

# **JUSTICE 1 COMMITTEE AND JUSTICE 2 COMMITTEE (JOINT MEETING)**

Tuesday 1 November 2005

Session 2

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## JUSTICE 1 COMMITTEE

† 33<sup>rd</sup> Meeting 2005, Session 2

### CONVENER

\*Pauline McNeill (Glasgow Kelvin) (Lab)

### DEPUTY CONVENER

\*Stewart Stevenson (Banff and Buchan) (SNP)

### COMMITTEE MEMBERS

\*Marlyn Glen (North East Scotland) (Lab)

Mr Bruce McFee (West of Scotland) (SNP)

\*Margaret Mitchell (Central Scotland) (Con)

\*Mrs Mary Mulligan (Linlithgow) (Lab)

Mike Pringle (Edinburgh South) (LD)

### COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)

Karen Gillon (Clydesdale) (Lab)

Miss Annabel Goldie (West of Scotland) (Con)

Mr Jim Wallace (Orkney) (LD)

\*attended

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## JUSTICE 2 COMMITTEE

† 27<sup>th</sup> Meeting 2005, Session 2

### CONVENER

Miss Annabel Goldie (West of Scotland) (Con)

### DEPUTY CONVENER

\*Bill Butler (Glasgow Anniesland) (Lab)

### COMMITTEE MEMBERS

\*Jackie Baillie (Dumbarton) (Lab)

Colin Fox (Lothians) (SSP)

\*Maureen Macmillan (Highlands and Islands) (Lab)

\*Mr Stewart Maxwell (West of Scotland) (SNP)

\*Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

### COMMITTEE SUBSTITUTES

Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

\*Carolyn Leckie (Central Scotland) (SSP)

Kenny MacAskill (Lothians) (SNP)

Margaret Mitchell (Central Scotland) (Con)

\*attended

### THE FOLLOWING GAVE EVIDENCE:

Jean Couper (Scottish Legal Aid Board)

Robert Gordon (Scottish Executive Justice Department)

Cathy Jamieson (Minister for Justice)

Lindsay Montgomery (Scottish Legal Aid Board)

### CLERK TO THE COMMITTEE

Callum Thomson

### SENIOR ASSISTANT CLERK

Douglas Wands

### ASSISTANT CLERK

Lewis McNaughton

### LOCATION

Committee Room 4

† 32<sup>nd</sup> meeting 2005, Session 2—joint meeting  
with Justice 2 Committee.

### CLERK TO THE COMMITTEE

Gillian Baxendine

Tracey Hawe

### SENIOR ASSISTANT CLERK

Anne Peat

### ASSISTANT CLERK

Steven Tallach

† 26<sup>th</sup> meeting 2005, Session 2—joint meeting  
with Justice 1 Committee.



## Scottish Parliament

### Justice 1 Committee and Justice 2 Committee (Joint Meeting)

*Tuesday 1 November 2005*

[THE CONVENER *opened the meeting at 14:06*]

### Budget Process 2006-07

**The Convener (Pauline McNeill):** Good afternoon. I welcome everyone to this joint meeting of the Justice 1 Committee and the Justice 2 Committee. We have received a number of apologies, the first of which is from Annabel Goldie. Today's meeting was to have been convened by Annabel Goldie as convener of the Justice 2 Committee; I will convene in her absence. We have also received apologies from Bruce McFee, Mike Pringle and Colin Fox. I welcome Carolyn Leckie and ask her to confirm that she is substituting for Colin Fox.

**Carolyn Leckie (Central Scotland) (SSP):** I am substituting for Colin Fox.

**The Convener:** Agenda item 1 is our scrutiny of the budget process 2006-07. Today's meeting is the second joint meeting to take evidence on the draft budget for 2006-07 and the efficient government programme.

We have two witness panels and I plan to split the time pretty equally between them. Our first set of witnesses is from the Scottish Legal Aid Board: I welcome Jean Couper, who is the chair, and Lindsay Montgomery, who is the chief executive. I am sure that both witnesses are known to committee members. I thank them for their submission and for agreeing to appear before the committees this afternoon.

Mary Mulligan will open the questioning for the committees.

**Mrs Mary Mulligan (Linlithgow) (Lab):** We are all aware that the legislation that is passed by the Scottish Parliament can have an impact on the demand-led legal aid budget. To what extent is the Scottish Legal Aid Board consulted by the Executive on the implications for legal aid of new or proposed legislation?

**Jean Couper (Scottish Legal Aid Board):** When a consultation paper is issued, the board always looks closely at the content and takes a view on the legal aid implications that arise from the proposal. We always aim to give a sound response to consultations by highlighting the legal aid implications and any issues that arise. Where possible, and based on our knowledge and

experience, we also aim to give a view on the likely cost implications.

**Mrs Mulligan:** In your discussions with the Executive, has it made an adequate response to your identification of the pressures that the proposal might add to the system?

**Jean Couper:** In general terms, the answer is yes. Certainly, as the volume of Scottish Parliament legislation has grown, we are getting better at that. The board is consulted more regularly and given a proper opportunity to contribute to the costing exercise and to put forward our views.

**Mrs Mulligan:** Have there been any instances of your views not being accepted?

**Lindsay Montgomery (Scottish Legal Aid Board):** A couple of years ago, an issue arose around the financial memorandum for the Vulnerable Witnesses (Scotland) Bill, which contained figures that we did not recognise. Thereafter, the Executive has worked much more closely with us and has brought us in at an earlier stage of the process. Recently, the process has become far more effective than was the case two or three years ago.

**Mrs Mulligan:** In the instance that you mentioned, was it possible to take a fresh look at things? Where there is a difference of opinion on a piece of legislation, is it possible to return to it later in the light of the evidence?

**Lindsay Montgomery:** That is exactly what happened in the case that I mentioned.

**The Convener:** What has been the budgetary impact of the modernising legal aid regulatory changes since July 2004?

**Lindsay Montgomery:** In terms of the efficient government plans? I am not totally sure what you mean.

**The Convener:** I believe that there have been some regulatory changes to legal aid since about 2004. I wondered whether you could tell us what their impact has been on the budget so far.

**Lindsay Montgomery:** It is fairly complex and some of the changes will take time to work through. Some of the changes that were introduced by the earlier set of regulations are beginning to work through the system and we are beginning to see some changes in expenditure, but it will be close to the end of this financial year before the picture becomes clear. The monitoring of those changes is quite complex. A range of things is happening in legal aid and we are trying to work out which ones are to do with specific regulatory changes and which are to do with changes in business. We, together with the Executive, are putting a lot of effort into that, but it is hard to give specific answers at this stage.

**The Convener:** I understand that. We are aware of controversy surrounding the Bonomy reforms—I use that term in the loosest sense, because as well as the reforms of the High Court of Justiciary, policy decisions were taken to remove some business from the High Court to the sheriff court. Can you give us any early indications of the impact on the budget of those reforms?

**Lindsay Montgomery:** There are cases that were previously dealt with in the High Court but which are now dealt with in the sheriff court. We are beginning to see a reduction in the average cost of the cases that are coming through. The change in sheriffs' sentencing powers happened in May 2004, and the figures that we are currently looking at appear to show that average case costs are starting to reduce. Sheriff court cases cost us less than High Court cases for a range of reasons, so that is beginning to be reflected in the numbers.

**The Convener:** Can you give me some idea of the percentage of cases that formerly would have sanctioned counsel for which you still sanction counsel now that some cases go to the sheriff court?

**Lindsay Montgomery:** First, it is impossible for anyone—apart from the Crown Office—to say that a specific case would previously have been heard in the High Court and is now being heard in the sheriff court. We certainly cannot do that, nor can solicitors or counsel—we just know that there is a change in volumes. Last year, we noticed an increase in the number of applications for sanction for counsel in the sheriff court and over the year we had an increase in grants of about 14 per cent compared with the previous year, so it is clear that a larger number of cases was coming through and that we granted more of those applications.

**The Convener:** But that is before the new system. Under the old system, cases that went to the High Court would automatically be granted junior counsel, so a certain percentage of the cases that are moved to the sheriff court will still be granted counsel.

**Lindsay Montgomery:** That is what I am saying. For those cases that are in the High Court, there is no need for us to be asked for sanction for junior counsel, although there is for senior counsel. In fact, we have had an increase in our grant rate for such applications. For the sheriff court cases in which solicitors are seeking junior counsel, we saw an increase in the number of applications last year and an increase of 14 per cent in the grant of those applications, so more of those cases got sanction for junior counsel.

**The Convener:** Have you set criteria for which of those applications will be successful?

**Lindsay Montgomery:** When the change to sheriffs' sentencing powers was introduced, we

conducted a review of our guidelines on sanction for counsel in criminal cases. We consulted widely—judges, sheriffs, the Faculty of Advocates and the Law Society of Scotland—and revised our guidelines to some extent to take account of their comments. We are conducting another review this year to see how the guidelines are working.

**The Convener:** Are those criteria available?

**Lindsay Montgomery:** They are published and available on our website.

14:15

**The Convener:** Do you believe that you have resolved the fee negotiations with the Faculty of Advocates? Some of us have had representations that much unhappiness is felt about the outcome.

**Lindsay Montgomery:** The process has several stages. Some pieces of work involve almost emergency regulations, which the Executive is finalising. They make limited changes that are based on representations from the faculty and further discussion with us.

We had always said to the Executive that when the new tables were introduced, we would be talking about a completely different system. From April, we were talking about preliminary hearings, which we had not had before, so we had to provide a fee table while we were a little in the dark. We said that we would need to review that, which we and the Executive have done with the faculty. In the next little while, we hope to identify whether any other changes will be required. We will progress that in the next two to three months, as I said.

**The Convener:** When do you hope to conclude those discussions?

**Lindsay Montgomery:** That is a function of how we, the faculty and the Executive assess matters to be working in practice, but I hope that that will happen in no more than a couple of months or so. That is outside our direct control.

**Bill Butler (Glasgow Anniesland) (Lab):** Your submission says that expenditure from the fund will be in excess of the Executive's planned provision. Will you quantify that shortfall? How is it intended to be funded? What discussions have you had with the Executive about it?

**Jean Couper:** A shortfall is identified only in the current year. As the fund is demand led, the Scottish Executive will have to meet any legal aid expenditure through the fund that the board incurs. The Executive is aware of our expected outflow of funds from the legal aid fund. It is our responsibility to keep the Executive abreast of anticipated and actual expenditure as we move through the year.

**Bill Butler:** Has any attempt been made to quantify the shortfall?

**Lindsay Montgomery:** As we say in the paper, we think that the difference is about £10 million.

**Bill Butler:** That is £10 million that the Executive will have to fund.

**Lindsay Montgomery:** In effect, that represents commitments that have been taken on in legal aid cases.

**Bill Butler:** So you see no problem with that—that will just happen. That is the normal practice.

**Jean Couper:** That is the normal procedure. The legal aid fund is demand led, not cash committed.

**Bill Butler:** I know.

**Jean Couper:** Any commitments that are made against specific cases must be met by public funds.

**Stewart Stevenson (Banff and Buchan) (SNP):** What proportion of the money that you commit is a result of the Napier judgment and related cases on slopping out in prisons?

**Lindsay Montgomery:** None of it. The Napier case cost the legal aid fund no money, because all the expenses were recovered. That is what normally happens in successful reparation cases—the losing party pays. We have made no specific provision for such cases; such issues lie elsewhere, with the Executive.

**Marlyn Glen (North East Scotland) (Lab):** Your submission says that current spending plans for the administration budget are likely to be insufficient. What is the extent of the deficit and how does the board plan to manage it?

**Lindsay Montgomery:** The planning to manage the deficit is based on further discussions with the Executive, which we have pointed up. Once ministers have decided what they want to develop from the consultation “Advice for All: Publicly Funded Legal Assistance in Scotland - The Way Forward” for the future delivery of legal aid, they are likely to want us to do certain things. That is the key issue. If additional people are required for that work, I will need additional funds for them. We are not in a position to quantify that, but we are perhaps talking about not millions of pounds, but several hundred thousand pounds. Until it is clear what ministers want us to do, it would be a bit presumptuous for us to say what we need. There are plans to discuss those things in the next month or so.

**Carolyn Leckie:** I am interested in the figures on civil legal aid, the budget for which remains static for several years. That might not be a surprise to other members, but it strikes me, as a

substitute member, as quite astonishing. How is that achieved? What mechanisms are in place to allow that? Are you content with the assertion that civil legal aid is demand led? Why do the figures match each other so well?

**Jean Couper:** The volume of civil legal aid applications has been falling since 1992-93 and the board has been concerned about that decline. If we take the reduction in the volume of applications and the increase in case costs, we get a net outflow from the civil legal aid budget.

We have done quite a lot of research to try to understand the reduction in the number of applications. There are several contributory factors, but it is partly to do with changes to the eligibility criteria that were made in 1993 and changes to the contribution level. Moreover, there have been changes to the ways in which people resolve disputes. There is a sense that solicitors have been moving towards taking work under conditional or private fee arrangements. There have also been societal changes—fewer people are divorcing on the grounds of unreasonable behaviour, so we would expect to see a reduction in the number of legal aid applications for that sort of thing.

Even in the past three years, there has been quite a reduction in the number of applications for civil legal aid. That causes the board some concern and we have made some suggestions about how the system might be changed to increase eligibility and perhaps the number of applications that we receive.

**Carolyn Leckie:** Was the percentage of successful applications the same in each of those years?

**Jean Couper:** Our grant rate stayed fairly static for that period. There has been movement, but nothing particularly dramatic.

**Lindsay Montgomery:** Around 60 per cent of applications—plus or minus 3 or 4 per cent—were granted over that period. The figure has not moved far from that.

**Carolyn Leckie:** So 40 per cent of applications are denied. That, too, strikes me as a bit coincidental. If the number of applications is decreasing, there are already barriers to people applying for legal aid and the percentage who are denied it has stayed the same. How is that possible? Are there coincidental similarities in the merits of the applications?

**Jean Couper:** There are three tests to be met. The first is financial eligibility, the second is probable cause and the third is the overall test of reasonableness. We have applied those tests throughout that period of time, and from time to time we go back and check that we are applying

the tests appropriately to all the cases that come to us.

**Lindsay Montgomery:** We have also found that, over the years, the average cost of civil cases has increased. If that cost had stayed the same, the figure for civil legal aid would have dropped much more than it has done. However, a range of things has happened in the population of cases, which changes from year to year. We might get more reparation cases in some periods and at other times we might get more family cases. The types of cases that get sent to us do not stay static.

We do not consider—

**Carolyn Leckie:** You do not consider how much money you have left.

**Lindsay Montgomery:** If we did that, it would be a major problem. That is not what we are there for. Our job is to assess cases on their individual merits.

**Jean Couper:** Recently, we have been able to change the repayment processes for contributions. That has worked very well, because it has enabled more people to take up their offer of civil legal aid; prior to that change, the repayment period vis-à-vis the level of contribution was a barrier to many people accepting their offer. That change has proved to be worth while and productive.

**Maureen Macmillan (Highlands and Islands) (Lab):** My perception is that it is becoming more and more difficult to find a solicitor who will do civil legal aid work, because of the level of payments that they can access from the board. Is that true? Do you have any statistics on that, or is it peculiar to some parts of the country?

**Jean Couper:** We have anecdotal evidence, as you do, of solicitors claiming to have moved out of the provision of civil legal aid. The profession's expectation is that the trend will continue. We have analysed our figures to determine the number of solicitors on the civil legal aid register—both the number of individual solicitors and the number of outlets—and there has not been a dramatic change. However, we are concerned to know whether any issues have arisen, perhaps as a result of lack of supply in specific subject areas. We are also concerned to know whether there is a lack of supply in certain geographical areas, as you suggest, and we are doing more work on that. We would like to have the facility to employ solicitors to deal with specific subject matters or geographical areas in need, so that we can maintain a balance between supply and demand.

**Stewart Stevenson:** What are your performance targets for the current year?

**Jean Couper:** We have quite a large number of targets. We have six headline targets and a range

of supplementary targets, which are published. We also publish our performance against those targets on an annual basis.

**Lindsay Montgomery:** The specifics are all set out in the corporate plan, which is available on our website. We combine accuracy targets with time limits in a managed process to ensure that we are dealing with cases correctly as well as quickly. A stack of things is set out in the corporate plan, which is available.

**Stewart Stevenson:** The targets are not included in the draft budget, which is strictly the locus of today's meeting. Are you aware of any particular reason why the targets have not made their way into the budget?

**Lindsay Montgomery:** It is the Executive's budget, rather than the board's. We are outside the Executive as a non-departmental public body. We publish our own corporate plan, which sets out the targets that we agree with the minister each year.

**Stewart Stevenson:** Would it be fair to say that I read the objectives of the Scottish Prison Service in the draft budget?

**Lindsay Montgomery:** The SPS is an agency, which is part of the Scottish Executive. We are not and we are outside it.

**Jean Couper:** We are an NDPB. That is why, as Lindsay Montgomery said, we have our separate corporate plan. Every year we examine our performance targets closely to see where we should be aiming to increase our target levels. We take account of the profession's views on the areas in which, from a client service point of view, it wishes the board to stretch its targets and performance. We also take ministers' views. We agree our performance targets with the minister, but we also take account of the priorities that come to us from the profession.

**Stewart Stevenson:** If your targets are not included in the Executive's draft budget—you have explained why they are not—is there any political overlord who should be fired if you fail? In other words, where is the political accountability for your performance? At an operational level, I expect that the two witnesses who are before us would be the ones who would be fired in extremis, but if the board's targets are not included in the Executive's list of objectives, where is the political accountability?

**Jean Couper:** The board is responsible to the Minister for Justice.

**Stewart Stevenson:** So would the Minister for Justice be fired if you failed? We might ask her that in due course.



**Mr Stewart Maxwell (West of Scotland) (SNP):**

The technical notes for the Executive's efficient government plan lay out cash savings targets for legal aid of £5.5 million, £9 million and £12 million. To what extent was the board consulted by the Scottish Executive when those targets were being set?

14:30

**Lindsay Montgomery:** We worked with the Justice Department to develop a range of options for efficiency savings, which the Executive took forward to its efficient government plan. It is for ministers to decide which savings to take forward and what the order and timing of those savings should be. We will work closely with them in helping to deliver the package that they want to develop. There was a significant contribution from us on the package, but the shape of it is a matter for the Executive.

**Mr Maxwell:** That is a diplomatic answer. Are you saying that although you put forward your position, the Executive published the figures without consulting you directly on them and on how they could be achieved?

**Lindsay Montgomery:** It was, quite rightly, for the Executive to make the final decision on what savings to take forward. We provided the Executive with lots of detailed information to inform that decision, which is quite proper.

**Mr Maxwell:** Are you confident that the targets can be achieved?

**Lindsay Montgomery:** From our point of view, the figures shown are achievable, provided that the legislation—they are nearly all led by primary or secondary legislation—is put in place in good time. Legal aid is a bit like a tanker—to turn things round from applications through to accounts takes quite a long time. The key test is the timing of legislation.

**Mr Maxwell:** You are confident that the targets are deliverable, if the timing is right.

**Lindsay Montgomery:** We think so.

**Jackie Baillie (Dumbarton) (Lab):** Given what you said in a previous answer, you might find this question difficult to answer, but let me try you with it. I understand that the Executive has made the final decisions on what bits of the package it wants to take forward. You set out helpfully the savings that have been achieved so far. What regulatory changes are still to be made and what level of savings are they expected to yield?

**Lindsay Montgomery:** It is difficult to answer that, because the list is long and is made up of lots of individual components. Some big reforms are being introduced. Big changes are planned for the

summary justice system, so we will need to ensure that changes that are made to the summary criminal legal aid system will fit. Many of the changes in other parts of the savings package would come in at the same time. There are also issues about changes to counsel's fees. In the sheriff court civil side, there are no tables of fees; fees are based on 90 per cent of the private rate being paid, whatever that means. The savings package included specific provision to put in place a fixed table of fees to cap the expenditure growth that we had noticed.

**Jackie Baillie:** You outlined the complexity and said that work was in progress. What would be the consequence to the board if it failed to achieve the cash savings that are specified for it? I am slightly nervous that you do not appear to control the levers.

**Lindsay Montgomery:** That is true of legal aid generally. We do not control the numbers that come to us or the costs that are incurred. What happens in crime is a function of what the police and the Crown do. It is difficult to say that someone has total control over legal aid spend. A number of the savings are to stop or reduce the expenditure growth that we are finding in certain areas, some of which have been factored into both our model and the Executive's figures. If that does not happen, we would expect to see an increase in expenditure.

**Jackie Baillie:** I have no doubt that we will return to that. Perhaps an easier question is what proportion of the planned cash savings is to be found other than through regulatory change?

**Lindsay Montgomery:** Almost all the savings in the plan are determined by changes in regulation or primary legislation. As I set out in our submission, we have our own plan that considers internal efficiencies through a reduction of staff numbers and further investment in capital expenditure. That is always a separate line. The big numbers that are published are almost solely based on changes in regulation, because so much of the legal aid budget is driven by legislative change.

**Mr Maxwell:** My question follows on from that question and answer. Your submission refers to the board's

"own programme of efficiency measures."

You lay out several measures that mostly relate to computerisation, and there are some staff changes. What level of savings is it anticipated that those measures will produce in the coming financial year?

**Lindsay Montgomery:** Our own internal savings are in the order of £180 million to £200 million in the current year.

**Mr Maxwell:** Thank you.

**Lindsay Montgomery:** I mean £200,000.

**Mr Maxwell:** I was going to say that your initial answer was a rather large figure.

**Jean Couper:** Our performance would be excellent if that were the case.

**Maureen Macmillan:** The draft budget refers to

“better co-ordination of the provision of all forms of publicly-funded legal and related advice.”

I presume that that refers to the idea of community legal aid. I am interested in the pilot that was run in Inverness by Citizens Advice Scotland and the Scottish Legal Aid Board. The Public Defence Solicitors Office also has an office in Inverness. Will such schemes be rolled out?

**Jean Couper:** As you know, the pilot to which you refer, which involves an employed solicitor in the Inverness area, was one of a number of pilot schemes that were set up and run by the Scottish Legal Aid Board under part V funding—that is, funding under part V of the Legal Aid (Scotland) Act 1986. That particular scheme has been continued under the new set of part V pilots that we are in the process of setting up, albeit that it will have a slightly extended remit to take forward the lessons of the current pilot as we look for greater effectiveness and innovation.

As I said, the scheme is one of a number of new projects that we are taking forward under part V. The pilot projects will be announced shortly, as will the key findings from the evaluation of the previous set of part V pilots. In general, they were very successful. They achieved the outcomes that were set for them and a number of positive lessons have been learned from them about their effectiveness and how we can replicate some of those activities in other parts of the country. We have tried to build on our evaluation findings and to look for other areas of innovation in the way that legal aid and advice can be delivered. We want to consider sections of society that have difficulty in accessing legal aid and to investigate how we can use part V pilots to test out different mechanisms to reach different people with different needs.

**Maureen Macmillan:** Can you share some of your ideas with us? What will the budgetary implications be? Will the schemes save money from the legal aid budget, or will the money just be spent in a different way?

**Jean Couper:** Part V pilots are funded through ring-fenced money. They are about testing and developing different methodologies for delivering legal advice and information, in particular to different groups of people who, for whatever reason, do not access such advice and information and therefore have unmet needs.

Rather than being cost-saving measures, the pilots are about extending access to and eligibility for legal advice and information. The pilots are also about finding different and perhaps more effective and more efficient ways of delivering advice and information.

As I said, some of the projects that are coming up are an extension of the Inverness pilot, for which continued funding was confirmed some time ago. There is a revised version of the Edinburgh project called street legal, which is about setting up more of a virtual legal advice and information service in Edinburgh, and we will also be working with Fife rights forum and citizens advice bureaux in Argyll and Clyde. I think that that is the full list. More information will be made available.

**Maureen Macmillan:** Thank you. We look forward to more information being released shortly.

**The Convener:** Although we have no further questions, I want to return to a question that has already been asked. I take the point that some reforms have yet to be legislated on and that the impact of other reforms cannot yet be identified, such as those on disclosure, which need to be seen in operation. However, I do not understand why we cannot get a figure of some description on the Bonomy reforms. In April of this year, the Justice 1 Committee considered the Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2005 (SSI 2005/113). Those regulations were made on 2 March 2005, so why can we not get a preliminary figure for their impact on the budget? My understanding is that the adjustment of the fees was not a savings exercise per se. It is fair and reasonable for the committees to pin you down a bit on the impact on the budget of the reforms that you should know about.

**Lindsay Montgomery:** I am not sure that that is fair. The timescales for the cases in question are still relatively long. We are talking about solemn cases in the High Court, which take some time to work their way through the system. What we have seen, and what advocates have seen, is a fundamental change in the volume of business that goes through the courts. There is less churning and turning over of cases. It is clear to us that that will have a significant impact on what we spend, but we will not get the bills for many of the cases until well into the second half of this year, or perhaps not until next year, because they will take quite a long time to come through.

We will start to notice some of the changes. The financial memorandum on the Bonomy reforms suggested that the saving would be about £1 million over three years. That is probably an underestimation of what we think will happen over the next year or so. It would be foolhardy for anyone to say, “This is the impact,” because we are still at an early stage in the process.

**The Convener:** But you must have some idea of the impact. Our position is that we must scrutinise the budget. We know that reforms have already kicked in, but we are none the wiser about whether any savings have been made. I feel that I am in the dark.

**Lindsay Montgomery:** We have built into our model an amount for the effect that we think that the Bonomy reforms are having. As I said, the financial memorandum said that there would be a saving of about £1 million, but it may be more than that. We have produced an estimate and I would be happy to tell you the sort of figure that we are looking at, but I do not have the detail with me.

**The Convener:** I would welcome such additional information, just to get some idea of whether the reforms are producing any savings or whether they are just adjusting the way in which things are done. I would like to have a sense of that, even though I acknowledge that you will have a definite view only once the new system has been in operation for longer. We have not even seen the proposed summary justice bill, so we obviously cannot expect you to make a judgment about its effect. However, I think that it would not be unreasonable to get a wee bit of information from you on how things are going. Would that be possible?

**Lindsay Montgomery:** We can give you our initial perceptions. It is worth bearing in mind the fact that solemn legal aid fees for solicitors are due to be reformed over the next six months or so, which will impact on the effect of the Bonomy reforms on High Court cases. I am not trying to avoid the question; the present situation is difficult to analyse, but we will let you know what we think is happening.

**The Convener:** That would be very helpful. I thank you both very much for your oral evidence and your written submission.

I welcome our second panel of witnesses: Cathy Jamieson, the Minister for Justice; Robert Gordon, the head of the Justice Department; and Ruth Ritchie, of the Finance and Central Services Department. We have until approximately 3.30 pm. We will go straight to questions, beginning with Stewart Stevenson.

14:45

**Stewart Stevenson:** The Scottish Prison Service budget is one of the largest in the justice portfolio and will rise next year by £75 million and the following year by £106 million. In the light of that money and other factors, when do you expect to reach your aims of ending overcrowding and slopping out? As a parenthetical note, you might care to comment on Peterhead prison—the nature of slopping out is different there, but it is accepted that that, too, needs to be ended.

**The Minister for Justice (Cathy Jamieson):**

The issue has been of interest to the committees in the past couple of years, so it is worth recognising the progress that has been made and considering the prisons where slopping out has been ended. Slopping out continues at HM Young Offenders Institution Polmont, where there are around 150 places, and, of course, at Peterhead. You will be familiar with the difficulties of trying to resolve the problem at that site and the need to look at the whole provision for prisons in the north-east, on which work is on-going.

You also asked about overcrowding. It is worth emphasising that, until we have the new prison at Addiewell and resolve the issue of the replacement for Low Moss, we cannot deal fully with all the Prison Service's pressing problems. We have made clear the way in which we wish to progress. As you are aware, progress on Addiewell is well on target, but difficulties have been encountered with the Low Moss site because of the time taken by the planning permission process and the subsequent refusal of planning permission. However, we will address those issues. We will consider, as part of the next spending review, potential funding for the measures in the north-east.

We have made significant progress, which is to be welcomed. We should remember that some of that progress was achieved through additional funding to rebuild house blocks in existing prisons and to provide short-life accommodation to deal with particular overcrowding problems. However, we have more to do.

**Stewart Stevenson:** That is a clear statement of intent and policy, but the specific core of my question was to attempt to elicit from you a comment about the timetable. That is the issue, given the open questions about how the courts might view claims à la Napier if we do not make progress and stick to a timetable. The key point in which we are interested is your view on the timetable.

**Cathy Jamieson:** My view is similar to the one that I have expressed to the committees previously: we cannot end slopping out and overcrowding until we get the new prisons up and running, so it is important that we continue to press the timescale for that. We also need to address the situation in the north-east. As the committees will be aware, we have dealt as a priority with the so-called triple vices in the Napier case to ensure, for example, that people are not slopping out and doubling up in cells. As you are aware, the nature of the building at Peterhead makes it difficult to improve, but we have considered the issue and have invested in, for example, the provision of electric power in cells. However, in Peterhead, it is simply not possible to

use the solutions that we have used elsewhere. You ask for a specific date, but that is also dependent on when we get the two new prisons up and running and, as I said, although we are experiencing some planning permission problems at Low Moss, we are well on target with Addiewell.

**Stewart Stevenson:** I realise that your intentions are good and I suspect that no one at the table feels uncomfortable with your response. However, I ask you for the third time to give us a date by which you will have solved this problem absolutely. You can be as elastic as you like; even if you say 2010, at least that is something. We can have a bidding war across the table, but it would be useful to hear a date from you. We realise that certain matters such as planning permission at Low Moss are not within your control, but you should take this third opportunity to give us an indication of a date.

**Cathy Jamieson:** I can give you an indication of the date for Polmont, as that situation is within our control and does not involve, for example, securing planning permission. We are currently constructing a new house block at the institution, which we expect will allow slopping out to end in early 2007.

That leaves the problem of Peterhead. I would love to be able to put dates on a whole range of things; however, with all due respect, it would be wrong of me to do so for reasons that you, as the local MSP, are well aware of. We are trying to take the matter forward. You have my assurance that we are on track with Addiewell; that things are moving ahead; and that we intend to continue to address these problems. I hope that it gives the committees some comfort to know that the 150 places at Polmont will be dealt with early in 2007.

**The Convener:** Last week, I asked Tony Cameron, the chief executive of the Scottish Prison Service, about the on-going planning issue at Low Moss prison. I was reassured by his response that if the planning issue is resolved there is money in the budget to build a new prison immediately. Will you confirm that you, too, see the situation in that way?

**Cathy Jamieson:** We dealt with the two new prisons in previous spending review rounds. I know that, at the previous meeting, the committees took an interest in how Low Moss prison would be procured and that Tony Cameron provided some explanation about how the gap will be bridged. There is no reason why, when planning permission is secured, the prison will not be built.

**The Convener:** Have you received any reports from the SPS on how discussions with trade unions are progressing on their role in securing a public sector bid for the second prison?

**Cathy Jamieson:** We need to understand this process. The SPS has set up and supported a team to ensure that the public sector has the opportunity to compete. The trade unions have been very helpful and have engaged fully in the process. They want to show that they can compete against the private sector. However, under the agreement, they have been given only the opportunity to compete; it has not been decided that the prison is to be built in the public sector. I know that the matter was probed with Tony Cameron, but it is important for me to put that on the record.

**Maureen Macmillan:** Will the 500 prisoner places in the new prisons in the central belt have an impact on local prisons in Aberdeen and Inverness, which are suffering from severe overcrowding?

**Cathy Jamieson:** I certainly hope so. I am aware of the position at Aberdeen prison and, in particular, at Inverness prison, where we have used the work that we carried out at Cornton Vale to address issues involving women and to ensure a better quality of provision. However, that has meant that some women who would have been held elsewhere are now being held at Cornton Vale. We have to make such judgments to ensure that people in the prison system get the best deal.

**Carolyn Leckie:** Do you think that the solution to overcrowding is to build more house blocks and prisons, or do you agree with Tony Cameron's recent suggestion about not giving first offenders prison sentences in order to reduce overcrowding?

**Cathy Jamieson:** I do not think that prisons on their own offer the only solution to all the problems in the criminal justice system. During discussions on the Management of Offenders etc (Scotland) Bill, I have consistently made it clear that we need a more joined-up approach. We need the right programmes and interventions to deal with people appropriately. There might be some people who should go to prison for their first offence. That is a matter for the courts to decide, taking into account all the available evidence.

If community sentences have credibility with both the public and the judiciary, the judiciary will be more likely to use them in appropriate cases. We need to stop treating this as an either/or issue. Throughout our consideration of the Management of Offenders etc (Scotland) Bill, we have made it clear that this is about not just punishment but rehabilitation. Whether people are in custody or in the community, they should serve their sentence. We should be focusing on the nature of their offence and trying to stop them doing it again.

**The Convener:** That was not strictly a budget question, but you took the opportunity to respond. Does Stewart Maxwell have a budget question?

**Mr Maxwell:** Yes. I have been told that the local authority's decision to refuse planning permission for the development of Low Moss will result in a delay of at least a year, even if there is a successful appeal. Can you confirm whether that is also your understanding? Will that delay result in increased costs? Have the increased costs for the new build been factored into the budget—whether or not the development is to be at Low Moss?

**Cathy Jamieson:** It is fairly obvious that, if planning permission is not granted in the initial period when people hope that it might be, there could be a delay, which could have a knock-on effect on costs. However, I expect the Scottish Prison Service, which is responsible for managing its budgets, to keep a very close eye on that. No doubt, the SPS would come back to me if it felt that there was any difficulty.

**Bill Butler:** The witnesses from the Scottish Legal Aid Board said that they expected there to be a shortfall of approximately £10 million in the legal aid funding provision for 2005-06. How will that be addressed? Will the Executive simply fund that in the normal way?

**Cathy Jamieson:** We are aware that legal aid provision is demand led. We try to estimate it, based on the amounts of money that have been provided in previous years. However, it would not be a case of money not being allocated. If SLAB took the view that particular cases or situations required legal aid, we would have to provide the budget for that. As the committees heard, that makes things difficult with respect to some of the levers that may be required. That is why we are trying to find efficiency saving measures in administration and other areas.

We have to look to the future and establish whether we are achieving best value from the considerable sums that we spend on legal aid. Is it going to the right types of cases and individuals? Are people getting access to justice in the best possible way? We should keep a close eye on those issues.

**Marlyn Glen:** I turn to police budgets. In its written submission, the Association of Chief Police Officers in Scotland stated that, in its view, there is a shortfall in funding of £4 million, rising to £8 million, over the next three years; that time-releasing efficiency savings of £10 million, rising to £50 million, have been sought; and that there is an expectation that the police will absorb the costs of new legislative demands and ill-health retirement. What is the minister's view on that statement from ACPOS? What mechanisms exist for reviewing Scottish Executive funding allocations to the police?

15:00

**Cathy Jamieson:** I have found some of the interpretation of what ACPOS has been saying quite surprising. ACPOS has been fully involved in the process of examining what is required in the review of grant-aided expenditure for the police. We assessed, jointly, that some police forces were perhaps overfunded in terms of GAE, whereas others were underfunded. Rather than seek a simple and straightforward redistribution of the funds, we agreed to put additional resources into levelling up the funding over a period of time.

It is worth remembering that there have been significant increases in GAE: around £42 million for 2006-07 and £95 million for 2007-08. That reflects some of the additional demands that have been placed on policing. We now have a record number of police officers—more than 16,000 throughout Scotland. In the spending review process, we asked for estimates of need, which we considered in detail. We ensured that additional funding—£1.5 million in 2006-07 and £4.5 million in 2007-08—was provided for accelerated recruitment. Additional funding was also made available in a number of other areas.

To be fair, in relation to the so-called shortfall and the savings, we took account of the assessed need figure that ACPOS provided when we estimated the savings that we require the police to make. ACPOS calculated a 0.5 per cent saving on police pay as £2.5 million, but we estimate that the figure is likely to be closer to £4 million. There have been surpluses since at least 2002 and they probably add up to about £10 million. There is some discussion to be had on the interpretation of the figures.

**The Convener:** In oral evidence to the justice committees, the Scottish Police Federation expressed concern about the impact of the lack of growth in police budgets on front-line policing. What is your response to the SPF's position? It causes me some concern.

**Cathy Jamieson:** As I explained, additional funding has gone in. We should recognise that, over the piece, there have been increases at twice the rate of inflation. It is not a question of funding being cut back. We have been clear that we expect front-line services to benefit from the time-releasing efficiency savings. We are not asking the police to find savings and give us the money to use for something else. The savings will be reinvested in front-line policing.

**Jackie Baillie:** I think that we have already strayed into this territory but, for absolute clarity, what discussions were held with police organisations about the time-releasing savings of £10 million, £35 million and £50 million that are identified in the efficiency technical notes?

**Cathy Jamieson:** I think that there has been some confusion among the various police organisations—ACPOS, the Association of Scottish Police Superintendents and the SPF—about whether formal consultations were held by either the justice ministers or the finance ministers or whether the organisations were asked to submit information separately in a paper. The figures that the Justice Department arrived at came from a series of discussions that were held over a period of time. In those discussions the financial position and the savings that we can reasonably expect were considered, and factors such as the changes in prisoner escort services were taken into account. Therefore, it is not fair to say that no discussions took place.

It is important to note that the discussions took place over a period of time. The figures were not plucked from the air, and they take into account some of the pressures that the police are facing. The police are not being asked to find the level of savings that is being sought south of the border, where the police are under pressure to find twice the level of savings that we are asking for in Scotland.

**Jackie Baillie:** Time-releasing savings can be redeployed internally. Do you want to comment on the fact that, without exception, all the police witnesses said that all the money should go to front-line and community policing? Many of us have been calling for that for some time. Is it for the police to reallocate the savings?

**Cathy Jamieson:** It is for the chief constables to decide how best to deploy the resources. I suspect that there would be some controversy if I, as the minister, strayed into the territory of operational policing. I am delighted to hear that, without exception, everyone wanted the savings to go to front-line and neighbourhood policing. It is interesting to see, in the supplementary evidence that has been submitted, the number and percentage of calls that relate to disorder that results from antisocial behaviour, and there are other pressures. That suggests to me that the police will be correct to deploy the resources to front-line policing.

**Jackie Baillie:** We welcome that commitment.

**The Convener:** We move on to a different topic.

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** Have increased resources been made available to counter the heightened threat of terrorism? If so, what are they? What financial planning has the Executive carried out in that respect?

**Cathy Jamieson:** The ACPOS submission highlighted the need for additional resources to assist in trying to combat terrorism and outlined its position that

“it is essential funding is on a par with England and Wales if an effective ... approach to terrorism is to be achieved.”

Obviously, we take the threat of terrorism very seriously. We must ensure that we understand that any apparent imbalance between funding in Scotland and funding in England and Wales results from current expenditure on Metropolitan policing. If it and London are taken out of the equation, the funding for Scotland is broadly comparable to the funding for England and Wales.

We understand that the Home Office is likely to announce substantial additional resources for counter-terrorism in the coming months, and the likelihood is that much of that will be spent around London. There will be an impact on policing in Scotland, which is why ACPOS is working up in close consultation with us a set of proposals to ensure that we take the right measures. Depending on the situation, I might need to go back to other ministers; however, it is important that we get that quantified before we put any figure on it.

**Jeremy Purvis:** I appreciate that. In the case of the London bombings, the heightened policing activity went well beyond London and into the north of England. It could well be required in Scotland. What are the mechanisms for discussing the requirement for policing activity that is considerably outwith normal policing? What is the formal mechanism for determining the potential cost implications of any new legislative proposals that are made, either here or at Westminster, that would have an impact on policing?

**Cathy Jamieson:** A specific member of ACPOS has responsibility for dealing with that area and will meet regularly and be involved in discussions with the Association of Chief Police Officers and others south of the border. It is important that we get a fix on what the requirements will be. Some of it is about front-line policing and some of it is about the measures that the police require to take. It is also worth recognising that, over the past budgetary period, we have given local authorities and others additional resources to try to ensure that they are ready to respond to any situations that may arise through civil contingencies measures.

I am not trying to avoid putting a final figure on the costs, but I think that it is important that we have those discussions among Executive officials, senior police officers, the Home Office and others south of the border.

**Jeremy Purvis:** If the sub-committee on civil contingencies determines that there is a greater requirement, is your department the lead department in considering that and distributing funds or is that a responsibility across all departments in the Executive?

**Cathy Jamieson:** I am responsible for chairing a sub-committee in the Justice Department that deals with civil contingencies. We have made some provision already but, depending on what happens elsewhere and what the assessed need is, I might require to go back to other ministers and see what else we could do in the circumstances.

**Maureen Macmillan:** I draw your attention to the list of priorities on pages 15 and 16 of the draft budget. There are 14 priorities, some of which are costed. For example, one is to

“make available £5/6m to ... the sheriff courts”;

others just say things such as

“roll forward and continue investment”

or “invest resources”. Why do some of the priorities not have figures attached to them when others do?

**Cathy Jamieson:** When the figures are broken down further, to level 4, it will be easier to see the figures that relate to some of those priorities. At this stage, we are taking a broad-brush approach, and some of the priorities are simply to be continued. We have broken the spending down more substantially in the level 4 figures.

**Maureen Macmillan:** I confess that I have not read the budget in detail from cover to cover. That answers my question.

Is there any ranking of priorities? If so, how is that decided? Are there discussions involving the minister, the SPS, the police and the Crown Office?

**Cathy Jamieson:** We tried to avoid ranking them. In the document, there was simply an opportunity to get them listed.

**Maureen Macmillan:** So they are not in any order and they will all be brought forward together, marching shoulder to shoulder.

**Cathy Jamieson:** They are all things that we would expect to do.

**Stewart Stevenson:** What discussions have you had across your areas of responsibility to ensure that each area is contributing to achieving the others' targets and that the targets are consistent and deliverable?

**Cathy Jamieson:** The cross-cutting approach is important. I am aware of the committees' interest in ensuring the sensible deployment of all the resources that are potentially available to deal with crime and antisocial behaviour not only by the Justice Department but across the Executive. We have tried with the criminal justice plan, for example, to translate the broad-brush approach into a vision of how we take matters forward in the future, and all the different work streams are now part of that. You have heard how the changes that

we are making in summary justice will impact on the running of the courts, on policing—if the police do not require to come to court because matters can be dealt with outwith the court system—and on the management of offenders.

We have tried to join up the different areas so that the targets make logical sense across the piece. However, I also expect each area to take responsibility for ensuring that it can meet its part of the efficiency savings. As I said, the figures have not been plucked out of the air; they came about through discussion and from examining areas in which we should be able to free up time and resources.

**Stewart Stevenson:** When we questioned the previous panel, from the Scottish Legal Aid Board, I asked about accountability and responsibility, but I was not clear about where the political responsibility lies. Does it lie with you?

**Cathy Jamieson:** Obviously, I have political responsibility for everything that is under the auspices of the Justice Department. However, the chair of SLAB has a particular responsibility to ensure that work is done within the board and the chief executive is responsible for making that happen on a daily basis. To be fair, we have asked SLAB to undertake a difficult job and other reforms are required. As I indicated, the reforms that will come in during the next phase will not be the end of the story in legal aid, because there is further work to do.

**Stewart Stevenson:** I accept all that, but I have a very simple question. If they fail utterly, are you the Cabinet minister who resigns?

**Cathy Jamieson:** We must place responsibility where it lies. SLAB is a non-departmental public body and we have put a chair and a board in there to manage the process. I expect them to be accountable and I would certainly hold them to account in the same way as Parliament would hold me to account.

**Stewart Stevenson:** So the line is through you. I utterly accept that the operational responsibility is the board's and not yours.

**Carolyn Leckie:** Giving evidence at last week's meeting, the police suggested that, due to changes in reporting methods, recorded incidents of violent crime are likely to increase, which would mean that the police clear-up rate for such crimes is unlikely to improve. What is your view of that? Do you agree that the clear-up rate is unlikely to improve?

**Cathy Jamieson:** A considerable time in advance of the new figures that came out as a result of the change in the way that crime is recorded, we said that we were likely to see an increase in the number of incidents that appear on

those records. We have a significant piece of work under way that looks at violent crime, which I am determined we should tackle. Again, I am aware that there were perhaps issues in different parts of the policing organisations about the degree to which they had been consulted. I found that a wee bit surprising, considering that the violence reduction unit in Strathclyde is doing a power of work and that we are considering how we can benefit from that across Scotland. The work that is being done is vital in informing how we set future targets.

People will be aware that our target 1 talks about working with police forces to set a target for a reduction in violent crime. From my previous appearances, the committees will be familiar with the targets on youth justice and on reducing reoffending. Those targets were difficult, because in some instances we did not have proper baseline data. Therefore, we were determined not to set some arbitrary target for a reduction in violent crime. We wanted to ensure that we had a reliable recording system, and we discussed with ACPOS and the police forces how they would seek to reduce violent crime in their areas.

I am sorry if that was a lengthy explanation, but it is important to have it on the record given some of the misunderstandings that have arisen.

15:15

**Carolyn Leckie:** Is a system in place to compare the new and old systems of recording crime, so that success rates and clear-up rates can be compared? I can understand why the percentage of clear-up might not improve, but if more crimes are being recorded, I would expect the number of crimes being cleared up to increase. Are you comfortable with the clear-up rate not increasing, either numerically or as a percentage?

**Cathy Jamieson:** I am sure that the member will be delighted to know that she has just posed the same question as the First Minister posed when I gave him the figures for this year. Unfortunately, when there is a change in the method of recording, it is not always easy to compare different years, which is why it is important to have a baseline.

In forces across Scotland, the clear-up rates for crime generally are different. Each of the chief constables will have to address that in their area.

I would be concerned if more and more crimes were being recorded but we did not see any benefit to the victims of those crimes through increased clear-up. I will continue to talk to the police about that.

**Margaret Mitchell (Central Scotland) (Con):** Target 5 seeks

"A 2% reduction in reconviction rates in all types of sentence by March 2008."

What contribution could the Scottish Prison Service's rehabilitation programme—or any other interventions with prisoners—make towards that target? You have already touched on that but perhaps you could expand on it a little.

**Cathy Jamieson:** Similar questions have been asked on that issue before. The target of reducing reconviction rates by 2 per cent was set so that we had a focus on reducing reoffending. It was an initial target. The idea was, and still is, that when the new national advisory system is in place—as a result of the Management of Offenders etc (Scotland) Bill—we should consider the target in more detail. A joined-up approach is important. The Scottish Prison Service now has more accredited programmes in place, involving prisons and communities. The bill outlines a joined-up approach.

I may be making a rod to beat my own back, but I remind people that the 2 per cent target was an initial target. We have never had such a target before and we do not really know how quickly we can achieve it. We will consider whether it is the right target or whether we should be a bit more ambitious.

**Margaret Mitchell:** Do you have specific views on rehabilitation programmes or interventions? For example, do you favour mandatory testing for numeracy and literacy? Poor numeracy and literacy skills seem to be a huge problem in the prison population.

**Cathy Jamieson:** When we consider the population of young offenders in particular—in Polmont or Cornton Vale, for example—we can almost predict the numbers who have literacy and numeracy problems. I would expect that the Scottish Prison Service is dealing with that. There has been investment in link centres and there has been a change in approach in the prison service, getting us away from the old workshop model to a much more outward-looking model that is based on education and training. Efforts are being made to give some of those people the skills that they will need when they go back into the community to get into employment, and we can do more to join that up and to ensure that they have housing and family support. We know, from research, that those are the sort of factors that ensure that people are less likely to reoffend.

**Margaret Mitchell:** Would you favour mandatory testing?

**Cathy Jamieson:** I am not sure what you mean by that. I would expect that, as part of the assessment of everyone who goes into the prison system, there would be an assessment of what help and support they required. One of the



difficulties is that the ability of the prison system to carry out those assessments and put in place effective programmes is lessened for people who are given short sentences, as those programmes stop when they go out of the door. Again, the investment that we are making should make a difference in that regard.

There is probably little point in assessing a need if one is not then able to put in place an appropriate rehabilitation programme. I would not like us to be in a situation in which we simply process people and assess them but then have no programmes in place to deal with them.

**Margaret Mitchell:** With respect, I think that that rather contradicts what you said earlier, when you said that identifying a problem at least gave you a starting point from which you could do something, even in the short term.

**Cathy Jamieson:** Yes, but I would expect something to happen once that problem had been identified. My concern about your use of the term "mandatory testing" was to do with the suggestion that there would be a test that might not lead logically to a programme. If it does not lead logically to a programme, it is not helpful.

**Margaret Mitchell:** I think that it is always helpful to identify a problem, but we will move on.

When Tony Cameron gave evidence to the committees, he indicated that there was no direct read-across between the Scottish Prison Service's key performance indicators and the reconviction target. Would you like those key performance indicators to be altered in some way to reflect that?

**Cathy Jamieson:** I am not entirely certain that there is no read-across. The SPS has a number of performance indicators that it is required to achieve and I would expect the SPS to play a major role in reducing reoffending.

**Margaret Mitchell:** Given that Tony Cameron did not think that there was a direct read-across, what would you suggest should be changed in the key performance indicators to ensure that there is?

**Cathy Jamieson:** A number of the performance indicators relate to the running of the prisons and to good order within prisons. To come back to one of Jackie Baillie's favourite points, the issue is about not only the number of hours that prisoners spend in learning programmes but the quality of those programmes and the need to ensure that they are the right programmes for making changes that will help someone when they go back into the community. That is why I am surprised that it has been suggested that the issue has nothing to do with reducing reoffending.

**Margaret Mitchell:** Should that be made clearer to the head of the SPS?

**Cathy Jamieson:** I will be happy to take the matter up with him.

**Margaret Mitchell:** That would be helpful.

**The Convener:** I invite Jackie Baillie to pursue more of her favourite lines of questioning.

**Jackie Baillie:** I will move on, minister, as I know that you will take up the matter with Tony Cameron.

I want to turn to the Napier case. To ensure that we are working with the same figures, I note that the SPS's 2003-04 accounts included a provision of £26 million to reflect its possible liabilities and that, at the same time, it had a contingent liability of £136 million in respect of other cases that might arise in connection with the European convention on human rights. Further, the SPS's 2004-05 accounts show that the provision increased by £18 million to £44 million and that the contingent liability reduced to £24 million.

**Cathy Jamieson:** That is correct.

**Jackie Baillie:** Okay, we are in the same territory.

Are you content that the SPS has considered all the relevant factors in revising the budgetary provision? Does that represent the worst-case scenario?

**Cathy Jamieson:** Obviously, I would expect the SPS to revise the figure constantly in light of the judgments that have been made and the estimates of the number of people who are or have been in similar situations and of the number of claims that are outstanding. I hope that we do not find that the estimate has to be revised upwards. I expect the SPS to keep an eye on the figure and to revise it if necessary, because it is important that it makes the correct provision.

**Jackie Baillie:** I understand that no cases have yet been settled using the alternative dispute resolution scheme. Does that give cause for concern in relation to the modelling of the figures?

**Cathy Jamieson:** No. There is an on-going process that is much more likely to lead to sensible outcomes than simply letting things go through other processes would be.

**Jackie Baillie:** I will turn to my other favourite topic, which is the Reliance prisoner escort contract. When we tried to question the chief executive of the SPS, I was slightly concerned to note that there was some confusion about whether the contract represented a cash saving that had already come out of the budget or whether the saving was still to come. I am clear that a cash saving of £20 million was to be realised as a result of the Reliance prisoner escort contract. I am concerned to note that instead of being £1.5 million, the monthly payments were £1.7 million.

The question is: if that saving has already been made, where does the overspend come from?

**Cathy Jamieson:** The expenditure is based on the volume of escorting. Whatever estimates were made initially as the contract rolled out, further escorts were made. I noted from the *Official Report* of that meeting that the committees were interested in the matter. There is more to explore there and we can take the matter up with the Scottish Prison Service.

**The Convener:** The committees seek clarity. Most of us, apart from Stewart Stevenson who has a relevant background, do not deal with budgets day in, day out. It is helpful when making a report to get some straight answers. We are not criticising the Reliance contract per se, although we might have criticisms of it. There was an overspend at the beginning and, whatever our understanding of budgets, we know that it must have come from somewhere. We are trying to establish where, and it has been difficult to get a straight answer about that.

**Stewart Stevenson:** I asked the Scottish Legal Aid Board whether the Napier case and others had an implication for its budget and the answer was that the implication was nil. I accept that I might have misled SLAB, which thought I was talking only about Napier, whereas I meant all the cases that might follow. Where will the financial burden associated with the legal process rest? Will it be with SPS?

**Cathy Jamieson:** If you want to extrapolate, the financial burden is ultimately for the Scottish Executive because it is public funding. Perhaps Robert Gordon has further information.

**Robert Gordon (Scottish Executive Justice Department):** The matter turns on the extent to which the alternative dispute resolution machinery about which Jackie Baillie spoke is effective. Our team involves various interests from the SPS, legal advisers and others and keeps an eye on the system solutions—the sort of things that Stewart Stevenson asked about in an earlier question—to ensure that we are considering the consequences of developments across the system.

**Stewart Stevenson:** Of the current £44 million in the budget, what proportion is attributable to the legal process rather than to the compensation that might or might not be paid?

**Cathy Jamieson:** I do not have that in my head, but I understand that, subject to the usual SLAB tests, legal aid provision is available to prisoners and ex-prisoners who have a slopping out-related claim, so they can still go through that process. However, the alternative dispute resolution scheme was designed to reach a position where we could resolve some of those claims with the minimum expenditure to the public purse.

**Stewart Stevenson:** Perhaps you and your advisers will look at the *Official Report* to see what SLAB and you have said. I am still left with some ambiguity and it would be helpful to resolve that.

**Cathy Jamieson:** We will look at that. I understand that SLAB has been kept up to date on the progress of the ADR scheme but that further issues might require to be bottomed out. We will certainly do that.

**Mrs Mulligan:** I apologise for not being here for most of the session, but I look forward to reading the *Official Report* and to picking up on the details of the questions.

My questions are on efficient government. I understand that you have already dealt with that issue in respect of the police and the SPS, so my question will be a bit more targeted. What discussions on the specifics of the planned efficiency savings have you had with the Crown Office and fire service?

15:30

**Cathy Jamieson:** The Crown Office does not come within my portfolio, so I would hesitate to answer on behalf of those who have that responsibility.

On the fire service, you should be aware that there are still some issues and difficulties with control rooms. We are currently considering some further work on the issue so that we can try to get the best possible resolution to the situation. That is one of the main issues that has still to be dealt with for the fire service.

**Mrs Mulligan:** When do you expect to be nearer to a decision on that?

**Cathy Jamieson:** Without rehearsing all the arguments, I think that the bigger picture is that we are in one of those situations in which several reports have suggested a way forward that would allow efficiency savings to be ploughed back into other priorities but geographical considerations must also be taken into account. As yet, those who are most likely to be affected have not reached agreement on the best way forward. The Deputy Minister for Justice, Hugh Henry, has been involved in the on-going discussions. No doubt we will need to consider the matter afresh with the Convention of Scottish Local Authorities and others.

**Mrs Mulligan:** Convener, it would be useful if we could get a written response on the Crown Office's planned efficiency savings.

My follow-up question relates to all the different agencies. How do you intend to monitor the efficiency targets that are set for the police, the fire service and the SPS? Will you report back to the

committees and the Parliament on what efficiency savings have been achieved?

15:33

*Meeting continued in private until 15:47.*

**Cathy Jamieson:** The normal mechanisms that we have for engaging with the police, the fire service and the other agencies enable us to consider such impacts regularly. Given that, as a minister, I will be asked to account for such matters to the Minister for Finance and Public Service Reform at various stages, I see no reason why we cannot provide such information to the committees and the Parliament at the appropriate intervals.

**The Convener:** That ends our lines of questioning.

We have one paper coming from the Crown Office. If members have other questions for the Crown Office, they will need to specify what additional information they would like to obtain.

I thank the Minister for Justice and Robert Gordon for attending today's meeting. I also thank Ruth Ritchie for preparing the reconciliation paper, which has been very helpful.

We will now move briefly into private session so that members can discuss what they have heard, which will help with the preparation of our report.



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