OFFICIAL REPORT
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Public Audit and Post-legislative Scrutiny Committee

Thursday 31 October 2019

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PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE
24th Meeting 2019, Session 5

CONVENER

*Jenny Marra (North East Scotland) (Lab)

DEPUTY CONVENER

*Liam Kerr (North East Scotland) (Con)

COMMITTEE MEMBERS

*Colin Beattie (Midlothian North and Musselburgh) (SNP)
*Bill Bowman (North East Scotland) (Con)
*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)
*Alex Neil (Airdrie and Shotts) (SNP)
*Anas Sarwar (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Phil Fairlie (POAS)
Steve Farrell (Community)
Caroline Gardner (Auditor General for Scotland)
Michael Guy (Serco)
Nigel Ironside (Prison Governors Association Scotland)
Mark Roberts (Audit Scotland)
Tony Simpson (Sodexo)
Wendy Sinclair-Gieben (Her Majesty's Chief Inspector of Prisons for Scotland)

CLERK TO THE COMMITTEE

Lucy Scharbert

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Public Audit and Post-legislative Scrutiny Committee

Thursday 31 October 2019

[The Convener opened the meeting at 09:01]

Decision on Taking Business in Private

The Convener (Jenny Marra): Good morning and welcome to the 24th meeting in 2019 of the Public Audit and Post-legislative Scrutiny Committee. I ask everyone in the public gallery to switch off their devices or turn them to silent, please.

Item 1 is a decision on taking business in private. Do members agree to take items 3 and 4 in private?

Members *indicated agreement.*

Section 22 Report

"The 2018/19 audit of the Scottish Prison Service"

09:01

The Convener: Item 2 is on the section 22 report, "The 2018/19 audit of the Scottish Prison Service". I welcome our witnesses to the meeting.

The evidence session will take place in a round-table format with the aim of encouraging discussion. As usual, members will ask witnesses questions, and witnesses can ask one another questions if they wish. However, we still want to retain some structure to the discussion, so please indicate to me or to the two clerks sitting beside me if you would like to contribute. When you speak, your microphone will be activated automatically, so there is no need to touch your console.

I ask everyone to introduce themselves. My name is Jenny Marra and I am the convener of the committee.

Michael Guy (Serco): Good morning. I am the director of Kilmarnock prison.

Liam Kerr (North East Scotland) (Con): I am an MSP for the North East Scotland region and deputy convener of the committee.

Nigel Ironside: I am the chair of the Prison Governors Association Scotland.

Alex Neil (Airdrie and Shotts) (SNP): I am the MSP for Airdrie and Shotts.

Anas Sarwar (Glasgow) (Lab): I am an MSP for the Glasgow region.

Colin Beattie (Midlothian North and Musselburgh) (SNP): I am the MSP for Midlothian North and Musselburgh.

Tony Simpson (Sodexo): I am director of United Kingdom custodial operations for Sodexo, representing Addiewell prison.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I am the MSP for Kilmarnock and Irvine Valley.

Wendy Sinclair-Gieben (Her Majesty's Chief Inspector of Prisons for Scotland): I am the chief inspector of prisons for Scotland.

Bill Bowman (North East Scotland) (Con): I am an MSP for the North East Scotland region.

Phil Fairlie (POAS): I am the chairman of the Prison Officers Association Scotland.

The Convener: We are still expecting Steve Farrell; he has been held up due to an accident and will join us in a short while.

Alex Neil will open the questioning for the committee.

Alex Neil: I will be brief. No doubt everybody will have read the report from the Auditor General for Scotland. It does not make good reading in terms of the challenges that the Prison Service faces—not just the financial challenges but the challenge of rising prisoner numbers compared with prison capacity. I know that my colleagues want to raise particular issues about Barlinnie, for example.

For me, exhibit 5 in the report sums up both the challenges and the opportunities. I will just pick a couple of examples from exhibit 5. It states:

"Supervised bail ... as an alternative to remand has fallen from 917 cases at its height in 2005/06 to just 268 cases in 2017/18."

As professionals, do you think that we could be doing more to get more people on supervised bail as an alternative to going into prison?

Exhibit 5 also states:

"Convictions for domestic abuse ... have contributed to over 400 additional prisoner places over the last decade. New provisions ... could accelerate growth in prisoners convicted of domestic abuse."

What are the implications of that? Is there a better way of dealing with domestic abuse? We have the Caledonian programme, for example, which has been successful recently. Do we need to expand that programme so that we do not end up with far too many people in prison who do not need to be there?

I picked two examples but there are many others. I would like to hear from the professionals about the seven areas that are identified in exhibit 5 and what more they think could be done. Let us not just look at the issues in terms of what the Scottish Prison Service can do; we must address what the wider Scottish Government justice portfolio can do to address them. I would like some feedback on those points.

Nigel Ironside: Supervised bail is a matter for the police, so we have no locus in that. However, increased use of such mechanisms would be welcome.

The Scottish Government undertook a review of electronic monitoring in 2016 and it accepted the outcomes in the working group's report, so we have the means to divert from custody.

The issue that we are all experiencing is the inexorable rise in numbers. This morning, we unlocked 8,298 people, and we have approximately 38 on home detention curfew. That places extraordinary pressure on the system. Our occupancy report for last September shows that only three establishments—Polmont, Cornton Vale and the open estate—were operating under capacity, and that is because they have been left that way deliberately; the rest of the system is under significant pressure.

There is good news. Young offender numbers have dropped year on year for the past five years, so something is right there. However, we should look at using all means necessary to reduce the prison population.

The section 22 report is quite clear about some of those issues. The Prisoners (Control of Release) (Scotland) Act 2015, which removed automatic early release for long-term prisoners, was about the principle of longer sentences. Seventy per cent of High Court business is legacy sexual crime, which has led to an increase in the number of elderly prisoners coming into custody, with somewhere in the region of 1,300 prisoners being over the age of 50. No disrespect to anybody in the room, but 50 is the recognised age at which a prisoner is deemed to be an older prisoner because, in comparison with the general population, in relation to physiology, prisoners present as 10 to 15 years older. Those prisoners represent about 16 per cent of the overall prison population. They come into prison later in life and have longer sentences. We are therefore dealing with a changing cohort in the prison population that requires a different approach and response.

We would welcome the ability to limit that input, but we have to take who the court sends us.

Wendy Sinclair-Gieben: I agree completely with everything that Nigel Ironside said. It is sometimes important to look at justice as a business and to follow the numbers. There is a rising prison population, and yet we have a drop in crime in Scotland. When you look at the rise in levels of violence and staff absence that the Prison Service is facing, you can see that there is a real problem that needs to be resolved.

I would love to see an increase in supervised bail because that would bring our remand statistics more into line with those of our European partners. In Scotland, we are operating at around 20 per cent of our prison population on remand. It would be wonderful to reduce that by half and reduce the pressure on the Scottish Prison Service.

It would also be nice to look at the lessons learned from the whole-system approach and the reduction in the number of juveniles in prison to see whether we could take a step-and-repeat approach to any of that with an older age group. Nigel Ironside mentioned the physiology of older people in prison, and there is a reverse effect that is true for younger people. For younger people,

brain maturation means that they mature later than they used to, and not until they are about 26. It would be really nice to see the population of prisoners who are between the ages of 21 and 26 come down to the same level as that of the under 18s.

That requires a whole-system approach; the Scottish Prison Service cannot do it alone.

The Convener: As no one else wants to respond to that general opening question, I will bring in Colin Beattie.

Colin Beattie: One of the things that jumps out at me is sickness absence. I have two very simple questions. Why is sickness absence increasing? Why is it so much higher in Scotland than it is south of the border?

Nigel Ironside: There are a number of factors for the increases in sick absences. Prisons operate a regime that requires a certain level of staffing to maintain the safety of people in custody and those who work there. When the system is under pressure with increased numbers of prisoners, stuff is moved around in order to maintain delivery and make the regime work. That places increased stress on those who maintain regular attendance at an establishment. It is a challenge when staff go off, because we then need to mix and match the teams that manage the estate. That places stress on individuals and, as a result, they go off, too. It just so happens that our absence management policy tends to favour people who remain on long-term sickness absence over those who are on short-term sickness absence.

Governors do all that they can to bring prison staff back to work. At Barlinnie, where there are already around 30 to 40 vacancies, 40 to 50 staff might be off on sick absence on any one day, so even starting the regime with a regular staffing group is a challenge. As I said, that places stress on other staff, and the situation tends to snowball.

Phil Fairlie: I agree with a lot of what Nigel Ironside has said. Sick absence in Scotland is to do with the change in the environment, overcrowding, increases in violence and the use of psychoactive substances, and the impact that those factors have on the regime. Those developments are fairly new, and they have had an impact on staff awareness of how to deal with and cope in that environment. That has left us with a much more unsettled staff group than we have had for a considerable time. We still have very stable, well-organised and well-run prisons, but staff are less certain about what they are dealing with. The type of violence and the type of and growth in the mental health problems that we deal with are real challenges for some staff, who are struggling to cope. Our absence management policy and how we manage the differences between long-term and short-term absences is, without a doubt, the elephant in the room.

One of the differences between the Scottish Prison Service and the service down south is the age profile of the staff. We have a much more mature and longer-serving staff group than there is down south. Given that the retirement age has now disappeared over the horizon for many staff, when people in their 40s and 50s go off sick, the decision to come back is much more difficult to make. An awful lot of staff who are off sick at the moment will not return to the service, and they will be replaced with new staff at the start of their careers. The turnover in England is much bigger, with many more younger staff who have less service but who have a greater capacity to deal with things at that stage in their lives. The thought of coming back is just too much for an awful lot of our staff.

Colin Beattie: That is different from previous evidence that we have heard. This is the first time that I have heard about problems in getting staff to come back, particularly those in their 40s and 50s. Is it just a case of burn-out? Is it stress? What causes people not to want to return? That is not a normal reaction.

Phil Fairlie: No. The change in retirement age for prison officers is a factor in how they look at what they are coming back to and for how long. I am one of the many staff who previously had a retirement age of 60 and now have one of 67. For someone who has 12 years to go rather than five, the thought of coming back to work in the prison galleries would be a lot less pleasant, given that they would have to deal with the new and much more unsettled environment there, including dealing with prisoners with unpredictable mental health issues and greater levels of violence and tension. It would be a much less easy step to take.

09:15

Colin Beattie: Are you saying that the change in culture among prisoners is the problem rather than the culture in the Prison Service itself? Should we separate those two things?

Phil Fairlie: It is the environment. Officers are having to deal with overcrowding, the rise in temperature and unpredictability among prisoners because of mental health issues and their use of psychoactive substances, and the increase in violence. That all contributes to a difficult working environment. Many staff have either experienced that much earlier in their careers but it has not been there for a while, or they have never experienced it before. The numbers of staff in the Prison Service who leave because of capability issues or medical retirement have gone through

the roof. They look at the length of time before they reach retirement for which, if they came back, they would have to endure such conditions and, for some, it is just too big a step.

Colin Beattie: The evidence shows that a disproportionately high percentage of staff sickness absence is due to stress. How effectively is the situation being managed? What is being done to address stress that might also assist with the factors that you have highlighted?

Phil Fairlie: I do not think that we are managing the situation well enough. The number of staff who go off with stress-related illnesses or mental health issues has risen enormously in recent times.

Colin Beattie: What could prison management do that would deal with stress better? That would obviously have a knock-on effect on older workers as well.

Phil Fairlie: The service is being asked to deal with far too many prisoners with mental health issues. There are some very complex, difficult and challenging characters in prison, and staff are not adequately skilled or trained to deal with the issues that confront them. That leads to staff having mental health issues themselves, and there is not enough support for either group. Bringing in proper specialist skills to assist staff to deal with such issues would help. However, I am not sure that the organisation is going far enough to provide staff who fall victim to mental health issues with the specialist help that they need.

Colin Beattie: You have highlighted the growth in mental health issues among prisoners—we have certainly seen that from other evidence. What skills are staff being given to deal with those issues? Is anything being done to support them?

Phil Fairlie: There is more awareness training, which is about recognising signs and making first responses. However, that does not go far enough towards giving staff the skills and confidence to know what they are dealing with. When staff suffer mental health issues as a consequence, we give them access to an employee assistance programme. It is a good system, but it is not enough for people who are dealing with such complex issues. Their access to sessions is not long enough and the sessions themselves are not sufficiently intensive to deal with the issues that are starting to be identified among staff.

Wendy Sinclair-Gieben: I absolutely agree with both Phil Fairlie and Nigel Ironside. There are a number of significant factors to take into account: overcrowding; the impact of psychoactive substances; the changing environment in relation to serious and organised crime; the vast increase in the number of prisoners who are sex offenders; the explosion in mental health issues that is being felt in wider society and is replicated in prisons; and the age profiles of staff and prisoners.

I spoke to staff and prisoners as I was doing my inspections, and the two factors that emerged most strongly for staff were their concern about whether they were dealing with mental health issues correctly—whether they had the right approach—and the fact that they have to deal with prisoners who use psychoactive substances. It is important to remember that such substances are relatively new. I keep quoting the example of the emergence of the Ebola virus. When that first hit the world, we did not know what to do, and the same was true when psychoactive substances came into play a few years ago. Nowadays, there is a reaction: we are beginning to recognise that staff should get mental health first aid training and guidance on how to deal with psychoactive substances and the difficulties of excited delirium. Such measures are in train, but they have not yet been embedded in the way that they need to be.

It is also important to remember that Scotland has a national problem with recruiting sufficient numbers of mental health staff in prisons—to support the other staff—and in the community.

The Convener: Michael Guy, from HMP Kilmarnock, is the first voice this morning from the private sector.

Michael Guy: I agree with the points that have been made, which I will not go back over. The prisoner population that our staff deal with is more complex. It is a difficult population to manage, not just in relation to mental health, but because of drug abuse and the associated behaviours.

At Serco, we recognise that our staff are not just absent with work-related stress, because it is also about wider stresses and wellbeing issues. We do a lot of work in that area. We hope that we can bring our people back to work as quickly as possible, so we put a lot of measures in place to support them. For example, there is training to prevent them from going off sick, but when they go off, we have counsellors and employee assistance programmes so that there are people whom they can speak to and who can help them back into the workplace on, we hope, a permanent basis.

Liam Kerr: I want to summarise what we have heard so far. Wendy Sinclair-Gieben said that rising numbers of issues are presenting, including mental health, the age profile and new psychoactive substances, but all of those issues could have been predicted. I take the point on new psychoactive substances—by definition, they are new. However, we have only three Rapiscan machines in the service. I might be wrong, but I think that their use is still at the pilot stage. The rising numbers that we see in the report are a trend over time, but those issues have not come

out of nowhere. Could action have been taken earlier? If so, by whom?

Wendy Sinclair-Gieben: Do you want me to answer that?

The Convener: If you have an answer.

Wendy Sinclair-Gieben: I am not sure that I have an answer. I cannot tell you how many Rapiscan machines there are. Over a year ago, I went into Kilmarnock and Addiewell, both of which had Rapiscan machines, and they were having significant positive results from them. The Scottish Prison Service has been investing in Rapiscans. The two prisons that we inspected most recently both had Rapiscans, but I cannot tell you how many there are across the estate. Perhaps Nigel Ironside can tell you.

The Convener: Michael Guy tells me that he has two machines in HMP Kilmarnock. Are you saying that there are only three in the whole estate, Liam?

Liam Kerr: That might be only in SPS prisons.

The Convener: Okay.

Tony Simpson: We have a Rapiscan machine at Addiewell. We can underestimate how hard and how quickly psychoactive substances hit the system, and Addiewell was at the forefront of that. We felt some of the brunt and we did some hard learning early on, but that had an effect around the place.

Going back to stress management, our view is that, as Michael Guy said, we need a whole-person, wellbeing approach. Our recent learning is that the focus has to be on making sure that we get the balance right, that our shift patterns allow people to get their work-life balance correct, that people feel safe at their work and that they feel that they are well led, well managed and listened to. That is the focus of our attention.

The Convener: Let me go back for a moment to the drug testing machines—the Rapiscan machines. Both private prisons have those machines. Are they making a discernible difference? Wendy Sinclair-Gieben is nodding vigorously.

Wendy Sinclair-Gieben: In the Addiewell inspection report, we compliment the relationship between Police Scotland and Addiewell, which have driven the agenda on dealing with psychoactive substances. I have also noticed that in Kilmarnock and Barlinnie, and recently in Glenochil. They have Rapiscan machines, and we are beginning to see a demonstrable effect. If I remember correctly, the Rapiscan machines had picked up that something like 30 per cent of mail coming into the prisons was contaminated. That would not have been picked up otherwise.

The Convener: Okay. Before I bring in Anas Sarwar, I ask Nigel Ironside why there are not more of those machines in the public sector.

Nigel Ironside: The evidence on the effectiveness of Rapiscans is emerging. There is a recipe for psychoactive substances, and it changes. In the early stages, there was testing. People would be given a psychoactive substance to test its potency. We saw some extreme responses to that, which staff had to deal with because it was out in the open. As the recipe has changed and stabilised over time, prisoners who are poly drug users know what they are taking.

Rapiscan certainly has a place, but as long as we allow mail and personal communication to come into prisons, there will always be that challenge. Because of the manner in which it was introduced, it is a constant battle. You would have to ask—

The Convener: You are not totally convinced of their effectiveness. Is that a fair summary of your answer?

Nigel Ironside: The evidence is still emerging as to how effective they are.

The Convener: Okay—thank you.

Anas Sarwar: I will go back to the mental health angle. Phil Fairlie and Wendy Sinclair-Gieben spoke about the level of training that staff are being given on dealing with mental health issues. What capacity is there in the workplace—the prisons—in terms of clinical support? In the mental health debate, we talk a lot about having mental health nurses in our general practices, our schools and our college and university campuses. What specialist clinical capacity—mental health nurses and counsellors—is there in prisons from day to day?

Wendy Sinclair-Gieben: It operates under the principle of equivalence. The healthcare that is provided in a prison is supposedly similar to that which is provided in the community. There is no question but that there are some excellent professionals out there who are prepared to provide support, but there is a real difficulty in recruiting sufficient professionals to meet the need.

Anas Sarwar: Does every prison have a mental health nurse or counsellor on site?

Wendy Sinclair-Gieben: Yes.

Anas Sarwar: At all times? In the night?

Wendy Sinclair-Gieben: No. They are not there in the evening, and many prisons suffer from an absolute inability to recruit sufficient professionals to meet the need.

Anas Sarwar: Is there a specific vacancy rate for the mental health nurse and counsellor capacity on the estate?

Wendy Sinclair-Gieben: Yes, but that is true of the community as well. It is not just limited to the prisons.

Anas Sarwar: Is there a difference between the public and private sectors in their ability to recruit mental health capacity on site?

Wendy Sinclair-Gieben: All the healthcare is under the national health service, so there is no difference.

Anas Sarwar: So the private sector would not contract someone in.

Tony Simpson: We would not. It is exactly the same for the private sector. It is led by NHS Scotland.

Anas Sarwar: Okay.

Bill Bowman: I want to look at some of the detail in the report. In paragraph 16, the Auditor General says that the

"SPS made one-off payments to operational staff on three occasions",

totalling £13.9 million,

"for their engagement and continued support of its plans for organisational development",

but the auditor noted that there were no success criteria, so it was not possible to determine whether those payments represented value for money.

My first question is for the management side. How could you make a payment three times without knowing what it was for or how you would measure the value? On the staff side, were the staff aware of what the bargain was and did they provide what was required of them?

The Convener: I think that that question is best directed to Nigel Ironside.

Nigel Ironside: Thank you, but I am representing the Prison Governors Association Scotland, not SPS management. The Prison Governors Association Scotland did not agree with the payments that were made to staff in that regard, because they were based around engagement in the revisions of working practice. We were not supportive of that.

You would have to ask the chief executive and his team why he wished to make those payments. The Prison Governors Association was excluded from the discussions about the payments and the principles around them. Our expectation would be that, if such payments were going to be made, there should be a tangible outcome. However, as you will be aware, the prison officer professionalisation programme was not successful in being voted through. We, too, question the efficacy of the payments.

The Convener: Mr Bowman, we are going to hear from the SPS in a future session. However, I think that it is worth finding out how things operate on the ground. Can Wendy Sinclair-Gieben add anything?

Wendy Sinclair-Gieben: I cannot add to that debate at all. I apologise.

The Convener: Okay. Does Phil Fairlie want to come in on that?

09:30

Phil Fairlie: Yes. The background is that, back in 2013, the trade union threatened to run a ballot for industrial action over pay. There was a long-standing grievance among operational front-line staff, who believed that the pay had failed to recognise and reward the role appropriately for a very long time. The long and short of the deal was that it was agreed in conversation with the chief executive and the Scottish Government that they would take the time to bring in a new model to professionalise the Scottish Prison Service.

The professionalisation agenda was originally the trade union's agenda. We went down that path because we believed that it was the best route to get properly recognised and rewarded for our role in comparison with other uniformed and professional services. The timescale that was required for that to happen meant that the trade union held off running a ballot for industrial action, and the payments were the response to holding off the ballot. That was all that was required and all that was agreed would take place during the timeframe. Otherwise, the trade union would have gone to a ballot for industrial action. I am absolutely certain about what the result of that would have been.

Bill Bowman: That is an interesting schism. We will come back to it but, for clarity, would the chief inspector of prisons not have known about that or been involved and interested in it?

Wendy Sinclair-Gieben: I knew all about it, but I was absolutely not involved in the decision making. That is not within my remit.

The Convener: I think that that is a fair response.

Bill Bowman: I am confused, anyway.

The Convener: Phil Fairlie, I want to drill down into that. You are the leader of the POAS.

Phil Fairlie: I am the Scottish chair.

The Convener: In your view, that held off industrial action.

Phil Fairlie: It held off the ballot.

The Convener: Yes. We have heard from the auditors that that does not seem to be a very transparent, thorough or proper way of dealing with pay awards. Do you agree with that? Should the process be a bit more formalised or are you happy with the system as it currently operates?

Phil Fairlie: I do not think that anybody came out of that process particularly happy. We would not regard it as a pay award at all. It was about everybody buying the time and space to work to develop a professionalisation programme to bring in. The reward in respect of pay and conditions would have come at the far end of that. It was simply about the interim period and how we bought time and space to let that piece of work take place.

The Convener: What is the average salary for a prison officer?

Phil Fairlie: At the very top of the scale, it is £30,000. I am sorry—it has just gone up in the recent pay deal, but it was £30,000 at the time. For a person coming in as an operations officer at the start, the pay was £18,000.

The Convener: Okay. What would you like to see instead of the ex gratia payment system?

Phil Fairlie: The pay award that we have just dealt with has gone some way towards starting to address the issues that we have raised with the employer and the Government for a very long time. The operational front line has probably got among the best public sector pay deals anywhere in the United Kingdom in the round of pay talks. This is the first time for a very long time that it feels that recognition is starting to come.

The Convener: So the ex gratia system could be phased out.

Phil Fairlie: The ex gratia payments have been used as an alternative to overtime. They are separate from pay.

Willie Coffey: It is important for us to hear the witnesses' views before we hear formally from the SPS. As the Public Audit and Post-legislative Scrutiny Committee, we are interested in the public pound, and there is a discussion about the flatlining of the overall budget allocation to the SPS—or a real-terms drop, depending on how we look at it. Some £14 million has been spent, plus another £2.45 million on equal pay claims that resulted from that, I presume. It is important for the committee to get a handle or views on that before we speak to the SPS. Your views on whether there was justification for that would be most welcome.

Phil Fairlie: From a trade union point of view, I would argue that there absolutely was justification for that, because the alternative was that prison officers would have run a ballot for industrial action, and I am certain that industrial action would have been taken. The purpose of that would have been to engage with the employer for a substantial pay award, which we thought was long overdue. That was going to happen either back then or further down the line.

What the Scottish Prison Service was going to get back in exchange within that timeframe was a programme and a plan that was going to professionalise the service beyond where it currently sits. A recognised professional academic qualification was going to be introduced for our role, and new professional delivery practices were going to be brought into prisons. There was plenty in it for the SPS had we managed to get things over the line at the far end of the process. It was not simply about buying off the strike. The programme that was being developed and offered up would have made a real difference to what was going to be delivered inside prisons.

Willie Coffey: Has it been abandoned or are there plans to bring it back?

Phil Fairlie: It was overwhelmingly rejected in the ballot. There are a load of things in the background as to how that came about, but it was overwhelmingly rejected by the staff, and at this moment in time it is dead in the water.

Willie Coffey: Are there no plans to revive an alternative proposal?

Phil Fairlie: Not at the moment—nothing has come on to the table. That is probably as much to do with time, the climate and the environment as it is to do with anything else. It is not about a willingness to engage or whether we still see it as the right path to take.

The Convener: We will need to pick that up with the employer—the Scottish Prison Service—as well. I believe that Nigel Ironside of the Prison Governors Association would like to come in on the issue.

Nigel Ironside: Yes. Prison governors were really disgusted by the manner in which that was done, which completely excluded operational prison governors who have management and accountability responsibilities in prisons across the country. It is hugely disappointing that there has not been an outcome from that investment.

I wear two hats. I am here as chair of the Prison Governors Association in Scotland, but I am also a governor of 16 years' standing. We need to consider the pressures that are placed on management teams in relation to their responsibilities and the decisions that they have to make, and there is operational responsibility that does not equate to what exists in other

management environments. The responsibility for people's livelihoods, the environment in which they live and their safety is ours and ours alone.

It is particularly difficult to accept that nothing has come from such a level of investment. It will be worth while for the committee to speak to the SPS in particular in order to understand the rationale for the proposal and why it was only targeted at operational uniformed staff, because that question has not been answered for the Prison Governors Association.

Willie Coffey: Whatever happens here, there will be consequences throughout the service. Earlier, we were discussing changes in behaviour in the service and the reasons those changes. One of the Auditor General's charts—exhibit 6—shows that there has been a huge drop in the number of purposeful activity hours that prisoners engage in or enjoy during the course of the year. Given that I think that the exhibit relates only to the SPS, it would be helpful if Michael Guy could clarify whether that huge drop in purposeful prisoner activity has happened at Bowhouse as well?

In addition, although we could probably guess some of them, we would like to hear witnesses' views on the reasons behind that drop and whether it has had a negative impact in relation to the prisoner behaviour that was described earlier.

Michael Guy: As part of our contract, we are measured on purposeful activity—I assume that it is the same at Addiewell. Over the two years that exhibit 6 covers, we did not curtail our regimes at all; we delivered full regimes for prisoners during that time. As to the reasons why things are changing, in my prison, we have far more prisoners who are assessed as being unfit to attend purposeful activities. As of Monday, 120 out of 600 prisoners had been assessed by NHS professionals as being unfit to attend work. I have seen that change over recent years, and it relates to prisoners engaging with activities, rather than the availability of activities.

Tony Simpson: To follow on from Michael Guy's answer, it is exactly the same at Addiewell. The availability of purposeful activity is a key part of our contractual delivery. It is measured forensically by the SPS on a daily basis, and we are held to account if we do not meet our contractual obligations on the availability of purposeful activity. However, we meet those contractual obligations.

Although we work hard to get people to go to those activities, motivation is always a challenge, particularly with some of the prisoners we look after. Nonetheless, we are very much held to account on making those activities available, so we would not curtail them unless it was a last resort, because that would impact on our contractual performance.

Nigel Ironside: There are a number of reasons why the level of purposeful activity might fall, including, in particular, the need to meet staffing obligations in the residential environment to manage prisoners in the halls. That is always the first priority. The victim of the redeployment of staff is often the work sheds or other work environments that prisoners would otherwise attend.

I echo Tony Simpson's and Michael Guy's views on motivation. The motivation of the prison population to work and engage in purposeful activity is a constant and ever-present challenge. In 20 years of being in prison—working in prisons, I should say—I do not know what the answer is. All that we can do is provide the mechanisms and opportunities for people to learn, engage and work, but they continue to not do so.

I must note that the recent increase in prisoner numbers by about 700, which is about the size of a large prison in Scotland, compromises the ability to provide purposeful activity for everybody.

Willie Coffey: I was glad to hear what Michael Guy said about Kilmarnock and Addiewell prisons, in that there has been no reduction in purposeful activity. Is there any correlation between the huge drop in the number of hours of activity and the behaviour of prisoners in the estate?

Michael Guy: I am not in a position to comment on that, because that is SPS data and not Kilmarnock prison data.

Willie Coffey: Perhaps Wendy Sinclair-Gieben could cast some light on that.

Wendy Sinclair-Gieben: Yes, gladly. In all our reports, you will have noticed that we raise concerns about purposeful activity. Let me clear: the range of purposeful activity opportunities in many prisons is excellent. However, as Nigel Ironside mentioned, because of the number of prisoners who are going through the system—for example, Barlinnie is about 50 per cent overcrowded—some prisons do not have the space in which to give purposeful activity to every prisoner.

There are all sorts of other problems, too. The behaviours of the prisoners are not quite the issue, but the keep separates—the people who are under threat or who are a defined threat to other people—must be kept separate. HMP Edinburgh, for example, has to operate a minimum of five different regimes, and trying to get five different batches of people to have enough purposeful activity is difficult and complex. If we add in the keep separates, the people who are unfit to work, given the prisoner age profile, and the people with

mental health problems who just want to socially self-isolate, there is suddenly a problem in providing purposeful activity.

However, in every prison that I have inspected so far, the opportunity for purposeful activity is not filled with enough people, which is combined with the high sickness level that means that staff are redeployed away in order to keep the halls safe.

The Convener: That summary exactly reflects my experience of visiting prisons. I was in Perth a couple of years ago and, although my visit was during the morning, which should have been a prime time for purposeful activity, the classrooms were empty.

Wendy Sinclair-Gieben: Other major problems are substance misuse and prescribed medication. There has been a massive increase in the prescribing of gabapentinoids, for instance, which has meant a change because people have to be supervised when taking them. Perth prison, for example, cannot get the activity regime going until everyone has had their medication, which is at about half past 10 in the morning. The morning activities are already constrained by prescribed medication. It is a major problem.

The Convener: I welcome to the table Steve Farrell from Community, which is a union that represents the staff and prison officers in the private sector. I know that you have missed part of the session, Steve, so please indicate to me when you would like to come in.

We know that there have been real-terms reductions in the Scottish Prison Service budget over the past few years. What impact has that had?

09:45

Phil Fairlie: From our point of view, the cut in the budget came at a time when the exact opposite needed to happen. We cannot continue to ignore the fact that we have an increase in the prisoner population that is equivalent of one very large prison country and not a single extra member of staff to manage that. I am referring simply to the front-line operational staff, but everything else that is required to manage an extra 700 prisoners in the system is also a cost that should be getting added to the budget, not removed from it. In the case of the example that we are talking about just now, purposeful activity, the staff who are trained to deliver those programmes and skills inside the prison are being taken off those roles to supplement the operational front line in the residential areas.

If we had the proper complement to deal with the proper prisoner population, we would not be seeing some of the consequences that we talked about earlier. As Liam Kerr touched on, we could have predicted some of this happening. That is true—we have watched the growth in prisoner numbers for many years and we have always talked about having the highest number of prisoners in western Europe inside our system and the need to do something about that. However, every time we have talked about that, the numbers have gone in the opposite direction.

It is predictable and we need to stop talking about the numbers that we wish we held and start to fund the Prison Service for the numbers that we are holding. Right now, given some of the sentencing policies that we have, I do not see those numbers coming down; I see them going up. For the budget to be cut at a time when the numbers are going in the opposite direction makes no sense to me.

Nigel Ironside: When I was prison governor at Glenochil, my annual budget was around £17.5 million and the majority of that—about £13 million to £14 million—was staff costs, so the amount of revenue that I had to utilise for the running of the prison was significantly limited. Some of that was caught up in national contracts, for example for social work delivery and education; those were devolved to me and we managed the budget locally. It is a challenge for governors, particularly in areas such as food, which is provided under a national contract. You tend to end up managing finances at the margin of the core budget and, fundamentally, you are not able to make significant inroads into finding ways to maximise that budget.

That challenge manifests itself across the estate; the amount of recruitment that happens is, generally speaking, based on a model of the overall vacancies picture nationally. That does not reflect the operational requirements on the ground, which include the issues that we have talked about to do with absence, maternity, and people returning to work who are staff you have to manage but who are not deployable in the front line.

It has been a challenge, particularly in relation to maintenance, as maintenance of the estate tends to be hit. When you end up with a broken piece of the jail, be that the front gate, the personal alarm system or perimeter security, although the estates team do an excellent job, the ability to respond—and to respond quickly—is compromised. Parts are not readily available because we do not keep lots of parts. That exacerbates the whole issue. There is little scope for decision making.

Wendy Sinclair-Gieben: The choice is stark—either we put fewer people in prison or we recognise that we have to pay for the prison population that we do have. I agree with everything that Nigel Ironside and Phil Fairlie have

said. However, there is the other side—700 extra prisoners. If we were to build a prison for them, that would cost £200 million-plus. If we were to run it, that would cost between £10 million and £20 million. Instead, the SPS has been repeatedly asked to cut its budget.

An additional issue is the subcontracting that Nigel Ironside referred to. Every health service person I meet in every prison tells me that they are not funded for the additional people they are having to deal with. When I think about the health service and epidemiology, I note that we have deep-end funding of GP practices in the most deprived areas but we do not have deep-end funding for the prisons, yet the people in the prisons are from those very deprived areas. We have not done the health needs analysis and workforce capacity modelling needed to provide the necessary level of healthcare. That funding needs to be looked at.

There is also the fact that the service is having to deal with a different, complex and more vulnerable population, so funding for social care for the older needs to be looked at. Staff need to be trained in mental healthcare and in dealing with older people and those who have orders for lifelong restriction. Those cohorts in the prison require particular skills, and a year-on-year cut in budget simply means that the margins are consistently being cut.

Barlinnie is shocking. I urge you to go and have a look at it. Walk along the corridors where plaster dust rains on your head, and walk around in the evening and think how, even though we see Scotland as being at the leading edge in penology, we are happy to ask staff and prisoners to work and live there. I feel quite strongly about that, even though I recognise that we are in a period of fiscal prudence.

The Convener: Wendy Sinclair-Gieben, that summary is excellent and the committee will come back to it. You made some interesting points about extra funding for the health of the vulnerable and elderly populations.

I am interested to know whether the private sector faces the same challenges in health delivery, although I know it is all delivered by NHS Scotland.

Tony Simpson: I can speak on behalf of Addiewell. Yes, I think that we are affected equally by those challenges. There is no distinction between public and private in that respect. It depends on geography as much as on anything else. We have exactly the same issues; there is no distinction.

The Convener: Michael, your answer would be the same.

Michael Guy: Yes.

Alex Neil: I ask this question as a former health secretary. The funding for health provision in prisons was transferred from the prisons budget to the health service budget, probably in 2010-11. Prior to that, the Prison Service was responsible for its own health funding. Are you saying that it might be better to revert to that arrangement because prisons are not a high priority in the national health service?

Nigel Ironside: No, that would be a retrograde step. That was just evolution. The reality is that the health and justice improvement collaboration board was put in place to look at how health and social care partnerships respond to prisons healthcare. Having just relinquished the healthcare brief in the Scottish Prison Service, I am encouraged by the attention that prisons healthcare is getting. I have to say that it has been a long time coming but a host of different work is being done to recognise and include the prison population as a specialism within the NHS. That is welcome.

The complexity of the shape and style of the prison population is enormous. Dealing with personality disorder compounded by mental health issues or co-morbid health issues for the elderly and poly drug use by a significant proportion of the prison population means that its health and wellbeing environment needs a completely different approach from that which we have taken hitherto.

I do not think that giving prison healthcare back to the Prison Service would help. Being part of that broader health and social care partnership agenda is to be encouraged.

Liam Kerr: I would like to stick with funding. The Audit Scotland report highlights the financial issue that comes with buying extra places in the private estate. Can someone explain to me in basic terms how that private funding works? Does the SPS purchase a finite number of prisoner places per year and then buy extra places at a premium? Is that roughly what is going on here?

Michael Guy: Under the Kilmarnock contract, we are paid for the availability of 500 beds. Anything beyond that is paid on occupancy. There are also tranches for which the prison service can ask or instruct us to take additional prisoners. We are currently over capacity by 96 prisoners, or 20 per cent. With that overcrowding, we are paid for those additional prisoner places.

Liam Kerr: Would Tony Simpson like to say something about that?

Tony Simpson: We have pretty much the same model, but I do not use the word “overcrowding”. The additional places that we have are in specially

designed double cells, so they are recognised as appropriate prisoner places. We would not use the word "overcrowding", but the model is the same.

Steve Farrell (Community): There are additional places in the private sector, and the report talks about the funding for those places.

There is an impact on staff and the union membership in the private sector. The SPS will, for instance, give the private contractor, whether that be Serco or Sodexo, notice that it will require additional places. Serco or Sodexo will then recruit an adequate number of staff, but the problem is the back end of that. Those places can be taken away without any notice and, ultimately, those companies will be left with additional staff. More often than not, that leads to a redundancy situation. The SPS will ask for additional places, the private contractor will recruit additional staff with notice and then, without any notice, those additional places will be taken back and staff will be left without resources and a job.

I have an issue with the staffing model. We talk about the regime and purposeful activity in both private prisons. I do not think that purposeful activity has ever been an issue in Kilmarnock prison in the 20 years in which it has been in situ. The staff have always delivered purposeful activity.

The private sector does not have the facility that the public sector has to close a regime or a wing wherever that may be, because there is a cost implication to that. I will give an example of that restriction.

In 2002, there was a major incident—a level 1 incident—at Kilmarnock prison. The staff did what they did without any mutual aid and put people back into their cells. The following day, there was a secure unlock, and Serco was fined quite considerably for not having prisoners in their workplaces. That is perverse. If we are talking about purposeful activity and doing things right, how could there be proper security at HMP Kilmarnock on that day and a fine of hundreds of thousands of pounds the following day for not having prisoners at work in their work locations? What happened at Kilmarnock prison on that day would happen at Barlinnie, Shotts and Glenochil prisons and every other prison with the secure unlock requirement.

The Convener: Surely a fine to Serco does not affect your members?

Steve Farrell: It does.

The Convener: How?

Steve Farrell: Ultimately, the bottom line is that it affects the ability to negotiate improved terms and conditions for our members. As the committee will know, the private sector's terms and conditions are still way behind those of the public sector.

The Convener: So Serco could say that it cannot up your terms and conditions or your pay because it has been fined. Does it say that?

Steve Farrell: It does. It will look at the key performance indicators in the contract.

Moving on from that, since 1999, I have asked every justice secretary and minister where money goes when it is withheld from private contractors.

The Convener: So you think that there is a problem with the contracts.

Steve Farrell: I do, and I think that there is a problem with where money that is withheld from private contractors goes in the overall purse.

Alex Neil: Where do you think it goes?

Steve Farrell: I do not know, because I have never seen that audited or detailed. GEOAmey is in line to lose £1.2 million this year. Where will that £1.2 million go? That is a fair question.

The Convener: Okay. We will pick that up.

Liam Kerr: It is a good question.

I have in my mind that the cost of keeping a prisoner for a year is around £36,000—I have no doubt that someone can give me the cost. Is the cost the same whether the prison is an SPS prison or a private prison, or is there some variation?

The Convener: Wendy Sinclair-Gieben is shaking her head.

10:00

Wendy Sinclair-Gieben: The cost per prisoner will be different for every prison. It will be considerably cheaper to have a prisoner in Castle Huntly, the open prison, because a lower number of staff is required. Other prisons, such as antiquated Victorian prisons, require a much higher level of staff. As Nigel Ironside has explained, when staff costs make up such a high percentage of the budget, it is inevitable that, if a higher number of staff is needed, the cost per prisoner place will be higher.

The private sector will be able to speak about its prisons, but the benefit of having a modern prison is such that, in order to compare apples with apples, it would be necessary to take off the mortgage element before looking at the cost per prisoner place and to look at a comparable modern prison.

Liam Kerr: I understand—thank you.

My final question is about something that is mentioned in the report that bothers me. How come the private prisons have space? Wendy

Sinclair-Gieben said that Barlinnie was operating at 50 per cent above the level that it is supposed to operate at, yet it would appear that the two private prisons have space. How has that come about? Is that at all sustainable in the longer term? Will the private prisons be able to absorb any extra capacity that is required in the system in the future?

Tony Simpson: I will answer that on behalf of Addiewell. The joy of having a purpose-built prison is that the issue was pre-empted at the time of construction and contract award—hence the availability of 96 additional places in double cells. As Michael Guy said, we get paid for the standard 700 prisoners, and those cells are held in abeyance, so they would have one person in them rather than two. We are ready to go at the point at which the SPS needs that capacity. When it presses the button, we activate those cells and they will be available for as long as the SPS wants them. That is the joy of the contract—we can switch on and switch off that capacity, depending on demand.

We would struggle to go beyond 796 prisoners, if that is what you are asking about. Addiewell is not designed to go above that. We would have to have some serious discussions about what any such arrangement would look like. We cannot see a world in which we could go beyond 796, based on current—

The Convener: The capacity of Addiewell is 796.

Tony Simpson: Yes.

Michael Guy: I have a few points to add, following on from what Steve Farrell said. We operate under a commercial contract. The payment mechanism for Kilmarnock was set up in 1997. Back in 2002, there would have been local negotiations. The fee that we received from the SPS had to pay for staff, for any abatements for KPIs and for the maintenance of the building. We had that pot of money that we were able to spend. That provides a bit of context for what Steve Farrell said—it all came out of the one pot.

There is the ability to put additional prisoners into Kilmarnock if the SPS chooses to do so, but the risk of doing so beyond where we are at the moment is exactly the same for every prison. Putting more prisoners into a smaller space could cause further aggravation, and we would be concerned about that.

The Convener: In her report, the Auditor General was very clear about the pressures on Barlinnie prison, in the east of Glasgow. Anas Sarwar will ask questions about that.

Anas Sarwar: My questions are probably most relevant for Wendy Sinclair-Gieben, although the other witnesses should feel welcome to feed in.

Barlinnie is more than 50 per cent above capacity. Exhibit 6 in the Auditor General's report covers prisoner assaults, prisoner activity and substance misuse. Is it safe to say that Barlinnie probably skews the statistics? Is the situation noticeably worse in Barlinnie than it is in other prisons in the estate? For example, are the number of assaults, minor and major, by prisoners on staff and the number of prisoner-on-prisoner crimes disproportionately higher in Barlinnie? Does that correlate with the fact that it is 50 per cent above capacity?

Wendy Sinclair-Gieben: It is important to separate what the statistics mean. Barlinnie has more prisoners than any other prison in Scotland, so its statistics are higher, but not disproportionately higher.

Anas Sarwar: Do you not think that there is a correlation between Barlinnie's being is above capacity and the number of attacks on staff and prisoner-on-prisoner attacks?

Wendy Sinclair-Gieben: There is a correlation, but that is true of every prison—not just Barlinnie. Barlinnie is more overcrowded than other prisons, and its purposeful activity figures are very low because a huge effort is made to keep the prison safe and controlled, which means, in part, that a lot of people are not getting out of their cells much.

Anas Sarwar: Nigel Ironside gave the example that at Barlinnie there are, at any one time, around 30 to 40 vacancies and up to 50 staff off sick. Is there a correlation between Barlinnie being 50 per cent over capacity and the sickness absence rate there?

Nigel Ironside: That is probably a reasonable conclusion to come to. Just to put that in perspective, I note that most of the other establishments are at in the region of 110 per cent to 115 per cent of capacity. As of September, Barlinnie was at 140 per cent occupancy. There is a correlation between the figures and keeping a prison safe. I ask Wendy Sinclair-Gieben to give her view on safety in Scottish prisons, but we pride ourselves on the fact that prisons in Scotland are safe environments, although that might not appear to be the case from the statistics that are before the committee.

However, the reality is that to manage a prison that has a high population and to minimise incidents, we have to manage and control movement, access, and the open environment in which the people who are in our care live and work. As we have heard, assaults result not directly from the fact that people are taking psychoactive substances but from the fact that

debt is incurred by the people who use them: enforcement of debts causes the violence.

Phil Fairlie: At least 10 of our prisons are overcrowded—not just Barlinnie, although Barlinnie is overcrowded by, by far, the biggest percentage. However, the violence is spread right across the estate and is not related solely to overcrowding. In the 10 prisons that are overcrowded there are variations in levels of staff absence and violence. At the moment, Polmont probably has the highest sickness-absence level, although it is not in the same position as Barlinnie.

I will jump back quickly to the issue that Liam Kerr raised about the contract. I think that Steve Farrell mentioned that when prisoner numbers go up in the private sector, new staff are taken on to manage that. I wish that that was the case in the public sector. A big problem for us in the public sector is that we are asked to absorb that cost: the money that the public sector prisons pay to the private sector as a premium to buy spaces comes from an already decreasing budget. The impact is not just that we do not get extra staff; it is that we actually lose resource for running public sector prisons in order to fund the private sector at a time when our budgets are being cut.

The Convener: I will bring Liam Kerr back in, then come back to Anas Sarwar.

Liam Kerr: That is a good point, Mr Fairlie, but does it not come back to a failure of planning? I do not know whether I am right, but I will run through my thinking. Is not it the case that somebody somewhere has failed to plan for the rise in the prison population and to buy places up front at private prisons, which leads to overcrowding because there are not sufficient places, except ones that can be bought at a premium from the private sector? Would not it be better to wind back and say, at the start of the process, that we have an increasing prison population, so we need to plan for there being more prisoners, and to buy private places at lower cost then, rather than in an emergency later on?

Phil Fairlie: The Prison Service uses extra spaces in the private sector as a last resort, simply because of the cost and because there is no budget provision for that. However, overcrowding has reached the point at which the Prison Service is having to buy extra spaces from the private sector, even though there is no provision for that in the budget. A conscious choice was previously made not to use those spaces because of the premium that is charged for them.

Tony Simpson: I will clarify use of the word "premium". That implies that the private sector spaces are more expensive than a normal available prisoner place. Without going into the numbers, the cost of an additional prisoner place is significantly cheaper than the cost for an available prisoner place.

Phil Fairlie: I use the term "premium" to mean the cost over and above the cost of the existing contract.

Liam Kerr: I think that that is my fault: I introduced the term earlier, just because I do not quite know how the system works.

Willie Coffey: A budget allocation supports a certain prisoner population, and moving prisoners to Bowhouse or Addiewell prisons is an additional cost that must come from that budget. Private sector places are therefore not cheaper: as I understand it, the additional money has to be found within the system. Is that correct? We are talking about money that we did not have in the first place.

Alex Neil: I have a question about Sodexo and Serco. On capacity and facilities, how many additional prisoners could you take into Kilmarnock or Addiewell prisons today? Leaving aside issues of cost and so on, what is the difference between the number of prisoners that each institution has and its capacity?

Michael Guy: Kilmarnock could, under the contract, take 96 prisoners over and above the number that we hold today.

Alex Neil: You could take 96 extra prisoners today.

Michael Guy: Yes.

The Convener: You said "under the contract". Do you have the physical space for more than 96 additional prisoners?

Michael Guy: We have 500 cells. We are not in the same position as Addiewell, because our additional prisoners get a bunk bed in a cell, rather than a wider or larger standard cell.

The Convener: Do you have the physical space for 96 additional prisoners?

Michael Guy: We can accommodate another 96 prisoners in cells with bunk beds.

Tony Simpson: There might have been some changes overnight, and I have not seen this morning's figures—

Alex Neil: Yesterday's figures will do.

Tony Simpson: Addiewell could not take more than two or three additional prisoners. We are pretty much capped out with the 796 prisoners that we have currently.

The Convener: You are at full capacity.

Tony Simpson: Yes.

Alex Neil: So between them, Serco and Sodexo could perhaps take an extra 96 to 100 prisoners.

Under the current contract, the unit cost of the additional 96 prisoners or the additional ones in Addiewell is higher than the cost of normal mainstream work. However, we should compare the cost with the additional cost of the consequences of overcrowding—for example, in Barlinnie, where overcrowding leads to other problems. Even if the additional places were to be bought at that higher unit cost, would not there be a net saving to the system from reduced problems and costs in Barlinnie, for example?

Wendy Sinclair-Gieben: We would need to separate human cost from financial cost. The cost of buying the private sector places is a financial cost. In Barlinnie, for example, the financial cost of being over capacity is not huge because no additional staff are being recruited, although there are inevitable additional increases in the cost of food, clothing and so on. Andrew McLellan referred to the "nine evils of overcrowding": and the human cost of overcrowding is significant.

Nigel Ironside: When we talk about space and place, the people aspect is often lost. Part of the challenge of managing overcrowding is about moving elements of the population; we end up moving people around the country, away from where they have been, and that has implications for the escort contract, which the SPS manages.

There is also a human cost of manoeuvring and moving people away. The implications for individuals in our care who reside in a prison that is 200 or 300 miles away from their home are not insignificant. The human rights aspect—being able to provide the right environment, access to family and so on—is often lost in the discussions.

Michael Guy: It is also worth remembering that the issue is not just about a physical bed for someone to sleep in: it is also about access to the regime and to visits, and about being able to have space. When we have the best part of 400 prisoners sharing cells, there is no privacy and no space. Putting lots of people into a very small space is where some of the aggravation comes from.

The Convener: Does the Scottish Prison Service have contingency plans for if the estate were to reach full capacity or exceed it?

Wendy Sinclair-Gieben: I have asked the Scottish Government and the Scottish Prison Service what contingency plans are in place not only for full capacity but if, for example, a violent incident were to take out accommodation or the infrastructure at Barlinnie were to fail.

The Convener: What answers did you get?

Wendy Sinclair-Gieben: The Scottish Government and the Scottish Prison Service both have full contingency plans.

The Convener: Can you give us a flavour of those plans?

Wendy Sinclair-Gieben: It would be best to ask the Scottish Government and the SPS that when they attend as witnesses.

10:15

Anas Sarwar: That fits in nicely with my final question, which is on the estate. You gave examples of the condition of the estate at Barlinnie. It is clear that it is not a good working environment and that it is not a good environment for prisoners or for people who visit prisoners. Given the fact that you all work so directly with the Prison Service, is there any realistic prospect in the near future of a new-build prison to replace Barlinnie? If so, how soon?

Wendy Sinclair-Gieben: The branding for the new prison is "HMP Glasgow", although there is, I understand, contention about that name. However, the funding has been agreed. There are commercial negotiations taking place about the new site at Provanmill, and it is hoped that that will be put in place. That is great, but it will be between five and six years before there is a replacement prison and during that whole time, Barlinnie's infrastructure will continue to be fragile. Overcrowding means that we are fragile, as a service.

Anas Sarwar: On that point about fragility, we will have a new prison. In an ideal world, it would be five or six years away, but it might end up being 10 years away. We know how such projects work. Is there a block on investment in infrastructure to at least make it fit for purpose for the time being? Is there a greater risk that infrastructure will fail and that we will have to use the contingency plans that were mentioned?

Wendy Sinclair-Gieben: I think that there was a block on investment, but it is being overcome. There is a European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment—CPT—report and my interim report on Barlinnie. Significant work is under way on two levels: one is on reducing the prison population across the whole judicial system and the second is on finding interim solutions for Barlinnie so that it can continue to run.

Nigel Ironside: The maintenance issue is challenging because that was where it was deemed that there would be opportunities for savings. That said, there is an extensive preplanned maintenance programme across the estate; Barlinnie is no exception. A fundamental

change to infrastructure—by which I mean buildings and so on—would not, I think, necessarily be the best use of the public purse while maintenance of the existing environment is the priority. That said, however, there are locations in the estate where there is limited occupancy due to the condition of the cells. That situation particularly manifests itself in the older estate—in Greenock prison, for example.

The Convener: Why is the SPS underspending its capital budget, given the pressures that we have just discussed?

Nigel Ironside: That is a question for the SPS—

The Convener: I know that it is a question for the SPS, and I will ask the SPS the question, but what is your opinion? Does anyone have an opinion on that?

Nigel Ironside: In many respects, it is a question of whether there is political will to invest the money. It is also partly about how the SPS has been funded in the past: it is clear that there have been separate operating budgets and capital budgets. I am sure that the chief executive of the SPS would give a clear view on how he is able to spend that money.

Phil Fairlie: This is purely speculation, but I think that the capital money is not spent because it was never designed to be spent: it was not set in order that something that is in the pipeline could take place. The SPS budget is about the headline figure, but the Government knows that some of that money will come back to it each year. On paper, the SPS has been given a budget of a particular figure, but the reality is that there are no capital spending plans for some of that money. I think that it is a game, to be honest.

Wendy Sinclair-Gieben: There are two elements. One is delays in capital funding in the women's estate—

The Convener: I was just about to ask you about that.

Wendy Sinclair-Gieben: The capital funding for the women's custody units could not be spent. For a variety of reasons, the capital funding decision had, therefore, to be reversed. That money could not be vired into the operating budget.

The second element is that, as always with public sector funds, if the funding is not spent within the financial year, it has to go back to the Government to be reallocated.

The Convener: Where were the delays?

Wendy Sinclair-Gieben: I am afraid that I cannot answer that question.

The Convener: Okay. We will ask the Scottish Prison Service about that.

Does Anas Sarwar have any further questions?

Anas Sarwar: No.

The Convener: I will try to pull things together and wind up. We will take evidence from the Scottish Prison Service. Does anyone want to tell the committee what we should ask it, what message to give it, and what it needs to hear? We will go round the table.

Phil Fairlie: From the conversations that we have had with the Scottish Prison Service, I do not think that we are far apart in terms of recognising the problems and what would fix them. It is simply down to trying to deal with an ever-expanding prison population with an ever-decreasing budget.

We need investment in the infrastructure. I am not talking only about Barlinnie, which will always grab the headlines: several prisons need to be rebuilt or heavily invested in, capitalwise. What we need more than anything is the proper staff complement to deal with our prisoner population. That number of prisoners will not drop; it will grow, so we need a staff complement that recognises that.

The Convener: Does Wendy Sinclair-Gieben feel able to answer the question?

Wendy Sinclair-Gieben: Yes. There is no evidence for any immediate relief in prisoner numbers, or for any immediate possibility of alternative accommodation. The Scottish Government should be asked questions about the tension between the numbers of people going into prison and the numbers going out of them. That issue is not wholly for the Scottish Prison Service.

The Convener: We will have the Scottish Government in, as well, so such questions can be put to it.

Tony Simpson: I have nothing further to add.

Steve Farrell: I would ask the Scottish Prison Service and the Scottish Government whether there is monitoring of the contracts. I say that selfishly, on behalf of the private sector. I have said for a long while that it is perverse that the Scottish Prison Service sits, in effect, with a public purse and a private purse, which causes some of the problems that have been discussed today. There should be independent monitoring of the two contracts. Both contracts, the GEOAmey contract and an add-on to the two prison contracts, should be reviewed, and there should be a K-factor to allow them to be reviewed consistently for simple things such as finding mobile phones. The difference between finding mobile phones in prisons in 1999 and finding them in 2019 is like that between night and day, but the

contract remains the same. There needs to be a complete review of that in the contracts and an independent monitor of the contracts.

Nigel Ironside: We need clarity on the operating model. The questions for the Scottish Government and the Scottish Prison Service are these: what is expected of the Prison Service and what does that operating model look like? Is there a human rights-based approach or a warehousing approach to managing the ever-increasing numbers?

Michael Guy: I have nothing to add. Thank you.

The Convener: I thank you all very much for your evidence.

10:23

Meeting continued in private until 10:50.

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