



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 25 October 2011

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JUSTICE COMMITTEE

11th Meeting 2011, Session 4

CONVENER

*Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

DEPUTY CONVENER

*James Kelly (Rutherglen) (Lab)

COMMITTEE MEMBERS

*Roderick Campbell (North East Fife) (SNP)

*John Finnie (Highlands and Islands) (SNP)

*Colin Keir (Edinburgh Western) (SNP)

*John Lamont (Ettrick, Roxburgh and Berwickshire) (Con)

*Alison McInnes (North East Scotland) (LD)

*Graeme Pearson (South Scotland) (Lab)

*Humza Yousaf (Glasgow) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Oliver Adair (Law Society of Scotland)

Keith Dryburgh (Citizens Advice Scotland)

John Ewing (Scottish Prison Service)

Phil Fairlie (Prison Officers Association Scotland)

Tom Halpin (Sacro)

Graham Harding (Law Society of Scotland)

Richard Keen QC (Faculty of Advocates)

Brigadier Hugh Monro (Her Majesty's Chief Inspector of Prisons)

Lindsay Montgomery (Scottish Legal Aid Board)

Professor Alan Paterson (Citizens Advice Scotland)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

Committee Room 2

Scottish Parliament

Justice Committee

Tuesday 25 October 2011

[The Convener *opened the meeting at 10:00*]

Decision on Taking Business in Private

The Convener (Christine Grahame): Good morning. I welcome everyone to the 11th meeting of the Justice Committee in session 4. I apologise for my voice—never sing at a karaoke and expect to come out alive. I ask everyone to switch off their mobile phones and electronic devices, because they interfere with the broadcasting system even when they are switched to silent. We have received no apologies for absence.

Item 1 is a decision on whether to take in private item 4, on our work programme. Does the committee agree to take the item in private?

Members *indicated agreement.*

Draft Budget 2012-13 and Spending Review 2011

10:00

The Convener: Item 2 is the first of the committee's two evidence sessions as part of our scrutiny of the Scottish Government's draft budget and spending review. I welcome our first panel: John Ewing is chief executive and Willie Pretswell is director of finance and business services at the Scottish Prison Service; Brigadier Hugh Monro is Her Majesty's chief inspector of prisons in Scotland; Phil Fairlie is chair of the Prison Officers Association Scotland; and Tom Halpin is chief executive of Sacro. Thank you all for attending.

John Finnie (Highlands and Islands) (SNP): Mr Fairlie, thank you for your submission. You mentioned "ex-gratia payments" to staff in the context of the requirement to work long hours. Is the approach risk assessed? Are you content with the long hours, in respect of the security of not only your members but prisoners?

Phil Fairlie (Prison Officers Association Scotland): The approach is risk assessed in the sense that there is a limit to the amount that a member of staff is allowed to work in a calendar month. No more than a 40-hour working week can be worked by any individual, so to some extent the approach is controlled.

The ex-gratia payments system has helped us to get over short-term shortages in certain prisons and is a handy way of dealing with shortfalls or sudden increases. Longer term, it would not be the strategy that the Prison Officers Association is looking for to resolve issues—I do not think that such a plan is part of the Scottish Prison Service's thinking, either.

John Finnie: In relation to the development of the prison estate, what do you and your members think would give more flexibility? Is it the retention of the existing terms and conditions, or is it increased officer numbers? It is not an either/or—

Phil Fairlie: If it has to be an either/or—

John Finnie: No, no.

Phil Fairlie: The terms and conditions issue is separate. The improvement that has been made to the estate has made a significant difference to prison officers' ability to do what prison officers want to do. The difficulty is the increase in prisoner numbers. We can modernise the estate as much as we want, but if we keep putting away the numbers that we are putting away, that gets in the way of prison officers' ability to deliver the services that we need to deliver.

The Convener: I ask panellists to indicate to me if they want to come in on any question. If you simply want to agree with a point that has been made, please just do so. We do not need a full statement.

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): The number of people in prison is about 8,000 and during the next 10 years it is likely to rise to 9,500. How many new prisons will need to be built to accommodate the extra capacity?

John Ewing (Scottish Prison Service): There has been a significant increase in the total prison population. The committee might be interested to know that we hit a record high last night, when we locked up 8,242 prisoners.

As you said, the projections run to 9,500 by the end of the decade. Ministers have made it clear that they do not regard that as an acceptable level and that they want to consider what alternatives can be put in place to reduce the number of offenders in Scotland's prisons and ensure that we focus on imprisoning the people who need to be kept in prison to protect the public.

There are other opportunities, such as community sentences, which could deal more effectively with a number of the offenders whom we currently lock up. Any response to the total projections must strike a balance between investing in the prison estate and finding alternatives to custody that mean that we avoid the need to build new prisons.

We are adopting a strategy of trying to create additional space in the existing estate. Our plans to modernise the estate will create some space to enable us to meet demands as they arise.

One option that we have as we develop our plans for replacement prisons is to keep some of the existing prisons available to be used if prisoner numbers grow to the level that is projected. Ministers would have that option available to them in the future.

The Convener: I take it that you are saying that you do not want us to build more prisons, but that we will have to replace the existing ones. You do not see building more prisons as the way forward.

John Ewing: There are alternatives. We do not see building new prisons as the way forward. We take the view that we should see a reduction in the total number of offenders in Scotland's prisons but we recognise that the growth in numbers may continue, so we must have options available to us.

The most obvious question is what we do about Barlinnie. There are issues there and you will be aware from the budget document that ministers agree that the SPS should begin to plan now for the replacement of Barlinnie. That is a major

project. The chances are that, by the time that we complete that project, ministers will be in a position to decide whether to demolish the existing prison or retain it for other use in the future. Other options are built into the programme.

The Convener: Is it an awful lot more costly to have alternatives to custody, when there must be some kind of monitoring of prisoners? Do we have an idea of per head costs for alternatives to custody? We get such figures for prisoners.

John Ewing: The general calculation is that alternatives to custody, such as the work that is done by a number of third sector organisations, are cheaper to operate than keeping somebody locked up in prison for an equivalent length of time. Tom Halpin might have views on the figures.

The Convener: Mr Halpin, the figure that we are given for the cost per prisoner place in 2011-12 is an average of £36,200. What is the cost per head for alternatives to custody?

Tom Halpin (Sacro): No figure is available that neatly compares the cost of an alternative to custody with the cost of someone being in custody, but a number of indicators support the view that it is much cheaper to deal with the offender effectively in the community.

One example is a project that my organisation runs mentoring women offenders in the community, where we build capacity with volunteers supported by co-ordinators. One year, for a budget of £33,000, the project worked with 42 women. The cost is comparable to that for one woman being in prison for a year. That is anecdotal evidence of the comparison.

Alison McInnes (North East Scotland) (LD): I would like further clarity from Mr Ewing on his statement about replacement prisons. Are you saying that, when you build HMP Grampian, you will not close down Craiginchies in Aberdeen but mothball it?

John Ewing: No. We will close Craiginchies in Aberdeen and Peterhead prison, because neither of those prisons is now fit for purpose. The plan is to concentrate the resources on HMP Grampian.

The Convener: As a follow-up question, which I should perhaps have asked already, who should we not be locking up? It would cost less to have them outwith custody and we might not have to build so many replacement prisons.

John Ewing: There is a range of views about who is best dealt with in the prison system. It usually comes down to the argument about whether prison works. I believe that prison works for certain categories of offenders far more effectively than it does for others.

Prison is the best place to keep people who represent a real risk to the community; it is the place where serious and violent offenders should go. For those serving longer sentences, prisons are the place where we can develop, in partnership with our third sector and local authority colleagues, interventions that can address some of their offending behaviour, but we need to have the prisoner at our disposal for a reasonable period of time.

For the short-term prisoner who is a persistent offender and is in and out of prison, I believe that better alternatives are available in the community to address their offending behaviour and recompense the community for the nuisance value of their behaviour.

The Convener: For the record and for those who do not know what you mean by a short-term prisoner who is in and out of prison, could you define such a prisoner?

John Ewing: It is a crude estimate, but anybody who is given a sentence of about a year or less, which means that they would serve six months in prison, is probably in that category.

Humza Yousaf (Glasgow) (SNP): You have helpfully stolen all my questions, convener.

The Convener: That is a minor revenge for your supplementaries at the previous meeting.

Humza Yousaf: Following on from the convener's earlier question, I was pleased—like, I think, most members—with the focus on preventative spend in the budget. Having said that, I think that even the Government recognises that it is an extremely challenging budget. Mr Halpin, how do you envisage the role of Sacro in the future? You must have been pleased with the preventative spend element but worried at the tightness of the budget.

Tom Halpin: As well as being the chief executive of Sacro, I chair the criminal justice voluntary sector forum, which represents a number of third sector criminal justice organisations. We welcome the shift to preventative spend, in particular the opportunity that the growth fund offers us. The important point is to ensure that the spend is targeted at the activities that we know work in community sentences and engaging with offenders in the wider community.

Humza Yousaf: That is helpful. I want to follow on from a point that Mr Ewing made. This may not be the place for you to say, but should there be a presumption against one-year sentences?

John Ewing: I suggest that consideration should be given to the current limit on the presumption against short sentences.

Humza Yousaf: You think that it should be extended.

John Ewing: We support that principle on the basis of addressing the offending behaviour of the categories of offenders who are subject to those sentences. We think that there are better solutions than putting them into prison.

Humza Yousaf: Does anyone else on the panel have a view on that?

Tom Halpin: I support that view. In fact, we question the value of sentences of less than two years, but we are pragmatic and realistic about public reassurance on the alternatives to those sentences. If the alternatives are not credible, they are not appropriate. We still strongly hold to the initial intention and to the figure of six months being achievable.

Brigadier Hugh Monro (Her Majesty's Chief Inspector of Prisons): I entirely agree and endorse the idea that prevention must be better than cure. At the moment, there is just not enough access to purposeful activity in prison. We are having a particularly bad moment in Barlinnie. We will publish my Barlinnie report next month, and it shows disturbing figures about the lack of access to activity for short-term prisoners. At any one time, some 70 per cent of prisoners are not getting access to purposeful activity. That cannot be right.

We have to look at better ways of dealing with offenders and ensuring that they are dealt with in a much more constructive way before the issue gets out of hand. The current situation as far as I see it—I am talking about what is going on at the moment—is that we must be looking at prevention and that there is not good access to purposeful activity.

James Kelly (Rutherglen) (Lab): I want to follow up on that specific point with Mr Ewing. It obviously makes sense, and I think that there is broad agreement, that there should be proper rehabilitation programmes in the Prison Service to introduce an element of stability into a prisoner's life in the run-up to release and post release, so that there is more stability in their lives, they do not recommit offences, and there is better safety and security in the community. What particular programmes or work streams do you have to provide rehabilitation and support prisoners in the run-up to release and post release, in order to limit reoffending?

John Ewing: We work closely with a number of partners in the prisons. All the prisons have what we call links centres, which are spots to which our different community partners can come to engage with the prisoners and help prepare the way for release. I happened to be in Glenochil yesterday, and I was talking to the Jobcentre Plus manager there, who provides a service to prisoners on a

regular basis to enable them to sort out their benefits issues and, increasingly, is looking to how prisoners can access employability programmes once they are released.

Similarly, the local authorities and housing sector partners have housing officers in the prison on a regular basis. They deal with prisoners when they first arrive in the prison to explore whether there are any issues with their existing tenancies and to see whether they can be continued so that the prisoner has somewhere to go to when they are released. For prisoners who are in for a longer period of time, they see how they can be housed in the community when they are released.

We work with a number of different groups that seek places for prisoners back in the community. The things that we know work in addressing reoffending are finding somebody a home, finding them a job and getting them into a stable relationship. If you can do any of those things, it certainly helps reduce their risk of reoffending.

10:15

The Convener: I want to stop you there, because this could turn into an inquiry into how we stop people reoffending. I want to talk money; I must remind the committee that we are talking about money here. I realise that the stuff that you are talking about is important, but can you do it with the budget? Is there a budget for it? If you have all these extra prisoners, you have to pay for the staff. Is there money for that? If not, we are just talking about motherhood and apple pie.

John Ewing: There is money to run rehabilitation programmes in prison. The increase in the budget that has been provided for will enable us to do better, but we have to make sure that we get the best value from that money. The problem is that the overcrowding that we are experiencing means that it is difficult to deliver those services, which goes back to Brigadier Monro's point. We could provide more opportunities for shorter-term prisoners if we had fewer of them. The constraint is not the budget but the number of prisoners that we are trying to deal with at the moment.

Graeme Pearson (South Scotland) (Lab): There would be horror among many communities at the prospect that someone who displayed chaotic behaviour would not be put in prison unless it was for a two-year sentence or more. There are other issues involved. Investing in initiatives that work, particularly in dealing with reoffending, is really the nub of what we are talking about. Brigadier, from your experience in inspecting prisons and seeing the work that is ongoing, what do we need to invest in and is there

money available in the budget to do that kind of work?

Brigadier Monro: I cannot comment on the money; the one thing that I do not inspect is the money. I certainly endorse what the chief executive said: there is a disparity between the numbers and the available places. Every prisoner should have an opportunity to work or improve themselves—to be educated and to understand and address their underlying behaviour, which will probably involve drugs or alcohol. The issue that concerns me is in many ways—although not entirely—related to overcrowding. I would like to see much more determination to deal with prisoners' underlying issues and to ensure that when they leave prison they are in a better state than when they arrived. We must have better through-prison care and we must make sure that we have understood precisely what the prisoner needs and that they have proper access to education, vocational training and work. Otherwise, by the time they get to the links centre it is too late; if they have not been dealt with they will still have a problem, so when they walk out the door they will still get drunk or have a drugs problem and they will not be better qualified or prepared for work or life in the community. At the moment, that issue is very much related to overcrowding, but the point is that we have to make sure that we are investing in trying to improve people when they are in prison.

John Ewing: I want to correct a misperception. We are not arguing that you should do nothing with people with chaotic lifestyles that cause them to offend in their community—far from it. What we are suggesting is that there are better alternatives for dealing with some of those individuals. When somebody comes into prison, we can do a certain amount to stabilise them and help them start to address their drug and alcohol problems, or whatever has been the cause of their offending behaviour. However, to be effective that needs to be carried through into the community. There are services that can be offered in the community rather than delivered in the prison context. It is not about saying, "There is nothing to be done with those offenders". They need to be dealt with, but the issue is whether prison is a more cost-effective way of doing that than alternatives in the community.

Brigadier Monro: When I ask a prison governor how well they are doing, they do not know, precisely because, as Mr Ewing said, no one knows whether the programme that the prisoner has been following works in the community—that information is not fed back to the prison. Integration and co-ordination of effort need to be better.

Tom Halpin: I agree with what has been said, so I will not go back over it. With regard to the committee's purpose of examining the budget, it is absolutely clear that sufficient funding is not available for throughcare services in the community, particularly for those who are released from sentences of less than four years and who are in what we term voluntary throughcare.

Audit Scotland's report noted the inconsistency of such services. Local authorities fund the service—which is run by Sacro—in some areas, but neighbouring local authorities might not put any money into it. I understand that choices must be made, but that leads to postcode provision of services for people who leave the prison establishment.

Roderick Campbell (North East Fife) (SNP): Are there any time bombs—such as slopping out—ticking away in the system that would be affected by the budget proposals for the next few years?

John Ewing: We will address the issue of slopping out through the construction of the new HMP Grampian, and the sanitation facilities that we have in place at HMP Peterhead have proven to be acceptable to the courts, so I am not conscious of any time bombs of that nature.

It is always possible that someone could bring a challenge under the European convention on human rights that might throw up an issue, but at present we are covered for all the cases in the system of which we are aware.

Brigadier Monro: I remain very much concerned about the time bomb that is Cornton Vale. Great efforts have been made since I published my follow-up report to deal with issues in the short term, but I am concerned about how female prisoners are treated and the conditions in which they are kept.

The issue for me is prioritisation in terms of where Cornton Vale comes on the list. I know that HM Inspectorate of Prisons has been concerned about the female prison and the position of female prisoners for some years; I am not the first chief inspector to worry about that.

Cornton Vale never seems to get to the top of the Scottish Prison Service list, for perfectly good reasons, but in my view it should be there. It is good news that Dame Elish Angiolini is chairing a commission on female offenders, which I hope will come up with a much better answer on how we deal with female offenders outside prison and in the community.

That does not solve the problem now, however, and I prefer female offenders to be given much higher priority. What is going on at Cornton Vale is just not good enough.

Alison McInnes: As my committee colleagues will know, I share Brigadier Monro's real concern and anxiety about the conditions at Cornton Vale.

I was disturbed to hear John Ewing say that Barlinnie is the obvious priority. We have been saying for years that the plight of women prisoners seems to be forgotten and is never viewed as the most pressing problem. When will that change? How many more reports need to be produced?

John Ewing: It has changed. I disagree with the brigadier on the priority that the board attaches to the issues at Cornton Vale, as we have taken significant action to address the situation. We have converted Ratho hall at HMP Edinburgh so that it can house women offenders, and we have transferred more than 100 prisoners there. That was done deliberately to reduce some of the pressure on Cornton Vale to enable us to improve the level of services for the women there.

One difficulty for Cornton Vale has been the rapid increase in the number of women offenders, which has been far higher than the percentage increase in the number of male offenders in the past few years. The challenges include the extent to which the female prison population differs from the male prison population, and the possible alternatives to sending women to prison. We await with interest the conclusions of Dame Elish Angiolini's commission on those issues.

Members should not misunderstand my reference to planning for Barlinnie as an admission that it has suddenly become our priority, as it has not. Our programme commits us to deliver HMP Grampian, and we are well down the road on that: as we announced yesterday, we have identified the preferred bidder for the project. We have a site and planning permission for HMP Inverclyde, which is needed to address the particular problems and pressures in the west of Scotland. However, we are committed to further investment in the female estate.

As we say in our submission on the budget, ministers will want to develop further the plans for Cornton Vale redevelopment. One challenge for us is to start a discussion with our various community partners about what exactly that means and how we should take it forward during the spending review period.

Alison McInnes: To my mind, that pushes it very far away again. You say that you have made progress, but it is clear that the progress that has been made has been piecemeal and that it has involved the easy things that you can fix. The major underlying structural problems with Cornton Vale have never been addressed and have been pushed to the side because of cost, although there is still investment in other prisons around the estate.

I have another supplementary—

The Convener: I would like to know the cost of remedying the issues that were raised in the chief inspector's report and his follow-up report. What would be the cost of remedying those issues just now without a new build for women or some alternative system for the very damaged women who are in the prison?

John Ewing: The brigadier has identified a number of specific interventions at Cornton Vale. As a rough calculation, we estimated that it would cost in the order of £10 million to £12 million to address some of those issues.

The challenge that we face is whether that would resolve the problem. It would deal with some of the specific interventions that the brigadier has identified, such as having the equivalent of a male segregation unit that is designed for women, but it would not address the fundamental problems about Cornton Vale's design and its capacity to deal with the particular prisoner group.

Cornton Vale was designed for a different group of prisoners. The female prison population has changed over time and Cornton Vale needs a radical overhaul.

The Convener: I understand that. You have identified one thing that could be remedied. Can you give examples of some of the other issues that could be addressed for the time being—before we are in a situation whereby we would perhaps hope to keep in different circumstances women who are very damaged, need help and are victims themselves—for a cost of £10 million to £12 million? The committee appreciates that many of the women are themselves victims. You have named one thing. What other things would that £10 million to £12 million do for Cornton Vale?

John Ewing: It would allow us to improve the conditions in some of the housing blocks for female prisoners and potentially expand some of the facilities that are available for delivering services to women.

We would also like to see progress on the health centre's capacity to handle the number of prisoners in Cornton Vale. That is where there is a trade-off. The brigadier expressed concern in his report, written at a time when Cornton Vale was running with more than 400 female prisoners, about the strain that that put on the existing facilities. By reducing the total number of prisoners, we are seeking to be able to use the existing facilities better so that those pressures are no longer there.

The Convener: Do you want to continue on this matter, Alison?

Alison McInnes: No, that is fine.

The Convener: We might return to the issue another time, but we will not press it any further now.

John Finnie: My question to the panel is about the imminent transfer of responsibility for prisoners' healthcare to the national health service. Clearly, everything is about more collaborative working across the public sector. Mr Ewing mentioned full-year costs of about £20 million. Are there wider implications? What budgetary implications, if any, are there for the Scottish Prison Service in connection with that transfer of responsibility?

John Ewing: The budgetary implications are that the Scottish Prison Service budget has been reduced, because the costs are now being met by the NHS and NHS boards have been funded to take on the responsibility from 1 November and to continue with it in future years.

There will be a requirement for the SPS to continue to work closely with health service colleagues in the delivery of services in its prisons. We will be engaged in that as part and parcel of the normal day-to-day running of prisons. There are opportunities for better integrated throughcare in the services that are being offered in the community and in the prison. We seek better integration of such services in the future.

John Finnie: Does that imply any sort of internal charging regime between the Scottish police service and the NHS?

John Ewing: The Scottish police service?

John Finnie: Sorry, the Scottish Prison Service. I beg your pardon.

John Ewing: No. There are no plans for any internal charging mechanism. We might jointly operate a couple of minor technical contracts, which might involve small amounts of recharging. One example of such a contract is for the collection of clinical waste. However, there are no recharging arrangements within the transfer. The responsibility becomes one for the NHS and it has responsibility for funding prisoner healthcare in the future.

10:30

John Finnie: Does that have implications for your staff, Mr Fairlie?

Phil Fairlie: Not that we are aware of. The staff who work within the prison service transfer to NHS employment, so we are likely to have very much the same staff group that is currently in SPS employment. The skills, experience and knowledge that are required when healthcare is being delivered in the prison environment will still be there. I do not anticipate issues developing, but

time will tell, given that people will have a different employer.

Graeme Pearson: Perhaps Mr Ewing or Mr Fairlie can enlighten me on this. Sex offenders are a particular challenge to the Prison Service and no doubt there are costs involved in their management. Is there a change in the profile of prisoners in the system and, if so, does that bring challenges in the coming budgetary period, given the kind of work that you need to do with sex offenders?

John Ewing: You are right that the treatment of sex offenders is a challenge in any system. There has probably been a gradual increase in the number of sex offenders—but not a dramatic increase.

Graeme Pearson: What does the increase look like?

John Ewing: I do not have the figures with me and I would not want to make something up. We can get the figures for you.

There are variations in the pattern of the sex offender population. As more cases of historical abuse come to court, the sex offender population includes more people with dependency issues, in relation to health needs and so on. There are differences in the population.

The challenge is to develop programmes that offenders can engage with. We operate a series of programmes, which are primarily focused on offenders who are prepared to admit that they have committed an offence and to work with us. There is long experience of operating such programmes and we have extended their reach from Peterhead prison, which was the traditional centre, to Glenochil prison, which started the first of its programmes about two weeks ago.

We need to develop other interventions, particularly with the group who deny having committed an offence. That is part of the good life programme, which we have been developing and piloting. The evaluation of the programme's impact has thrown up issues for us to address. We are constantly looking to refine and reform the engagement process, but it is challenging.

Graeme Pearson: Does that have an impact on the budget?

John Ewing: No, because we will give priority to addressing how programmes operate and how we make available opportunities to engage with them.

Graeme Pearson: Do you want to add anything, Mr Fairlie?

Phil Fairlie: I will add one thing. The prisoner population from Peterhead will be dispersed around the estate when Grampian prison opens,

so the sex offender population will be on various sites. A long-standing issue for us is that, although we have staff who deliver programmes throughout the estate, the role of delivering sex offender programmes is much more intense and difficult, and we are concerned that a number of staff have been delivering such programmes for a long time without having an opportunity to step back from doing them.

The trade unions are suggesting to the Prison Service that, when the prisoner population has been dispersed, there should be a review of the number of staff who are involved in programmes, to ensure that there is capacity to allow staff to step back and have a break from what is intensive, difficult work. We will make an approach to the Prison Service and ask it to look at staff structures in relation to programme delivery for sex offenders.

Graeme Pearson: Are there measures to judge the effectiveness of programmes in preventing reoffending?

John Ewing: The short answer is that it is not easy to do that. The programmes are based on accredited work that has been done elsewhere, but dealing with that group of offenders is a challenge.

The Convener: I want to talk about efficiencies, which need not always mean cuts. We have a high reoffending rate. Leaving aside alternatives to custody, are you able to tell how much is being put into throughcare and how much the budget ought to be to assist the very high percentage—I cannot recall the exact figure; I think that it is 80-something per cent—of those in the current system who reoffend within a couple of years?

John Ewing: Over 60 per cent of offenders reoffend within two years.

The Convener: I beg your pardon.

John Ewing: We do not identify a separate budget in those terms. The budget covers a number of different strands and it is difficult to disentangle activities that might take place in a prison from what is done to prepare prisoners for release. Phil Fairlie has already referred to developing the prison officer's role and the prison officer's engagement with the prisoner is quite often critical to their preparedness for getting out. Although we can give you a breakdown of our expenditure on education contracts, criminal justice social work support in prisons and so on, I do not think that that would fully answer your question.

The Convener: I will let Mr Halpin respond in a moment, but I simply have to wonder whether there is any way we can join these things up. I have been an MSP for 12 years—and have

convened various justice committees in that time—and I am still hearing the same stuff. Nothing has changed. Hugh Monro will understand why I feel this way; your report says the same things that your predecessors were saying way back. Surely we must be able to put a figure on this. If the thrust of the budget is to make efficiencies by spending to save, we should be spending more money on alternatives to custody, as has been suggested, rather than on throughcare. However, we do not have even ballpark figures for any of this. Can you help me, Mr Halpin?

Tom Halpin: The Audit Scotland report itself refers to inconsistency. No figure is available. The funding for statutory throughcare provision is in the core criminal justice social work grant that is allocated through community justice authorities and voluntary throughcare services. Nothing is determined in the budget; the decision whether such provision is implemented is a local one. The Prison Service does not commission throughcare. From our perspective of picking up those who leave prison and come back into communities, we feel that the voluntary element in throughcare is haphazard.

The Convener: But can you help me with this? What should be happening? How can we find out where the money is and what funding you require? If we had that information, we could track throughcare outcomes—that lovely word—and see whether the money is being spent properly to ensure that we do not have 60 per cent reoffending within two years and costing us all this money per prisoner. If we could make that work, would that not be a good efficiency?

Tom Halpin: Community reintegration is a distinct workstream in the reducing reoffending programme. That on-going work has been encouraging and we are also about to design and embark on the successor to that programme for the next phase.

We also need to join up what already exists. For example, we need to look at how commissioned services are aligned with CJA plans, how they are accounted for and how things are co-ordinated. At the moment, there is a strategic view of what is needed in a CJA area, which everyone signs up to in a plan, but commissioning is separate from all that. Accountable officers might report outcomes to chief officers, but I think that there is still a disconnection between commissioning and the strategic plan.

John Ewing: In its report, Audit Scotland has made a number of recommendations to the Scottish Government on addressing that information gap. The Public Audit Committee is taking evidence as a follow-up and I imagine that some proposals will come forward as a result.

The Convener: After all this time, we still need to move things on; turning this system round is like trying to turn round a tanker. What about funding? How much more money is needed? If I were to say to Sacro, for example, “How much money do you need to make more of a success of your activities?” how would you respond? After you put your bid in, we will deal with the issue of joining things up and the costs to the SPS.

Tom Halpin: Any approach to reducing or breaking the cycle of reoffending has to be needs led, which means carrying out a proper assessment of the whole person’s needs. Once that is understood, we need to work out where those services are best delivered.

The Convener: Does that not happen already? When someone is about to be released from prison, do they not get a care package that sets out what they need and which is costed?

Tom Halpin: It is probably best to approach this through the case study model. In a survey that was carried out at Cornton Vale, almost a third of the women leaving the prison did not know where they were going to stay. Accommodation is a very big issue. How can people who fall between stools in that way access mainstream housing? With an awful lot of people entering the criminal justice system, particularly women offenders, the primary issue is mental health. It is not that there is no psychological services pilot for women offenders; the point is that that is what those services should be doing in the first place. The question is whether we have the clinical assessment tools to ensure that we understand the extent of mental health issues in the prison population.

The Convener: Or indeed to find out whether those individuals are illiterate or innumerate.

Tom Halpin: Absolutely.

The Convener: Let me take as an example a vulnerable woman in prison. What ought to be taking place is an assessment of their housing requirements, their social work support requirements, their children’s requirements and all the other stuff that they will need when they come out. They should also have received assistance from the Prison Service to deal with the underlying causes of why they are in prison. Therefore, in one column, you would set out the things that this person needs; in the other, you would set out the costs. We need to find out how much it takes to fund all that—or am I being too simplistic here? It seems to me that if you can stop one or two people reoffending, it would be a help.

John Ewing: We do assess individual prisoners’ needs; indeed, that assessment shapes the responses that we try to give them in prison. However, picking up those needs after the

individual leaves prison is a matter for CJAs and local authorities.

The Convener: I hear that. That is the process. What I am asking is whether, when Ms So-and-so leaves prison, she has some checklist of the services that she requires and the funding or personnel that will be needed to ensure that she is not back in prison after a few months because of soliciting or some other aspect of a miserable existence.

Tom Halpin: That is the inconsistency in the current picture. For someone who leaves Edinburgh prison to go back to Edinburgh, voluntary throughcare will start before they are released and their needs will be picked up when they come back into their area. We cannot say the same of every area in Scotland.

As for putting a price on all that, the fact is that the biggest need might well be housing. The cost is in co-ordinating all that activity. After all, housing is a statutory right.

James Kelly: I have another question but, on this specific issue, the convener makes a very good point. Although there are pockets of activity in certain areas, although sums of money are being spent all over the place and although people such as Mr Halpin and his organisation are doing a lot of good work, no one is measuring the effectiveness of any of that. Humza Yousaf made a good point about preventative spend. It is all very well for the Government to make that a priority—indeed, it is correct to do so—but we have to be able to understand the outcomes. The recent Audit Scotland report was the first attempt by anyone to pull everything together and see how the system worked. Should the Government or Audit Scotland be doing that job? Who should pull together all the information on spend to let us find out how the money is being spent and what the outcomes are? No one seems to be taking responsibility for any of that at the moment. Everyone takes responsibility for their own bit of the budget or justice system, but who should be taking overall responsibility for measuring spend and examining the outcomes?

10:45

Tom Halpin: I acknowledge what you are saying. Everyone involved should have a very clear understanding of the effectiveness of the outcomes of the bit for which they are responsible and the system itself should understand as much. I am drawn to the whole-systems approach to youth justice that is being taken in Aberdeen, which looks at the young person as a whole and designs services around their needs. Some services that my organisation delivered were not considered to be the right ones, so they were

reshaped. We had to develop them and design other services, and we worked to co-produce those solutions. Outcomes are being measured in that area. The numbers of young people who appear in court and who offend are reducing significantly.

James Kelly: That is fine and I welcome such work, but who should look at the system Scotland-wide? Should a particular organisation take that up?

Tom Halpin: Community justice authorities are well placed to consider community activity.

The Convener: Does James Kelly want to continue questioning?

James Kelly: I do not—I have a separate point.

The Convener: Just go for it—I do not really have supplementaries running now.

John Finnie: I have a question on the point that we are discussing.

The Convener: Go for it.

John Finnie: Forgive the daft laddie question, Mr Ewing. I am familiar with the arrangements that apply at Inverness prison, where the links centre involves the NHS, Highland Council, Citizens Advice Scotland, the Highland Homeless Trust and all the rest. Who co-ordinates their presence there? Is that co-ordination part of the focus on the individual prisoner's needs assessment?

John Ewing: Provision is driven by an assessment of prisoners' individual needs but more by prisoners' collective needs. The question is what services can be provided that we know from experience are valuable to prisoners. Over the years, we have developed partnerships with several agencies and facilitated them to come into prisons.

There is a mixture of interventions. Sometimes, we establish a link with particular bodies, such as housing departments, because we know that their presence makes sense. At other times, when groups are developing initiatives in the community that might benefit prisoners, they approach us to ask for a connection to a prisoner. If we think that that would add value, we will facilitate that through a links centre. A bit of a mixture is used.

As we have said in relation to the budget and spending review, the challenge is integrating those services better, so that the plan for delivering them is more coherent in prisons and in the Prison Service. A part of the reducing reoffending programme on which the Government has embarked is facilitating such interaction and engagement with different partners, so that we work towards a common set of objectives.

John Finnie: I do not know whether you are familiar with getting it right for every child, which focuses on the individual and involves different lead authorities. If the prisoner is the Prison Service's responsibility, the co-ordination role should fall to the relevant establishment.

John Ewing: The establishment has a role to play, but some statutory responsibilities fall outside our scope. I cannot tell a local authority how to organise the services that it delivers to ex-offenders. In discussing how to move forward, somebody has asked whether we should have a programme such as getting it right for every offender. Giving effect to that is a challenge.

John Finnie: If we are talking about preventative spend and about every section of the public sector contributing to that through not just its own budget but other organisations' budgets—housing is a key issue—the arrangements should not be like a shop. Porterfield has a series of portakabins. People should be tasked with going there to have their needs assessed and met. Surely the obligation falls on the prison authorities.

John Ewing: We will try to take such an approach to ensure that a prisoner makes those connections, but we are dealing with adults who must make decisions about their lives. I will describe a difficulty. We can create the opportunity for appointments in a prison with a housing provider, a drug addiction support unit or whatever. As Tom Halpin said, we are increasingly making that work such that services come into the prison before a prisoner is released. Previously, more engagement used to take place after release.

We are encouraging organisations to come into prisons and establish relationships with prisoners before release, because that provides a better chance that prisoners will turn up at the door to follow that through in the community. We need to get better at that. However, we must recognise that some offenders will walk out the door, go off and not take up the opportunities to help them not to reoffend.

John Finnie: I am sorry to flog this but, if there are case notes on a prisoner, with whom are they shared after the prisoner's release? Are they shared with the statutory authorities—perhaps the community justice authority?

John Ewing: Yes, they are. In particular, the offenders on sentences of four years or more have care plans that are dealt with by the statutory authorities. For those on sentences of less than four years, it is more of a challenge because, as Tom Halpin said, those arrangements are voluntary and there is no obligation on local authorities to provide the services unless the prisoner asks for them.

The Convener: Will you run that past me again? What is the distinction with the care plan for those on four-year sentences?

John Ewing: The local authorities have a statutory duty to follow up and deal with longer-term offenders. They do not have the same statutory obligation in relation to those on sentences of less than four years. Local authorities will provide services, but the individual is not obliged to take them up.

The Convener: Mr Halpin, should such services be statutory?

Tom Halpin: I am of the clear view that we should compel services to be offered to shorter-term prisoners. A significant number of people do not take up the services on release because they think that they know better. They then come up against the realities of life back outside and, maybe a month later, walk back through the door to seek help to overcome some of the difficulties that they face. It is not just about what happens on the day they walk out the gate; it is about their life after that.

The Convener: I hear that. I appreciate that there is a statutory duty towards prisoners on sentences of four years or more because their needs may be greater—or they may not—but those on two-year sentences become those on four-year sentences. If we are spending to save, why not put statutory duties in place for those on lesser sentences to prevent them from reoffending and climbing up the criminal tree? Is that a silly thing to say?

Tom Halpin: That is the nub of the point that we make regarding the inconsistent availability of throughcare.

Brigadier Monro: I entirely endorse that point. Often, the issue is what happens at the door. A lot of effort is put into integrated case management in prison, but it can often go wrong at the door because delivery into the community has not been thought through holistically. Too often, I see prisoners coming back and wasting more public money in the wrong place when the spend-to-save priority should be careful delivery from the prison into the community. If we approach that much more carefully and in a statutory way, we will have a much higher success rate.

The Convener: You take the view that, I think, I now have: that the statutory duty should apply to those on sentences of less than four years as well. Is that correct?

Brigadier Monro: I entirely agree with you.

The Convener: I have found out something that is good and interesting. I hope that we will pursue that.

Roderick Campbell: Mr Ewing, I was not entirely clear from your submission whether you think that there are sufficient funds to provide for meaningful activities for prisoners. I would also be grateful to hear from the brigadier on that. Do we think that there is enough in the budget?

John Ewing: The problem is not so much the budget as it is capacity. Because of overcrowding, we do not have the capacity to provide the meaningful activity that we would like for the prison population.

Another issue is the fact that one of the biggest population drivers is the increase in the number of remand prisoners. Last night, there were over 300 more remand prisoners than there were a year ago. Such prisoners are not convicted of any offence and are not subject to the requirement to work, so the extent to which they engage in any purposeful activity is a matter for them. The reality is that, because of the constraints on our capacity, we cannot offer many opportunities.

Brigadier Monro: We inspected Addiewell and will go back there for a follow-up inspection. One of the things that I will examine there is the use of technology to organise the regime of the jail. That is mentioned in my annual report, which I hope you have seen.

In each prison hall in Addiewell, there is a little kiosk that the prisoner operates. It provides a fantastic way of organising a prisoner's day—visits, programmes, the purposeful activity to which they go and the meals that they eat, for example. It also provides good data on how the prison gets the maximum number of people into the right place at the right time. It is a highly effective tool.

We are talking about spending to save. When I go back to Addiewell, I will check whether it has coped with higher numbers recently. That may be a good way forward. It is a better use of technology to get the maximum number of people out and into the purposeful activity that they should be undertaking. Addiewell already has a higher proportion of people going out to pursue purposeful activity. When I go back there, I would like to see whether it has coped with the higher number and made them get into such activity.

I agree entirely that the number of people on remand is an issue. I see far too many people on remand—of course, they have not been judged guilty yet—sitting in prison and doing very little. I cannot give you the figures now, but the number of people on remand who are sitting in their cells rather than out doing something is disproportionately high. We really must look at that because that cannot be the right way to deal with them if we are to prevent something from happening again when they are released.

Alison McInnes: We have had an interesting discussion this morning. We have heard about alternatives to custody and reducing reoffending, but we have not yet touched on earlier intervention. I may come to that in a moment. However, it is no clearer to me whether the budget is divvied up in the right way, whether it is providing the holistic services that we have been talking about or whether it is flexible enough. Are we using the money to the best ends? We have a finite pot of money, but it is not clear to me whether it is being shared in the most appropriate way. I would like the panel to comment on how we can hasten the kind of change that we have been talking about and what flexibility is needed within the different budget heads to allow that to happen.

John Ewing: The additional resources that have been made available to the Prison Service will allow us to bring on stream the new facilities at Low Moss, which will enable us to develop and offer an alternative model to the one that we have traditionally used in the prison. From the outset, we are planning to operate Low Moss with a greater degree of integration with our community partners in offering the services that the prisoners need.

One of the challenges for us, given the budget going forward, will be to ensure that we focus more on those rehabilitative services that can make a difference to reoffending rates. We will get into a discussion and Phil Fairlie will defend the interests of his members and my staff as we debate whether the budget allows me to give them a big pay rise in year 3. The short answer is that it does not—we will have to continue to exercise pay restraint because we need to focus the budget on reducing reoffending. That is the challenge that we will face over the next three years. We will work in partnership with our community justice authorities, and there will also be challenges in how they organise the budgets that local authorities are deploying in the area.

Tom Halpin: The budget offers an opportunity to do some things differently, particularly with the growth fund and the shift to rehabilitative activities, which I welcome. Given the constraints that are on us in Scotland at this time, we look forward to making the most of that opportunity. I invite the committee to look back, in due course, to make sure that the diverse solutions include the third sector as well, as it is the softer issues, such as the relationship with an offender, that the third sector can address. I also believe that there are efficiencies that it would be a mistake to miss.

The Convener: What are those efficiencies? Where are we going to take the money from?

Tom Halpin: Efficiencies can come through non-cash savings, by getting more throughput for the same money. I have explained the use of

volunteers working with our staff in mentoring women offenders in the community, getting a bigger bang for our buck. Also, the third sector achieves higher levels of attendance for community payback orders than the statutory sector. There are a number of efficiencies that could be made, which are not necessarily about getting cash back but are about getting more throughput.

11:00

James Kelly: Is there an inconsistency in the budget? We heard a lot about the use of proper and effective community sentences, but the budget line that supports such sentences flatlines. The budget is set up to support an increase in prisoner numbers. Have community sentences been given appropriate priority?

John Ewing: That is a question that you must put to the Scottish Government.

James Kelly: Do you have a view?

John Ewing: No, I think that we sought to strike a balance in how we deploy our resources between the known pressures that come from the growth in the prisoner population and the other pressures. We have not talked about the capital budget line, which is heavily committed to the delivery of HMP Grampian. Another issue over the three-year resource period is whether we can deploy some of the resource budget to invest in the prison estate. At the end of the day, ministers have to strike a balance between the cost of delivery in the community and the cost of dealing with the offenders who are and will continue to be in the system over the spending review period.

James Kelly: Does Brigadier Monro have a view?

Brigadier Monro: I very much inspect the prisons and not the money, so I will not get involved. Certainly, efficiencies have to be looked at and I entirely agree that we must get people into community sentences rather than short-term prison sentences. That must be the way ahead. How such an approach is delivered in an effective and joined-up way is a holy grail, and I have not yet seen the path to it.

The Convener: Does the Prison Officers Association think that efficiencies can be made in the practical running of prisons? We heard about the use of technology, which also benefits prisoners. Could other savings be made? I am not talking about your members—you are all right; I know that you are not going to talk about pay.

Phil Fairlie: You are already getting huge savings in that area.

The POA has been working with the Prison Service for years to identify efficiencies and savings. We have freed up significant numbers in previous years, and in many cases it has been staff who have been freed up.

On the budget that we have been allocated in this round and where we would like the money to go, I appreciate the balance. All that we are prepared to commit to saying at the moment is that we are cautiously content that what we have got will allow us to continue doing what we are doing.

As John Ewing said, there are areas in the estate that are a priority for upgrading, Cornton Vale being the obvious example from our point of view. We need to spend significant money on Cornton Vale, where improvements are urgently needed. Investment is also required to get standards up to date at Dumfries prison. There are ways in which we can find efficiencies but, if we do that, it is because we want the money to stay in the prison estate, to redevelop the bits that require redevelopment.

The Convener: The committee appreciates that when conditions are bad in prisons, they are bad for your members.

Phil Fairlie: Yes, we work in exactly the same conditions—

The Convener: That must be disheartening.

Phil Fairlie: Yes.

The Convener: I think that the chief inspector said in the report on Cornton Vale that training of officers on dealing with people with mental health problems would help to prevent reoffending. Do you subscribe to that view? I am thinking again about spending to save. Prison officers are not just turnkeys; you interact with prisoners and live in the same place day in and day out. A good relationship with prison officers can have an impact.

Phil Fairlie: The relationships that a prisoner has had with staff are crucial to the person who comes out at the end of the sentence.

I do not want to go back over old ground but, although the staff in Cornton Vale require training because the issues that come up in the female offender group are different from those that we deal with in the male offender group—in the same way that the issues that come up with sex offenders are different from those that come up in the general male offender population—part of the difficulty is that prison officers are not best equipped to deliver the kind of services that you are talking about. We are still locking up an awful lot of people who should not be inside a prison. Training a prison officer to cope with that will have some limited impact on the environment in which

they work and in which the prisoner is held, but it will not identify and deal with some of the specialist problems that we are talking about. We are not just locking up too many people; sometimes, we are locking up the wrong people.

The Convener: Am I correct in saying that that is a common view among all the panelists?

John Ewing: Yes, I agree with what Phil Fairlie said. We have already started to develop further the training packages for staff at Cornton Vale, who are dealing with a very challenging population group. There is a thread of issues to do with the extent to which some of the prisoners there should be in a prison setting.

The Convener: We will conclude on that point, unless anyone on the panel wants to raise something else that we ought to have asked about.

John Ewing: I have one observation on the capital programme. The pressures on the overall Scottish Government capital budget will be known to the committee. At the end of the day, ministers have had to take some pragmatic decisions about where the priorities should lie. That has meant that we have been given sufficient funds to enable us to take forward and deliver on Grampian as the top-priority project. The resources available in the latter year of the spending review period are less than we would ideally have liked, but that is the reality of the settlement that the Government is having to deal with, which is a limiting factor in our investment capability as we go forward.

The Convener: It is fair to say that the project that you are talking about is a replacement prison. From the evidence that you have given, should the committee take the message that we should not build more prisons but should look at alternatives to custody and better throughcare for those who have been in prison and that we should not lock up as many people, given that you have all said that quite often we are locking up the wrong people?

John Ewing: Yes, but we still have apace the modernisation of the estate. In an ideal world I would be looking for a budget of £50 million to £60 million a year running forward, but that is just not available. That is why we have to look to see how we can supplement the resources available in the capital budget from the resource budget in order to make it go further.

The Convener: Is it fair to summarise your view as being that there are many people in prisons—not just in Cornton Vale but across the prison population—whom we should not be locking up because they are not a danger to the public? Are you saying that we should be doing something else with them—I am not talking about giving them free rein and not punishing them but about dealing

with them in a different way because it costs less—and that we should not just be looking at continually refurbishing and building more prisons?

John Ewing: Yes, that reflects our view. We are trying to produce a programme for a modern estate of about 7,500 to 8,000 prisoners; we should not be building an estate for 9,500.

The Convener: Can I take it that all the panelists agree with that summary? I do not want to put words in your mouths.

Tom Halpin: Yes.

The Convener: Thank you for your evidence, which has been very useful. I will suspend the meeting for five minutes.

11:08

Meeting suspended.

11:16

On resuming—

The Convener: I welcome the second panel of witnesses. Richard Keen QC is dean of the Faculty of Advocates; Lindsay Montgomery is chief executive of the Scottish Legal Aid Board; Oliver Adair is a member of the criminal legal aid negotiating team at the Law Society of Scotland; Graham Harding is a member of the civil legal aid negotiating team at the Law Society of Scotland; Keith Dryburgh is a social policy officer at Citizens Advice Scotland; and Professor Alan Paterson is professor of law and director of the centre of professional legal studies at the University of Strathclyde. I welcome you all.

As I said earlier, when a question is asked, just nominate yourself to answer and I will call you. If another panel member wants to come in on a question, they can indicate to me, but you should not feel obliged to come in on each question. I know I do not need to tell you gentlemen this, but if you agree, just say you agree. The panel is quite large. We now move straight to questions.

James Kelly: I will focus on the legal aid budget. Obviously the implications of the budget as proposed are that there will be cuts in the legal aid budget line. That is an extremely challenging situation to have to deal with because there are increasing demands on legal aid as a result of a number of factors such as Cadder that mean that more people are applying for legal aid. The demand for that service brings real financial pressures. The budget is being decided against that backdrop of financial pressures, and we have been asked to make savings in the legal aid budget line. What are the panel's views on that scenario? How can SLAB continue to deliver an

appropriate service that ensures access to justice while making the savings that it has been asked to make by what the cabinet secretary has proposed?

Lindsay Montgomery (Scottish Legal Aid Board): You said it yourself: it is going to be extremely challenging. However, there are some things that help us. We are beginning to see a downturn in the number of applications for civil legal aid, which reached an all-time high during the past two or three years.

We have also had some very worthwhile joint working with the Law Society and other stakeholders on the range of savings put through this year. That was a very constructive approach and showed the importance of working with stakeholders and partners. No one has a monopoly on the best ideas, and the process brought out the fact that there are different ways of doing things. There are oodles of ways we can all save money, but we must agree on which are the most effective over this period and must ensure that we come in as close to that budget as possible, or on it if we can.

There are some uncertainties, as we said in our written evidence. We do not know what the impact will be if the Government accepts Lord Carloway's recommendations. We cannot see ahead to what will happen in the economy, which could increase demand, particularly for civil legal aid. The Westminster Welfare Reform Bill is likely to have some impact, but I do not think that any of us knows precisely yet what it will do in our area. There are a number of uncertainties, but the Government has set out a range of measures and there is an opportunity for other proposals to come to the fore, provided we do things early enough. We cannot wait until year 3 to make savings, as legal aid savings take a little while to have an effect. If the stakeholders can get together—I think that this is the plan—in very early course, we will have a fair wind to achieve a difficult task.

On our running costs, which were covered in the other part of the question, I have some concerns because the reductions are quite marked. Had we not introduced legal aid online, we could not have achieved the savings we have already made. The volume of development work that will be needed from the board over the next two to three years to implement the various ideas will be quite challenging. Again, we must work with the profession to find ways in which it can help us do that.

Keith Dryburgh (Citizens Advice Scotland): We have touched on the Welfare Reform Bill and other factors that will probably increase demand for legal advice and legal aid in the next few years. The Fraser of Allander institute estimates that £2 billion could be taken out of the Scottish economy

by 2014-15 on top of the other reductions in budgets, including those of local authorities. Many people will lose services and income and will get into housing arrears and debt, which will inevitably increase the demand for advice. We are facing a big demand for advice alongside a cut in budget.

We probably should think not about the cuts to the budget but about more innovative and effective spending. The Scottish Government and the Scottish Legal Aid Board have talked about preventative spending and we are very keen on that. We think that courts and legal aid are only the very end of the legal process and that if you can sort out problems closer to the source, you will save money. Citizens advice bureaux dealt with 560,000 issues last year and 370,000 clients, so they are keeping people out of the legal system. Equally, when people do not get advice first off and go to court, in-court advice services act as a triage service and help people to represent themselves in court. They also point people towards mediation services. There should be an emphasis on preventative spending and we should be focusing on where spending is going, not just on the cuts.

The Convener: Do you think there should be more direct co-operation between CABx and solicitors who do legal aid work? They could even co-locate, if it is proper, to stop small matters becoming volcanoes, with everybody taking sides and the people involved being determined to go to court come hell or high water. Do you think there is room for that?

Keith Dryburgh: That is already happening, to a large extent. Lawyers volunteer in CABx and SLAB funds the in-court advice services. There is a lot of joint working going on and we would like to see more of that. The Scottish civil justice advisory group recommended that in-court advice be extended across a larger number of courts and we support that. The Scottish Government is looking at the budget it gives to in-court advice services and other projects and we would like to see it extended so that we can do more co-operation of the sort I have talked about.

Lindsay Montgomery: There is a lot of good work going on. In the Highlands and Islands, successful work has been done between SLAB-employed civil solicitors, the advice sector and the legal profession. That model offers people a much better referral service. We still have a problem in Scotland with people not knowing who the best person to go to is. After someone has made two or three attempts to find out who they should talk to, they might get fed up and not find a solution. There is much more that we can do to get further joint working in that area. The other issue is that there is a need to get greater co-ordination between the various funders of legal services,

including local authorities, the Government, SLAB and others. That will be extremely important in the next couple of years.

The Convener: I take it that you are talking about debt counselling by local authorities, welfare benefits officers and so on.

Lindsay Montgomery: Yes.

The Convener: Does Mr Adair wish to say something?

Oliver Adair (Law Society of Scotland): From the Law Society's perspective, it is always concerning when further cuts are sought to the legal aid budget. We appreciate that, given the downturn in public spending, we cannot expect the legal aid budget to be immune from the financial pressure that everyone else faces. I support what Lindsay Montgomery said. As the Law Society's legal aid convener, I have always championed the tripartite approach. It has been successful in other areas, such as summary justice reform. I am sure that, if we work together, we will find a way of achieving the Government's objectives.

Professor Alan Paterson (Citizens Advice Scotland): Citizens Advice Scotland sees the Scottish Government's policy of moving in a strategic direction in which all the stakeholders are working together as the only effective way forward. We heartily endorse what Lindsay Montgomery and Ollie Adair have just said.

We have a number of programmes that are linked to the pro bono and free legal services initiatives that the Faculty of Advocates has launched. Through the pro bono programme, we are trying to set up legal aid clinics with the profession.

The Convener: Does Richard Keen want to say something about pro bono work and the role of the Faculty of Advocates?

Richard Keen QC (Faculty of Advocates): First of all, I do not subscribe to the Orwellian notion that less is more. Less is never more. Consequently, I think that we have to begin by appreciating that the very real cuts in the legal aid budget and the justice budget as a whole are going to impact on access to justice. We cannot hope to maintain access to justice in its present form in the face of these cuts.

For many years, the Faculty of Advocates has maintained a free legal services unit. It provides an excellent and necessary service, but it cannot be a substitute for a legally aided service for those who are most vulnerable and, very often, most in need of advice and assistance. While I applaud the work that is done by our free legal services unit, it cannot step into the breach. We have to think more seriously about how we are going to

accommodate the necessary cuts in the legal aid budget.

I add one further point. I agree with Keith Dryburgh that the service that is provided by the citizens advice bureaux is a preventive service, and an important one. It is there, essentially, to keep people out of court and litigation. A great emphasis on that service would be appropriate in the present climate.

The Convener: If I could be difficult for a moment, I put it to you that advocates make quite a bit of money out of the legal aid system. What proportion or percentage of the collective income of the Faculty of Advocates comes from legal aid?

Richard Keen: Criminal legal aid represents rather less than 12 per cent of the Faculty of Advocate's total income. Of the £100 million that is paid out in legal aid by SLAB each year, less than 10 per cent goes to the Faculty of Advocates.

The Convener: What about civil legal aid?

Richard Keen: A much, much smaller proportion—it is tiny. Overall, legal aid represents far less than 15 per cent of the Faculty of Advocate's total income. I also point out that those who are carrying out work that is legally aided are carrying out some of the most important legal work, whether it be family related, immigration related or crime related, and are working on behalf of some of the most vulnerable people in our society. I can say that those who are carrying out that work in the Faculty of Advocates are, essentially, the lowest-paid advocates in the country.

The rates of pay under criminal legal aid are far lower—and I emphasise the "far"—than the rates paid for private work in this jurisdiction. Many people work for very marginal sums of money indeed in order to carry out legal aid work. An obvious example is immigration work. A perception exists that somehow we are the fat cats, but there are some very, very thin cats.

11:30

The Convener: I do not think that I should have taken him on, do you?

Roderick Campbell: I declare an interest as a member of the Faculty of Advocates. I want to pick up on what Lindsay Montgomery was saying on the difficulties in predicting the impact of the Welfare Reform Bill. It seems valid to point out that the bill is likely to increase demand slightly, but should the Scottish Legal Aid Board not be considering the issue seriously and quantifying the impact?

Lindsay Montgomery: Each of the local legal aid authorities in the UK jurisdictions is doing

exactly the same thing—trying to work out what the impact will be. We will be engaging with colleagues down south as we try to do that. As things stand, it is still not wholly clear exactly how the bill will operate and what its impact will be on all of us. Consideration of that is a high priority for each of us.

I want to pick up on a point that Richard Keen made. Last year, out of £160 million we spent about £23 million on counsel—advocates and solicitor advocates.

Humza Yousaf: I take Mr Keen's point about fat cats and thin cats. Are the fat cats taking too much of the budget? Everybody agrees that the budget is challenging for everybody, but perhaps it is more challenging for some than for others. I am looking at the list of the top 20 advocates receiving legal assistance fees. The total for the top 20 is more than £4.5 million. The total for the top five QCs is about £1.5 million—an average of £300,000 each. Is there a great disparity between those in the top 20 and those lower down—the thinner cats?

Richard Keen: The people at the very top of their profession do indeed earn the sort of figures that you mention. There are also people setting out who are earning near to zero. You do not receive a salary when you are a member of faculty, and you will find people on the legal aid list who are earning less than they would receive on state benefits. They struggle on doing that, and they take on other employment such as teaching at university.

At the top end, you have to remember that you are dealing with people who will normally have spent eight years qualifying and, to become a QC, will have spent a further 15 years in practice. So, it has taken them 20-odd years to get there. They are at the top of their profession—and I can tell you that, in relative terms, they are not well paid.

Humza Yousaf: Relative to whom?

Richard Keen: Relative to very senior lawyers in other areas of practice, they are not well paid. Relative to very senior accountants, they are not well paid. Relative to very senior bankers, they are not well paid. Relative to many people, they are not well paid. The public perception may be that these are high incomes, but the public perception may be that MSPs receive a very high salary, pension arrangements and expenses. These are all matters of perception. It is very easy to isolate one or two people and say that X earns £300,000 a year. If—and I hope that this never happens—you find yourself on trial for murder, you will want one of the top five QCs and not one of the bottom five advocates. That is common. People demand their services, and they are incredibly busy and incredibly hard working.

The Convener: You are a top QC.

Humza Yousaf: He is not one of the top-earning ones though. I have to make that clarification.

Perhaps I can ask Lindsay Montgomery whether the fees are regulated. I accept the point about bankers and accountants earning more than people who have studied for 15 or 20 years, but they are not taking money from the public purse.

Richard Keen: Not directly, perhaps, but I rather think that most bankers' bonuses come from the public purse indirectly at the present time.

The Convener: Game, set and match, I fear.

Humza Yousaf: My question was for Mr Montgomery, too—I would like to hear from him. I also had another point, following on from that.

Lindsay Montgomery: I was planning to stay out of it.

On the payments to counsel in criminal cases, to be fair to counsel, what Richard Keen says is true—we have the top people taking legal aid cases. If someone paid privately, they would not go to someone such as Ian Duguid, Paul McBride or the others. We are very fortunate, as that situation is not common in a lot of other countries. We pay £900 a day for a top QC to work on a murder trial. That includes some preparation. Compared with what is paid in some other jurisdictions, that is not a large amount. Certainly, it is significantly less than what is paid in other types of law. Okay, counsel can have a range of cases going on at once, but a lot of work has been done with the faculty and the Government to set fee rates that are fair and reasonable and which reflect the market in which we are operating. Junior counsel are paid rather less than senior counsel. At the end of the day, it is the Scottish Government that sets the rates. On the civil side, rates have been introduced for counsel in sheriff court cases and they have been revised downwards for cases in the Court of Session, which will mean some savings coming through this year and next year.

It is an area in which there is a lot of public interest. We have a common interest in ensuring that the rates are affordable and encourage people of the proper quality to do the job.

The Convener: Let us move off the faculty—if Humza will let us.

Humza Yousaf: I have a final question on the faculty. I understand Richard Keen's point about counsel being those at the top of the profession—I do not doubt that they are—but is there anything that the faculty can do to promote those who are not quite at the top of the profession but who are still pretty well respected and do the job well?

Should those—probably like Mr Keen—who are not the top earners be getting a little bit more of that work, or is it open to market forces?

Richard Keen: The faculty is a basic marketplace in which everyone is self-employed. If someone is seen to do well, they will get more work; if they are not seen to do well, they will not get more work. There is a terrible attrition rate. Many people spend years qualifying only to leave because they cannot make a living. If you believe in market forces at all, you will see that they work most obviously within the faculty. That is perhaps the best driver of both quality and fee rates.

Humza Yousaf: I am done.

The Convener: If you had wanted to go on, you could have done. I have on my list Colin Kerr, John Finnie, Graeme Pearson and Alison McInnes. *[Interruption.]* Sorry, it is John Lamont, not John Finnie. You cannot get the staff these days. It is Colin Kerr, John Lamont, Graeme Pearson and Alison McInnes. I reassure those members that I have noticed their winks, nods and signals.

Colin Keir (Edinburgh Western) (SNP): I would have thought that, after all these years, you would not have got Keir and Kerr mixed up.

The Convener: Yes—Keir is correct. Did I call you Colin Kerr?

Colin Keir: Yes, you did.

The Convener: Did I really?

Colin Keir: Absolutely.

The Convener: You are a neighbour, too.

Colin Keir: I know. It is quite shameful.

My first question is for Mr Montgomery. I am interested in the online payment system that you mentioned. How are solicitors and other groups who use the system taking to it? What savings do you think will be made through the system? I perhaps missed that in your comments. Are any groups showing a bit of hostility towards it?

Lindsay Montgomery: Do you mean law accountants?

Colin Keir: Well, I gave you a heads-up.

Lindsay Montgomery: It is perfectly clear that the profession has been very supportive of the system—I think that Oliver Adair will share that view. It has made transactions between the profession and the board much more simple in relation to applications and accounts. From April, all applications have been online—we will not accept paper—and we did not have any difficulty in getting the profession to sign up to that.

Four or five years ago, when we first told criminal practitioners that we were going online, there were howls of worry, but they are now saying that they want more of it. It reduces their running costs because they do not need to spend so much on administration, and that benefit has arisen without our forcing anyone. People in the profession are encouraging their colleagues to use the online system.

We are working with the law accountants because some of them might have to change the ways in which they operate in order to facilitate the online systems that their clients—the solicitors—want to use. As we work with them, I think that more and more of them will feel comfortable. It is a significant change and we are trying to help them to accommodate it. They are slightly behind the solicitors, who see the online system as a way in which to make their business cheaper to run. That is helpful to them and us because it changes pressure on fees as well.

The Convener: Can you put a figure on the savings that the board has made by changing from paper to the online system?

Lindsay Montgomery: We have saved about 20 to 30 posts, which turns into quite a significant amount of money. I do not have the figure to hand, but over the piece it has allowed us to make savings. Our running costs were cut by £1.1 million this year, having been flatlining for three years. That is where we have been able to make serious savings.

The Convener: Colin Keir has a question.

Colin Keir: It is something that I tried to ask while Humza Yousaf was in full flow. Mr Keen made a strong defence of his profession. Given the cutbacks in public moneys, where does he suggest that any savings can be found?

Richard Keen: It is difficult, because legal aid rates have been pegged over the past two or three years. I know that there was a reference to criminal appeal work rates having changed in 2010, but that was after about 12 or 15 years, to put it in context. The problem is that, if we begin to erode further the rates that are available to skilled people, fewer of them will want to do the work. Legal aid embraces some of the most vulnerable people in our society. It is often the people who cannot afford to go to law who need to do so.

I do not think that any one area stands out. I have one or two concerns about the Government's paper "A Sustainable Future for Legal Aid", which will no doubt be the subject of a further discussion in due course. For example, there is a reference to the role of a solicitor sitting with counsel in court as being, in effect, a supporting role to counsel, and it is argued that the rates of pay for those solicitors should therefore be cut. I am not here to

defend the Law Society, which is well able to do that for itself, but I observe that to suggest that it is a supporting role is to not appreciate the way in which such work is prepared and done. Essentially, the solicitors do all the preparatory work. They sit not in a supporting role but in an instructing role. It is a fundamentally important role. To look at that as an area where we can suddenly cut the legal aid bill is misguided. Even though the proposal does not directly affect my branch of the profession, I believe that it is misguided and it worries me.

On the other side, as I mentioned, there is a case for seeking to maintain the budget for Citizens Advice Scotland, which is the first line of advisory work, as it were, because it keeps people out of the justice system. If we do that, we save money.

We have to be careful with the legal aid budget. If we start cutting it, there is a risk that some people will fall through the net and will become party litigants. As I think the committee will know, party litigants take up an enormously disproportionate amount of judicial time, for a variety of reasons. If we exacerbate that situation through cuts in the legal aid budget, we will simply shift the cost away from that budget into other parts of the justice budget, because more and more judicial time will be taken up.

One idea that strikes a chord is the proposal for contributions to criminal legal aid, which are made in other jurisdictions, including England. Whether that would produce cost savings is another matter. My limited experience is that drug dealers do not tend to have a visible income source, so assessing their financial contribution is difficult. However, that proposal is a positive move in looking at how we can improve the legal aid budget further.

11:45

Professor Paterson: I will pick up Mr Keen's point about a possible increase in party litigants. The CAB service is fully conscious that that might well mean more pressure on CAB advisers and particularly on the nine in-court advice projects, on which we have submitted evidence and which appear in the Government's paper "A Sustainable Future for Legal Aid". That part of the programme is vital; several surveys and reports have recommended expanding, not contracting, that service. If the court service was cut back, that would put more pressure on the in-court advice service, which is a vital part of what CAS and SLAB do.

Graham Harding (Law Society of Scotland): I agree with what Mr Keen said about the role of solicitors who sit behind counsel. We do an

important job. Other cuts could be made while core fees are maintained. Core fees have not really moved in the past 10 years—in real terms, the rate is probably 10 per cent below inflation. If cuts are to be made, they should come from areas other than core fees.

The Convener: I should declare an interest—I am not in practice now, but I was a civil legal aid lawyer and I frequently sat behind counsel. I therefore share some of the views of Mr Keen and the Law Society. I also declare an interest as I was an in-house pro bono lawyer for the CAB.

Keith Dryburgh: I will make a quick point about wider citizens advice bureaux funding issues. I talked about the importance of bureaux in the legal process in preventing matters from becoming justice issues. We project that core and project funding for citizens advice bureaux in Scotland in 2011-12 will decrease by 9 per cent, or more than £1 million. That almost inevitably means that we will see fewer people. Funding was cut by 10 per cent last year in England and Wales, and 7 per cent fewer people were seen there. We work on the basis that, if we see fewer people, the justice system will probably see more people. We want to see more people, to keep people out of the justice system.

The Convener: Will you run that past me again? Have you had a cut?

Keith Dryburgh: We receive funding from a variety of sources. Advice is devolved to local authorities and funding for it is not ring fenced, so 32 different decisions are made on advice funding across Scotland. We also receive project funding, which forms about 50 per cent of our total funding. Both forms of funding are reducing. Our initial estimate is that our total funding will reduce by 9 per cent in the next year, which will probably mean that we will see fewer people. That could put pressure on the justice system and the legal aid budget.

The Convener: That is helpful.

The order of play is John Lamont followed by Graeme Pearson, Alison McInnes, John Finnie, Humza Yousaf and Colin Keir.

John Lamont: My question is to the Scottish Legal Aid Board's representative. You touched on planned savings. Are you concerned that the savings that you have identified might be offset by extra costs, particularly from the Cadder judgment?

Lindsay Montgomery: The savings that we are making exist. At this stage, neither we nor the Government know what the budget for dealing with Cadder will be—it will depend on Lord Carloway. We put figures for the costs in our submission and we are doing a major review of

the estimates, following four months of our police-duty scheme. Our figures do not include the removal at the end of the month of subsuming advice and assistance in legal aid, so they will go up. It looks as though the range that we are considering could be accommodated in the budget—subject to the outcome of Lord Carloway's report, which is an unknown. If that report raises the cost significantly, we and the Government will have to think seriously about where the money will come from.

John Lamont: Are you planning further cuts to address the potential hole in the budget that would arise in the worst-case scenario?

Lindsay Montgomery: When Lord Carloway's report is published in the not-too-distant future, we will know what is likely to happen to the numbers. When that is clear, we will work with the Government to find out the cost implications and decide, if a substantial amount is involved, how that can be funded. At the end of the day, that will be for the Government to decide.

The Convener: Lord Gill's proposed reforms involve what he called divisional sheriffs, or something. What might be the cost implications of those reforms?

Lindsay Montgomery: In a number of ways, Lord Gill's proposals and the Government's response to them should lead to a more efficient civil justice system. To go back to a point that Richard Keen made, if we get to a position in which fewer people are able to access lawyers, we will jointly have failed. The key for us is to maintain the breadth of access to justice but to find cheaper ways of doing it. Reform of the justice system is probably more important than some of the changes to legal aid. Legal aid should not be considered in isolation, because it is a key part of the operation of the system. Some of the proposals in Lord Gill's report about making the system more efficient should help to reduce the costs.

Cases going through the system more quickly with less resource going into them sounds like a good deal for everyone, whether they are legally aided or private. The Government is beginning to take that forward, and we will be working with it on aspects of that.

Richard Keen: I do not think that there is a universal view that the implementation of Lord Gill's reforms will necessarily lead to cost savings or to greater efficiencies in some areas. They would bear further examination. We have already responded to Lord Gill's report. Of course, there is the issue of the capital cost of implementing such radical changes in the court system over the next four or five years.

The Convener: Which changes do you mean?

Richard Keen: If an entirely new tier of courts, for example, is to be introduced, where will they be? How will they be staffed? Who will be the judges? It is not simply a matter of musical chairs. It raises issues that have yet to be addressed.

The Convener: Would not the courts be in the same buildings?

Richard Keen: That is highly unlikely.

The Convener: Why?

Richard Keen: Take, for example, the structure of Parliament house, where there is an expensive capital refurbishment programme going on and there are 32 courts which accommodate, at the moment, the High Court and the Court of Session. To try to introduce a new personal injury court to that building would be highly problematic because you would be introducing an entirely new set of judges over and above the existing senators. As I said, it is not a straightforward matter, and there are still questions to be addressed in the context of implementation of the reforms. I merely make that observation.

The Convener: Why would you need special personal injury senators when existing senators already deal with those matters?

Richard Keen: I do not think that there will be special personal injury senators, but one of Lord Gill's recommendations is that there should be a specialist personal injuries court. The question is, where are you going to put it?

The Convener: I do not follow that. They would be sitting in the same court room, given that they already handle those cases. All that would happen is that the timetable would be rearranged, or something.

Richard Keen: If that is what was proposed, it might work. However, that is not what is proposed, if you look at the terms of the Gill report.

The Convener: I will chew on that one, I think.

Graeme Pearson: I want to cover two areas. First, to give Richard Keen some comfort, I say that some members of the committee were concerned about the Government's current proposals in terms of their budgetary implications.

On the impact, I note that, in the period 2007-11, about 17,000 fewer cases were dealt with by Scottish courts, of which 1,000 would have been at solemn procedure. Does that reduction give us any comfort in terms of how we might be able to achieve savings at that end of court business?

Richard Keen: I am not familiar with those figures. However, one problem with the justice budget is that we face what might be regarded as a demand-driven situation: we cannot decide to have, say, only 10,000 criminal trials in any one

year. The same is true for civil cases. I am not sure that you can extrapolate from past figures the likely demand for services. In any case, with recession, higher unemployment and economic difficulty there will be exacerbated social problems, which will be reflected by demands on the justice system.

Lindsay Montgomery: A number of factors have been working together to cause continuing reductions in the volume of criminal cases. As you will see from our forecasts, we think that expenditure will fall, particularly on the criminal side, because it appears that that trend will continue. Of course that will not continue for ever, but it provides some basis for thinking that expenditure will fall.

The civil side is driven by quite different things. For example, people can get help—whether through CABx or other preventative means—before they have to go to court. The use of mediation in Scotland has been fairly derisory; other jurisdictions make more and better use of it. There are a number of other approaches that, if brought together, might lead to fewer matters going to court. After all, it is the court bit that costs the most money.

An awful lot of early advice can be provided for a big case. Last year, one of our civil cases cost £500,000 to £700,000—which is serious money. As I have said, there are a number of things that will, if we are successful in making them work together, reduce demand at the court stage, but we might—in fact, we will—be required to invest more in helping people before they have to go to court. That help might be provided by a range of bodies, including CAS, but if we are successful in co-ordinating that effort there will, in time, be changes to the volume of cases going through the courts.

Graeme Pearson: I note that the Scottish Court Service had hoped for full recovery of civil court fees and had a target of reducing public-purse subsidy from 47 per cent to 22 per cent. Was that achieved?

Lindsay Montgomery: That is not our bailiwick or area of interest. Given that people who qualify for legal aid are exempt from court dues, the issue has no impact on the legal aid bill.

Richard Keen: You have to be very careful: too great an increase in court dues will create a barrier to access. I can understand the Scottish Court Service's desire to balance the books—if I can put it that way—but going too far down that road will simply erect another barrier for people who are seeking justice.

Graeme Pearson: Again, we need to know about that, because it might well be a false avenue.

Richard Keen: Indeed.

On mediation, there are situations in which it is worth while and can work. However, it is an expensive business and has to be paid for, which can lead to costs and delays. In Ontario, for example, some obligatory requirements for mediation had to be abandoned because they were holding up the justice system and costing litigants so much that they simply could not be sustained. The point is that such approaches are not panaceas; however, at the right place and at the right time, they can be employed.

The Convener: I call Alison McInnes.

Alison McInnes: My question has already been asked, convener.

The Convener: Okay.

12:00

John Finnie: Audit Scotland's report said that in 2009-10 court hearings being adjourned cost £10 million, late decisions not to proceed with cases cost £30 million and late guilty pleas—where the accused had pled not guilty at an initial hearing but changed the plea before or at the trial hearing—cost £47 million. Could you comment on the last two figures? Some people might view those categories as presenting us with an opportunity to save £77 million, but it is a fundamental principle of justice that an accused can change his or her plea in the light of additional information coming to light and, similarly, that proceedings can be dropped.

Richard Keen: I cannot comment on the precise figures, but steps have been taken to try to encourage people who are contemplating a plea to make that plea early. That is reflected in sentencing policy and is a positive development. However, one has to bear in mind that often, particularly in the context of criminal prosecution and the accused, you are dealing with the triumph of optimism over experience. Often, the criminal decides, when the witnesses decide to turn up, to plead contrary to his expectation in the run-up to a trial. I am not being facetious. We have to remember that, in many cases, we are dealing with a criminal element who have a determined view of how they will deal with the justice process. They do not want to co-operate, if I may put it that way.

Lindsay Montgomery: The Audit Scotland report contains a line that is basically a variation of what Richard Keen just said. The report said that, at the end of the day, people who are charged with offences will have a view about how they want to operate relative to the justice system, and it is impossible to control everything in that regard. However, the report also brings out the fact that

we have had a number of successes. The summary justice reform that changed how we pay solicitors has had a significant impact, alongside disclosure, in bringing pleas significantly earlier in a significant number of cases.

We—and, I think, the Law Society—think that there are still semiperverse incentives that we can remove by making changes to the system, which will help to make some of the necessary savings. The most obvious one involves the fact that financial eligibility for summary criminal legal aid is different to financial eligibility for assistance by way of representation—ABWOR—when an accused is making a guilty plea. A proportion of people who qualify for legal aid will not qualify for advice or assistance or ABWOR when making a guilty plea, which means that they will have an incentive to enter a plea of not guilty in order to qualify for legal aid. Addressing that situation would help to reduce churn.

Another positive thing that is shown by the Audit Scotland report is that joint working between the justice agencies is hugely improved. Five or six years ago, we were just starting to do that, but it is now our way of operating and it will reduce churn even more. We will never get rid of all the churn, but we can go further towards that end. Again, that will help to make legal aid cheaper, in some respects.

John Finnie: My second question relates to facilities, which you touched on earlier, conveners, and which has been mentioned by the Law Society of Scotland and Consumer Focus Scotland. The Scottish Court Service has an ongoing review of the matter. People talk about the barriers to access to justice and the financial issues around that. I am interested in, to take a parochial example, the suggestion of reducing the number of locations where the High Court sits and—instead of having sessions in Inverness—bussing dozens of witnesses to Glasgow, Edinburgh or wherever. Could the panel comment on that, with regard to the issue of the need for justice to be seen to be done?

We have a submission from Women's Aid concerning the fact that the physical layout of a building can often result in the pursuer and the defender—the victim and the accused—being closely located. There is nothing new in that and, sadly, it remains to be remedied. What implications might that have for access to justice, given that it might make people unwilling to come forward?

With regard to the new civil arrangements, Consumer Focus mentioned the potential for facilities to be shared with tribunals. Will you comment on that?

Oliver Adair: I can understand why the Scottish Court Service might want to rationalise courts to make savings for itself, but you are quite right to point out that its doing so might lead to a danger of transferring costs from one part of the budget to another. In legal aid cases, you are dealing with people who do not have a great deal of money. If you ask an accused person to travel from their home to a court some distance away, you run the danger of the person not having the money to travel and not turning up, and there then being a warrant issued for their arrest, with all the concomitant costs of the trial not proceeding. Also, witnesses might have to be transferred from one court to another. I understand the superficial attraction of rationalising the court system, and I can see that it might be appropriate in some areas, but serious consideration would be required before large-scale changes were embarked on.

Richard Keen: I concur with that observation. Furthermore, there would not just be the cost of moving parties and witnesses over considerable distances; there would also be considerable disruption to the administration of justice that arises when somebody does not turn up, or is delayed. It may be a witness or it may be an accused—we know that the High Court has always had a major problem in ensuring that witnesses are available in trials on particular dates.

Adjournments were mentioned. Often, adjournments are the product of that sort of difficulty. What seems like a cost saving in one area is, I agree, often a financial burden in another area of the overall budget.

Professor Paterson: I will shift away slightly from the suggestion about moving courts. On the civil side, in order to prevent difficulties there is scope for considering remote access. Examples of successful projects can be seen around the world. The English project on telephone advice lines is one of their big success stories. By linking to web-based technology, we could deliver more remote access. As technology develops, there will be videophone links, and it will be as though people were in the same room. Savings could be made in that area.

Humza Yousaf: I have two questions. The first is on advice services and is for Mr Dryburgh. Does Citizens Advice Scotland worry that advice services may be gobbled up by solicitors, lawyers and law centres? In Glasgow City Council, advice services have gone out to tender. There is a worry that a bid from lawyers and law centres may well be successful. That might not be a bad thing, but would there be a cost implication? As we have heard, advice centres exist to keep people out of the court system. It might be suggested that law centres are not designed to do that.

Keith Dryburgh: On the whole, citizens advice bureaux work well with solicitors and law centres, across the advice sector. I am not aware of the bidding process in Glasgow, but there are probably 32 separate arrangements across 32 local authorities.

As I have mentioned before, funding is decreasing across the board, which will impact on the number of people we see. Over the next few years, net demand for advice will increase and that will impact on legal services.

Professor Paterson: We do not know enough about what is happening in the Glasgow area, but it seems as though some of the law centres are tendering in a way that might not include the CABx service and other law centres. Obviously, it is a competitive market and such things can happen.

In four years when the retendering comes round again, and the CABx or whatever have gone under because they were not successful in getting the contract this time round, the question will arise of where we go now. That is one of the difficulties with the contracting situation. England and Wales have moved to civil contracting in legal aid, and there are associated dangers. I know that there is information in the Government paper, but questions of how contracts are allocated, whether other providers will still be there in four or five years' time, and whether the base will have been lost, are important.

The Convener: I was going to ask whether on one of your forms we should ask whether people have approached a citizens advice bureau, debt counselling service or welfare or housing benefits officers before granting them advice and assistance. When they come to us one of the first things we ask is whether they have a lawyer and whether they have been to a CAB. Sometimes, they are doing the whole lot and we are part of a multiple attack. Perhaps we could save some—

Lindsay Montgomery: Some years ago, the Scottish Government, the board and the Law Society of Scotland looked at reforming advice and assistance. One of the changes that we brought in was to try to encourage people to go to the most appropriate adviser, whether that was a lawyer or someone in the advice sector. We changed the payment and authorised expenditure arrangements to encourage more of that, which has been quite successful.

The whole notion of legal aid being the funder of last resort is about using the best person to help you—we want to encourage more of that. That is very much with us and the Government.

The Convener: Should that question be on the form so that the solicitor would check certain things before giving advice? The solicitor would have to make a judgment about whether a matter

was so serious or immediate—the case might be in court tomorrow—that they had to get on with it.

Lindsay Montgomery: I think we can make that more explicit. The forms do encourage solicitors to tell us what has happened and why they want to take the matter forward, particularly if they wish to spend higher amounts of money—we would normally know that someone had been to another adviser. We will look at that further.

I want to return to Humza Yousaf's point about law centres and the advice sector. Our grant funding programme has been quite successful in getting the law centres and the advice sector working together on the projects, which has sometimes included private law firms, too. We want to move away from the silo approach that we have taken in Scotland in the past. It is about not just passing clients between services but working together to provide a holistic approach. We have seen other countries operate a more triage-like model, which is where we are beginning to go. Such a model would remove some of the dangers that might exist with some of the tendering processes that are under way just now.

The Convener: Professor Paterson, did you want to come in?

Professor Paterson: Lindsay Montgomery has dealt with my point.

Oliver Adair: I would be a little cautious about including a question on the form about whether a member of the public has tried to access other sources of advice. How much do we want to restrict the individual's choice about whom they go to for the advice that they seek? Some members of the public will have faith in the local solicitor, who might have been the family solicitor for years, and might wish them to be the person who advises them. I understand what you are saying and we value the role that CABx and other sources play in providing advice and assistance, but I would be cautious about restricting the public's choice of where to seek the advice.

The Convener: I was not suggesting that people should be prohibited from getting advice—the solicitor would have to make a judgment call. It might be appropriate for the solicitor to deal with the case for a range of reasons. I am just suggesting that somebody might come to them for initial legal advice and assistance about a broken washing machine, when they could go to the CAB about that.

Oliver Adair: Safeguards around that were introduced after previous discussions on this, to which Lindsay Montgomery referred. The issue has already been dealt with. I was talking about access to advice on something that is a matter of Scots law.

The Convener: A broken washing machine can be a matter of Scots law.

Professor Paterson: The problem with a system that leads to more referrals—the solicitor could say, “You haven’t been to the CAB or one of the other advisers, so we’ll send you there”—is that we know from research that there is an attrition rate with every referral that is made. So, clients will be lost every time they are referred on somewhere else. Part of the reason for trying to produce joined-up legal services is that we want to get people to the right source of help first, rather than going on with referrals.

Lindsay Montgomery: The person who needs to make the informed decision is the client. We need to get better at giving people information about who is the most appropriate adviser. We all agree about that. Sometimes it is not that easy to know who is the right person to go to. If we make that system better, we allow people to choose.

The Convener: I will leave it there.

12:15

Humza Yousaf: I had a second question—I will make it quick. It is for Lindsay Montgomery, but others might want to come in on it.

Mr Keen pointed out that we cannot expect the savings not to have a consequence for access, but is it not the case that this is not just a budget issue, but a mindset issue? I will explain what I mean by that. At the end of May, when I had been in the role of MSP for just a couple of weeks, I got calls from Glasgow solicitors who were quite upset about the savings. Some of them were quite upset that they could not solicit clients from Oban, Selkirk or Wick because of the reduction in travel fees, which meant that taking on such clients would not be profit worthy. Is the thinking among some solicitors—maybe a minority—that legal aid was there to make them a profit rather than to allow people to have access to legal advice? To that extent, is it perhaps a mindset issue rather a budgetary one?

Lindsay Montgomery: Ollie Adair is probably better placed to say what the profession thinks about it. On what we did and how the system works, it is eminently sensible for someone in Oban to get a local solicitor, instead of us being expected to pay for someone to traipse up and down the country, which just does not make sense.

We asked the Law Society about this recently and since bringing in the travel changes, we have seen no negative impacts on access to justice—people can get solicitors. As we have said in other evidence, a growing number of solicitors are keen to do legal aid work. We are in a recession, so that

is likely. We want to pursue the idea of people finding someone local who can give them a good service, which will avoid the taxpayer having to meet the cost of travel. We think that that is a very good idea. I think that solicitors’ practices will change in recognition of that different way of doing business.

Oliver Adair: It is necessary to realise that a solicitor’s client does not commit crime only in his local area—he travels around. In fact, he probably commits more crime in other areas, where he is not known to the police, so a solicitor may well have a client who is itinerant and who commits crime in other parts of the jurisdiction. Should that client be entitled to the solicitor of his choice, who has acted for him for years, even if he commits a crime in Oban rather than where the solicitor practises, which in my case is in Hamilton?

The society recognised that, given the economic climate, a range of cuts had to be made, which is why we agreed that travel should be looked at. However, I am sure that there will be circumstances, as the board would agree, when a solicitor will have to, or will wish to, travel to avoid losing their client.

You mentioned profit. I think that the approach should be to recognise that, in a liberal democracy, it is necessary to have a thriving, effective legal aid service of private practitioners to ensure access to justice and to maintain the quality of the service that is provided. We must achieve a balance between meeting economic challenges and sustaining the service.

The Convener: That takes us back to quality and competition.

The next questions will be from Colin Keir and Roderick Campbell.

Colin Keir: My question has been answered.

Roderick Campbell: Mine has been answered, too.

The Convener: I just want to go back to the savings in the justice system that might result from the reform of the civil courts and the other reforms that are coming. To what extent will such reform help to deliver access to advice and assistance, legal aid and citizens advice? Is the hope that it will? We have heard that some measures that looked as if they might help, such as stopping the High Court moving around, will not do so and may very well cost more. Will the reforms help in any way?

Citizens Advice Scotland may start, because its budget has been cut by 9 per cent. That concerns me, given that we are trying to achieve a shift to the very beginning of the process.

Keith Dryburgh: Additional communication routes are always welcome. For the past five years, we have run the Citizens Advice Direct phone line, which has expanded the provision of advice to those who prefer to get advice by phone.

On the potential for savings through communication methods, it is important that we keep provision for face-to-face advice, as many people much prefer to get such advice and would not access advice in any other way. That provision is beneficial. We want to ensure that, whatever new communication methods there are, face-to-face advice remains available for people who need it.

Professor Paterson: Research needs to be done on where face-to-face provision is needed and where the job can be done just as effectively through new telephone technology systems. In some cases, communicating remotely is perfectly effective. We have experience of that from America, Canada and Australia. However, as we have just heard, face-to-face communication is essential in some situations. Research needs to be done to work out when such communication is essential and where there can be efficiencies.

I do not know whether it is quite appropriate to say what I am about to say, but I will say it. We are talking about reforms and caps that are likely to be introduced and what the Government put forward in "A Sustainable Future for Legal Aid". Obviously, one would prefer not to have those things, but we are in an economic situation in which they are needed. If you had asked me whether I would prefer to have the reforms and the cuts that are being proposed across the board in Scotland to what is being proposed in England and Wales, I would say that there is no contest: what is being proposed in England and Wales is more severe and goes in the wrong direction. I endorse the route that the Government has chosen of making cuts across the board and bringing in all the stakeholders together. That route has not been taken south of the border.

The Convener: I think that the committee is running out of steam, although perhaps the panellists are not. Is there anything that we ought to have asked about? Is there something that we ought to know about the budget that we have not asked about? I am sure that we have missed things. Please say whether we have or forever hold your peace.

Lindsay Montgomery: It is important to build on the response to the last question. The issue is touched on in the Government's paper. An important project in the Government's making justice work programme, which is crucial to improving how justice works in Scotland, is consideration of access to justice. It is important to consider and find better ways of delivering

preventative services and to deal with rurality and distance issues, not just to ask how we can make cuts. I think that there will be a lot of focus on that project in the next year. We will consider how we can avoid difficulties with accessing justice.

SLAB has been given a statutory responsibility to monitor access to justice or legal services in Scotland, not just in legal aid areas, but much more broadly. We have a group that involves everybody around this table and others. We want to take the matter seriously in that group and identify for the Government whether there are areas in which gaps are emerging that we need to find ways of putting resources into. That is a step forward from what we had before the change was made in the legislation.

Richard Keen: Playing musical chairs with the court system will not save money or improve access to justice. Simply shifting a body of casework from one set of courts to another will do nothing to achieve either of those objectives. We should look at the procedures that we apply in the existing court structure to see whether they can be improved in order to effect savings and improve access to justice.

The Convener: Are those procedures currently being dealt with in the various reviews that are taking place?

Richard Keen: In a sense, they are, but we have taken a step too far. The Gill proposals would to some extent effect an element of musical chairs, although I do not suppose that Lord Gill would agree with me on that.

The Convener: I will leave matters on that controversial comment. I hope that you have a nice lunch with Lord Gill next time.

I thank all the panellists for their evidence, and suspend proceedings for a few minutes to allow them to go.

12:24

Meeting suspended.

12:26

On resuming—

Subordinate Legislation

Prisons and Young Offenders (Scotland) Rules 2011 (SSI 2011/331)

The Convener: Agenda item 3 is subordinate legislation. There are two negative instruments to consider, the first of which is SSI 2011/331. As members will see from paper J/S4/11/11/2, the Subordinate Legislation Committee has drawn to the Parliament's attention a number of matters relating to the rules. The Scottish Government has since accepted many of that committee's findings, and has laid an amending instrument to deal with the issues. The Subordinate Legislation Committee will consider the amending instrument at its next meeting, which is this afternoon, and this committee will consider it next week. Do members agree to consider both instruments together next week, when we will have the repair job in front of us?

Members *indicated agreement.*

Criminal Legal Assistance (Fees) (Scotland) Regulations 2011 (SSI 2011/333)

The Convener: The second instrument to consider is SSI 2011/333. I refer members to paper J/S4/11/11/3. The Subordinate Legislation Committee has not drawn the Parliament's attention to any matters relating to the regulations. As members have no comments to make, are they content to make no recommendation on the regulations?

Members *indicated agreement.*

The Convener: We will move into private session to discuss our work programme.

12:27

Meeting continued in private until 12:45.

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e-format first available
ISBN 978-0-85758-871-5

Revised e-format available
ISBN 978-0-85758-888-3