

FINANCE COMMITTEE

Tuesday 18 June 2002
(Morning)

Session 1

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FINANCE COMMITTEE

13th Meeting 2002, Session 1

CONVENER

*Des McNulty (Clydebank and Milngavie) (Lab)

DEPUTY CONVENER

*Elaine Thomson (Aberdeen North) (Lab)

COMMITTEE MEMBERS

*Brian Adam (North-East Scotland) (SNP)

*Mr David Davidson (North-East Scotland) (Con)

*Mr Tom McCabe (Hamilton South) (Lab)

*Alasdair Morgan (Galloway and Upper Nithsdale) (SNP)

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

COMMITTEE SUBSTITUTES

Mr Keith Harding (Mid Scotland and Fife) (Con)

Mr Keith Raffan (Mid Scotland and Fife) (LD)

Andrew Wilson (Central Scotland) (SNP)

*attended

WITNESSES

Anne Cairnduff (Scottish Executive Justice Department)

Perry Clarke (Scottish Executive Justice Department)

Ruth Ritchie (Scottish Executive Finance and Central Services Department)

ACTING CLERK TO THE COMMITTEE

David McGill

SENIOR ASSISTANT CLERK

Terry Shevlin

ASSISTANT CLERK

Gerald McNally

LOCATION

Committee Room 4

Scottish Parliament

Finance Committee

Tuesday 18 June 2002

(Morning)

[THE CONVENER *opened the meeting at 10:35*]

Criminal Justice (Scotland) Bill: Financial Memorandum

The Convener (Des McNulty): I open the 13th meeting in 2002 of the Finance Committee. I ask members to ensure that their mobile phones are switched off. We have received apologies from Jamie Stone.

Item 1 is consideration of the financial memorandum for the Criminal Justice (Scotland) Bill. I welcome the witnesses. Ruth Ritchie is the team leader of the Scottish Executive's justice finance team, Anne Cairnduff is a member of the bill team and Perry Clarke is from the civil law division.

At our most recent meeting, we took evidence from witnesses representing the Convention of Scottish Local Authorities, the Scottish Court Service and the Scottish Children's Reporter Administration. We have asked today's witnesses along to help us to clear up a number of outstanding issues. We probably do not need opening statements, unless there is something that you are desperate to say.

Ruth Ritchie (Scottish Executive Finance and Central Services Department): You have the second team with you today; the first team is supporting the Deputy First Minister, who is answering the Justice 2 Committee's questions. Until we can be in two places at one time, the committee will have to put up with me.

The Convener: We probably have the people who know the nuts and bolts.

Mr Tom McCabe (Hamilton South) (Lab): You should never talk yourselves down.

The Convener: I will fire off with a question on an issue that was raised by Colin Mackenzie. The Executive has claimed that criminal justice social work services receive 100 per cent funding. Will that funding meet the total cost to local authorities of implementing the bill?

Ruth Ritchie: Our view is that the financial implications that arise from the bill are not particularly significant, given the overall level of

provision that is supplied to local authorities under the 100 per cent funding arrangement. The funding that is given to local authorities has risen by 52 per cent in cash terms since 2000-01, when the baseline provision was £44 million. In the current year, baseline provision sits at £62 million and in 2003-04 it will rise to £67 million.

Brian Adam (North-East Scotland) (SNP): Are those figures grant-aided expenditure figures, or are they ring-fenced, absolute cash figures?

Ruth Ritchie: They are absolute cash figures. The money that is provided for offender services covers the entire range of provision, from alternatives to custody to all the reports that are produced. Offender services is a generic term. Local authorities are the Executive's agents in the field and they provide the services, for which we provide 100 per cent funding. That money is not part of the local government settlement.

Mr David Davidson (North-East Scotland) (Con): When we took evidence at our most recent meeting, the COSLA representative seemed to question what 100 per cent funding means. Will you clarify that 100 per cent funding means that all the funding to which the Executive agrees is being spent specifically on the exercise in question?

Ruth Ritchie: Yes; all that funding is being spent on offender services.

Mr Davidson: It is helpful to have that on the record, because the COSLA representative was concerned that the 100 per cent funding applied to what had happened in the past and that local authorities would have to look for additional support this time round. I suspect that the definition that you have given answers the questions from COSLA.

Ruth Ritchie: Yes.

Mr McCabe: Is there evidence that local authorities are engaging in service delivery that does not fall within that category?

Ruth Ritchie: I am sorry, but I am afraid that I cannot comment on that. I am a finance person and that question is about a policy issue.

The Convener: I will move on to the costs of the proposed risk management authority. There is a budget projection for the existing parole system. How have you constructed the estimates of the additional cost of the RMA, and how confident are you that the costs that you have identified will meet the requirement that is laid down in the bill?

Ruth Ritchie: The figures for the RMA represent the best estimate that could be made at the time. However, the estimate was made in the wake of the recommendations of the MacLean committee, which came out in 2000, and we are already two years down the line from then. The

figures are £3 million for the current year and £5 million for 2003-04. We secured that funding in the spending review 2000.

The RMA cannot be compared with existing agencies in the field because it will undertake a new range of work; that is, work that is not undertaken elsewhere at present. Although it is true to say that the number of offenders will tend to be small—we think that there are 10 to 15 such offenders in the system at present—

Anne Cairnduff (Scottish Executive Justice Department): We expect a similar number of offenders to be given an order for lifelong restriction. Obviously, the RMA's remit will be much wider—

Ruth Ritchie: The RMA will have other statutory functions once the bill is passed. It will develop policy and carry out research on risk assessment and minimisation. It will be responsible for setting standards and for issuing guidance to those who are involved in assessment, such as people in the health service, the police and everyone else who is involved with such offenders. Most importantly, it will provide and develop training. All those functions tend to be carried out by individual agencies, so it is not possible to compare the expenditure of the Parole Board for Scotland with that of the RMA; the parameters are different.

The Convener: You have explained that the figures are £3 million for the first year and £5 million for the second year. Does that £5 million represent the fully implemented funding level, whereas the £3 million represents—

Ruth Ritchie: Yes. The figures represent a gradual increase. We expect that the annual costs will be in the region of £5 million. Whether expenditure settles at £4 million or £5.5 million remains to be seen, but the figures represent the best estimate, based on the information that was available at the time.

Brian Adam: Did you say that there are 10 to 15 high-risk offenders?

Ruth Ritchie: Yes.

Brian Adam: Broadly speaking, the role of the new agency will be to assess risk and to provide training. How does the agency's budget compare with the anticipated budget for managing risk at local authority level? If the public were aware that we were going to spend £5 million on providing a strategy and training to look after the interests of, and to protect society from, 10 to 15 people, they might have some concerns about whether they were getting value for money.

Anne Cairnduff: The RMA will not look after only those people.

Brian Adam: The RMA will not look after those

offenders directly—in fact, local authority social work departments will perform that function. Can you give me some idea of the amount of money that is spent on looking after those offenders? The functions of the RMA are at least one step removed from that, and it seems to me that the cost is rather high, given that we are talking about providing an overall service to protect society from 10 to 15 people.

Anne Cairnduff: The remit of the RMA goes beyond its responsibilities for that small number of offenders. It has specific responsibility for the risk management plans for those offenders.

Brian Adam: My point is that the functions of the RMA seem to be training and assessment of risk in relation to 10 to 15 people. However, do those functions relate beyond those 10 to 15 offenders to several hundred people who represent a far smaller risk?

Anne Cairnduff: Yes.

Brian Adam: That was not made clear.

Ruth Ritchie: I am sorry—that might be my fault. I did not make it clear. There might well be an issue of extending orders for lifelong restriction—OLRs—to other areas, but we will consult on that.

Anne Cairnduff: The issue is the fact that the RMA has a statutory responsibility for those offenders, but its remit is to assess the risk of OLRs in general and not specifically with reference to the high-risk offenders.

Mr Davidson: Last week, we received written evidence from the Convention of Scottish Local Authorities in advance of a COSLA representative appearing as a witness. That written evidence stated that

“the supervision requirement for a medium risk offender already exceeds national standards by 100-200%.”

What is your position on that statement?

Ruth Ritchie: I do not deal with national standards. That is a policy area.

Mr Davidson: I think that COSLA is saying that there is a cost implication and that the standards do not meet the funding. Would you dispute that, or could you write back to us about that?

Ruth Ritchie: We would have to get somebody to write back to you on that.

Mr Davidson: That would be excellent.

10:45

Alasdair Morgan (Galloway and Upper Nithsdale) (SNP): I would like to switch to another area—part 7 and section 43 of the bill. The witness from COSLA, Colin Mackenzie, said that

section 43 will create a significant amount of work for local authorities. The witness from the Scottish Children's Reporter Administration said that there was already enormous pressure on child and family social workers. The financial memorandum does not seem to square with Mr Mackenzie's forecast, unless the implication is that there will be a significant amount of displacement and that, by doing that work, local authorities will not be doing something that they currently do.

Ruth Ritchie: Ministers do not believe that there will be a significant increase in reported cases of smacking because of the bill. Some increase could be inevitable because of raised awareness, because the media has given the smacking issue much coverage. However, operational costs should be met from within existing resources, just as other demands are met in the normal run of business and subjects rise and fall in prominence. It is not something that we think will cost local authorities a great deal.

Alasdair Morgan: I do not think that COSLA was implying that costs would be associated with specific cases so much as with education in relation to the general issue. However, such spending is already under significant pressure. Everyone recognises that and there have been debates in Parliament about it. You cannot say, "We will put increased emphasis on this rather than on that because we are within a fixed budget and we can afford for something to go down."

Ruth Ritchie: Given the interest in the issue, ministers are considering the nature of a public information campaign. They will provide information to Parliament before stage 2 of the bill begins. Ministers believe that a campaign will have a twofold effect: it will inform parents of what is not acceptable, thereby reducing reportable cases; and it will inform the public about what is not acceptable, thereby avoiding increased misreporting. The only cost in the financial memorandum for that specific issue was £30,000 for an information leaflet. That can be met from existing resources; we have a budget that is set aside for such publications. We will consider the matter in more depth. We think that there might be a larger campaign, the costs of which will have to be taken into account when we report back at stage 2.

Alasdair Morgan: I would like to press you slightly on that. Paragraph 405 of the memorandum, entitled "Costs on local authorities", says, "None", which is about as specific as you can get.

Ruth Ritchie: That is right. When the financial memorandum was prepared, we did not realise that the matter would have such a high profile and that it would polarise opinion to the extent that it has. We will take a view that is based on the

feedback that we have received.

Alasdair Morgan: Does that mean that we will get a revised financial memorandum?

Ruth Ritchie: We are not sure whether there will be a revised financial memorandum, but everything will certainly be discussed openly with the Finance Committee, with the Justice 2 Committee and with the Parliament.

Alasdair Morgan: Regardless of the political profile—I am not trying to get into that argument—Mr Mackenzie said that section 43 will create significant work for local authorities. That totally contradicts the financial memorandum, which says "None", for "Costs on local authorities". I do not see how you can square the two.

Perry Clarke (Scottish Executive Justice Department): Our attitude was that no direct compliance costs would be required of public authorities or local authorities, but that transient increases in the reporting of individual cases would be dealt with within existing operational funding.

Mr McCabe: Am I right in saying that you think that additional costs might arise from the requirement on local authorities to bring the issue to people's attention and to educate the public about where the parameters lie?

Ruth Ritchie: Yes.

Mr McCabe: Perhaps that does not fall within the responsibility of local authorities. It could be done at Executive level, could it not?

Ruth Ritchie: We are awaiting the findings of baseline research, which will aid evaluation of the effect of the changes. We do not at the moment have a figure for the cost of the research. We have commissioned the research in order to get a detailed insight into attitudes to smacking and associated issues. We hope that the research will provide a baseline against which to monitor the impact of the legislation. We will write to the committee with the exact cost.

Mr Davidson: I wish to broaden the discussion before we go into more detail on the bill. I presume that your financial section gets the same advice as do other departments that are responsible for producing financial memoranda for bills. It would be helpful to know how that guidance is evolving. It is not the first time that we have questioned the way in which memoranda have been written. We get statements in the memoranda that say that costs are "None", after which clarity is provided. There is a second phase as awareness dawns and more evidence is taken.

Have you had any indication that we are likely to see a change in the system? In part, it is unfair on you that you must work within the guidance that

you are given; however, it is almost impossible for committees to operate effectively when supplementary evidence appears that colours the significance of the memorandum on the cost of a particular bill. Such occurrences seem to be a developing trend. It would be helpful if the witnesses could comment on that. Also, I ask the convener to take up the matter, on behalf of the committee, with the relevant department in the Scottish Executive.

Ruth Ritchie: The policy area is represented by Anne Cairnduff, whose group is working on the bill. That group prepares the financial memorandum and passes it to the finance group to consider. We consider whether what they say is correct. We ask whether any areas are not covered and whether any areas should cause us concern. If they say that the costs could be met from within existing resources, we must determine whether we agree. Those questions are all taken into account.

As far as I am aware, no guidance is written down for finance groups on how to consider financial memorandums; that is left to the experience of the groups themselves.

We examine the financial memorandum and take into account the bill's impact. I am personally responsible for the justice budget. I am not responsible for the local authority budget, nor am I responsible for the education budget, so I examine matters purely from a justice point of view. I ask whether there is anything in the proposed legislation that will have me crying in my cocoa at night because I know that we cannot afford it. That is how we go through these things.

On the question of how solid the assumptions are, we have to take a lot on trust from our client divisions. The division that is responsible for the bill kept us fully informed about how it worked out all the assumptions.

Mr Davidson: Thank you for your openness.

Brian Adam: There are 15 different items under which additional spending has been identified, 11 of which are from within existing budgets in various forms. It is a less than robust way in which to plan a budget if, in introducing a bill, you say, "We will just find efficiency savings that are sufficient to cover it", which in this case includes additional spending of £700,000 per annum. Is that because there are already unallocated resources, or is there another reason why you might be able to meet the additional funds from within existing resources?

Ruth Ritchie: We do not have vast amounts of unallocated money. The cornerstone of the justice portfolio is alternatives to custody. In the spending review 2000, it was deliberately decided to allocate additional funding to provide further

alternatives to custody. Where it could be seen that prison was not an option, did not work or had no effect on the reoffending rate, we took the view that we must deliver better and tighter alternatives to custody. In the spending review 2000, additional money was earmarked for the areas that fall into those categories. Those areas include drug treatment and testing orders and drugs courts. Those are new initiatives for which funding was badged. The legislation is to bring them all on stream.

Brian Adam: Given your remarks that the Executive has allocated additional money, are alternatives to custody more expensive than custody?

Ruth Ritchie: Certainly not. Custody costs between £28,000 and £30,000 per year per prisoner.

Brian Adam: That is what I thought. The prison service also takes up part of the justice budget. Are savings expected that would more than balance the budget?

Ruth Ritchie: I wish that we could make savings, but the only way that the prison service can do that is by closing a prison. Provision of alternatives to custody skims off the short-term offenders, but it does not really have any effect on long-term offenders, who are the nucleus of the rise in prison numbers.

Brian Adam: I presume that short-term offenders cost the prison service a pro-rata amount of the £28,000 to £30,000 per annum per prisoner.

Ruth Ritchie: Yes.

Brian Adam: Either you are taking those offenders out of the system because you have not anticipated the increase in the prison population, or you have not budgeted properly. You cannot have it both ways. You will save money because you will be providing alternatives to custody. You have told us that you are providing additional funds for alternatives to custody, but what has happened to the other side of the equation? That does not seem to be consistent.

The Convener: There is an issue about budget heads, to which we will perhaps come back.

Elaine Thomson (Aberdeen North) (Lab): I do not have a question so much as a comment. I presume that the budget would depend upon the number of people in prison. I understand that the overall prison population is increasing at the moment.

Ruth Ritchie: Yes it is. The current figure is about 6,700 prisoners.

Alasdair Morgan: There are various ways of arriving at a figure for the cost per prisoner, as I

discovered when I was on the Justice 1 Committee. Taking a prisoner who costs £30,000 per annum out of prison does not save £30,000. However, there must come a stage at which the next extra new prisoner will need a new prison to himself. At some point, average costs and marginal costs will have an effect on the budget. We will either get more people in the justice system and deal with them through other disposals, or we will transfer people from the prison system into other disposals. If we took the latter course, we would expect to make a saving at some point.

Ruth Ritchie: We would hope so, but we are talking about a long time frame.

Brian Adam: Perhaps that is the kind of detail that would be helpful in the financial memorandum, if the committee is to be given the responsibility for considering that. Have calculations been done on whether there is a saving to be made on one side or the other?

The Convener: I am certainly moving towards suggesting four points at the end of the discussion, because there are some general points, as well as specific ones, about the issue.

Mr Davidson: I raise a specific issue that came up in written evidence from the Scottish Court Service. Fee levels are apparently set for psychiatric reports on people who have committed sexual offences, but are not set for psychological reports. The Scottish Court Service estimates that there could be 100 such reports at a cost of between £500,000 and £600,000. Do you agree with that figure? Is it allowed for in the costs that you propose for the bill?

Ruth Ritchie: The Scottish Court Service has a budget of £69 million a year. It works out how it will plan its budget on the basis of the work that it expects to do in any one year. Therefore, as John Ewing explained when he was before the committee last week, when the Scottish Court Service knows that additional funding is coming, it is able to switch funding between different budget heads. As an agency, it has to be allowed to do so.

11:00

Mr Davidson: I am not arguing about flexibility within the budget. However, John Ewing also said in his evidence that psychological assessments are not called for routinely, so the £0.5 million appears to be an additional cost. Does it come from new moneys, or do you expect it to be found within the budget?

Ruth Ritchie: We do not plan to give courts new money. In the next budget revision for courts, we will consider mopping up all the additional costs

that will come along. The courts will deal with the business that comes along in the usual way.

Mr Davidson: Policy is obviously involved in that. In pulling together the financial memorandum for the bill, were all the agencies consulted about likely costs? Should the bill have come out in a certain form before you produced the memorandum?

Anne Cairnduff: I could not really talk about all the courts.

Ruth Ritchie: The courts were consulted, and the legal aid people were involved. For courts to be able to formulate their bids for the budget, they have to consider areas of expenditure. The bill team would not work in isolation. It would speak to the sponsor division and the people who deal with the budget.

Alasdair Morgan: If you give the Scottish Court Service another £0.5 million, will it spend it? Do you think that the best way to make courts lean, mean and efficient is to give them no more money, so that they will have to find ways of doing what you ask of them within their resources? After all, we are talking about £0.5 million out of their budget.

Ruth Ritchie: I do not think that we could do that.

Alasdair Morgan: In relation to tape recording—this is the same principle—John Ewing said:

“If I need to find that money from within my existing resources, I can find it by, for example, delaying work on the refurbishment of Dumbarton sheriff court”—[*Official Report, Finance Committee*, 11 June 2002; c 2139.]

I do not know whether that would please people in Dumbarton, but would you expect it to happen?

Ruth Ritchie: It is the sort of thing that an agency must have leeway to do. Budgets are set at the beginning of the year. Before devolution, budgets were called estimates for a very good reason—they were the best estimates of what would be required. Things change, and if somebody does not have sufficient provision to run their service, they will contact me to ask for more money. We should be able to give them more money if we can make savings elsewhere through a budget revision. That is how the system works. No budget should be set in stone, because agencies must have flexibility to work within budgets.

The Convener: I want to ask a question about procedure. The Executive will introduce stage 2 amendments. Would the normal pattern be that the finance group would be involved in considering the financial implications of stage 2 amendments? If there were financial implications, would they normally be communicated to the committee that

is considering the bill?

Ruth Ritchie: I am afraid that I do not know the answer to that.

Anne Cairnduff: I expect that if we were to lodge amendments, we would be expected to flag up their financial implications.

The Convener: There are no standing instructions to say that where an amendment has significant financial implications, they should be flagged up in connection with the amendment.

Anne Cairnduff: I am not aware of any such instructions.

Mr Davidson: Perhaps the convener should write to the relevant authority on that question. If we are to have a procedure for considering the financial implications of bills, we must ensure that, at all stages of consideration of bills, the committee is notified of the financial implications of any amendments.

The Convener: The clerk is whispering in my ear that we could deal with that in our report. Perhaps we could include with the report an accompanying letter saying that there are some general issues that should be considered.

Mr McCabe: We need to think through the implications. Amendments can be made at stage 3. We could slow down the process dramatically. Amendments that change the costs do not always come from the Executive, of course.

Brian Adam: Amendments are not normally successful if they do not come from the Executive.

Mr McCabe: Dare I suggest that some members lodge amendments for spurious purposes? I know that that is a horrible thing to say, but we must face up to such matters.

The Convener: I pick out four issues from what has been said. Perhaps they are not so much for the witnesses but for the committee to consider further. First, financial memoranda seem to concentrate on the cost of administration of new provisions rather than on the cost of their implementation. That cuts across some of the questions that have been asked. We are getting more accurate information on the administrative costs of putting provisions in place than we are on the full implications of implementation.

The second point emerged from what Ruth Ritchie said. Many cost estimates appear to be linked to departmental silos. For example, if we move from custodial sentences to non-custodial alternatives, there is an issue about who bears the cost of that change. The local authorities or some other agency might bear more of the cost than the justice department would. The change involves a transfer that is not identified.

Thirdly, best estimates should always be associated with some identification of margins of uncertainty. I am not sure that that is what we get in the financial memorandum that is before us or in others. We need more precise information about where the margins of uncertainty lie.

The fourth point is that a more structured process of consultation would be more helpful for the committee. For example, we could promote dialogue between COSLA and other responsible agencies, as opposed to what we have heard today, which is two distinct views and a lack of communication. That would help to identify costs more clearly.

A number of general issues have arisen from what we have heard and we would like greater definition on those issues. Committee members might want to add to those issues, but they seem to me to be the four common issues that have emerged from the questioning.

Mr Davidson: The explanatory notes to a bill could state on what issues consultation took place before the bill was introduced. The explanatory notes and other accompanying documents give an opportunity for consultation to be made clear. That would help all committees to focus more clearly on the direction of their lines of questioning.

The Convener: That could be done in the policy memorandum, too.

I thank the witnesses for coming. We will write a report on the matter. Some of the issues that we have raised will be contained in it.

Items in Private

The Convener: I seek the committee's agreement to discuss in private item 3, which is consideration of the committee's annual report, and to consider in private at the next meeting our report to the Justice 2 Committee on the Criminal Justice (Scotland) Bill's financial memorandum. Is that agreed?

Members *indicated agreement.*

The Convener: I presume that we also need to agree to discuss the private finance initiative report in private.

David McGill (Clerk): The committee agreed to do that at its previous meeting.

The Convener: We now move into private session.

11.09

Meeting continued in private until 11:10.

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