



OFFICIAL REPORT
AITHISG OIFIGEIL

Criminal Justice Committee

Wednesday 7 September 2022

Session 6



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CRIMINAL JUSTICE COMMITTEE

23rd Meeting 2022, 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

CLERK TO THE COMMITTEE

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 7 September 2022

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Audrey Nicoll): A very good morning to everyone. I welcome members and staff back from summer recess and to the 23rd meeting in 2022 of the Criminal Justice Committee. We have received apologies from Pauline McNeill.

Agenda item 1 is a decision on taking business in private. Do we agree to take items 4 and 5 in private?

Members *indicated agreement.*

Subordinate Legislation

Offensive Weapons Act 2019 (Prescribed Documents) (Scotland) (No 2) Order 2022 (SSI 2022/210)

10:00

The Convener: Agenda item 2 is consideration of a negative Scottish statutory instrument. I refer members to paper 1.

The SSI adds

“A United Kingdom photocard driving licence”

as a valid form of identification for the purposes of a defence to two new criminal offences under the Offensive Weapons Act 2019 operating in Scotland. The two offences are, first, an offence under section 39 relating to a delivery company delivering bladed products, sold by a UK-based seller, to a person aged under 18 at residential premises; and, secondly, an offence under section 42 relating to a delivery company that has entered into an arrangement with a seller that is based outside the UK to deliver a bladed article to a person under 18.

As there are no questions, are members content not to make any recommendation to the Parliament on the instrument?

Members *indicated agreement.*

Correspondence

10:02

The Convener: Item 3 is consideration of a number of items of correspondence that the committee received during the summer recess. I refer members to paper 2. As you will see, the clerks have suggested some follow-up actions in the table in paragraph 3.

I propose that we take each letter in turn. I will ask the committee for any views, and then for agreement, on how we wish to proceed with each of them.

We will start with the letter that the committee received from the Minister for Community Safety in relation to legal aid. Do members wish to make any comments on the correspondence?

Russell Findlay (West Scotland) (Con): Subsequent to the correspondence from the minister, we have had some correspondence from the Edinburgh Bar Association. It might therefore be worthwhile, if we are writing to the minister on that issue, to incorporate some of the points that the EBA has made in response to her.

Jamie Greene (West Scotland) (Con): I echo that comment. The EBA's letter was received only lately, so it might not necessarily be widely available in the public domain. Nonetheless, it is relevant, because it clearly suggests that the dispute is still on-going.

A number of members have asked questions both in committee and in the chamber of the Minister for Community Safety, who is responsible for the relevant portfolio, about the dispute around legal aid. The letter that the committee received from the EBA yesterday clearly shows that the matter is far from resolved—indeed, quite the opposite.

It is not necessarily that there is disagreement just on the numbers or on the quantity of money being offered by the Government. There is clearly disagreement on the facts, and the historical journey that both parties have been on to get to where they currently are.

From my own neutral standpoint, I am struggling with this. What are the facts, and who is right in this instance? Both parties cannot be right, given the vocal and vehement disagreement between them. Perhaps the Scottish Parliament information centre or other colleagues can provide us with a timeline that outlines the exact journey that the parties have been on, including the assignment of a budget to legal aid; any changes that were made; and any additional funds that were made available by the Government and how those were

received. That will enable us to see how we have got to where we are today.

Two parallel conversations are happening. Those in the sector, and therefore on the front line, are clearly in huge disagreement with the Government, to the point of stating yesterday in the EBA letter that the minister was being less than forthcoming with the facts. The minister herself has a robust point of view, which she feels is an appropriate response.

We should get that information before we hear anything further on the matter. We will simply get into a tit-for-tat situation if we keep writing back and forth between the parties; we are not a mediator in the situation, and it is not our job to solve the problem. However, I am coming to feel that criminal lawyers are clearly at their wits' end with the matter. They are warning of all sorts of things down the line, which I think should be of concern to the committee, but equally the Government seems to be quite robust in its defence.

I am struggling to get to the nub of the problem. What are the numbers? What was promised and not delivered? What was overdelivered but not promised?

That is my only comment—I am not taking either side in the dispute.

Katy Clark (West Scotland) (Lab): I echo everything that has been said. It seems to me that the Government keeps saying that the rates have been agreed; indeed, the committee has previously heard evidence on that. However, I do not think that that is particularly fair. The profession says that it had no choice, that that was what was on the table and that if it did not take the offer, there would be no increase.

We have some information in the committee papers, particularly on hourly rates. I do not think that we need a huge amount of financial knowledge in order to understand the information on page 10, for example. Obviously, there has been an increase in the use of fixed-fee arrangements, but the hourly rates have not kept up with the rate of inflation or with any other indicator that we might expect.

It is quite apparent that there have been massive cuts in legal aid, and that solicitors in particular are now being paid a lot less, in real terms, than they would have been 25 years ago. It might be that the Scottish Government can provide some justification for that, but I do not think that we need a huge amount of further evidence to be able to see that that is clearly the case.

It is clear that there is a huge amount of anger, as there is in England, where there are similar

problems and where barristers are now on strike. We have already had some strikes by the legal profession in Scotland, including the decision not to carry out certain types of work. The situation is clearly very heated, but I do not think that we, as a committee, can be mediators. We cannot perform that function.

In addition, we are going into a period of austerity. We were told that the cuts to the budgets in the justice sector were going to be approximately 20 per cent, and that was when inflation was lower. That backdrop means that the problem is going to get a great deal more serious, because the Cabinet Secretary for Justice and Veterans and the relevant ministers presumably have very little financial flexibility at their disposal.

The situation is highly concerning. It is clear that there have been massive cuts. I am not exactly sure what role the committee can play, as we are not mediators, but I think that we have to accept that there have been massive cuts in the legal aid budgets. As a consequence, some of the most vulnerable will not be getting the support that we would like them to have. That is the message that the committee should be sending: that we recognise that there have been significant cuts and that that will have an impact.

Rona Mackay (Strathkelvin and Bearsden) (SNP): I agree with Jamie Greene's comments—I do not think that we have all the information. Things have clearly reached an impasse, and I do not think that we have all the facts set out clearly before us.

We are not mediators, but it would be good to know more about the background to the dispute. I agree with Jamie Greene; it is a sensible proposition to ask for a fairly easy-to-understand timeline to enable us to know what has been going on. Once we get that, we can consider whether there is any role for the committee in the matter. That is not to say that the situation is not concerning, but work is clearly on-going.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I take this opportunity to mention that I have had some contact on this matter from lawyers, some of whom are constituents. As Katy Clark has just said, there are concerns, from their point of view, about the funding of legal aid and, therefore, the ability of defence lawyers to operate. Given that we are dealing with a backlog, the situation is clearly not a good one. This is a similar point to that made by Rona Mackay and Jamie Greene, but it feels to me as if the Government's response has been quite robust.

We are not, as others have said, mediators. I think that the suggestion from the clerks—that we take the matter into the budget scrutiny period that

we are now entering—is the right one. We can examine it then, and we can perhaps ask stakeholders and the Government more about it to see whether the impasse that seems to exist can be navigated around. The Government will not want a situation in which the backlog cannot be cleared, because defence lawyers cannot do their work. Indeed, that will be in no one's interest.

As I have said, I think that the suggestion that has been made is the right one, but I just wanted to take this opportunity to comment. I have had several pieces of correspondence on this matter; I imagine that some correspondence has gone to all committee members, but two or three constituents have contacted me, too. I just wanted to put that on the record.

Jamie Greene: I apologise, convener—I do not want to prolong the debate on this too much. However, I should say that the budget scrutiny point is a valid one, albeit there are limitations on our involvement, in that we can identify only what the Government has to offer; whether or not that is received well is out of our control. Aside from that, though, there is the other issue of headcount and resource in the sector. Given the other work that the committee is doing, what is more important to us in yesterday's letter from the Edinburgh Bar Association is the paragraph that reads:

"The Scottish Government is presently consulting on proposals to give complainers in sexual offence cases the right to legally aided independent legal representation in their case. Who does the SG propose represent them?"

The association is warning of a delta between the number of people coming forward with cases and the number of people available to represent them or to offer them independent advice. As we already know, the lack of representation has been an issue throughout the country for a while not just because of the backlog but, clearly, because of a lack of resource. We do not want people going through the justice system on either side—accused or complainers—to face unnecessary delays to cases or trials or to have no access to representation.

It is a different issue, but we need to keep a watchful eye on it. If the warnings come to fruition, we could be facing a substantial crisis in the sector during this session of the Parliament, and it would have a knock-on effect on clearing the backlog and for people who are being held on remand, waiting for their day in court. We know all about the consequences of such delays on folk. I just wonder how we can work the issue into our workload to ensure that it does not creep up on us in a year or two.

Collette Stevenson (East Kilbride) (SNP): I echo everyone else's comments and, in particular, emphasise the point that we should not be the mediators. More important is the impact on the

victims, if the situation goes on and this impasse remains. That is what lies at the heart of the matter.

I want to get clarification on something. Am I correct in saying that the lawyers are looking for a 50 per cent uplift? I am sure that the figure is 25 per cent in England and Wales. There was a paragraph in the correspondence saying that somebody had been commissioned to examine the issue. Could we draw some comparisons from the work being done by Sir Christopher Bellamy QC before we get anywhere near strike action, which is the last thing that we want?

10:15

The Convener: Thank you very much for that. Members have made valid points, not least in recognising what, at this point, the committee's role is and is not.

I found both sets of correspondence to be comprehensive and helpful in setting out the historical context for today's legal aid provision. It is clearly not a straightforward situation and challenges remain with regard to everyone getting to where they would like to be. I agree with Collette Stevenson about our ideally having a system that meets the needs of those who work in it and those who are in receipt of the services that are provided through legal aid.

I do not want to repeat the points that members have already covered. I am therefore happy to pick them up and link with SPICe to get further information on the context of all of this, as well as the timeline that Jamie Greene has mentioned, which would be helpful.

I note that the Scottish Government is currently in negotiations and has undertaken to update us on their progress, as well as on the review of the Public Defence Solicitors Office. I am happy for us to write the minister for an update on that progress and to refer to the Edinburgh Bar Association letter that we received yesterday. We will also cover the issue in our budget scrutiny, as it will form an important part of that forthcoming process.

I therefore propose that we link with SPICe and write to the minister on the points that we have raised. Are members happy with that?

Members indicated agreement.

The Convener: I move to our second letter, which is from the Scottish Government and outlines its plans following the consultation on the not proven verdict and other matters. Yesterday in Parliament we heard an update in relation to the programme for government around the proposals to abolish the not proven verdict.

Do members wish to make any comments on that correspondence?

Rona Mackay: I want to put on record my delight that the not proven verdict will be abolished, as we heard yesterday. That is good news for victims, particularly of sexual crimes. It is a historic and radical change, but one that is long overdue.

Russell Findlay: I echo that the proposal is a good development. It was in our party's manifesto during the last election and is in my colleague Jamie Greene's member's bill—that development will push the bill forward.

We should be grateful to those who responded to the consultation. There were of course those people who one would expect to respond, but also quite a lot of members of the public who have suffered from the verdict—including Miss M and families who have lost members to murder—and have not had justice as they see it. There are really compelling responses in there that are worth taking time to read.

Jamie Greene: Naturally, that proposal is of interest to me because it might have a knock-on effect on my member's bill, as the abolition of the not proven verdict is one of its key pillars. I will liaise with the authorities on what happens next in that respect and I will try to work constructively with the cabinet secretary on that process.

There were not a huge amount of responses to my bill and to the consultation, but I note that the responses that were received were of quality and substance. I cannot say too much about the statistics from the responses to my question and my consultation on the issue of not proven, because we have not published them yet, although we soon will. However, the results are not far away from the statistical response that the Scottish Government got. Respondents were not overwhelmingly in favour of abolition—62 per cent is a high bar, but it is not the highest when compared to the responses to other questions that were asked.

As we all know, it is fair to say that it is not quite as simple as just abolishing a verdict—through whatever bill it is done, it will require a whole raft of other changes. It is very clear from the immediate response to yesterday's news that a number of folk in the justice sector and some justice partners who we rely on as key cogs in the wheel have reservations about it. They expressed that to me when I announced my plans as well, and I hear them.

Therefore, it is really important that, as the Government moves forward with the not proven issue—I know that the bill will go through robust scrutiny and consultation, as all bills do, especially when it comes through this committee—it makes

clear what will happen next. In other words, what other changes might have to be made and what wider implications will the change to the system have? That is really unclear at the moment. "What effect will it have on trials and on outcomes in our courts?" is an easy question to ask and a very difficult one to answer.

We will need to give a huge amount of careful and considerate cognisance to the voices who work in that sector, whether or not we agree with them, whether or not they agree with us, and whether or not they agree with the Government—that is by the by. They clearly have a lot of experience, and over the past few weeks of talking to judges, solicitors, barristers and advocates, we have all heard about the effect that these things will have on trials.

However, overall, it would seem to be a step forward, if it is finally delivered after what seems like hundreds of years of discussion. Time will tell.

The Convener: Thanks very much.

Like everybody else, I welcome the announcement. I think that it moves Scotland's judicial system in the right direction, which is a very good thing. Obviously, the next steps will be around the bill. Jamie Greene is right to say that the issue of removing not proven will be a lot of work and will surely require a review of jury majorities and possibly corroboration, too. We will wait and see what comes forward in the bill and monitor that content. Thank you very much for those points, Jamie.

Our third letter is from the Minister for Drugs Policy on the new national drugs mission oversight group. Do members have any comments on that correspondence?

Russell Findlay: The letter that we received happened to be dated the same day as the first meeting of the new group. The letter also says that details will be made available on the Government website. I do not know whether that is indeed the case, but I certainly would like to know when the group is planning to meet next and to have a rough idea of schedules. Given that there are international members among the 20 listed in the letter in front of us, I would like to know what the format of meetings will be. I presume that they will not be travelling to Scotland every time the group meets—I am curious about that.

The Convener: If there are no other comments from members, I am happy to write and ask for that information.

The next letter is from the Cabinet Secretary for Justice and Veterans on the funding for recovery cafes in Scottish prisons. Are there comments on that correspondence? Obviously, we are aware of the statement on the national mission that will be

made in Parliament—I think tomorrow—which might also incorporate an update on work to progress provisions such as recovery cafes. Are members happy to agree to the suggested recommendations in regard to that letter?

Members indicated agreement.

The Convener: The next letter is from the Scottish Prison Service and is about access to fresh air. We have some confirmation of the provision that is in place for that. Do members have any comments?

Jamie Greene: This is perhaps a slighter wider issue, but I think that purposeful activity among the remand population is still an unaddressed issue. I appreciate that that was not the subject of the question that we asked so it is not covered in the answer, but I am not 100 per cent convinced that enough is being done in that respect.

I appreciate that there are legal ramifications in that regard, and perhaps statutory duties that apply, but nonetheless I would like to think that the SPS is actively looking, even within the confines of what the law states, at what people's rights are, and at what it can and cannot force people to do. I would like to think that it would go above and beyond in that respect. The statistics that came out yesterday point to a dire situation with people being held on remand for lengthy periods due to court delays, so I would like to think that more than just the bare minimum is being done. I wonder whether we could ask for more information about that.

Collette Stevenson: I agree with Jamie Greene. The letter mentions time in the open air and purposeful activity, but they are two completely different things. I would like to seek clarification of what the SPS says is purposeful activity. My understanding is that it includes physical training or down time, which is different from time in the open air. There is also the work element when people go to the work sheds and things like that. At that time, they are not out in the fresh air. I seek clarification of those two different elements.

The Convener: The only thing that I would mention is that we are reviewing this and other issues to do with prisons in our action plan. We can expect discussion of access to activities for remand prisoners to be covered in the passage of the Bail and Release from Custody (Scotland) Bill, but we can certainly monitor the issues of fresh air and purposeful activity as part of our wider work. I think that it is appropriate that we do that.

The next piece of correspondence is also from the Scottish Prison Service and it concerns the issuing of medical slips to prisoners on release. Do members have any comments?

Rona Mackay: The response basically tells us what we already knew, so I am not sure that it is helpful. What we were asking was whether the framework is the correct one. We were not saying that the national health service should not be involved; there needs to be more connections on a number of issues. The response is quite short and it basically tells us what we already know. It would be good to probe a wee bit further into how the arrangements could work better.

Jamie Greene: May I make a suggestion, convener?

The Convener: Yes.

Jamie Greene: If the responsibility for healthcare before, during and after someone is in the custody of the SPS is not its responsibility at any point during that journey, asking the SPS more questions about it will probably elicit very little. It may be more helpful for us to write the health secretary, who is responsible for the NHS.

Each health board will be responsible for the institutions in its area. From a nationwide point of view, however, it is evident that, although people have access to certain levels of care and treatment—especially around addiction, mental health and so on—while they are in custody, there is a disparity of services when they leave custody, especially if they were held somewhere that was not in their home health board area, meaning that they were, if you like, a visitor there. There are issues with data and records moving around. The system is not as seamless as some people might like us to think it is. However, those are not only justice questions; they are ultimately health questions because the NHS is responsible for folk in custody.

That seamlessness, which we are not seeing, is part of the throughcare conversation that we have been having, as we saw at first hand on our committee visit to the Wise Group. It is important for keeping people on the straight and narrow, which it is easy to do in a managed environment and less easy to do it out in the real world. Those are questions that perhaps only the Cabinet Secretary for Health and Social Care could answer.

10:30

The Convener: I agree entirely. We should follow up the letter. It is more an operational delivery issue, so I am minded to suggest that we write to the chief medical officer and ask for information about what changes and improvements can be made. The issue has been raised with the committee on more than one occasion. I think that it was raised during our visit to the Wise Group and the new women's custody unit in Glasgow.

It is a question of who we write to—I propose that we start with the chief medical officer and ask for some appropriate information.

Russell Findlay: One point that was made to us during our trip to the new facility in Maryhill was that each health board seems to have a different approach, so the SPS was frustrated that there was a lack of consistency. It will be interesting to make that point when we write to the CMO.

The Convener: Exactly. That issue in relation to health boards, as opposed to NHS Scotland oversight, was highlighted a couple of times.

Collette Stevenson: There is still an issue when prisoners transfer from one health board to another if they transfer from a different prison and are progressing through. Despite Teresa Medhurst clarifying that their medical records go with them, I am not entirely convinced that the process is as seamless as the SPS says that it is. At the heart of the matter is the fact that many of them suffer from varying degrees of mental ill health and addictions. The approach should be seamless.

The Convener: Yes. I agree.

Rona Mackay: I agree with your suggestion, convener, that we write to the CMO, and with Jamie Greene's point that it is a health board issue. Depending on the response from that correspondence, if we have time on our schedule, would it be possible to have a round-table session with health board representatives, the Scottish Prison Service and others to discuss the matter? Sometimes, more gets done if we have a face-to-face conversation. There is clearly an issue. We hear about it a lot and the Wise Group has concerns about it. I am not sure whether that is a practical suggestion but it might move things on a bit more than just correspondence.

The Convener: That is a really good idea. Stephen Imrie is reminding me that we have a plan in progress to hold a round-table session on mental health. Perhaps we could incorporate it into that discussion. However, it is valid to suggest having face-to-face discussion.

Rona Mackay: It does not need to be a full morning session but we could get people together for even just an hour or an hour and a half to see what the issues are from their side and what the process is now. We could follow up what was said with the cabinet secretary.

I am just putting that suggestion out there. I agree with your initial plan to write a letter.

Jamie Greene: That is a useful idea. It is always more powerful to hear from people who have been through the journey than people who turn up with briefcases and suits and tell us how wonderful everything is.

It might also be helpful to keep the Parliament's Health, Social Care and Sport Committee abreast of what we are doing in this space or, indeed, invite it to participate somehow by writing to the convener and copying it into the correspondence that we send on the matter.

The Convener: That is a good suggestion.

Do members agree that, with the help of the clerks, we will look at an opportunity to incorporate a discussion on this particular issue into our forthcoming evidence session? I know that that will be more about policing and mental health, but I think the issue is very relevant and related, and I would certainly be happy to incorporate it into that discussion.

Stephen, did you want to add anything?

Stephen Imrie (Clerk): Just briefly, convener. The evidence-taking session that I was referring to was not so much the one on policing and mental health but the one that you had agreed to on the overlap between health, criminal justice and the mental health issues faced by prisoners. The medical issue of drugs and health board issues could be incorporated into that.

The Convener: That would be perfect. Are members happy with that approach?

Members indicated agreement.

The Convener: Thank you very much.

The next letter is correspondence from the Crown Agent on centralisation of case marking. Do members have any comments? I think that our colleague Pauline McNeill first raised the issue.

Russell Findlay: For what it is worth, I think that it is quite a useful letter. We have heard that there have been problems with or objections to the change from some quarters, but the letter lays out the benefits quite clearly, including greater consistency and efficiency. It is quite reassuring.

The Convener: I agree. I found the letter very helpful in setting out quite a lot of information that had either slipped off my radar or that I was not aware of.

Katy Clark: At the committee's away day events, we discussed consistency in the Crown Office's position on bail. We presumed that that would not be dealt with in the centralisation process, because people would have to appear from custody at short notice and that simply would not be practical. However, it would be quite helpful to get clarification on how the Crown Office attempts to ensure consistency across Scotland in relation to its position on bail and bail applications, which I suspect are dealt with in a slightly different way from what is outlined in the letter.

The Convener: I agree with your assumption that that would not be considered as part of the centralisation process. That issue might come up in the Bail and Release from Custody (Scotland) Bill.

Katy Clark: There might well be a process for trying to ensure consistency, even in retrospect—I do not know. However, it would be interesting to have that information in time for our scrutiny of the Bail and Release from Custody (Scotland) Bill.

The Convener: Do you want to come in on that, Stephen?

Stephen Imrie: I remind members that, on 21 September, we will be bringing forward a paper on the approach to the Bail and Release from Custody (Scotland) Bill, which will contain some ideas about engaging with the Crown Office on how it makes its recommendations on bail decisions. We could take forward Ms Clark's suggestions with regard to getting some clarification on that matter as part of the process of engaging with the Crown Office on the bill.

The Convener: Are members happy with that?

Members indicated agreement.

The Convener: The next letter is from the Convention of Scottish Local Authorities on funding provision for secure care. Do members have any comments?

Collette Stevenson: I will focus on the procurement process that the local authorities go through, because I have had experience of that myself. My one concern is to do with cross-border placements, because they do not align with the Promise, which ties in with all of this. Although I welcome what was said in the programme for government, I am keen to get more clarity on how many secure beds there are in Scotland. Are there enough?

The cross-border placement of young people is a challenge. Having worked in a children's care home, I know that a substantial number of requests were made from down south to place young people up here. I feel that we are not looking after their wellbeing by doing that—that is the heart of the issue. I would therefore like to seek more clarity on that aspect.

Scotland Excel sets the procurement framework, and its approach is robust. It must meet certain requirements from the Care Inspectorate and the Scottish Social Services Council. A lot of times, local authorities are champing at the bit trying to get secure beds on a Friday. I also add that no local authority staff are available over the weekend, which can be a challenge. We need to ensure that the process around procurement is more seamless and that

more secure beds are available so that young people are not getting put into the prison estate.

Rona Mackay: I can speak only for the situation at St Mary's Kenmure, which is the secure care home in my constituency. In its case, there are always enough beds, and the cross-border placements coming from England are part of the funding solution.

We are definitely moving in the right direction, and I am really pleased to see a focus on the issue at last. However, it is perhaps quite a timid start. The Scottish Government has agreed to pay for the last bed in each of the four secure centres as it becomes available. A bed is always available at St Mary's.

The short-term objectives of the funding are to reduce the number of cross-border placements, as required by the Promise. Collette Stevenson is right to say that we must think about the young people who are involved. That said, there are not enough secure places in England, which is why they are coming up here. We have been using that as a way to fund our system, but I hope that we are looking at that and saying that we need to have a different framework. I am quite optimistic that this is the start of a journey for making that process better, and I am glad to see that something is being done at last.

Jamie Greene: I found the letter to be very helpful—it certainly speaks to my personal lack of understanding of the status quo. Who is placed where and why can often be confusing or confused, and the letter was eye-opening. Clearly, there are enough beds in Scotland—there are 78 of them. The letter provides a snapshot of use. At that time, only 39 were being used. Interestingly, of those, the majority were there on care and protection grounds and only one was sentenced. That is important, because it is the responsibility of local authorities to fund those who are placed through care and protection and it is the responsibility of the Scottish Government to fund those who come through the justice system. I do not know what the numbers are today but, at that time, in January 2022, only one young person was in secure care, having been sentenced.

Those of us who have less experience of the system than others could maybe do with some help in understanding, especially in the context of the children's care and justice legislation that was announced yesterday. On what grounds would someone be placed in secure care, in a young offenders institution or in an adult prison? Clearly, there is crossover. Clearly, there are also people in the wrong place at the wrong time. However, that does not seem to make sense, given that we know that secure care is available. I have a lack of understanding of that flow chart and journey.

As we will be looking at the new legislation, it would be helpful to understand the landscape, so that we know what the right path is for people and what the Government wants to do next, if changes are to be made. Clearly, the Government is getting some flack about young people being seen to be in the wrong institution, yet we are hearing that there is plenty availability—so much so that we are shipping people up from south of the border, presumably because that is being funded by others. I would like more understanding of that.

10:45

I am also interested in the short-term model that is mentioned in the letter—a six-month trial will start this month. I do not really understand it, although I see what it does. The letter says:

“the Scottish Government has agreed to pay for the last bed in each of the four contracted secure centres, as it becomes available.”

I am not 100 per cent sure what that means.

Perhaps we could have an offline session so that we could have someone explain to us what happens. They could explain the difference between someone who is in protective care and someone who has gone through the justice system, having committed some form of offence. They could also tell us what options are available to people who interact with the criminal justice system during childhood. I do not know whether that falls within the remit of the committee, but the letter has raised a bunch of questions for me.

Fulton MacGregor: Like others, I broadly welcome the letter, but, as Rona Mackay has said, the measures that are being taken could go a bit further. After the announcement of the children in care and justice bill in the programme for government yesterday, I think that the trial period is probably to set us up for a time when no one under the age of 18 will be in a custodial setting. If some young people are going into secure care through the criminal justice system, there will be implications for Scottish Government funding. As Jamie Greene rightly said, the letter states that only one young person in secure care has been sentenced.

I have raised the cross-border issue with the committee before. I am aware of that from my time as a social worker; it is not new. I have concerns about it. When I was a social worker, a trip to the north of England—and to the north of Scotland, which is a similar distance—was not an uncommon occurrence. I also visited secure care centres, where young people were making relationships with people from various parts of England.

Placements are a two-way thing. It will be particularly difficult to stop that when both partners

are relying on them. I am not saying that they just will be stopped—the letter mentions plans

“to reduce the number of cross-border placements”.

I assume that that refers to Scottish kids going across the border.

In either scenario, the Scottish Government will have to speak to the relevant stakeholders in England and Wales. If there is no space for young people in England, they will have to continue using space here and no Government is going to turn a young person away. We need to increase capacity here to meet the policy objectives for how we treat our young people who are sentenced.

There is a big discussion to be had here. Cross-border placements are not new: they go back decades. I might be wrong—any stakeholder who is watching should feel free to pull me up on this—but I think that that approach came from decades-old assumption that, when kids needed secure care, it was better to get them far away from the community where they came from. The thinking around that has changed, but the historical placement of kids has not, if that makes sense. I think that the idea came in the 1970s, when people thought that a kid who needed some time away should be taken a couple of hundred miles away. Cross-border placements will be a real issue to deal with.

The Convener: I see that no one else has any other comments.

Thank you for those helpful views. Based on my professional experience, I absolutely agree that the historical rationale for cross-border placements probably made sense at the time, but we are now in 2022 and our thinking has moved on. It is definitely a real issue.

Jamie Greene referred to the children’s care and justice bill that was mentioned in the programme for government yesterday. Do members agree that we should come back to the issue, perhaps in the autumn, once we can see where the bill is going? In the meantime, we can flag our interest to the lead committee and to the Parliamentary Bureau when the bill is published. Are members happy with that proposal?

Members indicated agreement.

The Convener: We are getting there. Our next letter is from the Scottish Fire and Rescue Service, which provides an update on its use of naloxone. Again, I am happy to open the floor up to members.

Russell Findlay: Seven months ago, the First Minister and the Minister for Drugs Policy attended a fire station. The headlines stated that firefighters were to start carrying naloxone. The announcement came with £90,000 of funding to

train officers. The letter tells us that 1,226 members of staff have been trained, but it does not tell us how many are carrying naloxone. It also omits to make any reference to what I believe is some form of disagreement or dispute between the SFRS and the Fire Brigades Union about the issue.

There is perhaps a sense among some officers that there is a presumption that they should carry naloxone without any reassurances about liability for use or misuse and that those questions have been unanswered. Therefore, it would be useful to ask the SFRS what is actually happening. Is naloxone being used, and what are the issues, if any?

The Convener: Thank you for that. You are right that there does not seem to be any indication that naloxone is being used—or being carried—at the moment. I am more than happy to write to the SFRS, to raise the points that you have made and to get a more detailed update on progress around that. Are members happy with that?

Members indicated agreement.

The Convener: Our next letter is correspondence from Martyn Evans, who is the chair of the Scottish Police Authority, about changes to the police pension scheme. There is also an associated letter from David Page, who is the deputy chief officer at Police Scotland. Again, I will open up the floor to comments. The letters were in relation to some correspondence from us requesting an update on progress around the impact of the pension scheme changes.

Russell Findlay: I am happy to go first. There is a lot in both letters. Are we taking both at the same time?

The Convener: Yes—it is just as easy to do that.

Russell Findlay: I know that this is primarily about pensions but other issues are referred to. David Page mentions—this is near the top of his letter—the importance of being mindful of police officers’ physical, emotional and mental wellbeing. We have heard evidence of suicides among police officers and what appeared to be a lack of any meaningful attempt to get to the bottom of that. A particular phrase was used in an exchange between SPA and Police Scotland in response to the former asking the latter for some information. Police Scotland explored the issue and said:

“Based on the information available at that time, there was nothing to suggest that any of the recent cases were caused directly by the pressure of work.”

I do not think that that is the case; I think that the matter is worth revisiting. I am familiar with cases where it very much looks as though the pressure of work, the work environment and other

issues around that were contributory factors. I wanted to put that on the record.

I will return to the pension issue. Will Kerr is one of two senior officers who chairs the operational priorities, capacity and resilience group, which is looking into the issue of the change in pension rights and the large numbers of officers who have left and might continue to do so. That particular officer has, ironically, just announced that he is leaving to take up a post with another police force, so it would be interesting to know who is taking his place on that group.

However, the main issue, on which I am sure that other colleagues will have plenty to say, is David Page's very stark warning towards the end of his letter about the impact that the proposed budget will have on policing in Scotland. I will not read it out, but it is clearly extremely concerning. That comes just a couple of months after the chief constable told the SPA that the proposed budget would have a significant impact on the numbers of officers who would be serving communities.

Katy Clark: I presume that we will look at the issue in detail, as part of our scrutiny in the budget review process. As I said earlier, my understanding is that, across the board, budgets for the justice sector are being cut by approximately 20 per cent. That will not necessarily be an even cut, and that figure was given before we had the current information on expected levels of inflation. I presume that we will see a lot more detail on the cuts so that we will be able to scrutinise them and see what their impact is likely to be in specific sectors.

We should call for more evidence so that we can consider that. We should know how the police intend to respond and where the cuts are likely to be. They will be making strategic decisions about how to respond. Certain types of work might be given more protection than others and certain staff might be prioritised over others. It would be interesting to have more information on that as part of the budget process.

The Convener: Jamie, do you want to come in? I will then bring in Collette Stevenson.

Jamie Greene: Collette wants to come in first.

Collette Stevenson: It is just for clarification. I am sure that the pressure on the police has come up previously. My understanding is that several pilot schemes are being run—for example, there is one in Dundee—in which a fifth emergency response service is provided by mental health responders. That takes the pressure off the police, who have been, and are still, the first responders in such cases. It would be interesting to see how the pilots work out. I have had conversations with, and written correspondence from, the Minister for Mental Wellbeing and Social Care. Perhaps we

could follow up on those. Using such an approach could mitigate the challenges that Police Scotland faces.

Jamie Greene: First, I associate myself with Collette Stevenson's comments. I have long believed that the police are mopping up the jobs of other emergency and public services. We know that—we have heard it from the police in this room. For example, that might involve social care dealing with health situations, such as driving people to hospital and dealing with overdoses, mental health breakdowns and so on. That is taking up a lot of the police's time at work, which adds to stress levels.

That leads to my point on the letter from David Page, which is of the sort that I would expect to see from the Scottish Police Federation rather than from the police force itself, given its tone. The first point that I would like to make is on a matter that should be of concern to the committee. We know about the issues around pensions and retirement, but the letter flags it up to me that we are seeing the loss of a large number of officers with considerable experience.

We have talked about that issue in the past, and there is no easy fix for it, as it takes time on the job to accumulate experience. However, if we are losing 718 officers who have more than 25 years' experience, that is a huge chunk of the 1,137 officers who have left or are planning to leave. We should also note that one in 10 of those who are leaving the service are not doing so through normal attrition; their primary reason for doing so is the lack of resources. One in 10 is quite a lot. The letter goes on to explain why that is the case. That should be of concern to us, and we should ask the Government what it is doing to address it.

I am also worried that Police Scotland says that, given the available budget, it will focus on the three key business areas that involve its statutory duties, which are:

“C3, response policing and public protection”.

The letter explicitly states that

“some work in other business areas may be stopped or scaled back as we prioritise our work”,

and that those

“are not decisions that will be taken lightly”.

I understand why. The letter continues:

“our focus will always be on the most vulnerable in society.”

However, the letter does not elucidate what other business areas will be scaled back; what other capital investment projects will be stopped or paused or will not go ahead; and what other projects the police are involved in, such as education projects, that the police would say are

superfluous to the core product that they must deliver by statute. It is unclear what those things are, and I am worried that they include important things. Especially in relation to the preventative agenda, scaling back will simply lead to problems down the line, because problems have been delayed.

11:00

The letter also says that the police are seeing

“the impact of fewer officers across a range of operational areas, including our responsiveness to calls from the public.”

My question would be: which operational areas? Does that mean the ability of the police to respond to emergency calls? Does it refer to the timescales that it takes for them to respond to calls, or whether the calls are answered, or how long it takes for them to be answered? As we know from information that came out last week, there is an issue with whether calls are even being processed—we heard last week that data was being entered in the system that was not even being recorded. Was that a result of human error, or technical issues due to lack of investment in information and communications technology?

Those are all questions that I have. All that the letters have done is to flag up the need for us to have a conversation with the police force and the minister, because this is quite serious stuff. One of the letters says that, if what was put out in the resource spending review comes to fruition, it

“would have a serious impact on Police Scotland and our likely ... workforce numbers”.

We hope that it does not. We know that there might be an emergency budget, in which I think the committee would have a role to play. We need to be quite nimble in responding to the letter, so I would like to hear from Mr Page and/or others, by having them come to the committee and tell us more about some of the issues, because the letters have opened up a can of worms.

Rona Mackay: Jamie Greene is right. This is exactly the sort of issue that we would have drilled into in the previous Justice Sub-Committee on Policing. We definitely need to set aside some time to try to get answers.

Russell Findlay: I agree with Rona Mackay that that is probably necessary, but that is the job of the Scottish Police Authority—or at least it is supposed to be. It should be asking those tough questions.

The Convener: I will pull things together from both pieces of correspondence. Mr Evans’s update tells us that the SPA’s people committee is leading its oversight of police numbers. The SPA received an update in June, and at that time it was

satisfied with where work was taking Police Scotland in responding to the numbers of people who are leaving. The SPA asked for further information on the leavers’ reasons for leaving, and that is set out to an extent in the correspondence.

On policing performance, Mr Evans’s update informs us that the appropriate SPA committee—the policing performance committee—is monitoring that issue. I took a little bit of reassurance from that.

Then there is the important area of wellbeing, which the committee has looked at recently. Members will know that we have a session coming up in which we will consider policing and mental health, including both the response to poor mental health in communities, which we have spoken about, and the impact of the demands of policing on police officer and staff mental health. In that session, I would certainly want us to probe the issues that we have spoken about today.

On the financial issues that we have raised and the coming budget constraints, we will obviously consider those closely during our forthcoming budget scrutiny process, which will be in late October.

There is a lot for us to think about and discuss. I anticipate that both Mr Evans and Mr Page will be invited to give evidence at our evidence sessions on the budget. If members agree, we will take forward in those two forums the issues that we have discussed today.

Jamie Greene: The second forum is appropriate, because it is on budget scrutiny, and we will have valid cause to question our witnesses on the implications of the budget, whether that is the planned budget or any emergency budget that arises. The other session is perhaps more informative, which is not the right climate for getting into the nitty-gritty of some of the questions that I raised, as those are geared far more at management level.

I would be minded to thank Mr Page for his letter, but to go back to him in writing with all the questions from across our membership—which will be set out in the *Official Report*—and to say that we would like a little more information from him in advance. We should not wait until the end of October before we hear from them again. I politely request that we go back to ask for further clarification on what some of this means, because a lot of things have been said, but the detail is not clear.

The Convener: On that note, Stephen Imrie has reminded me that we have already started to seek some of that information. You have raised a good point. Another option is to have a follow-up to the session on policing and mental health, in order to

consider that session and other issues that have been raised. Do members agree to that?

Rona Mackay: Can we also follow up Collette Stevenson's suggestion, to find out how the pilot in Dundee is going?

The Convener: Absolutely. Are members happy with that?

Members indicated agreement.

The Convener: Our final letter, which is again from Police Scotland, is a response on tackling online child abuse, grooming and exploitation.

Russell Findlay: I have just one point to make. Obviously, this is one of the most serious subject areas in which the police are working. The letter touches on the point that Jamie Greene made about bigger budget concerns. Its writer acknowledges that, given the current financial circumstances, putting in more money will probably not address the issue and is probably not a feasible option. It will therefore be interesting to see in December what is proposed. We should just put that in the diary and give it a good look when it comes along.

The Convener: I am happy to take forward that suggestion. The update was helpful. This is a growing and serious area of police work and it is right that we maintain a watching brief over how things progress when it comes to the policing response and the resource around that.

On a related issue, an invitation was extended to us to visit the Stop It Now! Scotland offices. We can certainly take that forward. I am not sure whether that is in the diary.

Stephen Imrie: We do not yet have a diary date, but we were looking to do that in this calendar year. We were going to approach the Stop It Now! Scotland team to see what dates they have available, and then come back to the committee to see who might be available for that visit.

The Convener: Thanks very much, Stephen.

Fulton MacGregor: I would welcome that visit, and I welcome the letter.

I wonder whether we might be able to tie this into the session that you mentioned earlier, on mental health in policing. The topic might be brought to us by officers; however, as you rightly said, it is an area of growing concern, so more officers are probably experiencing it at some level, perhaps when initial contact is made. I wonder about the emotional impact of the nature of some of the alleged offences, and whether we could get information about that in a sensitive manner in the upcoming session.

The Convener: Absolutely. I agree with that, Fulton, and maybe we should think about staff members in that regard, as well as police officers. I propose that we keep the issue on our programme and come back to it down the line. Are members happy with that?

Members indicated agreement.

Rona Mackay: On the proposed visit to Stop It Now! Scotland, will you give me some clarity by reminding me what that organisation does? I have in my head that it is about the rehabilitation of paedophiles and abusers.

The Convener: You are correct. It works with offenders in that field.

Rona Mackay: Are we talking about things such as online abuse?

The Convener: Yes.

Russell Findlay: It seems to be more about early intervention.

Stephen Imrie: Yes. To say that it is a campaigning organisation may be too strong. It certainly works in that field with offenders but also, as the deputy convener said, through early intervention. People approach it who are perhaps feeling such desires but who have not actually offended, and it provides sessions, advice and signposting to prevent those people from offending in the first place. You may recall that the director of Stop It Now! Scotland came to a previous evidence session.

Rona Mackay: Yes. I just wanted clarification. Thank you.

Stephen Imrie: Before members go on that visit, we can provide a quick reminder about Stop It Now! Scotland and its work, so that you are briefed before you go.

The Convener: Okay. Thanks very much.

That is our final piece of correspondence. I thank members for their forbearance, as there was quite a bit to get through.

That concludes the public part of our meeting but, before we move into private session, I give a reminder that our next meeting will be a joint meeting with the Health, Social Care and Sport Committee and the Social Justice and Social Security Committee, next Thursday, 15 September, when we will hear evidence from Angela Constance on tackling drug deaths and problem drug use. That will be in place of our scheduled meeting of Wednesday 14 September.

11:12

Meeting continued in private until 11:36.

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