



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Criminal Justice Committee

Wednesday 6 October 2021

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot or by contacting Public Information on 0131 348 5000

Wednesday 6 October 2021

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
PRE-BUDGET SCRUTINY 2022-23	2
POLICE, CRIME, SENTENCING AND COURTS BILL	50

CRIMINAL JUSTICE COMMITTEE

7th Meeting 2021, Session 6

CONVENER

*Audrey Nicoll (Aberdeen South and North Kincardine) (SNP)

DEPUTY CONVENER

*Russell Findlay (West Scotland) (Con)

COMMITTEE MEMBERS

Katy Clark (West Scotland) (Lab)

*Jamie Greene (West Scotland) (Con)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

*Pauline McNeill (Glasgow) (Lab)

*Collette Stevenson (East Kilbride) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Chris Brown (Scottish Police Authority)

James Gray (Police Scotland)

Colin Lancaster (Scottish Legal Aid Board)

David Page (Police Scotland)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 6 October 2021

[The Convener opened the meeting at 10:01]

Decision on Taking Business in Private

The Convener (Audrey Nicoll): Good morning, everybody, and welcome to the seventh meeting in 2021 of the Criminal Justice Committee. Apologies have been received from Katy Clark.

The first agenda item is to decide whether to take in private items 4 and 5, which are to consider today's evidence and to discuss our work programme. Do we agree to take those items in private?

Members indicated agreement.

Pre-Budget Scrutiny 2022-23

10:01

The Convener: The next agenda item is the first in a short series of evidence-taking sessions on spending priorities in the justice sector for 2022-23. I refer members to committee papers 1 to 3.

I welcome our witnesses, whom I am delighted to see in person for a change. We have, from Police Scotland, David Page, deputy chief officer, and James Gray, chief financial officer; and, from the Scottish Police Authority, Chris Brown, acting chief executive and accountable officer. We very much appreciate your taking the time to join us this morning.

I thank the witnesses for their written submissions, which are available online. I intend to allow an hour and 15 minutes for questions and discussion.

Before we move to questions, on behalf of the committee, I put on record our best wishes to Lynn Brown, the chief executive of the Scottish Police Authority. We all wish her a speedy recovery.

I ask that members indicate to which witness they are directing their remarks. We can then open the floor to other witnesses for comments. If other witnesses wish to respond to a question, please indicate to me or the clerks that you want to come in and I will bring you in, if time permits. If you agree with what a witness is saying, there is no need to intervene to say so.

We will move directly to questions. I ask that members and our invited guests please keep their questions and comments as succinct as possible.

I plan to structure the discussion around a series of broad themes. I will start by looking at the budget requirements as we come out of the pandemic and, in particular, at what is needed to return to pre-Covid levels of working.

Police Scotland's written submission makes specific reference to the implications for the service arising from the anticipated increase in court delivery, including in relation to witness scheduling and broader summary justice reform. In the context of budget scrutiny, I am quite interested to hear you outline that in more detail. What opportunities might there be to offset some of those costs? I am thinking in particular about the implications of the commitments on police officer time to attend court. I address that question to Mr Page and Mr Gray.

James Gray (Police Scotland): I can start off on that, convener. We are working closely with our operational colleagues to understand what future

requirements will look like. In this financial year, we have funding for additional overtime costs, because costs generally arise from officers who are extracted from their duties to go to court. Obviously, we know that there is a backlog of court cases and that that will have implications. We are still working with the team to understand what the financial impact will be. At this point, we cannot quantify that, but we will be working on the issue over the next couple of months to get to a position in which we can set the budget for next March.

Depending on the approach that is taken, the costs can vary significantly. Obviously, a lot more time is taken if an officer must attend court in person. If evidence could be provided through, for example, an online platform, that would certainly reduce the financial implications for policing. We are working with operational colleagues to understand what that will look like, and then we will cost it.

From a cost perspective, the fundamental difference is whether the evidence that we provide is in person or online. As has happened in the past, and as I am sure will continue to happen, things move on and change. Quite often, officers attend court but find that they are not required. That time is lost, because they have been extracted from their duties, whether that be in local policing or in national services. If there was an online mechanism through which officers were provided with an appointed time, not as much time would be lost if they were not required.

That is the single biggest element, but I do not yet know what the requirements will look like, so I cannot tell you what the financial implications will be. However, costs could be minimised by maximising the amount of evidence that can be provided online rather than in person.

The Convener: I wonder whether post-Covid recovery provides an opportunity and could be used as a platform for reform. That brings me on to issues around changing demand. There has to be a balance between how we promote reform and the change in demand on the police service. In the report "Five year financial planning", you talk about changing demand arising from the changing nature of crime, community expectations and needs and so on. We recently visited the Scottish crime campus and had quite a helpful discussion about the challenges of recruiting specialist staff to tackle, for example, cybercrime. Bearing that in mind, what might be the budgetary implications around changing demand and the specialist nature of some of that new demand? How might that impact on budgetary considerations?

David Page (Police Scotland): There are a number of considerations in that regard. One consideration is that, obviously, we must operate

within the budget that we have. Another consideration is that we are committed to maintaining the current officer numbers.

Our workforce has a set of inherited skills from legacy forces. We are looking at changing the workforce mix, as the strategic workforce plan says. A key component of that is creating additional capacity in key skills, such as cyber. We could do that in a number of ways. One way would be through the transformation programme and reform funding. If we continue to get reform funding, supported by capital, we can continue to do transformational activity, which creates capacity and space for us to recruit new specialists.

Another way is to change the workforce mix. Some cyberskills are very specialist, but a warrant card or warrant power is not necessarily needed to discharge the duties. Therefore, it might well be that we rebalance the workforce so that we have more civilian staff with such skills, because warranted officers are not needed in some of those key roles.

There should also be recognition of the marketplace. Such cyberskills are in massive demand across the United Kingdom—and the world. We need to think about growing our own talent, which means considering apprenticeships and how we can attract people. Perhaps we could work with the private sector, with people from there coming to us and then returning.

We must be innovative in how we recruit such people. That is a new area for us and we will need to develop new skills. Ideally, we want such people to stay with us for a while. We do not want people coming into policing, getting a cyberbadge and then leaving to get a salary that is two or three times greater than they would get in the service.

There are a number of different factors. We need to carry out transformation to create capacity and capability, which will give us, in effect, money. We also need to change the workforce mix and find different ways of hiring, attracting and retaining people.

The Convener: That is really helpful. I will hand over to Rona Mackay, who is interested in how to balance the budget.

Rona Mackay (Strathkelvin and Bearsden) (SNP): I think that this question is for James Gray. Last year, the Scottish Government provided a cash injection to eliminate a structural deficit in the policing budget. I understand that the budget has now been balanced. Given all the challenges, what steps will you take to maintain a balanced budget?

James Gray: That is correct—the structural deficit has been eliminated as a result of the uplift

in funding. We welcome that our ask from last year was heard and that the deficit was corrected. We have a balanced position, and our five-year financial plan sets out a path to maintain financial balance throughout that period and ensure that the service remains sustainable.

There are a couple of things to mention about that. First, about 87 per cent of our budget is on payroll—the cost of police officers and staff. Given our organisation's size, the cost of our people is more than £1 billion, so we are more sensitive to changes in that area than we are to anything else. The current planning assumption in the five-year financial plan—the plan will change; we will update it every year—is that we will retain the workforce size. In the short term, that means retaining police officer numbers, but, beyond that, there might be a change in the workforce mix, as Mr Page said.

As we set out in the five-year plan, we have asked that the commitment to real-terms protection for the policing budget be based on unavoidable pay pressures. I am talking about pay awards, the national insurance employer contributions that will need to be made and anything of that nature that we are not able to meet through reducing the workforce—that is, areas that require real-terms protection and an increase in funding each year to reflect what the pay awards look like.

There will be considerable pressure on non-pay costs, particularly information and communication technology costs. That is happening across the public and private sectors. Traditionally, IT costs were capital—they related to things that you bought and having server rooms. Now, the costs are moving more towards the purchasing of services, which is a revenue cost.

We expect to have significant revenue costs for ICT not only because of the switch from capital to revenue spend, but because of the new capability that we are looking to develop over the coming years, such as rolling out body-worn video cameras—if that is to go ahead—creating a new unified communications platform and other such things. We plan to manage that predominantly through our fleet strategy and estate strategy.

On the fleet strategy, we are looking to move from what was a 100 per cent diesel and petrol fleet to an electric fleet. There are two aspects around cost savings in that regard. One is that powering the vehicles is a lot cheaper using electricity. Given that our annual fuel bill is in the region of £8 million at the moment, we expect to see millions of pounds of savings from using electricity. We operate a number of garages around the country, and we outsource work. We expect to require mechanics a lot less frequently, because vehicles will have electric parts, so there

are millions of pounds of savings to be made in that regard.

10:15

On the estate strategy, we are looking to move to a co-located model wherever possible. When we look at a property in an area where we need to do something different, our first assumption is to move in with a partner. A great example of that, which you might be aware of, is in the north-east, in Aberdeen, where there were three big headquarter buildings—the old Grampian Police building as well as buildings used by Aberdeen City Council and Aberdeenshire Council. The Queen Street building is being vacated and we are moving into the council accommodation. There is a saving to the taxpayer of £1 million a year just from using that one property. We are looking at 100 projects across the country, so estates rationalisation has the potential to lead to many millions of pounds' worth of savings.

As we have pointed out to the Cabinet Secretary for Finance and the Economy, those savings do not necessarily come to policing. The cost of the Queen Street building might be £1 million a year, but we are now paying rent to the councils, so we are not saving £1 million, although the sector is. If there is to be more collaboration and asset sharing, we need to look at the model through which we capture savings.

By and large, the fleet and estate savings will compensate for increased costs in other areas. On pay, we are seeking real-terms protection so that pay pressures are met. If they are not met, we will have to look to reduce the workforce, but that is not our current planning assumption.

Rona Mackay: That is really interesting. I want to go back to the point about replacing existing cars with electric ones. I presume that those costs will come from your capital budget. Does that mean that you are looking for a big uplift in that budget?

James Gray: Thank you for prompting me, because I should have mentioned that in my answer. Our document is clear that the five-year financial plan is dependent on the capital investment required. We estimate that the current level of capital investment would allow us to have electric vehicles accounting for only 40 per cent of our fleet, because, when we managed to get to 40 per cent, the first vehicles that we bought would need to be replaced, and we would be caught in a cycle. The alternative would be, in effect, what we have been doing with diesel and petrol cars, which are just getting older and older.

We are trying to break out of that cycle. When I walked down the Royal Mile today, I passed an eight-year-old police car. We really should not be

using cars of that age, particularly marked cars with blue-light bars on them that might need to go out on response. They are maintained, so they are safe, but the cost of maintaining them is significant because they are old.

Russell Findlay (West Scotland) (Con): I declare an interest, in that I am married to a serving police officer.

I thank our witnesses for coming. You have suggested that pay makes up something like 80 per cent of the overall budget. The previous pay award ran until April of this year, and I think that talks in respect of a new award are on-going—I think that there are to be talks tomorrow, in fact. If the award is agreed any time soon, it still would not happen until much before the end of the year, or, possibly sometime next year. What stage are the talks at? How confident are you of agreement? Given that officers have faced the pandemic and are now facing COP26—the 26th United Nations climate change conference of the parties—does that apparent delay not risk demoralising rank-and-file officers?

David Page: The police negotiating board meets tomorrow, so we will be talking to the police then. We have been clear from the outset with police officers and civilian staff that we want to treat both sides with parity—they are both really important for the policing family. We have also been clear that any pay award that we put on the table has to be affordable. As Rona Mackay said, we have just had a significant investment from the Scottish Government to address our structural deficit. It has taken us a long time to get to that point so, having just reached a balanced budget, the last thing that we want to do is to break our own budget by offering more than we can afford.

We have therefore been clear with the staff unions and with the Scottish Police Federation and the Association of Scottish Police Superintendents that any offer that we make has to be affordable and within our budget. In effect, our guidelines will be the public sector pay policy. That is our position going into any negotiations. We have been clear from the outset, when we laid our budget this year, that that would be the approach that we would be taking.

Russell Findlay: On a scale of one to 10, how confident are you that it will be agreed by the end of this year?

David Page: I cannot comment on how the federation will react to the offer. It knows what we can do. I cannot comment on the federation's position—I am afraid that you would have to ask it.

Jamie Greene (West Scotland) (Con): I want to take a step back and look at the wider budget. I will drill into your submissions, and specifically some of the numbers, because this is pre-budget

scrutiny. You talk a lot in your submissions about the five-year capital investment plan, and the figure of £466 million crops up quite a few times. However, you say that the Scottish Government's capital spending review suggests that there will be a shortfall of £218 million over the next five years. That is quite a jump from what you are asking for. You have partially set out your case as to what will happen if the call for £466 million is not met. You say:

“we will not be able to modernise our asset base to the minimum levels set out in our strategies.”

If you do not get the £466 million five-year capital budget that you are asking for, what will you not be able to deliver?

David Page: What we have asked for is based on our assessment of what the Police Service of Scotland needs to meet the tasks that it is given versus what we think will be on the table. The first point that I would make on that is that we are not gold plating anything—we are not being hugely ambitious in our ask; we are just trying to lay out clearly what is required.

In that requirement, there are two major components. The first is that we have to spend an awful lot of money maintaining the service as it is and meeting our health and safety and statutory and regulatory requirements. That consumes an awful lot of our capital ask. That is about replacing police cars, the maintenance of buildings, specialist policing weapons and equipment and stuff like that. We need a core or base level of capital. To be honest, what has been indicated might be available will fund that.

The additional money is what we are looking for to invest in policing to try to move it from where it is today into a 21st-century police force that is green and that reduces its cost base and is one in which, as James Gray said, we can move our officers into better accommodation, which is better for their welfare; provide them with vehicles that are green and more efficient; and provide jobs that people actually want to get into because they are not backward-looking jobs but are ones that operate in the space where the new economy is going to go.

More important—or, I should say, as important—is that a lot of the capital links into transformational activity alongside our reform capital. That goes back to the point about how we maintain a balanced budget. If we have capital and we have reform, that allows us to invest in transformational activities, which means that we can have body-worn video cameras and other technical capabilities that create capacity to meet new demand. If we get the money, we can continue to push forward with trying to be a leading green public sector organisation—we have

been doing a good job of that so far. The investment would enable us to reduce our cost base, because we will be more efficient, and provide a better working environment for officers and staff. It would also have a kind of double-whammy effect because it would enable us to provide better technology and innovation so that we consume our own smoke in terms of absorbing demand and also enable us to keep up with threat, harm and risk, because we know that, on the opposite side to us, investment is going into technology and, as the convener said, cybercrime is growing at a huge rate.

Jamie Greene: Just reading between the lines, it sounds as if, of your total ask rather than what you think is on offer, about half is for business as usual—it is to enable you to perform to the current standards and levels of policing—but the extra is for extra elements that you think will be needed to make the transformation that you want. Therefore, you are not in any way suggesting that what is proposed will not be enough to maintain current policing levels, current workforce levels or existing standards of service.

David Page: If the profile is the profile that you mention, we will move more into care and maintenance. The principal call on the money will be around making sure that we meet statutory requirements on health and safety and so on. The committee will be aware that, some time ago, because of long-term underinvestment, we were in a situation in which, to be honest, I was having to cut budgets tightly to operate within the budget that we had. I had got to the point where I had taken the budget down as far as I could, but I then had overspends each year because we were having failures on the health and safety front and I was having to invest in that space. We do not want to be in that situation—basically, we want to maintain what we have and then improve it so that the service becomes greener and more efficient and a better place to work.

Jamie Greene: For this financial year, 2021-22, the total capital budget is £53.7 million. I am not sure whether I read this in the papers for today or in last year's budget submission, but my understanding is that you asked for £85.7 million, so obviously you were given a lot less than you asked for. We do not know what you will be offered this year. What effect did that £30 million shortfall have on what you wanted to do with the business?

David Page: The way that we manage our capital is that we go out to the organisation and ask what the capital need is. We have a rolling forward-capital requirement, because every year we know that a certain amount of money will be required to maintain buildings and things like that.

We therefore have default numbers that go into the capital budget.

We then look at our transformational needs and additional investment needs, which include things such as investment in a green fleet. We work out what we need, and the finance team basically sense checks the numbers to ensure that we are asking for the right type of money, whether it be for reform, capital or revenue. On the capital side, we work out what we need, and then we run something called the capital investment group. That runs four times a year. In effect, that group involves all the senior police officers plus federation and union representatives. The important point is that the allocation of capital is not driven by my corporate side; it is driven by those involved in operational policing, because they are the best-placed individuals to work out where the money should go.

There is a discussion, led by those in operational policing, about where we should put the money. In effect, we work out a list, which is our ask for £85 million or £90 million. When we get the allocation, we have two columns: what we wanted and what we have been given. On my side of the house, we first look at the amount that has been given and then immediately allocate funds for all the health and safety, statutory and legislative stuff, because it is non-negotiable. The chief constable has made a commitment—as have I, multiple times—that there will be no compromise on spending on health and safety, for officers and staff.

Once we have allocated all that money, we are left with a residual amount that is discretionary spend. We then look at all the asks, and we consult the operational police officers to find out where they want the money to go. The interesting thing about that is that a lot of our asks, especially around the DDICT—digital, data and information and communication technology—strategy, require there to be a logical build. Sometimes, you have to build infrastructure and put in the foundations. The problem with that is that it is not sexy or interesting—people are not that interested in the foundations; they all want the roof. When there is only a little bit of money, people are interested in something nice and shiny. That is a real challenge. Police officers and staff want something tangible, but we are trying to build something that is long lasting and sustainable.

The process is driven by operational police officers. It is about what could have an effect and could help them to do their job in the best way, although it might not be the most efficient way. That is what we do.

Jamie Greene: If you spend £15 million on body-worn cameras, that is something that you can see, touch and feel, and people will notice the

difference, but if you spend it on a software upgrade, which has a net benefit to the force, no one is really interested in that.

David Page: No one is very interested in it, but the issue is that data is probably the key to the future and, unless we can properly address the ICT infrastructure and digital and data management, we risk making mistakes at the end of the day. Body-worn video cameras are a useful tool, but they are a tool for capturing data. The more money that we put into making sure that we have appropriate tools for the capture, management, storage and exploitation of data, and for putting data into the justice system so that it is correct, the better justice outcomes we will get. If we just have a shiny camera that takes nice pictures, it will just take nice pictures.

10:30

Jamie Greene: That is interesting.

My next question is for Mr Brown of the SPA—I want to make him feel included in the conversation. The SPA's submission says:

"The Authority will continue to make a strong case for additional funding to Scottish Government, including proposals for borrowing or up-front funding for long term disposals/bridging finance."

How much additional funding are you asking for from the Government? It would be helpful to know that so that we have an expectation ahead of the draft budget coming out. What are the proposals for borrowing that you refer to? What will you do with the extra money that you are given or that you borrow?

Chris Brown (Scottish Police Authority): The first thing that I should say is that the authority considered the five-year financial plan and the five-year capital plan last week and approved both of them, so it is fully supportive of those plans.

With regard to your question about up-front capital funding, that gets to what Mr Page described around the investment that is required in the estate, primarily. From memory, I think that about £160 million of investment is required in the estate over the next five years. As you have pointed out, on the face of it, there is a dislocation between what the Scottish Government has published in its five-year plan and what our total capital ask is. Therefore, we need to consider what options there are for accelerating that spend in whatever way the authority or Police Scotland can.

In terms of the up-front capital receipts, that is acknowledging that the authority has an estate with valuable assets in it that may be surplus to requirements. By disposing of those assets, we

would be able to make a significant contribution to that funding ask.

There is a bit of a timing issue there. Very often, before exiting a building, it is necessary to invest up front to have somewhere to go before it is possible to release those receipts. One of the options in the five-year capital strategy involves us receiving some of our five-year capital funding up front, as that would enable the crystallisation of some of those receipts, which would then go back into the Government coffers.

On borrowing, I do not think that that is being pushed particularly hard, but if we are looking at all options, that probably needs to be part of the discussion, at least, and the authority is supportive of that at least being on the table for consideration.

Jamie Greene: I want to be clear on the pecking order. You would obviously rather just get the cash from the Government to let you do what you want to do. The second choice is to sell off the family silver and, in the worst-case scenario, you could go and borrow the money. Is that what you are saying to us?

Chris Brown: Obviously, that is simplifying things. I would say that that demonstrates at least some creative thinking in this space, so that it is not just a case of our not being able to do anything if we do not get the money. We are just trying to come up with other feasible options for consideration.

Pauline McNeill: Good morning. I want to follow up on the question that the convener put to you on the issue of cybercrime, which, according to the figures, has doubled in the past few years, so it is quite a significant issue for policing.

You said to the convener that you are considering the recruitment of civilian officers. Whose decision is that? The idea of recruiting more civilians is one that I have heard before. Opinion is divided on where the line should be when it comes to having people other than police officers do the job. Is that a decision for the SPA to make or is it one for Police Scotland? Can you say anything about which jobs would be civilianised?

David Page: It is Police Scotland's job to define that. Ultimately, it is an operational decision for the chief constable.

As far as individual jobs in the cyber space are concerned, that will be driven by the nature of the role. Deputy Chief Constable Malcolm Graham looks after that area. He will work with his officers, officers outside Police Scotland—obviously, there is a lot of expertise in the UK that we can draw on—and our own civilian staff in the people and development function. We will define the jobs that we need. We will work out the job specifications and the nature of the roles. If a role requires a

warranted power, it will go to a police officer. If it does not require a warranted power, or it requires specific technical skills that mean that it would not sit within the police job family, we would look at hiring civilian staff.

The convener mentioned demand. It is quite important to note that demand is increasing. Our demands stats are becoming more and more useful in terms of the data that is being driven. As you have said, cybercrime is going up. We cannot just keep building the police service—we cannot keep adding extra bodies. That is where the workforce mix comes in.

Let us say that we needed 50 civilian staff. If I am to maintain a balanced budget, I cannot just go out and hire 50 civilian staff. We must work out how we can get the capacity to hire 50 civilian staff. The only way that we can do that is through the myriad ways that we have talked about, such as reducing our cost base through efficiencies, which will make money available to hire new staff, or changing our workforce mix. That may mean that some of the roles that existed in Police Scotland historically are perhaps no longer as relevant as new cyber roles. We need to balance that judgment carefully. We must engage with the unions on that, to ensure that people are aware of the direction of travel and to give them an opportunity to engage in that discussion. Only at that point could we move to hire those specialist staff, while operating within the budget.

Pauline McNeill: My next question is one that the Scottish Police Federation has posed. It is about public confidence and the pressures on the police. According to the SPF,

“police officers across Scotland have almost 50,000 rest days due to be re-rostered as a consequence of operational demands outstripping available resources. Beyond that ... an additional ... 100,000 ... days have already been re-rostered to future dates.”

The obvious question is, how long can we keep doing that for? Is the authority asking the Scottish Government to programme that in? Through the pandemic, police officers have had to put public policing first, which builds up roster days. I would have thought that it would be grossly unfair not to recognise that that is an additional pressure on the policing budget. What is your ask of the Scottish Government in relation to that?

David Page: We recognise that the RRDs trend is upwards. The numbers that have been quoted are the numbers.

I will provide some context. Although 50,000 sounds like a scary number, when you look at it over a workforce of the size of the one that we have, the banked RRDs equate to only about three days per officer.

Having said that, we must manage the situation more effectively and more efficiently. To be honest, I do not think that we would make an ask of the Scottish Government in that regard. I think that it is incumbent on Police Scotland to manage that better. We have acknowledged that we need to do that.

The Convener: Before we move on, I have a quick question on the subject of estates. I am aware that an estate condition survey was being undertaken, and I think that that was due to be published or reported back on some time ago. Do you have an update on that?

James Gray: That is right. Before the pandemic, we committed to report back to the committee. Covid slowed down the pace at which we did the condition survey work. More than 300 buildings, with many thousands of component parts, were assessed. That work has now been completed. The initial findings have been put into a report that has been presented internally within Police Scotland. Once that has been through the authority, we will soon be in a position to be able to report back to the committee.

I can give you a flavour of what is in the report. It was identified that some immediate works were required on health and safety grounds, costing a couple of million pounds. Those works have either been completed or are under way. Those are the things that had to be done immediately. The report told us that about £242 million-worth of work needs to be done over the next 10 years to get our estate up to condition B. We are not looking to gold plate things; we just want to have buildings that are of a reasonable condition—“condition B” is the term that is used.

I go back to the question about maintaining our asset base. When we talk about “maintaining” our estate, we are talking about maintaining it at the level that it is currently at. Our estate is in a similar condition to the one that the school estate in Scotland was in prior to the schools of the future programme. In other words, it is in a pretty poor condition. The bulk of the buildings are at the very bottom end of condition B or in condition C, and we are looking to get all of them up to condition B.

Work is currently being done on how we can get into a planned maintenance cycle, based on the need for £242 million to be spent over 10 years. Obviously, we would like to do as much of that in the early years as we can, but even if the spending was spread evenly over 10 years, it would still amount to £24 million a year. We are currently spending about £12 million on maintenance of the estate, and that is a lot more than we were spending on it in previous years, because our capital allocation has gone up. However, the current level of spending is still some way short of what we need in order to get

the buildings up to condition B status. We are not looking to have everything shiny and new; we are just looking not to have mould on the carpets and not to have parts of buildings that are not wind and watertight. We have buildings that are not wind and watertight, parts of which have had to be shut down.

The condition survey has pointed out what we need to do and, as I said, has identified that we need to spend £242 million over 10 years to get the estate into a reasonable condition.

The Convener: I have a follow-up question. We have been looking at custody provision. As a former officer, I know that there is good custody provision and not-so-good custody provision across the estate in Scotland. Was custody provision looked at specifically as part of the survey? Could you comment on any particular plans from a budget perspective for improving some of the custody provision that needs to be improved?

James Gray: Custody was covered, but that was based on the current model. There has been investment in custody over the past two or three years, most recently in London Road in Glasgow.

I could get more information from my colleague Assistant Chief Constable Kenny MacDonald, who is the lead for this area, but we are looking to have a custody remodelling plan. We want to look at custody provision across the entire country and whether it is in the right locations and of the right quality. We know that there are things that we can do to improve it. We have improved it, but there is still some way to go. That custody remodelling work is under way and the estates team is working closely with that team in order to identify what the future need will be. However, we have not got to the point of deciding what the provision needs to be and publishing that plan. I can commit to bring back more information, if that would be helpful.

The Convener: That would be helpful—thank you.

If there are no more questions on the capital budget side of things, we will move on to look at Covid and the 26th UN climate change conference of the parties—COP26—on which Russell Findlay has some questions.

Russell Findlay: Figures have been reported for how much the policing of COP26 is expected to cost. The most recent one that I have seen is £250 million, which was reported at some point last year. To put that into perspective, it equates to a fifth of the entire Scottish policing annual budget. Can Police Scotland or the SPA tell us what the latest projection is?

10:45

James Gray: We are constantly updating our projections, especially in the lead-up, as things crystallise and we get specifics on the numbers and locations of world leaders, but that is changing from day to day, as you are aware.

We have consciously not put out a figure for the cost, because it can be confusing. I could have given you a different figure every month for the past 18 or 19 months in which we have been working on this, but it is safe to say that the amount of funding that policing in Scotland has secured from the UK Government spend approval board is more than £60 million. That is for the direct costs that we are currently aware of, but that does not mean that it is what the total cost will be. After the event, we will look at the actuals, which are what we will be looking to get funding for.

Based on our known direct costs, more than £60 million has been secured. However, that does not include the significant cost of accommodation or the considerable cost of mutual aid—when police officers from other UK forces come up to Scotland—and both costs are being picked up by the Home Office. Our direct element of the cost is more than £60 million but, when we take the three components together, although it is not as much as £250 million, my understanding is that it is upwards of £150 million.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I will follow up on the COP26 stuff. When we were at the crime campus in Gartcosh a couple of weeks ago, we got a rundown of some of the plans for COP26. The scale of it is incredible, so fair play to the police for taking it on. I do not think that you will have to do anything as big again in a long time.

The chief constable said that he was keen for there to be no additional cost to Police Scotland. You talked about £60 million but, clearly, there will be an element of costs that we cannot currently predict, because we do not know how it will go or where there will be protests. Are you feeling reassured that there will be no cost to Police Scotland in the end? Do you have that assurance from the UK Government?

James Gray: We have that assurance from the UK Government. At the very start of this process, the finance business principles were agreed with the Cabinet Office, and number 1 on the list was that there would be no financial detriment to the policing budget in Scotland. I do not want to get into specifics of what we think now the cost will be because, as you rightly point out, it is a projection. We will not know until after the event what was required in additional overtime and so forth, and not just for the policing of COP26. Because such significant numbers of police officers in Scotland

are being focused on COP26, the remaining officers will have to deal with the usual day-to-day policing, and that might require higher levels of overtime among officers carrying out other duties.

As Fulton MacGregor said, what happens with protests will have an impact on the number of officers who will be required for COP26 on a day-to-day basis versus those who might be able to come back out and do normal business-as-usual activities. There are so many moving parts that we will not know until after the event. We have been clear with the Cabinet Office on that. We will have a wash-up session at which we will look at the actual cost against our best assessment of a forecast, and we will look to be compensated for the full cost. Beyond that, if something were to happen that might result in litigation against the chief constable or the Police Authority, we have also sought assurance that those costs, which might take years to crystallise, will be covered, and we have that assurance that the costs will not fall on the policing budget.

Fulton MacGregor: When will you have that discussion? I am asking because I cannot envisage a situation in which there will not be a long-term cost to the police in Scotland. Is there an assurance from the UK Government that the costs can be looked at in the longer term? I am sure you have all been through loads of these possibilities, but people will be working overtime for this massive event, so they will need time off after it, which might reduce services a wee bit. I am sure that it will not reduce core services, but people might also be off with stress—we just do not know. From what you said, I feel reassured that the UK Government will fund the costs that come out of the discussion that you are talking about having, but what about the knock-on effect over the next year or couple of years? I cannot see that we will not be affected by that, ultimately, because this is a massive event.

James Gray: The first part, which is the most acute, is the cost of the rostered rest days, and we have built that into our forecast costs up front. As you said, we do not know exactly what they will be, but the UK Government has made some financial provision for what we think they might be and, as I said, there will be a true-up afterwards. It is about the degrees of accuracy; our target will probably be to be 95 per cent of the way there early in the new year and 99 per cent of the way there by next June. You are right that there is likely to be some residual cost, and we will do our best to capture that, but we cannot guarantee that we will capture and attribute 100 per cent of it—there might be things, such as psychological illness as a result of the event, that do not happen until some time afterwards. However, we have arrangements and an agreement in place based on finance business principles, including that of no

detriment. Therefore, we will work on the basis that the UK Government will work through these things with us in good faith so that, even if it goes into the next financial year, we will still be looking for it to pick up the cost. When the COP26 finance unit disbands, we have a contact that we can go to if we need to continue the conversation beyond the end of this financial year.

David Page: I will build on what James Gray said. From the very start—it was part of the conversation with the Cabinet Office—we have been very clear on both our finance principles and the need to evidence what we say. We are acutely aware of that. From the finance perspective, we are working very hard to capture early evidence of what is going on and what the effects are from COP26 so that, when we go back to the Cabinet Office, we do so with an evidence base. We are doing our best to ensure that our argument for recovery is supported by the best evidence that we can provide, and James Gray and his team have been working closely with ACC Higgins to make sure that finance is not an afterthought but is integrated into the early planning. We have been working closely to ensure that our systems allow us to capture the difference between, as you said, what was a business-as-usual activity, such as protests somewhere that are nothing to do with COP26, and what are COP26 protests across the country. We do not know yet what might happen, but we are trying hard to make sure that we capture things early on, so that there is an audit trail that allows us to make our case strongly.

Fulton MacGregor: I have a follow-up supplementary question. I feel reassured that the UK Government is going to fund what it says it will. However, I am still wondering about the long-term effect. It might be too early to say, but is there scope for additional funding coming from the UK Government straight to the police—or via the Scottish Government, if there is a role for this Parliament in that—or an additional payment to cover things over the next few years? I get the point about your being able to say that this or that happened and that there needs to be a trail for that, but there will be a knock-on effect. Are you already thinking about that, or are you not quite at that stage?

David Page: All that the Cabinet Office has asked of us to date is that costs are evidence based. What you say is true; there is a good chance that there will be some sort of lag, but it is about how we quantify that and at what point the line is drawn. Scottish Government officials are involved in the COP26 finance planning side, so they will be acutely aware of that type of risk. As we go through the COP26 event and the immediate after-effect, if we start to see such things emerge, we will be engaging with the COP26 spending team and the Cabinet Office to

put early markers down. We will be working alongside SG officials because, as much as it is incumbent on us to do the work on the ground and the finance work and build the evidence base, there is a political element, and that is where SG officials, working with ministers, are just as important in ensuring that we get a fair and appropriate recovery.

Chris Brown: I will come in briefly to add some additional reassurance. From the Scottish Police Authority standpoint, we are comfortable that every reasonable step has been taken to protect the business-as-usual policing budget from the impact of COP26. I hope that that will come across as well as how detailed the planning has been for this event. It is planning on a level that I do not think we have seen, certainly from the authority standpoint, so there should be additional reassurance from that.

On the final point that Fulton MacGregor picked up with David Page, if there is any lasting legacy, you can be confident that, if there is anything that we need to pick up and make a specific case for, with whomever we need to make a specific case with, we will certainly do that because the post-event objective will be to make sure that there is no adverse impact on the policing budget from COP26.

Collette Stevenson (East Kilbride) (SNP): My questions are about the accounting principles for the money that is coming forward for COP26 and how that will look in your accounts. From a procurement perspective, there will be a higher spend, so how will that look? Will it be separated? You talked about the COP26 spending committee. How will that be realised going forward? Audit Scotland will be keen to know. If any legacy payments come forward, I am interested to know how that will look.

James Gray: Thank you for the very topical question. We had our annual report and accounts signed off last week at the board meeting and I have already started the conversations with our statutory reporting team about the presentation of next year's annual report and accounts. We plan to engage with Audit Scotland early on to make sure that we have a common understanding of what is required.

From a statutory reporting perspective, we will obviously show the costs that are directly attributable; those costs will not include accommodation and mutual aid, which will be picked up through UK Government accounts, but the costs that we incur directly will be included in our numbers. The money is not coming through as resource departmental expenditure limit, so there is a question around that part of the accounts—do we treat it as income that we are reimbursing, rather than funding? The team is working on that

by going through the UK Government financial reporting manual and will be taking guidance from the Chartered Institute of Public Finance and Accountancy technical inquiry service and from Audit Scotland. However, instead of just setting out the entire numbers in the annual report and accounts, we will probably include a note to be clear about what was the business-as-usual cost and what was the COP26 cost. As far as I understand it, there is no statutory reporting requirement in the financial reporting manual to separate it out for the statutory accounts but, for good practice and disclosure, we will probably have a note to show what was business-as-usual policing and what was COP26 policing.

The Convener: I know that other members want to look at individual areas of the police budget and, before we move on from COP26, I have a quick question. A lot of overtime will arise from COP26, so will the provision include overtime costs, or will that have to be managed separately?

James Gray: There are two elements to that. The first is the directly attributable overtime for the officers who are deployed to COP26. That cost, which we have forecast, has been funded by the UK Government to date. Again, once we see what the actual number is, there will be a truing up. It is also likely that there will be costs from officers picking up work as a consequence of other officers being on COP26 duty, so that is an indirect overtime cost. We have an element of that funded by the UK Government, but the reality is that, until we get through November, depending on what the demands are on business-as-usual policing, we will not know to what extent that overtime is required.

We are absolutely aware of the issue. We have funding for what we know of and we have robust plans for recording the overtime, as Mr Page was saying, and I give the assurance that, after the event, we will take that to the UK Government to seek the full funding.

11:00

The Convener: If members are happy, we will move on from COP26. A number of members would like to look at specific areas of policing and policy. I will bring Rona Mackay back in, then Collette Stevenson.

Rona Mackay: I want to ask about planning for spending under the new budget that you will get. I am interested in rape, sexual crimes and domestic abuse, and, at a wider level, the culture of police and corporate policies on bullying, racism, homophobia, misogyny and that kind of thing. Are you earmarking funds for those things? If so, can you expand on that?

David Page: There are two parts to that question. The sums that we allocate for crimes against women, such as domestic violence and rape, become part of our budget allocation through the different divisions. On public protection and domestic violence, DCC Malcolm Graham and ACC Judi Heaton set a provision or they make a request, and that is what they put in the budget. Whatever is asked for in that space, we will make sure that there is provision for it. That covers that part of the question.

Rona Mackay: Will the rise in the number of domestic abuse cases feature in that?

David Page: It will feature in as much as ACC Heaton and DCC Graham will look at demand change there. If they need to allocate more resource in that area, that will feature in our budget planning. It is a good question, because if you look at the number of police officers that we have, and if domestic abuse cases are on the rise, it is a bit like pushing the balloon; officers have to be moved over there. In that space, the money follows the officers, and then we have to look at the demand pressures elsewhere. It is a balancing act.

Ultimately, the chief constable acts as the arbiter, but any requirement for additional funding on that would be made by the ACC and the DCC in that area, and that would then come through to us.

On Police Scotland's internal culture, the chief constable and the senior force executive have made it clear, and we have made it clear in statements to the board, that those types of behaviours are not accepted. If issues arise that reflect them, those types of behaviours are completely rejected, and we are doing our utmost to ensure that we improve in those areas and do not accept them.

Obviously, there has been a huge amount of reaction to recent events and rightly so; we are all horrified by them. At senior command level, we are asking ourselves how we provide a service that the public can trust, in light of those recent events. The service has already taken steps on that front. We are also asking how we can address our own behaviours and culture.

The topic is right at the top of our agenda, in terms of public confidence and ensuring that we operate a workforce of officers and staff that is safe for men and women—people—to be in. That is right at the top of the chief constable's list.

Rona Mackay: Would that include extra training for officers in any of the areas?

David Page: Absolutely, where that is required.

The Convener: I will bring in Russell Findlay, before coming to Collette Stevenson.

Russell Findlay: I would like to ask about Police Scotland's use of non-disclosure agreements, which, for people who are not aware of them, are used in the payment of compensation deals to keep the details of those pay-outs secret or confidential. It has been reported that the value of such claims has breached £1 million since 2013, and that raises serious questions about transparency and accountability for public money.

Just today, we heard about a successful tribunal claim that was brought by a female police officer called Rhona Malone. Her career was destroyed by what was described as a "boys' club" culture. She had been offered a settlement on the condition that she signed a non-disclosure agreement. Mr Gray, are such agreements compatible with good governance, public confidence and accountability?

James Gray: Non-disclosure agreements are not something that I would expect us to make. Most of those agreements for the figure that you mentioned were probably made in the early of years of Police Scotland. I am certainly not aware of any having been made recently. I have not seen or been involved in any discussions of that nature. I know that we are not supposed to do them. They might be used in certain circumstances, because of particular sensitivities, but certainly not in that particular case. I certainly agree with your sentiment.

David Page: Our guidance on non-disclosure agreements is, effectively, the Advisory, Conciliation and Arbitration Service guidance, which says that NDAs can be used legitimately in some cases, usually because of confidentiality and to protect commercial sensitivities. We would use them in those situations. ACAS guidance says—and our position is—that they absolutely should not be used to prevent claims about sexual harassment or discrimination, for cases of whistleblowing or anything like that. That would be a completely inappropriate use of an NDA and we would not—

Russell Findlay: [*Inaudible.*] completely incompatible with the offer that was put to Rhona Malone. Her case was one of sexual discrimination, and an NDA was used in an attempt to settle confidentially, so that the public would be unaware of what transpired.

David Page: I cannot comment on that case, because it only broke this morning. What I am saying—

Russell Findlay: I am sorry to interrupt again, but there is a contradiction between what you and Mr Gray are saying. As I understand it, Mr Gray is saying that NDAs are not compatible with and they have no place in Police Scotland.

James Gray: I was saying that there are rare exceptions, but that case was not one of them. As Mr Page said, it is in those very limited—

Russell Findlay: That comes back to the question—

The Convener: Let Mr Gray speak, please.

Russell Findlay: Mr Gray, you said that non-disclosure agreements are mostly historical, but according to a media report this week, there have been seven in the past couple of years, all of which involved females—three officers, three civilians and one member of the public.

David Page: I cannot comment on those numbers as I am not aware of them. I am happy to write to the committee and provide some more data on that once I get the facts.

The Convener: I ask members to confine their questions to budgetary issues. I am afraid that you are going—

Russell Findlay: Can I ask one question of the SPA?

The Convener: Yes, but I ask that you respectfully confine your questioning to budget provision and considerations.

Russell Findlay: This is budgetary. It is on NDAs and it is for Mr Brown. Have you had any discussions with the police on the use of NDAs and how they can impact on budgets, or do you expect to?

Chris Brown: Not to my knowledge, but I will follow up on that.

The Convener: Ms McNeill, do you want to come in on this subject?

Pauline McNeill (Glasgow) (Lab): No, my question is on something else.

The Convener: I will bring in Collette Stevenson.

Collette Stevenson: I want to talk about your procurement practices. I know that your recent accounts have just been signed off, but I have not had the opportunity to look at them. Following the previous ones, there was a recommendation about putting in place a procurement improvement plan for your future spend.

I want to look at things such as openness and transparency. You have talked about innovative and creative thinking in terms of suppliers and whatnot. What steps and actions on your spend will you take in the future? Can any savings be made?

I also want to ask about the spend on the focus on drug misuse. Is there a new budget for things

such as officers carrying Naloxone to tackle the misuse of drugs?

James Gray: I can take this one. I will start by addressing the question about improvement activity. The procurement improvement plan has largely been worked through and there has been significant improvement in the organisation's procurement practices, which has been recognised by internal and external audit.

There is still more work to be done. We still have areas where we can improve and tighten up, but, by and large, the spending is now well controlled. We have finally managed to roll out a pay-to-procure system across the organisation, to standardise purchasing practices. As the committee will be aware, in the early years of Police Scotland, the focus was on making sure that operational policing continued to be effective. Some of the corporate improvement work that was required took a bit longer. In effect, we had eight different procurement teams still working, but they have now been brought together into a single team. That is a good foundation.

The SPA board approved our procurement strategy last week. That looks to build on the previous one, which was mostly focused on compliance, which is important. Compliance is a continuing focus, but we are looking to broaden out the focus to look at the environmental practices of suppliers and consider whether weighting should be apportioned to that in any kind of information and communications technology tendering exercises. We are also looking at the employment rights of people who work in organisations.

We have been doing those things and improving over time, but we are putting more focus on them to see whether our suppliers are good employers and whether we can use our buying power as leverage to try to change behaviours, if they need changing.

We are looking at the profile of our spend, or where we spend money, and we are trying to push more money into local communities where we can, especially to support recovery from Covid. We are a national organisation, so there are times when we have to do things at a national level, but even on something such as facilities management, where we have a national provider for hard facilities management, where we can, we are making sure that we are subcontracting with local firms around the country. We are trying to focus on that and on using our buying power to support better outcomes that are linked to the national performance framework.

On your question about the misuse of drugs, I would need to write to the committee with the detail on that. It is a relatively low level of spend,

so I have not been involved in it, but I can find out the detail on the procurement activity and cost in relation to that.

David Page: We will make provision for whatever is asked for on the Naloxone front. It is a small number, relative to our budget. No specific case to ask for it has come to us, which means that it is being absorbed within the normal budgetary envelope that is available in that area of the business.

Collette Stevenson: Will the cost of the training involved be included in that?

David Page: Yes, absolutely.

The Convener: Do you want to ask a follow-up question, Mr MacGregor?

Fulton MacGregor: Yes, but I am quite happy for Pauline McNeill to come in first. She had her hand up before me.

The Convener: I will bring Pauline McNeill in that case.

Pauline McNeill: My question is on a different subject. Is that okay?

The Convener: Yes, that is fine.

Pauline McNeill: This question is probably about the capital budget, but the witnesses can tell me if that is right. It is perhaps for Mr Brown—but, again, you can tell me.

The Scottish Police Federation gave evidence about the co-location of police services. Its concern is about the condition of the police estate, and I am sure that it is a fair concern. It is saying that in such cases, Police Scotland has been

“the tenant and not the landlord”

and that there would be increased revenue pressure in the long run if there was more co-location of services. The SPF says:

“This tends to suggest that desperation, rather than suitability is the key driver.”

Is it a principle of the SPA or Police Scotland to seek co-location, or is it a measure of last resort? Obviously, there is an immediate pressure, but, looking to the future, I would not have thought that it would be ideal to co-locate when you are sharing a building with completely different services. That is my concern—I have been controversial in the past, I have to say.

11:15

David Page: It is not for the SPA to determine where police officers are located; that is the chief constable’s decision in the first instance. We need SPA approval for estate strategy planning disposals, but the drive for that comes from operational requirements.

In relation to the estate strategy, as a component of prudent financial management and how we can best make use of the assets, as James has already said, the condition survey that we carried out recently and the one that we carried out in 2015 highlighted the large amount of funds that are required to bring the police estate up to where it needs to be. The committee will be aware of the multiple photographs of poor accommodation that have been in the press over many years. With the investment challenge that we have, we have been struggling with that.

The estate strategy around co-location is driven operationally. Although the estate strategy is a corporate strategy—it falls under my purview—what the police service wants from its estate now and what it will want in the future is driven by operational policing requirements. One of those key requirements was to recognise that the police estate as it was, with a police station located in every village alongside the pub, the doctor’s surgery and whatever, is not necessarily what is required now. What is required is better integration of the police service with other public sector services and the recognition that policing is part of a process that deals with the challenges that people face. Better integration can help to improve service delivery, and for us and other public bodies, shared locations and shared costs can reduce the overall burden on the public sector.

We need to make sure that we still have visibility in those co-located areas when we need to. A policing presence will still be visible where we need it to be. That is very much an operational requirement, principally driven by DCC Will Kerr, because that is the local policing footprint. It is not driven purely by the finance.

The other issue that we have is our net carbon ambition to green our estate in line with Scottish Government and UK Government requirements. A lot of our estate is very old. It has a very large maintenance bill and to green it would be very expensive.

The co-location approach has come forward in the context of the ability to provide policing services to communities, our ability to make the estate fit and habitable for police officers and staff, and of getting the best value for money. As James Gray said, the feedback that we have had from officers and staff in the north-east about the move in Aberdeen has been incredibly positive. They are now operating and working in much better conditions. It is greener and it cost me less money to run.

Pauline McNeill: Perhaps I should pursue the issue a wee bit further another time, because there are a lot of different priorities around decarbonising the estate. I have experienced the poor estate on my patch in Glasgow. I am glad

that you mentioned visibility, because from the public's point of view, a police office needs to be quite different from any other environment, so visibility is important. It should not be completely driven by best value because it is a distinct service.

David Page: I agree completely with that.

Jamie Greene: I will touch on the issue of financial sustainability as part of your medium and long-term plans, which is linked to the budget. I refer specifically to your second submission to the committee. There is a lot of wording in there. Earlier, I asked more about the numbers, but my questions now are more about strategy. I have some cause for concern that I hope you can alleviate.

You talk about your current five-year financial plan and how you will maintain sustainability. You indicate that the plan will maintain current levels of policing but that that is dependent on four key factors. That strikes me as a key point. One of the factors is

“receiving funding increases in line with the commitment to real terms protection”.

What do you mean by “real terms protection”?

You also refer to “managing the workforce size”. What do you mean by that? Surely an increase means higher expenditure. You mention “managing non-pay pressures” and

“receiving compensatory funding to support lost income as a result of COVID-19.”

Those are big issues. What is the risk in relation to those four key determining factors that will allow you to maintain current levels of policing? How has the Government responded to those asks?

David Page: I will start and James Gray can come in with specific numbers.

In relation to real-terms protection, about 86 per cent of our budget is for people, which is a huge number. The biggest pressure is pay. We have committed to operate within our budget. If we have pressures that take us outside that, they have to be funded from elsewhere because, otherwise, we cannot operate within our budget. That includes things such as the national insurance hike that will come in from April next year. That will add £11.5 million to our costs, which is an awful lot of money. If that national insurance is not covered by the Scottish Government, I will have to make cuts somewhere. That is the importance of real-terms protection; it has to cover all those inflationary people-related costs that come from outside the organisation over and above our core budget.

Workforce management is important and tricky. As you say, we cannot keep growing the headcount, because bills go up. As we have

mentioned, we need to increase headcount in certain areas. For example, we need to do that in cyber, because there is increasing demand and we need to recruit people with specialist skills in the area. There are only two ways that I can fund that. We could make non-pay savings, which, because of the economies of scale that James Gray mentioned, would reduce bills, and then use that surplus to fund the extra jobs, but we have already been pressing down on that budget for a long time, so there is not much margin there. Using reform funding and capital, we could use transformation to create capacity. For example, body-worn video and other technical means can create a gap so that it costs less for us to deliver a current service. I can then push the savings from that gap into cyber.

Alternatively—this is probably the trickiest of all—as long as I get the money on capital and reform, we can look at the workforce mix. We have a defined number for the workforce at the moment. If, for example, I need 50 cyber specialists and there is a cost associated with that and, all other things being equal, I do not have the money from elsewhere, we will have to change the workforce mix. I mentioned that at the SPA resources board meeting a couple of weeks ago. At that point, we would need to consider the jobs that we do in policing. We cannot recognise that demand requires new jobs and then just keep adding the new jobs to the mix, because policing would continue to get more expensive.

At that point, we would have to think about the positioning of policing in terms of the services that we currently deliver. When we have done everything that we can and we know that there is no more money coming from the Scottish Government to help fund that on top of everything else, we would have to look at whether we continue to provide the services that we currently provide. If we do not need to continue to provide those services, we need to deprioritise some of them and redirect the funding into new jobs. At that point, we would be offering voluntary redundancy or voluntary early retirement to staff in areas that are less of a priority than they used to be. That is how we would have to balance the budget—

Jamie Greene: I am sorry to interrupt, but why are we resourcing the police to budget and not budgeting to the resource needs? With respect, it sounds to me that every answer that you have given me has been about how you balance the budget and not how much it costs to adequately police. That is a very different approach from what we are used to.

David Page: There are two answers to that. The first relates to the capital side. About three years ago, we changed the way that we articulate

our capital requirements. At board and committee level and in our published reports, we were publicly explicit about what policing needed in capital. At that point, everyone was able to see what we needed to deliver policing versus what we were given. That is how you found about the gap between our asking for £80 million or £90 million and getting £50 million. We have been explicit about that.

Until the budget that has just been granted, we operated a structural deficit anyway. We had to build transformation activity with a view to reducing police officer numbers, because that is the most expensive part of our budget. The additional structural deficit funding that we got this year put us into a balanced budget position. Having said that, like all public bodies, we have to operate with a balanced budget, which we try to do by doing the things that I have mentioned, because that is good management practice.

There might well be a point when there is a demand on policing that we are required to meet that we cannot meet without compromising service delivery. At that point, we would need to go to the Scottish Government and make a case for additional funding to meet the demand. If we had to do that, it would have to be backed up by solid evidence and data that shows that we are not shrouding. We would have to be explicit about the fact that we were managing the police service as efficiently as possible but, notwithstanding that, there was an additional demand on us that we needed support to meet. In that situation, once we had taken it through our police governance, it would go via the board to be scrutinised and challenged and then to the Scottish Government.

Jamie Greene: What savings are required to maintain the financial balance that you talk about in your submission?

James Gray: The savings are predominantly on the fleet and the estate, which we touched on earlier. An electric fleet is dependent on funding, but it would be a lot cheaper to operate than the current diesel and petrol fleet. On the estate, if we can make more use of co-location opportunities, that will reduce costs. We have an initial estimate of what we think we might be able to deliver, subject to our receiving funding, and that would broadly meet the non-pay pressures that we anticipate over the next five years.

The Convener: Does Collette Stevenson want to come in? I have a final follow-up question.

Collette Stevenson: I want to drill down further into the savings on the fleet that James Gray talked about. I will bring in a technical financial point. Am I correct in thinking that that will no longer be capital spend but will be revenue spend, because you will be leasing an electric fleet across

five years rather than having one-off capital spend?

James Gray: There are two parts to that. The saving will be a pure revenue saving in the sense of the fuel costs versus the electricity costs. The reduction in the size of the workforce that is needed to maintain the fleet will be a revenue saving. In relation to the leasing model, you are correct. In the past, that has been a revenue cost, whereas buying a car is a capital cost. With the introduction of international financial reporting standard 16—I do not want to get into the detail of that—it is likely that that will mostly be capitalised.

We have flagged that with our colleagues in the Scottish Government to make them aware of what we are planning to do and what the impact would be, but we are still waiting to hear back. Finance colleagues are waiting to hear from the Treasury about how that will be managed so that we understand the full implications. My understanding is that there will be adjustments to resource departmental expenditure limit and capital departmental expenditure limit to reflect the new accounting implications. I will not know the answer until we have clarity about the accounting treatment.

Collette Stevenson: So you are waiting for clarification from the Treasury.

James Gray: We will get it from the Scottish Government finance department, but it is waiting for the Treasury. That was the last update that I had.

The Convener: We have slightly overrun. I would like to bring the session to a close with a question about your digital strategy, which we have not really covered so far. Your five-year capital investment plan includes continued roll-out and work in relation to your digital strategy. There has been some criticism of the call-handling side of the Police Scotland function. What will be the priorities and what will be the budgetary implications of ensuring that the strategy continues as planned?

11:30

David Page: As part of the digital, data and ICT strategy, which we published a number of years ago, there is a technical project called the unified communications and contact platform project, which we are going to push off into early next year. All blue-light and public sector services will have to address that project at some point, because BT is turning off the analogue system in 2025 and there will have to be a replacement for the old analogue BT lines. We will need digital lines. The system also gives us multichannel capability.

That part of the DDICT strategy has been on the stocks for a long time and will introduce new technical capability and better service capability in our call centres. The project will be mirrored elsewhere across the public sector. As with all the work that we do, we are working closely with our blue-light colleagues in the fire and ambulance services to look at procurement and estates opportunities to reduce our cost base and improve efficiency. The UCCP project will be one of those projects about which we are open and transparent with those areas in saying, "This is what we have to do. We will share it, and work with you as much as possible to help all of us to be more efficient."

James Gray: The funding question links nicely back to the discussion on the capital ask. The strategy is included in the £466 million over five years, and it was in our ask for £85 million when we got £50 million. Had the funding been what we asked for when the strategy was published in, I think, 2018, we would be further down the road. The speed at which we can implement the DDICT strategy will be determined in part by how close we get to the £466 million in the next five years.

The Convener: Mr MacGregor, I was unaware that you wanted to come in.

Fulton MacGregor: Thank you, convener. I thought that I had been forgotten about there.

This is probably a reasonable enough area for the last question. It has been touched on in all the answers when looking at the budget overall. Where does local policing sit as a priority in the budget? I can speak only for myself, but I am sure that I also speak for my colleagues when I say that the relationships with local police stations are absolutely fantastic. The two stations that cover the two different parts of my constituency provide a crucial service to the public, and they have really good relationships with community groups and so on. Where does local policing sit as a priority?

David Page: All our budgets are driven from the ground up. DCC Will Kerr, who runs local policing, has a huge budget for the area. His requirements and demands come on to the table alongside all the other requirements.

What we do, from a finance perspective, is the technical management of that ask. At that point, the chief constable's job is to balance all the demand and risk across the different areas. To be honest, for the most part, DCCs Malcolm Graham, Will Kerr and Fiona Taylor agree among themselves what the balance of priority should be. They are all highly experienced senior officers who understand all the demands on the different areas. What usually comes through to the chief constable is an agreed operational plan or operational policing requirement, which we then wrap around the technical side of the budget.

Local policing is up there front and centre, because one of the key requirements for us in setting the policing budget is public confidence, and the chief constable has to balance that against all the hidden demands of policing and specialist crime such as cybercrime, which are not as visible but are more present in some cases.

Fulton MacGregor: It was useful to get that on the record.

The Convener: I thank you all for your attendance. It has been a really useful session. If you have any follow-up information that might be helpful to the committee, that would be welcome, and we will obviously take it into account.

We will have a five-minute break before we move on to our next agenda item.

11:35

Meeting suspended.

11:43

On resuming—

The Convener: I am delighted to welcome Mr Colin Lancaster, the chief executive of the Scottish Legal Aid Board. Thank you very much for your written submission, which is available online. I intend to allow about an hour for questions and discussion.

The session will be structured around a number of themes, starting with administrative costs, which Rhona Mackay will pick up.

Rona Mackay: Administrative costs have remained steady for about 10 years, which you could argue is a real-terms cut. Do you have sufficient administrative resources to do your job? What could you do with more?

11:45

Colin Lancaster (Scottish Legal Aid Board): You are right to observe that our budget has been fairly static for the past 10 years, when the profile of the organisation, the staffing mix, and the other costs that we incur have not been static. You can see from a more detailed examination of the mix between staffing and running costs that they have moved a fair bit in the past few years. Specifically, we have reduced our non-staff running costs quite considerably over that period, which has enabled us to maintain our staffing costs despite the overall budget remaining fairly flat.

That has been part of a strategy to move towards digitisation, and to drive efficiency in the organisation and in the service that we provide externally. Over that period, we have managed to reduce staff numbers, as some of the processes

that they were engaged in previously were no longer needed to the same extent because of the process of modernisation.

We have also reduced some of the running costs that were associated with what was, traditionally, a heavily paper-based process. Now, and particularly during the past 18 months, the process is entirely digital and online, barring some of our communication with the public. All our communication with the legal profession is based on our online systems, which has enabled us to change how we work and the associated costs.

Although there have been various periods in which things have been tight, we have managed to adopt a number of strategies to live within our means and reduce running costs to enable us to maintain our staffing numbers when they have been needed.

I would not say that we have felt that there have been things that we should have done or would have preferred to have done but were not able to do purely because of the budgetary position, but we have kept very careful watch on all running costs.

Our procurement processes have been improved. Some of the systems that we have adopted have given efficiency savings. Significantly, several years ago, we moved premises out of a beautiful—and now very expensive—series of Georgian townhouses into a publicly owned building at Haymarket. We took ownership of the new building, which we manage on behalf of a number of tenants as well as our own organisation. That has reduced our cost profile considerably because we can generate income from subletting that space. That has seen us through for a number of years.

However, those impacts peter out over time and things have become that bit tighter in the past couple of years. You will have seen that our budget allocation this year increased by a significant amount for the first time in the past 10 years. That was in recognition of the fact that we had exploited all the usual things that you might expect a body to do to find savings in running costs and drive down expenditure. Without some additional contribution from the Government, the pips would have started to squeak a bit.

Rona Mackay: How much have your staff numbers come down?

Colin Lancaster: Over a long period, we have reduced staff numbers by about 25 per cent. I can give you a specific—

Rona Mackay: No, I just wanted to get an approximate figure.

Colin Lancaster: It is around about that figure over a period of probably 15 years. As I said, the

process of digitisation started quite some time ago. We were maybe slightly ahead of the curve in that regard, which stood us in good stead.

Rona Mackay: My second question was going to be about efficiency savings, but you explained all that in your first answer. I will move on to the action that you are planning to take in response to your work with the Equality and Human Rights Commission on impact assessments. Does that have budgetary implications for SLAB?

Colin Lancaster: I suppose that, in a general sense, we are putting more emphasis on our equalities work, and we have been doing quite a lot of work to build that up over the past few years. How we approach our work with the EHRC is to try to embed our work on impact assessments into other processes. Rather than treating it as a stand-alone issue, we are trying to ensure that, as we do business improvement work, and as we review our policies, processes and practices, we build equalities into the heart of that. Although there is some additional work that would not necessarily otherwise have been undertaken in the way in which it will be, most of that is really an approach—it is a way of doing the things that we planned to do.

A major strand of that work is reviewing all our operational decision-making policies, or how we apply the discretion that we are given by the legal aid legislation in relation to applications or accounts. We are making sure that we have clear statements of all our policies in those areas, and that that is translated into clear guidance for the profession and decision makers.

As part of the process of drawing up the policies, or articulating the policies that have been in place previously, we are conducting thorough impact assessments and consulting on those policies. We are seeking input from the professions, users of legal aid and others who might have an input to make to ensure that we are properly reflecting all the needs of people with protected characteristics. We are also seeking input on whether our statements on how we do what we do, why we do it that way, and what information we need—whether that be from a member of the public applying for legal aid, or from a solicitor making an application on their behalf or submitting their account for payment—are as clear and transparent as possible. The equalities work is built in to the core of that.

Another piece of work that we had already scheduled but has perhaps been given greater prominence is a review of all our people-related policies, such as our staffing policies and procedures. Again, that is just to ensure that they are all fully up to date and reflect good practice generally and in relation to protected characteristics specifically. We will incur additional

costs for the support that we need to go through that full review process so that we can ensure that we have in place that up-to-date suite of policies.

Rona Mackay: What you have been describing sounds quite labour intensive, which I imagine would incur additional costs. I guess that the most important thing is that you can evaluate and evidence the work that you are doing.

Would you like to say anything else about the general costs and your budget?

Colin Lancaster: Generally speaking, we are using existing staff for that improvement work, but we will bring in specialist support for short periods when we need that. For something like the guidance on the administration of legal aid—GALA—project, we are tapping into the expertise that we have in our operational teams. That inevitably means that people are drawn away from their day-to-day work, and that might be where we are starting to feel a little bit of pressure.

The small increase in this year's budget will enable us to look at resourcing in those teams so that we can not only do the day-to-day work and maintain what has been fairly good performance in our turnaround times and engagement with the public and the profession on legal aid matters, but draw on the experience and expertise of our staff for our developmental work. That is what we will be able to do over this period.

The Convener: Unless anyone has any specific questions on administrative costs, I would like to move on to looking at general trends around legal aid and the number of legal aid applications that are being granted.

During a previous session, we have spoken with you about how the trend has been downwards. There are reasons for that, such as the pandemic. I am interested in whether you think that there are other underlying reasons why we are seeing a downward trend. What might that mean in the longer term for legal aid budgeting and for legal aid firms offering legal aid work?

Colin Lancaster: That is a really interesting question, and one that I could probably spend all day talking about—

The Convener: Please do not.

Colin Lancaster: I will spare you some of the detail.

Legal aid is not a single thing, as you will have picked up from looking at the stats, from the discussion last week, and from the submissions that you have received. A wide range of topics are covered and the trends in relation to those topics are different. The overall picture is a combination of the impacts of really quite different things happening in society, the criminal justice system

and elsewhere. For example, if we look over the longer term—10 to 20 years—we can see a real move in civil legal assistance towards many of the social welfare law categories. We now see far more advice provided in relation to mental health, immigration and asylum and, to an extent, in relation to housing cases.

The big rise in civil legal aid relates to adults with incapacity. You can see the immediate impact of changes in legislation that the Parliament has introduced. When new rights are created and new processes are required, that can stimulate demand for legal aid. Adults with incapacity or guardianship-based applications are our biggest single category of applications for civil legal aid. Obviously, 15 years ago, that category did not exist at all. You can really see how those shifts happen over time.

Although those applications have risen considerably and stayed at a high level, other things have had different trends. The big headline trend is, of course, in relation to criminal legal assistance. Such assistance tends to account for two thirds of legal aid expenditure, but the balance has shifted a bit in recent years and it is less dominant than it once was. That is largely driven by a 10-year reduction in the number of court prosecutions. The system, being demand led, obviously responds to demand. Therefore, as the demands reduce in relation to the number of court actions that are taken, applications go down, resulting in the number of cases that we then pay out on going down.

Although, generally, one should celebrate if crime is down, or celebrate that there are fewer prosecutions or people requiring assistance, as that would seem to be a good thing, for those providing the service, it means that business levels fluctuate.

Over that 10-year period, the amount of business available to be done by firms, particularly those that specialise in criminal work and that might find it harder to divert capacity into other areas of business, will have fallen fairly significantly. There has been a 35 per cent reduction in prosecutions and a 32 per cent reduction in criminal legal aid expenditure over the 10-year period. Those things will not be without their impacts on those who deliver the service.

I know that you will also be aware—because you have had submissions from firms—that many firms are very small. I think that about 70 per cent of firms that provide criminal legal assistance have two or fewer solicitors providing it. Perhaps it is difficult for them to respond to changes of that magnitude—they might find it a challenge to flex their capacity or, as I have said, to divert into other areas of work.

Thirty years ago, the model was that of generalist high street firms that did a bit of criminal work, a bit of family work, a bit of work for the local community and a bit of work for local businesses. Those things would perhaps ebb and flow in a way that could be managed alongside one another, but the move to specialisation, and particularly to small criminal-only firms, perhaps leaves firms vulnerable to fluctuations in the market.

The Convener: That perhaps covers my follow-up question, which was about how specialist criminal law firms might need to change their model of practice and what budget considerations might need to be taken into account to allow that to happen. Do you want to add anything on that?

12:00

Colin Lancaster: That is another really interesting question, and it is useful to discuss it. It is a challenge in the discussion on legal aid that it is all about fees and spend, and there is less focus on the delivery. As we said in our submission for last week's meeting, the delivery is good—we have a lot of really committed solicitors up and down the country delivering a great service on behalf of their clients in difficult circumstances. Particularly in the past 18 months, those have been very difficult and changing circumstances. It is important to recognise that.

The structures within which the services are delivered are in no way dictated or required by the shape of the legal aid system. Therefore, any discussion on different ways in which firms could structure themselves, mix their business or perhaps work together at local level or across the country are beyond the scope of legal aid policy per se. However, the impacts of such issues very much result in the discussion focusing on fees and income levels for firms.

Last week, Mr Greene raised the question of whether an immediate increase in fees would solve the problems that were being described. It is not for me to say whether there should or should not be an increase in fees, but there are a number of issues that we hear about, that you have heard in the evidence that you have been given by firms and that we pick up in our discussions with them. Some of the issues are structural, some are about business models, some are about the professional structures or training models and some are about the ways in which firms can deliver their services. As a public service, it is really unusual in that it relies for its delivery on hundreds of small firms competing against one another for business at local level rather than co-ordinating their services to ensure that client needs are met in the most efficient and effective way, and in a way that enables firms to derive fair remuneration for the work that they do, that is cost-effective for the

taxpayer and that delivers high-quality services to the public in a way that is predictable, understandable and accessible.

We cannot possibly resolve that debate today, but it is important to have that discussion.

The Convener: That is a helpful response.

Russell Findlay: I want to go back to the point about local firms competing for the same pot of money. We have heard previously from Scottish Women's Aid about a lack of specialist solicitors in respect of offences in which women are victims. Is the direct employment of more solicitors by the board a likely direction of travel that will help to resolve that? Are you actively seeking to achieve that or—let us face it—are you up against the resistance of law firms and their lobby, who are pretty hostile to the idea?

Colin Lancaster: As I said last week, with public defenders—and with the solicitors who we employ in the civil legal assistance office—it is not for us to decide how many there are or where they will operate. We have observed that a more varied range of tools might be helpful in addressing the range of needs that might present and in designing services to provide more assurance that services will be there when people need them.

The question about competition is interesting. From the outset, the Public Defence Solicitors Office has been seen very much as additional competition for the private bar—the private bar as a whole and individual firms in areas where the PDSO operates. It was part of the original expansion plan for the PDSO when, following the early evaluations, we went from one office to three to seven that it would operate in a way that tries to minimise the impact of its presence on individual firms. For example, we have a PDSO in Dundee, which was set up to cover the courts in Dundee but also the surrounding towns, so that its impact on competition is not focused entirely on Dundee. The Edinburgh office also services Livingstone sheriff court, and the Falkirk office services Stirling and Alloa sheriff courts, to try to spread that effect.

We can debate whether that is the most efficient structure. In some respect, it means that our public defenders have to cover a lot of ground to deliver their business. If you were setting up a business and there was sufficient business to be had locally, you might be better focusing on your local patch, but that is not how it was set up.

There are different ways of doing it, and different possible mixes. As I said, it is not for us to say whether it should be 5 per cent, as it is at the moment, or 10, 15, 20 or 30 per cent. However, there could be scope for that and for different ways of securing the services of private solicitors. At the moment, in essence, any firm that wants to provide criminal legal assistance can register with

us—there is a fairly low bar for entry, although that is not to say that there is a low quality bar; it is just that the requirements for entry are not particularly onerous. As a result, any business that wants to move in to criminal legal aid work in any part of the country can simply do so. No intervention is possible if it looks as if that might oversaturate a local market or draw resource away from another area.

Russell Findlay: I have a quick follow-up question. If I understand correctly, in order to make radical changes to the structure, that would require political direction. On the basis of the structure as it is, do you have any thoughts about creating specialist legal provision to deal with what has been identified as a particular problem around domestic crimes?

Colin Lancaster: I am sorry, but are you asking about what has happened or what could happen?

Russell Findlay: Are you exploring or have you explored the creation of a specialist provision within the framework that you already have?

Colin Lancaster: I mentioned last week some initial discussions that we had with Rape Crisis Scotland, in which the Law Society of Scotland was also involved, on the scope, even at present, for advice to be provided to complainers in sexual offence cases, particularly those in which applications are made for the leading of particular types of evidence, and on the rights of complainers in such cases to make representations in relation to that evidence.

I mentioned Lady Dorrian's review, which looks at expanding the potential for complainers to participate in the process, or aspects of the process. Obviously, for that to happen, support would need to be provided, including funding for that support. There is a question as to whether that would best be provided by criminal defence solicitors—who obviously have a clear understanding of the way in which proceedings might unfold, the issues that might be discussed in court and what it might mean for a complainer—or by somebody with experience in civil matters, who might for example work in the area of domestic abuse. There might be different ways of doing that.

We have had initial discussions on whether, using the fact that the PDSO is a separate service, we could explore which service would work best and how to get people in touch with that service. That might be by referral from Scottish Women's Aid, Rape Crisis or other organisations that assist complainers in such cases, or it might be notification by the Crown if an application is made to lead certain evidence. We could try things out and use that as a basis for saying, "Actually, there is something here. It works with criminal defence

agents, and there is scope for there to be, in effect, a commissioned service that brings in the private sector." At present, everything that the private sector does in a legal aid case is defined by the legislation and regulations, which set out the things that people are paid for doing. Other activity that is not directly associated with the case or a defined form of legal aid would have to be thought of separately.

It might be that, rather than having a new type of legal aid or a new fee, a new service could be delivered that could be structured in a certain way, commissioned out, contracted with private firms and delivered through a combination of public-private partnerships, specifically to meet the particular need as it emerges, rather than use traditional models.

The Convener: Pauline McNeill is keen to come in.

Pauline McNeill: You will have heard some of the evidence that the committee has taken. I will summarise what has interested me about the evidence that we have taken. We heard criminal lawyers and the Faculty of Advocates talk about the fee structure. The Faculty of Advocates said that it has upped the average number of daily cases from 12 to 20, but it still thinks that there will be a shortage of defence lawyers in the system.

We also heard a lot about the job of a defence solicitor. There is an important point to address here about the work-life balance of defence solicitors. They have to go to the police station late at night. The vulnerability of many of the clients of defence solicitors must be acknowledged, too. Do you agree that, as part of any changes to the system, there needs to be acknowledgement of the fact that being a defence solicitor brings with it all those things? Whether a defence solicitor works for the PDSO service or has their own firm, the job is probably much the same—they deal with vulnerable people in the criminal justice system who want a choice of lawyer and who want to be properly represented to give themselves the best chance of having their case put. Most ordinary people probably do not appreciate the hours that defence solicitors work. Do you agree that such acknowledgement is required?

Colin Lancaster: The committee has had some vivid descriptions of the work of a defence solicitor. I absolutely recognise that it is a tough job. You mentioned vulnerable clients. Many of those vulnerable clients will have pre-existing vulnerabilities, and being in a stressful situation in the criminal justice system might add to or exacerbate those vulnerabilities. We are talking about people who are in very difficult circumstances who are looking for help and, often, their solicitor is the person who is there for them, the person who they trust, the person who they

have a relationship with and the only person who they think is on their side. Therefore, it is an extremely important relationship, and it is one that many solicitors perform admirably.

The pattern of work has changed again over the recent period. It is around 10 years since the Cadder judgment extended rights to advice in police custody and, three years ago, the Criminal Justice (Scotland) Act 2016 further extended those rights. In many ways, that change and the impact that it has had on the way in which services are delivered have not really been reflected in changes in the practice of criminal defence. It might be an additional burden, but the model has not really changed. That means that one might look at the situation and think, “We’ve got a new situation where we’ve got a requirement for a 24/7 service,” but that service will potentially be delivered by the same people who deliver the daytime service. They might be called out to a police station at 2 in the morning but might have a sheriff and jury trial the next day. They might be a sole practitioner or might work in a firm with two people, which means that there is no scope for having a rota, getting time off in lieu or getting somebody else to substitute the next day.

What happened in 2010-11, and largely also in 2018, when advice rights were extended, was that defence practices absorbed that work—they just took on those additional responsibilities. Although we had some discussion at the time about whether there were different models that could be used to ensure that sole practitioners did not have to be on call all the time, for example by collaborating with their peers through a sort of deputising service—

Pauline McNeill: Does that not happen?

Colin Lancaster: That does not happen.

There is a duty scheme, which we manage, whereby we have duty solicitors who are available—they are on call, if you like. In a busy area with lots of firms of solicitors, someone might be a duty solicitor one week a year, but in areas with fewer solicitors, someone might be a duty solicitor one week in two, one week in three or one week in four. That means that they would not be on call for that work all the time.

12:15

The duty solicitor deals with people who do not have a solicitor—people who are in police custody and who ask for a solicitor. The police contact us and we arrange that. However, for a solicitor’s own clients, that service does not step in, and that is where the extra burden comes. Even if someone is on duty only one week a year, they might be on call for their own clients 52 weeks a year. That is a real challenge logistically, as well as from the point of view of work-life balance.

In 2010, we introduced a solicitor contact line, which involves solicitors employed by us providing a central telephone service. That was augmented in 2018 to recognise the additional rights that were brought in. We have a team of solicitors who are at their phones 24 hours a day, seven days a week, including weekends, public holidays, Christmas day and boxing day. They are available to take calls from the police for people who are in custody. They provide telephone advice. If somebody wants a solicitor to attend at the police station—in particular, to attend for an interview—we arrange for a duty solicitor to attend. If no duty solicitor is available, we have off-shift contact line solicitors, on whom we can call to provide that service.

That model was initially resisted—I think that it was initially regarded as being a grab on new business—but, over the intervening years, a lot of solicitors have come to appreciate the fact that they were the first line of defence and that that provided a buffer for the demands of being on call 24/7. However, it has not really replaced the demand for individual solicitors to be on call.

Part of the issue goes back to the point about competition. Solicitors want to be there for their client. They want to secure that client—they do not want the client to be left with somebody else in case they stay with that other person.

The contact line does not provide casework, so if a contact line solicitor acts for the client, the client will still be the client of the other solicitor, come the next day when they appear in court. Therefore, it does not disrupt the solicitor-client relationship.

In thinking about different models and ways of delivering the service, it would be really useful if the private sector were to look at that and think, “Could we operate in that way in relation to named-solicitor clients rather than just duty clients?” A consortium-type approach might enable solicitors in the private sector to work collectively so that every individual solicitor did not need to be on call all the time. It could be agreed between a group of firms who was on call and that those clients would still be the clients of the other firms that were part of the consortium. Such an idea emerged about 10 years ago, but it was roundly rejected by the profession. It came from the profession, but it was rejected by the profession, who I think treated it with a degree of suspicion and hostility. In some respects, that might hold the sector back in being able to think about whether there are innovative ways of responding to the new demands that would provide a good service to clients, but without having such an impact on individual solicitors.

The Convener: I am aware that this is a really important topic and that there are a lot of moving

parts at play, but I ask that we try to keep to time so that we can cover as much ground as possible.

Pauline McNeill: That was a really helpful answer.

I have a very quick question, the answer to which will, I hope, be short. You will have heard—I think that you agree, although you can correct me if not—that fixing the early plea aspect of the fees structure might be helpful. Could you put your views on that on the record? Until we find alternatives and discuss and agree on some of what you have mentioned, should there be, in the short term, an immediate uplift in fees, in addition to what has happened, in order to ensure that we continue to provide an adequate service overall for people who seek to be defended in the criminal justice system?

Colin Lancaster: On the first question, my answer is yes—I agree. To be clear, that would mean reforming the fees structure to reward early preparation better, particularly where it leads to early resolution of a case. I absolutely agree that that should be done. That could be achieved through regulations—primary legislative change would not be required. That could be put in place pretty quickly; the new fees structure could be available for new cases within months, which would have an early positive impact.

There are two aspects to the other question. One is whether there should be an injection of resource and the other is whether that injection of resource should be enabled or facilitated by an increase in the headline fees.

As I said in my written submission, the budget is demand led. If there are more cases, more work will be done and more will be paid out in fees. If there is an increase in demand in the short term that results in more solicitors submitting applications or doing work and submitting accounts, more money will flow into the sector immediately. Our projection is that overall expenditure will return to pre-Covid levels in this financial year, and that it will go up in future years because of the backlog being cleared and because of increases in demand, which we have seen even in the past year.

On whether there should be a fee increase, ministers have committed to a further 5 per cent increase over the 5 per cent increase in March. Last week, the Minister for Community Safety made a statement on the legal aid payment advisory panel's recommendations. Further work will be commissioned to consider—quickly, I hope—whether there should be an increase in the rate over and above that 5 per cent increase.

Jamie Greene: I want to address what seems to be a bit of a contradiction in views about the situation in legal aid. Anyone who follows Scottish

legal news or who has seen any headlines over the past few days and weeks will know that the legal profession is vocal in its concern about the situation. That is quite different to what we are hearing today about the drop in revenue being simply a by-product of the drop in demand.

We heard from Citizens Advice Scotland that the number of people seeking legal assistance has gone up by more than 30 per cent in the past year, but that the amount of grants being paid out over the same period had dropped by, I think, 27 per cent.

Another illustration is that witnesses who gave evidence at a previous session said that there are “legal aid deserts” in provision in Scotland. They also mentioned that there are many and varied issues to do with access to justice that are particularly acute in island and rural communities.

It seems to me, on the one hand, that a body of people are saying that the fees structure does not work and that they are not getting enough money for they work that they do, and that people in the real world are not able to access the legal justice and representation that they deserve or want. On the other hand, the system is saying that it pays out only as much as it is asked for. That seems to be a huge contradiction. Why is there that difference of views?

Colin Lancaster: I do not think that it is a contradiction as such, but I can see why it might appear to be inconsistent. The system is demand led; that is baked in. If demand increases—if more people seek help and are given it—more money will be spent. Nobody is denied access on the basis that the budget has run out or because there is rationing of any sort. That is not how the system operates.

I think that Citizens Advice Scotland said that there has been an increase in people seeking advice about legal aid, rather than an increase in people seeking advice on legal issues. I think, from my discussions with CAS over many years, that it tends not to be the first port of call for people who are seeking a solicitor; most people navigate their way to a solicitor independently and might go to CAS if they are having difficulty. I think that it said that it provided 4,000 pieces of advice last year. Relative to the 100,000 or so people who were granted legal aid, that is a small number. I am not saying that CAS has not seen an increase over the period—it absolutely has. That might reflect challenges that people have faced in travelling or accessing physical services during Covid; they might have been seeking more advice about how to get help.

The matter of there being advice deserts is tricky. We have a duty to monitor availability and accessibility of legal services, which we did for a

number of years through an access to justice reference group. The group included the Law Society of Scotland, the Scottish Association of Law Centres, Citizens Advice Scotland, Scottish Women's Aid and many others. Its purpose was to ingather evidence about such challenges, so that we could provide ministers with an assessment of whether there were particular problems in availability or accessibility of services. All our reports are published on our website. Generally, we did not find evidence—none of the participants in the group was able to give us such evidence—of systemic problems. They identified isolated problems, but nothing that would point to the system not working, or to there being big issues with it.

We found evidence in a couple of areas that there might be something that could be explored further. One was access for people who are deaf or hard of hearing. We did work with Deaf Action on that. The other was housing advice. On the face of it, provision of housing advice appears to be very uneven. We see good strong pockets of housing advice, particularly in Glasgow, in areas where there are law centres and in areas where our offices operate. We provide quite a lot of housing advice for rent arrears and suchlike. It would be fair to assume that people in other parts of the country who experience housing debt are getting help from Citizens Advice Scotland, Shelter or specialist housing advisers. However, we have not seen that come through in terms of there being great numbers of legal aid applications.

We see that there might be issues in some specific areas but, overall, the evidence did not suggest that there are systemic problems. The evidence that we gathered from applicants for legal aid suggests that a very small minority had difficulty finding a solicitor. I think that we cite in our submission that 5 per cent of criminal applicants found it difficult to find a solicitor, and that in our most recent survey the figure was 8 per cent for civil applicants. It appears that coverage is generally fairly solid.

Jamie Greene: I note that the previous survey was in 2018.

Colin Lancaster: Yes.

Jamie Greene: I presume that there will be another one.

Colin Lancaster: We are running one now.

Jamie Greene: That is great.

I will follow on from that. I guess that the three strings to the puppet are interlinked. One string is the set level of fees, which is out of your control; it is a policy decision for Governments. The second string is the volume of cases that are brought to prosecution. The third string is the value of cases,

which we have not discussed. There is probably no magic solution to all that. Surely, an increase in one or more of those would increase the level of grants that are paid out by SLAB and the amount of revenue coming into organisations such as Pauline McNeill mentioned, which are smaller scale and seem, on the face of it, to be struggling to survive. Where do you fit into the triangle in terms of getting those numbers up? We do not necessarily want to pay out more, but if that is the right thing to do because we have an uncapped system, then so be it. Something has to give. What is the most likely outcome?

12:30

Colin Lancaster: What we have seen in the past 18 months is obviously unusual. The situation has been very up and down. However, we have seen a build-up of cases and the backlog in the system, of which you are well aware.

However, we have also observed an underlying growth in solemn procedure cases. Last year, during the pandemic, the number of grants for solemn procedure cases was higher than it was the year before and is still going up. There is growth in demand in that respect. The trajectory of those cases—the timescale over which they are seen through—has stretched, which has resulted in an increase in grants and will have resulted in an increase in activity and spending. As I said earlier, we expect to go back up to pre-Covid levels this year, and to go beyond that in future years. It looks as though that trend will not reverse in the next two or three years, so we expect a fairly significant increase in state expenditure. During this year, we expect to spend £30 million more than we spent last year.

Jamie Greene: We are running out of time, so I will be brief. Do you see your organisation's role as facilitating the administration of public money that goes to the legal profession, or are you more consumer facing? Many thousands of people are going to Citizens Advice Scotland, and we know that many of its services are being cut or have been lost recently. Is that a warning that people will no longer have an idea about where to go to seek advice and help? Could you play a better role by being more consumer focused, so that people would know who you are and where to go for direct advice from the body that administers the finance, rather than going to the third sector?

The Convener: I ask that you keep your answer as brief as you can, so that I can let other members in before we close the meeting.

Colin Lancaster: Sure.

Fundamentally, SLAB is an administrative body—our statutory function is to administer the legal aid system. Whether that is all that we should

be is a different question. As I said, potential exists for different models of provision and forms of intervention. There is scope for SLAB, or a body like us, to take a more proactive role. The system is reactive—maybe it should not be.

Collette Stevenson: I will ask about the interim fees that were introduced as a result of Covid, and the resulting backlog in cases. Are the interim fees the way forward? Should those fees stay in place? What impact would that have on your future budgets? I am keen to find out a wee bit more about that.

Colin Lancaster: We have had interim fees for quite some time—their use was extended for Covid purposes. From the profession's point of view, removing interim fees would create a cliff edge. There would be a gap—that is, people would already have billed for cases but would have to wait until the end of other cases before being paid.

The introduction of change in the cash-flow model for the profession would result in a change to SLAB's cash-flow model. We would pay out more at earlier stages of cases, which would bring forward expenditure from future periods. I do not think that that would be an issue at the moment, because of the interruption that Covid has caused.

The profession has talked about the issue for many years, and we have discussed the matter with it. Changes have been made; now, perhaps, is when there is the best opportunity to keep them in place in some form. The provision was put in place as an emergency measure and could be more nuanced, but it would be useful to have something that addresses the cash-flow issue that exists because solicitors have to wait until the end of a case and must cover costs as they go, before being paid.

I have to say that take-up of the interim fees has not been as big as we anticipated. Maybe that was because the profession was not confident that there would be no cliff edge. An assurance that payment will remain as it is might give them the confidence to change their billing patterns, which would improve their cash flow in a way that would support their businesses.

Fulton MacGregor: I have a question about the guidance on the administration of legal aid—GALA—project that you are running. Is it having an impact on and streamlining effectiveness in decision making? What is its impact in the experience of solicitors and their clients who are involved in legal aid?

Colin Lancaster: Thank you for the question. The project is having an effect. It is a huge piece of work for us that will be central over the next couple of years.

Ian Moir, who was at the committee last week, mentioned the impact of the change to the interests-of-justice test. That came out in our GALA project, in which we looked at how we applied that test, the factors that we weighed and the information that we needed. We concluded that for cases being prosecuted in the sheriff court, we do not need all the information that was requested in order to be satisfied that prosecution is in the interests of justice, so we changed our guidance and system in March. Ian Moir acknowledged last week that the project has already had an impact in terms of the amount of information that we need and, perhaps, the speed of some decision making.

We have launched our consultation on accounts assessment. That should have an impact, not only in relation to some of the specific policy changes that we are proposing, but in terms of making it as clear as we can how the process works and the tests that we apply, so that we can take some of the heat out of the relationship, which can get fairly tense. That should have a positive impact on solicitors, both with regard to administration and cash flow, if the result is that more of the accounts that are submitted can be paid in full first time because all the charges are valid and properly vouched. That should improve the position.

We will consult on means assessment. That could result in a significant impact on individual applicants for legal aid in relation to how we assess their income; it might make it easier for people to satisfy the means test and it might make the system a bit smoother. The test is, at the moment, very complex and can be very time consuming. The consultation could lead to improvement in that. Separately, the process might suggest a change to the regulations, which we would incorporate in advice to ministers.

Fulton MacGregor: Anything that improves access to justice and legal aid is crucial, so I welcome what you have said. However, the meeting is about budget scrutiny, so might the result of streamlining the process be that, once things are working more fully and better, more people will get legal aid? Would that increase budget pressures?

Colin Lancaster: I have to be up front and say that that could increase budget pressures on the Government, but not on SLAB because—as I said—it is a demand-led budget. Some people who should qualify for legal aid find it difficult to go through the process, so they drop out of the process along the way. They should get the help that they need. If changing how the process runs enables them to stick with it to the point at which they are granted legal aid and can get the help that they need, that is how the system should be working. If that results in some additional

expenditure, that expenditure will reflect what Parliament intends in relation to the legislation and regulations.

Fulton MacGregor: I agree. It is helpful to have that on the record.

The Convener: Mr Lancaster, thank you for your attendance today; it has been most helpful. If there is anything you wish to follow up on, please feel free to do so in writing. The committee will also take that evidence into account.

We will take a short break to let Mr Lancaster leave before we move on to the next item.

12:38

Meeting suspended.

12:39

On resuming—

Police, Crime, Sentencing and Courts Bill

The Convener: The next agenda item is consideration of a paper from the clerks on a United Kingdom Parliament bill. I refer members to paper 4. Since we last agreed to publish a short legislative consent report on the Police, Crime, Sentencing and Courts Bill, the Delegated Powers and Law Reform Committee has published a report and has highlighted a couple of issues, which are outlined in the paper. It is suggested that we update our planned report and publish it now.

We should note that the Scottish Government plans to produce a supplementary legislative consent memorandum in due course. We can consider the issue of extraction of information from digital devices then.

Do members agree that we should update our draft report, as is suggested in paper 4, and that we should ask the clerks to make arrangements for publication?

Members indicated agreement.

The Convener: That concludes the public part of our meeting. Our next meeting will be on Wednesday 27 October, when we will hold a round-table evidence session on the role of the Scottish criminal justice sector in tackling the misuse of drugs.

12:41

Meeting continued in private until 13:06.

This is a draft *Official Report* and is subject to correction between publication and archiving, which will take place no later than 35 working days after the date of the meeting. The most up-to-date version is available here:
<https://www.parliament.scot/chamber-and-committees/committees/committee-transcripts>

Members and other meeting participants who wish to suggest corrections to their contributions should contact the Official Report.

Official Report
Room T2.20
Scottish Parliament
Edinburgh
EH99 1SP

Email: official.report@parliament.scot
Telephone: 0131 348 5447
Fax: 0131 348 5423

The deadline for corrections to this edition is:

Monday 8 November 2021

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba