



OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 8 October 2019

Session 5



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JUSTICE COMMITTEE
25th Meeting 2019, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*John Finnie (Highlands and Islands) (Green)
*Jenny Gilruth (Mid Fife and Glenrothes) (SNP)
*James Kelly (Glasgow) (Lab)
*Liam Kerr (North East Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Liam McArthur (Orkney Islands) (LD)
*Shona Robison (Dundee City East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Melanie Allan (Scottish Prison Service)
David Doris (Scottish Government)
Colin McConnell (Scottish Prison Service)
Jim McMenemy (Scottish Prison Service)
Neil Rennick (Scottish Government)
Humza Yousaf (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 8 October 2019

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Margaret Mitchell): Good morning, and welcome to the Justice Committee's 25th meeting in 2019. Agenda item 1 is a decision on taking business in private. Do members agree to review in private the evidence heard under item 2, which is on pre-budget scrutiny?

Members *indicated agreement.*

Pre-Budget Scrutiny

10:00

The Convener: Agenda item 2 is our final evidence session as part of this year's pre-budget scrutiny of the Scottish Prison Service. I refer members to paper 1, which is a paper by the clerk; paper 2, which is a private paper; and paper 3, which is a compilation of the written evidence that we have received. The witnesses on our first panel are from the Scottish Prison Service. I welcome Colin McConnell, chief executive; Melanie Allan, head of financial policy and services; and Jim McMenemy, head of operational planning and performance management.

I thank all the organisations that provided written submissions to the committee. Those are always helpful to the committee in advance of this kind of evidence session. Mr McConnell, I understand that you want to make a brief opening statement.

Colin McConnell (Scottish Prison Service): Thank you for the opportunity to make an opening statement. The Scottish Prison Service agency framework agreement—"Scottish Prison Service Framework Document March 2016"—which is published on our website, sets out the nature and conditions of the operation of the service and its relationship with Scottish ministers and other key stakeholders.

Section 2 of the framework describes the roles and responsibilities of the key players that are responsible for the oversight and management of the organisation. The main responsibilities of ministers and the Government with regard to the agency include

"Setting the strategic objectives and related performance targets"

and

"Setting the budget for the Agency."

For the chief executive, the overarching responsibility is described as

"the delivery of the functions"

of the Scottish Prison Service. That includes

"Ensuring that all ... financial considerations and Scottish Government guidance, including issues of propriety, regularity, efficiency and value for money, are taken into account in delivering the business of SPS"

and

"Preparing and publishing annual reports, accounts, corporate and business plans, subject to Ministerial approval."

Put simply, the Government says what it wants to be done and gives us a sum of money with which to get it done. The role of the chief

executive officer and therefore of the service as a whole is, with best endeavour, to deliver what is required with the resources allocated.

In September 1997, the then chief inspector of prisons, Sir Clive Fairweather, described Barlinnie, which was operating at 51 per cent overcapacity, as a “national disgrace”. He noted that overcrowding was

“pervading almost every part of the prison and its regime”

and that consequently for the prison there were

“health and hygiene implications”.

Roll forward to today, in October 2019, with more than 20 years in between, and Barlinnie is almost 50 per cent overcrowded and the service as a whole is more than 9 per cent overcrowded. With our current chief inspector of prisons about to publish her latest report on Barlinnie, would you or should you be surprised if she were to be critical of conditions for those living and working there, given that back story and despite the fact that, over the past 10 years, £30 million has been invested to keep the prison functioning to a reasonable standard?

The poor living and working conditions in the SPS’s Victoriana stock, which covers Barlinnie, Inverness, Perth, Dumfries and Greenock, should not shock us as a result of being newly realised or laid bare, because the issues have been with us—all of us—for a long time, through successive Governments and justice and political leaders. Those issues have been much reported on, criticised and, on occasion, condemned, by successive chief inspectors of prisons in Scotland.

The prison population is neither homogeneous nor stable; it is constantly changing. Today, the Scottish Prison Service holds an increasingly complex and difficult-to-manage population, which is often composed of groups of people who are in direct conflict with one another; those who present with a multiplicity of complex mental, social, physical and healthcare needs; those who by the nature of their offence require to be kept separate from others; those who simply cannot cope; and those who present such a level of risk and threat that their very presence has the potential to destabilize a prison in part or as a whole.

I will share some interesting facts about the prison population.

The Convener: That is a very comprehensive opening statement. If you do not mind, we will move to questions. The prison population now exceeds 8,200. The Auditor General’s report, “The 2018/19 audit of the Scottish Prison Service”, states that that is above operating capacity, and there is a fear that it could increase beyond maximum capacity. What would be the practical

implications of prisoner numbers exceeding both limits?

Colin McConnell: The answer to that will be in two parts. I will give a general overview and then I will ask Jim McMenemy to give some of the operational detail.

The operating capacity of the Scottish Prison Service is 7,669 prisoners. That is the capacity at which we are fully funded and expected to deliver a full regime for those in our care. However, the prison population this morning was three short of 8,300. That gives members a feel for the overcrowding that exists in the SPS today.

It does not require experts such as me or the people sitting with me for you to appreciate that the overcrowding has serious implications for not just the lives and working conditions of those in prison, but how the prison service sets about operating day by day. Jim McMenemy will give you some practical examples of those implications.

Jim McMenemy (Scottish Prison Service): As Colin McConnell said, we have almost 8,300 prisoners in custody. The average number of prisoners for this financial year from April to date is about 8,270, although the number fluctuates every day.

We have 3,200 long-term prisoners, but, going back four or five years, we had only 2,800 in custody. Long-term prisoners are those who are sentenced to four years or longer.

There has been an increase in the number of convicted sex offenders and there are about 1,400 in custody. Due to the nature of their crime, they have to be kept separate from other mainstream prisoners.

We have more than 1,500 remand prisoners, who are not allowed to be located in the same area as convicted prisoners.

There are more than 400 female prisoners. This morning, at unlock, we had 413 females in custody. That number has stayed at about 400 for the past two or three years, after coming down from a record high of 540.

All those prisoner groups have an effect on operations. There is a requirement to keep them separate in prisons, to manage them separately and to provide them with appropriate regimes. That increases the complexity of looking after those in custody.

The Convener: Are you able to separate the prisoners and do all the things that need to be done with the various categories of prisoners?

Jim McMenemy: We are funded and staffed for levels of about 7,700 prisoners, but where the numbers have increased—such as in Barlinnie

prison, which has more than 1,400 prisoners in custody, and some of our other establishments that are overcapacity—it is increasingly difficult to ensure that we provide an appropriate regime for prisoners.

The Convener: The prison population figure has increased beyond the figure that the Scottish Parliament information centre gave me in its latest update. You are now three prisoners short of 8,300. What number would you get to if you were to go beyond maximum capacity?

Colin McConnell: That is an interesting question. It is clear that, as chief executive of the Scottish Prison Service, I have no legal power to stop people coming to prison. In some ways, that is not surprising, given that the courts have that function.

Through experience and judgment, and in discussion with similarly experienced colleagues, we have assessed that the SPS has an operating emergency capacity limit of 8,492 prisoners. There is still headroom in the system, but the organisation is being stretched to its limits. That gives you a feel of the situation.

We operate at about 8,300 prisoners. Sometimes, the population flexes considerably—up as well as down—on a single day. Jim McMenemy can give you an example of that. There is not that much headroom, but we have enough to keep us reasonably confident that we can keep the service going.

The Convener: I note that you referred to the “operating emergency capacity limit”. What conversations have you had with the Government about the issue?

Colin McConnell: The Government is updated at least weekly, if not more often, on the level of the prison population, and the potential consequences of the fluctuations. I go back to my earlier point, and, again, Jim McMenemy has some evidence that he can share with you on this. The population can flex by as much as 50 or 60 prisoners in a single day, depending on the number of people who are released and the cases that come through the courts. We ended last week a bit higher than we had projected, which was just to do with the flexibility and variability of court business.

The Convener: What impact does the prison population, which is increasing, have on the safety and wellbeing of prisoners and prison staff?

Colin McConnell: I will make a general comment and then ask Jim McMenemy to give you some details.

Again, I make the point that we should not be surprised, as a nation or as a Parliament, that holding 8,300 people in a system that is really

designed for 7,669 brings deficit to staff and those living with us.

For staff, it involves more work, stress, encounters and problems to deal with. For those who live with us, it means restriction on regime access, more confrontation, less space to move around in, and, frankly, a bit more downtime than we would otherwise like there to be. Jim McMenemy will give you some hard examples.

Jim McMenemy: As was published in this year’s SPS annual report, over the past two years, we have noticed a continual increase in violence in the prison service. On average, prisoner-on-prisoner violence has increased by over 40 per cent, and the category of minor and no-injury assaults on staff has also increased by 40 per cent, whereas, thankfully, serious prisoner-on-staff assaults came down last year in comparison with the previous year. A lot of that is to do with the fact that, as the population increases, we have to double up more—people are used to be being in one cell and all of a sudden they have someone else in with them, which causes friction.

Over the past two or three years, the significant increase in serious organised crime nominals and those linked to them has also been noticeable. Through the good work that the police are doing, serious organised crime gangs are now in custody, during which time we have an obligation to keep everybody safe. Therefore, we have to try to keep those different groups separate. However, there are so many nominals and people linked to organised crime that retaliatory violence takes place regularly.

The Convener: It probably would not be an exaggeration to say that the situation in Scottish prisons is something of a powder keg, as a result of those prisoner numbers.

Colin McConnell: I would not say that it is “a powder keg”, although I can understand why some might think that. If we compare the performance of SPS with that of our near neighbours in England and Wales, which are probably our most reasonable comparators, despite those really worrying trends, violence levels in Scottish prisons are much lower than they are there. Similarly, although we are concerned about regime performance, which has dipped—for some of the reasons that Jim McMenemy has set out—again, comparatively, our performance is holding up much better. We can check this for you, but, as I understand it, bizarrely, the level of overcrowding is more serious in Scotland than it is in England and Wales, despite all the headlines.

10:15

The Convener: You are saying that it is serious, but not so serious that you are really concerned that things could kick off.

Colin McConnell: Indeed. However, given the complex mix of people we are looking after on a day-to-day basis, it would be foolish not to contemplate the possibility that any single incident on any day could spark a major confrontation, either in a single location or more broadly. I think that we have been very skilled in preventing that from happening before now.

We have lots of systems and processes in place whereby we continually sense, check and test the temperature across a range of issues in every single one of our prisons. That is done in the operations group. We then meet as an organisation to balance and check that sense taking. We are absolutely sensitised to the risks that we are managing in Scottish prisons today, but they are significant, and I would certainly not wish to diminish that.

The Convener: It is not a highly volatile powder keg. Would that be a reasonable description of the situation?

Colin McConnell: Prisons are stressed, strained and stretched on occasions; they can be volatile. I certainly would not agree that, at this stage, there is any indication that we are managing a powder keg.

The Convener: Members have a number of questions. Rona Mackay has a supplementary question first.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Good morning. I want to ask you about the women's custody units that are being built and planned. I believe that their capacity will be for about 230 women. Mr McMenemy has already said that the number of women prisoners is more than 400—or thereabouts.

As we know, many of the women who are in prison serve short sentences. Many of them are victims of domestic abuse and have mental health problems and so on. Does that highlight the need for a sea change in how we deal with women offenders?

Colin McConnell: That is one of the contemporary issues. Scotland is leading the way through our groundbreaking strategy for how we care for women who pass into our custody. As you may recall, Scotland had good, well-developed plans to replace Cornton Vale at Inverclyde, with what was then a state-of-the-art, fit-for-purpose, trauma-informed facility. However—I welcomed this decision—the Government decided to take a more enlightened approach. That approach has garnered interest from around the world. We are

well on track to deliver the strategy. There are some technical issues with the marketplace, which is stretching our timelines a bit, but the strategy itself is absolutely sound, and it is the right one for Scotland.

Rona Mackay: How do you view the numbers issue? With the presumption against short sentences, will the situation improve?

Colin McConnell: I think that it will take some time yet for the expectations and behaviours of society that influence the judiciary, court procedures and what happens in prisons to work through and to get us to the ambitious position that Scotland wants to achieve.

As Jim McMenemy said, the number of women being sent to prison custody has remained fairly stable over the past three years, at or around 400. The design capacity of the trauma-informed system that we want to bring into use is planned to be 250, so there is a considerable gap there. However, as you have touched on, the Government has already launched a number of well-intentioned approaches to reduce the number of women coming into custody, which it will deliver on time. The presumption against short sentences is one of the key aspects of that.

Shona Robison (Dundee City East) (SNP): Good morning. I want to return briefly to the subject of violence levels. You have set out a picture of quite a pressurised environment, but two facts that you cited jumped out at me. First, violence levels are lower than they are in England and Wales. Secondly, serious assaults on staff are down—I think that that is what you said. The staff are obviously managing a difficult situation well, for which I commend them, but apart from that, how has that reduction been achieved? The figures are a bit counterintuitive.

Colin McConnell: Again, I will offer two different views on that, if you do not mind. The fact that the figures seem counterintuitive is something of a conundrum. We have to welcome what they tell us, even though I would rather that violence was down over the piece. However, for the reasons that Jim McMenemy gave, we know that, when we squeeze more people into the same place, we will get more people budging up against one another.

Something to keep in mind is that many of the people who come into prison come from the same areas, and the issues that they were dealing with in the community tend to follow them into prison. That is where we get some of the low levels of violence: the scores that are being evened, the people who have fallen out or whose family members on the outside have a tiff that carries through into the prison, and so on. Issues to do with contraband tend to affect the situation, too. In

addition, when more people are cell sharing and are squeezed into tight spaces, it is not surprising that they rub up against each other. I think that that is where the burgeoning of low-level violence comes from.

As Jim McMenemy said, at the upper end, violence has not burgeoned in the same way. We have to be open minded about the fact that some of that might be down to dark or hidden factors, particularly if serious and organised crime is involved. Also—and I am grateful to you for touching on this—our staff are well trained and do a really good job. In the most violent situations, they deploy good de-escalation techniques really well. Jim McMenemy might want to give some examples.

Jim McMenemy: On the reduction in serious prisoner-on-staff assaults, in 2017 there were three or four significant assaults on members of staff. After all such incidents, we do a critical incident debrief and review the situation. We found that a significant number of incidents were down to two or three individuals. We analysed where assaults were taking place. We then developed a new process. The staff are allowed to wear personal protective equipment, and we introduced a new piece of equipment, which would prevent some assaults of the type that took place in 2017-18.

In addition, on the operational side in the establishments, the public protection unit team works hard to identify issues that might lead to risks for staff, and deals with them appropriately. On the back of the significant increase in 2017-18, we worked very hard, and that work was reflected in the figures for 2018-19, which showed a reduction.

Shona Robison: That was interesting. Thank you.

Liam Kerr (North East Scotland) (Con): I want to follow up on that interesting line of inquiry. Mr McConnell, you said that violence levels are much lower in the Scottish prison system than they are in our near neighbour's system. Can you say what you are doing differently that is delivering such results?

Colin McConnell: Members are asking interesting questions, on which we will reflect further.

I think that there are a number of factors. First, the culture of the prison environment and how it operates is different. I think that people who visit our prisons regularly are struck by how positive and genial relations are between the people who are in our care and those who provide the care. That is quite different, I think.

Secondly, when we look at our staff group and their experience, we can see that the situation is incomparable with the situation that governors and the service in general in England and Wales have to cope with, given the rapid turnover and throughput of new prison staff there.

Earlier this morning, I looked at statistics on our staff and their experiences; I can get the detail out for you now. I have heard good evidence of prisons in England and Wales, where they operate with between 30 and 40 per cent of staff who have less than two years' service. The majority of staff in Scotland have 10 years-plus service. Prisons are difficult, complex places to make work, and experience counts. In Scotland, we have been fortunate that we have not had that rapid turnover of staff. Some of that is to do with terms and conditions and relationships. When the pressure is on, staff in Scotland are more able to remain calm and respond appropriately. Sometimes, things happen that we regret and would prefer not to happen but, in the main, Scotland's prisons are run well, conditions are decent and relationships are good. Those are the chief inspector's comments, not those of the CEO.

Liam McArthur (Orkney Islands) (LD): Before I turn to the questions that I was going to ask, I want to follow up on a couple of the questions that Shona Robison and Rona Mackay asked.

Although I commend the staff for the work that they do and the experience that they bring to the role, Jim McMenemy indicated that incidents of prisoner-on-prisoner attacks are up by 40 per cent. We take reassurance from what Colin McConnell said, but we should not lose sight of the challenges that remain.

In relation to the female estate, Mr McConnell talked about timeframes being elongated. The initial commitment was for the delivery of the prison and the custody unit by the end of 2020. On a couple of occasions, I have tried—without success—to get clarification from the Cabinet Secretary for Justice on where that elongated timeframe stands. Are you able to enlighten the committee on that?

Colin McConnell: If that is the case, Mr Yousaf might point the finger at me. I hope that that would not be the case.

We are committed to 2021. I hope that you will accept at face value that the situation is not to do with anything that the SPS or the public sector has been unable to achieve. Recently, we have been buffeted by stresses and strains in the marketplace. In case it is commercially sensitive, I do not want to give too much detail away, but we ended up with only two bidders in the marketplace, both of which demanded an extension to the negotiation period during the procurement phase.

As the bids came back, both providers presented higher costs and significantly stretched-out build phases.

We have professional staff working on value engineering and negotiations, but we can deliver only what the market will allow us to deliver. With the best will in the world, I reiterate that the Government and the SPS are absolutely committed to delivering in full the women's strategy. However, the market will require between nine and 12 months of additional time to deliver it.

Liam McArthur: Are we talking about the end of 2021?

Colin McConnell: Yes.

Liam McArthur: You mentioned the extension of the presumption against short sentences to 12 months, which is welcome, but the committee has received evidence that, for a variety of reasons, the impact that that will have on reducing numbers is less than one might think. I am concerned that, although you are attempting to bring the female prison population down from around 400 to closer to the 250 capacity of the new estate, you might not get anywhere close to that number, with the result that women will still be held in units that are not trauma informed and are not in keeping with the progressive direction that we want to go in as regards the way in which we hold women in custody. Is that a realistic risk?

Colin McConnell: I would certainly entertain it as a possibility. However, I go back to the ambition. Everyone in this room and in Parliament more widely has a role to play in that, as I am sure that the cabinet secretary will say in due course.

Scotland has to treat women in the criminal justice system differently. In Scotland, based on international comparisons, far too many women get sent to prison. The right thing to do is to recognise that Scotland is on a trajectory to deliver a world-leading solution for women who ultimately end up in custody. We anticipate that, at the end of that, around 250 women will still have to be sent to prison, because of the seriousness of the offences.

10:30

Everything we do between now and the end of 2021-22 must be geared towards taking a broader, more trauma-informed and individualised view of what will work best for women who have to come into the justice system. For the vast majority, that will not mean prison. If we do not grasp that need and do something about it as a nation and a Parliament, I absolutely entertain the possibility that we will have more women in our care than the new facilities and strategies are primarily intended to care for. We will have to put in place

workarounds for that. That is the reality of the situation.

I remain ambitious and I remain committed to the idea that we should be working on ways to keep women out of prison—especially women who do not really need to be there—and I hope that Parliament is committed to that, too.

Liam McArthur: Mr McMenemy, you answered some of the questions that I was going to ask about the impact of double occupancy of single cells and the reason why that is being explored by the prison service. You also said that in no circumstances are those who are held on remand to be held in the same location as those who have been convicted and are serving sentences. Is that an absolute guarantee across the estate?

Jim McMenemy: We have a situation in which, this year, the remand population has increased dramatically. We topped out at more than 1,600 people on remand, but the numbers have since come down by about 100 in the past two months or so. People are remanded to the prison that the court determines they should go to. Obviously, in those situations, we have to hold them in the establishment to which they were originally sent. Once we know the numbers and have determined that we have spaces in other establishments, we try to facilitate moves to ensure that people on remand are not held in the same location as those who have been convicted. We have first-night-in-custody centres, remand areas and designated areas—those areas are designated as required under the prison rules to ensure that they are the areas where those people go.

If I am being honest, I cannot say that people on remand have never been held in the same place as those who have been convicted. There are pressures on prisoner numbers. However, the Scottish Prison Service does its best to ensure that we comply with what we are required to comply with.

Liam McArthur: I appreciate that you are dealing with numbers that fluctuate daily.

Mr McConnell, you said in your annual report—and you have said again this morning—that you have a contingency that would allow you to get up to a total of almost 8,500 prisoners. What is that predicated on? Does it involve double occupancy of cells? Does it involve consideration of where remand prisoners are housed? Where is that headroom being created?

Colin McConnell: Again, Jim McMenemy can give you more details. On the point of cell sharing, it is important that the committee appreciates some of the pressures that we face and, therefore, the conditions that people are being held in.

Today, the number of cells that are holding more than one person is 1,568, so we have more than 3,000 people who are in shared cells. Only half of those cells were actually designed for two people. In Barlinnie—I love to talk about Barlinnie, and you can understand why—92 per cent of the people who are there today are sharing cells that were designed for one person. I say that perhaps to shock you a bit—I hope that it does—but I also say it in order to give you a bit of context. Jim McMenemy will be able to give you some hard examples.

We really are trying our best to ensure that we are fair and that we give people access to as much of the regime as possible and, of course, that we absolutely comply with the requirements of the law and human rights. However, we have to face the fact that, as long as the prison population remains as high as it is or gets higher, those aspects will be squeezed at the margins. In all honesty, I cannot give Mr McArthur an assurance that everything will be as it should be in every regard, because there will be compromises.

Jim McMenemy: To respond to the point about the maximum prison population of 8,492, when it comes to the operational capacity of the Scottish Prison Service, which Colin McConnell was talking about, there are spaces that we just cannot use at the moment because of where they are located. At this time, there are spaces in Polmont and Grampian, for example, that it is not appropriate or feasible to utilise, for example, but that is primarily where our spaces are. The breakdown of the prison population shows that it consists mainly of male adults. However, a lot of our prisons are not suitable or secure enough for male adults, so we have to utilise the big local jails, such as Barlinnie.

Liam McArthur: Does that explain why Barlinnie is almost an outlier in the extent to which it is over capacity?

Jim McMenemy: Yes. That is the case for Barlinnie and the prisons in Edinburgh and Perth. HMP Low Moss was designed and built for a prisoner capacity of 784 and that was the capacity when it opened in 2012. However, to alleviate pressures in some of the larger and older local jails, we have stripped out single beds in single cells in Low Moss and replaced them with 100 bunk beds. Low Moss is going through a period of increasing its population to between 850 and 880 prisoners. That recently provided accommodation means that Low Moss is a better place to put adult males than Victorian prisons such as Barlinnie and Perth, which have had immense population pressures in the past few months.

Those are the kind of things that we are having to do. That supports Colin McConnell's comment about the number of prisoners who are doubling up in single-cell accommodation.

Liam McArthur: I want to touch on the issue of home detention curfews. The justice secretary has acknowledged that the dramatic reduction in those released on HDCs is part of the reason for the significant recent increase in the prison population. He has assured us that he expects the number of HDCs to gravitate back towards the previous number, if not actually reach it. What is your expectation of the number of people who are likely to get out on HDCs and the timeframe for that?

Colin McConnell: We all know that the constriction in the number of HDCs came about because something terrible happened. Scottish society and Parliament were understandably shocked and affronted by what happened because of a person who was unlawfully at large. Since then, we have gone from having over 300 people on HDCs in the community to having about 37 today. However, home detention curfew means that the person has very tight, restricted access to the community.

The journey now is about ensuring that we are concerned about the right things. The Scottish Government is developing a new policy and there is a training event at the Scottish Prison Service college today to take some of our home detention curfew decision makers through the new policy and discuss how to take appropriate decisions. That will take some weeks to bed in and there will have to be a lot of associated oversight and supervision.

As an operator, I understand and respect what the cabinet secretary is looking for. I am naturally cautious, though, and I want to ensure that we implement the new HDC procedures with a mind to ensuring that every decision is right and that the public is appropriately protected.

The way things have gone recently is that, because of individual events that have happened, there has been an absolute focus on the service and its decision makers, and incredible criticism has been levelled against the service for those events. You will have heard the term "error terror". I think that we are in a period in which decision makers in the service are concerned about the degree to which they will be held accountable if they take a significant decision and something then happens elsewhere. You might say that it is absolutely right that, in public service, there is such accountability and, to a degree, that is the case, but individual decision makers, who must take into account lots of different information from different sources, different contributors and different professions, are always in the position of making the best judgment possible rather than an infallible one.

My counsel to the committee and the Parliament is to avoid the counsel of perfection. I worry about the fact that I often hear it said at the moment that,

somehow, there are magic, perfect solutions out there if only we could achieve them. I must say to the committee that there are not.

Liam McArthur: I am not sure that anybody was suggesting that, so I think that it would be wrong to characterise the scrutiny of the issue in that way. It is accepted that the issue that we are dealing with is to do with the management of risk. However, there is a concern that the position with regard to HDCs is not only leading to an increase in the prison population, with all the implications that that has for prison staff as well as the prison population, but is affecting communities. Because the use of HDCs as a tool for ensuring successful rehabilitation of those who exit the prison estate is now less of an option, or is one that is being used far less frequently, there are implications for public safety in the community. I think that we want to reach a settled position in which HDCs are used appropriately, and the management of risk is key in that respect.

You have given assurances to the committee that the new procedures that have been put in place involve a greater level of senior oversight of such decisions. Therefore, one would have thought that, although that does not mean that there is a guarantee that errors will not be made, we should have more confidence in those decisions being taken. What I am asking is what the expectation is as regards the timeframe for a steady increase in the number of prisoners who are released on HDCs—if not to the previous level of 300 or so, then to a higher level than the 30-odd who are on HDCs at the present time.

The Convener: I make a plea for questions and answers to be as succinct as possible.

Colin McConnell: I am not trying to obfuscate, but I want to resist coming up with a number or a timescale. The committee might want some more detail from Jim McMenemy, but I guarantee that the new procedures will lead to more people being on HDCs in the community. That figure will ramp up towards the end of the year, but I do not know to what degree it will ramp up.

The Convener: If you could keep us up to date with the figures, that would be much appreciated.

John Finnie has a supplementary.

John Finnie (Highlands and Islands) (Green): I will seek to be brief. I appreciate the pressures that you are under, Mr McConnell, and I know that you have a progressive outlook. However, the decrease in the number of people on HDCs from more than 300 to 37 appears to be a damning indictment. Either there was previously a callous disregard for public safety—I do not think that that was the case—or there is risk aversion among your staff. In my humble opinion, you must address that.

I assure you that everyone accepts that, because of the nature of the people you are dealing with, things will not always be right. Surely the test is whether your staff have acted in good faith in making decisions. That does not mean that there will be no errors. How do we build up that confidence and empower staff? That seems to be absolutely integral to having a more progressive regime and addressing the population issue.

Colin McConnell: I welcome that rounded position and the opportunity to make an ask. I think that it is necessary for members of the committee and the wider Parliament to recognise what you have just said—that everyone in the prison service, whether they are on the front line or in a senior leadership position, endeavours to do their best and acts with good public sector values behind them. However, we are not perfect: I make mistakes and so do my colleagues.

10:45

We are dealing with human beings who find themselves in particular situations in the community—they meet different people and encounter different stressors and temptations on different occasions. It is hard to understand how the decisions that one makes today might influence someone in a week, a fortnight or three weeks' time. We have to hope that the other facilities that are in the community, which are there to support, supervise and point out things that are going wrong, have the opportunity to engage as appropriately as we hope that we do in our decision making. I see it as a team effort. There is a joined-up approach to making it work. We must not be tempted by the counsel of perfection.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good morning, panel. Like Shona Robison, I want to thank your staff team, who are clearly working in very difficult circumstances. They are always working in difficult circumstances, but from what we have heard, they are perhaps more difficult at the moment.

You will be aware of the Auditor General's report, which said that the Scottish Prison Service would not be able to deliver a balanced budget in 2019-20. Can you talk a wee bit more about the circumstances that gave rise to that and whether enough additional funding has been provided?

Colin McConnell: I can give the committee an overview of the general position and then Melanie Allan, our head of finance, can give you more detail.

The Scottish Prison Service is subject to annual budget settlements. In this case, the annual budget round went as normal. As the budget round progressed, we were concerned that what was being planned for the Prison Service would

not be sufficient. That was recognised in the context of the knowledge that the public purse is stretched to the limits and not everyone can get what they need and far less what they want—as I would have said in my opening remarks, but I ran out of time.

We worked through the budget process, but it became clear in the new year that the Prison Service's funding would be left substantially short of what it needed just to break even throughout 2019-20. On that basis, in March, I wrote to the principal accountable officer, setting out my concerns. We went through a sort of challenge process. I am pleased to say that the outworkings of that process, with the support of the cabinet secretary, have got us into a position where we have the offer of on-going support to close that funding gap as the year progresses. Given the stresses and strains on the public purse more generally, that is a very welcome position for us to be in. We had got to the point where we simply could not run the Scottish Prison Service in any recognisable way for the money that was going to be provided.

Melanie Allan (Scottish Prison Service): It is important to point out that, over the last three years, the Prison Service has received a flat cash settlement. Out of that settlement, we have to absorb the cost pressures in relation to pay, major contract inflation and additional pension costs. A flat cash settlement does not take account of that, so having written to the cabinet secretary we have secured some cover, of up to £24 million for this financial year. That is a one-off for the current financial year and we will need to plan for the future.

Fulton MacGregor: Do you expect it to be a one-off and then for you to be able to work within the budget next year, or do you expect to hold similar conversations next year?

Melanie Allan: At the moment, we understand that the additional cover is a one-off. We are currently going through the spending review process with the Scottish Government and have submitted figures for the next four years, which capture future cost pressures.

Fulton MacGregor: Okay.

The Convener: Was any representation made at the beginning of the year, when you knew what your allocation was, or did you just wait to see how it panned out?

Colin McConnell: In reality, most people—certainly the people around this table—will know how the budget round works. It can seem a bit like groundhog day in some ways because I start from the perspective that the public purse is under tremendous pressure. It is understandable that ministers and the Scottish Government fret about

how to square a circle, or whatever metaphor we deploy. However, I give the committee the absolute assurance that the Scottish Prison Service was actively engaged with the Scottish Government throughout the budget process.

The Convener: John Finnie, do you want to ask any further questions?

John Finnie: Yes, but I will roll them together. We have been told about one of the financial pressures, which is the buying of additional places in a private prison. I will briefly pose three questions on that. Is a premium paid for those places, how do the costs compare and is that sustainable in the longer term?

Colin McConnell: I will provide a quick answer, but I have some expert people who can give you more detail. Is there a premium? Yes and it is a hefty one. On cost comparison, do you mean in terms of additional places or more generally?

John Finnie: I mean a comparison more generally between the private sector and the public sector, which I would like to run all the prisons.

Colin McConnell: We leveraged additional places out of the public sector at a fraction of the cost of those in the private sector. Going forward, is the cost of the additional places or that of using the private sector more generally sustainable? A number of questions probably need teased out on that, but for as long as the Scottish Government is prepared to fund those additional places, I do not have a concern. However, if the funding becomes a concern, then the position is not sustainable.

John Finnie: The Auditor General's report states:

"Inflation-linked increases built into the contract for"

the two privately run prisons

"will require additional recurring savings of around £12 million a year by 2022/23."

Can Ms Allan expand on how that arises and whether it is achievable?

Melanie Allan: Both private contracts—for HMP Addiewell and the escort contract—have inflation-linked elements built into them of retail price index plus 1.5 per cent, so the cost of both contracts increases over the term of the contract.

John Finnie: Is there a built-in requirement for consequential savings to be made in the overall prison budget and is that achievable?

Melanie Allan: That is part of the cost pressures that we have identified for four years going forward and that is not sustainable on a flat-cash settlement.

Colin McConnell: I will come in on the back of that just to help the committee with the answer to Mr Finnie's question. As an organisation, we have raised over a number of years real concerns about the consequences of the built-in inflation in the private sector contracts. Of course, it is normal to have such built-in inflation in contracts. The consequence of that, however, as I think that Mr Finnie is already aware, is that for as long as the SPS gets flat cash or cuts, there is a disproportionate impact on the public sector from cost saving. In effect, we are cost saving in the public sector to pay the inflation costs of private sector contracts.

John Finnie: Okay, thank you very much.

The Convener: I have another question for Mr McConnell. The Auditor General also highlighted that the Scottish Prison Service

"is preparing a strategy covering 2019-22",

but she emphasised that it

"is critical that SPS has a strategy"

beyond that to meet the challenges that it faces and become more financially sustainable. Do you agree with that point and will you follow through on it?

Colin McConnell: Yes, indeed. As Melanie Allan has just indicated, we have produced a four-year forward look that meets the requirements of the Government's spending review. We therefore have a financial projection that takes us through to 2024. Melanie Allan can give you more detail on that. I make the point, however, that it would be beneficial for organisations such as ours to have a longer settlement period than the current one-year round that we get, which makes it very difficult to plan because we are always reverse engineering the solution.

James Kelly (Glasgow) (Lab): Mr McConnell, you have been very stark with your comments about the prison estate, particularly Barlinnie. What is your understanding of current plans to modernise and replace the estate?

Colin McConnell: If you do not mind, I will give you a wee bit of history, which will not take long.

I took over as CEO in May 2012. In 2011, my predecessor made a submission to the Scottish Government infrastructure and investment board, which set out all the physical infrastructure requirements of the SPS. It also set out a timeline to replace Barlinnie, funnily enough, by 2019. Here we are in 2019, still with Barlinnie. It would be easy in some quarters to simply point the finger at the Scottish Government, and perhaps at us, and say that we are clearly not very good at what we are doing with regard to the estate. However, as ever, it is much more complex than that. It has

taken us pretty much that length of time to eventually identify a site that someone is prepared to sell to us and that we think is suitable to buy. We are in the final knockings—the final stages—of purchasing the land on which to build the new Barlinnie. We are pretty much eight years down the line, and it has taken us that length of time to get a site.

There are similar stories in identifying the sites for other prisons, such as HMP Highland. I was talking to a colleague yesterday, who said that it took 10 years to secure the site for HMP Highland. It is not as if we or the Scottish Government have been sitting on our hands, just hoping that magic pixie dust is going to fix everything—such things take an incredible amount of time. Another consequence is that the infrastructure investment plan, which has all the capital information in it, has to keep being reconfigured as we move along. I am delighted to say that the Scottish Government has given us every indication that the forward plan for Barlinnie—now that we have somewhere to build it—will be fully funded. We anticipate that, with a fair wind, we should have a new Barlinnie by the end of 2024, or perhaps 2025.

I would caution that, given the experience that I shared with the committee earlier about the replacement for Cornton Vale and the new community custody units, in respect of which the markets have driven us to a different situation, we have to face the fact that, with all the uncertainty in the marketplace, 2024 or 2025 could easily become 2026 or 2027. That is not because of anything that the Scottish Government or SPS is or is not doing, but simply because of where the market is at.

James Kelly: The reality of the situation that you are outlining is that it will be at least five years before we get a replacement for Barlinnie up and running. Bearing in mind that the Auditor General has identified that there are high risks around elements of the building, particularly drainage and sewerage, have there been any incidences of parts of the building coming close to failing, such that you have had to consider evacuating parts of the prison population?

Jim McMenemy: As Colin McConnell said, over the past 10 years, we have invested more than £30 million just on maintenance, replacement and upgrades in Barlinnie. Our estates colleagues have a five-year maintenance plan, so they target such things. Occasionally, there have been water failures or heating failures in Barlinnie that have required significant remedial work or investment going forward, and we have had to divert funding from one area to another to support that.

We are very conscious that, until there is a new HMP Glasgow, Barlinnie has a very precarious nature and we have to ensure that we keep it up

and running. That is one of the risks. With Barlinnie being the size that it is, and given the number of people that it can take, until the new HMP Glasgow comes online, we will need to keep investing in the areas in which we think that there is a need for critical replacement.

James Kelly: What is the contingency plan if, for example, there was a heating failure and you had to find alternative accommodation for prisoners?

11:00

Colin McConnell: There has been some good reflective stuff this morning.

Members might or might not know that I have worked in all three jurisdictions in the United Kingdom, and I have run two of them. In that time, I am not aware of our having lost an entire prison. If that were to happen, it would be unique, but I am not discounting the possibility.

If something catastrophic happened at Barlinnie that meant that people could not live there, we would be in uncharted territory, but there would be a number of obvious options. The Scottish Prison Service has active contingency plans whereby up to about 500 additional people could be located in other establishments. In the early stages, it is likely that that would involve nothing more than a mattress on the floor with appropriate toilet facilities and so on to support people. That option would be available if we were faced with a catastrophic situation in which we lost one of the wings in Barlinnie or any other location.

If the situation went as far as the whole prison becoming uninhabitable, I would need to speak to the Scottish Government about Executive release, because the Scottish Prison Service could not find places for 1,400 people in a system that is already overstretched. I reiterate that I have never known a situation in which a whole prison has been lost, but I do not discount the possibility that that could somehow happen somewhere.

Rona Mackay: What effect has the increased prison population had on rehabilitation and reintegration work in prison, such as the provision of education and skills? We know that the throughcare service has been suspended—as a result, I think, of staffing problems—and that the Wise Group is offering the new routes initiative. Could you say a bit about that? Will that replace the throughcare service? What are the prospects for restoring a fully rehabilitative system?

Jim McMenemy: The difficult decision to suspend the SPS's throughcare support service was taken so that about 45 operational staff could be put back into front-line residential functions, which was necessary because of the high number

of prisoners and the issues regarding staff. The age group for the new routes service has been expanded so that it can take on more people.

With regard to rehabilitation, the SPS has a finite ability to deliver purposeful activity, which means that although we might have more people in prison, we cannot get more people into work and education-related activity. That adds to the pressures that have been mentioned to do with getting convicted people into work or education. It also affects programme delivery. We now have 1,400 or 1,500 sex offenders in custody, which means that we would need to significantly increase the delivery of our programmes to tackle the risk of sex offenders to meet that demand. The same applies to programmes to address significant violent offending. We are actively looking at such things with a view to finding solutions, in the knowledge that, in the future, our population will be focused on long-term prisoners and sex offenders. We need to review all of that and make changes.

Rona Mackay: Will shorter-term prisoners and those on remand be adversely affected by what you are having to do?

Jim McMenemy: The SPS has developed the short-term intervention programme—the STIP—which started off in Low Moss and has been expanded to cover Perth and Barlinnie. That is a modular programme that is targeted at short-term prisoners. Elements of the programme can be used by people who come in with particular issues, whether those are to do with drugs, alcohol or housing. Barlinnie has started to trial a short-term intervention, which is targeting the use of psychoactive substances. It is an awareness session that involves speaking to the people in our care regarding the issues with and the risks of dealing with such substances.

Jenny Gilruth (Mid Fife and Glenrothes) (SNP): I will ask a question that is supplementary to Rona Mackay's line of questioning. It relates to purposeful activity; Colin McConnell knows about my interest in the subject, specifically with regard to the educational opportunities that are available. The Audit Scotland report shows that, over the period 2015-16, there was a reduction of 500,000 hours of purposeful activity. How do we define purposeful activity? Should we look specifically at educational opportunities, for example?

Jim McMenemy: You are quite right that the number of purposeful activity hours has decreased over the past three or four years. Purposeful activity covers everything to do with work, access to programmes, physical education and education. The SPS has entered into a new contract with Fife College, which is actively focused on individual learning plans; it focuses on the needs of people who require to learn the basics. We track the

classes that deliver basic literacy and numeracy and we target Scottish vocational qualification levels 1, 2, 3 and 4. The SPS annual report on that shows that there was a significant increase last year, which is linked to our partnership with Fife College. We are actively seeking to ensure that those who need education take it up.

Colin McConnell: Jenny Gilruth and I shared a platform quite recently on education in prisons. I mention in particular the excellent interventions and products that Fife College is making available in our prisons, for which we now have a single contract. We are at the very early stages of working with Fife College as a key partner, in order to find out how best we can make use of the space and opportunity that we have.

We have gone through a bit of a transition by moving away from what we tended to focus on as a custodial provider and allowing what is delivered to be influenced much more by an education expert in the form of Fife College. They have not been reported here, but there have been some startling statistics about how education performance is beginning to grow in Scottish prisons. That is less about what we are doing and much more about what an excellent education provider is doing.

The Convener: The submission from the Robertson Trust draws attention to the Christie commission recommendations and talks about the “tension between addressing immediate need and moving towards more preventative approaches.”

It goes on to say:

“SPS has made an operational decision to focus its budget on immediate need rather than prevention.”

We can perhaps understand why that is the case, but the Robertson Trust also says in its submission that the throughcare strategy has actually stopped reoffending. Therefore, when throughcare stops, there is a danger that people will reoffend and come back into the system. Will you perhaps comment on that tension?

Colin McConnell: Your reference to the Christie commission recommendations is an absolutely appropriate reminder of where we are trying to get to.

Postponing the throughcare support service was not something that I really wanted to do—Jim McMenemy touched on that—particularly when independent evaluation had shown that the throughcare support service was contributing to lower levels of reoffending. However, operationally it was absolutely necessary. That was a tough decision to take, but I assure the committee—I think that this is what you will want to be assured of, convener—that, just because we have paused the throughcare support service, throughcare

support itself has not stopped. The personal officers are working daily in our prisons, effectively backfilling that space.

Increasingly, as community-based partners are being encouraged to deliver more, those two elements of what should be a joined-up service will come back together. However, the Christie commission also talked about the need for cohesiveness across the system. I am grateful that the committee has acknowledged that the SPS has to deal with the immediate needs of those who come into its care, because many of those people do not stay with us for long. Over the piece, we must have a coherent, convergent approach for people who come from the community and pass through the system in our care, so that there is a connectivity to all that. In part, it is about ensuring that public sector organisations do not stand alone when they produce something that states what they should be doing. There must be an overarching strategy for how all that effort will join up and deliver outcomes.

The Convener: That is helpful. Thank you.

Liam Kerr: Like Fulton MacGregor and Shona Robison, I am concerned about prison staff. Your annual report notes that

“sick absence has increased significantly”;

the Auditor General’s report referred to that, too. What are the underlying causes of that increase in sickness absence and what can you do to address them?

Colin McConnell: To generalise, based on what people report on the certificates that they provide, there are two elements to that sickness absence. The first, and the most significant proportion, is concern about mental health issues and the second is musculoskeletal issues. Those make up the bulk of our sickness absence.

On the mental health issues—I mentioned this in my opening remarks—we should not be surprised that, in the current circumstances, staff are reporting higher levels of stress, worry and concern. Undoubtedly, that is a significant contributor to the higher levels of sickness absence that we are experiencing. An interesting factor in that is that the rapid rise in the sickness absence rate peaked at 17.2 average working days lost—a horrendous and eye-popping figure—but that that is made up primarily of people who are on long-term sickness absence. The number of days lost ramped up, but the number of people who went off sick rose by less than 1 per cent.

The absence rate is therefore about people who go off work ill and stay off, which is why the number of days lost is compounded. It is not the case that an increasing number of people are taking sickness absence; it is clearly that when

people go off, they stay off for a long time. That suggests that there are deep-rooted, long-term issues with the people who have to go off sick. Our challenge as an organisation is to try to find some way to relate to those people, to keep them supported and to target them to possible solutions in order that they always believe that there is a way back to the organisation.

A worrying factor is that we have also seen a rapid acceleration in the number of people who are leaving the service on capability terms. Generally speaking, they are staff with long service histories who tend to take the view when they go off that there is no way back, or who do not want to come back, and who therefore leave the service after a long period of sickness absence through capability. We have to find a way of turning that round.

There is something else that I would like the committee to think about. I appreciate that I have taken a lot of time on this answer, but it is an important one. I mentioned earlier that we have a very seasoned and experienced staff group. We should be very grateful for that, given the challenges that we face. However, the staff, who are often in very pressurised, confrontational situations, are having to work for longer. The committee will be aware that prison officers cannot retire until they are 67 years old and that the retirement age will in due course become 68.

I find it astonishing that we, as a society, would think it okay to have prison officers at the front line having to work until they are 67 or 68 before they can retire honourably with their pension. We have to look at that. The morale issue, the wearing down, the constant tiredness and stress, and the sense of “I won't get away from this until I'm 67 or 68”—those are having a direct impact on how our people feel about themselves in the context of their work and the confrontations that they face. Some of that psychological pressure also comes from what is, for many staff, almost a never-ending sense of having to get up in the morning and come into a working environment that can be very difficult and stressful.

11:15

Liam Kerr: I imagine that a lot of what you have just said will feed into my next question. If there is a lot of sickness absence, that will put pressure on the staff who are able to turn up and do the job each day. However, it seems to me that an associated issue would arise if there are vacancies—if it is difficult to put the resource there in the first place.

I understand that there have been difficulties in recruiting, particularly in some parts of the country. As you know, I am from up in the north-east, near

Grampian. What are the underlying causes of those recruitment difficulties? Presumably the causes might be different in different parts of the country. What can you do to address the recruitment issue?

Colin McConnell: I would never want to take a contrary position from yours, but I might do so slightly on this occasion. The SPS has an enviable brand in the marketplace and we have no difficulty at all in recruiting. I would caveat that, because you come from the hallowed north, by saying that we have one location where we have extraordinary difficulty in recruiting and that is Grampian. Eighty per cent of the SPS's vacancies are in Grampian, and that is all to do with the economy and the marketplace. Estimates that were provided for our human resources department suggested that we were somewhere between £8,000 and £10,000 per annum off the market rate for equivalent work. That gives you a sense of the gap. I am very happy to talk about Grampian, but if we set Grampian aside, the SPS recruits very easily and readily. We have successfully and consistently stayed within 1 per cent of our funded staffing position.

I looked at the prison officer numbers for four years and they flex by two; it was 2,867 in 2016, 2,867 in 2017, 2,868 in 2018 and 2,865 in 2019. We have kept things pretty much on the money. However, I accept—and I think that your proposition is right—that as sickness absence has accelerated away, and particularly now that larger numbers of staff have started to leave through capability issues, the requirement for additional prison officers has been stretched. Although we have kept the recruitment to within 1 per cent, our wastage feeding into that was traditionally around 3.5 per cent, whereas it is now 5 per cent. In a sense, that gives a feel for the impact of sickness absence and people leaving. In effect, we will ramp up our recruitment throughout 2020 to take cognisance of that. We will keep our prison officer numbers very close to the funded level that we have.

Liam Kerr: That is interesting. I will ask one final question, if I may, given what is going on this week in Parliament. You said at the outset that the Government gives you a sum of money and says, “Get it done.” If a workplace parking levy were to be imposed at, say, £400 a bay, and you have 2,411 bays at your 13 sites, that would be a cost of about £1 million to the SPS.

John Finnie: Convener—

The Convener: Mr Finnie, do you have a point of order?

John Finnie: I wonder about the relevance of the matter that is to be discussed this week to our deliberations now.

The Convener: Let us hear the question and we will take it from there. I think that it is a budget-related question.

Liam Kerr: It is absolutely budget related. I understand why Mr Finnie has jumped in.

Audit Scotland said in the report that we looked at earlier that the budget had been cut by 12.5 per cent in the past year. If such a levy were to be introduced, presumably you would at least have to consider passing that on to the prison staff whom we have been discussing.

Colin McConnell: I do not know what the expectation would be. My general comment would be that, if the employer's costs go up, either we have to expect that there will be additional funds coming into the business, or we have to find those resources from elsewhere.

The Convener: We have a brief supplementary from Fulton MacGregor.

Fulton MacGregor: If John Finnie has a supplementary on this point, I can ask my question after that.

John Finnie: Thank you.

That is a general principle. Similarly, if national insurance contributions or the like were to go up, or if there were implications about fuel duty or all sorts of things, those would have to be factored in.

Colin McConnell: Yes, indeed. If I may, I will ask—

John Finnie: I am content with that reply, thank you.

The Convener: Okay—we have that on the record.

Fulton MacGregor: Liam Kerr asked about the levels of sickness absence, and we can imagine how difficult the conditions must be for your staff, given the people they might have to work with and the situations that they might have to face. Is that leading to an increase in the therapeutic support that the SPS is providing? What impact does that have on your budgets?

Jim McMenemy: We have an employee assistance programme; any member of staff can phone the EAP provider and have confidential communications on a number of things, whether they are work related, family related or funding related, and whether they involve issues with money or with any type of relationship. First and foremost, we promote that to all our staff.

If staff are absent, we need to get to the bottom of the reason for that. As Colin McConnell said, most of our staff are off because of musculoskeletal injuries; many of our staff have more than 10 years' service and, as they get older,

that tends to happen more often. In stress-related cases, once we have identified that that may be the fundamental reason for the absence, we provide additional support to the staff very quickly.

The Convener: That concludes our questioning. I thank the witnesses for attending the evidence session. It has been very helpful, if somewhat sobering.

11:23

Meeting suspended.

11:27

On resuming—

The Convener: I welcome to the meeting the Cabinet Secretary for Justice and his officials Neil Rennick, director of justice, and David Doris, diversion and community sentences team leader in the community justice division. The cabinet secretary will make brief opening remarks.

The Cabinet Secretary for Justice (Humza Yousaf): Thank you, convener, for the opportunity to provide evidence to the committee on its pre-budget scrutiny of the justice budget, which focuses on prisons and community interventions, including the role of the third sector.

We all share—I hope—an ambition to make Scotland the safest country in the world. We might differ on the most effective way of achieving that, but I welcome the broad political consensus on the importance of an evidence-led, progressive approach to reducing reoffending and victimisation. Our focus on prevention and rehabilitation has contributed to a 20-year low in reconviction rates, helping to keep crime down and communities safe. However, I am also clear that serious offenders deserve to go to jail.

As committee members are well aware, Scotland has the highest per capita prison population in western Europe, which is not a statistic to be proud of. The Auditor General for Scotland and Her Majesty's chief inspector of prisons have highlighted the very significant pressures that the prison population level is placing on capacity at prisons, staff and prisoners. We take very seriously the pressures facing Scotland's prisons, particularly the rising prison population, and have been working closely with the Scottish Prison Service to monitor and respond to those increases.

As the committee knows well, a range of factors across the Scottish justice system can impact on the prison population. Those include changes in the number and nature of offences being prosecuted, sentencing decisions, Parole Board for Scotland decisions, home detention curfew

releases and changes to early-release rules. An additional £24 million has already been made available this year to help the SPS meet a range of cost pressures, and we will keep the budget position under review throughout the remainder of this financial year. We have also increased the SPS's capital budget by £31.3 million this year, to help it deliver progressive plans for development of our new female custodial estate, including a new national female prison to replace Cornton Vale.

11:30

Earlier this year, the committee scrutinised our proposals to extend the presumption against short sentences. I am pleased that the committee and Parliament overwhelmingly supported those proposals, and the extended presumption is now in force.

We have committed in our programme for government to ring-fenced funding for criminal justice social work of more than £100 million to deliver community sentences, support rehabilitation and reduce reoffending. An additional £1.5 million to support the implementation of the extended presumption is budgeted for 2020-21, and the impact of the extension will be monitored closely.

It is important that we do not see justice funding in isolation. That is particularly the case when we trying to create conditions for a further shift to prevention and early intervention. Scotland's high level of drug deaths brings into sharp focus the importance of diverting people with addiction issues to health-based interventions where possible.

The third sector can also play a role. In 2019-20, we have invested more than £11.6 million in third sector services, which is aimed at reducing reoffending and bolstering capacity in relation to community sentences and support services. That investment includes annual funding of £3.4 million to the new routes and shine partnerships, to support throughcare services for men and women leaving short-term sentences. As the committee will be aware, we recently widened access to the new routes programme following changes in throughcare support.

I welcome the committee's scrutiny of pre-budget plans. Of course, those plans may change as the spending review is still under way. As always, I am happy to take the committee's questions.

The Convener: Thank you for that comprehensive statement, cabinet secretary. You will be aware that, since our inquiry into the Crown Office and Procurator Fiscal Service, we keep a watching brief on its budget. The committee has

received a written submission from the procurators fiscal section of the FDA union. It says that

"the significant difference in salary between what ... prosecutors receive and"

what

"colleagues in the Scottish Government ... are paid"

is causing significant problems. Using the example of a trainee, the submission states that

"assuming that"

a

"trainee stays on for 5 years post-qualification, the employee in COPFS will earn almost **£94,000** LESS than their counterpart in Scottish Government."

Are you aware of that disparity and the problems that it is causing?

Humza Yousaf: You have given exact figures. I know that my officials will be aware of the issue. I will look into the situation in detail to see whether that is having an impact. Neil Rennick might have more to add—as director, he will have oversight of the issue.

The Convener: We gave notice to your office last night that the FDA submission had come in. As I said, throughout our scrutiny, we have kept a watching brief on the COPFS budget. Have you had any representation from or any discussion with the Crown Agent about the salary issue? We understand that it is causing huge problems in recruiting new people to COPFS and retaining them. Although 60 new places have been created, the numbers in the service have not gone up, which is a worrying situation.

Humza Yousaf: As you would imagine, I meet and have discussions with COPFS regularly, but I was not aware that there was a particular issue in relation to the recruitment of lawyers to COPFS. On the submission that came in last night, I will look at that in detail today.

I am not aware of that issue being raised with me. I do not know whether I have had representation on it; I will have to look back over my correspondence. Certainly, when I have had face-to-face meetings with COPFS, that issue has not been raised with me directly. I do not know whether Neil Rennick wants to come in with more detail on that.

The Convener: This is certainly not a new issue. It was raised last year, but it seems that the situation has got worse. Obviously, the last thing that we want is the prospect of the COPFS facing industrial action, but I think that that possibility has been mooted, if the situation does not improve.

Humza Yousaf: Again, I will look into the issue in greater detail, but I can confirm that nobody has suggested that we are on the cusp of industrial

action. However, if warning shots have been fired at the committee or anybody else, we should take those very seriously, because the last thing that the Government wants is industrial action in that area.

Neil Rennick might be able to provide slightly more detail.

Neil Rennick (Scottish Government): As I know that you are aware—this issue was raised last year—although the Crown Office budget sits in the overall Scottish Government budget, it is discussed separately by the Lord Advocate and the Cabinet Secretary for Finance, Economy and Fair Work.

We are aware of the recruitment issues in the Crown Office. I understand that positive progress has been made with the additional funding that ministers allocated to the Crown Office for recruitment. As I understand it, the issue with recruitment at the introductory grades relates to the differential between the grade at which the Government recruits staff and the grade at which the Crown Office recruits staff. Obviously, decisions on staffing deployment and pay in the Crown Office are the responsibility of the Lord Advocate and the Crown Agent.

The Convener: Although there were 48 recruitment exercises across all grades, staff numbers continue to drop. I thank the cabinet secretary for confirming that he will look at the issue.

John Finnie: My question is about prisoner numbers. Our information is informed by the Auditor General's report and by Mr McConnell, who was on the previous panel. If I remember correctly, he said that the prison population in Scotland is 8,297. Three terms came up in the discussion: "operating capacity", "maximum capacity" and "emergency capacity". What would the practical implications be of prisoner numbers exceeding the operating capacity or the maximum capacity? What is the Government doing to address the accommodation challenges?

Humza Yousaf: Nobody—certainly not me, as the Cabinet Secretary for Justice—downplays the seriousness of the challenge that we face. We are not waiting to hit the 8,400-plus figure that is often cited as the maximum, but are taking action now. That is why we introduced the presumption against short sentences.

On the back of two inspectorate reports, revised HDC guidance will be provided. I know that John Finnie has often questioned the risk aversion in the system. We are not resting on our laurels waiting to hit maximum capacity. We think that the prison population is already far too high. It does not sit well with us for a country as progressive as

ours to have the highest prison population per head in western Europe.

I will not go into the practical implications of that high prison population in great detail, but it has an effect on the amount of purposeful activity in which inmates can take part. It can also affect the waiting list for rehabilitation programmes for inmates and can contribute to violence in prisons, perhaps as a result of an inmate who was used to having a single cell having to share that relatively small Victorian cell in a prison that was built a couple of centuries ago with someone else.

There are also issues for the staff. I must take the opportunity to praise not just prison officers but SPS staff as a whole for working in extremely challenging conditions. Having a high prison population undoubtedly creates staff-related issues, such as sickness, absence and stress.

In addition, there is the wider societal impact of having such a high prison population. A number of people who are in prison would, I suggest, be better served by community sentences or earlier rehabilitation interventions that would reduce the likelihood of their reoffending again.

I could go into a lot more detail on each of those areas, but that is about as comprehensive as I can be on the impacts of having such a high prison population.

John Finnie: Some of those factors are in your control. I am interested to know what the Government could provide if it had additional resources. We have heard from the Auditor General about there being, for example, longer sentences for serious offences and more convictions for domestic abuse. Coupled with the fall in the use of home detention curfew—the numbers on the use of HDC are depressing; they have fallen from more than 300 instances to 37—those factors must be having a significant effect. Given the range of factors that is driving the increase in the prison population, how and when will you achieve the reduction in prisoner numbers that you want?

Humza Yousaf: We have made changes in relation to the presumption against short sentences. As we have stated publicly, it is forecast—these numbers are often quoted—that those changes would probably reduce prisoner numbers by between 200 and 300 a year. Those are not huge numbers. They are based on projections and forecasts, so the committee will have to forgive the fact that this is not an exact science. We must add to that number the revisions to the use of HDC. It is right that, on the back of the two inspectorate reports, and following the tragic case of Craig McClelland, the guidance on HDC will be revised.

We will bring in legislative changes. For example, Mr Finnie will be aware that being unlawfully at large is an offence. There is also a presumption against allowing people out of prison if their index offence involved violence. Changes in that regard should and will be made, because they are important.

We hope that the revised guidance—together with political signals from the Parliament to the effect that there is too much risk aversion in the system—will help to rebalance the HDC regime slightly. Although it might do so, I do not necessarily envisage that the number of prisoners would go up to 300 as it did previously. However, I think that most people would agree that since it has gone from 300 to 37 the pendulum has perhaps swung too far the other way.

To answer John Finnie's question more directly, these things take time to churn through the system. The presumption against short sentences—PASS—does not necessarily affect prison numbers directly, but does affect that churn. Therefore, it is forecast that the prison population will begin to reduce at the end of the year. At the moment, the number is plateauing at between 8,200 and 8,300 prisoners, but it can change by 40, 50 or 60 day to day, let alone from one week to another. We hope that we will see such reductions by the turn of the year, if not by the end of this year.

Liam McArthur: I will follow up on that point. The figures on the impact of the presumption against short sentences are inexact, but it is about 200 to 300 prisoners. Even if the numbers of HDCs were to go back down—not to the level that they were at before, but to something approximating that—we would still be struggling to come down from 8,300 prisoners to the prison estate's capacity, which, as Colin McConnell reminded us earlier, is 7,650 or thereabouts. Are you considering additional measures that would get us closer to that capacity figure and, over the longer term, bring down the prison population further?

Humza Yousaf: That is an excellent question. The short answer is yes, we are considering additional measures. Before I go on to cover those, I first stress that, as the committee will appreciate, some factors are outwith the Government's control. Secondly, although the nature of offending is not changing, the number of people who are willing to come forward and talk about the offending against them is changing. The most obvious example of that is the victims of sexual offences. There is increased confidence in the system. Although that level of confidence is not yet where I would like it to be, it seems that people are more likely to report being victims of such offences, and especially of rape.

According to the data on recorded crime, the reporting of sexual offences has grown over the past eight years. I do not see the reporting figures decreasing any time soon; indeed, I hope that they will continue to increase as victims' confidence also increases. In the range of such offences, some are historic and others are cyber-enabled offences, both of which tend to attract custodial sentences.

Although some things are in the Government's gift—I will come on to those in a second—the committee and the Parliament will have to accept that, because of the nature of the offending, some things are slightly outwith our control.

To answer Liam McArthur's question directly, we are seriously considering some of the measures that are in our control. Remand is one of the areas of priority that I will look at. As Liam McArthur probably knows, our remand population is 20 per cent, compared with 10 per cent in England and Wales. The levels of bail supervision have actually reduced over the past few years. We are investing additional money into electronic monitoring and bail supervision, but it may be that, come the spending review—I will not prejudge the spending review, of course—bail supervision will be an area of focus for us.

11:45

On community justice, we have invested an extra £9.5 million over the years in community sentences. However, there is a fair bit of pressure from members and others to look at that figure and consider whether we are investing enough and also whether sheriffs, judges and others have enough confidence in the community justice landscape. Given the recent inspectorate reports for the Borders and East Dunbartonshire, there is clearly not enough confidence in those systems, so we will have to work on them.

The other end of the spectrum is the preventative side of things and how we help to prevent people from even coming into contact with the criminal justice system by using early interventions. We have had great success with the youth offending population, with a reversal in its trajectory—that is the one reversal that we have had. We have fewer young people coming into custody—the numbers have fallen quite dramatically—so we have to consider how we take lessons from that preventative strand and apply those to the male and female adult population, although I suggest that we would apply them specifically to the adult male population.

Again, I am trying to be as comprehensive as I can be on where our focus is, although I could go into a lot more detail on each of the issues. The last thing that I will say is, if there was a quick fix

to the issue, we would look at remand as an area that we should prioritise. However, it will take a suite of measures; there is not one magic bullet that will be a panacea for the issue. If we take a suite of measures over the longer term, I am quite confident that we will be in the position of closing down prisons, not building additional prisons. That is the position that I would like to be in.

Liam McArthur: That is helpful—I am grateful for the detail in that response. In relation to remand, you are absolutely right. The figures suggest a 12 per cent increase in the number on remand over the most recent years for which figures are available, which suggests that we are going precisely in the wrong direction at a point at which additional funding is going into community-based measures. Have you had discussions with the Crown Office or with the judiciary directly to understand their concerns about sentencing individuals with community-based measures rather than sending them on remand?

Humza Yousaf: To answer your question directly, yes. I have had conversations with a number of sheriffs principal whom I met recently to discuss remand. I have also had conversations with the Lord Advocate in his role as head of prosecutions, as it will often be the Crown that requests refusal of bail and it is then up to the individual sheriff or judge to make a decision on that. Therefore, we have had those conversations.

There are always nuances. For instance, more and more people are coming in front of the courts in relation to sexual offending. Although the grant of bail depends on the nature of the crime, in the case of sexual offending, someone is probably not as likely to be granted bail as they would be for other crimes. The Lord President has publicly spoken about the growth in sexual offence cases that are coming before the courts.

Secondly, as I think the committee is aware, we are seeing more and more nominals from serious and organised crime groups coming into our prisons, which is down to the hard work and success of the police and the Crown Office in making sure that we get those nominals and that they are sent to prison. Those nominals are unlikely to be granted bail, although that of course depends on the seriousness of the crime.

Conversations have taken place, but we need to give more confidence around the alternatives, such as supervised bail. I have talked about sexual offending and serious and organised crime; however, it will be easier to tackle the issue of sheriffs having concerns about the non-appearance of a person at court. For people who are coming through the revolving door, there might be a concern that they will not appear back in front of the court on a given date, and supervised bail could make a big difference there.

Liam McArthur: We have seen an increase in the incidence of crimes such as sexual violence, rape, domestic abuse and serious and organised crime, but that is against the backdrop of an overall decrease in the level of crime. To an extent, we would expect a bit of a netting effect rather than an upward trajectory.

With regard to the issue of remand, judges and sheriffs have to deal with the individuals and circumstances in front of them. The question is whether some cases should ever get to that point, and what could be done further up the system to avoid individuals ending up in a court setting, in which there is pressure on the judge and the sheriff to make those sorts of decisions.

Humza Yousaf: I could not agree more. We have commissioned research on the law on bail and remand, which will give us some of the detail on the underlying factors. If we can get to a position in which we can intervene earlier, particularly with those who come in front of our courts through what is often called the revolving door, we will be more likely to have an impact in that area. If we can intervene in respect of people's mental health issues, substance abuse issues and so on, so that they do not end up appearing in court, we will have much greater success not only in reducing the prison population but in making our country even safer.

Liam McArthur: The female prison population has hovered around 400, with the most recent figures showing an increase. That is considerably above the capacity level for the new estate. What is the Government doing to reduce that population, possibly drawing on lessons learned from the recent youth prison population?

Humza Yousaf: There are lessons to be learned—in relation to the adult male population, too—from the reduction in the number of young people in custody, some of which will be around the preventative and whole-systems approaches. We can learn lessons about how we keep women out of prison who are significantly affected by drug or alcohol addiction, and who may have been victims of abuse—

Liam McArthur: Also, a high proportion of those on remand end up not being given custodial sentences, which is a shocking indictment in many respects.

Humza Yousaf: Indeed. Again, that is why there will be a focus on remand.

I would make a second point, just to reassure Liam McArthur, because I know that he has asked about this issue previously. As he probably knows, short sentences disproportionately affect women. My understanding is that 90 per cent of women receive a sentence of 12 months or less, so the presumption against such sentences should have

a disproportionate impact on the female custodial population.

With the new national facility, and when the five community custody units are eventually in place, there will be a smaller footprint than there is at the moment for the number of women in our prisons. We have other options, and we will look to reduce those numbers through the presumption against short sentences; the work on bail and remand; and early intervention, prevention and so on. We have enough sites—Greenock, Edinburgh and Polmont—that hold women. I hope that, once we have the national facility and all five CCUs up and running, we will not require that extra capacity, but it is there if it is needed.

Liam McArthur: That will not be part of the trauma-informed estate that is being put in place, however.

Humza Yousaf: That is correct, but we should be able to take elements of the trauma-informed approach that is inherent in the CCUs and apply them to our national facilities. When the five CCUs and the national facility are up and running, the desire is that we significantly reduce prisoner numbers. I just want to give reassurance that there is additional capacity in the system if needed.

The Convener: You mentioned that you have commissioned research on bail and remand. That will be welcomed by the committee. Can you share the terms of reference for that research and provide us with the results once it has been completed?

Humza Yousaf: I would certainly be happy to provide all of that once we have it. The commitment to review the law of bail and remand was a programme for government commitment, and I will check on the progress that we have made on that. I have always said that we should be as open and transparent as we can be on such matters, so we can make sure that the committee gets the terms of reference and the results of the research.

David Doris (Scottish Government): The research is being commissioned at the moment—it has gone out to tender. It will focus on decision making on remand and the potential use of alternatives and will involve the judiciary and fiscals.

The Convener: We would welcome anything that you can share, as the committee takes a keen interest in the subject.

Fulton MacGregor: In our session with Colin McConnell, I asked him about the Auditor General's report and the issue of the Scottish Prison Service writing to the Scottish Government to say that it would not be able to deliver a balanced budget in 2019-20. Mr McConnell said

that he had a productive meeting with the Government and that additional funds were provided. Will you explain the background to that situation? Will that lead to a general review of how prisons are funded?

Humza Yousaf: I have a few things to say about the SPS's funding over the years. Over the past five years, the SPS has managed to come in under budget, but that was against the backdrop of a falling prison population. This year, there has been a reversal of that, for the reasons that we have discussed.

I have an extraordinarily close relationship with each of the senior managers I deal with, and I have close and regular dialogue with Colin McConnell. I would say that prisons take up a fair bulk, if not most, of my time, because of the situation that we face. Colin McConnell made it clear that he would not be able to deliver a balanced budget and that he would face challenges in that regard, and we were able to provide £24 million of additional funding for our prisons. As I said in my opening remarks, we are not yet through the financial year, so we will keep the position under review.

Fulton MacGregor: We had a fairly positive response on that from not just Colin McConnell but Melanie Allan, who is the SPS's head of financial policy and services.

In general terms, do you feel that there is an issue with the financial sustainability of the prison budget, or is it simply a case of looking at the situation on a year-by-year basis, depending on how other measures are working?

Humza Yousaf: We provided the £24 million for a variety of reasons. For example, £6 million of it was to meet the consequences of UK Government changes to public sector pension employer contributions. Some of that is not in our gift to tackle. What is in our gift, to an extent, is working on the issues to do with the high prison population, which undoubtedly adds to operational costs.

As far as spending reviews are concerned, as Fulton MacGregor will know, at this stage I am not in a position to say whether that additional money will be baselined into future SPS budgets. We are doing a lot of work on the SPS finances and what the projections might look like for the next financial year. In this financial year, we have been willing to step in with an additional £24 million. We will keep that under review and will factor in the operational pressures that the SPS faces when I have discussions with the finance secretary about the future spending review.

James Kelly: Colin McConnell told us about the stark situation as regards the prison estate and the issues at Barlinnie, which he explained is 50 per cent over capacity; he also told us that 92 per cent

of the shared cells were originally built for only one person to be accommodated in them. He stated that it will be at least 2024-25 before a replacement for Barlinnie is up and running. Bearing in mind the risks that the Auditor General has identified around Barlinnie and the overcrowding, is the position sustainable?

12:00

Humza Yousaf: As Cabinet Secretary for Justice, I take the issues around Barlinnie with the utmost seriousness. The issue with the infrastructure causes me grave concern. We are investing in Barlinnie—the SPS has made progress on the site and we are providing the funding—but Colin McConnell is absolutely right. With the best will in the world, we are looking at 2024-25.

I have asked my officials to work with the SPS to consider whether we can take interim measures to ensure that the estate is in a better condition. Once we have done that piece of work—we are in the middle of it—I will be happy to provide the committee with a bit more detail.

As you would imagine, I have visited Barlinnie as Cabinet Secretary for Justice. I had visited it before then, but I have certainly visited it in my current role and, as I say, I am not satisfied that it meets our expectations of the prison estate. The problems have been exacerbated by the fact that it is at 150 per cent of capacity, or thereabouts.

I agree with James Kelly, but I assure him that we are actively and proactively looking at what interim measures we could put in place to start to ease some of the pressures that Barlinnie is facing.

James Kelly: I have a question about the situation with the women's prison population. Some of the recent weekly statistics have had it running at the 400 mark, but the plan is that, with replacement accommodation, it will reduce to 230. I am sure that we all agree that we should reduce the number of women prisoners, but how do you envisage that it will come down to 230 from the current level of 400?

Humza Yousaf: I gave some answers to that in my response to Liam McArthur, but I am happy to go into a bit more detail. In the first decade of devolution, the female prison population increased from about 250 to above 450. Since then, it has fluctuated, but it is too high and I would like it to reduce.

There are some ways that we can reduce the female prison population. I mentioned the presumption against short sentences, which will have a disproportionate impact on the female custodial estate. I hope that targeting remand and

the greater focus on and investment in community sentences as alternatives will have an impact.

James Kelly is right. We envisage a footprint for the female custodial estate that is closer to 230. I do not have the exact figure with me, but it is significantly lower than the current figure. We will work on reducing the female prison population. I assure Mr Kelly that we have space in HMPs Greenock, Edinburgh and Polmont beyond 2021, which is the date by which the new facility plus the first two of the new CCUs will be built, but we are going to put a big focus on reducing the female prison population.

Rona Mackay: I asked Colin McConnell about the effect that the high prison population is having on rehabilitation and purposeful activity. Did you have any prior knowledge of or involvement in the decision to suspend the throughcare services? I understand that they have been suspended due to staffing shortages.

Humza Yousaf: I heard that part of Colin McConnell's evidence. I did not hear all of it, but I tuned in to bits and bobs between other activities and I heard that question being put to him. If memory serves me correctly, he said, rightly, that it was an operational decision and not one for me as cabinet secretary to interfere in.

Colin gave me notice that he was having to make what he said was an incredibly difficult decision and that, based on the experience of those prison officers and the need within prisons, there would have to be a temporary suspension of throughcare. It is important to emphasise that it is a temporary suspension. When I was informed of that, I immediately spoke to my senior officials, including Neil Rennick, and we worked up two ideas. First, we determined from Colin whether it was just a budgetary issue and whether finding extra resource, for want of a better phrase, would solve the problem. However, he made it clear that it was not a resource issue per se but a matter of the experience of those prison officers, which was needed back in the main prison estate.

With the best will in the world, even if we had money available to recruit additional prison officers, there is a whole process to go through and that takes time, training and so forth. Meanwhile, Colin needed those 40 or 41 experienced throughcare support officers back in the main prison estate. So, having checked that it was not a resource issue to which we could find a solution, I instructed my officials to approach the third sector to see whether it could step into that space—again, temporarily. I thank the new routes project and shine service for being so agreeable to that and enabling us to get to a position in which there should be no gap in provision. The SPS has continued with that provision until the third sector

providers are ready to step in, so any impact should be minimal, if not fully mitigated.

Rona Mackay: Colin McConnell said that throughcare was still going on to some extent through that provision and through general day-to-day operations in prisons. Is the new routes initiative with the Wise Group temporary? What is the timescale for that?

Humza Yousaf: We have a temporary agreement and arrangement with both programmes. Shine focuses on women offenders, and new routes, for which the age restriction has been lifted—it previously covered 18 to 24-year-olds—now covers the entire adult male population. How temporary the arrangement is will depend, rightly, on operational decisions made by Colin McConnell, because he has to determine whether and when he is prepared to release the experienced officers from their duties. I suspect that that will depend on the progress that we make in reducing the prison population. When John Finnie asked me about timescales, I said that we were looking at the end of the year or the beginning of 2020 before we see a reduction in the prison population. Colin McConnell may take that decision at that point, but it may well be made after then. If he feels, in his operational capacity, that he has to retain those officers on their core prison duties, he has every right to do that. We will keep the situation under regular review.

The Convener: We covered throughcare when we talked to Mr McConnell. The committee received a very good submission from Apex, which says that, if we are going to look at having a preventative approach and funding community alternatives properly—rather than using the third sector to fill the gap or as a temporary solution—throughcare services provided by voluntary organisations should be available, regardless of a prisoner’s age or category. It also says that those services should be

“commissioned separately as a joint arrangement between criminal justice social work and the third sector.”

Apex Scotland also raised a worrying problem about the funding of the third sector. It said that the system is “extremely wasteful and inefficient” and

“subject to annualised funding rounds, competitive tendering, non-strategic commissioning and competitive mission creep.”

It made the point that the

“vast majority of funding for justice services”

goes through local government. In effect, local government is in competition with the third sector. There is a “vested interest”, especially when we are in spending restraint mode, which often results

in local government not releasing funding externally to third sector organisations.

It seems to me that decisions on how we adequately fund community alternatives—such as throughcare, which is preventative and aims to stop more people ending up in the system—have gone beyond operational level to policy level. We should look at the existing mechanism and perhaps move to one that is more about commissioning, rather than channelling everything through local authorities.

Humza Yousaf: I will look at the Apex Scotland submission in great detail. I have a tremendous amount of time for that organisation.

The convener’s latter point is an important one. Community Justice Scotland is doing some work on what a commissioning framework might look like. Once it has done further work on that, we can ask it to provide the committee with appropriate details.

We invest a quite significant amount—it is about £11.6 million—in third sector organisations with the specific aim of reducing reoffending, and the £100 million budget for criminal justice social work is ring fenced.

The nuanced points that the convener and Apex Scotland make on the competitive element are not lost on the Government, and the work that CJS is doing on a commissioning framework might be of interest to the convener and Apex. We can share some of that information when we get a bit more detail.

The Convener: That would be extremely helpful, because it is not just Apex that has made such points. Most of the written submissions were good, lengthy submissions that made excellent points—it would take us far too long to cover them all, but, nonetheless, they should not be overlooked. That is a welcome commitment from the cabinet secretary.

John Finnie: I am sure that the third sector would acknowledge that things can be very competitive among third sector organisations, which is a challenge.

We need to address the short-term approach. The committee previously heard from Sacro about a case in the Renfrewshire area, where Sacro went in to target and resolve a backlog of bail offending. The matter was seen to be dealt with, but, although the backlog had been resolved, continuing work needed to be done. Who is responsible for taking the long-term view? There was evidence that that model was working.

Humza Yousaf: I do not know the specifics of the case that John Finnie mentions, but I am more than happy to look at it as an example of a situation with issues and problems. There is a lot

to be said about what more we can do in our role as facilitators of conversations between the third sector and local authorities. The example that John Finnie gives is exactly what we do not want to happen.

The Convention of Scottish Local Authorities—Councillor Parry has responsibility for this—and I co-chair a group of leaders who are involved in community justice. COSLA and I co-chair it because we want to ensure that we sing from the same hymn sheet. A number of third sector organisations are represented on the group.

I can look at the specifics of the case that John Finnie mentioned, but I give him the assurance that COSLA and I are working closely together to address such matters.

There will come a point at which part of the solution will require some rebalancing of funding from prisons to community justice. We are not at that stage yet; we cannot reduce the prisons budget, for all the reasons that we have just spoken about. However, that does not mean that we cannot consider whether funding is being used in the best possible way, whether the frameworks are appropriate and whether we can increase investment—and, if so, how we should target it. I assure John Finnie that we are having those conversations in the leadership group.

12:15

Liam Kerr: I will stick with that point, which is a good one. In its submission to the committee, COSLA talked about the important role of the local authority. It said that local authorities require to be adequately resourced, but local authority funding is increasingly tight, and that a whole-systems approach should be considered. What will you do in response to such representations?

Humza Yousaf: I do not want to repeat what I have said, although I will say again that we are ring fencing the £100 million for criminal justice social work, which is an important element and is increasingly important in COSLA's work in the round on reducing offending and reoffending.

That is exactly why we created the leadership group. The group was established only recently and has had one meeting. I co-chair it with COSLA, so COSLA is very much part of conversations about how we can get a more consistent approach to community justice across the country. I have said publicly that I am not satisfied that we have a consistent community justice landscape across the country, which means that, in some sheriffdoms, some sheriffs do not have the confidence in community justice that we would like them to have.

The short answer is that we will continue to ring fence funding. The leadership group's work will be essential in getting a consistent landscape. Of course, I have regular conversations with COSLA and will listen to any ideas that it has on the matter.

Liam Kerr: You might have seen that, in the earlier part of the meeting, I asked Mr McConnell about staff absences, given the evidence that the figures are going up significantly and the impact on people who are not absent. I also asked about recruitment, and Mr McConnell gave an interesting answer about the recruitment challenges. What discussions have you had with the SPS about those concerns, and what, if anything, do you propose to do to help?

Humza Yousaf: I did not see that part of the meeting. Given your interest in the matter, you will know that a lot of the staffing issues are focused on the north-east and Grampian; a large percentage of SPS vacancies—I cannot remember the exact proportion, but it is in the 75 or 80 per cent ballpark—are in and around Grampian.

Staff sickness gives me concern. Over my time as cabinet secretary, in my conversations with the SPS and the POA—I have regular dialogue with unions, particularly the POA—I have been told that there is a range of factors behind staff sickness and absence.

For a prison officer, having to work until the age of 67—soon to be 68—is an issue. Members have probably seen reports about new psychoactive substances that can give the people who take them additional strength. If you consider what happens when a prison officer in their 60s tries to deal with an incident that involves a person who has double, triple or quadruple the strength that they normally have, you can imagine the musculoskeletal damage that can be caused. A number of sickness absences are related to musculoskeletal issues. Indeed, I have the figure here: approximately 15,000 days per annum are lost because of musculoskeletal issues. That is a huge number.

What are we doing about that? In October 2018, the SPS launched a pilot physiotherapy scheme in HMP Edinburgh and Polmont. The feedback has been very positive, which is interesting. The SPS will review the service at the end of the financial year—it is still being piloted—and consider whether it should be rolled out across all establishments. That is an attempt to address the musculoskeletal issues that are having a huge impact in relation to staff absences.

I do not know whether Colin McConnell talked about the number of days that are lost as a result of long-term absences, as opposed to short-term

absences. Members are nodding, so I assume that he did. Some of the figures are pushed up because a number of people are on long-term sickness absence.

The mental health side of things is hugely important. I could talk a lot about that. A number of sickness absences are attributed to mental health conditions, and the SPS is doing a lot of work in that regard. Colin McConnell and Jim McMenemy would be able to give you details about that work. For example, counselling is being provided, there are 24-hour confidential support services, and a number of tools are used to monitor and improve health and wellbeing.

Finally, in the pay deal that was struck with the POA this year, there is an agreement that the employer and the unions will, in partnership, look at staff sickness and absence and amend the attendance management policy.

The Convener: That concludes our questions. Cabinet secretary, I thank you and your officials for attending. The evidence session has been worth while. We look forward to receiving the additional information that you have undertaken to provide.

12:21

Meeting suspended.

12:21

On resuming—

Justice Sub-Committee on Policing

The Convener: Item 3 is feedback from the Justice Sub-Committee on Policing on its meeting of 3 October 2019. I refer members to paper J/S5/19/25/4, which the clerk produced. Following the verbal report, there will be an opportunity for members to make brief comments or ask questions. I invite John Finnie to provide the feedback.

John Finnie: Thank you, convener. As you said, there is detailed feedback in the paper on the sub-committee's most recent meeting, on 3 October, when it took evidence from the Cabinet Secretary for Justice on capital funding for the police service. That was the committee's final session on pre-budget scrutiny of the 2020-21 draft budget.

The cabinet secretary was asked about the claims by the Scottish Police Authority and Police Scotland that the level of capital funding means that they are struggling to keep the estate, the fleet and information and communications technology working. Both organisations have described the situation as "not sustainable".

The cabinet secretary said that, although he did not recognise the description of the police estate, he was listening to the views of Police Scotland and the SPA. He added that he had acted previously in response to their concerns about insufficient capital funding.

The cabinet secretary confirmed that there is an expectation from the Scottish Government that police officer numbers will not be significantly reduced below the number that it inherited in 2007.

In response to questions on Brexit preparation costs, the cabinet secretary said that if policing costs are greater than anticipated, as a result of a Brexit deal or no deal, he will request additional funding from the UK Government to meet the costs.

A recurring issue is the lack of engagement by the SPA and Police Scotland with the police staff associations and unions to inform budget decisions. The cabinet secretary indicated that he expects the police unions and staff associations to be fully involved in budget discussions. He asked the SPA and Police Scotland to reflect on their approach.

The cabinet secretary confirmed that it is unlikely that Police Scotland will meet its deficit reduction plan. He added that if Police Scotland

and the SPA want to revisit the plan, he will be willing to have that discussion.

Finally, the sub-committee agreed to undertake an inquiry into how policing in Scotland makes use of facial recognition technology and to schedule an evidence session on Police Scotland's custody provision at its next meeting, which will be on Thursday 7 November.

I am happy to take questions.

The Convener: Thank you. If members have no comments or questions, is the committee content to note the paper?

Members indicated agreement.

The Convener: That concludes the public part of the meeting. Our next meeting will take place on Tuesday 29 October, when we will take more evidence on the Scottish Biometrics Commissioner Bill and on Scottish statutory instruments that will introduce a victims surcharge fund.

12:24

Meeting continued in private until 12:44.

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