



OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 18 August 2020

Session 5



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JUSTICE COMMITTEE

17th 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:

Maurice Corry (West Scotland) (Con) (Committee Substitute)

Bill Kidd (Glasgow Anniesland) (SNP) (Committee Substitute)

Eric McQueen (Scottish Courts and Tribunals Service)

Teresa Medhurst (Scottish Prison Service)

Neil Rennick (Scottish Government)

Humza Yousaf (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 18 August 2020

[The Deputy Convener opened the meeting at 10:30]

Decision on Taking Business in Private

The Deputy Convener (Rona Mackay): Good morning. This is the 17th meeting in 2020 of the Justice Committee and our first hybrid committee meeting. I start by welcoming all the people in the committee room and all our virtual participants, who are John Finnie, Liam McArthur and Fulton MacGregor. We have apologies from Margaret Mitchell and Alasdair Allan, who cannot be with us today, and we are joined by Maurice Corry and Bill Kidd as their substitutes.

Before we begin, I remind members, witnesses and staff present that social distancing measures are in place in committee rooms and across the Holyrood campus. I ask that all take care to observe those measures over the course of this morning's business, including when entering and exiting the committee room. I also remind members not to touch the microphones or consoles during the meeting. As usual, members should indicate to me if they wish to ask a question and the sound engineer will activate their microphone.

I invite members to agree to take agenda item 4 in private. As no member objects, that is agreed.

Covid-19 Impact (Justice Sector and Policing)

10:31

The Deputy Convener: Agenda item 2 is an update on the impact of Covid-19 on our justice sector and policing, for which I refer members to papers 1 and 2. I welcome our first panel of witnesses: Eric McQueen, who is the chief executive of the Scottish Courts and Tribunals Service; and Teresa Medhurst, who is the interim chief executive of the Scottish Prison Service. I thank the witnesses for any written submissions, and I invite them to make some short opening remarks, after which we will move to questions. We have up to one hour for this panel.

Mr McQueen, would you like to begin?

Eric McQueen (Scottish Courts and Tribunals Service): Good morning, committee. Thank you very much for inviting me along this morning.

Since my last appearance before the committee, all our courts and tribunals across Scotland have reopened. That took place on 2 June and progressed as we moved into June. It is fair to say that that took a tremendous amount of effort. I think that we were the first national body to bring staff back in and reopen our buildings. Ensuring that we put the protection and safety of court users was paramount—that was our first priority. I should also mention that, throughout lockdown, a third of our courts were open to deal with essential and critical business, and I would like to pay tribute to our staff, the judiciary, the legal profession, the prosecutors and the third sector for all their efforts during lockdown and in the period thereafter.

It is clear that the aftermath of lockdown and the on-going impact of social distancing will impact enormously on the justice system. The backlogs across the court system—particularly in criminal proceedings—are significant and will take a number of years to deal with. Radical solutions will be needed to find different ways of dealing with things in a new, socially distanced environment.

We are very cognisant of the fact that behind the numbers are people—victims, witnesses and accused people—whose lives have, in essence, been put on hold. We need to find creative and innovative ways of re-establishing the justice system and reducing some of the time delays.

As part of the work that we have done on civil proceedings, we have largely moved to a virtual or remote environment across all parts of civil and tribunal business. That is important, as it has freed up capacity in criminal courts. In criminal courts,

we have introduced remote hearings and have piloted virtual trials. We have now restarted a full programme of summary trials, and on Friday we announced the very radical approach of looking to create remote jury centres to ensure that we can get the most serious trials up and running in a short space of time.

Throughout the next couple of years, significant effort will be required to deal with the backlog, as well as on-going investment from the Government, which we have been speaking about on a daily basis. Most important, it will be key that we work collaboratively with all organisations in the justice system. If we look back over the past four or five months, there will be things that we have not got right and could have done better. We must be honest about that.

The work of Lady Dorrian's working group on solemn trials is an excellent example of what people can achieve when everyone comes together with a single focus. That is certainly the approach that we want to take over the coming months and into next year, as we start to deal with the backlogs and bring the justice system back into action.

Teresa Medhurst (Scottish Prison Service): I echo Eric McQueen's comments about welcoming the opportunity to meet the committee today, which will allow me to answer any questions that members have on the way in which the Scottish Prison Service has responded to the challenges that the Covid-19 pandemic has presented thus far.

There is no doubt that the pandemic has placed significant demands on our organisation and that it will continue to do so for many months to come. I therefore put on record my thanks to staff at all levels and in all parts of the organisation for their hard work, flexibility, professionalism and commitment to the SPS during this time. I also record my appreciation and thanks to all our colleagues in the national health service, who have continued to work alongside us, strengthening our partnership working and providing support to those in our care throughout our prisons.

Anyone who has worked through this period has had to manage the challenges of working in a changing environment with changing conditions, as well as having to deal with the impact of the restrictions on their personal lives. That has not always been easy. My thanks are also due to those in our care, their families and their loved ones for responding with such a high level of co-operation to the restrictions that we have had to impose.

People in our care have donated to food banks, they have made face masks for health and social

care workers, and they have complied with the restrictions that we have had to introduce to minimise the health risks, which has meant limited access to families for support during this time. Families have had to endure months of restricted access to loved ones in custody, which has been particularly hard on children. I am acutely aware of how difficult that has been, so I am grateful for the understanding that has been shown by so many people. Without that co-operation and understanding, our task would have been so much more difficult.

We have also benefited from significant support from public sector and third sector partner organisations in shaping our policies and guidance in response to the pandemic and in ensuring that that has been informed by user voice and changes in practice in communities.

Unfortunately, in the course of the outbreak thus far, a total of five people in our care have sadly passed away where Covid has been a factor in their deaths. A total of 31 prisoners and 62 staff have tested positive for the virus. At the peak of the shielding provisions, 678 staff had to self-isolate. It is fair to say that, at the point of lockdown, we feared that the impact of the pandemic would be much worse.

We have appreciated and give our thanks to colleagues in Government and the Cabinet Secretary for Justice for their unstinting support and assistance. In managing the situation and seeking to mitigate some of its most challenging effects, we have always found support and understanding. I am very proud of all those who live and work in our prisons, who have responded magnificently to the challenges thus far.

Maurice Corry (West Scotland) (Con): Good morning, Mr McQueen and Ms Medhurst. It is good to see you here. Well done on getting the service back to normality—or starting that process—on 2 June. Please give our good wishes to your staff and everybody involved. It has been an excellent effort through what has been a very difficult time.

Obviously, people are anxious to get things moving, and I want to ask about the case backlog and prioritisation. I am particularly interested to find out the latest backlog figures for criminal courts and civil courts and tribunals. Can you give us some idea of what is happening there and what the figures are?

Eric McQueen: Yes, I am happy to go through the figures, as I think that that is an important place to start.

Starting with the criminal side and solemn business in the High Court, we had about 390 cases awaiting trial prior to lockdown. That is not a backlog; that is a normal number for the queue of

trials coming through. We anticipate that the figure will be about 750 at the end of August. Depending on the models that we put in place, that had the potential to increase to some 1,300 or 1,400 over the next two or three years.

With Friday's announcement on moving to the jury centres, we expect to start to move back to our normal capacity of having about 16 trial courts up and running across the High Court in a short space of time—probably by October. On that basis, the number of outstanding trials will probably plateau at about 800 over the next few years. That would still be double the normal number, but it would plateau and not increase beyond 800.

We are discussing with the Government how we can further increase capacity. Could we, for example, move from 16 to 25 trial courts? If we could do that, we could reduce the backlog in the High Court and bring it back to normal levels within two years. We are discussing some radical options for how we could continue to increase capacity and have more trials running, so that we can reduce the backlog.

As things stand, the backlog over the next couple of years will probably be twice the normal level. If we can create additional capacity and run even more High Court trials, we could pull that down to normal levels within about two years.

Regarding sheriff court jury business, prior to lockdown 500 cases were awaiting trial. We reckon that that figure will be about 1,800 by the end of August. If we were to carry on in socially distanced mode, that figure would increase to well over 2,000.

If we bring in the remote jury model that we are discussing with the Government, we anticipate that we could start to slowly eat into that backlog, but that it would take around five or six years to bring it down to pre-Covid levels. We are looking at ways to further increase capacity and to run more than the usual number of solemn trials. If we can get the investment that is required for that, we could bring the backlog of trials down to pre-Covid levels within two years.

Therefore, there are options for bringing the backlog of High Court and sheriff court jury trials down to normal levels within about two years if we can create the right environment and get the right funding. That paints a picture of how dramatic the impact of lockdown and social distancing has been on the High Court. It has been significant.

Turning to sheriff court cases, prior to lockdown there were 14,000 cases outstanding. That figure will be 27,000 by the end of August. We now have a full programme of courts back up and running: there are about 33 trial courts running each day. That will gradually reduce the backlog by about

2,000 cases a year. If we simply run 33 trial courts a day, it will take us eight to 10 years to get back to pre-Covid levels. We are discussing with the Government additional investment that would allow us to increase capacity by about 25 per cent and to have 10 more trial courts up and running, which could enable us to reduce the backlog within about three years.

Another option, which we will probably look at as we move into next year, is that we have the potential to run courts at weekends. If we ran trial courts on Saturdays, we could get back down to business-as-usual levels within two years.

All such measures would have an impact not only on the courts but on prosecutors, the defence and third sector organisations. Over the next few weeks and months, significant discussions will need to take place to work out the best or optimum solution, which will be one that meets the needs and resources of all the organisations involved.

There is a similar situation in the justice of the peace courts, where the backlog was 3,500 cases before Covid; it is now 8,000. We think that that will probably come back to a business-as-usual level within about four years. With additional investment, we could achieve that in about two years.

A two-year period is the most optimistic forecast for bringing the backlog of cases back to pre-Covid levels. That might take longer if we cannot increase capacity, or if investment across the justice system is not available. On the criminal justice side, the impact of lockdown, as well as the continuing impact of social distancing, is dramatic. It is difficult to predict how long social distancing will be with us, and to what extent it will hamper us.

On the civil and tribunal side, the picture is a lot more positive. The Court of Session—the superior civil court—is operating as an entirely virtual court and has been doing so for the best part of two months. There is no backlog in the Court of Session. It is taking longer to allocate and deal with some of the proofs, but that will work itself out over the course of the next year.

Case registrations in the first quarter of this year were at 81 per cent of the figure for the equivalent period last year. If we compare July this year with July last year, we see that case registrations are now up to 102 per cent, which reflects the progress that has been made in dealing with any backlogs. Proof levels in the Court of Session are now at about 70 per cent of what they were at this time last year. By and large, the Court of Session is now working very effectively. There are very few backlogs; there are just some additional delays in allocating proofs, but they will work their way through during the next year.

10:45

In the sheriff courts, it is a similar position. The national courts—the all-Scotland personal injury court, the Sheriff Appeal Court and the Bail Appeal Court—are all working in an entirely virtual mode; they have been doing that for the past two months. The business levels in the sheriff courts are down significantly. In the first quarter, they were down to about 21 per cent of what they were in previous years; that increased to about 50 per cent in July. Part of the reason for that is that eviction cases and mortgage arrears cases, which take up about 30 per cent of the business, have, quite rightly, been halted. We are also seeing the effect of the fact that a number of solicitors and administrative staff are still furloughed and have yet to return to work.

Our expectation is that the business levels in the sheriff courts will gradually increase over the next two or three months. Given that we can deal with business remotely and virtually, we think that that will work itself out over the next six to 12 months, as it will in the Court of Session. The issue on the civil side is much less dramatic than it is for criminal business.

On tribunals, the largest tribunal in terms of volume is the Mental Health Tribunal for Scotland, which deals with about 5,000 applications a year. Since lockdown, more than 1,900 statutory hearings have taken place, all by telephone. None has been cancelled and the tribunal is up to date, with no backlog.

The only tribunal with backlogs at the moment is the housing and property chamber, which has backlogs of about 800 hearings. All those have now been allocated remotely and will take place over the next two or three months. The vast majority of the other tribunals are pretty much up to date. Their volumes are very low, but they are putting in place virtual and remote hearings to deal with the business.

Although there are pressures on the civil and tribunal areas, in comparison with the criminal area it is a much more manageable position, which we think will resolve itself, probably over six to 12 months.

Maurice Corry: It is very good to hear all that information. To draw a line under it, we are looking at basically double the workload that you had pre-Covid, in general terms.

Eric McQueen: In general terms, the backlog—

Maurice Corry: You make lots of points about where you hope to be, and everything else. What assumptions have you based your estimates on? That is very important. You referred to investment, which is one of them. Putting that aside, have you made any other assumptions?

Eric McQueen: The assumptions that we are trying to make are about the impact of social distancing. To a certain extent, the remote jury centres take some of that away, but there will be an on-going impact on summary criminal business. Our assumption is that social distancing will be in place until at least March next year. In some of the detailed documents that we have produced, we have other projections that show the impact of social distancing potentially being in place until March 2022.

Maurice Corry: Do you think that social distancing could go on to 2022?

Eric McQueen: If it goes on to 2022, some of the backlogs could increase. The detailed reports that we shared with the committee on Friday set that out in significant detail.

We have made assumptions about the maximum capacity that we can start to make available. Our starting point is that we recognise that our capacity will be reduced by a third, but we have tried to move as much business as possible into a virtual environment, to make sure that the physical hearing capacity is maximised. Across not only civil but criminal areas, we have a range of remote hearings taking place for the procedural aspects, to take people out of the court building and make sure that the capacity can be dedicated to trials.

We have also factored into our model what we call the conversion-to-trial rate. Clearly, not all cases will end up in an evidence-led trial. In the High Court, for example, about 62 per cent of cases will end up in a trial, and that has been quite consistent over the past four or five years.

There is a risk that as the trial becomes further away, there is less likelihood of cases being settled earlier—why would someone plead if a trial was not going to take place until two, three or four years' time? Another significant issue is witnesses' availability or willingness to give evidence for trials that could be some way away. In the detailed modelling reports, we have included some variables relating to what the impact could be.

Those are the types of things that we have brought into our modelling in order to give people as full and transparent a picture as we can of what the different options could be.

Maurice Corry: You have made no mention of people on remand, which is quite a serious consideration. Where is that issue in your priority list and assumptions?

Eric McQueen: People on remand and in custody are always a priority. During the lockdown period, custody trials were prioritised. About 48 custody trials took place during the critical lockdown period. People on remand and the

length of time that they have been held on remand will always form part of the decision on priority for trials, as will cases that involve children, including as witnesses, or vulnerable adults. A range of things are taken into consideration, and one of the key factors is people on remand. That is always part of the key prioritisation decisions.

Liam Kerr (North East Scotland) (Con): I will follow up on a couple of questions that Mr Corry asked. I am very interested in the conversion rate that Eric McQueen talked about, because it seems to me that the assumptions that underlie that are key. I looked at some of the figures. For sheriff court solemn trials, if physical distancing remains in place until March 2021, the estimated number of cases by March 2026 is 1,188. However, if the conversion rate increases from 36 per cent to 56 per cent, the number of cases will be 6,900 by 2026. I find that fascinating. Can you give us a bit more detail on what those figures are based on? You talked about witness availability and pleading. What does your modelling suggest about the likelihood of the conversion rate increasing from 36 per cent to 56 per cent?

Eric McQueen: The likelihood will depend on what model we adopt. We are in discussions with the Government about creating remote jury centres for sheriff and jury business. If there is agreement, we expect to have the centres in place by the end of this year—probably in November or December. That would give much greater certainty about the number of cases that can proceed, and trials would run through quite quickly.

As long as we get the jury centres in place, the risk of the conversion rate increasing will drop quite significantly and be relatively low. If the jury centres were not in place and we could not run 18 trial courts a day but could run only a vastly lower number, the risk of the conversion rate increasing would become more of a reality. As I said, if people see the judgment as being longer into the future, it is more likely that they will not plead early, and there is the risk that witnesses will no longer want to participate in a trial if it will be a number of years down the road.

If we were sitting here today saying that we did not have a solution and were not confident that we could deliver remote jury centres, I would be more concerned. If we can deliver the jury centres by the end of this year, that will reduce the risk significantly and we will be closer to the figures that I am projecting today. However, there is a risk.

Liam Kerr: I understand.

The letter from the cabinet secretary on 14 August refers to £5.5 million coming your way for the High Court remote jury centres, but I presume that there are other needs for remote sheriff and

jury processes. Are discussions taking place about the money that you need to run those processes, too?

Eric McQueen: There certainly are. We have a daily discussion about that. The £5.5 million will provide the capacity to create the two remote jury centres for the High Court. To create the same model for the sheriff and jury court will cost something in the region of £6.5 million. We are having an on-going and active discussion about that, and I hope that in a relatively short number of days or weeks we will be able to confirm that and make an announcement.

Liam Kerr: Excellent. Maurice Corry mentioned the prioritisation of cases. The current and immediate reaction to that is understandable, but how do you anticipate the next year looking in relation to prioritisation in order to get the backlog down?

Eric McQueen: I think that the prioritisation will not change that much. The basic principle of prioritising those cases in which people are in custody or children or vulnerable witnesses are involved existed prior to Covid. We do not see that changing radically. Those three areas—custodies, child witnesses and vulnerable adults or children—will always be the priorities.

The Deputy Convener: We now move to John Finnie, who is joining us remotely.

John Finnie (Highlands and Islands) (Green): Good morning, panel. I have some questions for Eric McQueen. Much has already been covered, but I want to pick up on his point about prioritisation and vulnerable witnesses. What is the status of the Glasgow evidence and hearings suite, which, to my mind, is fundamental in not only supporting victim survivors but addressing capacity issues for trials? Will you talk about the position with the suite?

Eric McQueen: Yes. The Glasgow evidence suite is the groundbreaking suite that we created last year for the very purpose that John Finnie points out. It ensures that we have somewhere for people to give evidence to courts directly and, more importantly, where we can take evidence by commission in the more serious cases, with the pre-recording of evidence being done well in advance of the trial.

The suite was designed to be discreet and personalised and to have a different feel from a court environment. Unfortunately, it was not designed to deal with 2m social distancing and, because of that, we are unable to use the vast majority of the suite at the moment. Work is being done on how we can adapt it, and we believe that, at an early stage, we can get at least two of the suite's rooms back into use for vulnerable witnesses.

In the meantime, we have been making wider use of the court estate where we are not running court business, and 40 evidence by commission hearings have taken place and another 48 are scheduled.

We are giving preference to vulnerable witnesses and we are working carefully with our estate and specialist facilities to maximise capacity while working within the challenges of 2m social distancing.

John Finnie: I encourage you to take every step to accelerate the adaptation of the suite, as that is the direction of travel that many of us want for victim survivors.

Eric McQueen: It is a priority for us. If we can maximise the use of those facilities, that is what we will do.

John Finnie: You have covered a lot of ground, but I have a couple more questions.

You touched on Lady Dorrian's working group and you alluded earlier to some of its work. What lessons have been learned from running small jury trials over the summer?

Eric McQueen: We ran two models of jury trials over the summer: one in Glasgow, using a three-court model, where the jury was dispersed in the public areas of the courtroom; and one in Edinburgh, where the jury was in a separate room with a videolink to the courtroom. Both models worked fairly well; the feedback from all involved was that they worked perfectly satisfactorily.

However, the clear consensus was that the model with the jury remote from the trial court was better. The jury was seen as a more collective group than in the model where they were spaced out around the public gallery. In that model, it was also difficult to get good viewing angles and for the defence and prosecution to engage directly with the jury.

In the two-court model in Edinburgh, we created what we call a jury wall. Directly above the jury box are large screens, where—just as John Finnie appears on the screen in the committee room—we showed each of the individual 15 jury members. When the defence, prosecution or judge addressed the jury, they addressed the jury wall and looked directly at the jurors on the screens. Through different cameras, the jurors in the remote accommodation had good views of the judge, accused, counsel and defence, which gave them a full view, as if they were sitting in the courtroom.

That came out as the clear preference, which is what led us to consider whether, if we can have the jury remote from the trial courtroom, we could have it remote from the building altogether. That led us to look at the cinema model as a fit-for-

purpose model with good spatial accommodation, excellent technical infrastructure and very large screens that can be subdivided. The jurors who sit in the jury centre will look at a large screen that will be divided into four, with a view of the judge, the accused, the counsel and the prosecution and, at the bottom, any video evidence that is displayed in court, which will go directly to the jurors.

The two trials were key to ensuring that we found the right solution. As I said, we have worked collaboratively with the prosecution, the defence and the third sector, and we have come up with a solution that everybody is comfortable with and feels is the right direction to take.

11:00

John Finnie: Thank you for those replies, and for all the work that you and your staff are doing—it is appreciated.

Maurice Corry: My question follows on from Mr Finnie's about remote participation in court cases. Will that lead to a lessening of local justice and possibly to more court closures?

Eric McQueen: I hope that the answer on both of those points is no. With some of the virtual courts and remote access, we provide an audio connection where that is appropriate, so that anyone can dial in and hear proceedings. In some cases, people can view proceedings. With some cases in which there is high public interest, we have had many hundreds of people tuning in to view court proceedings in a way that would never have happened before. Perhaps we have a way of widening access to justice.

It is very important that local justice is always delivered locally. Five or six years ago, we went through an extensive programme in which we closed a number of courts throughout Scotland. At that time, we were clear that we thought that we had found the right long-term model and that it was incumbent on us to make heavy investment in technology to increase remote proceedings and try to minimise physical attendance where possible. What we have achieved over the past four or five months is entirely consistent with that path or direction that we set out. Local courts will always play their part, irrespective of what model we have. To be honest, concerns over access to justice or closure of local courts are not even on our radar.

Maurice Corry: What sort of exemplar or comparator are you using to see whether remote participation is working? Do you have something to measure it against?

Eric McQueen: Various academic studies have been done that are of interest, although they have all been fairly small scale in terms of their stretch.

We have been thinking about putting in place a comprehensive evaluation, and we have done that for the remote jury exercise. We are talking to the Scottish Government justice analytical team and we are thinking about engaging academics to carry out a longer-term study of the benefits and issues. No doubt, the approach will evolve and change over time. What we put in today might not be the perfect model in two or three years, so we have to be open and be willing to change and adapt.

The Deputy Convener: Before I bring in Shona Robison, I have a quick question. What work has been done to ensure that people with learning difficulties or communication difficulties are assisted when it comes to participating remotely?

Eric McQueen: That is a good question, and we have more work to do on that issue. Assessing the needs of individuals who come to any court proceedings has always been a key part of the process. The preliminary hearings before trials and before cases come to proof are always about looking at the needs of the individuals involved. As we move more and more to remote hearings, we will need to get better at that, so we have to find a better way of signposting the support and we have to have a clear understanding of the needs of individuals who come forward.

Until now, the vast majority of remote hearings have tended to involve the legal profession or people's representatives, but there is good academic evidence on how people with learning difficulties can access processes. In some ways, remote hearings can actually improve access. You are right to raise the issue, because it is an area where we have more work to do, although the issue forms part of our initial considerations.

No remote hearing takes place unless there is agreement with all the parties on how it will operate and what facilities might be available. That check is already in place, although there is probably more that we could do in advance to signpost and make clear what services are on offer and how they can be adapted.

Shona Robison (Dundee City East) (SNP): Could you please outline the measures that are currently in place to prevent the transmission of Covid-19 within court buildings? Have you had any feedback on how well those measures are working and on ways in which they might be improved?

Eric McQueen: We carried out some comprehensive risk assessments, which we published five or six weeks ago on our website, setting out our risk assessment approach to the reopening of our buildings and to safety. We took extensive advice from Public Health Scotland, and we liaise with other jurisdictions on the models and

systems that they put in place. As I say, that risk assessment has been published.

We have made a significant investment in the deep cleaning of our court buildings, and there is a vastly increased cleaning regime that operates on a daily basis, with instant access to deep cleaning when we need it. We have extensive signage in all our buildings, with floor space markers indicating 2m social distancing. We have marked off extensive areas of seats that cannot be used and areas that cannot be occupied. We have very much tried to go for high visibility, as we have tried to communicate clearly on our website. Information leaflets are available for court users and jurors, in which we try to spell out and describe the various types of circumstances.

The feedback so far on that has been very positive. Fortunately, we have had no outbreaks within any of our court buildings. Touch wood, that is a good place to be, although we know that, but for the grace of God, that could easily change. We have clear procedures in place on how to deal with any individual who displays symptoms, how we get them into an isolated area and how we then treat the area where they have been. We are live on those things, and we have worked with both the Crown Office and the Law Society of Scotland in producing joint guidance, which is on our website, and in signing up to the commitment that we have in place.

I think that what we have in place at the moment is adequate, and it is performing well. There is a real risk of complacency, however, as we have seen among our own staff—and I have probably experienced it myself. We have seen that with judges and the people who use our court buildings. Perhaps there was a risk, even up to a few days ago, that people were getting too complacent, and it was quite hard to remember what to do.

We have gone to great lengths to reinforce things with our staff. I have written to the Crown Agent and the president of the Law Society to ask them to restate the position with staff to ensure that people stick to it. I do not think that the measures are weak, but there is a natural complacency. A lot of the stuff in the media about the lockdown in Aberdeen and different areas is making people very aware that the virus is out there and has not gone away. It is a matter of ensuring that we stick to the rules and the facts that are put out by Government. That is the key thing.

We are currently considering the compulsory wearing of face masks. At the moment, people can wear face masks in the public building, but it is not mandatory at the moment. I think that, as we start to bring more business back into the courts, a fairly logical position, which we will probably move

to quite quickly, will be to insist on face masks being worn in all the public areas of our buildings and to encourage people to do the that, until we can get a legislative basis for face masks being worn.

Shona Robison: When do you think you will make a decision on that?

Eric McQueen: It is something that we are actively discussing at the moment, and we are having some discussions with Public Health Scotland about some of the issues. I expect that we will move on that in a short number of weeks, if not quicker.

The Deputy Convener: Thank you, Mr McQueen—that was very helpful. We will now move on to some questions on the Scottish Prison Service.

James Kelly (Glasgow) (Lab): Thank you, convener, and good morning, panel. It is good to be back physically at a meeting of the committee in Holyrood.

My question is for Ms Medhurst and relates to the prison population. At the start of the pandemic, the number of prisoners was 8,200. That is a fairly high level, which puts pressure on the estate. The committee has previously raised concerns about overcrowding. The prisoner release scheme brought the number down to 6,900, but it is starting to rise again—it is now at 7,300. What is your view of the trend going forward? Is there going to be a return to the level that we had at the outset of the pandemic, which would obviously present a concern around overcrowding?

Teresa Medhurst: You have described the position regarding the population very accurately. At that time, we were probably sitting with a level of just over 70 per cent single occupancy, because of the population increase over the winter. Because of the slowdown in court business and the early release arrangements, the number was brought below 7,000. At that point, the maximum single cell occupancy was around 85 per cent.

There are some potential difficulties with some of our multiple populations regarding those who are sex offenders or protection prisoners, and some of those tensions make it more difficult for some aspects of our prisons to reduce to single-cell occupancy totally.

There are some establishments where we do not have those problems, but we have most difficulty at our local establishments, such as Barlinnie, Perth and Edinburgh. With the recent increase in population, that is where the double-occupancy levels have been rising again. During the height of the pandemic and the restrictions, the increase in single-cell occupancy allowed us to apply the protective measures that we required to

put in place in line with Government guidance and Health Protection Scotland guidance in a way that has ensured we have managed to keep the number of cases in prisons to a low level during that period.

As we start to come out of lockdown and lift the restrictions in prisons in line with the Government's route map, the risks clearly increase. As we move to greater occupancy with a rise in the prison population, there are clearly health concerns around that, as well as concerns regarding the amount of activities that will be made available to those in custody due to the restrictions and physical distancing.

James Kelly: The Howard League for Penal Reform and other organisations have expressed concern about the mental health and wellbeing of prisoners, particularly in connection with the restrictions on exercise, education and showering, which you mentioned. What is the plan for lifting those restrictions as we move out of lockdown?

Teresa Medhurst: As you know, we had to make some amendments to the prison rules. We made decisions at the very start of the lockdown restrictions based on what we anticipated might require some flexibility. Our experience has been that those restrictions, particularly on access to showers, to food and to clean clothing and laundry, have not been required. Although the current amendments run out at the end of September, we anticipate laying further amendments to give us a degree of flexibility.

We have faced some pressures. There is currently an incident at Low Moss prison, where a member of staff tested positive. There are currently more than 50 staff who are isolating as per Government guidelines, and 124 prisoners are restricted in their access to movement outwith their area. They are still getting access to fresh air and to recreation, but we have not as yet recommenced access to education on that site and will not do so until we are through the current period.

We anticipate that the issues that communities are experiencing regarding spikes and outbreaks will be a feature of prisons as well. Therefore, there may be some requirement to continue with some of those amendments to the rules. However, we will not be taking forward those amendments that we have not used and do not anticipate needing to use.

James Kelly: My final question is about home detention curfew. The numbers of those who are being released under home detention curfew are still at a relatively low level. Obviously, they had decreased around the time that a prisoner who had been released on home detention curfew was

convicted of murder. What is your view on those numbers? Are they likely to increase?

11:15

Teresa Medhurst: As you rightly say, the position with HDC changed in 2018. Some of the regulations on access to HDC changed considerably at that time.

Around 40 individuals were on HDC when the pandemic began. Since then, two further changes have been made to HDC. The first is the removal of the presumption against release in the HDC guidance with regard to decision making. The second is the extension of the eligibility criteria to include individuals who are at a medium supervision level. Since those changes were made, the figures have increased slowly, but it is clear that the earlier release arrangements have also had an impact on them, because a number of those individuals would have been eligible for HDC applications. Currently, there are between 80 and 90 individuals out on HDC.

We are doing further work with Government on HDC, including holding internal workshops this week and reinstating our learning sets for managers who are involved in HDC applications. That is so that we will have a better understanding of any issues that we need to improve with regard to our processes and can move on that quickly. It is also to enable us to understand whether we are achieving the maximum benefit from the HDC scheme in the current configuration.

James Kelly: Thank you.

The Deputy Convener: I will bring in Liam McArthur, who is joining us remotely.

Liam McArthur (Orkney Islands) (LD): I will start, as others did, by thanking panel members and their colleagues for their efforts over recent months, during an enormously challenging period.

Maurice Corry referred to problems in relation to the remand population in our prisons. Obviously, the pandemic has exacerbated that problem; it was a serious issue leading up to March as well. I think that the figure for the remand population in 2019-20 was around 1,400, and it has now risen to just under 1,700. I have raised this issue with the cabinet secretary in the debating chamber. That number represents a quarter of our prison population; it is twice the level south of the border. The number appears to be unsustainable, so what should we be doing to bring down the overall number and the proportion of our prison population who are on remand?

Teresa Medhurst: We have seen an increase in the remand population. Since the beginning of May, remand numbers have increased by over 800. Clearly the restrictions that have been placed

on court business have had a significant impact. As court business starts to reopen and returns to normal—whatever that looks like—there will be an impact on remand numbers.

It is unclear at this stage what that impact is likely to be, particularly considering that some people will have spent an extended period of time on remand and we do not know how much of that sheriffs will take into account when they apply sentencing. It is really difficult at this stage to understand what the further implications will be for the remand population.

I know that there have been discussions in Government and through other justice forums about how best that issue can be tackled and what other options can be put in place to tackle some of the real pressures relating to remand.

Liam McArthur: That is helpful. However, Eric McQueen was talking about how we get back to a kind of manageable backlog in the court system. In relation to remand, it seems that we should be not only unwinding the additional numbers that have recently come into the prison system through remand but actually improving on the pre-pandemic situation.

Are there specific issues that we should be considering? The cabinet secretary mentioned electronic monitoring of those who are on bail. In particular, are there specific steps that we can take to address the higher rate of remand for our younger prison population? The number of young people on remand might be quite small, but I understand that, as a percentage of the overall prison population of young people, the rate is significantly higher.

Teresa Medhurst: You are right—the cabinet secretary mentioned electronic monitoring linked to bail, and that approach clearly offers an alternative to placing people on remand. Other options have been scoped, particularly through the work of Community Justice Scotland, which has been doing some work on community alternatives and what they might offer in order to provide the courts with more options around remand.

We know and understand that a proportion of those who come into custody have related issues to do with housing or addictions. A number of those factors might well be impacted were electronic monitoring to be introduced as part of a bail option, and that would certainly give us more scope to prevent those people from coming through our doors.

Liam McArthur: Thank you for that response. I conclude with an appeal for more detail on those measures in writing, specifically on any measures that are aimed at reducing the rate of remand among the younger prison population.

The Deputy Convener: Do you happen to have approximate figures on the number of women who are on remand?

Teresa Medhurst: I am sorry, but I do not have them with me.

The Deputy Convener: That is fine. I threw that question at you. Maybe you could forward that information to us. That would be helpful.

Teresa Medhurst: Absolutely. I will send that on to you after the meeting.

The Deputy Convener: Thank you.

Shona Robison: I have some questions about conditions for prisoners and family contact. You touched on the subject, but with the easing of lockdown restrictions, what has been the position on prisoners getting more time out of cells, purposeful activity and so on? Has that improved?

Will you also say a little about families? They have been able to visit prisoners again since early August—with some exceptions, for obvious reasons. Compared with the pre-lockdown situation, what are the main differences for visitors in terms of numbers, times et cetera?

Teresa Medhurst: I will start with the restrictions. We have in place a new governance structure that includes not only operational people, health colleagues, health and safety representation and trade union side partners, but also Health Protection Scotland and local health protection colleagues across each of the establishments to ensure that all our phased plans have robust risk assessments.

We are working in partnership with our trade unions and we are informed where we can be by User Voice. We also include the latest and most up to date health guidance, because the guidance has clearly been changing, particularly for us. We are termed a “complex setting”, and a number of changes have been made to the guidance—particularly in the early days, but also more recently, and particularly in relation to the lifting of restrictions.

At each stage of the lifting of restrictions in the community, we have taken a commensurate approach within prisons. We have tried to reflect not only our experience but the facilities that we have, and to lift restrictions at the same time and in the same way.

We have not been able to do that exactly as timeously as the Government has been able to, because prisons are much more complex, with the staffing resource that has been available to us, and there are different conditions on different sites. Different prisons have different physical environments. The lifting of the no-access-to-visits restrictions, for example, was phased over the

course of a week to allow establishments to ensure that they had in place the most effective approach that they deemed appropriate in order to protect people’s safety. That was informed by the best health guidance at the time.

In lifting restrictions, we have followed the Government guidance and increased the social bubbles that we created at the very start of the pandemic for the number of people who could associate together at exercise and recreation in order to facilitate greater time out of cells. Throughout the pandemic, we have kept some of our work parties going because, obviously, people needed to be given meals, and laundry and cleaning needed to be done. However, we are now in line with Government advice and going back to re-establishing work parties that can now be in put in place.

As of 11 August, we reinstated learning. The learning centres are therefore now operating as well, but with limited capacity. I am sure that members will understand that.

On visitors, we understood that there would be quite a lot of anxiety for families—and particularly children—about going back into prisons. We wanted to ensure that the experience was as positive as it could be, so we used the third sector organisation Families Outside and our visitor centre providers to do some consultation with families in order to understand where there might be tensions or issues and what their concerns might be so as to be able to provide as positive an experience as possible. That has meant that all the prisons except Barlinnie have restarted visits allowing three visitors. Barlinnie currently allows only two visitors because of its size and the numbers.

When people go into prisons, they must wear face masks, but not in the visit room. Obviously, children under 12 can have physical access, and we have restricted the number of people in visit rooms to ensure that there is physical distancing during visits.

We have put all the advice and guidance on our website to ensure that people understand what the experience will feel like when they go in. So far, the feedback that we have received has been positive.

Shona Robison: Virtual visits have probably become more of a tool to enable families to keep in touch. Will they continue beyond the pandemic, particularly given the distance that some families have to travel? Do you see virtual visits as being as important going forward?

Teresa Medhurst: To be honest, the virtual visits have been a revelation. I have heard stories about young children being able to show dad that they have new shoes for school. Previously, they

would not have been able to do that coming up to a visit. For some people, being able to see into their homes, which they have not been in for some time, has been quite painful but, as you have said, virtual visits have opened up remote access. Foreign nationals have been able to utilise the service and, in particular, people on islands, who can take days, at significant cost, to visit, now have much more frequent access. We certainly see that as a hugely positive benefit, and we hope to continue virtual visits past the pandemic.

Shona Robison: Will you give us a brief update on the level of throughcare that is available to prisoners and what impact there has been on the provision of that service?

Teresa Medhurst: That is a really good question. We probably focused so much on internal processes in that area that we forgot about people who were leaving prison and how much the environment would have changed for them. That was particularly brought home to us with the early release arrangements.

We moved very quickly to work with public sector and third sector partners to look at ways in which we could better prepare people for the changes in services in communities, because a lot of the services moved to telephone or online access, which was going to be problematic for people. They also needed to better understand how they would need to comply with restrictions within society, what that would look and feel like for them, and to ensure that they were connected to services. That meant things like our health colleagues providing those who required prescriptions with seven days of medication and a prescription for 28 days. We also improved our data-sharing arrangements with our public sector partners to ensure that we could better connect with and make preparations for people who were leaving custody.

All those things made a difference to people when they were leaving custody, but they have clearly moved into a world that has changed quite considerably.

11:30

Shona Robison: If you have any further detail on that, it would be useful if you could provide the committee with it.

You talked about Low Moss prison earlier. Can you tell us today how many prisoners or members of staff are self-isolating? You talked specifically about Low Moss, but what about the entire prison estate?

Teresa Medhurst: At the moment, across the entire estate, 134 individuals are isolating, 124 of whom are the Low Moss cases. There are 10

others across eight other prisons. We have not had a positive case in prison for something in the region of 90 days. Those individuals are taking precautions at the moment but whenever anyone who is in prison identifies, or is deemed to have, symptoms that could be of Covid-19, they are tested immediately by our NHS colleagues.

Shona Robison: That is good news about there being no positive cases for more than 90 days.

What action has been taken when there has been failure to comply with social distancing, which is part of your management of Covid in the estate? We heard about an issue at HMP Kilmarnock, where the inspectorate found that, at times, staff did not adhere to the rule that they should wear personal protective equipment when they cannot maintain a 2m distance. What action is taken in those case?

Teresa Medhurst: All through the pandemic, we have put out regular—almost weekly—messaging about social distancing, compliance and personal responsibility. Our guidance has been clear and open to people. When people cannot apply physical distancing, they require to do their own assessment and wear appropriate PPE. Equally, we have guidance on where PPE must be worn, particularly when dealing with people who are isolating because they are symptomatic.

As Eric McQueen said, we were made aware recently that public health guidance, particularly around complex settings, was likely to change and that face masks might become mandatory. We therefore took the decision ourselves a week past Friday to make it mandatory for everyone to wear face masks. Updated guidance went out on Friday of last week giving more specific and detailed information about when and where. Someone who is sitting in an office on their own does not need to wear a face mask. However, if they are in a public area, or if they leave their office to move around a public area within the prison, they are required to wear a face mask. We made that change because we considered that it was likely to be made mandatory.

However, that does not negate people's personal responsibility and the messaging that still requires to go out about ensuring that people apply physical distancing when and where they can. We continue to encourage people to do that and to come forward when they have not done so. If there are any instances where we feel that there has been any negligence, we will need to take firmer action.

Shona Robison: The face masks apply to staff but not to prisoners in communal areas.

Teresa Medhurst: Not at the moment.

Shona Robison: Might that be considered?

Teresa Medhurst: That continues to be under active consideration as we move further out of the restrictions.

The Deputy Convener: The final question is from Liam Kerr. I ask you to keep questions and answers brief please, because we are overrunning slightly.

Liam Kerr: I certainly shall, convener—thank you.

My question is for both witnesses. What impact is the pandemic having on your spending plans? What conversations are being had about next year's budget? Are you looking for increases and, if so, where?

Eric McQueen: I think the answer to the final question is yes. We are having extensive discussions with the Scottish Government at the moment. We have a sub-group formed of the justice board—it has just been named the criminal justice board—and it brings together the main criminal justice organisations to look collectively at the range of solutions that we are considering over the next few years and what the overall impact might be. We want to be sure that we are taking a joined-up position and it is not just about each organisation looking at their own particular priorities. That work is being done at the moment. It is reaching a good stage and it will be part of key planning for next year.

From our perspective, significant on-going investment will be required for the remote jury service. We have already talked about the amount of money that is involved in that. We have received £4 million from the Government this year to upgrade our digital infrastructure and put in place the facilities that we need for remote hearings. Again, there will be a continuing need for that.

Discussions are very active, and to be honest, some very large numbers are coming out of those discussions, as you will probably not be surprised to hear.

Teresa Medhurst: Just to reflect on what Eric McQueen said, there are cost pressures, some of which are about digital and some about PPE. We are monitoring those cost pressures closely and reporting them to Government. We did get an uplift in our budget this year, but we are planning and preparing for next year as well. That is all very complex because it is difficult to see the impact that that will have going forward, particularly because of the lockdown restrictions. We are monitoring the budget closely and will continue to work closely with Government colleagues on our expectations. They are well aware of our current cost pressures.

The Deputy Convener: That brings us to the end of questions. I thank both witnesses for the helpful information that they provided. We will suspend the meeting for five minutes to allow for a change of witnesses.

11:37

Meeting suspended.

11:42

On resuming—

The Deputy Convener: Welcome back, everyone. Our second panel is the Cabinet Secretary for Justice and his officials. Neil Rennie is director of justice in the Scottish Government, and Clare Hicks is deputy director, police division in the Scottish Government. I welcome them to the meeting and invite the cabinet secretary to make short opening remarks before we move to questions.

The Cabinet Secretary for Justice (Humza Yousaf): Good morning, and thank you very much for inviting me to provide the committee with an update on the continuing impact of Covid-19 on the justice sector, and on what can be expected over the coming months.

It is important to update and engage with the committee on how Scotland's justice system has responded thus far to the challenges that have been presented by Covid-19, and to set out what we as a Government are doing to allow the system to recover and renew. I welcome that engagement today and going forward.

I express my sincere thanks to everyone who works in the justice sector. I am sure that members will join me in paying tribute to the dedication, on-going commitment, resilience and adaptability of all justice agencies and to those on the front line for their support and response during the public health crisis.

I again put on record my appreciation of and gratitude to our police officers and staff for the excellent job that they have done and continue to do during the public health emergency. Their approach has, rightly, commanded widespread support and has been firmly within our traditions of policing by consent. I am sure that members will join me in paying tribute to them and to the role that they have played in supporting the regulations and guidance and keeping us all safe.

The effective action that has been taken by prison and health staff has helped to keep the infection rates in our prisons low. That has been acknowledged by others, including, for example, Her Majesty's chief inspector of prisons for

Scotland, who has noted that the decisive action which has been taken has been

“no mean feat given the vulnerability and close confinement of those in prison”.

The level of stability that has been maintained during this time is testament to the efforts of those who work and live in our prisons, and my sincere thanks remain with them.

11:45

Because of the low infection rates, the SPS is now able to implement a phased approach to easing restrictions, including the return of in-person visits in all prisons and recovery of all key parts of the regime. We know that the virus has not gone away and that things will not feel normal just yet for visitors, as physical distancing and strict hygiene measures are in place, but I know that that will be a welcome relief for those who have deeply missed seeing their loved ones in person.

The use of virtual visits across the estate, and mobile phones, which are now in place in the vast majority of our prisons, will continue in conjunction with in-person visits as the SPS continues towards regime recovery. As part of that recovery process, the SPS is actively considering the need to extend, amend or revoke the various changes that have been made to the prison rules in response to the pandemic, taking into account the need to ensure that it is prepared for all eventualities, including, of course, any resurgence of the virus, either nationally or locally. Any such changes will, of course, be subject to parliamentary scrutiny in due course.

The decline in prison population numbers because of the decline in court business and the effects of the early release scheme was very much welcome and contributed to the SPS's ability to successfully manage the spread of Covid-19. The early release process was not decided on lightly, but it was effective in helping our prison service to respond to Covid and in protecting the health of prison officers and, indeed, those in our care. We will continue to be vigilant, and we will continue to work with the SPS and our justice partners to consider whether more needs to be done to maintain the safe and effective operation of our prisons.

We continue to monitor the population closely. During the coming weeks and months, we will consider what further action will be required to reduce the use of imprisonment and to maintain a lower prison population.

Last week, I wrote to the committee to provide a clear assessment of the scale of the challenge that our justice system faces in these uncertain times. That demonstrates the need for imaginative joint

working to reduce delays and mitigate their impacts as much as possible.

We are already making progress. In our courts, new digital approaches that are supported by emergency legislation have been introduced and remote hearings have been rolled out across the courts. Sheriff courts across Scotland have reopened, and priority has been given to custody cases. Last month, High Court trials restarted in Edinburgh and Glasgow in new formats that are designed to ensure a safe and secure process that accords with public health requirements.

I have recently agreed funding to the courts service to take forward a ground-breaking and innovative new solution and approach that will use cinema complexes as remote jury centres to make up to 16 jury rooms available for High Court trials.

I acknowledge the adaptability, resilience and hard work of everyone across the wider justice system and the third sector who has worked so hard to bring about those changes and serve the people throughout the pandemic. However, I also recognise that further work will be required to address the very serious situation that we face. The challenges are being faced by jurisdictions around the world, and there are no easy answers. Addressing a case backlog is much more than just a statistical exercise. Court delays have a huge human impact and significant implications across the entire justice system. That is why it is so important that we work together to recover, renew and transform the system as a whole.

As always, I look forward to answering members' questions, recognising that operational matters for the Scottish Courts and Tribunals Service rightly rest with the Lord President.

The Deputy Convener: Thank you, cabinet secretary. We will now move to questions.

It appears that Police Scotland's approach to policing during the pandemic has been very positive and that public engagement has been positive. Are you satisfied that Police Scotland continues to use its emergency Covid-19 powers proportionately and with the public's consent?

Humza Yousaf: The short answer to that is yes, I am very confident of that. Members will have seen a range of surveys that have been conducted to look at the levels of confidence that the public have in Police Scotland. Those levels have been exceptionally high.

The chief constable and his officers have taken a commonsense approach. We know that enforcement has been the last resort. The chief constable and his officers have often looked to engage, explain and encourage and then, as a last resort, enforce the law where necessary. When it has been necessary, they have enforced. We can

see that from the number of fines and fixed-penalty notices that have been handed out to people.

I have great confidence in the approach that Police Scotland has taken. In particular, I commend the chief constable for his tremendous foresight in setting up the review group headed by John Scott, which involves a number of expert stakeholders. That group is looking at the approach that Police Scotland has taken to policing during the pandemic, and it is advising the police accordingly.

Maurice Corry: I want to add to the cabinet secretary's comments about the work that the police and the prison service have been doing at this very difficult time. It has been tremendous. I congratulate both services on that and thank them for their positive approach, which has been excellent.

Has the chief constable raised any concerns at all with you about the speed at which we are moving through the Government's route map?

Humza Yousaf: That is a really good question. The chief constable or his deputy chief constable team and I talk regularly. Up to this point, we have been speaking twice a week. It is important that Clare Hicks and her team will engage with Police Scotland, as I will, regularly in advance of changes that we are looking to make, whether those are in relation to the route map or in response to certain circumstances, such as the Covid-19 cluster in Aberdeen. Where it is appropriate, we will take feedback from Police Scotland. For example, when it came to the opening of outdoor hospitality, Police Scotland rightly said to us that we will want to avoid the situation that arose in England. My understanding is that outdoor hospitality opened on a Saturday there. Police Scotland suggested that it would not be a wise move to open beer gardens on a Saturday. I fed that back, and that is why we opened beer gardens during the week rather than on a weekend. I often take feedback from the chief constable and Police Scotland.

I do not think that any major concerns have been raised about the pace at which we have been moving through the route map. Members will have seen the chief constable attend the daily briefing on a number of occasions alongside the First Minister to show that we have a joined-up approach. The advice and feedback that I have had from Police Scotland have certainly been absolutely invaluable.

Maurice Corry: How has the chief constable been reassured that the Government's plan is working? How do you reassure him about that?

Humza Yousaf: Obviously, you would need to ask the chief constable whether he feels reassured by what the Government says to him.

However, from the conversations that I have had, it is really important that we include Police Scotland right at the beginning when we are formulating ideas and working our way through the route map, for example. I think that there would be a big difference if we were to make a decision without involving the police and the police then had to catch up with the guidance and regulations. Because we have such a close relationship with the police, nothing takes them by surprise. They work with us, and they are therefore able to prepare their officers for any announcements that we are going to make. That arrangement works well for both sides.

Bill Kidd (Glasgow Anniesland) (SNP): You have mentioned this issue already, cabinet secretary, but it bears speaking about again. It has been very welcome that Police Scotland's approach has been to engage with the public before thinking of moving to any enforcement action. You mentioned clusters of infection. Are you aware of any changes that might be necessary with maybe raising the enforcement level? You talked about John Scott's review group and his work with the chief constable and the Government. As we move through the route map, are there any difficulties in maintaining the engagement approach rather than taking enforcement actions?

Humza Yousaf: Those are really good questions.

From a Police Scotland perspective, policing by consent is important at any time, but particularly during the pandemic. We are seeing the biggest restriction of people's liberty in my lifetime. That is, of course, for good, public health reasons. If Police Scotland had taken the opposite approach to the one that it is currently taking and had gone in with enforcement first, there is no doubt that that would have damaged the important relationship that it has with the public. I think that the four Es approach, with enforcement as the last resort, is absolutely the right one to have taken.

On the question about where we might see clusters or outbreaks and whether there might need to be a change of approach, a helpful thing about having a single national police force is that, as we saw in Aberdeen, Police Scotland is able to draw on resources quickly and put them in place in a flexible manner. Additional resource was brought to Aberdeen at the time when some of the restrictions were reimposed there a couple of weeks ago. It is incredibly important that Police Scotland is able to do that.

Where Police Scotland feels that it has to be able to use an approach that involves enforcement, that is an operational matter. It will do so where it feels that that is appropriate. An example of that is the infamous case of Boli

Bolingoli's utterly reckless actions. As members know, he was issued with a fixed-penalty notice. Police Scotland has made it clear that it took that approach for a number of reasons, including because there were a number of aggravating factors. I thought that it was remarkably important that it took that approach because of the message that it sent due to the high profile of footballers and their status as role models in society.

Where necessary, Police Scotland will take an enforcement approach, and the choices that it has made so far give me confidence in that approach.

Bill Kidd: My next question is relevant to what you have just said. As we know, the police have been engaging with the public rather than moving to enforcement action. However, recent indicative figures that Police Scotland has published have shown that around 3,000 fixed-penalty notices have been issued specifically in relation to Covid-19 legislation.

During the good number of months during which that legislation has been in place, other offences will have been committed but will not have been generally covered in the media. The committee is interested to know whether there have been significant increases in offences other than those that are related to Covid. Have the behaviour patterns of the population changed very much during that period?

Humza Yousaf: At the beginning of the pandemic, during lockdown, there was an impact on crime—less crime was committed at that time. We saw that in jurisdictions across the United Kingdom, for obvious reasons. However, there were concerns that other types of crime could potentially increase during that period, with domestic abuse being the obvious example. We can certainly look at the most recent data that we have in that regard and write to the convener about it.

You are right that Police Scotland regularly publishes information about fixed-penalty notices and other engagements that the police have had with the public around the coronavirus legislation. With regard to other offences, we do not have figures for the lockdown period—I think that I am right in saying that we have figures for quarter 3, 2019-20. However, I will talk to Police Scotland and officials and, if we have any verifiable statistical data on that issue, I will write to the convener, who can distribute that to committee members.

Liam McArthur: From discussions that I had with the chief constable earlier during the lockdown period, I think that it is fair to say that the police were pleasantly surprised by the degree of compliance with lockdown restrictions.

Obviously, as the restrictions start to be eased, the messages become a bit more nuanced and complex. As we have seen, outbreaks are occurring in different parts of the country. Aberdeen is probably the most notable example, but there is also an outbreak in Orkney. What are the challenges for the police in communicating messages to the public and in enforcing advice and guidance locally, which may be different from what applies nationally?

12:00

Humza Yousaf: I thank Liam McArthur for the question. The situation does present challenges. Of course, a national message that applies in a blanket way across the country is much easier to communicate than a more nuanced message tailored for particular regions or geographies. However, I know from my regular discussions with Police Scotland that it is pleased with the high level of compliance in Aberdeen, for example, from licensed premises. Indeed, Police Scotland has been really pleased by the response from the hospitality sector and other sectors to the reimposed restrictions.

We have to accept that, where there are regional outbreaks, or where restrictions are reimposed, messaging will always be challenging. We have to ensure that the Government, Police Scotland, the local council and all other stakeholders speak firmly with one message in and around Aberdeen. That has been done well, including by local MSPs from across the political spectrum who represent the north-east region and Aberdeen itself. Although they may have done so with a heavy heart, they all communicated the same message that they understood that the restrictions had to be reimposed. It is exceptionally helpful when we are able to act in that way.

The chief constable has often been alongside the First Minister at the daily briefings. That is also helpful and positive, because a lot of people are watching and receiving those messages. It is challenging, but the Aberdeen example clearly shows that such messaging can be effective.

Liam McArthur: You are right that local MSPs for the north-east and for Aberdeen have been consistent in their messaging. However, I think that they have also been critical about the fact that certain businesses do not appear to be adhering to the advice and the restrictions and they are urging a more interventionist approach. Given the resources that are available to Police Scotland, how should those be prioritised to enforce the restrictions?

A concern that has been raised with me locally is the grouping together of restaurants and cafes on the one hand with pubs and bars on the other

under a general hospitality banner, given that the businesses operate differently and that, for example, how they can apply and enforce social distancing is different. From your conversations with Police Scotland, what are you looking for in terms of a proportionate and commonsense targeting of the actions and the deployment of the resources that are available?

Humza Yousaf: I will make a few points in response to that. I know that Liam McArthur is not suggesting this, but we do not live in a police state in which the police would be knocking on the door of every single hospitality establishment to ensure that they are obeying the rules. However, many police officers, often before indoor hospitality reopened, engaged with their contacts on the beat, went into premises and made sure that they were ready for and understood the rules around reopening. That was a sensible and welcome move.

All the onus cannot be put on Police Scotland—and it rightly is not all on Police Scotland. Local authorities, environmental health officers and many other stakeholders have a role to play. Ultimately, however, the responsibility should be on the individual premises to make sure that they adhere to the rules—and there are consequences for not adhering to those rules.

On the resource question, I go back to the point that I made to Bill Kidd—there is a flexibility in the national service whereby resources can be redeployed, if additional resources are required at short notice and at pace.

However, I take Liam McArthur's general point. There will always be a challenge with localised outbreaks. In particular, if we begin to have more and more of them, and if restrictions are reimposed in a number of areas or regions, that has a resource implication for Police Scotland. I do not deny that, but I would like other stakeholders to make sure that they are playing their part.

Liam McArthur: That is very helpful. That clarification about Police Scotland's responsibility alongside the other agencies to which the cabinet secretary has referred is important.

Do you accept that, although localised lockdowns have been difficult for the communities affected, that approach has, perhaps, spared the country the wider problems which would be created by the reimposition of a national lockdown? At the same time, problems may be persistent in individual sectors. Is it your view that the Scottish Government will revisit the way in which restrictions are eased for specific sectors, if problems continue with compliance?

Humza Yousaf: For sure; that has to be part of the conversation.

The First Minister has made no apologies for saying that education will be prioritised. If that means that we have to close down pubs and bars in order to protect education, we will look to do that.

We absolutely want to open up society in a safe way, in accordance with the public health advice and guidance that we receive. At the same time, if we have to reimpose certain restrictions, we would have to do so not just on a regional basis, but potentially on a sectoral basis. We have made no bones about that.

As a Government, we have taken—and continue to take—a very correct and cautious approach. However, I accept Liam McArthur's point.

The Deputy Convener: John Finnie joins us remotely.

John Finnie: Cabinet secretary, I agree with you about the outstanding work of our public services. The huge human impact is at the forefront of all our minds.

I have questions about the case backlog for jury trials. You sent correspondence to the committee on Friday; are you content that the short-term and long-term measures that you set out will reduce the backlog? Realistically, when will the backlog return to previous levels, or even be reduced from those?

Humza Yousaf: I wish that I could give you a more definitive answer than I am about to give you, but that problem is faced by jurisdictions across the United Kingdom and across the globe. Jury trials and court business cannot, in effect, be suspended over a number of months without the expectation of quite a significant impact—which we have seen.

I had heard that the committee was taking evidence from Eric McQueen, and I caught the tail end of that evidence. Undoubtedly, he would have articulated very well the challenge of that backlog. My job is to make sure that we explore every possible potential solution to address that backlog. That is why we have funded the external remote jury centres in cinema complexes. That is a unique idea. The courts service in England and Wales is also interested in looking at what we are doing up here.

That is just one example of considering innovative approaches that have never been tried before and that, outside the pandemic, would not even have been given a moment's thought. We will examine those innovative solutions and we will do what we can to mitigate the backlog—stopping it getting any worse and then making a dent in it. There is no panacea or silver bullet: there is no one solution that will magic the problem away, and

there would not be one even if we did have a pot of money, which we do not; everybody is in challenging financial circumstances.

I align myself with what Eric McQueen told the committee earlier about the extent of the backlog and the scale of the challenge, and I reiterate what I have said about its human impact. I have spoken to a number of organisations and to victims themselves over the past few months, and there is no doubt that it is having a significant impact on people—whether they are a victim, the accused or a witness.

I will pass over to Neil Rennick, who may be able to add to what I have said.

Neil Rennick (Scottish Government): I can confirm that, as the cabinet secretary says, we are confident that the additional funding that is being provided for the jury centres will allow the High Court, initially, and then sheriff and jury cases, to return to their pre-Covid capacity. However, as the cabinet secretary said, that will not begin the task of eating into the backlog that has built up. We are doing further work to consider the best way of doing that.

I can confirm that we are confident that there is significant cross-justice activity on the matter, whereby solutions are being identified, including the innovative option of the jury centres.

John Finnie: Thank you for that, Mr Rennick and cabinet secretary.

I would like to pursue a specific point: the announcement on Friday about the non-court venues, remote juries and the backlog. The news release states that

“it would be possible to run a much higher number of trials”.

How much higher?

Humza Yousaf: We would have capacity for 16 High Court jury rooms to be available. That would be the same capacity that we had pre-Covid. I look to Neil Rennick to get confirmation of that. For High Court jury trials, that should help stop the backlog getting any bigger, although it will not make a significant dent in the backlog that existed pre-Covid. That is where we would have to consider what other solutions we could bring to the table. The £5.5 million of funding for the cinema complexes will give us the capacity to run as many trials as we could pre-Covid.

John Finnie: On the issue of other venues, I do not know whether you heard the question that I posed to Mr McQueen about the Glasgow evidence and hearings suite and the innovation that that type of location brings. It is not operating to capacity. It might make a modest difference to the numbers, but it could make a significant difference to the wellbeing of victim survivors. Will

you push to ensure that that facility is open with as much capacity as is safe to provide at the earliest opportunity?

Humza Yousaf: I did not hear your earlier question—I think that I was still in Cabinet at that time—but that is of course an operational matter for the Scottish Courts and Tribunals Service, although everybody recognises the suite as a state-of-the-art facility. I think that I am right in saying that the Justice Committee visited it, so you will have seen for yourselves how good the facilities there are. It is a real shame that they cannot be used to their full extent or capacity, but I completely understand the restrictions on that under the public health guidance—and they are very much in line with the guidance that the SCTS has received. We are in close contact with SCTS about the facility—and indeed regarding any other facilities that can be reopened for taking evidence by commission, for example. There is no lack of desire from anybody; it is simply to do with public health guidance.

Neil Rennick: Just to confirm what the cabinet secretary said, we are working very closely with the courts service, which is speaking with victims organisations and looking at a range of options that might allow victims to provide evidence remotely or to have their evidence taken by pre-record.

We are very keen to have the facility in Glasgow operational, although we are considering other options and facilities that might allow victims to provide their evidence remotely.

12:15

John Finnie: Again, the news release on the use of non-court venues reported that Lady Dorrian’s working group concluded

“that using remote juries minimised the need to change the fundamentals of the trial process itself—which would be time-consuming and have uncertain outcomes”.

Cabinet secretary, you said in your letter to the committee that Lady Dorrian’s group believes that “this option need not be pursued.”

Does that mean that you too are now ruling out the need for smaller juries?

Humza Yousaf: I am reluctant, in the midst of a global pandemic, to be so firm as to say that we would never look at the option of smaller juries. However, given the solution that we now have, we do not need to pursue that option—certainly not at the moment. It is not an option that we are actively exploring, looking at or pursuing, because the solution that we now have in place will allow a 15-person jury to socially distance; there is plenty of room in the cinema complexes for that to happen. It would therefore not make sense for us at the

moment to exert effort to explore the option of smaller juries.

The Deputy Convener: We still have a number of questions to get through, and we are aiming for a 12.30 finish, so I would appreciate short questions and answers, please.

Liam Kerr: I go back to the point that John Finnie raised. Cabinet secretary, in your letter of 14 August, you mention not only “smaller numbers of jurors” but

“adjusting the sentencing powers of Sheriff Courts”.

A lot of modelling has been done recently, which is to the good. Have you modelled the impact of adjusting the sentencing powers of sheriff courts? Given all that modelling, are you now considering any other options—short-term or longer-term—that would require legislative change?

Humza Yousaf: The only option that we are looking at that would involve legislative change is the one that Liam Kerr mentioned: adjusting the sentencing power of sheriffs. The key to that would be the extent to which we would extend the powers. It is clear that the further we extended sentencing powers, the more scope there would be to bring business into the sheriff courts.

With regard to forecasting, I ask Liam Kerr to forgive me, as I do not have the information to hand, but I am happy to provide any information that we may have in the interests of transparency. I am not convinced that the change would have a hugely significant impact. The expectations of the legal community and of victims’ organisations around the sentencing power are rather minimal. There is no expectation that sentencing powers would be adjusted to a huge degree, and therefore the impact would be relatively minimal. Nonetheless, we will continue to keep the matter under review, and adjusting sentencing powers is certainly an option that we are exploring.

I cannot immediately bring to mind another option that would require legislative change; I have mentioned smaller juries and sentencing powers. I look to Neil Rennick for confirmation on that.

Neil Rennick: That is right. The modelling work that the Scottish Court Service prepared, which looked at different options including the amendment of sentencing powers, was shared with the committee. That modelling confirms that such an amendment would result in a marginal difference between summary and sheriff and jury cases—obviously excluding the most serious cases—so the impact would not be sufficient for us to consider pursuing the option at this time.

The Deputy Convener: Court delays have a significant impact on the victims and survivors of crimes, in particular sex crimes and domestic abuse. Over the weekend, the media reported that

Rape Crisis Scotland is considering a legal challenge to the Government over what it believes could be unlawful delays to sex trials during the coronavirus crisis. I appreciate that you might not be able to say too much about that, cabinet secretary, but I would like to hear your response.

Humza Yousaf: First and foremost, I have the utmost respect for Rape Crisis Scotland, which I understand has sought a legal opinion, as you articulated. I always take very seriously what Rape Crisis Scotland has to say—it is absolutely the foremost expert in advocating for the rights of those who have been affected and traumatised by sexual offences, and by rape in particular. I do not wish for a minute to take away from what it has said about the human impact on survivors.

The organisation has spoken to me in a great amount of detail about its concerns. It had an obvious disappointment, which it did not hold back in expressing, when we decided not to pursue the option of judge-only trials. I understand its perspective on that.

As Cabinet Secretary for Justice, I would not bring forward any action that I did not think was legal, or within the legal framework. I am confident of the legal basis for the action that I take as Cabinet Secretary for Justice.

I think that Rape Crisis Scotland is considering a legal action. I do not think that it has actually brought one forward yet. If it does so, we will engage with the process. However, regardless of that, even if I put it to the side, my engagement with Rape Crisis Scotland will continue to be positive and constructive, and I will listen to what it has to say. As I said, it is the foremost expert and advocate for those who have survived sexual offences and rape.

The Deputy Convener: Thank you. I will bring in Fulton MacGregor, who is joining us remotely.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I am going to ask some questions on criminal justice social work. I refer members to my entry in the register of members’ interests.

Cabinet secretary, will you provide details of any discussions that you have had with Social Work Scotland on the specific challenges that have been faced in the provision of services during the Covid-19 outbreak? What elements of justice have been identified as priorities?

Humza Yousaf: It is a good question. I have had dialogue with Social Work Scotland. Importantly, my officials in the community justice team speak to Social Work Scotland regularly—weekly, I think—and it is part of our justice board Covid-19 subgroup in the recently established community justice and prisons workstream. That is

part of the recovery, renewal and transformation programme. I suppose that that is my long way of saying that Social Work Scotland is very engaged in the work that we are doing as a Government.

I note that Social Work Scotland wrote to the Justice Committee recently with its report on the challenges that Covid-19 has brought to its work. It has articulated a range of challenges. For me, the issue of greatest concern is the outstanding hours of unpaid work that exist at the moment because of the global pandemic, and how they have built up. The capacity of criminal justice social work to deal with that across local authorities is, I think, the biggest challenge, and it is certainly one to which I am giving a great degree of attention.

Fulton MacGregor: My next question is on that point. What options are available to allow community payback orders and, specifically, unpaid work orders to be completed and help to reduce the backlog? Are any discussions going on about how that may be achieved?

Humza Yousaf: There are discussions. I have to explore every option—it would be foolish of me not to do that. Not only has Social Work Scotland written to the committee and to me, but you will also have seen correspondence on the subject from the Convention of Scottish Local Authorities and Community Justice Scotland.

The member will be aware that we made regulations under the Coronavirus (Scotland) Act 2020, which contained powers to enable us to postpone or vary community orders in certain circumstances. I am looking at whether we can vary the community orders in order to reduce the burden that local authorities and criminal justice social work departments are looking at. It is only right that I do that. I would like to do it in a way that continues to maintain people's confidence in the system while listening to our local authority leaders about the real challenges that the outstanding unpaid work hours are causing them.

Fulton MacGregor: That sounds really proactive. Orders often include group work sessions for people such as sex offenders and those who have been convicted of domestic abuse. You will remember that, in the chamber not too long ago, I asked you about the further roll-out of the Caledonian programme, and you talked in your response about some capacity being made for virtual sessions of the programme. Has there been any progress on that? Has any work been done to allow the Caledonian programme and other programmes to be done virtually, or are any plans in place for some of the work to go back into in-person group sessions?

To tie together a few questions—if you do not mind, cabinet secretary—what can you say about

people's issues with internet access, including in those scenarios?

Humza Yousaf: Those are good and important questions.

There is no doubt that there has been an impact with the suspension of group work, which was unavoidable because of the public health crisis that we face. As Cabinet Secretary for Justice, my concern first and foremost was to ensure that, despite the suspension of group work, the multi-agency public protection arrangements that were in place for those who had committed sexual offences were absolutely robust and stringent, regardless of the public health challenges that we face. I have been very reassured by the fact that the multi-agency public protection arrangements continue to operate effectively, whether through phone or virtual settings. That has given me a great degree of confidence.

The Caledonian domestic abuse programme has resumed in some areas, and the situation in local areas in which group work is still suspended is being monitored.

On what we are also looking to do in relation to the Caledonian programme, detailed guidance has been issued in relation to a one-to-one alternative. I know that the group work element is important in those programmes, but the Caledonian programme has been working with a variety of stakeholders and partners to look at what the one-to-one dynamic might look like, as well. The work on that is at quite an advanced stage, and similar discussions are now being held with the moving forward: making changes programme, which Fulton MacGregor will be very aware of.

The issue of digital poverty is a big one, and the Government has regularly discussed it. In respect of digital inclusion, I know that the connecting Scotland project is being delivered by the Scottish Government in partnership with local authorities, Healthcare Improvement Scotland, the Scottish Council for Voluntary Organisations and others. The £5 million programme that is currently in place, which is funded through communities funding, will provide 9,000 devices, data and support for digitally excluded people.

There is probably a piece of work for us to do. We have looked at the issue for families outside prisons who are struggling to connect for virtual visits with people in our prisons, and it is not unreasonable to ask us to ensure that my colleagues who are working on the group work are plugged into that, and to see whether we can make the best use of the resource that is available.

Is there anything in particular that Neil Rennick would like to add to that?

Neil Rennick: I confirm that we will provide some further background on that in writing, if that would be helpful.

The Deputy Convener: Thank you. We will move on to James Kelly.

Fulton MacGregor: Convener, I—

The Deputy Convener: I am sorry, Fulton, but we are really up against the time. We will move on to James Kelly, please.

Fulton MacGregor: Okay. Thanks.

James Kelly: I will turn to the issue of prisons. In the previous evidence session, we heard from Teresa Medhurst that prisoner numbers are on the rise again. The number had reduced to 6,900 as a result of the prisoner release scheme, but it is now up to 7,300. It is worrying that Ms Medhurst said that that has resulted in double occupancy in cells. That will be a particular concern at prisons such as Barlinnie, where there is a significant amount of double occupancy in cells that are designed for single occupancy. Given that prisoner numbers are on the rise again but we still have the continued threat of the pandemic, how can you give assurance about the safe and humane running of prisons and that prisoner safety will still be a priority?

Humza Yousaf: That is a fundamental and important question from James Kelly that takes up a significant amount of my time. Without a shadow of a doubt, there was always going to be a rise in the prison population when court business began to resume. I worry about the pace of that increase and about what we can do to mitigate it. We cannot go back the figure of more than 8,000 that applied before the pandemic. The peak was 8,100. We cannot go back to that situation, both for humane reasons and for public health reasons. That would be unacceptable.

12:30

We are exploring a range of options. The use of home detention curfew has gone up during the pandemic, but it is not high enough. I would like to see the use of HDC increase. We can do more work on remand, which I can talk about if you would like me to. Reducing the remand population is important. Once we resume sheriff and jury trials, we will see the number of prisoners on remand reducing. As a last resort, and only as a last resort, there could be another early release scheme. I am not exploring that at the moment, but it is an option under the legislation.

I cannot have a situation in which our prison population goes back to pre-pandemic levels. James Kelly is right to say that there are concerns about how humane that is even outwith a

pandemic, and it would raise real issues during a pandemic.

Liam McArthur: Cabinet secretary, you referred to the issue of remand during our exchange in Parliament last week. I take on board what you said then about efforts to reduce the remand population. The problem existed before the pandemic. Might you consider committing yourself to a target for reducing the number of those on remand? Specifically, are you considering any proposals that would reduce the remand population among young prisoners, where the overall numbers are small but the percentage as a fraction of the overall prison population for young people is higher than it is among the adult prison population?

Humza Yousaf: That number will always be skewed for young people because the population of young people in prison is so small. The percentage of prisoners on remand can be skewed.

I do not take away from anything that Liam McArthur says. Electronic monitoring of those on bail could be a significant step, and one that would reduce the number of prisoners on remand. The resumption of sheriff and jury trials will help with that too. There is no single solution.

If we were not still in the middle of a global pandemic, it would be worth exploring the idea of a target that is not only for those on remand. We might, as a Government, have a target and agree a cut-off point for having a certain number of prisoners in our establishments but no more. We might consider that if we were not in the middle of global pandemic. Our ability to do what we might like to do is restricted. Different rules, such as the Coronavirus (Scotland) Act 2020, apply.

I would not be opposed to the suggestion of a target, but the focus must be on reducing numbers. Creating a target will not do that automatically. It might focus minds, but I guarantee that our minds are focused on reducing the prison population as a whole and particularly on looking at the remand population.

Liam Kerr: On the point about the significant numbers on remand, I think that I am right in saying that section 24 of the Criminal Procedure (Scotland) Act 1995 gives the Lord Advocate the ability to look at bail and remand. If that is right, are you aware of whether the Lord Advocate is considering whether he should be looking at that and actively instructing local procurator fiscal staff to review the situation?

Humza Yousaf: The Lord Advocate can speak for himself, but that is a discussion that he and I have had. I must tread carefully: the decision that a prosecutor makes about whether to oppose bail is one for them to take independently, and the

decision whether to remand someone or to grant them bail is one for the sheriff or the judge in an appropriate trial. I must therefore tread carefully.

The Lord Advocate and the judiciary must be part of the discussion. You would have to ask the Lord Advocate about whether he is actively looking at that with his prosecutors; I cannot tell you for sure. However, the issue of bail and remand has been the subject of a discussion that I have had with the Lord Advocate. Certainly, the Government, the Lord Advocate and the judiciary have to be part of the solution.

Some things are in my gift. For example, electronic monitoring for bail acts in effect as a reassurance to the judiciary that, if a judge grants someone bail, the electronic monitoring will prevent such things as future non-appearance at court. That is my job. However, I have to be honest and say that it is for the Lord Advocate to give you a detailed answer as to whether he is having those discussions with prosecutors.

Liam Kerr: Thank you.

Shona Robison: Briefly, cabinet secretary: are you content that enough is being done to improve conditions for prisoners, following the restrictions which were imposed at the start of lockdown? Has enough been done to help the families of prisoners during the current pandemic?

Humza Yousaf: Yes, I am satisfied with the approach that the Scottish Prison Service has taken.

We will not get everything right all the time. Some family members may sometimes be frustrated at the pace at which we are going, because it affects their loved ones. I know how difficult it was not to see my mum for three months. For people who had a loved one, partner or parent in prison, a visit in person was not possible for longer than that—for around four and a half months. That was a really challenging set of circumstances.

I do not take away from anything that has been said by family members who were upset at the pace at which we could move, but I am absolutely satisfied that the Prison Service has moved forward at a pace that it thought that it could move at, not only operationally, but safely, in terms of public health guidance.

The service has been innovative. People had been looking at the issue of mobile phones prior to the pandemic, but we have moved at pace on that issue and on the issue of virtual visits—and we have managed now to get to a position of having in-person visits, which I think is really important.

There are always lessons to learn, but I am satisfied by the approach that the SPS has taken. In her commentary, the independent inspector has

been nothing short of effusive in her praise at the way in which the SPS has handled the very difficult circumstances of the pandemic.

Shona Robison: Are you committed to keeping virtual visits going, as a concept, beyond the pandemic? What support is the Scottish Government providing to organisations that are involved in the throughcare of prisoners? When will we be likely to return to the levels of throughcare that we saw before the pandemic?

Humza Yousaf: I think that we should maintain virtual visits. We have heard stories of prisoners who did not have family visits prior to Covid, but who were then able, for example, to connect with family who live abroad. From the research that has come forward from criminologists and others who have an expertise in prisons, we know that family connections are very important to rehabilitation.

That is also why, for example, I think that there is a very strong argument for retaining mobile phones in prisons, although that will depend on funding and resources. Mobile phones are restricted, and those security restrictions will continue, but giving prisoners access to helplines such as the Samaritans can have a huge impact on mental health and a reduction in suicides. Again, the retention of family contact can pay real dividends when it comes to the potential reduction in reoffending.

On throughcare services, I pay tribute to organisations such as Sacro and the Wise Group, which have worked closely with the Prison Service to ensure that they can provide services for those who are leaving or about to leave prison, and which are also looking at what further work they can do inside prisons, within the public health guidance. I am really pleased to support them as best I can.

The throughcare services have started using the email-a-prisoner system to reach out to eligible prisoners, and while day-of-release support has not been possible, they have created liberation packs that provide personalised information, advice and brochures on, for example, travel and how to get to statutory services. The packs also include a voucher that can be used to purchase a basic smart phone from the local supermarket so that people can keep in contact with statutory services and so on.

I have been really impressed by the work that those in the third sector—particularly Sacro and the Wise Group—have done. I will continue to have close engagement with them about what their needs are for the future.

The Deputy Convener: The final question will be a supplementary from Liam Kerr.

Liam Kerr: I have been struggling to find figures on something, cabinet secretary. Do you know off the top of your head the full cost of issuing the mobile phones in the prisons? Do you have any idea of the on-costs for SIM cards and the contractual basis?

Humza Yousaf: We certainly have the figures. Forgive me—I would need to rifle through my briefing to find them, but we can certainly provide the information. We might have to be a bit careful about commercial sensitivities and so on, but in general, as a broad brush, we should be able to provide you with some figures on the costs in writing. There is certainly an economy of scale because we have managed to purchase thousands of handsets and SIMs at a time.

On the funding issue, there have been some cost savings in the SPS's budget as well as cost pressures. For example, construction has not been able to take place, so a number of capital costs have been reprofiled in year.

Forgive me—I do not have the exact figure. I will bring in Neil Rennick if he can provide more information, but ultimately, if the committee would like figures on the cost of the mobile phones, I will be happy to provide them where that is appropriate.

Liam Kerr: I am grateful.

Neil Rennick: As the cabinet secretary says, we will double check what we are allowed to reveal about that and make sure that we share it.

Liam Kerr: That is very kind—thank you.

The Deputy Convener: That completes our questions. I thank the cabinet secretary and his officials for that very helpful update.

Work Programme

12:42

The Deputy Convener: Our next item of business is a short discussion to ratify the decisions that we made at last week's business planning meeting. For the record, I note that the committee met informally via Microsoft Teams on Tuesday 11 August to consider its forward work programme up to the end of the year. I refer members to paper 3, which provides a note of the decisions.

If members have no points to make, are they content to ratify the decisions that we made and ask the clerks to make arrangements with me to issue the information publicly?

Members indicated agreement.

The Deputy Convener: Thank you. Our next meeting will be on Tuesday 25 August, when we will recommence stage 1 evidence taking on the Defamation and Malicious Publication (Scotland) Bill. We will also consider some secondary legislation next week.

That brings the public part of our meeting to a close, and we will now move into private session.

12:43

Meeting continued in private until 12:47.

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