

JUSTICE 1 COMMITTEE

Wednesday 22 May 2002
(*Afternoon*)

Session 1

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JUSTICE 1 COMMITTEE

21st Meeting 2002, Session 1

CONVENER

*Christine Grahame (South of Scotland) (SNP)

DEPUTY CONVENER

*Maureen Macmillan (Highlands and Islands) (Lab)

COMMITTEE MEMBERS

Ms Wendy Alexander (Paisley North) (Lab)

*Lord James Douglas-Hamilton (Lothians) (Con)

*Donald Gorrie (Central Scotland) (LD)

*Paul Martin (Glasgow Springburn) (Lab)

*Michael Matheson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Bill Aitken (Glasgow) (Con)

Mrs Margaret Smith (Edinburgh West) (LD)

Kay Ullrich (West of Scotland) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED :

Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab)

Professor Seamus McDaid (Adviser)

Alex Neil (Central Scotland) (SNP)

WITNESSES

Elaine Bailey (Premier Prison Services Ltd)

Paul Brew er (PricewaterhouseCoopers)

Professor Christine Cooper (University of Strathclyde)

Grant Macrae (Chartered Institute of Public Finance and Accountancy in Scotland)

Martin Mathers (Chartered Institute of Public Finance and Accountancy in Scotland)

Ron Tasker (Premier Prison Services Ltd)

Phil Taylor (University of Stirling)

Derek Yule (Chartered Institute of Public Finance and Accountancy in Scotland)

ACTING CLERK TO THE COMMITTEE

Alison Taylor

SENIOR ASSISTANT CLERK

Claire Menzies

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 1

Scottish Parliament

Justice 1 Committee

Wednesday 22 May 2002

(Afternoon)

[THE CONVENER opened the meeting in private at 13:49]

14:06

Meeting continued in public.

Prison Estates Review

The Convener (Christine Grahame): I open the 21st meeting this year of the Justice 1 Committee. This is a marathon week for us as we have many meetings. I ask everyone to ensure that mobile phones are off.

I welcome Brian Fitzpatrick as a visitor to the committee and also Professor McDaid, who is advising the committee on the financial aspects of the prison estates review. How we need him. We have received apologies from Wendy Alexander.

I also welcome our witnesses. Martin Mathers is from the chartered institute of public finance and accountability in Scotland, which I shall call CIPFA for short. Derek Yule of CIPFA in Scotland is head of finance at Aberdeenshire Council. Grant Macrae of CIPFA in Scotland is also a partner in KPMG. I refer members to the CIPFA paper—J1/02/21/2—which has been circulated.

I have the honour of asking the first question, which is a soft ball to you. Will you briefly tell the committee about CIPFA and its breadth of experience?

Martin Mathers (Chartered Institute of Public Finance and Accountancy in Scotland): CIPFA is in fact the Chartered Institute of Public Finance and Accountancy.

The Convener: I said the wrong thing. That is a bad start.

Martin Mathers: CIPFA is a membership organisation and one of the six chartered accountancy bodies in the United Kingdom and Ireland. We are a charity and serve two functions. First, we help to develop and maintain standards of accountancy, especially in local government. Secondly, we provide training and education to qualified accountants to ensure that they maintain and adhere to professional standards.

Derek Yule and Grant Macrae are qualified

members of the institute. They have much more experience of the institute than I have as a new boy, so if they have anything to add they are more than welcome to do so.

The Convener: As they have nothing to add, Michael Matheson can ask his question.

Michael Matheson (Central Scotland) (SNP): I notice that the CIPFA publication “PFI/PPP: Stewardship Issues” discusses the impetus for considering the private finance initiative, public-private partnerships and other methods of financing. Will you describe what is considered to be a good candidate for a PFI/PPP scheme?

Derek Yule (Chartered Institute of Public Finance and Accountancy in Scotland): The line that CIPFA takes is that PFI is one of a number of options that must be explored. Over a number of years, there have been several examples of potentially suitable candidates for PFI, such as new hospitals in the health service or local government education sector projects to enhance existing schools or to build new ones. Grant Macrae has also had experience in other areas in the public sector.

Grant Macrae (Chartered Institute of Public Finance and Accountancy in Scotland): In the utilities sector, things can sometimes be tackled in different ways. PFI/PPP gives the opportunity to find different ways of arriving at the same solution or outcome. One of the biggest differences between PFI/PPP and traditional public sector projects is that the public sector traditionally specified the inputs and, to some extent, the outputs. The best candidates for PFI/PPP schemes are ones where there is some flexibility in how the output is provided, leaving the opportunity for the bidders to come up with perhaps innovative ways of operating.

Michael Matheson: Would you say that the prison sector was a good candidate for PFI or PPP schemes?

Grant Macrae: It is a possible candidate. A lot would depend on how prescriptive the specification had to be.

The Convener: Given that a lot of our prepared questions are technical—I failed an accountancy exam once but passed it on the resit—do we agree to allow Professor McDaid to ask questions on our behalf?

Members indicated agreement.

Professor Seamus McDaid (Adviser): Chapter 4 of the CIPFA bulletin that Michael Matheson mentioned considers two primary strands underlying the development of PFI and PPP: first, value for money, innovative solutions and the input of private sector skills; and, secondly, the desire to have off-balance-sheet financing to avoid an

upfront charge to budgets and control mechanisms. The bulletin says that CIPFA is supportive of the first strand but not of the second. What is the rationale behind that?

Grant Macrae: CIPFA is keen to see that the value-for-money and innovative solutions strand is considered first; the accounting treatment—whether it be on balance sheet or off balance sheet—should follow that process and not drive it. In the past, there have been attempts to find a solution that gets financing off the balance sheet rather than an approach that achieves the best solution, be it best value or whatever.

Derek Yule: On off-balance-sheet accounting, the main issue for local government has been capital expenditure controls in existing legislation. The reason for securing off-balance-sheet financing is that it does not score against a local authority's capital expenditure consent; if it did, the total cost of the project would count against the allocation in the year in which the project was funded. Usually, the cost of the PFI projects is well in excess of any local authority's yearly allocation.

CIPFA has been lobbying for the abolition of the local authority controls that are granted under section 94 of the Local Government (Scotland) Act 1973 and has been working up a code of best practice guidelines that could replace them and to which local authorities and other public sector bodies could work.

Professor McDaid: Does that have an impact on how a discounted cash flow for net present-value calculations for a PPP and a public sector option might be presented?

Grant Macrae: It does not affect the calculation at all. The calculation will be done in exactly the same way.

Professor McDaid: What would be the impact of financing through borrowing as opposed to financing through cash reserves?

Derek Yule: Public sector bodies do not have such cash reserves. Certainly, no Scottish body has the cash reserves to fund a project of the magnitude that would be considered for PPP or PFI funding and, with the existing controls, it would not be possible for a local authority to borrow that much. If the controls were relaxed, that would become an option that we could compare with the PFI or PPP model.

Grant Macrae: That is a fair way of describing most parts of the public sector. Major projects are financed either by borrowing in accordance with Government guidelines or by going down the leasing or PFI routes to find an alternative way of arriving at the procurement of major assets.

14:15

The Convener: I would like to ask what is perhaps a stupid question, which will put on the line my understanding of accountancy. Are you saying that the Scottish Prison Service cannot borrow that money because of Treasury rules? Is the SPS inhibited from instructing the building of a prison in the public sector by the current rules on borrowing?

Grant Macrae: My understanding is that limitations might be placed on the SPS in relation to how much it could borrow in a given period. However, there is no absolute ban on borrowing.

The Convener: So could the SPS borrow just as private companies such as Premier Prison Services can?

Grant Macrae: Only in the sense that it must limit its borrowing to what the Government allows it to borrow in a specific accounting period. What it borrows forms part of the public sector borrowing requirement, so there are limits.

The Convener: There are restrictions. That is what I was getting at. I see now what you mean.

Donald Gorrie (Central Scotland) (LD): If there was a facility for borrowing—for local authorities, prisons or whatever—that made sense, unlike the present Treasury rules, which do not make sense, how many people do you think would go in for PFI? Is PFI merely a route for avoiding the Treasury rules or do many people go in for PFI on its merits, as opposed to the public alternative?

Martin Mathers: It has certainly been the case in the past that the public sector could get money more cheaply by going through the public sector borrowing route. That is becoming less true, so the differences are eroding over time. However, regardless of that, if a PFI is to be successful, one must expect the private partner to bring more than money to the table. It must bring its expertise and experience and provide efficiency and cost-effectiveness in other ways. If the issue was purely about money, the PFI might not be a valid approach to take.

Grant Macrae: It is fair to say that, at the moment, there are limitations on how much any public body can borrow in a given period. If a public body has an agenda and needs certain things done that will cost more than is available in any period, it must consider other avenues, one of which is the PFI or PPP. As Martin Mathers said, people are likely to be driven down that route by the attempt to find some overall beneficial advantage, such as a more innovative way of arriving at a solution that will have a better long-term outcome for the community. If there were no such restrictions and the issue was simply about money, public bodies would consider all the

different options. Sources such as short-term and long-term leases, the PFI and the PPP would all be part of an overall armoury. I know that consideration is being given to not-for-profit organisations, so that any surpluses arising from operations are recycled back into the parent organisation. That is just one of the many approaches that are being considered as possibilities.

Donald Gorrie: Has any research been done to show that PFIs produce benefits for communities?

Martin Mathers: Benefits for communities?

Donald Gorrie: Mr Macrae said that part of the rationale of a PFI was that it was a way of doing things that would provide a benefit to the community. I wondered what research, if any, had been done to substantiate the claim that PFIs bring benefits to communities, because there are arguments the other way.

Grant Macrae: Quite a lot of assessment is being carried out in the evaluation process for individual projects before they are commissioned. I have seen some successful results for utilities financed by that route as against the public sector comparator. However, PFI and PPP funding has been on the go only for a few years, so there will be post-mortems in 10, 20 or 30 years' time to assess the pros and cons.

Martin Mathers: The only example that I have seen that is relevant to the prisons sector relates to the fact that the consortium that built Fazakerley prison in England was able to refinance the deal because it completed the prison and delivered it to the Prison Service ahead of time. It exceeded the standards that it had set itself in the contract, which allowed it to go back to the money market and refinance the deal in a way that was more profitable to it. It then passed some of the benefit back to the Prison Service. That is not to say that the prison will be successful over its 25-year lifespan, because we are only two or three years into the project.

Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab): As well as any prospective recommendation on considering innovative models for financing projects, there is an element of retrospective assessment. There has been regular criticism, by the National Audit Office and the like, of the failures in public procurement by the Prison Service. Another difficulty relating to public procurement is—dare I say it—lying at the bottom of the Royal Mile; we might examine that at greater length. I take it that you are familiar with the NAO's views on previous procurement disasters at the hands of the Prison Service.

Martin Mathers: Yes, but we have to question the assumption that public is bad and private is good. Derek Yule works in the public sector and

he can give hands-on examples of where the public sector can procure successfully.

Derek Yule: We should not always assume that the public sector is incapable of delivering projects on time. My local authority was faced with two major school fires. In the first instance, we managed to procure a replacement school within a couple of months, which was delivered on time and to budget for opening after the summer holidays 18 months after the fire. That was achieved by using previous designs from a neighbouring authority to undertake the design phase more quickly. We are now using that design to replace a second school that was lost to fire. There are examples of projects being delivered on time. The issue is good project management skills.

Grant Macrae: Part of the issue is specification. Comments have been made over many years in different branches of the public sector that the in-house team goes for high quality and long lives. That might be perfectly valid, but we should consider whether it is still right to go for long life or whether it would be better to go for a shorter life with a different quality to allow advances in technology to catch up. People are increasingly comparing life-cycle costing for the construction side, which, if specified in a particular way, can lead to lower operating costs—the project is considered over the lifetime. More of that is happening now than happened with any project a decade ago. That is a major advance, regardless of whether we end up with public sector procurement or private sector procurement.

The Convener: We understand that point.

Lord James Douglas-Hamilton (Lothians) (Con): My first question relates to the convener's earlier question. Am I correct in thinking that the level of borrowing consent for public authorities is fixed either by the Scottish Executive or the Treasury and that it operates in effect as a ceiling?

Grant Macrae: Yes.

Lord James Douglas-Hamilton: You say in your report that schemes with a wider scope offer the private sector more potential for efficiency and quality improvements. You also say that people considering PFI/PPP schemes should consider the link between the service being delivered and the design and operation of the building. On that basis, which of the options that are considered in the estates review do you think provides the greatest potential for efficiency and quality improvements?

Martin Mathers: The first thing to say is that we do not have enough information from the evidence from the estates review and the PricewaterhouseCoopers report to answer that. There are points about quality that the report does not address. Until we know what the underlying

assumptions are, it will be difficult to come to a final view.

Lord James Douglas-Hamilton: Would you be asking for more costings?

Martin Mathers: We would be asking for more details about the assumptions underlying the costings.

The Convener: Will you expand on the point about quality? You said that the quality issues are not developed. Will you give examples of that?

Martin Mathers: In the Prison Service, as in any other service, we would expect certain standards. For a start, we would not expect prisoners to be running around the countryside. We would expect standards of rehabilitation and prisoner care. Are we comparing like with like for the three options? We do not know.

The Convener: I take it that, if you do not know, we cannot know.

Martin Mathers: Not unless you have access to information that we have not seen.

Derek Yule: The PricewaterhouseCoopers costings have raised questions. We would explore the significant difference between the private-private option and the public-public option and look for the assumptions behind some of the figures. That is particularly true of the figures for construction and running costs. The question of quality comes on board when we are considering the running costs.

The implication seems to be that there is a substantial reduction in staffing costs. That relates to the quality issue. We would ask about the staffing ratios in existing prisons. What are the assumptions justifying a substantial reduction in staffing costs in the private sector model? We would have to draw conclusions from that information and we cannot draw conclusions at the moment.

Martin Mathers: One thing that strikes me about the report is that the figures for operational costs in the public-public option are based on historical data from a sample of prisons. However, there must be a relationship between the design of the prison and how efficiently it can be operated. We must assume that those efficiencies can be designed into a public-build prison in the same way as they can be built into a private-build prison. Perhaps the method that is used to cost the public-public option is not valid.

The Convener: Paragraph 2.2.2 of the PricewaterhouseCoopers report breaks down figures for the public sector under various headings. However, under the heading "PPP Private Build Private Operate Option", we are not given such figures. That is the problem.

Derek Yule: The second chart appears to have taken an average cost from six or seven private prisons. That is a difficulty. I am not sure that you can say that that is a direct and fair comparison with the public sector model.

The Convener: That is serious.

Grant Macrae: The three options were all designed to compare 700-cell prisons. However, as Derek Yule and Martin Mathers have said, there is a difference between the public-public option and the private-private option in design, staffing and other costs. We need more flesh on the skeleton to see what lies beneath the figures.

The Convener: Thank you. You do not need to labour the point: we know it now.

Michael Matheson: You might have answered my question already. In the comparative information provided in the estates review, the public sector comparator option has been based on a detailed discounted cash flow analysis of the project costs. However, the private sector option is based solely on a notional idea of what the costs might be. There are concerns about using such a comparison and the potential problems that that could create. You might have alluded to some of those problems already, but could you expand on the potential downside to using such a comparison?

Grant Macrae: One of the downsides would be if the staffing ratios were not sufficient to deliver what is required locally. The question then arises how that impinges on service delivery and how the Prison Service specification would be met. The PricewaterhouseCoopers report and other material show a noticeable difference between the specifications that the Prison Service has used in the past or is using currently and what it is being talked about for the future. As we mentioned, we do not know what that means for operational effectiveness.

14:30

Michael Matheson: You said that there was an operational issue in relation to staffing in the establishment. The other issue relates to the capital costs of the building itself and the difference between the bricks-and-mortar price for a private prison and for a public sector prison. Do you feel that the report gives sufficient detail to explain that difference?

Martin Mathers: Not at all. There is an assumption in the review that the public sector cannot deliver a prison with the same cost-effectiveness because it has not recently designed one. However, the question is whether that is a valid assumption. Prison officers do not design the prison or lay the bricks for it; that work is already

contracted in from the private sector. We do not know whether the assumption is valid, but the review does not adequately answer the question.

Grant Macrae: Perfectly clear reasons might underlie what is stated in the report. For example, the report says that the capital costs of a prison in the private-private category reflect the fact that fewer staff are required, which means that less space is needed for staff facilities. However, other assumptions might be linked to that. For example, electronic devices might be used to cut down the need for staff. Such measures might work perfectly well, but we are given no idea what assumptions are being made.

Derek Yule: The report says that the public sector would take almost twice as long to procure the three prisons. I am not clear why that should be. We are talking about three 700-cell prisons and—although I am not sure that I am making a fair comparison with other sectors—I would have thought that one design would be used for all three prisons. However, it is not clear whether different types of prison have unique design aspects or whether one design would suit all three. That line of questioning should be pursued before any conclusions can be drawn.

Michael Matheson: The committee has received evidence suggesting that prisons nowadays are more or less bought off the shelf to a certain specification and that it is rather old-fashioned to think that one has to go back to the start and reinvent the wheel. Indeed, the new houseblock that is being built at Saughton was bought off the shelf to the SPS's specification.

The Convener: In fact, the design had to be adapted because of the slope of the site. Even then, making such adaptations to an off-the-shelf houseblock caused no real difficulties.

Brian Fitzpatrick: I was struck by the rather extraordinary assumption underlying the data that were given to PricewaterhouseCoopers for its financial review that it would take almost twice as long for the public sector to build a prison. That assumption seems principally based on the fact that the SPS had no past or evidenced expertise in procurement. It cannot be beyond anyone's ken that a body might buy in that expertise as part of its procurement vehicle and build the prison rapidly, which would excise a large chunk of overrun costs. That might partly explain why we have ended up with the absurd £700 million differential. Is that a fair assessment?

Derek Yule: Yes. The report does not make it clear that, if the SPS or any other public sector body does not have project management skills either in relation to the design or the management of the construction phase, it can buy them in.

Brian Fitzpatrick: Presumably, in the case of

prisons, we need people who have experience of correctional institutions to direct the security aspects, for example. However, the project team for any design-and-build model would in any event include such people, who could feed in that information.

The Convener: Paul Martin will now ask some questions about private build, public operate prisons.

Paul Martin (Glasgow Springburn) (Lab): The witnesses might be aware of the SPS's statement that the delivery of the private build, public operate prison would "present extreme difficulties" because

"the integrity of the physical fabric of a prison is linked to its operation."

One of the issues that you raised in your report was the need to compare PFI/PPP projects throughout the public services. Are you aware of comparative evidence that would back up the SPS's statement that it is very difficult to go down the PPP route?

Martin Mathers: I would say not. My reading of the estates review is that, because prisons are a unique case, it is not possible to compare them with schools or hospitals. We do not have the expertise to challenge that assumption. That is not to say that the assumption should not be challenged. We are not involved in the running of prisons, although, at Derek's end of the table, we have experience of running schools. Until both sides of the equation are known, it is difficult to make a valid conclusion on the assumption.

Paul Martin: In your experience, is there enough comparative evidence to back up that statement?

Martin Mathers: Not in the other sectors where PFI and PPP have been used. Most PFI/PPP projects have a lifespan of 25 to 30 years. That means that we are only so far down the route of the experiment. However, there is evidence to suggest that PFI and PPP can be used successfully.

Maureen Macmillan (Highlands and Islands) (Lab): I want to think in concrete terms. In previous evidence, we discussed the situation of a privately owned prison that was run by the public sector in which a riot took place. In such a situation, the question arises of who is responsible if the prison is damaged. We heard that the risk was such that the private sector would not want to take it on, because it had no control over the prisoners.

It occurred to me earlier that the instance of a school burning down posed a similar risk if a public private partnership had been used to build the school. Who is responsible, in the case of a

publicly run school that was built under a PFI arrangement, if it is set on fire?

Derek Yule: That is one of the difficulties of PFI/PPP projects. A risk assessment is carried out in which it is possible to examine the transfer of risk in financial terms. However, the operational risk remains with the public body. That is because, at the end of the day, the public body has a statutory responsibility to provide a service.

If such a school were to burn down, it would be possible to say, from a financial perspective, that as the risk had been transferred to the private sector, the private operator would have to replace the school. However, we need to ask the question of what happens to the schoolchildren while the replacement school is being built. The education authority would have to deal with that problem. It would have to insure the risk or deal with it one way or another, as the costs would remain in the public sector. I am not sure that that aspect of risk can be transferred. It is possible to transfer the financial risk, but it is inevitable that a number of operational risks will fall back on the public sector.

Maureen Macmillan: There are some parallels, although, speaking as an ex-teacher, school children are not often dangerous criminals.

Grant Macrae: Some comparisons can be made. The definition of individual contracts would tend to suggest that, in the case of schools that are built under PFI and PPP schemes, the school has responsibility during the time that the children are under the responsibility of a teacher and that the PFI/PPP contractor is responsible outwith school hours. The difference in the case of a prison is that, almost by definition, people are in the prison at all times under the control of the warders. The question therefore arises of who takes responsibility for what. It is a question of definition. It is possible to cope with the risks that are involved.

Maureen Macmillan: It is not insurmountable.

The Convener: I want to develop that a bit. It is possible to understand the relationship between the private and public sectors in a PFI or PPP project. In the case of a school that is run in the public sector, the public sector picks up the tab for decanting the children elsewhere. However, let us examine the case of a fire in a private-private prison—one that is privately built and operated—where the prisoners have to be decanted and put elsewhere. Is that factor built into the costs that are shown in the estates review for private prisons? Do you know if that is the case?

Martin Mathers: As we read it, if that scenario develops it will be up to the SPS to find homes for the prisoners during a rebuild period.

The Convener: So if a prison with 700 prisoners

catches fire, the prisoners have nowhere to go and the public purse has to pick up that cost?

Martin Mathers: It must do. That is our understanding of this report.

The Convener: That is in relation to private-private prisons.

Derek Yule: The PFI model has a public sector comparator cost. You look at certain factors, assign a cost against them and work out the probability of their occurring. You multiply one by the other and that gives a figure that is added to the public sector cost. It is not a real figure—it is an assessment of risk. An example of risk assessment in the PWC report mentions a 15 per cent cost overrun and states that there is a 30 per cent likelihood of that happening. The public sector cost comparator is calculated by multiplying £100,000 x 15 per cent x 30 per cent. That gives a figure of £4,500 and that is what is included in the costing. If the project overruns there is a real cost of £100,000, which is transferred to the contractor in this instance. That is the calculation. The cost of risk transfer is assumed against the percentage likelihood of it happening and that is added to the cost of the public sector option.

The Convener: I can see that. The figure for cost of risk is 9.7 per cent in the table on page 13 of the PricewaterhouseCoopers report. I cannot see anything that refers to the risk being built into the cost of the PPP private build, private operate option.

That must also pertain with interest rates. As I understand it, the contracts are being based on an average interest rate of 6.5 per cent over 25 years. If there is roaring inflation and interest rates are higher, that is not built into the contract with the private sector.

Martin Mathers: Are you not confusing the discount rate and the interest rate?

The Convener: I will have to turn to my expert. I have been told that 6.5 per cent is their estimate.

Derek Yule: You have to take a view on that and assess that—that is the risk itself, that the rate of inflation will vary.

The Convener: We are back to the point where we are not comparing apples with apples. We can see the risk in the public sector option, because it has been factored in—the table on page 13 of the PricewaterhouseCoopers report states that the cost of risk is 9.7 per cent. As I understand it, there is nothing in the calculation of the cost of the PPP private build, private operate option on page 29. The costings say nothing about risk. Nothing is factored in, or is it?

Grant Macrae: That is where we were having some difficulty earlier.

The Convener: So we are back to that.

Grant Macrae: Some very specific information is contained in the front part of the section, for example on page 13 to which the convener referred. However when we reach page 29, where there is a comparison of the price with the current equivalent for six existing prison contracts, the detail behind those contracts is not given.

The Convener: We will go back to my example of a private build, private run prison where 700 prisoners are decanted and the cost is borne by the public sector. If that risk had been transferred to the private sector, it would have had to be in the cost. We do not know about that.

Grant Macrae: It is possible that that cost is in there somewhere, but we do not have enough information to know whether it is in the contract.

The Convener: I am thinking of Yarlswood immigration detention centre, where the insurance was up in the air.

Brian Fitzpatrick: There is a novelty about what a financial review is, and we might ask that question at some stage, because I was not quite sure what a financial review was.

The PricewaterhouseCoopers report proceeds on the basis of the SPS's estates review, which in turn has a number of geographical locations and preferences in mind and policy reasons as to why those geographical locations might or might not be used. I was struck by the absence from the PricewaterhouseCoopers report of any analysis of the implications for higher wages of transferring between geographical locations. My own constituency of Strathkelvin and Bearsden has a slightly higher wage economy than other parts of the country. I am particularly concerned about that as there seem to be preferred options for geographic locations and for coming out of the public sector for both procurement and operational functions. Am I wrong in having that concern?

14:45

Derek Yule: I totally agree with you. The prisons review is different in many respects from a lot of other PFI/PPP projects, which look at the enhancement, betterment and replacement of existing assets within the same geographical area. When the potential transfer of facilities from one part of Scotland to another is examined, it is found that there are significant social and economic aspects that are not reflected in the report at all. I would not state that I am competent to comment on the social aspects, but there are economic aspects to do with the wider public purse.

An assessment has been made of the impact of Peterhead on the local economy. A similar assessment should be made of the area where the

replacement prison is to be located, because we are talking about a potential loss of tax income—corporation tax, national insurance from staff and so on—and potential additional benefit payments for people who become unemployed as a result of the move. A cost is attached to that.

Another assessment should be made of the geographical area in which a new prison might be built. It may well be that the impact is neutral, but it should be appreciated that there are additional costs from relocation. I assume that there are benefits in other areas, but those are not quantified in the report.

The Convener: We are running over time, but we will take a quick question from Paul Martin.

Paul Martin: You made it clear that the public sector would be expected to pick up the insurance costs of prisoner relocation. Is that your understanding of the contract?

Martin Mathers: I was trying to find out—

Paul Martin: Convener, I ask because it would be helpful to clarify that point. At the Audit Committee—

The Convener: I do not think that we know the answer.

Paul Martin: But we must clarify the issue. Dr Peter Collings, the principal finance officer of the Scottish Executive, in his report to the Audit Committee stated that Premier Prison Services would be expected to bear the costs of any relocation of prisoners.

Martin Mathers: Then I am wrong. I looked for that information, but I could not find it. I thought I had read what I referred to, but I may be wrong.

Paul Martin: I am not trying to trip anyone up; I am trying to clarify that it may be helpful—

The Convener: We can put that question to the representatives from Kilmarnock prison when they give evidence. However, from what Martin Mathers has read the issue is not clear.

Martin Mathers: I thought that I had read the opposite, but I have read so much on this matter in the past week that the point that I made may have been to do with one of the prisons down south.

Derek Yule: The point that I was trying to make is that the financial risk can be transferred, so I can fully understand that the private sector prison will meet the cost of any relocation. There is still the operational problem of what you do with the prisoners in the event of having to relocate. Leaving aside the cost aspect, there would definitely be operational issues with suddenly having to house 700 prisoners elsewhere.

The Convener: I understand. That is clear.

Paul Martin: That would be the case whatever prison was in that situation. Dr Collings also made it clear that it would be up to the SPS to impose a financial penalty on Premier Prison Services. It has been said that that is part of the contract.

The Convener: That is helpful, Paul. We can—

Paul Martin: All I am trying to do is clarify—

The Convener: No, it is helpful. It will be useful to put the question to the other witnesses.

The only other question that we have—and I ask you to be brief—is what assessment we should make of the residual value of the prison asset to the public sector at the end of 25 years. I take it that we own the private prison after 25 years.

Martin Mathers: We wondered about that as well.

The Convener: Oh, I see—we do not.

Martin Mathers: As far as we can tell, the review is silent on that matter.

The Convener: I am glad that I asked that question. So we cannot tell from the information who owns the asset.

Martin Mathers: You may make an assumption, but until it is confirmed by the SPS it will be just an assumption.

Professor McDaid: If the assumption is that the PPP reverts to the public sector at the end of 25 years, in your eyes would it still be legitimate to make an assessment of residual value? One of the points that Grant Macrae made earlier was that PPPs may go for lower-cost capital assets that have a lower lifespan than the public sector would go for. Would an assessment of residual value be an appropriate exercise to undertake?

Grant Macrae: It would be hugely important to assess the value at the end of the contract if the asset was either transferring back into the public sector or remaining in public sector ownership. The difficulty might be in working out what that value would be. Value could perhaps be set at depreciated replacement cost or it could be worked out as an assessment of what would be required to upgrade the asset to what the best standards would be for a prison 25 years hence. However, a value must be worked out and it must be taken into account on a level playing field across all the options.

The Convener: That is very interesting because you said earlier that one might build for a shorter term instead of considering, for example, whether the Peterheads of this world might withstand a nuclear blast.

Maureen Macmillan: They do not have toilets.

The Convener: That is right. They do not have

the toilets to survive a nuclear blast.

Grant Macrae: There would be a vast difference between a 60-year specification that, 25 years on, still has a long life to go and another specification that is designed to last for only 25 or 30 years and then be almost completely dismantled and rebuilt. The specification makes a difference to the overall results.

The Convener: So that is another apples and apples thing about how long a public sector build will stand compared with a private sector build.

Grant Macrae: Yes.

Martin Mathers: It is not necessarily a public-private issue. One could argue that our thoughts on penal care change so rapidly that a 25-year build is legitimate and that a redesign would be appropriate at that stage, whether it was a public or private build.

The Convener: Yes. I am sorry to be sharp, but we are having long-haul sessions with lots of witnesses so, unless there is anything else, I thank you all for your evidence, which has been very helpful and clarified a foggy area for me—partially.

Grant Macrae: Thank you. In your introduction, you described me in relation to KPMG. For the record, in the past few days KPMG has turned itself into a limited liability partnership, so I should now be described as a director of KPMG LLP—limited liability partnership.

The Convener: Good grief! How did that pass me by? Thank you.

While witnesses change places in the hot seats, I inform members that we are running behind schedule—as usual—by 25 minutes. I think that it will be sleeping bags by the time we get through this tonight.

I welcome Professor Christine Cooper and Phil Taylor. We almost expect witnesses to pass a baton and get to their seats quickly, which is not very fair. I trust that you do not have announcements about changes of employers or anything else that I might have missed. I refer the witnesses to the report that is listed as paper J1/02/21/7. Phil Taylor is from the department of management and organisation at the University of Stirling. Professor Cooper is from the department of accounting and finance at the University of Strathclyde. I ask Donald Gorrie to start the questions.

Donald Gorrie: I have a preliminary question. Your report aroused a certain amount of hostility in public circles. In the light of those criticisms, are you standing by your report or would you like to modify any significant issues?

Phil Taylor (University of Stirling): We stand emphatically by what we said in our report. In fact,

research that we have conducted since the report was published has confirmed what is contained in the report.

Donald Gorrie: There is an issue about the fact that competitive pressure among private prison providers means that they ratchet down—if that is the right expression—pay and conditions for staff. Have you found that to be the case? Would you like to elaborate on that?

Phil Taylor: One thing that we tried to do in the report was to correct an imbalance that we felt existed in the estates review, the PricewaterhouseCoopers report and the Executive's proposals. In fact, the evidence to support what you asked is contained explicitly in the Scottish Executive document. Pages 25 to 27 of that document make it explicit that the principal savings that would accrue from the private-private route would be achieved through a reduction in labour costs, in the mix of skilled and experienced staff as opposed to incoming staff and indeed in staffing levels.

The assumption is that much of the reduction in staffing levels would arise first from closed-circuit television, new building and equipment surveillance, for example, and that those would be one of the principal justifications for reductions. Labour costs are the principal source of staff reductions and we can also see in the Executive document and repeated elsewhere that the introduction of flexible labour and flexible staffing would be ways in which savings could be made. The ratcheting down that you mentioned is fairly explicit in that document.

We tried to gather evidence from around the world for the report. I am not saying that the document is definitive, but the contextual information from the United States, Australia and elsewhere shows that the ratcheting down of pay and conditions is part of the experience of private prisons globally. They get squeezed. I read the *Official Report* of Phil Hornsby's evidence to the committee and he made it explicit that that is what is also happening at Kilmarnock prison.

Donald Gorrie: There is a theoretical possibility that private prisons have a vested interest in a large number of customers and may pressurise justice and penal systems to send more people to jail. Have you discovered any evidence of that happening in countries that have had private prisons for longer?

Phil Taylor: The committee took evidence from Stephen Nathan, who is probably more qualified than I am to comment on that. However, the interconnectedness of the various interests—accountants and private prison companies, for example—is absolutely clear from around the world. Such interests regularly meet at

conferences, where such matters are discussed.

I think that our report quotes the blurb from the Dallas conference in 1996, at which Wackenhut Corrections Corporation, which is one of the companies that lies behind the operators at Kilmarnock prison, was present. It sees matters in terms of an increased area of business opportunity in which considerable profits can be made.

However, to give direct evidence and show a direct correlation between countries that have seen an increase in privatisation and an increase in prison populations is difficult. We do not have the figures to do that and we cannot demonstrate it, but there is no doubt that there is a correspondence between those countries in which new penal establishments are opening on a privatised basis and the actions of very large corporations that have considerable lobbying powers on Government. That connection exists and is well demonstrated.

Donald Gorrie: There is a widespread view that there is a moral issue relating to private prisons. Do you have any information that could provide financial backing for the view that, taking a wider view of the cost to the community, the moral side is also the sensible, pragmatic and financial side?

Phil Taylor: That is a fundamental question and I am glad that you asked it. We hoped that that question would be debated as part of the consultation process. If the evidence from America and from a number of countries around the world is considered, it is clear that, on the one hand, there has been a trend towards increasing privatisation of prison facilities. On the other hand, however, it is clear that, in America for example, where privatisation has been more embedded and has a longer history, the moral, ethical, logistical and practical case against privatisation—in a sense, those cannot be separated out—is probably stronger because the experience of private prisons in America is greater.

15:00

It is interesting that, in March, California decided not to continue with prison privatisation. That is also true in the Netherlands. As we said in our report, having examined the evidence on privatisation in America, Australia and the United Kingdom, the Netherlands decided not to continue down that road. Part of the reason for that decision seems to be the wider social cost and social impact that have been brought to Governments' attention.

I do not want to labour the point, but it is necessary to put on record that, as our report says, several notorious cases caused considerable concern in the United States. We have pointed to evidence about Wackenhut-run

prisons in five US states. That is part of the debate there. It is no coincidence that California has turned its back on that route. A wider debate is being held about the effect on society as a whole, how society treats its prisons and how they are operated. Several legislators are beginning to pull back from the initial buzz in America that privatised prisons would incur lower cost and be an equally effective option.

The Convener: The committee is concerned about the influence that companies might try to exercise through lobbying on penal reform—you have referred to that. If 82 per cent of prisoners serve sentences of under six months and we want to have fewer prisoners—the report is not predicated on those propositions—we are led to the conclusion that if we establish and pay for more private prisons but do not have enough prisoners to fill all our prisons, we will have to move prisoners from public prisons to private prisons. Is that correct?

Phil Taylor: There is a logical case to be made that if prisons are built and lobbying takes place, and private companies must satisfy their shareholders—that is the nub of the matter—ipso facto there is a vested interest. We have been criticised for using the term vested interest, but it is a fact that private companies have a vested interest in making profits and satisfying their shareholders.

We wrote our report about a month ago and it contains about 30,000 words, so I had almost forgotten what was in it, but I remember that it contains a quotation from George R Wackenhut about Australia. The example may be extreme, but it is not atypical of the ethos that exists.

The Convener: On what page is the quotation?

Phil Taylor: It is on page 56 of our report. It says:

“George Wackenhut welcomed Australia’s policies favouring privatized prisons and detention centres, saying ‘[Australia is] really starting to punish people, as they should have’”

been doing. He added:

“This year we are going to make US\$400 million”.

It is difficult to escape the fact of the desire for profitability. We argue in our report that that clashes with society’s overall attempt to reduce prison populations and to rehabilitate prisoners. We think that a conflict of interest exists.

Lord James Douglas-Hamilton: If the premise is that standards in the Scottish Prison Service must be the highest—in fairness to ministers and the SPS, that is their position—surely it follows that if the private sector has a role, we must be exceedingly careful with what the tender specification says about the standard, range,

delivery and inspection of services. It must be certain that standards will be maintained. Considerations about shareholders are irrelevant to that. If private companies cannot perform according to the specification, we should be able to terminate their contracts.

Professor Christine Cooper (University of Strathclyde): It is almost assumed that if key performance indicators are put in place, people will automatically follow them and everything will be okay. The experience of league tables in education, which are like performance indicators, is that schools want to excel only in that area. There is a problem with distortion. I am not sure that, even if we had the best possible contract in the world—and I am not sure that many private prison companies would be interested in that contract, but let us suppose that they were—the performance indicators would ensure the highest possible quality.

Lord James Douglas-Hamilton: Surely HM chief inspector of prisons can monitor the situation closely to ensure that standards are maintained and, wherever they are not maintained, point that out effectively in reports.

Professor Cooper: That has definitely been the experience with Clive Fairweather and Kilmarnock, but everything is still not okay at Kilmarnock.

Phil Taylor: For our report, we scrutinised the chief inspector’s reports on Kilmarnock. It is quite revealing that, in 2001, two years after Kilmarnock had opened, Clive Fairweather discovered that the key performance measures had still not been agreed. One would assume, from your line of questioning, that those measures would be clearly and definitely put in place.

Lord James Douglas-Hamilton: Would it be fair to say that, if the Administration goes down the path of private prisons, it should do so with extreme care and be absolutely certain that it knows what it is doing?

Professor Cooper: Yes.

Brian Fitzpatrick: Like a number of people who read the SPS estates review documents, I was concerned about some of the language that was used about the SPS work force. I was also concerned about some of the language that was used in your report, particularly in relation to Wackenhut Corrections Corporation. We get a long narrative about the company in the executive summary. Is it correct that that is based on something that someone read in “Spy Magazine” in September 1992? Is there a purpose for that being there, or is it extraneous narrative that we might put to one side?

Phil Taylor: We are not saying for a moment that that is a definitive company history of

Wackenhut. It was the available evidence that we could find to attempt to document Wackenhut as an organisation. The reason that is important is that, in the estates review document and elsewhere, there is an assumption that the companies that run private prisons are reputable. The word "reputable" is used on a number of occasions. If prisons are to be run privately, one would expect a far greater degree of scrutiny of such companies to have taken place.

What we touch on in that narrative is evidence that causes considerable concern. Wackenhut Corrections Corporation is a fairly controversial company. People refer to it as a controversial company, but nobody says why it is controversial. We were attempting to redress the balance by putting that evidence in our report.

Brian Fitzpatrick: On redressing that balance, am I right in understanding that your critical examination of that company's history is the rehearsal of an article from "Spy Magazine" and that there have been no other studies or corporate searches?

Phil Taylor: There have been a number of searches.

Brian Fitzpatrick: Did you do them?

Phil Taylor: Yes. We did a number of searches through LexisNexis and other search engines on the internet. The evidence that we have accumulated on Wackenhut Corrections Corporation comes from the databases of 20 or 30 newspapers in the United States.

Brian Fitzpatrick: I can understand that one might do a media search. I am asking about, for example, the holdings of this guy that you mention—George C Wackenhut. I do not know who he is. We do not see anything on his holdings. Has research been done on that?

Phil Taylor: Do you mean on Wackenhut as a company?

Brian Fitzpatrick: Yes.

Phil Taylor: There is evidence in our report about the structure of the company and its financing. That is fairly readily available.

Brian Fitzpatrick: I will take you on to what you say about the aims of the Scottish Executive. I have my disagreements with what the Executive is about and some of the proposals on what it might be about. However, the Deputy First Minister's foreword to the consultation paper makes it clear that part of the reason that the Executive embarked on the estates review is the genuine concern about stewardship of public funds and the fact that there is a discrepancy in the order of £700 million between the cost of new public and private prisons.

Let us leave aside, for a moment, the notion that that discrepancy might proceed on the basis of various flawed assumptions. Is it part of a critical examination to say that

"the Scottish Executive is pursuing an agenda designed to undermine the POAS"

and that the aim of the Scottish Executive is

"lower pay and inferior conditions of service"?

I accept what you say about the narrative around the union and relationships with the union. However, is that in any sense a fair summary of what the Deputy First Minister—if we take what he said in good faith—is setting out as the purpose of the estates review?

Professor Cooper: No. Arguably, the estates review could be wider than that. However, a two-way process is going on between the estates review document and the PWC document. The PWC document states clearly that private prisons manage to make their profits or produce cost savings by reducing pay and introducing flexible working. It is up front about that—that is not something that we have said that it says. The document says that.

Brian Fitzpatrick: I am interested in the way in which you form a normative judgment on the aims of the Scottish Executive that flies in the face of what the Deputy First Minister has stated as the purpose of the estates review. I wonder how you reached that normative judgment.

Phil Taylor: Pages 25 to 27 of the Scottish Executive's document are illustrative of the thrust of what we are saying. It is true that it is difficult to know at what point the SPS is being quoted and when the Scottish Executive is speaking for itself. However, the document is fairly explicit. Paragraph 79 on page 27 says:

"In the face of competition, SPS is seeking to reduce the number of officers employed in the higher band and lower the average pay of prison officers but not cut anyone's actual cash pay."

Such fairly explicit statements are contained in the Scottish Executive's consultation document.

Brian Fitzpatrick: Just to be clear—

The Convener: I take your point, but we have to move on. You have made your point about this.

Brian Fitzpatrick: I would like to complete my point, if I may.

The Convener: Be brief, please.

Brian Fitzpatrick: I accept that and it might be something that you pray in aid to back up your judgment. However, it does not help to explain why you arrived at the conclusion that it is the aim of the Scottish Executive to undermine the prison unions. Why did you arrive at that as the

Executive's aim? Did you discount there being any merit in what was being said in relation to the stewardship of funds?

Phil Taylor: Perhaps we should substitute the definite article for the indefinite article—"an" aim. We must move on, and I realise that we are pressed for time. However, elsewhere the Scottish Executive's document talks about the desire to move to locally determined rates of pay. Whatever you think about that, it is an attempt to undermine the existing pay and conditions of the prison staff.

The Convener: We could argue about some of the verbs and phraseology, but I think that we know where the Scottish Executive document is coming from.

Michael Matheson: Let us return to the issue of the contract. There is some debate about the lack of flexibility in contracts between the public and private sectors in the provision of the service. I may be wrong, but I would have thought that it would be in the interests of a private company to have a tight contract that was focused on what it should and should not deliver, so that it could quantify the exact costs to it. However, the evidence that we have taken to date shows that there appears to be some inherent conflict in that.

The chief inspector of prisons highlighted the fact that the contract insists that, if two people are involved in an assault, the incident must be recorded as two assaults although it is actually only one assault. It also appears that the lack of flexibility in the contract is causing problems in the delivery of services in Kilmarnock prison, for example. I wonder whether your research shows that such problems are common in private prisons.

Professor Cooper: That is a tough question to answer, as we do not know about a lot of private prisons. We have studied Kilmarnock, though. I know about the problem of double counting and that a fight involving two people must be recorded as two assaults. However, from interviews with Clive Fairweather and from other sources, we know that there is also a fundamental problem of misreporting serious incidents.

We have documentary evidence to suggest that there have been cases of people who have been involved in a serious assault being asked to downgrade their report—to say that the assault was less serious—because of the penalty points system. I have already identified the problem of performance indicators driving what goes on, which could lead people to go down one route rather than to worry about other things. There is also the problem of misreporting.

15:15

Michael Matheson: I am more concerned about the issue from a management point of view. Is the

existing contracts system a good way to manage a prison?

Phil Taylor: I will point the committee to an extremely clear example of the way in which the inflexibility of the contract at Kilmarnock obstructs directly the progress of programmes to deal with offending behaviour. The example concerns unauthorised absences from work. As members know, Kilmarnock's regime is work oriented; that is very much part of the contract. If a prisoner wishes to attend an offending behaviour programme, visit the gym, take a daytime visit or have a family visit, that activity counts as an unauthorised absence from work. Prisoners who have more than two unauthorised absences suffer an impact on their wages. Prisoners at Kilmarnock are therefore faced with a choice whether to go on an offenders programme, which is restricted according to the number of absences they are allowed, or to make money through work. Given that most prisoners at Kilmarnock come from a background in which they were used to little money coming into the household, it is unsurprising that they choose to work.

The inflexibility of the contract and of staffing levels—those two aspects are inseparable—have a bearing on the matter. The result is that insufficient numbers of staff are available to enable prisoners to be escorted to a classroom or for a visit, for example. That rigidity is built into the contract. We have a situation in which prisoners are disincentivised from attending behavioural programmes. That is clear to us from the chief inspector's report. Is that what you are thinking of?

Michael Matheson: The problem is that if one does not have a rigid contract, it is difficult to obtain accountability for taxpayers' money. There is an inherent conflict in the type of contract system that is being used.

The Convener: That links back to the previous evidence, which indicated that quality is not being factored in. I think that that is what Michael Matheson is talking about. The committee is aware from visits to Kilmarnock that rehabilitation is imperilled when a prisoner must go to work. When we compare the public sector model and the private sector model, we are not comparing apples with apples, because we cannot see the qualitative aspects in the private sector.

Paul Martin: I refer to Professor Cooper's report's statement about the independent status of PricewaterhouseCoopers. You say that

"it is disingenuous of the"

Executive

"to refer to PricewaterhouseCoopers as 'independent auditors'."

Will you clarify your statement?

Professor Cooper: That was not a strong statement. At the beginning of PWC's report, it is stated that PWC is a paid consultant of the Scottish Executive. To that extent, the report is not an independent report that has been written by someone who has come fresh to the subject. The report is probably in line with what the Scottish Executive led PWC to concentrate on. It is almost as if the terms of the debate were set up. That is absolutely fair if one pays consultants and tells them what one wants them to examine. If they go and do that, they will have done what they were asked to do.

Independent consideration of the issue might have asked big questions such as, "Do we need 2,100 extra prisoner places?" It is clear that such questions were outside PWC's remit. Our point is not a strong one. I am sure that PWC did the job that it was asked to do, but it was asked to do a specific job.

Paul Martin: I want to clarify that you are not saying that PWC did not carry out its role.

Professor Cooper: No, absolutely not.

Paul Martin: Your document could give rise to that misinterpretation. You also say that

"the briefest scrutiny of the proceedings ... reveals the interconnectedness of those with vested interests in the privatisation of prisons."

You refer to PWC and KPMG in that way.

Professor Cooper: The big five accountancy firms sell privatisation advice—it is in their accounts and is part of what they do.

Paul Martin: Would it be unusual for a firm that was carrying out an audit to be given a brief by the people who procured that firm's services?

Professor Cooper: No.

Paul Martin: If PricewaterhouseCoopers was asked to carry out any other review, would it be given a remit in the same way as the Scottish Executive gave it a remit?

Professor Cooper: Absolutely. However, the trouble with considering only financial information—as the PricewaterhouseCoopers report did—is that it misses all the broader social questions. However, I am not saying that it was wrong to do that, because that was its remit.

Paul Martin: That does not take away from the fact that any company that was contracted to carry out an audit would not be given a roving remit to consider anything it wanted—it would be given a broad guide to the issues. For example, if Marks and Spencer asked PricewaterhouseCoopers to carry out an audit of its estates review, it would follow the same procedure.

Professor Cooper: Absolutely. Marks and

Spencer would set out the terms of the consulting agreement.

Paul Martin: Would you say that the statement in your report is in some way inaccurate, given that it could be said in respect of any company?

Professor Cooper: It would be possible for the Prison Officers Association to employ another one of the big five accounting firms which, if it was given a different remit, would come up with a different set of figures.

Phil Taylor: On the question of independence, there is a wider context. Our submission refers to a wider context that takes us away from the bricks and mortar questions of the three 700-prisoner prisons. It tries to locate the accounting firms in the wider network of interests, lobbying and so on in which PricewaterhouseCoopers is undeniably involved. We cited the evidence of the Dublin conference on PPP and PFI, of which PricewaterhouseCoopers was very much a part.

Paul Martin: Would not it be difficult to procure an accountancy firm that had the required experience, but did not have some involvement in PFI or PPP issues?

Phil Taylor: Yes. However, we were trying to point out the wider context. The debate is not about cost alone; I am sure that the committee would like to take on board the wider social questions.

The Convener: We should move on. We have established two things. First, we must ask what the PricewaterhouseCoopers remit was in order to find out whether it was constrained. Secondly, we have questioned whether it was appropriate to say that PricewaterhouseCoopers cannot be independent. We have aired those points.

Paul Martin: My point was that any firm would have to have a brief.

The Convener: That is a separate issue. The two issues are whether PWC is at arm's length, and whether its brief was part of the reason that we are considering the issue in a certain way. We will have to ask PWC about that.

Paul Martin: In your report, you raise concerns about the method that PricewaterhouseCoopers used to consider the estates review, particularly in its use of hypothetical prisons, rather than existing facilities, as a comparator. Can you elaborate on those concerns?

Professor Cooper: As we have discovered, the costings are complicated and difficult—discount rates and all kinds of things need to be thrown into the equation. The United States General Accounting Office did a small study to find out the best methodology to analyse which prisons would be cheaper. It found that it was better to consider

real prisons, rather than hypothetical ones.

The other problem with moving from the PricewaterhouseCoopers report to the estates review is that PWC does not try to cost other developments, such as the closure of Peterhead or the running down of Barlinnie to make it a little smaller. The report does not try to cost any of those things. That means the suggested saving of £700 million is not based on what will happen. Examination of those costs would probably involve another big consulting exercise.

Lord James Douglas-Hamilton: Your written submission states:

“The Pw C report is almost silent on the issue of quality.”

Will you outline other financial methodologies that are capable of taking quality into account?

Professor Cooper: That goes back to the question of the remit that was given to PricewaterhouseCoopers. It is difficult to come up with those kinds of measures. That said, from my reading of the reports—one could say this almost without any knowledge of what went on behind the two reports—it is not clear that the private-build prison would be exactly the same as the public-build prison.

Reading between the lines, it seems almost as though some leeway would be built into the public-build prison for things such as a sudden need for 25 per cent more prison spaces. I am not sure whether those things are built into private options. To return to the committee's discussion with the previous witnesses from CIPFA about what would happen if a prison were to burn down, it seems to me that in such cases, no matter who built the prison, the chances are that the prisoners would be moved to a state prison.

Lord James Douglas-Hamilton: Are you saying that the private prisons operate under tightly drawn criteria and that they must be used for more limited purposes than public prisons? Is like not being compared with like?

Professor Cooper: That seems to be the case in the estates review costings. However, as I said, I do not know what went on behind the scenes.

Lord James Douglas-Hamilton: Many witnesses have told the committee that the analysis of the three options in the estates review does not compare like with like. Your submission states:

“Each of these options has significant *quality and risk* differences.”

Will you outline those perceived differences?

Professor Cooper: I think that the committee's previous witnesses pretty much dealt with the differences in risk. In the end, no matter who owns

the prison, if something happens and prisoners need to be rehoused, the prisoners will automatically go back to state prisons. The state will always need to have contingencies in place.

As I wrote in our submission, I understand that if there were problems at Kilmarnock, help would come from the likes of Barlinnie. That means that Barlinnie's costings must build in the possibility that such a thing might happen. I am sure that the private-option bid would not have those kinds of quality and risk options built in.

Lord James Douglas-Hamilton: If, in that case, there was a fire in Barlinnie or in another prison—I very much hope that there will not be—could Kilmarnock not take more prisoners than it currently has?

Professor Cooper: That is probably not in the Kilmarnock contract.

The Convener: Paul Martin wants to ask his earlier question about who would pick up the cost.

Paul Martin: Dr Collings, who is the Scottish Executive's principal finance officer, made it clear in his evidence to the Audit Committee that the costs of relocating and making alternative arrangements for prisoners in such a situation would be met by the insurance of Premier Prison Services.

I am not trying to trip you up, but will you clarify from where you got the information that you have just given? Dr Collings is the principal finance officer of the Scottish Executive. He made it clear to the Audit Committee that, although the Scottish Prison Service would be expected to make alternative provision to relocate prisoners, financial penalties could be imposed on Premier Prison Services, which is expected to have an insurance contract in place that would deal with the financial implications of such a situation.

15:30

Professor Cooper: You are right that a contract could be devised that would say that, although the state would take over if the prison were to burn down, the costs would have to be met by the private prison contractor. However, those things would need to be written into a real contract. Again, we are back to discussing hypothetical cases.

Although it would be possible for someone to say that, if the prison were built, provision would be made in the contract—

Paul Martin: To be fair, Dr Collings was talking about Kilmarnock prison, which is already operating. He said that Premier Prison Services' contract covers the issue of insurance cover in detail. He stated that:

"If the prison became permanently unavailable—for example, because of fire—that would be covered and Premier Prison Services would, through its insurance, bear the costs to the Prison Service of making alternative arrangements."—[*Official Report, Audit Committee*, 30 April 2002; c1067.]

That is the statement of a senior principal officer in the Scottish Executive.

Professor Cooper: I agree with you. Such a measure could be written into a real contract.

Paul Martin: But it is already in the Kilmarnock contract.

Professor Cooper: It is, but I do not know whether such a provision is in the PWC costings for their hypothetical prison. You are right to say that it could be built into a contract.

Paul Martin: It could be because it already has been.

The Convener: I am sorry, but if we keep extending lines of questioning, we will be here until late at night. We have raised the matter and can raise it again.

Michael Matheson: In your report, you claim that the projected public sector costings in the estates review have been "grossly inflated". How did you arrive at that conclusion?

Professor Cooper: It costs about £28,000 per year to keep a prisoner in a Scottish public prison—that is a rough, ball-park figure. Because PWC expresses all its costings in some kind of average net present value calculation, it is difficult to get under the figures. However, they seem to suggest, after one has worked them out a little bit, that it will cost about £47,000 a year in real terms—March 2001 figures—to keep a prisoner in a publicly built and operated prison. I do not understand where that difference comes from. If it costs £28,000 to keep a prisoner in an old prison, why would it cost £47,000 to house them in a lovely new prison without slopping out and with good surveillance and so on?

Michael Matheson: We appear to have established firmly this afternoon that, when we do a cost comparison between the public and private sectors, we are not comparing apples with apples.

Why do you think that those figures suggest that there will be such a rise in the cost?

Professor Cooper: I cannot say. Perhaps you could ask representatives from PricewaterhouseCoopers when you speak to them.

Michael Matheson: Your report says that PPP arrangements pass on a great cost to the next generation. What do you mean by that?

Professor Cooper: At the end of the 25-year

lease—which the contract period almost certainly would be—if the prison reverts back to the private sector, the public will be faced again with the same issues of financing. Of course, whether the prison reverts to the private sector is something that could be worked out in the contract, but that is typically what would happen.

The Convener: You suggest that the prison might revert back to the private sector. However, somewhere in my pile of answers to parliamentary questions, I have one that says that the reversionary interest in Kilmarnock prison is to the SPS.

Professor Cooper: Yes. However, if I were Premier Prison Services and I knew that I had to give back the prison in 25 years, I would build a prison that was going to last for 25 years, rather than for 50 or 100 years.

Michael Matheson: Your report warns that

"Once the private sector has taken the expertise from the state prison service, private companies will be able to charge more or less what they want."

Do you have evidence of that kind of thing happening in other countries?

Professor Cooper: I picked that up from the 1996 paper of the United States General Accounting Office, which tried to work out costing comparisons. One of the arguments at the moment is that we should build private prisons because we do not have enough expertise in the public sector. However, the US General Accounting Office gathered evidence to show that, when a certain proportion of prisons go into the private sector, expertise gradually moves away from the state prison service into the private sector. That means that it could be difficult to reverse the trend.

Michael Matheson: That brings us back to the point that the convener highlighted, which was that if the proposals go forward as they are, about 38.2 per cent of Scottish prisoners will be in private prisons. However, if we are successful in reducing our prisoner population, the proportion that will be in private prisons will still continue to increase. I imagine that there would then come a critical point at which the public sector would be at the whim of the private sector as regards how prisons are run, what staffing levels are in place and a number of other factors.

Professor Cooper: That is exactly what will happen.

Phil Taylor: Precisely. Our report also tried to put the matter into an international comparative context. Michael Matheson quoted the figure of 38.2 per cent. I derived that figure by calculating the 2,200 proposed places, adding them to the 548 at Kilmarnock, dividing that and making it a

percentage according to the projected total prison population, thus arriving at 38.2 per cent. The reason why that is significant is that it would mean that Scotland had the largest proportion of its prisoners in private prisons in the world. With such a proportion in the private sector, it is difficult to see how prisons could come back into the public sector if, for example, problems such as we have seen in prisons elsewhere in the world were to arise and the state decided to bring prisons back into the public sector. There are major issues associated with the scale of privatisation that is proposed in Scotland.

The Convener: I shall allow Professor McDaid to ask the final question. We shall then try to make up time after we have had short break. If we can recommence at quarter to four, we will be only quarter of an hour late which, for us, is pretty good going.

Professor McDaid: The committee heard CIPFA's views on PPP and PFI arrangements being driven by the need to secure off-balance-sheet financing. When you have considered PFI and PPP arrangements, have you examined that matter? What are your views?

Professor Cooper: The issue arose because the private-private option was mentioned in the PWC report as a good thing. I was quite disturbed by the suggestion that it is good just because the state is not borrowing money. It is quite disturbing if decisions are to be made about hundreds or thousands of prisoners on that basis. The whole issue of how such things should be accounted for is being discussed actively within the accounting profession. The profession's view is that the private-private option is just the same as a lease and should actually go on balance sheets.

The Convener: Thank you very much. I now suspend the meeting. Refreshments are available outside, and we will hear from two more sets of witnesses when we resume.

15:38

Meeting suspended.

15:47

On resuming—

The Convener: I reconvene the meeting and welcome Paul Brewer, who is a partner in PricewaterhouseCoopers. Did you hear the previous evidence, Mr Brewer?

Paul Brewer (PricewaterhouseCoopers): Yes.

The Convener: I start by asking you to tell us what we do not know. What was the brief that you were given?

Paul Brewer: The brief from the Scottish Prison Service was quite clear and specific. The brief was to consider the financial aspects of some of the components of the prison estates review. Specifically, it was to assist the Scottish Prison Service in preparing the public sector comparator and to establish from the available evidence the equivalent cost of providing a 700-place prison under a design, construct, manage and finance prison contract with the private sector. That format was used for HMP Kilmarnock.

In addition, elements of the prison estates review were about the potential developments at existing prisons, such as Barlinnie, Peterhead, Shotts and Low Moss. The SPS asked us to review the costings that it had prepared for the potential developments at those prisons.

The Convener: I will let other members come in with their questions on like-for-like comparisons in a moment. Those points are woven into subsequent questions to which we will come. The points that you have just made will be developed later. However, I want to give you another opportunity to say something general. The previous witnesses, Christine Cooper and Philip Taylor, said

"it is disingenuous ... to refer to PricewaterhouseCoopers as 'independent accountants'"

given that the company co-sponsored a recent public-private partnership/private finance initiative global summit in Dublin. In fairness, I give you the opportunity to say something about that.

Paul Brewer: It is well established and we make it clear that PricewaterhouseCoopers is actively engaged in advising the Government and the private sector on PPP contracts, among many other things. The Scottish Prison Service was well aware of that. It is a matter of judgment whether that impacts on our independence. However, our reputation rests on performing our work objectively and to appropriate standards.

It has also been pointed out that in order to comment with a depth of knowledge, one needs to have some understanding of how PPP contracts work and how the relationship between the public sector and the private sector operates and is managed. It would be very difficult for a party to have such an understanding if they had no experience of working with PPPs.

The Convener: So it is a benefit, not a bias.

Paul Brewer: It is not a bias. If we were interested in winning work, we would far more quickly lose that work through a clear lack of objectivity than we would win it if we actively engaged in marketing in any particular sector.

The Convener: I will let other members comment on that.

Donald Gorrie: Just for clarification, did you receive the prison numbers as a given as part of your remit?

Paul Brewer: Yes, we received numbers for the PPP option, the private build, private operate option and the public sector comparator. However, in my submission, I omitted to mention that, although we were asked to consider other options, the private build, public operate model emerged as a possibility that we were specifically asked to comment on after our original remit was set.

Donald Gorrie: So your work concentrated on calculations relating to a putative 700-place prison.

Paul Brewer: That is correct.

Donald Gorrie: And the costings for building additional blocks on to various prisons, closing Peterhead and so on are included the prison estates review. You were not involved in drawing them up.

Paul Brewer: They were discrete exercises. There were two legs to our work, the first of which involved examining different options for procuring a 700-place prison. The second leg involved a number of specific potential developments that might take place at Barlinnie, Peterhead, Shotts and Low Moss under the estates review recommendations. We were asked to review the costings that the SPS had prepared for those developments.

Donald Gorrie: Is that included in your report?

Paul Brewer: Yes. The findings are summarised in paragraph 1.5.4.

Donald Gorrie: I was interested in the fact that you excluded VAT from your costings because it is a payment between Government departments. However, although you considered VAT, you have not thought about the fact—or what I understand to be a fact—that most of the employees in private prisons are paid so little, they have to receive benefits from the Government. That is a public cost.

Paul Brewer: I question that that is a matter of fact.

Donald Gorrie: On what evidence?

Paul Brewer: I noted that the question was asked in a previous evidence session and made inquiries about the matter. It seems that a very small number of employees—I do not know the exact number—receive benefits.

Donald Gorrie: Well, we can ask the next witnesses.

Paul Brewer: Yes.

Donald Gorrie: Am I right to say that you did not include the costs to society of the various

options and that the costings simply involved bricks and mortar, staff and so on?

Paul Brewer: The public sector comparator cost was based on building and operating a prison to the same operational standards—including custody, work activities, rehabilitation and so on—that were specified for Kilmarnock prison. To that extent, our review did not consider the wider social impacts of one method of procurement against another.

Donald Gorrie: As far as Kilmarnock prison was concerned, there were solid buildings, people and costs to go on. Were your figures for the theoretical Scottish Prison Service prison model based on information that was provided by the Scottish Prison Service? Did you validate the information that the SPS gave you?

Paul Brewer: The information that was used to compile the Kilmarnock public sector comparator—the public build, public operate model—was clearly and carefully put together. The information had its roots in the work that the Scottish Prison Service undertook when it had to construct a public sector comparator for the procurement of Kilmarnock prison. The information was reviewed carefully and it was updated and scaled up for a 700-place prison as against a 500-place prison.

The SPS took advice on the bricks-and-mortar aspects from an outside firm of quantity surveyors. The SPS also examined the existing operational costs that are incurred by the most comparable prisons in the SPS estate. Those costs were used as the basis for constructing the operational aspects of the public sector comparator model.

The Convener: I am lost. You say that we should be able to see clearly in your document the comparison between public build and run and private build and run 700-place prisons.

Paul Brewer: The methodology used for the document was put together on the basis and premise of being able to compare like with like.

The Convener: A substantial amount of the evidence that we have heard is that the comparisons are not like with like or that, if they are, it is not clear where the like-with-like comparisons are to be found. In paragraph 2.2.2 on page 13 of your document, the costs are clearly broken down. It is possible to see all the costs from the capital and development costs to the cost of risk and the total cost. I understand that section of the document. However, when we reach the calculation for the private build, on page 29 of the document, the only information that is given is about prisoner-place costs for prisons that, with the exception of Kilmarnock, are all based in England.

Paul Brewer: I can explain that, if the convener would like me to do so.

The Convener: It would have helped to have had all the information in the document. We have only the information that is before us. Most of the expert witnesses who have studied the document have said that it is not possible to tell from the document what is being compared with what.

Paul Brewer: For the private build, private operate model, we started with a number of transactions that were undertaken for prisons that are now operational. I understand from the SPS that those prisons were, for the most part, specified to a similar standard to Kilmarnock. There are exceptions to the standard model that is used in the comparator. Those include Dovegate, which has a therapeutic unit for 200 prisoners, but it is possible to see that that additional specification makes Dovegate prison slightly more expensive.

Through discussions with the Scottish Prison Service, we established that each of the prisons that are shown in the table on page 29 tries to work to a similar standard. When the SPS procured Kilmarnock prison, it had an active dialogue with HM Prison Service. That was because, at that time, HM Prison Service had more experience of procuring prisons. The SPS can say with confidence that the contracts are running to much the same standard.

The Scottish Prison Service asked us to consider, and advise it on, the best way of establishing the likely price if it invited the private sector to submit tenders for a 700-place prison. The SPS would have liked to have seen the numbers for the private sector comparator built up in the same way as we did for the public sector comparator, but that information is not available. It is possible only to see the cost that is being paid by HM Prison Service or the SPS for the service of the prisons that it has procured.

No in-depth analysis is available to us for the English prisons to build up the cost heading by heading. My advice to the Scottish Prison Service was that if we tried to replicate that and say what the private sector would do and how it would build up the cost, a high degree of estimation would be involved. If we came up with a different figure from the price that is being charged by the private sector for providing the services, we would not have a persuasive case for using the figure that we had come up with, because there is such strong evidence of prisons being procured on that basis and of that pricing being attached to those services in the marketplace.

16:00

The Convener: But different things are involved

in the public sector. We pay for the whole administration and for SPS headquarters. That is all part of the bill. That is not the case in the private sector.

Paul Brewer: Those costs are not included in the public sector comparator.

The Convener: What about risks within the private sector option? Is it the case that that is what we pay so that is what the cost is?

Paul Brewer: No. If one reads the contract for Kilmarnock, for example, which I believe has been published—

The Convener: Some of it.

Paul Brewer: Some of the contract has been published and I believe that the HM Prison Service contract has been published.

When one reads the contract, one can see the obligations on the private sector to bear a whole range of risks. Consider the major risks, such as the risk that the cost of building the prison will be higher than the figure that was estimated, or bid in the case of the private sector. If the SPS builds the prison itself, all the costs fall to its account. If the private sector fails to deliver within its own costs, the company has a contract that states what the SPS pays and it has to absorb the overrun itself. Consequently, the cost of that risk, which is borne by the private sector, is within the price that it charges the SPS for providing the prisoner places.

The Convener: But we do not know the cost of the risk. We have to assume that all such costs are included in the total sum. That is the problem.

Paul Brewer: The information cannot be disaggregated in that sense.

Professor McDaid: I accept your hypothesis and this is a difficult issue. However, consider the £112 million capital build cost for the public sector option. Has any work been done on capital build costs for the private sector option?

Paul Brewer: Yes. We know what the capital build cost was for Kilmarnock. I do not know whether I can disclose the figure, so for the moment I ought not to disclose it. As part of our review, we wanted to understand why the costs were so different. One has to take into account that the SPS has not built a new prison for 30 years. SPS prisons are built around an operating model that includes a significantly higher number of prison officers. The prison would have to be bigger physically for the SPS to operate it in the manner in which it currently operates prisons.

Professor McDaid: One of the difficulties that I had was that if I took a hypothesis that the capital costs were roughly similar—excluding the risk element that was built into the public sector comparator model—and I took the financing

charges for those to be 6.5 per cent, which I think is the figure that you used, the capital repayments over the 25 years would be approximately £230 million. My mathematicians told me that and I will take their word for it. When other building costs such as the costs of maintenance, refurbishment and minor works are added on, the real costs are approaching £290 million. That is out of the total estimated costs for the PPP of £453 million in real cash terms. I found that difficult to reconcile, partially because I do not have enough of the underlying data.

Paul Brewer: The capital costs for the prisons that are being provided under the design, construct, manage and finance contracts are very significantly lower than the equivalent figure for the SPS.

Professor McDaid: Is that predicated on the public sector being unable to manage such a procurement?

Paul Brewer: It is predicated on a number of factors. The first is that the relationship between the operation of the prison and the design is very close indeed—it is inextricable—so the SPS, in producing the methodology by which it reached that capital figure, examined how it would operate the prison in comparison with Kilmarnock prison. In principle, the SPS wanted to build a prison the size of Kilmarnock prison, but additional staff would have to be carried. That feeds right through the prison. It means that one needs everything from a larger car park to larger staff areas, so the area of the building is significantly greater to start with under an SPS operating model.

The SPS then examined its experience of house block developments at Saughton and Polmont, and found that there was a high propensity to refine and change the design as it developed. That is one of the factors that adds risk and, potentially, cost. The SPS has to recognise that the private sector operators that are producing DCMF prisons are now doing so to a fairly standardised model that meets their operating requirements and the requirements of the contract, and that they are doing that over and over again. The SPS is starting out to do this for the first time in 30 years.

The Convener: On that point alone—because we have a list of questions to get through—we will take a question from Lord James.

Lord James Douglas-Hamilton: I have two questions. First, do you accept that Shotts new prison, which is a substantial new prison with a special unit, was built after 1987 by the public sector and is generally considered to have made a substantial contribution and that, frankly, the figure of 30 years is not correct?

Secondly, do you accept that one of the reasons why it is difficult to make a like-for-like comparison

is that public sector prisons are continually changing and evolving, as are private sector prisons, according to the evidence that we have received from south of the border? For example, the regime at Peterhead prison is totally different from that of 20 years ago. In addition, Saughton prison, which is the biggest prison in Edinburgh, has a 10-year rebuilding programme, under which a huge number of changes will be made. We were told that, south of the border, the private sector prisons have made many changes since their inception. For all those reasons, is it not true to say that it is hard to make a like-for-like comparison, as you did, because the situation is constantly changing?

Paul Brewer: One has to approach the comparison in a way that, as far as possible, gives comparable outcomes, or financial figures that reflect comparable delivery of prison services. An appropriate methodology was used to do that. I know that the SPS has sought to learn from Kilmarnock, in the same way that HM Prison Service has sought to learn from its outsourcing of prison services in prisons that it owns and from its DCMF contracts.

Those lessons have been taken into account, and have changed the way in which the development of house blocks has taken place. It is correct to say that the model is changing, but when one builds a prison one has to build it on the basis of one's best understanding at the time of the services that one will wish to deliver within it. It is true that there is the potential that the prison will develop further once it is built.

Lord James Douglas-Hamilton: Convener, may I ask one or two more questions?

The Convener: Before you develop the issue, Paul Martin wishes to ask a question, but I am unsure on which subject.

Paul Martin: My question referred to an issue that was raised earlier.

Lord James Douglas-Hamilton: I have technical questions that follow on from my previous questions.

Paul Martin: Lord James can ask his question if he wants.

The Convener: I am trying to jiggle people. Members are putting their names down and upsetting the apple-cart.

We will have Lord James Douglas-Hamilton, to be followed by Paul Martin, Brian Fitzpatrick and Michael Matheson. That is now the list.

Lord James Douglas-Hamilton: Discounted cash flow calculations give heavier weight to earlier year spends. All capital payments are protected up front for the public sector comparator

option in the estates review. What would be the impact on the discounted cash flow of funding through borrowing to be repaid at the end of 25 years?

Paul Brewer: The discount rate that is used is 6 per cent on cost expressed in real terms, so we refer to that as 6 per cent real. If one assumes an inflation rate of 2.5 per cent, that means that the discount rate in nominal terms, which is how borrowing is priced, is 8.65 per cent. Therefore, the answer is that if one could borrow at lower than 8.65 per cent, the net present value would drop. If one could borrow only at rates higher than 8.65 per cent, the net present value would increase as a result of funding through borrowing.

Lord James Douglas-Hamilton: I have a further technical question. Notwithstanding the notional basis for the calculation of costs for the private build, private operate model, can we separate on a cash value real basis for each option the capital costs, the buildings and equipment costs and the operational costs? In particular, for the PPP, what will be the annual costs for repayment of borrowings, other buildings and related costs, which would presumably be the same as for the public sector comparator, and operational costs?

Paul Brewer: That information exists for each prison because it is the basis on which the private sector operator builds up the costs that represent their bid. I would expect that, in all cases, that would be commercially sensitive information.

The Convener: That makes it difficult. You can imagine how exasperating it is to be told continually that information is commercially confidential, because it means that we cannot compare.

Paul Brewer: That level of information was not made available to us. However the outcome, which was the price that was bid, is a price to which the operator is committed, however the price was built up. The operator must work within that budget to meet its expected financial outcome.

The Convener: Are your technical questions over, Lord James?

Lord James Douglas-Hamilton: Yes.

Paul Martin: My question is related to a question that was raised earlier.

The Convener: Do you want to ask it? Go ahead.

Paul Martin: My question is on the issue of independence, which was raised earlier. I want to clarify that in any process you would be required, in partnership with the organisation for which you were carrying out a brief, to set out exactly what

that brief was going to be. In this instance, was there any amendment of the brief by the Executive after your report was collated? The report was to be your independent report that would be delivered to the Executive. Was that position in any way amended?

Paul Brewer: I think that I understand the question. The brief that we worked to and that resulted in our report was set out at the time of our appointment, with the exception of the issue of the public-private partnership model. It was part of our remit to consider what other models were available and to look for experience around the world. We were specifically challenged to discover whether a private build, public operate model, which works with hospitals and schools, would work with prisons. That was an amendment to our brief after our appointment, but that was the only such amendment.

Paul Martin: So that was the only amendment to the brief. Was your completed report amended in any way by the Executive?

Paul Brewer: It was not.

Paul Martin: So the report was a completely independent report of your findings, which was sent to the Executive. Is the PricewaterhouseCoopers document that we have before us is the document that you sent to the Executive?

Paul Brewer: It is our document.

Paul Martin: Okay. I just wanted to clarify that.

Brian Fitzpatrick: I do not want to talk about Mr Brewer's professional independence or even his professional integrity. I, for one, will not be suggesting that the Carmelites should have been appointed in your stead.

I want to discuss the introduction to the review. It says:

"We have been engaged by the Scottish Prison Service ("SPS") on behalf of Scottish Executive Justice Department to undertake a financial review to support investment decisions that form part of the SPS Estates Review."

Is "financial review" a particular term of art?

16:15

Paul Brewer: No, "financial review" is not a particular term of art—it is a review of financial matters. I cannot remember where, but in either the Cooper-Taylor report or in a parliamentary debate, there was concern that the words "to support" suggested that the intention was to appoint us to provide confirmation of findings rather than to review findings and reach our own judgment. However, our remit was to review findings and reach our own judgment.

Brian Fitzpatrick: So we can substitute "inform" or "advise".

Paul Brewer: Yes. The point is that the investment decisions are not ours. We merely work in support of investment decisions by others.

Brian Fitzpatrick: So there is no suggestion that the Prison Service gave you the preferred options and your task related to supporting those preferred options.

Paul Brewer: Our work provides an element of what flows through into the preferred options. There is no logical flow into the preferred options. We have considered the financial information that underpins some decisions but we have not reviewed the decisions themselves.

Brian Fitzpatrick: The financial evaluation that is mentioned thereafter comprises part of the financial review.

Paul Brewer: That is correct. There is financial evaluation of three options and the estimated costs at existing establishments.

Brian Fitzpatrick: I want to discuss the evaluation that was done when you considered the different procurement routes for a 700-place prison. Low Moss prison is included in the reviewed costs of potential developments. When you conducted the review, was a report of Low Moss prison from 2000, entitled "Constructing the Future", prepared by a Mr Murch, available to you?

Paul Brewer: It was not available to me personally.

Brian Fitzpatrick: Was it available to any of your team?

Paul Brewer: It is possible, but I do not recognise the name.

Brian Fitzpatrick: You might come back to us at some stage if it transpires that it was available to you.

In conducting your financial review, did you take account of the benefits of buying in resource in respect of any perceived or actual deficit in procurement skills in the public sector?

Paul Brewer: No, not specifically. The cost of the public sector comparator does not recognise the head office element. If the public sector comparator route is pursued and there is consequently a need to bring in additional skills at head office, the costs are not reflected in the public sector comparator.

Brian Fitzpatrick: So those would be supplementary costs.

Paul Brewer: Yes. They would be additional to those that are disclosed in the report.

Brian Fitzpatrick: Obviously, in a financial review, you would not take into account the impact of penal policy, save what you were told in relation to the numbers to be catered for.

Paul Brewer: That is correct. We considered only a 700-place prison and a series of discrete developments at existing establishments. We did not consider whether one, two or three new establishments would be needed.

Brian Fitzpatrick: I was also struck by the absence of an analysis of the implications of transferring between high wages and low wages, given that a chunk of the review seems to relate to reducing labour costs. We know that one of the features of the review was the view that some prison facilities should be transferred from the north-east of Scotland to the central belt. That is not a criticism; the analysis just does not seem to be there.

Paul Brewer: That is correct. The review did not cover that. The remit of the review that we undertook remained unchanged as the estates review developed.

Brian Fitzpatrick: If we looked in PWC's review for comparisons of the costs of employing residential prison officers or custodial prison officers in Lanarkshire, Peterhead and Bearsden, we would find no evidence to support how that might impact on investment decisions.

Paul Brewer: We examined only the discrete elements. Our report does not cover the overall picture of the estates review.

The Convener: Brian Fitzpatrick's questions were helpful. It is obvious that the public sector picks up other costs.

Michael Matheson: Are you aware of Mouchel Consulting Ltd's report "Alternative Types of Prisons", which was published in March 2000?

Paul Brewer: I am aware that that piece of work was conducted on behalf of HM Prison Service.

Michael Matheson: That is correct. The report provides an independent and objective comparison of value for money in procuring prisons. I understand that it is a detailed piece of work that carries some authority.

The Mouchel report says that, based on figures in the third quarter of 1999, the 25-year notional building and life-cycle cost of a new 800-place prison would be about £58 million. However, the PWC report says that, based on 2001 prices, the capital and development costs for a 700-place prison would be more than £112 million. Will you explain the great difference between those figures?

Paul Brewer: HM Prison Service commissioned Mouchel to investigate what HM Prison Service

would do. The Scottish Prison Service commissioned us to review how the SPS would undertake such an exercise. The same prison would not be produced.

Michael Matheson: While conducting your review, did you examine anything that has been done in England on the issue?

Paul Brewer: We did not review the Mouchel report or reconcile its findings with our work.

Michael Matheson: Cooper and Taylor are concerned that the costs of the PPP option do not include matters such as contracting costs between the Scottish Executive and private prison companies or additional monitoring costs, such as those of the controller that the SPS provides at Kilmarnock prison. Are those figures included in PWC's review?

Paul Brewer: Those figures are not included, in the same way as we did not consider in detail the additional head office costs of the public sector comparator. The impact of either of those matters on the whole picture would be immaterial.

Michael Matheson: Why were those costs excluded?

Paul Brewer: They were excluded because we were examining directly the costs of prisons themselves. Over the life of a contract, the cost of a controller would not make a significant difference to the outcome.

Michael Matheson: The annual operating costs for the controller are fairly considerable—about £150,000 a year. Over 25 years, that would be a considerable amount of money.

Paul Brewer: If one discounted that over 25 years at the discount rate, the total would be about £1.5 million.

Michael Matheson: Are costs included for acquiring land on which to build three new prisons?

Paul Brewer: Such costs are included in the same way in both options.

The Convener: Michael Matheson asked about operational costs. There is a huge difference between the operational costs of the public sector and private sector models in Mouchel's report and those in PWC's report. PWC's report says that, at 2001 prices, the discounted operating cost of the public sector model would be £283 million and the cost of the private sector option would be £206 million, whereas Mouchel's report says that, at 1999 prices, the public sector model cost would be £168 million and the private sector cost would be £191 million. Why is the difference so big?

Paul Brewer: I cannot comment in detail on the difference, as I have not read the Mouchel report,

but the Scottish Prison Service figures are built on its operational experience at existing prisons. We asked the SPS whether the figures were realistic, as they seem much higher than the figures for private sector provision. The SPS would have had to make assumptions about changing the way in which it runs prisons to come up with a lower figure.

The Convener: I am trying to understand why the Mouchel report gives a figure of £168 million for the public sector model and £191 million for the private sector—the private sector is dearer—but your report gives a figure of £283 million for the public sector and almost £83 million less for the private sector. It is not only that the sums are different but that the traffic is the other way. What is the explanation for that?

Paul Brewer: I do not know what the scope of the report was. I cannot comment on something that I have not seen.

The Convener: I am sorry that you have not seen the Mouchel report or that it is somewhere in the background. Perhaps you could look at it and explain to us in writing why the figures are so different. That would be useful. We are swimming in figures and trying to understand the large differences. I will provide you with the information by letter so that you can follow the line that we are taking.

Paul Martin: Professor Cooper and Phil Taylor stated in their report that it was not clear whether the PPP costings in the estates review included risks such as building damage by inmates, higher than anticipated demand for places and facilities being inadequate. Were those risks taken into account? If they were not, what impact would they have?

Paul Brewer: By PPP, do you mean private build, private operate?

Paul Martin: Yes.

Paul Brewer: From what I picked up—you rattled through the list—I believe that they are all covered. Cooper and Taylor could have established that. All those risks will be in the publicly available part of the Kilmarnock prison contract.

Paul Martin: Are you absolutely certain that those risks are covered?

Paul Brewer: Would you mind running through the risks again?

Paul Martin: One of the issues that Professor Taylor and Phil Cooper raised was that it was not clear whether the PPP costings in the estates review included risks such as building damage by inmates, higher than anticipated demand for places and the possibility of the facilities being

inadequate for future needs. I want to clarify whether those risks were taken into account.

Paul Brewer: Building damage was. What was the second one?

Paul Martin: It was higher than anticipated demand for places.

Paul Brewer: That is not taken into account for a prison; it is taken into account for the Prison Service, which decides where to allocate prisoners. In the Kilmarnock contract and the contracts with which we compared the public sector comparator, there is a price for doubling up in cells, which gives scope to accommodate additional prisoners at times of particular pressure on the system. That is not included in the price that we have incorporated for the private build, private operate option, but nor is it included in the public sector comparator. In that sense, neither takes account of the risks of the prison estate not having the capacity to deal with the number of prisoners.

Paul Martin: Is there any issue with the third point—facilities being inadequate for future needs?

Paul Brewer: That is a broad heading. I am trying to think how it can be answered. The comparisons do not address future needs dictating that prisoners be dealt with by means other than custodial sentences. If future needs include the regime that is operated in the prison, rehabilitation activities and prisoners' work activities, neither the public sector comparator nor the private build, private operate contract incorporates future changes. However, the private build, private operate contract has a mechanism that encourages the private sector to consider innovative ways of using technology to improve the service and reduce the cost. There is also a mechanism for sharing the financial benefits that flow from that. That is one way in which the future delivery of custodial services is incorporated in the contract.

16:30

Paul Martin: Private prisons operate on the basis that they will receive 700 prisoners a year. In last week's evidence session, Stephen Nathan pointed out that if private prisons were to experience a reduction in numbers from that figure of 700, there would be a requirement to move prisoners from public prisons to private prisons to ensure that the private prisons were economically viable. Are those terms set out in the public-private partnership or the private prison model?

Paul Brewer: The DCMF contracts were awarded—on a private build, private operate model—on the basis that, for a 700-place prison,

the Prison Service pays for 700 available prisoner places. It is up to the Prison Service to decide whether it uses those places and where it puts the prisoners. If it built a prison for which there was no need, it would be contractually committed to pay for a prison for which there was no need.

Paul Martin: So, the prison would no longer be economically viable. For the state to ensure that it was economically viable—as part of the contract—it would have to move prisoners into the facility during the 25 years of the contract.

Paul Brewer: If a prison was built for which there was no need, the authority could terminate the contract and take back the prison building. However, there would be a cost in terminating the contract and the authority would be left with an empty prison building regardless of whether it was built by the public or private sector. When it enters into a PFI-style contract, the Prison Service enters into a contractual arrangement for the provision of a certain number of prisoner places over 25 years.

Paul Martin: Therefore, it would be in the interests of the private operator to ensure that it had 700 prisoners.

Paul Brewer: No, it would not.

Paul Martin: Because either way, the contractor would get paid for 700 prisoner places.

Paul Brewer: Yes. Once the prison is built, there is a contractual obligation to pay for the prisoner places. The operators are indifferent about whether the places are filled. I suspect that, if the places were not filled and only half the prison was being used, a cost reduction would be negotiated to reflect that, but that is conjecture.

The Convener: You are speculating. There is no history of that.

Paul Brewer: No.

Donald Gorrie: I want to ask about the life and value of private and public prisons. Are private prisons designed to last for 25 years, after which they can fall down without the builders being worried? Does the Scottish Prison Service, by contrast, build for ever, meaning that the building costs are much higher? What account is taken of the residual value of the building after 25 years? Might there be a nicely maintained Scottish Prison Service building and a not so well maintained private prison, because the contract will be up anyway?

Paul Brewer: That is not just an issue for contracts relating to private sector provision of accommodation in prisons; it is a generic issue for the provision of accommodation under PFI contracts. In all instances, there is an obligation on the operator to hand back the building to a specified standard at the end of the PFI contract. I

would have to look at the Kilmarnock contract to remind myself of the precise mechanism that it adopts. In general, a financial penalty incentivises the operator to hand back the facility in an appropriate condition. To that extent, it is not the case that the building is built to last 25 years; it is built to continue beyond that period and to be in an appropriate state that is commensurate with its age when the operating contract expires.

The Convener: When you refer to an appropriate state that is commensurate with the building's age, what does that mean for a contract for one of the 700-place prisons? What is the proposed lifespan?

Paul Brewer: I believe that the specification required a standard such that the building would last for a longer period. I cannot remember what that longer period was, but the principle was that such a prison ought to be built to the same lifespan standard as the Scottish Prison Service would demand if it was building the building. The issue is important, because it would amount to a significant failing in the contracts if they were to set up a relationship in which dilapidated assets were handed back halfway through their expected life.

The Convener: Other members want to ask questions.

Lord James Douglas-Hamilton: In the evidence that she gave this afternoon, Professor Christine Cooper suggested that if there was a crisis at Kilmarnock—because of a fire, or for whatever reason—other public sector prisons could accommodate the prisoners. She cast doubt on whether Kilmarnock could take extra prisoners if there was a crisis in a public sector prison. In practice, could Kilmarnock respond to an emergency by taking extra prisoners?

Paul Brewer: It is difficult for me to comment on operational matters at Kilmarnock. The capacity of Kilmarnock is about 500 places and I think that about 190 doubling places are available. I expect that those places would be available to help the Scottish Prison Service to decant prisoners, for whatever reason.

Lord James Douglas-Hamilton: Your expectation is that Kilmarnock would have some slack in the case of an emergency.

Paul Brewer: The SPS's expectation was that those additional doubling places would be available to the SPS. That is the contractual position. If prisoners were decanted out of another establishment—as opposed to prisoner numbers simply ebbing and flowing—there would be no reason for Kilmarnock Prison Services to decline to take those prisoners.

Lord James Douglas-Hamilton: I should have

used the phrase “some provision” rather than “some slack”. That is what you are saying.

Brian Fitzpatrick: I want to turn to the view that is almost implicit in your financial review. Let us suppose that I was an institutional investor in an organisation and I asked PricewaterhouseCoopers to examine the running of the organisation and its effectiveness in comparison to its nearest market competitor. If you came back and reported to me a gap of the scale that has been measured in the present situation, what would you recommend that I do with my investment?

Paul Brewer: We would give advice according to the remit that you had set us. I suspect that we would not give investment advice; it would be for you to reach your own conclusions on that.

Brian Fitzpatrick: If I were to reach my own conclusion and go to the next board meeting as an irate institutional investor, should I call for the board to go, root and branch?

Paul Brewer: That would be a judgment for you to make in the circumstances.

Brian Fitzpatrick: I am obliged.

The Convener: This is probably a silly question, but the issue with which it deals has troubled me. There is a risk that any private financial operator could go into liquidation as a result of financial difficulties. That situation will not arise with public sector prisons; we will always have to pick up the tab, whatever the tab is. Is that risk built in anywhere in your costing of the private sector?

Paul Brewer: Under the DCMF contract, the consequences of Kilmarnock Prison Services defaulting under its obligation to its financiers and going into receivership are that the prison gets handed back to the Scottish Prison Service and—

The Convener: What about heritable and preferential creditors? What about the banks?

Paul Brewer: Let me explain so that I can answer those questions. The operating subcontractor—Premier Prison Services—employs the staff; Kilmarnock Prison Services does not employ the staff. Preferential creditors for wages, employee taxes and so on relate to Premier Prison Services. That does not impact on the SPS.

The agreement is that the bank has no rights to be paid out until the Scottish Prison Service has taken back the building, assessed the costs that it will incur in continuing operation of the prison for the remainder of the contract and deducted that from the amount of the debt that is due to the bank. The contract was one of the earlier PFI contracts, in which the terms for the banks are slightly more severe than they are in later contracts. The bank gets what is left after the SPS

has established and recouped all the expected costs of getting the prison into good condition and operating it.

The Convener: Will the banks keep agreeing to such contracts? I would not imagine that they would.

Paul Brewer: The banks would not enter into such contracts other than with operators that they believed could deliver the service with a very low risk of default.

The Convener: Thank you. My stunned committee has nothing else to ask on such financial matters, so we will move on to the next set of witnesses. As usual, we are running about half an hour late—the meeting was supposed to finish at 5 pm. I hope that members have their flasks with them.

I welcome Ron Tasker, director of HMP Kilmarnock, and Elaine Bailey, managing director of Premier Prison Services Ltd. I suspect that you have heard the rest of the evidence that we have taken this afternoon.

I regret that I have to raise a preliminary matter that relates to the status of parliamentary committees. On 30 October 2001, my colleague Michael Matheson asked whether we could see the contract. You said:

“I would have no problem with the committee seeing the commercially confidential information privately.”—[*Official Report, Justice 1 Committee*, 30 October 2001; c 2725.]

We received a letter from you on 20 December saying that that had been an error on your part and that you wished to withdraw that response from the record. You said:

“There are a small number of issues that remain confidential in order to preserve our competitive position and so on.”

On 29 January, the committee indicated that we would be willing to consider the full contract in private and treat it as confidential. Months passed and we did not get a reply. On 25 April, we sent a reminder, in which we said:

“It is crucial to the Committee’s scrutiny of the Estates Review to have sight of the HMP Kilmarnock contract between Premier Prison Services Ltd. and the Scottish Prison Service in its entirety.”

We also emphasised that it was unsatisfactory not to have heard from you, as that did not demonstrate the respect that is due to a committee of the Parliament. We asked for a timely response.

On 7 May, I received a holding letter, in which you stated:

“I am in the process of reviewing our position in relation to those areas of the contract that were withheld from publication.”

On 17 May, I finally received a letter to say that we could see the contract in private.

I appreciate that, in front of the committee, people may say that they will deliver something because that is what seemed possible at the time, whereas there may be reasons why they are unable to deliver. It is obvious that the SPS, which was the other party to the contract, did not want us to see the contract. You may correct me, but I presume that the SPS prevented us from seeing the contract in private at that time. However, with regret I must say that it is not satisfactory for this committee or for any other parliamentary committee that it should take all these months to arrive at this stage, especially as we did not have the courtesy of replies. Will you respond to that?

16:45

Elaine Bailey (Premier Prison Services Ltd): I regret that very much. I apologise. The decision was not solely down to me, as I had to consult our shareholders and our banks. I thought that that process would be faster than it was, but unfortunately it took time. However, I got the result that I had hoped for, which was that the committee would be able to view the contract.

The Convener: That took seven months. I do not know who your shareholders are and I do not want to be rude, but that is a long time in which to consult. Some people do full consultations on major issues in that time. It was not until your letter of 17 May that we were told that you were consulting your shareholders. We should have been advised of that earlier.

Elaine Bailey: The consultation with the shareholders took place after I received your letter at the end of January. When I started the consultation, I did not think that it would take particularly long, but I was remiss in not sending you a holding letter sooner. I apologise for that.

The Convener: I thank you for that. I hope that you and other witnesses will take note of what has been said on the committee’s behalf. Does any other committee member wish to comment?

Michael Matheson: I raised the original matter when Elaine Bailey was before the committee on 30 October last year. After that meeting, I wrote to the chief executive of the Prison Service to ask him to facilitate access to the contract. He was somewhat remiss in his reply, in that he did not respond to the points that I had made. However, I understand that you wrote to the committee on 20 December to indicate that you had made your comment in error. Given the fact that your comment was made to the committee in good faith, what happened between 30 October and 20 December to change your mind?

Elaine Bailey: I saw the transcript and my shareholders talked to me about it. I had no correspondence with the SPS. I was unaware that you had written to the SPS and that it had responded to you.

Michael Matheson: You say that your shareholders made you change your mind. Earlier, you said that you started to consult your shareholders in January, yet the committee received your letter on 20 December.

Elaine Bailey: After reading the transcript, my fellow directors at Bracknell said that they thought that what I had said was not correct. I then wrote to the committee. When I received the committee's letter towards the end of January, which was after the committee had discussed the matter, I went back to my shareholders and asked them to look at our position and consider whether we could change our stance.

Michael Matheson: During that period, was there any discussion with the Scottish Prison Service about your comments?

Elaine Bailey: There may well have been, but I suspect that it was in the context of several issues, not just that one.

Michael Matheson: Can you confirm that you discussed the matter at some point with the Scottish Prison Service?

Elaine Bailey: Yes, I am sure that I would have done.

Michael Matheson: Did the SPS give its opinion on your commitment to provide the committee with access to the contract?

Elaine Bailey: Yes.

Michael Matheson: What was that?

Elaine Bailey: I do not recollect the exact words, but the gist of it was that the SPS did not want the security issues that were in the contract to be published and that it was for us to decide about the matters of commercial confidentiality.

Michael Matheson: In effect, the SPS was not in favour of the committee seeing the full contract in private or of the full contract being published. Is that the case?

Elaine Bailey: The discussion that I had with the SPS related to the publication of the contract. The SPS would have been uncomfortable about the publication of those security issues.

Michael Matheson: My request was for the committee to be able to view the contract in private. There was no question of matters of commercial confidentiality or security being placed in the public domain. I am asking a specific question: when you discussed the matter with the

SPS, did it say that it was in favour of the committee being able to view the contract in private?

Elaine Bailey: I would have to read my notes to refresh my memory. I think that the SPS was talking about the contract being published.

Michael Matheson: Does that mean that the SPS was not in favour of the committee being allowed to see the full contract in private?

Elaine Bailey: My recollection is that the SPS did not comment on that.

Michael Matheson: Would you check your notes and advise the committee of the position?

The Convener: I was about to ask that question as well. I hope that we get the response quickly.

Michael Matheson: For the record, I find it extremely unacceptable for a committee of the Parliament to be treated in such a fashion. We were given what I consider to be misleading information during an evidence-taking session and we have had to wait almost nine months for an opportunity to get to the bottom of the matter. Now that you are before the committee again, you are unable to give us a direct answer to the question whether the SPS had any involvement in preventing the committee from viewing the full contract in private. Given that we are considering the creation of further private prisons, that sort of treatment does not bode well for the possibility of placing further public services in the private domain.

Elaine Bailey: I am sorry that I do not have that information to hand. As I said, I will review my notes and get back to you.

The Convener: Thank you. We would like you to do that as soon as possible. We will now move on to specific questions.

The ownership of Kilmarnock prison is a mystery that we will now resolve. I want to know why, when I wrote to Mr Tasker to ask who owned the heritable property that is Kilmarnock prison, I was told:

"Kilmarnock Prison Services Ltd retains a lease over the heritable property of HMP Kilmarnock, while the heritable estate is owned by the Scottish Ministers."

I understand that. However, the Auditor General's report on the SPS's 2000-2001 annual report and accounts says that supporting evidence from the operator's published accounts

"revealed that neither party is recognising HMP Kilmarnock as a property asset with both parties claiming to have transferred substantially all the risks and rewards associated with ownership of the property asset to each other."

Can you explain that? The prison does not appear in the SPS accounts as a property asset, even

though it owns the heritable property. When I asked a parliamentary question about that, I was told:

“the reversionary interest property asset value for HMP Kilmarnock is included in the 2000-01 accounts of the Scottish Prison Service.”—[*Official Report, Written Answers*, 3 April 2002; p 354.]

What does all that mean?

Elaine Bailey: I am not a financial expert, so I am not sure that I could tell you. I suspect that the witness from PricewaterhouseCoopers would have been able to answer that better than I could. My understanding is that the building is owned by the Scottish ministers. As I said in my letter to you, we have a lease on it for the time being but, after 25 years, we leave and the property belongs to the SPS.

The Convener: Will there be an exchange of money at that stage? Will the SPS get it for nothing?

Elaine Bailey: There will be no exchange of money. At the moment, the SPS is paying for the service that we provide in Kilmarnock as well as, in effect, for the mortgage repayment. The contract runs for 25 years and my memory is that, after about 17 years, the mortgage is effectively paid off. Thereafter, for the last seven or eight years of the contract, the SPS will pay a lower sum.

The Convener: I would like to ask about the second part of that quotation, which deals with insurance matters relating to the contract. The insurance question is obviously a substantial part of the concerns about costs. Paul Martin might also like to comment on that. The Auditor General for Scotland mentions

“both parties claiming to have transferred substantially all the risks and rewards associated with ownership of the property asset to each other.”

What does that mean?

Elaine Bailey: I am afraid that I do not know.

The Convener: What does

“all the risks and rewards”

mean? A risk associated with ownership of a property must be to do with damage. Is that right?

Elaine Bailey: The honest answer is that I really do not know what it means. I would need to have my finance director with me to be able to answer those questions.

The Convener: I asked you in a letter:

“What is the annual premium for the buildings cover?”

I was told that it was

“To be found in the contract.”

I could not work out where the figure was, but your answer could have told me where it is to be found or who pays for what.

Elaine Bailey: The fact is that we insure the buildings, so that is our responsibility. If anything happens to those buildings, our insurance covers the cost of repairing them. If anyone is injured in the prison and we are negligent, we have insurance to cover a claim.

The Convener: I asked:

“Who is the liable party if injury occurs to a prisoner, member of staff or member of the public in terms of the contract between you and SPS and in what circumstances?”

You answered:

“Under the terms of the contract between KPSL and the Scottish Prison Service, liability for an injury occurring to a prisoner, a member of KPSL’s staff or a member of the general public would fall upon KPSL, providing it can be demonstrated that the injury resulted from negligence on the part of KPSL and/or its employees.”

I have a wee bit of a problem with the phrase

“providing it can be demonstrated”,

because there could be circumstances in which KPSL could say, “Well, it’s not our negligence that’s caused it, but something completely different, so we’re not coughing up.”

Lord James Douglas-Hamilton: Would not that give rise to legal action in which the matter could be determined by the evidence?

The Convener: Yes, but it still means that the issue is not straightforward. When one has a straightforward, no-conflict, public sector-run building, one knows that the public sector will pay for it. In the circumstances in question, however, there could be a conflict. Suppose there were police operations, as there were at the Yarlwood detention centre.

Elaine Bailey: I understand that, in the Yarlwood case, it is not Group 4 that is claiming from the Government, but Group 4’s insurers.

The Convener: What I am saying is that there could be a situation in which prisoners get loose and do things in a prison while the police are operating there. If someone were injured in such a situation, you would argue that that was not due to the negligence of KPSL.

Elaine Bailey: That is correct.

The Convener: So you would not be paying; the public sector would be. The insurance situation is not clear. Do you take my point?

Elaine Bailey: I do. Again, I would have to take advice and check that point. I think that you are saying that, if the police came in and, in the course of whatever they were doing in the prison, a

prisoner were injured, that prisoner would not be able to claim under our insurance, but I would have to check that point.

The Convener: I do not think that they could.

I know that Paul Martin has discussed the matter at the Audit Committee.

Paul Martin: What you suggest contradicts what Dr Collings, principal finance officer at the Scottish Executive, said in evidence to the Audit Committee. He assumes that personal injury of prisoners would be covered.

Elaine Bailey: It is covered in the normal course of events.

Paul Martin: He also says that that would be the case during the transitional period if prisoners have to be rehoused or relocated. He makes that very clear. He says:

"The insurance covers whatever solution SPS decides to take to rehouse prisoners."—[*Official Report, Audit Committee*, 30 April 2002; c 1069.]

Can you clarify that point?

17:00

Elaine Bailey: Are you talking about an instance in which, for whatever reason, prisoners are decanted out of Kilmarnock and into another prison?

Paul Martin: Yes. The point that Dr Collings, who is a senior civil servant, makes is that if Kilmarnock prison were to burn down tomorrow morning and 500 prisoners required to be relocated, your insurance would cover whatever costs that relocation would involve.

Elaine Bailey: Yes, we would pay.

Paul Martin: That requires clarification. Are you saying that your insurance would cover whatever costs the relocation of prisoners involved, including personal injury?

Elaine Bailey: I will check that point. I am pretty certain that we would meet the costs of relocation of prisoners from Kilmarnock to another prison. I am not so sure about whether our insurance would cover a situation in which a prisoner, who did not want to move, wanted to sue us because they were injured when somebody other than an agent of KPSL extracted them from the prison. I would have to check that.

The Convener: We are talking about a third party's being involved in the prison, which is different from the question of decanting prisoners. KPSL does not meet the cost, whether minor or major, if a small incident turns into a big incident.

Paul Martin: I want to clarify the point. Dr Collings said:

"Premier Prison Services is contracted to take out adequate insurance in case of problems ... The insurance ensures that sufficient money would be available to meet the financial consequences of any problems that arose."—[*Official Report, Audit Committee*, 30 April 2002; c 1069.]

The Convener: That conflicts with what I have read in the letter.

Paul Martin: The only point that I am trying to make is—

Elaine Bailey: I am pretty certain that we are liable for the vast majority of the cost of any decanting. I am not so sure about a situation in which a prisoner is injured by somebody other than a KPSL agent during that prisoner's removal from Kilmarnock prison.

Paul Martin: Will you confirm that in writing?

Elaine Bailey: Yes.

The Convener: We need clarification about how the insurance operates between you and the public sector in different instances.

Paul Martin: Can we get a briefing note from your insurance provider?

Elaine Bailey: Yes.

The Convener: We can get the information in whatever way clarifies the matter so that we can resolve the question of costs.

Elaine Bailey: I will base the information on where the liability lies in a scenario in which an incident at Kilmarnock requires decanting of prisoners to another prison and in which a prisoner gets injured in the course of that decanting.

The Convener: Yes. You could also clarify the question about personal injury in the letter that I sent on 17 May, when I wrote to you as an MSP, rather than as the convener of the committee.

Michael Matheson: One of the major differences between Kilmarnock prison and public sector prisons is in staff wages. The evidence that we received from the Prison Service Union, which I am sure you have had an opportunity to reflect on before coming here, states that Kilmarnock staff are paid between £5,000 and £6,000 a year less than are equivalent officers in the public sector. Is that the case? If so, why do you pay your staff such a significant amount less?

Elaine Bailey: That evidence does not compare like with like. It might be comparing a starting salary at Kilmarnock with the salary of somebody who has served in the SPS for a number of years. The fact is that in the SPS, staff start on £12,500 and we start on £13,250. We then go up to £13,600 the next year and £14,300 the year after that. The SPS salary after the same three years of service is £15,500. That is certainly nothing like a £5,000 difference. I do now know how SPS

salaries move on after that. Either the comparison is incomplete, or it compares the salary of a year 1 officer in Kilmarnock with that of a year 10 officer, or an officer with a number of years of service, in the SPS. It is conceivable that such a comparison would show a £5,000 difference.

Michael Matheson: The starting salary for a new recruit to Kilmarnock prison is £13,000.

Elaine Bailey: The starting salary is £13,250 once an officer has finished their training.

Michael Matheson: Once they have finished their training?

Elaine Bailey: Yes.

Michael Matheson: They have seven weeks' training when they come into the establishment.

Elaine Bailey: That is correct.

Michael Matheson: They then start normal duties, which involves them going straight into the halls.

Elaine Bailey: Absolutely.

Michael Matheson: I understand that, in the SPS, staff go through approximately one year of other duties before they go into the halls.

Elaine Bailey: I am not sure about that.

Michael Matheson: Okay.

I move on to an issue that was highlighted to the committee by the Prison Service Union, which said that 60 per cent of the staff at Kilmarnock are on some form of state benefit. Is that the case?

Elaine Bailey: No. Family tax credit is paid through our payroll and our records show that we have 13 staff who receive that benefit. A number of staff will receive other benefits. For example, our new director has two children and receives family allowance. Thirteen staff receive family tax credit.

The Convener: Were not we talking about child benefit?

Michael Matheson: No.

Elaine Bailey: So the number is 13 staff.

Michael Matheson: Did that figure come from a survey of your staff?

Elaine Bailey: Yes—we checked the payroll.

Michael Matheson: Can you confirm that there is such a cost difference between the public sector and the private sector because of staffing levels and wage levels? When we discussed that with Mr Tasker, when we visited Kilmarnock, he confirmed that that was one of the major factors that allowed private prisons to be cheaper than public prisons.

Ron Tasker (Scottish Prison Service): When you visited Kilmarnock, I confirmed the things—

Michael Matheson: I am sorry; I can hardly hear you.

The Convener: Pull your microphone closer.

Ron Tasker: I was advised not to touch the microphone under any circumstances, so it is with some temerity that I do so.

The Convener: I will take the blame.

Ron Tasker: When we had discussions at Kilmarnock, we rehearsed the evidence that we gave to the committee at the end of October. That evidence was that in a new prison with modern buildings, modern technology, clear sightlines and good compartmentalisation between different groups of prisoners, it would always be possible to manage supervision using lower staff ratios than would be the case in buildings that might not be so efficient.

We went beyond that, as members will remember. Because we have a new prison and a clean sheet, it is also available to us to manage the prison through good relationships. That has been singled out as an example that the rest of the prison service might follow. Good relationships lead to a settled existence. You said that Phil Hornsby talked about how a prison's design enhances the staff's ability to supervise. His evidence to the committee goes on to describe a quiet and calm prison. He also said that such a prison's security would be the envy of any prison professional and that an independent and fair assessment of the first three years would conclude that the venture had been successful. That is the evidence that the union man gave to the committee a fortnight ago.

Michael Matheson: You mentioned the wages that are paid to your staff. What percentage of the staff are members of the company's pension scheme?

Elaine Bailey: Approximately 20 per cent are members.

Michael Matheson: What is the level of contribution from Premier Prison Services?

Elaine Bailey: We have a matched contribution scheme in which we contribute up to 3 per cent.

Michael Matheson: If an employee refuses to pay into the scheme, how much do you contribute?

Elaine Bailey: I am hesitating because I cannot remember whether there is a legal minimum requirement that we have to pay.

Michael Matheson: The recommended national level is—approximately—between 6 and 10 per

cent. However, I am asking how much, if an employee refuses to pay into the pension scheme, you contribute?

Elaine Bailey: I need to check that. I am not sure whether we are legally required to pay a certain amount regardless of an individual's contribution, or whether we match whatever the individual contributes.

Michael Matheson: I ask the question because staff at Kilmarnock raised the issue with us. I understand that if they choose not to be part of the scheme, the company will not pay anything towards their private pension.

Ron Tasker: That is right. The pension scheme is based on matched contributions: the staff pay 3 per cent; we pay 3 per cent. There is no deal on the table that means that if they do not pay, we still will.

Elaine Bailey: Because it is a stakeholder pension, it has been set up following particular guidelines.

Michael Matheson: I raise the issue because it is felt to be significant when comparing Premier's wages with those in the public sector. The public sector has a good non-contributory pension scheme, which means that the public sector staff receive benefits alongside their wages that staff in the private sector do not appear to receive.

Elaine Bailey: The proper comparison is not with the public sector, because we do not aim to match public sector terms and conditions. We aim to attract sufficient high-quality staff from the local Kilmarnock area, so we have to make our package attractive in the first place. If we cannot attract the staff, we have to enhance the package. I would say that what we are offering is competitive in the market from which we are trying to attract staff.

Ron Tasker: I should point out that the relevant legislation provides that, from this June, the minimum contribution will be 3 per cent. We comply with employment law. We do not set out to match civil service pensions, which many people consider to be generous, but to match a realistic contribution from an employee with a realistic contribution. We level out across the piece.

Michael Matheson: Given your background, you might benefit from a civil service pension at some point.

Ron Tasker: Indeed, yes.

The Convener: Before I bring in other members, I have a supplementary question to ask. You mentioned that the clear sightlines in Kilmarnock prison's design reduces staffing levels. Do you have clear sightlines in the woodshed and the welding shed?

Ron Tasker: Yes.

The Convener: Is it possible for any prisoners to be out of sight anywhere in those areas?

Ron Tasker: Following the recent inspection and comments from some people in this room, we commissioned a health and safety inspection from an independent consultant in Glasgow. That inspection looked at issues ranging from staffing and prisoner ratios to supervision of prisoners in the workplace. That survey has concluded—independently—that the prisoner ratios are manageable within the context of the activities that take place in the workshops. There were one or two very small housekeeping points; the movement of some bits of equipment established the required sightlines. The consultant had to nothing much to report.

The Convener: I am thinking in particular of the recent claw hammer attack in the wood store. When I visited that area, I saw that one officer was present and that there were overhead closed circuit television cameras. If one of the 27 prisoners who work there picked up a piece of the pretty lethal equipment that lies about in those sheds, how quickly could another officer reach that area?

Ron Tasker: An officer could reach the woodshed within seconds and certainly within a minute. You will remember the layout of the place: there are shops on either side of the woodshed and the gymnasium is opposite it. The gymnasium is staffed, as is the health care centre, and the administration centre is not far away. Furthermore, the security desegregation unit is just up the corridor. We also have a first response contingency plan in which, when an alarm bell is sounded or any other alert is given, known staff members will respond immediately to any incident in any location. That is no different from the situation in any other prison.

The Convener: So you are saying that if a prison officer or another prisoner is attacked by an inmate, somebody will be there just like that.

Ron Tasker: Yes.

17:15

The Convener: I welcome Alex Neil to the committee—he has an interest in Kilmarnock prison. I apologise to Maureen Macmillan. The next questions will be from Donald Gorrie, Maureen Macmillan and then Alex Neil.

Donald Gorrie: The chief inspector of prisons for Scotland expressed concern about staff safety in a report. The Prison Service Union told us that, to secure the safety of staff, we need 20 per cent more staff. I have seen a document that made comparisons between Kilmarnock and Perth, in which the ratio of assaults on staff was 6:1. Do

you need to address the issue of stretching staff too thin?

Elaine Bailey: I do not know which figures you are using. The committee should remember that the SPS and not Premier Prison Services classifies assaults. Using the SPS's statistics under its definition of serious assaults, the figures from the current financial year show that we have had one prisoner-on-staff assault so far this year. The figure is the same as those for Edinburgh and Perth, which are the prisons that are most often compared with Kilmarnock. There have been two prisoner-on-staff assaults at Barlinnie and one at Peterhead. I know that it is early in the year, but if members look back over the SPS's figures for last year, our figures are on a par with those of other prisons. We are neither the best nor the worst.

The Convener: I have a piece of paper on which there are figures that differ entirely from those that you gave. Perhaps I have the wrong piece of paper, but I am looking at a figure of 29 key performance indicator assaults on staff in Kilmarnock prison in the year to 1 March 2002. The figure for Perth prison, which is of a comparable size, is five KPI assaults on staff.

Elaine Bailey: Kilmarnock has nothing like 29 KPI assaults.

The Convener: Okay. It is unfortunate that the sheet from which I am reading has become detached from its source. It is not a typed sheet; it has been sourced from a document. I am raising the question of the figures because there is such a discrepancy.

Elaine Bailey: I am happy to table the figures that we have given, which are sourced from SPS documents.

Ron Tasker: I can quote from SPS figures that show that Kilmarnock had two KPI assaults on staff in the whole of last year. Perth had one attack, Cornton Vale had two attacks, Shotts had two and most of the other prisons had one. In terms of KPI assaults on prisoners, Kilmarnock had 10, Glenochil had 10, Edinburgh had 12, Perth had three and Aberdeen had 11. We sit at the top end in a very high security—

The Convener: I will have to check the source of the figures. With the leave of the committee, I will send the paper to you so that you can comment on the figures, as they show such a difference.

Donald Gorrie: It can be argued that good interaction between prisoners and staff contributes to the rehabilitation of prisoners. The staffing system at Kilmarnock is reliant on efficient electronic surveillance, which may lead to less interaction between prisoners and staff than would be the case in a better-staffed SPS prison. Might

that not result in more of your prisoners re-offending?

Elaine Bailey: The regime that we provide includes a variety of programmes to meet prisoners' needs. I think that it was the chief inspector of prisons for Scotland who commented that the excellent relationship between staff and prisoners was a hallmark of the regime at Kilmarnock. It is about the quality of the relationship, rather than the quantity of people who are involved in that interaction. We pride ourselves on that relationship. It is very important to get interaction going between staff and prisoners.

The Convener: I have located the source of the figures that I mentioned. The comparative statistics are in the report of the follow-up inspection of Kilmarnock on 14 to 15 March 2002. The figures are in annexe 15.

Alex Neil (Central Scotland) (SNP): It might be helpful to quote from that follow-up report by the chief inspector of prisons. Paragraph 4.7 states:

"It appeared that in the past 12 months the number of incidents of prisoner on prisoner violence had almost doubled. There had also been 26 fires in the establishment compared with 41 across the rest of the estate."

That is hardly a successful record.

The Convener: The figures that I quoted are from the follow-up inspection. I do not know which figures you are quoting.

Ron Tasker: I was quoting from the SPS's official published figures. You are quoting from the chief inspector's report.

Elaine Bailey: We are quoting from the SPS's KPI figures.

The Convener: I am quoting from the chief inspector's report.

Elaine Bailey: Yes.

The difficulty is that there are different definitions. Our contract includes definitions of assaults, which are graded as no injury, minor injury or serious injury. There is a definition of serious assault for the SPS's key performance indicator.

The Convener: The follow-up report states that these are key performance indicator assaults: there were 29 assaults on staff and 55 assaults on prisoners.

Ron Tasker: I have those figures.

The chief inspector goes on to say—I speak from memory—that some assaults are classified even if they are near-miss assaults, which include people brushing past one another and pushing and shoving one another.

Those figures are not for serious assaults; they

are the total assaults. The same figures identify 18 assaults at Cornton Vale.

The Convener: I am comparing the figures with those for Perth, which has greater similarities to Kilmarnock.

Ron Tasker: One might look in the round at other places. The same chart shows that Aberdeen had 22 assaults and that Edinburgh, which is one of our comparators, had 16 assaults.

The Convener: Is Edinburgh prison of a similar size to Kilmarnock?

Ron Tasker: It is a similar sort of prison.

The Convener: It is not a similar size, though.

Ron Tasker: I think that Edinburgh is smaller.

The Convener: We can banter on about statistics, but we certainly have different figures. We have now located where the figures come from.

Ron Tasker: We have the same figures. The figures that I quoted earlier were for serious assaults. The figures that we are now quoting are for all assaults. Those figures come from annexe 15 of the chief inspector's follow-up report.

Maureen Macmillan: I wanted to come in on salaries; I realise that we have moved on since then. You spoke about paying wages that you thought would be commensurate with other wages in the local economy. I am interested in how that would work if you were bidding for another prison. Would you look for a community with a low-wage economy in which to build the prison? What weight would you give to that consideration?

Elaine Bailey: The customer selects the site when we bid for a new prison, so we do not have a choice about where the prison is located. As part of our research for the bid, we would use human resource specialists to go into the area to conduct research for us. They would find out the salary levels that are being paid for different types of job. We would also consider the size of the pool of people from which we could draw. For example, the prison site may be located in the middle of a rural area, so people would have to travel a long way to get to it, or it could be in the middle of an urban area. We must also consider the unemployment level. We collect a lot of information before we set the salary level that we think will attract staff. If we get it wrong and pay more, that is our risk.

Ron Tasker: The rate that we pay, which rises to £14,300, is not so bad, whatever one might think individually about it. We think that it is a fair wage for a fair day's work. We know that it is more than £6 an hour; it is significantly more than that at the top end of the scale. I am not particularly making any points about that, but one must

consider the minimum wage and the level that we are pitching the salaries at for the work that we expect to be done.

We look at the holidays that we provide and the working week, all of which have improved since we opened. As Elaine Bailey said, in the end, what we pay and how we treat our staff will determine whether they work for us, and whether they do so successfully. It is a partnership.

Elaine Bailey: Turnover at the prison dropped to 11 per cent last year, as we predicted. That is an indication that we are getting things broadly right. When we received a visit from Princess Anne a few months ago, the local paper interviewed a couple of staff from the Kilmarnock area. One of them said that the job was challenging, but a good and worthwhile job to have. Both of them expressed the fact that they enjoyed their job.

Maureen Macmillan: But my point is that if you had two prisons in Scotland in different areas, you could find yourselves paying one prison officer perhaps £1,000 a year more than another prison officer doing exactly the same job.

Elaine Bailey: That is right. That is what we do at the moment in our various prisons. We do not have a national pay scale. We pay the salaries for the areas. We have local pay.

Maureen Macmillan: What would happen if a factory moved into the area and offered big money, and all of a sudden wages locally went up and you started to lose personnel?

Elaine Bailey: We would have to start looking at making our package more attractive. That would involve a combination of salary, holidays, pension, working week and flexible working measures, the latter of which is important to people these days. We would also examine the benefits that we offer in terms of promotion opportunities. We would have to respond, because we need the people to run the prison.

Maureen Macmillan: What if a factory in the area closed and the wage level in the community dropped? Would you then take on people at a lower wage than you were currently paying?

Elaine Bailey: I would not have thought so.

Ron Tasker: The biggest single outgoing for just about everybody is the cost of housing. Clearly, if we employ somebody in Kilmarnock, or even in other parts of Scotland, remuneration will depend broadly upon the economy. For example, we employ people in the south-east of England, where mortgages or rents are typically four times what they are in Doncaster, where we also employ people. It would be ridiculous to pay everybody the same amount of money. Disposable income dictates the way that people work and live.

The remuneration that we receive in turn from the public authority for the contract conditions how much we pay, so one thing drives the other. The contract will cost less to run in Doncaster than it will in Hounslow or even in Bristol. It is a marketplace economy. It is regionalisation. It is jolly good sense.

Maureen Macmillan: Does that mean that in prisons in London you pay your personnel a lot more—

Ron Tasker: Yes, it does mean that.

Alex Neil: I want to follow up on some of those comments, but I would like to ask a quick factual question about the meetings between yourselves and the SPS. Do either the SPS or yourselves keep a minute of the meetings?

Elaine Bailey: We have a quarterly contract review meeting, which is formal, at which the SPS takes minutes and issues them afterwards.

Alex Neil: So the issue that was discussed at the beginning, about contractual matters, would have been discussed at the quarterly meeting some time before Christmas.

Elaine Bailey: It may have been. I would have to check my notes. Ron Tasker talks informally to the controller virtually every day and talks occasionally to the operations director and the contracts group in headquarters. I, too, talk to them occasionally. However, such contact is done informally.

Alex Neil: I presume that neither the SPS nor you would object to the committee seeing a copy of the minutes since last October.

Elaine Bailey: After my previous experience, I would like to think about that one.

Alex Neil: I suggest that it might be worth pursuing that, because the minutes might shed light on earlier questions and answers.

The Convener: Would the committee be content with that?

Members indicated agreement.

The Convener: Are you with us, Lord James?

Lord James Douglas-Hamilton: I am not clear what Alex Neil said.

The Convener: He referred to the minutes of the meetings.

17:30

Alex Neil: The minutes of the joint meetings of the SPS and Premier Prison Services might shed light on earlier issues.

I move on now to the issue of staffing. I will quote from *The Kilmarnock Standard*, which is, of

course, an extremely reliable source of information.

The Convener: Are we strong enough this time?

Alex Neil: An article on 10 May 2002 had the headline "My Jail" with a subheading of "The truth, the whole truth, and nothing but the truth about Bowhouse ... by the boss"—who is Elaine Bailey. As Ron Tasker obviously has a great deal of faith in Phil Hornsby, I remind him of what the article reported that Phil Hornsby said. The article said

"Mr Hornsby goes on to confirm concern about lax practices in the prison's medical centre and paints a picture of a regime that functions only because staff work long, long shifts for wages 'barely 75 per cent of those in public sector prisons.'"

Mr Hornsby is quoted as saying:

"I receive almost daily reports from staff that they are frightened about what might happen because of the very low staffing levels. There are too few staff and they are paid too little. It is irresponsible ...and somewhere the bubble will burst."

You obviously accepted Mr Hornsby's evidence to the committee. Do you accept his evidence to *The Kilmarnock Standard*?

Ron Tasker: I accept that each of us, Alex, could make selective quotes from everything that we have heard, but let me deal with the—

Alex Neil: Was yours a selective quote?

Ron Tasker: Let me deal with the facts. The nurses are paid £22,500. I am reliably informed by our clinical manager that they are paid as well as, or better than, they would be paid outside for doing what is described as a top-end, F-grade job—if that means anything to anybody. There is no doubt that the work is extremely hard and challenging for the nurses, particularly these days when prisoners are taking drugs.

We did a survey this year that showed that, on reception, 85 per cent of prisoners are taking drugs. Crack cocaine is becoming the drug of availability, if not of choice. In some cases, that leads to bizarre, unpredictable and aggressive behaviour. Prisoners demand drugs. The place from which to get drugs is a health care centre. I do not want to swap selective quotes, but I note that, although the chief inspector said that the Kilmarnock prisoners complained about health care, he named two other prisons where prisoners similarly complained. If prisoners want drugs but cannot get them, they usually complain and give the nurses a hard time. That is the way it goes in prison. It is a challenging and difficult job. Our job is to support the nurses to ensure that they can do their work properly.

Alex Neil: Phil Hornsby talks about "long, long shifts." Could you provide us with information, for

example, for the past three to six months about the amount of overtime and the length of shifts worked by staff in the medical centre?

Ron Tasker: I am sorry, but I am unable to give you that information just now. I can give you such information about mainstream staff because I have researched that issue.

The Convener: Alex Neil is stepping on somebody's toes, because Michael Matheson was previously developing that theme. No one wants to step on Michael's toes at this time of night.

Alex Neil: I would never want to step on Michael's toes.

Ron Tasker: I am happy to give, within seven days, a considered reply to the question about the hours that medical staff have worked this year.

Alex Neil: Send your reply to Michael Matheson, instead of me, will you?

Ron Tasker: Perhaps I will send it to the convener and then you can—

The Convener: Before we have a free-for-all, let Michael Matheson in on this matter.

Michael Matheson: On the issue of the "long, long" hours, we met staff during our visit to Kilmarnock prison who went into the issue of hours in considerable detail, particularly about the lack of breaks while they are on duty. In evidence to the committee, Phil Hornsby stated that during the past three years staff

"might work 13 or 14 hours a day without a break."

That is similar to the evidence that we received from Kilmarnock staff when we visited several months ago.

Ron Tasker: Let me tell you, once and for all, that that is simply not true. Staff have chosen to work long, 12-hour shifts. That is not my choice or preferred option. I have been working furiously for nine months to get staff to work shorter shifts, with longer meal breaks. The evidence is that staff prefer to come to work, get on with the job and go home without the day being elongated by an off-duty meal break. The fact is that every member of staff who works a 12-hour shift has a meal break and a meal for which we pay. The break is credited as duty time. I want to nail that once and for all.

Michael Matheson: Is that break time protected?

Ron Tasker: Yes.

Michael Matheson: So if there is a shortage of staff, for example, they will always get that break, even if they are committed to a 12-hour shift.

Ron Tasker: Yes. That time is protected to the extent that, on the wings, prisoners are locked in

their cells at that time. Staff may use the rest room upstairs, which has been criticised because it does not have windows, or a place that we call the bistro, which abuts the kitchen. Alternatively, they may—and typically all do—congregate in one wing and sit at the table and have a good old chat during that time.

Michael Matheson: When we visited the prison, staff said that sometimes they received breaks, but often there was only 10 or 15 minutes between doing other duties. They could grab some food off the hot plate while the prisoners were in their cells. Is that your definition of a break in a 12-hour shift?

Ron Tasker: Yes. That break will extend to about 20 minutes. It might be a bit longer or shorter, but typically it will be 20 minutes while they are between jobs. The prisoners will be locked in their cells. They eat the prisoners' food, we pay for it and credit the time as duty time. The time is uninterrupted.

Michael Matheson: You have already said that. However, sometimes they must just grab food where they can.

Ron Tasker: Those are your words, not mine.

Michael Matheson: There is no guarantee that, in a 12-hour shift, they will definitely get a 20-minute break.

Ron Tasker: There is a guarantee that they will have a break—

Michael Matheson: How long a break?

Ron Tasker: Typically, it is about 20 minutes, but it might be 15 minutes or half an hour. The break is conditional on prisoners returning from work. When they do so, they are locked in their cells. The staff eat their food, make a roll count and prisoners are let out. The prisoners will usually be in their cells at 5 past 12 and not be out before half-past 12.

Michael Matheson: When a member of staff starts a 12-hour duty, it sounds as if they do not know how long their break will be—it could be 10 minutes or half an hour. It depends on what happens that day.

Ron Tasker: I cannot add to what I have said. There is a guaranteed meal break at a particular time. I think that I have dealt with the issue as fully as I can.

Elaine Bailey: I want to reiterate a point that Ron Tasker made. Staff were involved in coming up with the attendance pattern in the first place. It is not Ron's or my preferred attendance pattern. Some staff would prefer to work shorter shifts and have longer meal breaks in the middle of them, but not all staff want that. Therefore, we are grappling with putting together an attendance pattern that suits everybody.

Michael Matheson: Is there a financial benefit for the staff if they work extra-long hours? Is there a financial benefit if they do 12-hour shifts?

Elaine Bailey: No, because they will work fewer shifts. They are contracted to work 43 hours a week.

Ron Tasker: In the end, they work 43 hours in a week. The option is to work long bursts and have a long time off, or work shorter shifts over more days, which is my preferred option. I believe that people would then be better rested and better equipped to work, but I am meeting resistance in trying to bring in shifts that I know staff will thank me for in six months.

Michael Matheson: Why is there resistance, if that is to their benefit?

Ron Tasker: They prefer to get in and get their work over with. That does not stop them telling everybody who walks past that the pattern is not good. I intended to introduce new shifts last Monday, but I have put that back for a four-week consultation period, as the staff's feeling in the prison is that the proposal is not attractive.

Elaine Bailey: If any governor of any Scottish prison is asked about attendance patterns, they will all say the same thing. It is difficult to develop an attendance pattern that all staff like. Certain attendance patterns will suit some staff more than other staff. Attendance patterns are always a bone of contention in prisons. I think that we do better than most in trying to be reactive to what staff want. We review our attendance patterns fairly regularly and constantly try to change them around to suit the staff.

Michael Matheson: I am pretty sure that if you went round many Scottish prisons and talked to staff who were doing 12-hour shifts, they would be able to say how long their break would be. That is not the case in Kilmarnock.

Ron Tasker: There is a significant difference in that meal breaks elsewhere are exclusive of duty time, as they are in many workplaces. Staff can take a break, but the clock stops. It starts again when they return to work. That is my preferred option.

The Convener: We will move on to staffing, which is the key to costing in the private sector.

Alex Neil: I am sorry, convener; I have not finished my questions.

The Convener: I will come back to you. You will have your chance again. Heaven forbid that I should not let you have a chance.

The chief inspector's intermediate inspection report says:

"Custody officers claimed that staffing levels could at

times be dangerously low, especially in 'A' wing and at weekends ... We sensed generally that staff seemed to be even more concerned about safety than they had been a year ago (and being under complement could also have contributed to this)."

An e-mail that I have received—it may just express the views of disgruntled prison officers, as you would have it—says:

"I agree with your comments about staff safety. I also agree that the only reason that no staff have been seriously injured is because of the good will of the prisoners."

The staff of HMP Kilmarnock are put in dangerous positions every day. Each House Block is meant to run with 10 staff. 8 staff for the four wings and 2 rover staff. In my opinion this is still not enough staff but a lot of the time each House Block runs with only six or seven staff, which is inexcusable. Staff are also frequently ordered to unlock 60 – 80 prisoners with only one member of staff being on a wing. On the occasions where two staff are present on a wing, one person is often taken off the wing to rover prisoners to Health Care and Visits. All these incidents are avoidable but happen frequently, and is only down to lack of staff."

That is just one part of a substantial e-mail. Is that rubbish?

Ron Tasker: It is not rubbish. On his visit, the chief inspector noted that we were 13 staff members short. As you describe, that had an impact on our ability to maintain proper staffing levels. Since then, our staff level has come up to strength. With trainees, we are budgeting for more staff on the premises. We can provide 10 members of staff per house block, including two to unlock each wing—two floaters—as you described.

At times, we cannot provide staff temporarily. For example, sickness takes everybody by surprise. If several sheriffs request prisoners when a member of staff does not turn in, that will stretch us from time to time, but immediately that happens, staff are diverted from other duties and are flexible enough to maintain house block levels, because that is the front line and nowhere is more important.

The Convener: Is it wrong to say that

"staff ... are put in dangerous positions every day"?

Ron Tasker: I do not accept the argument that staff are in dangerous positions. I accept that they are perceived to be in dangerous positions, but as I have said, we undertake risk assessments, review incidents and thrive on good relationships. We attempt and usually succeed to staff fully all the living areas. When we are temporarily short, shortages are made good at the earliest opportunity.

Elaine Bailey: We also have regular health and safety meetings at which staff representatives have an opportunity to raise concerns with us.

The Convener: I am being pressurised by my own colleagues here.

The e-mail from which I quoted also says:

"When staff object or refuse to open wings alone, they are pressurised by Management."

Ron Tasker: I expect the work of the prison to be undertaken in safe conditions, but I would not ask any member of staff to do anything that I or any senior manager considered unsafe.

The Convener: Is what the e-mail says true? You may not be hands-on all the time.

Ron Tasker: Are staff pressurised? The answer depends on how the word "pressurised" is used. Staff are required to unlock prisoners in all conditions when managers consider that doing so is safe.

The Convener: Do staff open wings alone?

Ron Tasker: Staff are required to unlock prisoners in safe conditions. You talk about staff opening wings alone, but an orderly officer, a duty director and a supervisor are in the complex, as well as the staff who unlock the prisoners. If someone is sick, it is not uncommon for a supervisor to pop in and help to unlock prisoners. That is what flexibility is about.

The Convener: I will leave that, for want of time.

Alex Neil: Could I finish my questions about staff?

The Convener: You will have to be quick. I know that you want to ask your questions.

Alex Neil: I have barely had a chance to speak.

The Convener: I agree, but we want to finish by 6 o'clock. Paul Martin wants to ask questions and Donald Gorrie may yet want to ask questions.

17:45

Alex Neil: I return to the metalwork shop. When the convener and I were in the metalwork shop on the day that we visited Kilmarnock, there was one warden and 27 inmates. The warden explained to us that the CCTV could not see certain areas. That was quite obvious. Because the building is a metalwork shop, some of the areas were blocked out. We expressed concern publicly about the staff-inmate ratio. An anonymous spokesman from your company rubbished our concerns. The following week, one prisoner coshed another to the extent that he had to be hospitalised.

Paragraph 4.7 of the chief inspector's follow-up inspection report on Kilmarnock shows that the number of prisoner-on-prisoner assaults had doubled over the previous 12-month period and that there had been 26 fires. Consider the number of deaths: there had been five deaths in

Kilmarnock since last March compared to a total of 16 in the rest of the estate.

If we take into account the other points about Kilmarnock being 13 under complement on staff and the issues that the convener mentioned, plus the fact that, on the health centre, the chief inspector says:

"there had been a very high turnover amongst nursing staff and the first appointed Health Centre Manager had left. It appeared to us that existing staff were struggling to deliver what was required",

surely you are in a crisis situation in Kilmarnock.

Ron Tasker: I will deal first with the staffing ratios. They are researched at 1:12, typically. I think that I have said something about the sight lines, as we have described them. Some areas, particularly in that shop, were obscure. However, there were no serious defects and the problem has been put right.

On nursing, we know about nursing shortages, not that that is any excuse for me or for the company. However, the nurses are dealing almost exclusively with matters relating to detoxification and drug treatment. The massive problem that exists in the community is reflected in the prison. It is no wonder that the nurses are run off their feet. Perhaps it is also no wonder because of the variety of opportunity. It is not about money, it is about how challenging or difficult a person's work is. Work is not easy in prison. I make no other comment about that.

Alex Neil: How does that—

The Convener: I am sorry. We must keep linking the discussion to staffing levels. I know that Alex Neil wants to ask a lot. Committee members are sitting patiently waiting to ask their questions and I am determined that we are going to stop at 6 o'clock. We have addressed the matter in connection with the prison estates review as well. Some of us in the committee have given soundings about how we feel about staffing levels and how they impact on the financial cost of private sector prisons.

I want to move on and let other members in. I will have to stop the meeting at 6 o'clock. I will have a rebellion from the committee members if I do not do that. I understand that. Paul Martin is next.

Paul Martin: How many—

Lord James Douglas-Hamilton: On a point of order. I wanted to ask one question and do not want to be excluded.

The Convener: I am sorry. Where is the question? I was being directed by the clerks.

Lord James Douglas-Hamilton: It is the question about overcrowding at the end of the

section in the question paper on staffing levels and pay and conditions.

The Convener: It is question number 6. Please proceed. After that, Paul Martin can ask his questions.

Lord James Douglas-Hamilton: I will be very quick.

The Convener: I am trying to please the world and it is not happy.

Lord James Douglas-Hamilton: I will ask two brief questions rolled up into one. The chief inspector of prisons said on 14 May:

"You could almost say that the staff are overcrowded in the areas in which they work in Kilmarnock."—[*Official Report, Justice 1 Committee*, 14 May 2002; c 3538.]

Please comment on that remark and whether you think that it is fair. What do you think are the chief inspector's more favourable points about the prison?

Elaine Bailey: On the staff facilities, Ron Tasker has answered that in some of his previous answers. There is a staff restroom. The staff can use the bistro. There are staff areas on the wings and the staff can use the gym when they are off duty. The fact is that the vast majority of staff prefer to come to work, do their duty and then go home again.

Ron Tasker: The chief inspector commented particularly on social work and overcrowding. We have more prisoners now. We have 10 per cent more prisoners than when we started. That led to us employing another social worker because the chief inspector's report recommended it. The social workers are working in crowded offices, but we expect social workers to work one to one with prisoners in other areas on the whole. We have opened up new offices—one in each house block—to facilitate the work of the social work department.

Elaine Bailey: The positive point, as has been highlighted before, is the strength of the staff, their enthusiasm and the way in which they engage with the prisoners. We do a lot of rehabilitation work and have a variety of programmes on offer. I am afraid that you have caught me a bit on the hop with that question.

The Convener: Paul Martin can have five minutes, then Donald Gorrie can have five minutes.

Paul Martin: I shall be brief. Can you advise me how many days' training for operational staff the officers receive annually?

Elaine Bailey: Six.

Paul Martin: How many days' training do first-line managers receive?

Ron Tasker: I have some statistics. The training for staff, over the past year, has been as follows: a postgraduate certificate in safety and risk management; an advanced food hygiene course; an in-house management development programme; a Confederation of Scottish Counselling Agencies accredited crisis counselling skills course; and a higher national certificate in accounting. We are also funding an Open University degree in sociology and we are training incident command negotiators—

The Convener: I think that Paul Martin just wanted to know how many days' training were involved.

Ron Tasker: Six days per member of staff a year. We are contracted to give five days' training, but we achieved six days last year.

Paul Martin: So that is one more day than would be provided by the SPS.

Ron Tasker: No. We are expected to provide five days' training. That is written into the terms of our contract.

Paul Martin: I am saying that the comparison is in your favour.

Ron Tasker: I am sorry. I misunderstood. We came here prepared to defend and it is difficult to get into a different gear. [*Interruption.*]

The Convener: If members talk over each other, the official reporters will not be able to follow this.

Paul Martin: The SPS provides five days' training, whereas you provide six. Is that the same for first-line managers?

Elaine Bailey: Yes. It is a minimum of six.

Paul Martin: The SPS provides seven days' training for first-line managers.

Elaine Bailey: We provide a minimum of six days, but we are flexible.

Paul Martin: The other issue that the POAS raised was the fact that new recruits in the SPS are required to carry out a minimum of a year's peripheral training before they can undertake supervised duties in the residential block. However, I understand that, in Kilmarnock prison, that period is seven weeks.

Elaine Bailey: Our initial training course lasts for seven weeks. That course is approved by the SPS. After that, officers go out on to the landings, but they are not in charge on the landings. When they first go out on to the landings, they are on six months' probation and working with somebody else—either one of the officers or a supervisor—who will be coaching, mentoring and shadowing them.

Paul Martin: There is a significant difference in the length of the training, though. The SPS works on the basis of an officer's requiring a year's training before they can undertake supervised duties in a residential block.

Elaine Bailey: By supervised duties, do you mean duties that the officers undertake before they are in charge of a wing?

Paul Martin: Effectively, yes.

Elaine Bailey: Our officers would not be in charge of a wing.

Paul Martin: I understand that, in the SPS, officers carry out peripheral duties for a year and are not involved in specified escorting duties until that training period is completed. However, your training period is seven weeks.

Elaine Bailey: Seven weeks and then six months on probation.

Paul Martin: Does that policy not put new staff at risk during that period?

Ron Tasker: We stand by the quality of the training and relationships that exist in the prison. What other people do is a matter for them to decide. Frankly, we do not have the luxury of being able to keep people in cotton wool for a year. I do not know whether a year is the right length of time. We have pitched a good training period at six months' probation. That is what we do—that is what works.

Elaine Bailey: If there were incontrovertible evidence that that period was not long enough, we would re-examine it. There has been no such evidence.

Ron Tasker: Two or three individuals are finding it difficult to make the immediate transition from training to operation. They are being strongly supported and mentored. One of them has been taken away from the particularly difficult areas for extra training, mentoring and coaching. The training officer who carries out the training and mentoring never misses an opportunity to look for people who need further training. We do not let people drown. We spot the signs or they come to tell us. We deal individually with those for whom the transition comes a bit early.

Paul Martin: The SPS has not devised its policy for reasons of comfort. It has devised the one-year policy on health and safety grounds. You are obviously subjecting your officers to an element of risk.

Ron Tasker: We have broken the mould in more ways than one. That is just one example.

Paul Martin: Would you prefer to have the period of a year?

Elaine Bailey: Who is to say that a year is right and six months is wrong? We have a different view; we do things a different way. We are flexible enough to spot whether an officer is struggling. If that is the case, we do something about it. Out of the numbers that come through, we are talking about a couple of individuals.

The Convener: Donald Gorrie will have five minutes. He will get his fair shot.

Donald Gorrie: The point of view exists that because your contract lays great emphasis on working in workshops, you are good at getting that done, but you are not so good at rehabilitation, which is now much more of a focus for the SPS prisons. In his report, the chief inspector said that at Kilmarnock there is a lack of

"quality opportunities available for prisoners to address their offending behaviour".

Do you accept that that is a problem and, if so, what are you doing about it?

Elaine Bailey: I would not accept that it is a problem. We run a range of programmes within the prison, all of which contribute to the rehabilitation of the prisoners. Work plays a role in that, by inculcating the work ethic and by requiring people to get up each morning to go to work, to take direction and instruction and to deliver products to a required standard.

Work requires prisoners to acquire some expertise and the fact that their pay is related to productivity teaches them a valuable lesson. All those lessons will be of use to them when they go outside. Many of our prisoners have led chaotic lifestyles, which have been characterised by drugs, by lack of education and by never having worked before. Therefore, working is important to them. However, work is not the only thing that they do. We offer education and offending behaviour programmes. Prisoners are able to do day release, in effect. For example, a prisoner can go to a literacy class one morning, can go to work for two or three days and can then have an afternoon when they do anger management. We run a huge range of programmes in the prison. We do not offer only work.

Ron Tasker: I must ask for the convener's indulgence to read out a list of some of our activities, because the committee has had a list from other witnesses. Sixty-three people have completed a course in anger management; 77 have done one in problem solving; 161 have done one in basic drug awareness; and a further 82 have done an advanced drug awareness course. Other courses that have been taken include anxiety management and overcomers, not to mention Scottish vocational qualifications in welding, catering and woodworking.

One person said to your committee that he had learnt to read and write at Kilmarnock prison. That did not happen because we force people to work. At least two people have left the welding shop and gone straight into welding jobs in the community. It is not true—and not fair—to say that we lock people up and do not do anything else. We have a fantastically active programmes department in the prison.

Elaine Bailey: We deliver 35 hours a week of structured activity. We do that five days a week, week in, week out. There is a consistency to it. The prisoners in Kilmarnock have a dependable and structured day. They know exactly what they will be doing every day. That happens day after day, which is very important.

Donald Gorrie: If you were negotiating a new contract, would you put more emphasis on rehabilitation as opposed to work? Would you change the contract in that respect?

Elaine Bailey: There is flexibility in the contract anyway—it is a framework. It does not matter how comprehensive a contract is, there is always room for manoeuvre. The Kilmarnock contract has that manoeuvrability.

Each year we draw up a strategic plan. Ron and I have discussed the Kilmarnock strategic plan and have decided that it should focus more on drugs. We have noticed over the past year that we are getting more and more prisoners with severe drug problems. The strategic plan will be discussed with Mike Duffy, the operations director. He will reach an agreement with us about whether that operational plan will be put in place. If it is put in place, we will discuss with him whether that can be done within the contract as it is currently set out or whether the contract needs to be amended. The contract can be amended. There are some simple mechanisms in the contract to change the service that is required.

The Convener: Thank you. That is the end of the evidence.

I thank the committee for what has been another marathon. I know that members are going home to sleep and dream about our response to the prison estates review, because we are back tomorrow at 10:15 am.

Michael Matheson: What room are we meeting in tomorrow?

The Convener: We are meeting in committee room 2. Perhaps we should stay here overnight—tents and sleeping bags will be provided.

I will try to make tomorrow's meeting shorter. However, members will appreciate that I am trying to let everyone have their say.

Meeting closed at 18:02.

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