



OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Thursday 23 April 2020

Session 5



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JUSTICE COMMITTEE
12th Meeting 2020, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP)
*John Finnie (Highlands and Islands) (Green)
*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:

Humza Yousaf (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

Virtual Meeting

Scottish Parliament

Justice Committee

Thursday 23 April 2020

[The Convener opened the meeting at 10:30]

Decision on Taking Business in Private

The Convener (Margaret Mitchell): I thank our parliamentary staff and in particular the staff of the broadcasting office for all their hard work in setting up this remote, formal meeting of the Justice Committee.

The committee recognises the very challenging times in which we are living, and we pay tribute to all the organisations in the justice sector for their continued dedicated service and hard work at this time.

The committee also passes on its heartfelt condolences to the family and friends of the prison officer from Her Majesty's Young Offenders Institution Polmont who is the first prison officer to have died from coronavirus, and to the friends and family of all involved in the justice sector who have been affected during the outbreak.

Members do not want to place undue pressure on those bodies during this public health emergency. However, as the First Minister has said, it is important that parliamentary scrutiny and accountability continue. That is why we have been writing to the Cabinet Secretary for Justice and others on a range of issues, such as changes to prison rules and the safety of prison staff and prisoners; plans for the release of certain types of prisoner; policing powers during the coronavirus crisis; the functioning of our courts and proposals for solemn cases; and guidance on the rules for family contact during the crisis.

I am grateful to the cabinet secretary and others for finding the time to answer questions from the committee and for the way in which the cabinet secretary and the various bodies have responded so quickly to the written questions that we have asked. All our letters and the responses to them are on our website.

Our first item is to decide whether to take in private item 3, which is a discussion among members of the evidence that we will take from the cabinet secretary. Given the complexities of a group discussion over videoconference, I will assume that everyone agrees unless someone says otherwise. Therefore, if members are happy to take item 3 in private, they do not need to respond, as that would require all microphones to

be active at once. No one has objected, so we are agreed to take item 3 in private.

Covid-19 (Impact on Civil and Criminal Justice Systems, Prisons, Policing and Fire and Rescue Services)

The Convener: Our main item of business is an evidence session on how Covid-19 has impacted on the civil and criminal justice systems, prisons, policing and fire and rescue services.

I welcome our witnesses from the Scottish Government: Humza Yousaf MSP, Cabinet Secretary for Justice; Neil Rennick, director, justice; and Clare Hicks, deputy director, police division. I refer members to paper 1, which is a private paper from the Scottish Parliament information centre and the clerks.

In a moment, I will invite the cabinet secretary to make an opening statement of up to three minutes. Unusually, because of the challenges of managing a virtual meeting such as this one, we will take questions in a prearranged order. Once the cabinet secretary has made his opening remarks, I will invite the first member to ask questions, and then I will invite the cabinet secretary to respond. I will go back to the member for any follow-up questions. Once that is completed, I will invite the next questioner to ask their questions, and so on until the evidence session is concluded. I expect the evidence session to last for no more than one hour. I ask everyone to keep their questions and answers succinct and to give the broadcasting staff a few seconds to operate the microphone before they begin to speak.

I invite the cabinet secretary to make a short opening statement of up to three minutes.

The Cabinet Secretary for Justice (Humza Yousaf): Good morning, convener and members of the committee. I welcome the invitation and the opportunity to engage with members in today's virtual meeting of the Justice Committee. First and foremost, I hope that you and your loved ones are all keeping well and safe. Following the sad news that we heard yesterday of the death of a prison officer who passed away from Covid-19, I take this opportunity to pass on my condolences to his family, loved ones and colleagues, all of whom will be suffering greatly at the loss of a very popular and much-loved individual.

I also want to place on record my sincere thanks for the work being undertaken by all the justice agencies, front-line professionals and staff who are supporting the operational response across the justice system in tackling the significant challenges that have been raised by the Covid-19 outbreak. As I said in my statement to Parliament on Tuesday,

"In these unprecedented times, Administrations across the United Kingdom and internationally are having to take"

exceptionally difficult decisions and action

"to boost and strengthen the justice response to help to combat, curtail and control the spread of the virus."—
[Official Report, 21 April 2020; c 17.]

I am very grateful to committee members and other members of the Scottish Parliament for the approach that they have taken in responding to this difficult situation and the issues that have arisen in recent weeks. I am keen to continue to work with the committee in that spirit and I am very clear that scrutiny of our plans is only ever to be welcomed.

Police Scotland is to be commended for its role in enforcing social distancing, which has been central to our public health response. Police Scotland has taken a commonsense approach and has sought to engage, educate and encourage the public and to use enforcement action only as a last resort. That approach has supported the vast majority of the public to comply with the regulations and the guidance.

Challenging times lie ahead; the flow of activity into the justice system has not stopped during the period of Covid-19 and, despite mitigating actions, we know that there will be a significant backlog in relation to both criminal and civil justice activity. The recovery period will not be quick and the implications will be felt for some time.

I recognise that the justice agencies, victims, legal professionals and others will have a strong desire to see the case volumes increase as quickly as possible, but we must take a balanced approach that takes account of health advice, and we must continue to take account of the health of those attending and working in our courts and other justice settings, such as our prisons.

Even at the end of the pandemic quarantine period, we will not necessarily return to the justice system entirely as it was prior to the crisis. For example, the positive use of technology may well have longer-term benefits. The challenges faced by Governments across the globe in dealing with the Covid-19 situation mean that we must take difficult decisions. It is important that we do so in a way that protects the safety of those we are dealing with.

As Parliament and politicians continue to adapt and adjust to changes in the way in which parliamentary business is conducted, as well as get used to new and innovative ways of engaging with the use of digital tools to support and keep the channels of communication open, I give an absolute assurance that the Government will look forward to on-going and regular engagement with the Justice Committee on a range of justice policy

matters. I am more than happy to take a range of questions from members.

The Convener: Thank you, cabinet secretary. I will ask the first questions. Can you provide an update on the numbers of prisoners and prison staff who are currently self-isolating, preferably broken down by prison, and will you agree to ask the Scottish Prison Service to publish that information regularly, as requested by the Howard League Scotland and others?

Can you confirm whether you have reviewed the level of financial resources available to bodies such as the Wise Group, Sacro, local authorities, the national health service and G4S to ensure that they are able to provide the vital support that the increased numbers of prisoners being released will require to access accommodation, health and addiction services and benefits? Without that support, there is a danger that those being released will fail and then potentially reoffend.

Humza Yousaf: That is a hugely helpful and important question.

There are currently 94 people in custody across nine sites who are self-isolating in line with public health guidance, and there are 12 confirmed positive cases. I have seen requests from the Howard League and others for more information, or for information to be broken down by prison, as you suggest. I am open to that suggestion. I have already spoken with the SPS to explore how we can publish data more regularly, and how we can publish as much data as possible.

That work is under way. However, sensitivities are involved, and we face staffing challenges, given the level of staff absences. At the moment, the level is at about 19.7 per cent of the total workforce, having come down from a high of 25 per cent at the beginning of the pandemic. As you can imagine, given those workforce challenges, all attention is focused on the front line. Nonetheless, I am open to publishing more data.

I could not disagree with your second point. A huge part of our thinking has been about engaging with local authorities and the NHS. You make an important point about Sacro, the Wise Group, G4S and others. If there are resource implications, we must consider how to address those. It is also clear that we must engage with all those bodies—and more—to ensure that prisoners who are released get the appropriate access to accommodation, health services, mental health provision and addiction services, so that they do not simply come back into the system. That work is on-going. As the committee wishes to be kept up to date, I am happy to do that as we begin to release prisoners.

The Convener: Thank you for that helpful response.

In a similar vein, can you provide information on the numbers of police officers and police staff who are currently absent from work due to the coronavirus?

The Coronavirus (Scotland) Act 2020 has increased the maximum fixed penalty available from £300 to £500. Can you confirm which new types of offences can now be diverted from prosecution in summary court proceedings as a result of the change and the number of cases that have been diverted due to the increase to £500?

Humza Yousaf: I do not have the detail to hand to answer the second question. I will write to the committee once we have that detail. It is an important question; forgive me for not having that to hand.

Working digitally is a little more challenging than working with my papers in front of me. I am looking for the detail that you have asked for on the number of police officers who are currently absent from work. As of 22 April, Police Scotland reported that 4.8 per cent of its workforce was absent due to Covid-19. That has come down from a peak of 12.5 per cent at the end of March. There is a significant reduction in staff absence; no doubt our testing regime is helping with that.

I will endeavour to get the detail that you asked for in your second question on the impact of increasing the threshold for fines. I will send that directly to you.

Rona Mackay (Strathkelvin and Bearsden) (SNP): What impact has the current lockdown had on crime, in terms of categories in which crime levels might have fallen, and of situations in which people might be more vulnerable—for example, to domestic abuse? What additional support is being given to people who are most vulnerable now?

Humza Yousaf: In short, I say that we know that crimes in some categories have gone down. That is undoubtedly related to the social distancing measures that have been put in place—people are not in pubs and bars on Friday and Saturday nights. Police Scotland can provide further detail about the types of crime that have gone down.

10:45

Rona Mackay is absolutely right to mention vulnerability. We are acutely aware of the impact of lockdown, in particular on vulnerable women, in the context of domestic abuse, and on children, in the context of child protection issues. A lot of work is going on not just with Police Scotland but—as members can imagine—with stakeholders and the support services that are so vital in tackling domestic abuse. Members probably know that we have given additional funding of £1.5 million to be spread across Scottish Women's Aid and Rape

Crisis Scotland. Also, the victims fund, which is available through Victim Support Scotland, has been increased to £100,000 to help to meet victims' immediate financial needs.

The Government is doing all that it can with stakeholders to address key vulnerabilities. Everyone, including Police Scotland, is very aware of the issue and is putting every effort into ensuring that we can tackle such vulnerabilities.

Rona Mackay: Thank you. That is reassuring.

The Scottish Police Federation says that the surgical face masks that police officers use where social distancing is impossible do not provide adequate protection. On Tuesday, you said in the chamber that the SPF has not called for every officer to have an FFP3 mask. Are you concerned that front-line officers might be at risk? Are there plans to change or upgrade the personal protective equipment that is available to officers?

Humza Yousaf: On what I said in the chamber, I confirm that I have sought clarity from the Scottish Police Federation: it is not calling for every officer to have an FFP3 mask. It is important that I put that on the record.

However, the SPF has concerns about some of the revised guidance from Police Scotland—which, I understand, it has made public. I am due to speak to the federation this afternoon; I want to see how we can address the concerns that it is raising on behalf of its members. It is clear to me from my regular engagement with the chief constable and with Deputy Chief Constable Malcolm Graham, who is leading on these efforts, that the revised guidance that Police Scotland has issued is absolutely aligned with the advice from Public Health Scotland and Public Health England, and with the guidance that the Scottish Government and United Kingdom Government are following.

Officers on the front line who attend an incident in which there is a chance or risk that they might come into contact with someone who has, or is suspected of having, Covid-19 will be given full PPE kit, including an FFP3 mask. The kit consists of a disposable suit, full knee-length boot covers, indirect vent goggles, long-cuff nitrile gloves and a surgical mask.

Police Scotland is rolling out training on the kit at an impressive speed, and has told me that, according to its most recent figures, more than 7,500 officers have been trained and fitted out with kit. I am reassured that Police Scotland is treating the safety of officers and staff as a matter of paramount importance, and that it is following the guidance that has been produced nationally. However, I am more than happy to see how we can address the SPF's concerns.

Liam Kerr (North East Scotland) (Con): We know that a range of steps have been taken to support the operation of the criminal courts, and to reduce the risk of coronavirus spreading. In your answer to Rona Mackay, you talked about crime rates. The committee has heard that the Scottish Criminal Bar Association suggests that offending has decreased during lockdown, but we have also heard from Victim Support Scotland and Scottish Women's Aid that some crimes might be increasing.

Given all that, can you help the committee to understand two principal things, please? First, what have been the practical impacts of the various steps that have been taken on operation of the courts? Secondly, can you provide the committee with any detail on how lockdown is affecting the number and nature of offences that are requiring prosecution?

Humza Yousaf: Those are important questions. As a result of the restrictions—Liam Kerr will know this, of course, because he has been involved in the discussions—there are currently no jury trials under way. We are working on what the options might be in order that we can make a dent in that backlog.

As members might be aware, the Scottish Courts and Tribunals Service has changed its operating model. In essence, it has consolidated sheriff courts into 10 hub courts across six sheriffdoms. They have been taking as much as possible of their business through written submissions, virtual means and telecoms, where that has been appropriate. Even so, they are having to prioritise urgent business.

I am conscious of the need for brevity, so we will send to the Justice Committee a link from the Scottish Courts and Tribunals Service website to a very helpful grid that shows where courts are prioritising cases. As you can imagine, there is a focus on child protection, on domestic abuse—as members have heard from the Lord Advocate and others—and, of course, on cases that are subject to a time bar and are approaching their time limit.

Urgent business is being dealt with, and we have seen some positive movement in the civil courts. To be frank, I say that whatever we do, whether it be on solemn business or on progressing summary business, there will clearly be an enormous backlog that will impact on victims of crime, on members of the legal profession and on the courts. Therefore, a fair bit of effort is already going into reflection about action that we need to take to address that.

Liam Kerr: You made a very important point about the backlog. Have there been any discussions between the Scottish Government, the SCTS and other key players about additional

resources that might be required in the short or medium terms to deal with the backlog of cases?

Humza Yousaf: That is an on-going discussion. All of us understand that dealing with the backlog will require resources. I cannot envisage how that could be done within current budgets. We are keeping in close contact with our agencies—not only across the justice sector, but across Government—about the cost implications of the challenges that we are all trying to address.

Of course, we will need to see what we can do in relation to matching the financial pressures. That will come not just from the Scottish Government; clearly, discussions with the UK Government will be needed. I am going far above my pay grade here, but I suspect that there will have to be some sort of Europe-wide—if not worldwide—look at stimulus packages to address the challenges that Governments around the world will be facing for the next 12 to 24 months, if not longer.

James Kelly (Glasgow) (Lab): I will turn to prisons. I echo the words of the cabinet secretary and express my condolences to people who have lost a loved one.

Following the announcement on Tuesday on release of prisoners, can the cabinet secretary update the committee on the timetable for releases?

What support will be available to local authorities? I have heard from a group of councillors in one local authority who are already seeing increased demands on their resources as a result of the virus, and are concerned about release of prisoners and the subsequent further demand on their resources. What additional resources will be available to local authorities that support those releases?

Humza Yousaf: I thank James Kelly for that hugely important question. If he wishes to speak to me in confidence about the specific concerns of that local authority, I will be happy to do that offline.

However, generally speaking, the concerns will be shared by local authorities right across the country. That is why our engagement with the Convention of Scottish Local Authorities on the matter is so vital. I spoke to Councillor Kelly Parry about exactly this matter only a couple of days ago. Again—in a similar vein to my answer to Liam Kerr—I do not doubt that I will have to work closely with local authorities on resources.

With regard to the first part of James Kelly's question, we think that the plans that we are putting in place will release a cohort of between 300 and 450 prisoners. That range is quite wide—

numbers will depend, of course, on governors' veto and on other review measures that exist.

On the timetable, we plan to manage releases in three stages across 28 days, as per the regulations. From 30 April, prisoners who have 30 days remaining, or who expect liberation, will be released within the first two weeks; prisoners who have 31 to 60 days remaining will be released within the third week; and prisoners with 61 to 90 days remaining will be released within the fourth week. I am, of course, happy to put that to the committee in writing. The longer initial stage will allow greater time for planning.

In relation to the specific question about releases that James Kelly asked, it is important that support arrangements are put in place. I will, of course, also put the detail of that in writing for the committee.

The Convener: That would be very much appreciated, cabinet secretary.

John Finnie (Highlands and Islands) (Green): Good morning. The emergency legislation has had a significant impact on the human rights of our citizens. I warmly welcome Police Scotland's appointment of John Scott QC to oversee the application of the new policing legislation. Will the cabinet secretary comment on the remit of his group and who comprises it, and will he give the committee an assurance that its report—along with his response—will be made public in order that we can scrutinise this important area?

Also on the question of human rights, will the cabinet secretary comment on the common pleas in the revised new guidance that the Lord Advocate has issued regarding holding suspects in custody before their first appearance in court and how it compares to what was in place previously?

Humza Yousaf: I thank John Finnie for his question and note that I agree with him in that I, too, welcome the steps that have been taken proactively by the chief constable; it was very much a proactive decision of the chief constable to set up the independent advisory group. I have great confidence in his judgment in doing that, and I have great confidence in John Scott's ability to rigorously test whether the emergency powers are being used in the correct and appropriate way. From the first few weeks, my feeling is that police officers are absolutely taking the right, commonsense approach. However, it is important that there is that independent scrutiny.

For brevity, I note that the membership of the group has been made public online on the Scottish Police Authority's website; we can direct members to an appropriate link. I know that some additional members have been added—including some very prominent campaigners on human rights issues,

black, Asian and minority ethnic issues, and disability issues—which I am pleased about. I think that anybody who looks at that membership list would say that those are people who not only have weighty credentials but would absolutely hold the police to account where necessary. We will send that link on to members.

My assumption is absolutely that the group's remit and terms of reference and any report that it publishes will be made public. However, I hope that John Finnie will forgive me if I point out that the group is not one that I have set up; it is a group that the chief constable has asked to set up, and he has operational independence. I know that he set up that group in order to provide transparent, independent scrutiny of the powers. Therefore, I am certain that he will be listening to what John Finnie has said and I am certain that his approach, even before John Finnie's question, has been to make as much of this public as possible.

11:00

The question about the Lord Advocate's revised guidance is for the Lord Advocate to answer in his role as the head of the independent system of the prosecution of crime and he can speak to the rationale behind the guidance. Again, the guidance is in the public domain and, for brevity, we will send you the link, which is on the Crown Office website. However, the guidance essentially makes clear that the test to be applied in these matters is whether there is a substantial risk to the victim, the witness or indeed the public that could not otherwise be mitigated.

By way of background, the Lord Advocate's guidance takes a clear and specific position on domestic abuse cases and the need for those cases to be treated particularly carefully. I am conscious of time, so I am more than happy to ensure that that guidance is sent to the committee. If John Finnie or the convener wishes for more information on the rationale behind the guidance, I am sure that the Lord Advocate would be happy to provide that.

John Finnie: Can you provide some information on how teleconference is working in the tribunals system, particularly in relation to urgent and time-critical cases? For example, how is it working in relation to the Mental Health Tribunal for Scotland?

Humza Yousaf: Sorry, I have just been given updated information—John Scott QC's report will definitely be made public and it will go to the SPA board. That is a helpful confirmation.

I spoke in my opening remarks about the advancement of technology and the need for us to implement that technology across the justice

system. That may well be something that we should keep in the longer term, not just in the current circumstances. Courts are having to adapt and are adapting to working remotely; that is a positive benefit that we should continue.

Teleconference hearings are operating at this stage only in the Mental Health Tribunal for Scotland. The procedure is that the Mental Health Tribunal hearing clerks facilitate secure calls; parties dial in from their locations. Patients typically call from hospital and tribunal members and all other parties call from their homes or offices. That is working well for the Mental Health Tribunal. We are now very much looking at whether that process can be rolled out to other tribunals. That is actively being considered. I see no reason why other tribunals cannot follow the Mental Health Tribunal's lead on remote hearings in this current situation and indeed potentially in the future.

Liam McArthur (Orkney Islands) (LD): To follow on from John Finnie's line of questioning, I echo what you stated at the outset, which is that the primary concern is to maintain the safety and welfare of court staff as well as that of the wider public.

However, you will be aware of concerns that have been raised by Roddy Dunlop QC on behalf of the Faculty of Advocates. In his letter to you, he contrasts what he sees as the stalling of non-urgent business in civil courts here with arrangements south of the border

"to use telephone, video and other technology to continue as many hearings as possible remotely."

He concludes his letter by saying that

"there are readily available solutions for at least the resumption of procedural business".

Locally, I have heard concerns about the granting of new guardianship orders and the sorting out of powers of attorney. I think that you alluded to work on that in your answer to John Finnie, but I would appreciate an update on what is being done to set up remote hearings and to facilitate the resumption of procedural business across our civil court service.

Humza Yousaf: I give Liam McArthur an assurance that I am in fairly regular contact with Roddy Dunlop QC in his role as the vice-dean of the Faculty of Advocates. Roddy Dunlop is not shy in coming forward with suggestions, and I appreciate not just his suggestions but his experience. It would be fair to say that if Roddy Dunlop and I had been having a conversation two weeks ago, he would correctly have been very agitated about what he perceived to be a lack of progress on the civil side, but I think that if we were to speak to him today, he would be far more positive. I have a message from him that says, in

effect—I am paraphrasing slightly—that things are moving in absolutely the right direction and that we should try to continue the pace on that.

The link that I said that I would send in my response to a previous question provides access to a table that will give Liam McArthur an indication of what is being prioritised in civil business. Mr McArthur will not be surprised to learn that there is a focus on family law cases and cases that involve vulnerable individuals, largely in the family space, but civil business will also move forward in cases in which there are time pressures or time bars. Mr McArthur has probably seen the announcement about matters progressing in the inner house. This week, an appeal in a fairly high-profile case was heard via remote means.

Such work is on-going. It will not happen overnight—it has already taken a number of weeks to get things up and running. I am certain that the Scottish Courts and Tribunals Service would be happy to update the committee directly on its plans, but I would be more than happy to provide a written update, if Mr McArthur would like one.

Liam McArthur: Thank you, cabinet secretary. That suggests that things have moved on, which I welcome, along with the offer to provide an update. I would particularly welcome an update on issues such as the new guardianship orders and powers of attorney.

You have probably already touched on this, but concern has been expressed that, with the setting up of the sheriff court hubs, people in remoter areas such as the Orkney constituency that I represent will be disadvantaged from the point of view of the distances that they will have to travel. That might be partly addressed by the ability to do more remotely. What reassurances can you offer in response to such concerns?

Humza Yousaf: That is an important concern to raise. Although we have the 10 hubs across the six sheriffdoms, we understand that there might well be some impacts on people in remote and rural areas. However, I stress that the vast majority of the business is being done through written submissions, teleconferencing and digital means, so there should not be a need to travel in.

All that said, there can often be challenges—as Liam McArthur has often said in the chamber—with regard to, for example, broadband coverage in island communities and remote areas, which can have an impact on remote working. I give an assurance that I will take Liam McArthur's question away and raise it with the Scottish Courts and Tribunals Service to see what we can do to give as much confidence as possible to those in remote and rural areas and island communities

that they will not be disadvantaged by the set-up that has been created.

Shona Robison (Dundee City East) (SNP): Good morning, cabinet secretary. I would like to take you back to Police Scotland. In your opening remarks, you said that Police Scotland was taking “a commonsense approach”; I certainly agree with that. Taking the issue slightly further, are you satisfied that police officers are using their discretion wisely and encouraging people to comply with the new restrictions before moving to issue fines? How is that approach being monitored to ensure consistency? Has Police Scotland seen an increase in specific complaints since the introduction of the new powers? Has the cabinet secretary sought any reassurances from the chief constable, the SPA and the Police Investigations and Review Commissioner that all complaints relating to the new police powers will be rigorously investigated?

Humza Yousaf: There are a fair number of questions there and I will try my best to go through them.

Am I satisfied? The short answer is yes. I have been not just satisfied but heartened by and pleased with the approach that Police Scotland and the chief constable have taken. That has sometimes been in stark contrast to some forces in England and Wales. I do not want to tarnish them all with the utterances of a few, but how other police services across the country have been communicating would, at the least, raise an eyebrow. The communication from Police Scotland has always been about a commonsense approach and is focused on engaging, encouraging and educating, with enforcement as a last resort. We have seen that from the number of fines that have been handed out and arrests that have been made—as a proportion of the interactions, they are small in number.

With regard to the oversight of that, I go back to John Finnie's point. I hope that setting up the independent advisory group, led by John Scott, will give people reassurance that there is an independent process, as well as the processes that already exist. If people wish to make a police complaint directly to the police, they can do that and follow it up. Both processes still exist, but we also have the independent advisory group role and remit. John Scott has been proactive; for example, when people have made a complaint on social media about the police and the use of the emergency powers, he has been quick to say, “Can we have a chat? Can we get some details on that?” Therefore, I have every confidence in that process.

I am also injecting some realism here. The approach from the chief constable has been welcome; he and I are the first to say that some

police officers will get their communications wrong. We have to be open to that, particularly because of the pace and speed at which the powers were introduced. Therefore, it is important that we have that independent oversight. That is a positive, proactive step that the chief constable has taken.

Shona Robison: Thank you, cabinet secretary. That is helpful.

I will go back to tribunals for a moment. You talked about the use of remote hearings for tribunals, which the Mental Health Tribunal is undertaking at the moment. Can you give a timescale for the expansion of that to other tribunals?

You talked earlier about dealing with the backlog of civil court and tribunal cases and the prioritisation around that. Can you share with the committee some of the plans for how that work will be undertaken? You said earlier that you might do that.

Humza Yousaf: Convener, forgive me. There might have been a technology issue at my end—I did not catch the second question that Shona Robison asked. I heard her asking about the timescales in relation to technology, but I could not hear the second question.

Shona Robison: I am happy to repeat the question. It was about the plans that are being made for dealing with the future backlog of civil court and tribunal cases, which will be caused by the issues that we are dealing with. You touched on that earlier. Are you able to share more detail with the committee about the prioritisation of that backlog? Earlier, you gave a commitment to do that.

Humza Yousaf: Thank you for repeating the question.

I am not able to give the details of timescales at the moment, but I will reflect on that question. I suggest that I give a regular update to the committee in person, which I am always happy to do via these remote means or by way of a written submission. I am more than happy to give a regular update.

As you can imagine, that work is being done at pace, and a fair bit of testing of it is also being done. I mentioned that the first appeal hearing took place earlier this week. It went well; if it had not, there would have been a need to work through some of the technological challenges. I do not have a timescale to hand, but everybody is working at pace.

11:15

The question about the backlog is also difficult to answer. We are still working our way through

the backlog, and it will change in nature depending on public health guidance, whether restrictions are eased in the coming weeks and what that will mean for business. Again, it might be useful if I say that I am happy to provide the committee with a regular update on how that work is progressing.

Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP): Cabinet secretary, you have touched on the new powers that have been granted to the police. Is a picture emerging of the use of fines, whether the need for them is increasing or decreasing and whether compliance is increasing or decreasing? Do you see those fines developing or changing in the future?

Humza Yousaf: I am in regular contact with Police Scotland, which is helpfully providing regular updates on some of the data. The latest data that I have shows that, between 28 March and 21 April, Police Scotland reported the following enforcements: 27 non-essential business premises were closed, 1,554 fixed-penalty notices were issued and 76 people were arrested for failing to comply with the regulations. On that arrest figure, Police Scotland tells me that it would have interacted with a significant number of those people even outwith the current circumstances of the global pandemic. I confirm that that enforcement action is a small part of the number of overall interactions that Police Scotland has had.

The message that I am getting from the chief constable is that the level of compliance of the public across Scotland is still high. That being said, we continue to monitor the data, and the data that I have to hand shows that there was a rise in the number of dispersals at the weekend. On 19 April alone, there were 506 compliant dispersals and 41 dispersals after warnings. We can perhaps therefore see that, as social distancing and lockdown measures continue, and as the weather improves, we will have to reiterate and re-emphasise the message about staying at home, protecting the NHS and saving lives. That will have its challenges.

Dr Allan: Thank you. That is broadly encouraging.

I am also keen to ask about the Scottish Fire and Rescue Service. Most people will appreciate that it is under particular pressure to guard against the possibility of firefighters getting ill or having to self-isolate, and having to plan around that. Do we know how many firefighters are self-isolating? If you do not have that number, cabinet secretary, can you say a bit about planning?

Obviously, some parts of Scotland, such as my own, depend on retained firefighters and it is not easy to bring people in from other places. I am looking for a picture of the planning that is being

done to ensure that we can cope if firefighters have to self-isolate.

Humza Yousaf: That is a helpful question. I should say that, if Alasdair Allan wishes to raise anything in relation to his constituency, which I know well, I will be happy to deal with it offline. That also goes for any member.

As of yesterday, 22 April, 206 firefighters were absent because of Covid-19. That number is 3 per cent of the workforce, so I am pleased to say that it is relatively low. Of that number, 163 are self-isolating.

I am hugely impressed—I always have been since I became the justice secretary—by how versatile the Scottish Fire and Rescue Service workforce has been. They have often done not just the work that they need to do to keep us safe from fire and on other fire-related matters, but work for other public services to assist where they can. As well as performing its core functions, the service is working to help other partners such as the Scottish Ambulance Service. I am really grateful to every fire officer and all the fire staff for the work that they do.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good morning, cabinet secretary. My question is about the Lord President's comments on whether a child can move between the homes of parents who do not live together, which I asked about in the chamber on Tuesday. Is there still a bit of uncertainty in the public domain? I think that the Lord President's statement was quite clear, but, given that I and others continue to receive constituency queries about the issue, can we do anything to make it clearer?

Humza Yousaf: I would like to reflect on that question—I also apologise for the fact that you can hear my 11-month-old daughter in the background. My perspective is that the messaging was quite clear. However, if Mr MacGregor and others continue to get comments and emails from constituents on the issue, I will reflect on whether I or a Government colleague—a minister or maybe the First Minister—could do anything to reiterate the messages and guidance.

At some points, the guidance can be tricky because it allows for an element of parental discretion. A parent may feel that moving a child between homes could cause harm to the child, so that parent would have to use their parental discretion when appropriate. In that regard, parental discretion is an important part of the decision and the guidance may not be black and white.

I will reflect on whether there is anything more than I can do in terms of making a statement or

reiterating the guidance. If there is, I will be happy to do that.

Fulton MacGregor: I thank the cabinet secretary for that very helpful and thorough response. What priority is being given to family court cases? Do you have any idea which cases are likely to be treated as more urgent? What might be the impact of any delays in the family court system on vulnerable families, such as those who are affected by domestic abuse?

Humza Yousaf: The link that I will send to the committee, which I have referred to, will give details of the cases that are being progressed as urgent. It will not be a surprise that urgent family law cases are being looked at and will be prioritised, particularly where a vulnerable child is involved.

There will be inevitable delays in family cases, regardless of what we do, and that will have an effect. I do not doubt that. We will try to put as much information as we can on the Parent Club website, for parents who do not live together. We are continuing to support organisations such as the Scottish Women's Rights Centre, which has a free legal helpline for initial legal information, and I have already mentioned the work that we are doing in relation to domestic abuse.

I know that this will also be a difficult and challenging time for many fathers, who will have concerns about their children, so I am happy to reflect on whether there is anything more that we can do.

However, I cannot shy away from the honest and truthful answer, which is that, regardless of our best efforts, there will be an impact on families and on those who are vulnerable.

The Convener: I apologise to James Kelly for omitting to bringing him in for his follow-up question. I invite him to ask it now.

James Kelly: Thank you, convener.

I turn back to prisons. How can the cabinet secretary respect the human rights of prisoners and protect their mental wellbeing, given the suspension of prison visits and the recent changes to prison rules on showering for prisoners and limiting exercise?

Humza Yousaf: That is a hugely important question, so I am pleased that we have returned to it. The human rights of those in our care and of those who work in our prisons are fundamental, which is why I took the very difficult decision to use the emergency early release powers. I know that that decision was supported by James Kelly and his party, and I appreciate that support. I took that decision because I believe in the human rights of those in our care, as well as those of victims;

the two do not need to be mutually exclusive—far from it.

I turn to James Kelly's specific question on the amendments that have been made to prison rules. There are quite a number of them. Yesterday, I spoke to the Scottish Human Rights Commission; Wendy Sinclair-Gieben, Her Majesty's chief inspector of prisons for Scotland; and the independent prison monitoring advisory group. We had a very positive discussion about the safeguards that we should put in place in relation to the amendments to the rules. I gave them an absolute undertaking that I will reflect not just on their suggestions but on whether we can create an overview mechanism that scrutinises the use of the new rules. Her Majesty's chief inspector of prisons has indicated that she will implement remote independent monitoring of our prisons. My understanding is that she will release some details on that early next week, so those should be published.

I give James Kelly an assurance that the new prison rules will be used only if necessary in order to keep people in our care safe and, indeed, to keep those who work in our prisons absolutely safe. They will not be used for any other reason. I am monitoring their use regularly. Again, I am more than happy for the Justice Committee to be provided with updates in that regard.

I could not agree more with James Kelly's point about prison visits. The suspension of visits will cause a huge burden. It is already causing a huge strain on prisoners, but they have complied well. I have made an announcement about mobile phones, but given the time that that action will take because of the security, legal and operational issues involved, we have ensured that prisoners are given extra credit to make additional phone calls.

Other appropriate measures have been taken. For example, the range of in-cell entertainment has been increased, and we have provided additional mental health support through information that has been produced by psychologists and mental health experts.

Forgive me for that relatively long answer, but we are doing a lot in that regard. If the committee wants any specific information, I am always happy to return to it or, indeed, to write to it.

The Convener: That would be extremely helpful.

11:30

Liam McArthur: I have a very brief request on the back of Fulton MacGregor's question. Mr MacGregor is absolutely right: cases are coming to all of us in which parents have split up and

childcare arrangements have to be negotiated in difficult circumstances.

As he reviews the available guidance with the Lord President, will the cabinet secretary bear in mind that, in an island setting, some of the logistics, such as getting on and off ferries, can be significant? Whatever guidance is issued, or updated, has to reflect the realities across Scotland and ensure that a commonsense approach can be adopted wherever the parents and children might be.

Humza Yousaf: That is a hugely important point and the short answer is yes. I am mindful of those issues. My circumstances as a step-parent are different, as it is relatively easy for my stepdaughter to go to her father's, who lives a five-minute drive away—that is simply not the case for everybody, as Liam McArthur has said. I will certainly reflect those concerns in the conversations that I have with colleagues and stakeholders.

The Convener: Before we conclude, cabinet secretary, I refer to this week's statement to the Parliament, in which you indicated that discussions on additional measures to deal with trials would, in solemn cases, focus on options 1, 3, 6 and 8 of the discussion paper.

You have already said that you will provide us with further information, such as the timescales. Can you assure us that you will consult the committee before you reach a final decision?

Humza Yousaf: Yes, I am more than happy to do that. I absolutely assure members that I am really happy to attend a remote meeting of the committee as often as they would like me to do so.

The process might be iterative: we might be able to progress with some options at a greater pace than others. There will also be great challenges for the options that I have identified. Let us bear in mind that people are anxious about going to the supermarket for their groceries, let alone attending a trial that could last a number of days—and potentially more than a week—with other people in the room, such as other jurors and court staff. Although those options might look good on paper, we will work through them as they might have practical and pragmatic difficulties.

I will continue to update the committee on the matter and will make myself available any time that it wants me to appear as a witness.

The Convener: That is very welcome, cabinet secretary. As one of the participants in the virtual round table that was held said, the best should not be the enemy of the good. There are a lot of options that we can use to ensure that those trials go ahead.

I thank the cabinet secretary for his undertaking to provide the committee with additional information and various bits of guidance. We look forward to receiving those in due course.

That concludes our evidence session with the cabinet secretary. I thank him and his officials for taking part and members for participating in their first remote committee meeting. The next meeting of the committee will be scheduled at an appropriate date, which will be notified in the *Business Bulletin* and via the committee's social media. In the meantime, any follow-up scrutiny work will be dealt with by correspondence, which will be published on our website.

11:33

Meeting continued in private until 12:02.

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