impact on staff that comes from a drip, drip effect, which is not without cost.

The Convener: What are your reflections, Paula Arnold? What is your view on the current proposal on emergency release? Could you say a bit about longer-term approaches?

Paula Arnold (Prison Governors Association (Scotland)): We are very supportive of what the chief inspector of prisons has said. We are at a crisis stage, and that is why the emergency release will give us some slight relief in the short term. However, we should be working towards the medium term and the longer term. That is what the members of the PGA are looking for: some sort of consensus on how we move the agenda forward in the justice system.

There is an impact on the prisons every single day. In the most recent upsurge in numbers over the past two months, we have been seeing the most challenging and complex people coming into our care each day in such large numbers, which staff and senior management are trying to cope with. It is extremely difficult for governors, deputy governors and staff to meet all the needs of the people who come into our care every day, because of the challenges that they face from the complexities that those people bring each time they are admitted into custody.

The Convener: I would be interested if you could expand on that. Will you give an example of the sort of activity that staff would normally support and assist with, which is now challenging, if not impossible, for them to deliver?

Paula Arnold: The extra numbers mean that there are extra staff on different halls and landings, and those extra staff sometimes come from areas where purposeful activity is undertaken. Sometimes, programme staff or staff who work in workshops are deployed to work in residential areas. That means that there is less purposeful activity for those in our care to attend, so there are fewer rehabilitative programmes. It also means that, when we deploy different staff to different halls, those in our care will always go to the person who they know best on the flat, for

example. Therefore, there is more pressure on the regular member of staff in that area. There is also the fact that the staff who are there for the day do not know the people whom they are working with quite as well.

As the PGA, we are concerned about meeting our statutory obligations day to day with the increase in numbers, and also about providing some sort of rehabilitative work for people that normalises the prison regime.

Ian Bryce (Parole Board for Scotland): The first point to make is that the regulations do not affect the Parole Board for Scotland directly, in that our remit is to make risk-based decisions on release. That is mainly confined to long-term prisoners, and the regulations do not impact on that. We have some involvement with short-term offenders, but that is really only in relation to sex offenders, and they are also excluded from the provisions. Therefore, in general terms, at this stage, we are not directly impacted by the regulations.

What I would say, just to support what my colleagues have said, is that, in dealing with the assessment of risk in relation to long-term offenders, it has become quite apparent to us that there are pressures in the system, and those can have an impact on the availability of offence-focused work, community testing and things such as that. Therefore, although this does not impact us directly in the short term, there is no doubt that it will have a knock-on impact on us in the future with regard to making long-term risk assessments.

Rona Mackay: Good morning, panel members. I want to start with a practical point about how the release will be administered throughout the prison estate. Does each prison have a certain number that it can release? How will that work? Does anyone know?

Paula Arnold: There will be an assessment of risk in relation to the early release scheme, which every governor and their senior management team will undertake, using the criteria that will be provided to us. The whole assessment process will be undertaken with a number of colleagues and will include working with partnership agencies.

Rona Mackay: What are your thoughts on the governor's veto? Will you talk us through how you think that that will go? Do you expect to have to make big decisions in that regard?

Paula Arnold: The decision will be based on risk in relation to protecting the public. That is my utmost concern in relation to people being released. If it is recommended that a governor's veto should be reviewed, that is what I will do. However, my main priority is ensuring that the risk is minimised in order to protect the public.

Rona Mackay: Who will actually recommend the release to you on which you then take the decision?

Paula Arnold: My senior management team will undertake the assessment of risk. It will be led by my deputy governor, and then I will have the governor's veto over that.

Rona Mackay: If you give the go-ahead for the release of young people in your prison, are you concerned about what they are going out to? Is there enough support for them once they are released?

Paula Arnold: The whole-system approach is very supportive of young people who are in custody. I can speak only for myself and HMP Stirling, where there are very good supportive measures, especially from social work, the third sector and the national health service. We work very closely as a team, and it is very much joined-up working.

Rona Mackay: That is good to hear. Thanks.

Phil Fairlie, roughly how long has this crisis been in your sights? We have come to this crunch point now, and something has to be done, but has this been brewing for a long time?

Phil Fairlie: We have been operating overcrowded for a period, but when you get to 8,000 prisoners and above, you are getting into crisis territory, so this has been coming for months now. However, to be honest, that has looked like the direction of travel for quite a time, so it has not come as a shock or a surprise to us that we are where we are.

Rona Mackay: You are at the receiving end of judicial decisions, I suppose. Do you think that there is enough recognition by the Crown now about what has actually happened? Do you think that there could be a better culture and a better working relationship?

Phil Fairlie: I do not think that I am qualified to speak about that in any great detail. However, from where we sit, it looks as though, every time that we create a space in a prison, somebody fills it. From talking to my POA colleagues down south, I know that more than 600 prisoners were released last week, but the overall numbers went up by 88—that was the net outcome. Using emergency release powers and immediately filling those spaces back up again makes no sense whatsoever. That is not doing a thing to tackle the issue that we are dealing with.

Rona Mackay: Yes, it is not doing anything to tackle the issue in the long term.

Wendy Sinclair-Gieben, I asked Professor Armstrong about the number of women who are being remanded and the number of women in

prison and the long-standing issue in that regard. Phil Fairlie might want to answer this, but I will ask you first. Given the number of not just women but people generally on remand who may or may not be guilty—they are not part of this scheme—will there be some resentment among them that prisoners are getting out early when they are not and they have not been found guilty or convicted of anything? Is that a tension, or is that a concern?

Wendy Sinclair-Gieben: When the last emergency release happened, I was concerned that children were not given special priority and thought, including about whether they should be considered for release on remand. There are legal methods that we have to adopt in order to consider that. It is not something that a governor could do. However, within that, we have to remember that, when someone is on remand, they are innocent until proven guilty. There may be some who are already convicted and serving a sentence who are on remand for another crime, but the vast majority of those on remand are innocent until proven guilty.

In Scotland, we insist on treating remand prisoners less well than convicted prisoners. The right to work, the right to earn a wage, the right to dental treatment and the right to attend all purposeful activity are significantly reduced. We lock up the vast majority of remand prisoners for 22 hours a day. That is often in a cell that is designed for one but has to hold two. We consider that acceptable. That is quite astonishing really.

I think that there will be some resentment. However, there is a kind of culture in Scotland that remand prisoners almost accept that they are treated very badly. That is an interesting culture that I think will take some time to overcome and which may allow for a level of complacency.

What I must say is that, in all our dealings in my tenure, I have not felt the level of tension that I am feeling now, not only from prisoners but from staff in particular. There is a real fear that, unless significant measures are taken, we will be in trouble, and there may be a resort. The rising violence and deaths in custody figures are an indication that the trends are not positive.

If I may, I will go back to the idea that we cannot build our way out of a crisis. That is a well-believed mantra. There is a belief that, if we build it, they will come. However, if, as a country, we think that it is important to have a very large prison population, as a country, we have to address that culturally or build to suit that belief.

The level of aged care accommodation in prisons is very poor so, if we are going to build, we should be looking at aged care. If we are going to build, we should be looking at justice centres in which we align the police, courts and prisons to

reduce the amount of transport. We are at the point of crisis, but we need to do some significant medium-term and long-term planning.

Rona Mackay: It sounds as though you are saying that there should be a bit of a culture change in how we look at the whole issue for the purposes of long-term planning.

Ian Bryce, how is this affecting what you do in the Parole Board for Scotland?

11:00

Ian Bryce: Are you asking about the pressures on the prison system at the moment?

Rona Mackay: Yes—and also about the decisions that you have to make in normal times.

Ian Bryce: First, the Parole Board applies the test for release, which largely comes from legislation. We do not have wiggle room with that; we apply the test as it has been interpreted by the courts. On how we go about that, we get from the Scottish Prison Service full dossiers with all sorts of information that we need.

On changes that we are noticing and what is missing at the moment, there is no doubt that the waiting list for offence-focused work is lengthening. It is important to make the point that, although we are talking about the release of short-term prisoners, the longer-term prisoners tend to be the riskier prisoners from the public's point of view.

When we are looking at applying the test for release, we look at various things, one of which is whether someone has done offence-focused work. That work does two things. First, it can provide an insight for the prisoner to help them to avoid further offending. Secondly, it can provide information and insight to those who will be asked to manage the prisoner in the community. If people are not getting the opportunity to do such work, that has an impact on our assessment of longer-term prisoners. There are some prisoners who might be released if they have done that work, but if they have not done that work, we will just not be satisfied that the test is met.

Another significant part of the work of the SPS is facilitating community testing. That usually happens after offence-focused work has been done. People get a chance to go to national top-end facilities or the open estate and undertake special escorted leave, unescorted day release or home leave. We are aware that there are pressures within the Scottish Prison Service, which has some difficulties with external escort providers. That can cause a great deal of disillusionment among prisoners and families who may have prepared for someone coming on an escorted visit, but are told on the day that that is

not going to happen, and it creates uncertainty elsewhere in the chain.

We release prisoners only when we are satisfied that the test for release has been met, but there are things that could be done to better inform us about whether someone meets that test.

Rona Mackay: That is interesting. Thank you.

The Convener: That is very interesting.

Russell Findlay: Last week, the cabinet secretary wrote to the committee to tell us that there is an information-sharing agreement between the Scottish Prison Service and four victim support groups, including her own, which is Victim Support Scotland. She has told us today that, although we are now on the cusp of that being enacted, she has not seen even a draft of the terms and conditions.

I know that you do not represent the Scottish Prison Service, but I wonder whether you have a sense from your members, Mr Fairlie, and your members, Paula Arnold, of what is happening with information sharing. I am sure that you will agree that the notification of victims is absolutely critical.

Paula Arnold: I do not have any information about that at all.

Russell Findlay: Okay.

Phil Fairlie: I am sorry, Mr Findlay, but I do not have any information about that either.

Russell Findlay: Okay. I guess that we can speak to Ms Medhurst about that next week.

The submission from the Prison Governors Association (Scotland) to the committee speaks of the risk of more violence, drug taking, deaths by suicide and drugs, mass indiscipline and loss of control, and prison riots in the 1980s and 1990s are referred to. One line of the submission that really stuck out was:

“Any of these core factors can be the spark that ignites people residing in prison to say ‘no more’.”

It seems to me that you were trying to tell us about the real threat of a return to the sort of incidents that you referred to. Is there not a slight risk in using such language that you are almost signalling to prisoners that such an outcome is in some way inevitable, if not justified?

Paula Arnold: On a daily basis, staff and PGA members work with really challenging people who bring a lot of situations to the fore that we find extremely difficult to deal with, given the high numbers coming into our prisons.

We would not want to see a return to a situation that most of the staff who work in the Prison Service now have not worked in before. The daily relationships are diminishing, because we do not

have the staff to deal with the high numbers. There are currently a lot of recruitment campaigns, but those staff have to be trained before they come into the prisons.

The higher the numbers, the higher the levels of staff that are needed. We do not want to go back to that situation. However, to use the language that the chief inspector used, there is a “crisis”, and some type of emergency response is required.

Russell Findlay: Another issue is the nature of those who are in prison. It is quite hard for the committee to establish a breakdown of the types of offending and so on. However, some recent research took a snapshot on a particular date—2 May—and found that, of the 8,220 prisoners who were in custody on that day, just over 74 per cent were convicted of, or were awaiting trial for, violent crimes.

I will not go into all the details of that research. However, it showed that, although somewhere in the region of 400 prisoners—which is a very small percentage; fewer than 5 per cent—were in prison for what, on the face of it, looked like minor offences, we do not know the full picture and the background of each offender.

Despite everything that has been said about too many people being sent to prison and the fact that Mr Fairlie is on the record as saying that the use of remand is “ridiculously high”, a snapshot such as the one used in that research would suggest, as far as the public are concerned, that remand is actually a proportionate and reasonable use of prison.

Do you have any thoughts on that? That might be a question for Wendy Sinclair-Gieben.

The Convener: Wendy, do you want to come in on that?

Wendy Sinclair-Gieben: I am happy to come in on that.

I have a firm belief that there is a place for prisons in Scotland—I am not, under any circumstances whatsoever, an abolitionist. All that one needs to do is work in prisons and see the types of people whom they have to deal with—complex, challenging people with significant violent records, mental health problems and substance misuse problems—to know that prisons need to exist.

I have said it before: as a country, our choice is stark. We either build to meet the prison population or we do not. In that case, we have to reduce the population and take the risk into the community.

There is no question but that, for non-violent, minor offending, community alternatives are more

effective in preventing recidivism; the research is there. There is also no question but that there is a proportion of people in prison who are severely mentally ill and whom staff have to deal with day to day. To be frank, those staff deserve medals. The situation is extremely challenging, given the lack of spaces in the mental health estate for those who meet the threshold for in-patient care, which impacts directly on the prison.

There is also a significant number of people with significant mental health issues who do not meet the threshold for in-patient care but require intensive resourcing. We need to accept that perhaps a different style of prison is required if we are going to meet the needs of the people who are sent to us by the courts.

Russell Findlay: Last year, the committee, in its pre-budget scrutiny, took evidence on the big picture around spending. Karyn McCluskey told us:

“of the overall justice budget, 2.5 per cent goes to social work and 1.47 per cent goes to community justice.”—*[Official Report, Criminal Justice Committee, 1 November 2023; c 54.]*

She also made the point that, if we want to do something differently, we have to spend differently. Is it not inevitable, therefore, given those ratios, that we are where we are?

The Convener: Wendy, do you want to come back in on that?

Wendy Sinclair-Gieben: Yes, please—I would love to come back on that.

It is inevitable, unfortunately, but it is not binary. It is a question of investing to save. We would have to invest in genuinely robust community alternatives that satisfy the public and also satisfy the sheriffs, and those do not currently exist. That money cannot be taken out of prisons—we cannot close prisons until that change has begun to take effect and has public confidence.

There is a difficult tension in that, in order to get the community alternatives that we need and the necessary prevention in place, we cannot immediately take that money out of the prison budget. What is important in the prison budget is that we work intensively with the people in prison to reduce the risk on release.

Russell Findlay: I will ask a quick follow-up question if I have time. There is a presumption against short sentences. In other words, there is a presumption against sentences of 12 months or less, and that has been in place since 2019, I think. However, according to some data that we have, there are roughly 33 prisoners doing three to six months and 70 doing less than one month. Sheriffs have clearly been privy to the full details of those cases before making their sentencing

decisions. Do you think that the judiciary in Scotland is paying heed to that specific guideline and, more generally, to the ineffectiveness of short sentencing, as you see it?

Wendy Sinclair-Gieben: I tried to dig into that. On the day that I looked at, there were 744 people with sentences of less than 12 months. Arguably, it would reduce the prison population dramatically if they were not there. However, my understanding is that the situation is more complex. Those are not people who have turned up at court and got a sentence of less than a month; they are people who have done significant time, served while on remand, and the sentences referred to are the rest of their sentences being served. I would need a more detailed breakdown and understanding of that to be able to answer your question properly.

I will use this opportunity to mention one of my major issues: we are not investing in post-release support. I know that there are significant plans in place to address that. When we release people homeless or into temporary accommodation such as bed-and-breakfast accommodation without rehab support, GP support and personal support to help with debts, previous warrants and so on, we are setting them up to fail, in reality. When we consider the long-term solution, we must look at the end-to-end issue, and ask why people are tangling with the police in the first place, all the way through to how we can help them to stop tangling with the police on their release.

Russell Findlay: As well as that support, other measures could be used, or better used, such as electronic monitoring. For example, remote alcohol monitoring technology is used elsewhere in the United Kingdom to great effect, but it is still not being used in Scotland. Why is there sometimes a reluctance to embrace changes and technologies that might help to alleviate the problem that we are talking about?

Wendy Sinclair-Gieben: There are two things that I can mention from when I worked in Western Australia. One is to do with dangerous and serious offenders, particularly dangerous and serious sex offenders, who were released back into the community on GPS monitoring, so that the authorities could see what was happening and where they were going. There were restrictions on where they could go. If their trigger point is primary schools, they cannot go near primary schools, and so on. I thought that there was an evaluation of that, but I have not been able to track it down. Anyway, that showed its effectiveness. There was a big American study, and that is quite easy to track down.

The other point is that GPS monitoring, which has alcohol monitoring and sleep monitoring on it, can be linked to a form of mobile phone that offenders carry, so that they can ask for help. The

system showed where there were disrupted patterns or there was alcohol, and the offenders could easily be recalled. All of those approaches are doubly effective if they come with support.

I think that there is a real need to embrace technology in numerous dimensions. When we first introduced the case management system into prisons electronically in England and Australia, there was a £4,000 a month saving on stationery, and the system paid itself off very quickly. Drones are used to do perimeter checks and so on. The use of technology really can transform our justice system in many dimensions.

Russell Findlay: I would like to continue this conversation, but I am being told that other members wish to ask questions.

The Convener: I will bring you back in at the end if there is time, but I want to bring in other members now.

Katy Clark: I understand that you are a governor at the women's prison at Stirling, Paula. Is that correct?

Paula Arnold: Yes.

11:15

Katy Clark: You will be aware of a huge amount of concern over many decades about the numbers of women whom we incarcerate in Scotland. The proposals are quite arbitrary, and they will affect a number of women prisoners—the cohort concerned is pretty arbitrary, however.

More broadly, from your experience, what would you say is the proportion of women in custody who you think really have to be there and who should not be dealt with in another way? If you prefer, could you say what proportion of women you feel would be better dealt with in a non-custodial way? I appreciate that, as you have said, you are dealing with some very difficult people, and I am not in any way underestimating the complexity of the issues, but is prison the right place for some of those women?

Paula Arnold: Alternatives could be considered, and those considerations would involve looking at what we could do in the community versus the risk, but a new type of risk assessment would be needed to ensure that there was community support that allowed people to live and be supported in the community.

Right now, though, that sort of assessment is not there. People come into custody, and they will perhaps go back to court for court reports that have been commissioned for them. The care in the community might not be there, so they return to prison.

Katy Clark: I do not know whether Wendy Sinclair-Gieben might wish to comment on that. Is that something that you have considered?

Wendy Sinclair-Gieben: For me, the stark reality of any women's prison that I have been to in the past six years is the number of traumatised and seriously unwell women who are being held there. I understand that, if a sheriff has very few alternatives to consider, they will at least know that the women are going to be safe. However, I am absolutely convinced that the vast majority of women could do with a better resource.

I am so much in favour of the Scottish Government having built HMP and YOI Stirling and the two community custody units. They are a leap forward in dealing with custody for women. I hope that, one day, we will make that same leap forward for men. It needs to be said that those facilities are superb.

Katy Clark: Clearly, a lot of money has been spent on those facilities, and we need to ensure that they are properly utilised, that the women who are there really need to be there and that that is the appropriate place for them.

The proposal is fairly arbitrary with regard to the particular cohort of prisoners who will be considered. Phil, if the issue that we are looking at is how to cut prison numbers, I have to say that the committee is struggling to know what types of prisoners really should not be in jail and should be dealt with in another way. As a representative of prison officers, do you have a view on that? Do you feel that a proportion of prisoners really should not be in prison and should be elsewhere instead? How do we categorise who those people might be?

Phil Fairlie: I am on record as saying:

"We don't want more prisons, we want less prisoners."

Some of those who get sent to us in prison come from a part of the population for whom we can do very little to nothing of any great value to the public by the time we come to release them. Probably the most obvious example of that is the untried population, who take up about a third of the prisoner population in Scotland. As Wendy Sinclair-Gieben has said, what we do with them while we have them is less than we do for any other part of the prisoner population. At the minute, any resources that are freed up even from this process will not go to them; they will go instead to the other bits that are failing and which need to be stacked up. The untried population is one of the population areas that we need to look at—it is really the only option that we have for managing that part of the criminal justice process.

The other thing that is really obvious to us now is the number of prisoners we deal with who have

significant mental health issues. Things are difficult inside prison at the best of times; in such an overcrowded, hectic, fraught environment, the condition of people with significant mental health issues only gets worse and worse, and the environment becomes worse for everybody sharing the same space.

I know that the solution for that lies in investment elsewhere, outside prisons, and that those facilities do not exist. That is why the Prison Service is being used almost as a dumping ground—we have nowhere else to put these people. That gets in the road of our doing the bit that we really need to do, which is tackling the offending behaviour of those who are in for significant offences and who are doing significant sentences. We have them for enough time to make a difference with them.

At the moment, that time is getting swallowed up with churn. We have probably the biggest number of organised crime gang members that we have ever had inside our prisons, and they are having a massive impact on what happens inside our prisons day to day. All credit to Police Scotland, though—it has had significant success in the convictions that it has secured, and we have some of the biggest names inside our prisons. However, they have not stopped operating, and that has had an impact on the environment inside the prison, whether through the settling of old scores or as a result of turf wars over territory or the drugs market inside our prisons.

While all that is going on, we are dealing with significant mental health issues and an ageing population, and we now have a load of prisoners who are in for historical sexual offences. We cannot provide that sort of social care there; prison officers are not social care workers, nor are we trained to manage mental health properly. We are asked to do an awful lot of things with a lot of people, but we are not qualified to give the proper service response that is required inside prisons. Those are the areas that we need to look at. I know that the alternatives outside prison do not exist, but the fact is that prison is paying the price for having to be the place where these people end up.

Katy Clark: Prison is obviously a very expensive option. I fully understand that some people have to be there, and you have outlined some of them, but the committee is concerned about those individuals who could be dealt with in another—and likely cheaper—way. Psychiatric services, for example, might be a cheaper option. Is that something that your organisation is concerned about? Is the way in which we deal with individuals who go through the justice system a false economy?

Phil Fairlie: Prisons are a very expensive option. In fact, they are not only an expensive option but are almost wasted if you overcrowd them and we do not get to do the bit that matters. Is there a way of taking some of that out of the system to give us the space that we need to work with? We have some serious offenders and criminals inside our prisons who need to be there and who need significant work done with them while they are there, but we are not getting to do that work. Everybody is paying a price for that, but the system does not focus on that.

Pauline McNeill: I want to begin with a question for Phil Fairlie, and Paula Arnold will probably want to answer it, too. We have been asked to look at this short-term measure. In your view, Phil, what difference would it make to the management of prisons if we were to pass it?

Phil Fairlie: As I said earlier, all that it would do is free up some time and human resource to allow us to start to do some of the bits that are failing at the moment. There would be no sea-change impact on what happens inside prisons—it would just give us a bit of breathing space in the short term. You would not see transformation from this change.

Pauline McNeill: You have probably seen the Howard League's list of demands, which you will not disagree with. The big one is mental health support in prisons, but we are not going to be able to tackle that or provide any more rehabilitation programmes through this. This is simply about breathing space—is that where we are?

Phil Fairlie: Those asks would be regarded as a priority once we free up the resource. Given the numbers that we are talking about, I do not think that we are talking about freeing up enough resource to make any impact from which we would be able to identify results easily.

Pauline McNeill: Paula Arnold, do you want to answer the same question?

Paula Arnold: All that this measure will give us is short-term relief. As others have alluded to, the remand population is extremely concerning, especially across the women's estate, where it has risen from pre-Covid levels. At that time, 20 per cent of those in custody in the women's estate had been remanded, and the figure is now 37 per cent. It is a constant revolving door; women are admitted to HMP Stirling and are then transferred out to Greenock or Polmont on a daily basis, because of the high numbers of those on remand who are coming in. The measure will give us short-term relief for women who are convicted and might be released, but it will certainly give no relief for women who come in on remand and have to be transferred within a very short time—

sometimes the next day—of being admitted to HMP Stirling.

Pauline McNeill: Given what Wendy Sinclair-Gieben has said about the conditions that remand prisoners are held in, does the Prison Governors Association have a view on whether remand prisons or centres might be a way forward if Scotland continues to remand so many people? The trend does not seem to be relenting.

Paula Arnold: You could look at the fact that the presumption against short sentences has led to an increase in remand—that is how my fellow governors and I might look at that situation. We have had a decrease in the short-term prison population and a massive increase in the remand population. When remanded prisoners go to court for sentencing, the sentence is backdated and they end up with quite a small one, as Wendy Sinclair-Gieben said earlier.

We feel that we have no ability to predict how many remand prisoners will come in from the courts at night. When we phone the courts to ask how many prisoners will definitely be coming, we might be told about two or three, but often we are told that the number could be anywhere between 10 and 40. We are trying to manage that situation.

Pauline McNeill: Notwithstanding what the prisons inspector has said about building more prisons, or building your way out of the crisis, has there been any discussion among governors about different ways of holding remand prisoners? I am thinking about the conditions that they are held in and the question of why they are not included in this.

Paula Arnold: We have not had any discussion about conditions or where remand prisoners should be held. It has been quite a tidal wave of an increase, and we have not had time to discuss that.

Pauline McNeill: Wendy Sinclair-Gieben, remand prisoners are not covered by the legislation. I do not know whether, because of their status, there is some legal barrier in that respect. We are prepared in principle to release prisoners serving sentences in order to free up space, and we also have a sizeable remand population. Is there a way round that situation? When the cabinet secretary was asked to address that question, she said that she would look at it, but that does not appear to have happened. What is your view on that?

Wendy Sinclair-Gieben: I cannot argue the legalities, as I do not have that knowledge and expertise, but it is clear that we have few alternatives such as supervised bail hostels.

We must look at why people are on remand, and it would be interesting if the judiciary were to

undertake such a review. We should also prepare for future years by looking at alternatives to remand, such as GPS monitoring, supervised bail hostels and all the things that are not quite there yet. When I speak to members of the judiciary, they are fully aware that prisons are overcrowded and they think very carefully about whether they should remand people. That, in itself, is interesting.

We also do not fund remand well. Work opportunities and education spaces are funded for convicted prisoners, because of the anarchic rule that remand prisoners are not required to work. They may not be required to work, but, if they can, they should be able to earn money by doing so, because that inability forces their families into poverty as they try to support them.

The whole question of remand should be looked at from every angle. If a heinous crime is alleged, prison is the correct place, but we should look at alternatives that sheriffs could use to inhibit the number of people on remand. Also, if we could speed up the court process, there might not be so many people on remand and we would be able to look at the modelling with regard to how many might convert to long prison sentences.

Pauline McNeill: I am thinking more about whether there is a justification for including remand prisoners in the tranche of those being released early. If we are able to look at that on a case-by-case basis, with support for every prisoner who is released early to ensure safety for the community, why can we not do the same with remand prisoners to free up prison space?

Wendy Sinclair-Gieben: I think that there is a legal imperative that might prevent that, but we should certainly be looking at it and working with the judiciary on a way of managing it.

11:30

Pauline McNeill: Lastly, I turn to Ian Bryce. The witnesses on the previous panel gave a number of reasons for our having such a high prison population, and they specifically mentioned that the Parole Board for Scotland had a low number of releases. Has that trend changed over the years?

Ian Bryce: Do you want me to come in on that?

Pauline McNeill: Yes—you know where I am going here.

Ian Bryce: The percentage of releases has remained mainly constant, although there have been fluctuations. For example, at the start of the Covid pandemic, there were knock-on impacts on people being able to progress to less secure conditions, as well as on prison operation and the availability of offence-focused work. Broadly

speaking, though, release rates have remained quite consistent over time.

I agree with everyone who has mentioned mental health as an issue—and, in my view, there is, for a lot of people, certainly an overlap between mental health issues and offending behaviour. We could have a more joined-up approach to parole and, say, mental health orders and compulsory treatment orders. If it is known that someone is going to be treated for their mental health illness and if that can be enforced, that might allow the Parole Board to look at risk in a different context.

Mention has been made of supervised bail hostels. England and Wales have approved premises to which people can be released. That provision is for high-risk prisoners, and they are subject to curfews and to professional supervision and monitoring on a 24-hour basis. Some things about the system in England and Wales are not as good as what we have in Scotland, but I have no doubt that that approach would assist us here.

Undoubtedly there are prisoners who might, if a place in approved premises were available, meet the test for release, but in the absence of such provision, that cannot happen. We do not have that provision at the moment. The closest that we have to it is the Dick Stewart project, and—as I think that the committee will be aware—availability there looks like it will be reducing rather than increasing, which is unfortunate.

Pauline McNeill: I am glad that you mentioned the Dick Stewart project, which is a Glasgow-based service. I find it really odd that, at a time when we need such services, they are not going to be there.

Ian Bryce: From a Parole Board point of view, it can be quite a comfort if we see in a dossier that someone is going to the Dick Stewart project and will have everything that that facility can offer. It is similar to the Crane service in Edinburgh.

Pauline McNeill: Can you remind the committee—or remind me—which prisoners come before the Parole Board?

Ian Bryce: We get all long-term prisoners—that is, everyone serving four years or more. They make up the vast number of people whom we see. They can then be sub-categorised into those on indeterminate sentences, such as prisoners on an order for lifelong restriction or a life sentence, and those on extended sentences, both in the custodial term and thereafter, when they have been released and recalled and we have them in the extension period. As has been mentioned, we have some small involvement with prisoners on short-term sentences, but that usually relates to sex offenders, so these regulations would not apply in that regard.

Pauline McNeill: Other than that, though, you do not see those serving sentences of four years or less.

Ian Bryce: No.

The Convener: I will stick with Ian Bryce for a moment. Earlier, you spoke about blockages of older prisoners, and access—I wrote this down—to some of the offence-focused work that they are required to undertake. That work is important for the Parole Board in terms of your ability to assess risk.

What are the pinchpoints there? Can you expand a wee bit more on that? Is it just as simple as the pressures of the prison population, or is there a wee bit more to it?

Ian Bryce: Paula Arnold may be better placed than me to answer some of that.

There has been a restructuring of some of the offence-focused work during my time at the Parole Board. That has been positive in so far as, previously, there were issues in that regard—in fact, there was no work available in relation to domestic offending. We now have the self-change programme, which is there for violent and sexual offenders, and it can bring in the serious domestic offending that we see.

The transition to that has perhaps been a bit of a pinchpoint, but the starting point was always that the prisoner would undergo a generic programmes assessment. Professionals would come in, look at the prisoner and the offending history, and work out what courses he needed to do. Once that assessment was carried out and approved by the risk management team and the programme's case management board, the prisoner would go on a waiting list for the programme.

When I started at the parole board, the GPA was the easy part—it was done very quickly—and, thereafter, people would go on waiting lists for programmes. Now, I notice that not only is there a waiting list for programmes—of years, sometimes—but people are on waiting lists for the GPA itself. Not only are they waiting to do the programme but they are waiting to be assessed for what programme they actually need to do.

It is often submitted to us by solicitors that a prisoner will not have time to do the course before their sentence end date or their earliest date of liberation, so they should be released. That is not always the best of arguments. If someone does not meet the test for release because they have not done a course, that is the end of the Parole Board's role. However, such submissions are now being made for prisoners whose date of liberation is perhaps two or three years from now. It is hard to work out what will happen to that prisoner if, as

we are told, they will not be able to do a course in the next three years.

Again, that impacts on not just the offender but the public. If someone gets to their earliest date of liberation or sentence end date and has not done that work, that risk goes out into the community with them. There are real issues in that.

The Convener: Do you feel that there is scope for that whole policy process to be reviewed?

Ian Bryce: I will defer to Phil Fairlie and Paula Arnold, but my impression is that it is about boots on the ground. Four facilitators can do the work of four people; however, if you have a long waiting list, you need more facilitators—and I understand the pressures that the SPS has at the moment.

The Convener: That is very helpful.

Sharon Dowey: To come back to Paula Arnold on the governor's veto, in what kinds of circumstance do governors use their veto? It is obviously for prisoners who they feel will be a danger. However, the people who are being released are on a maximum four-year sentence. By the time that they are released, they will get out early by probably a maximum of five months. Under what circumstances would they get a veto? I would have thought that they would have been near the process of being released at the end of their sentence—would they automatically be released, or are there occasions on which you would keep somebody in prison because you do not think that they are ready to get back out?

Paula Arnold: The tranches will be released anyway, in the period that they should be released, in terms of their liberation date. When I was the governor of Low Moss, during the last early release, I signed off on only two governor's vetoes, I think. Those involved circumstances in which it was recommended to me that, at that point in time, without the pre-planning that should be in place, the person was not suitable for release so quickly. For example, there might not have been an involvement with third sector or throughcare services, or somewhere for that person to live, or mental health or drug and alcohol support might not have been in place for them.

Whether a governor's veto is required is person centred. Such a veto is based on the risk of that person. The recommendation would come to me, and that is what I would look at. However, as I said, when I was the governor of Low Moss, I vetoed very few.

Sharon Dowey: The cabinet secretary's letter says that the process would be used

"if they think that they would pose an immediate risk of harm to a specified individual or group of individuals if released."

How would that information come to you?

Paula Arnold: It would come in an assessment. The deputy governor would lead on the early release scheme. People are reviewed case by case, and we would look for red flags in relation to why, potentially, that person should not be released, given that they meet the criteria.

Sharon Dowey: If you are not happy with the plan, would you use the veto?

Paula Arnold: Yes, definitely.

Sharon Dowey: You stated your concerns about the increased prison population resulting in greater violence against staff and drug-seeking and drug-taking behaviour. What more should we be doing to ensure that drugs do not enter the prison estate? That seems to be a huge issue at the moment.

Paula Arnold: There are various methods in place to prevent drugs from coming into prisons. New body scanners have been installed in the majority of prisons lately. With the investment that the Scottish Government and the SPS have made in that, we are doing as much as we can, but it is about being highly observant of people who could be trafficking drugs. Drones are flying over prisons to deposit drugs, so more investment in technology is probably required to modernise the response and to find out how we can stop drugs coming into prisons.

Sharon Dowey: How long have the body scanners been in use for?

Paula Arnold: HMP Stirling has had a body scanner since it opened and the scanners have been implemented in the majority of prisons across Scotland recently—I would say that it has been within the past year.

Sharon Dowey: Do you use drug detection dogs?

Paula Arnold: Yes. There are search teams dispersed across the whole of Scotland that include dogs.

Sharon Dowey: So those teams are not based in a specific prison—they are used for the whole prison estate.

Paula Arnold: My understanding is that they are based in regions. Prisons have shared responsibility for the tactical search teams and dogs.

Sharon Dowey: A few comments have been made about early release being a breathing space and not much more, and having medium and long-term plans has been mentioned a few times. Have those medium and long-term plans been written down, and are you in discussion with the Scottish Government on those? Do we have medium and

long-term plans? Obviously, this is just a breathing space, so what are we going to do to improve the situation for the future?

Phil Fairlie: When I referred to the medium to long-term plans, it was not in relation to any conversation that is going on anywhere. It was simply an observation that, from where we sit, early release should only be the start of what needs to be a much bigger and wider conversation about where we go from here. Early release is only ever going to provide very temporary relief, and it has to be the beginning of something much bigger—otherwise, we will just keep coming back to this position.

Sharon Dowey: So, at the moment, there are not really any medium or long-term plans to fix the on-going situation.

Phil Fairlie: All I can say is that that is not being shared with us. It is not a conversation that we are involved in. The conversation might be going on elsewhere but not with us.

Sharon Dowey: One thing that has been mentioned is looking at the whole system to see what we need to improve or change. We have mentioned supervised bail hostels, remand centres, what I might describe as a kind of secure care home for some of the ageing prison population, which has a lot of health needs, and perhaps a secure mental health unit for those who have severe mental health problems. Are those things just being talked about or is anybody in discussion with the Scottish Government on them? Is the Scottish Government actually taking action on those?

Wendy Sinclair-Gieben: I would have to echo Phil Fairlie's comments and say that, if the Scottish Government is taking action on those things, I am not aware of it. I have not seen any written plans or any action planning coming out of discussion. I am aware that we have had discussions—because I have been raising these issues for some time. I have sent the Government information about Ravenhall prison in Victoria, Australia, which has a unit that is run jointly by the forensic health estate and the prisons. I have talked about halfway houses, bail hostels and supervised bail hostels and GPS monitoring, and the evidence in favour of those. However, I have not seen any written plans or action plans.

Sharon Dowey: We have, for example, a presumption against short sentences and a presumption for bail. However, earlier, you mentioned that there is now an increased remand population. Has that approach worked or has it just moved people away from having short sentences to a situation where we have repeat offenders who eventually end up in jail on remand,

sometimes for a substantial time before they are seen at court? Is that approach working?

11:45

Wendy Sinclair-Gieben: It is important to look at the historical evidence. We had an emergency release during Covid, and we learned lessons from that. One of the things that did not work was that it did not reduce the population overall for any significant length of time. Now, we are in an even greater crisis, in relation to population, not health.

As to whether Covid caused a backlog in the courts, which meant an extended level of remand, I have not done the analysis of that. I am afraid that you would have to direct that question elsewhere.

The Convener: I have a couple of questions. The first is on a practical issue relating to the release process. Although we know that the plan is that there will be four tranches of release, we are not sure what the numbers will be. Obviously, that will apply across Scotland, and I cannot remember who, but somebody anticipated that some prisons will have greater numbers than others.

We have spoken a number of times about the lessons learned from previous release processes, not least those that happened during Covid. Paula Arnold and Phil Fairlie, based on your previous experiences of release, what are your views on what needs to be put in place to make the process as smooth as possible and, importantly, to minimise the likelihood that somebody comes back into prison because of reoffending? Are there any arrangements that are key to have in place so that the release process causes the least disruption to the function of the prison estate?

Paula Arnold: I can speak based on when I was governor of Low Moss. People were released during Covid, and it was quite difficult because of the health concerns, but we still managed to do that, and to work with partners such as the NHS, mental health services, addiction services and a lot of third sector organisations. Although we had to do it quickly, there was a lot of pre-planning and joined-up working.

As the governor of Low Moss, I was grateful for that, because we knew that people were going out with a plan, which was the most important thing. It was a very hurried plan, but at least it was an agreed plan and we knew where people were going. We even knew what bus or train they were getting on. The route home was made up for people, for example. Sometimes the basics, such as how someone will get from the prison to their home, are fundamental.

Phil Fairlie: During Covid, we were releasing for entirely different reasons, and we were trying to keep prisons as safe as possible, but if we are going to learn anything from that at all, it is that we should ensure that the risk assessment process that we use is properly assessing the risk. I do not just mean whether a person is a threat to their previous victim or likely to reoffend, but what we are releasing them to.

We got feedback from our colleagues down south on people being released under the scheme without an address to go to. We need to know what we are releasing them into. We need to factor in whether they have a home to go to and whether their family background situation is conducive to early release. If we do not do that, we will let people out of the door and they will come back, having reoffended. The risk assessment process has to capture all that needs to be captured—not just the offending behaviour but the environment that they are going back into and whether they have got somewhere to go.

The Convener: The update from the cabinet secretary says that the first tranche is due to be released on 26 June, which does not leave long for planning to be put in place.

Finally, I will ask about an issue that we have not covered: access to healthcare in the prison estate. I know that that can be challenging at the best of times, but I am interested in what impact the significant rise in the prison population has had on the provision of healthcare. I put that to Phil Fairlie and then Paula Arnold—and then to Wendy Sinclair-Gieben, if there is anything that she wants to add.

Phil Fairlie: Access to healthcare is a significant issue for the population inside our prisons. We have spoken earlier about the importance of the relationship between staff and prisoners. There are certain things that will have an impact on the environment and the atmosphere inside a prison, simply because of people not getting access or not getting satisfactory access to such things—and one of the biggest things is probably healthcare.

Prisoners worry. If somebody who is inside a prison has health issues, they are magnified in that enclosed environment, and it sometimes becomes a bigger worry. That is real for them. Not getting access to care in what prisoners believe to be a timely fashion, or not getting access to the services that they need, adds to the temperature, the hostility and the anxiety. It pervades the air inside a prison when prisoners feel that they are not getting proper access to that. There is an impact across the board.

There are lots of things that prisoners get frustrated about, and health is something that they

worry about. If we do not give them access to that care, the level of reaction is much increased.

The Convener: Do you want to add anything, Paula?

Paula Arnold: I agree with Phil Fairlie on that. The mental health needs of people in custody are magnified, and they know that—it is not something that is just apparent to the staff or the management teams. People understand it. They are probably withdrawn from drugs or alcohol, and they are in a different sort of circumstance. Their health needs are magnified and are more apparent. It can become quite fraught when people put their name down because they want to help themselves by being listed for drug and alcohol services or to see a mental health nurse, but it does not happen quickly enough. There is then retort between the prison staff and the person in our care. It can be quite a fraught time if there are just not enough staff to go round to help the individual.

The Convener: Do you want to comment, Wendy? I know that you look at these things very closely. Do you have any final brief comments?

Wendy Sinclair-Gieben: Healthcare is one of our two top concerns among what prisoners write to us about. There is no question but that there is an insufficient number of staff. It is an inconsistent and patchy application. What NHS Forth Valley manages is not what NHS Tayside manages, which is not what NHS Highland manages. It is a difficult one.

In reality, we must recognise that we cannot have bespoke healthcare. We ought to have bespoke healthcare, but there cannot be a principle of equivalence, because the people who we are talking about are in prison. If someone cannot make an appointment in prison, if they cannot get a car or a taxi, and if they cannot get a friend to take them, they cannot do it. They have to rely on GEOAmev, which fails routinely.

We see that the pressures in the NHS in the community are replicated and exacerbated in prison. I agree with Paula Arnold that mental health stands out. There is a difficulty with recruiting sufficient mental health nursing staff to support the mental health needs within prison. It is so obviously lacking.

The Convener: Russell Findlay wants to come in with a very quick final question.

Russell Findlay: It relates to something that was said earlier, and it overlaps with the issue of prisoner mental health. The absence rates for SPS staff were mentioned: I think that Paula Arnold provided a number or a percentage—or was it Phil Fairlie? Sorry. Do you happen to have that number to hand, Phil?

Phil Fairlie: It fluctuates. Between 30 and 35 per cent of staff absences at the moment are because of mental health issues.

Russell Findlay: I see. I had misunderstood, so I am glad that I clarified that. So, for 35 per cent of those who are off at a typical moment, their absence relates to mental health.

Phil Fairlie: Of those who are off, yes.

Russell Findlay: Thank you.

The Convener: We will now close this evidence session. Thank you very much, Wendy, for contributing online in the middle of your inspection. I thank everybody for that really informative session.

11:54

Meeting suspended.

11:58

On resuming—

Subordinate Legislation

Sheriff (Removal from Office) Order 2024 (SSI 2024/148)

The Convener: The next item of business is consideration of a negative instrument. I refer members to paper 2. Do members have any questions on the instrument, or are we content with it?

Russell Findlay: I have a couple of questions that the committee might be interested in asking. I have been assisting one of the female complainers in this long drawn-out saga, and there are several questions and concerns, so I think that it is useful to give a quick synopsis of the matter.

This is the first fitness for judicial office tribunal in Scotland, having been legislated for in 2014. In March 2021, the tribunal found the individual's behaviour to be inappropriate. However, the findings of that tribunal were quashed on appeal, because the tribunal did not take some other evidence into account. A second tribunal was held, which ruled that he had committed serious improper conduct, which is a matter of public record.

All of that took five years to conclude. In that time, the individual was suspended on full pay, which amounts to not far off £1 million in pay. As far as I understand it, the public might also be required to pay the legal costs of the individual. I have asked the Scottish Government how much that will be, and I am waiting for an answer.

The first question is whether it is proper in such circumstances for the public purse to meet the cost of a judicial office-holder's legal fees.

The second question is about the time that it took for what appears to be a relatively straightforward process that we might imagine happening in any other walk of life. Why did that take the best part of five years? On the basis of it being a brand-new tribunal and a brand-new process, is the Scottish Government concerned that the case will be typical, or is it confident that we will not see a repeat of a five-year process?

12:00

The third point is a possible question, but it is more a general point. The female complainer in that particular case was led to believe that she did not have an automatic right to know the outcome of the proceedings and, indeed, that it would not automatically be a matter of public record. That is

at the discretion or behest of the First Minister of the day.

In March, I wrote to the First Minister at the time, Humza Yousaf, to suggest that the issue might be looked at. I would not necessarily call it a loophole, but the issue is whether there should be some form of appraisal of whether, in such a tribunal—as rare as they might be—the default position should be that complainers are informed proactively and unconditionally, and that the wider public are also informed.

Those are my thoughts.

The Convener: Thank you for setting out those points. Since members have no further comments, I propose that the committee writes to the Cabinet Secretary for Justice and Home Affairs to raise those points and ask for a response from her on the particular issues that Mr Findlay has raised.

Russell Findlay: It is in everyone's interests that the process can be trusted, both by the judicial office-holders and potential complainers.

The Convener: That is in order. That completes our deliberation of the Scottish statutory instrument and concludes the public part of our meeting.

12:02

Meeting continued in private until 12:24.

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