



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 1 November 2011

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JUSTICE COMMITTEE

12th 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:

Nick Bland (Scottish Government)

Richard Dennis (Scottish Government)

Eleanor Emberson (Scottish Court Service)

Joe Griffin (Scottish Government)

Rt Hon Lord Hamilton (Lord President and Lord Justice General)

James How (Scottish Government)

Kenny MacAskill (Cabinet Secretary for Justice)

Colin McKay (Scottish Government)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

Committee Room 6

Scottish Parliament

Justice Committee

Tuesday 1 November 2011

[The Convener *opened the meeting at 09:41*]

Decision on Taking Business in Private

The Convener (Christine Grahame): Good morning. I welcome everyone to the Justice Committee's 12th meeting of this year, and I ask everyone to switch off mobile phones and other electronic devices completely as they interfere with the broadcasting system even when they are switched to silent. No apologies for absence have been received.

Item 1 on the agenda is a decision on taking business in private. The committee is invited to agree whether to take item 5 on the work programme in private today and whether to consider the main themes arising from evidence received on the Scottish Government's draft budget 2012-13 and spending review 2011 and its subsequent draft report in private at future meetings. Do members agree?

Members *indicated agreement.*

Draft Budget 2012-13 and Spending Review 2011

09:41

The Convener: Item 2 is the committee's second and final evidence session on the Scottish Government's draft budget and spending review.

I welcome the first panel of witnesses to the meeting: the right hon Lord Hamilton, Lord President and Lord Justice General, and Eleanor Emberson, chief executive of the Scottish Court Service. Welcome to you both. I understand that the Lord President must be away at 10.30, so I warn the committee to ask short, sharp questions.

I think that the Lord President would like to make a short opening statement, and I would be most obliged if he did.

Rt Hon Lord Hamilton (Lord President and Lord Justice General): Thank you very much, convener, and good morning to you and the other members of the committee. I will say one or two words in opening.

Thank you for your invitation to give evidence on this matter. This is a very opportune time for such an event as the Scottish Court Service, which I chair, has now been in statutory existence for a little over 18 months and it is beginning to find its feet. Indeed, it might be said already to have found its feet. It is facing and about to face further marked restraints as far as public expenditure is concerned. As we face up to those challenges with the Scottish Court Service in its present form, this is an opportune stage at which to consider how things are going.

The Scottish Court Service is, of course, a creation of the Scottish Parliament. It has an interesting mix of board members, the majority of whom are members of the judiciary from all levels, from the Lord President down to a member of the justices. It also includes the chief executive, two members of the legal profession and three members of the community at large. It brings together a wide perspective of different experiences, and although individual members of the board do not represent any constituencies as such, they bring their experiences of particular areas of life. That has worked very well: the members have gelled, and we believe that we are moving forward.

It might be said that we have acquired a certain status, partly because of our constitution and partly because of what we have been doing. I think that that has given us a degree of influence with Government that the agency that preceded us perhaps did not have. We are grateful for that state of affairs.

The constitution drew its inspiration from matters across the Irish Sea in the Republic of Ireland, which set up a similar establishment in its days of plenty in the 1990s. Of course, it is in days of famine now, but that body was set up in good economic times.

We have been set up in rather challenging economic times. I do not complain about that because, in some ways, the existence of challenges imposes a certain discipline on public bodies. It means that they have to look carefully at where they can best deploy the public resources that are provided for them.

09:45

We face a number of challenges, including the fact that we are only part of the justice system. Other bodies such as the police, the Procurator Fiscal Service and the community service organisations all have their respective parts to play. On our own, we cannot secure the best and most efficient arrangement for the processing of court cases. We need co-operation with those other bodies. We are seeking that, we are getting it, and matters are moving forward.

One matter that I mentioned when I opened the Scottish legal year in September, as I had done the previous year, is what is conventionally called churn. It arises when there is inefficiency in the processing of court cases. Various steps are being taken on that matter, to which we will no doubt return in due course, but we think that we can tackle it and make some progress on avoiding the wasting of court time.

I am happy to take any questions that the committee wishes to ask.

The Convener: As you mentioned churn, I will ask about it. What can be done to prevent churn in the system?

Lord Hamilton: A lot depends on parties other than the court. One of the worst areas of churn arises in relation to summary criminal cases, with parties not being in a position to proceed to court when cases come for trial, because of witnesses not being present or for some other reason. The Procurator Fiscal Service is doing something about that with the police, at least in pilot schemes. It now sends out the modern thing called a text message to witnesses the day before they are due to appear to remind them that they have been cited to give evidence and that they are expected in court the next day. In addition, it has adopted an arrangement whereby, if the witnesses do not turn up when they are expected, a bobby is sent out to get them and bring them to court. That approach is working, and it is to be hoped that it will be followed over the piece.

At a higher level, in the High Court, we are slightly concerned about whether preliminary hearings are as efficient as they might be. I have made an arrangement whereby preliminary hearings will be dealt with by a cadre of specialist judges rather than by all the judges.

The courts have some powers. They do not have a great deal in the way of sanctions that they can impose—if people do not turn up with their witnesses in time, the court can make noises and so forth—but there are certain measures that we can take.

The Convener: I will bring in other members.

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): Good morning to you both.

My question relates to court locations. In your submission, you described a process for reviewing the number of courts. Will you set out the timescale for consulting on those proposals? When do you think that they will be put into practice?

Lord Hamilton: We are at a very early stage. Perhaps I should introduce my response by saying that 40 per cent of the Scottish Court Service's expenditure is on court buildings, another 40 per cent is on the wages of staff, and there is a balance of 20 per cent. A very large proportion of our court expenditure therefore goes on maintaining our buildings. As some of those buildings are rather old, the maintenance costs are high.

We are in the very early stages of looking at what we want by way of provision of court buildings in the 21st century. Most of the court buildings are from the 19th century and were built where they were built because of the state of the community at the time, taking into account questions of travel and so on. We are taking a fundamental look at the matter. It has been brought before the board on one occasion, and a preliminary paper has been prepared by one of the officials.

The board took the view at its most recent meeting that the appropriate next step is to get the judicial members—the sheriffs principal, me and the Lord Justice Clerk—to consider what principles we ought to apply in the provision of court services in future. We are taking that forward, and we hope to be able to report to the board at its next meeting or perhaps the meeting after that. We have already taken soundings of affected people such as judicial office-holders and staff members of the Scottish Court Service. We hope to go out to a wider consultation sometime early in the new year. That is about the best that I can say on the timetable.

Implementation is some distance down the line. One thing that we have done is to address the issue of split sites. Where the same town or city has a sheriff court and a justice of the peace court, we are considering the options for combining them in a single building. We have succeeded in doing that already in four cases, and we have our eye on others. A big prize in that regard, if we can achieve it, is Glasgow, although there are problems with fitting all the business in both courts into one building. There will be others that we will address in due course.

At some stage, we might have to come to the Parliament to say that certain steps should be taken, which might even involve closing courts.

John Lamont: I ask this from the perspective of my constituency, which is a rural area. Will rural aspects and transport links be included in the principles that you use to guide the decision-making process?

Lord Hamilton: As I say, we have not formulated the principles yet, but that issue will certainly be recognised.

One thing that we have recognised is that we must consider what to do about the High Court. It has been suggested that the High Court should stop going on circuit, but the view that is coming through is that it is important for the High Court, as the most senior court in criminal business, to be seen to operate across the community geographically. The notion that we should simply have the High Court in Glasgow, Edinburgh and perhaps Aberdeen has been rather put back, but we are considering the matter.

James Kelly (Rutherglen) (Lab): Lord Hamilton, you were quoted recently in the media as saying that

"cuts can never be permitted to compromise justice in our courts".

The Procurators Fiscal Society submission to the committee raises concerns about reductions in staff costs in future years and states that there is currently a backlog of 14,000 cases, which has increased from 7,000 in April. Do you agree that we have an issue of justice potentially being compromised in our courts and that justice could be compromised further by staff cuts in future years?

Lord Hamilton: There are problems about that matter. We have had to address the issue of staff cuts. We have cut about 100 members of staff from around 1,500 through a voluntary retirement scheme, which operated well. We have no notion of requiring people to retire or having compulsory redundancies or anything of that sort. We might reduce staff numbers by a natural process of not replacing people when they retire, but we are

conscious that, if we reduce staff numbers, the remaining members of staff will potentially be required to do more work. We are therefore considering other approaches such as computerisation and the use of other forms of information technology to allow us to work more efficiently.

I do not see a particular problem with the courts processing cases, provided that the Procurator Fiscal Service brings the cases to us. One matter that concerned me when the financial arrangements were initially announced in September was that a greater cut seemed to be being made to the Scottish Court Service than to the Procurator Fiscal Service and the police. An imbalance could arise in that regard: if the fiscal service and the police receive more funding and can therefore produce more cases much more quickly, we might find it difficult to process the cases as efficiently as we would like. I therefore made particular representations and an adjustment was made. Although one must always bear in mind the effect of cuts on the services that we can deliver, I am confident that we will be able to adhere to the principle of doing justice in our courts. Indeed, that is critical.

James Kelly: You said that, as a result of the early retirement scheme, staff numbers had fallen by 100. Given that and the clear suggestion in the budget lines that there will be more staff reductions, is there a danger that the budget cuts will lead to a loss of expertise, which might well compromise the delivery of justice in our courts?

Lord Hamilton: We will lose expertise. The greatest difficulty is that the people who are prepared to go in voluntary schemes are often the most experienced members of staff, which creates challenges for the more junior members of staff left to take over the reins. If we take an orderly approach to the issue, we might avoid the problems that you have highlighted. We implemented a voluntary scheme last year but have no plans to do so again this year. As for the future, we think that the issue will be addressed through natural wastage, but we might have to come back to it at some stage.

The Convener: With regard to IT, what do you think about the Law Society's suggestion that in certain circumstances videoconferencing could be used in court?

Lord Hamilton: Eleanor Emberson might have to remind me, but my recollection is that videoconferencing is used for commercial business in Glasgow. Is it used in the Court of Session?

Eleanor Emberson (Scottish Court Service): Occasionally, perhaps. As part of the making justice work programme, a cross-justice project

has been initiated to look at extending the use of videoconferencing in a range of ways including, for example, contacts between solicitors and clients in prison, between courts and witnesses and so on. We intend to extend the use of videoconferencing a lot over the next few years.

Lord Hamilton: Rather surprisingly, the videolink between Glasgow sheriff court and Barlinnie prison, which we hoped would establish an appropriate link between solicitors and persons in custody, has not been taken up. It is not clear why that has happened, but I understand that the Scottish Legal Aid Board is investigating the matter to find out whether any improvements can be made to make that feature more efficient.

The Convener: I call Roderick Campbell.

Graeme Pearson (South Scotland) (Lab): Convener, can I ask Ms Emberson a supplementary question on IT?

The Convener: Yes. I am sorry, Graeme—you were at the bottom of my list.

Graeme Pearson: Although videoconferencing has been available for a decade, it has been used on fewer than a handful of occasions over the past year. Given the budgetary problems that we are facing, is it not time for more priority to be given to videoconferencing and for its full utilisation to be encouraged?

Eleanor Emberson: Absolutely. I think that it was probably the Barlinnie link that was used on the handful of occasions that you mentioned. We use videoconferencing technology for many things, including taking evidence from vulnerable witnesses, and it is increasingly being used for witnesses who might have to travel long distances.

Although videoconferencing is being used more than has been implied, all the justice bodies are acutely aware of the need to save each other money, which is why this SLAB-led project has been established. A sort of sequence has to be followed with regard to which of the many different uses for videoconferencing should be tackled first, and SLAB has suggested that links between solicitors and clients in prison be addressed first as a good way of saving some money quickly from travel expenses and so on. While that work is going on, we can investigate how we can better use the links between courts, prisons and perhaps police stations. There is a real will to do something about the matter, but as I am sure you will appreciate it is not going to happen in a few weeks.

10:00

Roderick Campbell (North East Fife) (SNP): I declare an interest as a member of the Faculty of Advocates.

Lord Hamilton, you were reported as saying that marked efficiency improvements have been achieved in the Court of Session and the High Court in the past year. Has the downturn in the number of civil cases that have commenced in the Court of Session and sheriff courts provided an opportunity for efficiency improvements? The 2010-11 figures are reported to be down by 17 per cent on the 2009-10 figures and by 26 per cent on the 2008-09 figures.

Lord Hamilton: I am not sure whether reducing the number of cases gives rise to prospects of greater efficiency, although it might. Interestingly enough, we are managing to give parties in civil cases diets much earlier than we used to, and that is partly due to the downturn. In the inner house—in the appeal court in civil matters—we are giving diets within a few months, whereas it traditionally took at least a year to have a case heard in the inner house.

The commercial court, which is one of the jewels in our crown, has a lot of business, but we are managing to give reasonably early diets for cases that are not too complicated—it requires a matter of weeks for them to be heard. If a case could be dealt with by a proof or a diet of debate in two or even four days and the diet was requested today, it could take place early in the new year, which is quite efficient.

Civil business has reduced to a degree. To an extent, that is why we can achieve earlier diets, which are an aspect of efficiency.

Eleanor Emberson: A sharp drop occurred in the number of ordinary civil cases that were registered between 2009-10 and 2010-11, but the number of proofs and debates that proceeded increased. It is important to understand that a reduction in the volume of business that comes in does not necessarily translate into the same reduction in the court's business.

Roderick Campbell: Would either witness care to speculate on where the trend in the number of civil cases that are commenced will go?

Lord Hamilton: That would be a pure speculation. I do not know the answer, because it is difficult to judge what causes increases or decreases in litigation.

I will describe what one might expect in some fields of the business. In difficult economic times, the construction industry used to address itself to claims. When it had nothing to build, it would seek more money for things that it had already built, which caused an increase—a spike—in litigation. I do not know whether that has happened on this occasion, because the economic downturn has been such that even construction companies are not prepared to hazard their moneys on perhaps

doubtful litigation that they might have undertaken in earlier downturns.

Roderick Campbell: You mentioned the principles that will be relevant to the future of courts. Given the £65 million maintenance backlog, will maintenance issues be one factor that is considered?

Lord Hamilton: As I mentioned, a very large proportion of our budget goes on maintaining court buildings, so we must bear that in mind as a factor in our thinking.

The Convener: The Lord President mentioned the specialist commercial court. Lord Gill has proposed a specialist personal injury court. I do not paraphrase the dean of faculty too much when I say that he gave the idea pretty short shrift and thought that process changes would be more pertinent to saving money. Do you agree?

Lord Hamilton: For two years or so, we have had arrangements for personal injury cases—what we call chapter 43 cases. They came out of proposals that Lord Coulsfield made some time ago. I understand that they have produced an efficient way of dealing with personal injury cases.

The approach involves giving parties a timetable from the outset that states when things will happen and when they have to do things. It includes a compulsory conference some weeks before the diet of proof so that every opportunity is used for securing settlement before cases come to court. That works quite well.

The process does not necessarily involve specialist judges in the Court of Session. Each and every judge who is not confined to another area of specialty will do his or her share of personal injury work. That is not a bad thing, because it is important that most judges have the opportunity to do it. The procedure is efficient, and I do not see a need to make a change in that regard.

There might be something to be said for the way in which the work has begun to be done in the sheriff courts. In Glasgow in particular, steps have been taken to identify personal injury judges, and that seems to be working well.

Humza Yousaf (Glasgow) (SNP): Good morning. My question is somewhat related to the convener's question. Does the tightness of the budget settlement make Lord Gill's reforms a greater priority?

Lord Hamilton: In some respects it does, but I have to say that his reforms are for the medium to long term. First, they require legislation, and secondly, resources will be required to put them in place, particularly for any transitional arrangements.

What is envisaged in the longer term if Lord Gill's proposals are implemented by legislation is that we will have district judges who will be paid rather less than sheriffs are paid at the moment. We will have fewer sheriffs and fewer senators, so we would perhaps expect the total judicial pay budget to be less than it is at present. However, if there is to be a mixture of ranks, transitional arrangements will have to be put in place, which will be quite costly. In the medium term, it will be important to have the means, somehow, before the end can be achieved.

Humza Yousaf: Perhaps the Government should introduce legislation sooner rather than later to expedite the process.

Lord Hamilton: Yes—if it can find the means. That might be a significant inhibiting factor in achieving it.

Humza Yousaf: Thank you. That is helpful.

Roderick Campbell: To what extent can case management be improved without substantial expenditure being incurred?

Lord Hamilton: The prime example of case management is commercial business in the Court of Session. That can be said to have been a real success. It is an expensive thing for litigants because they are required to appear regularly at preliminary hearings and other procedural matters. That will cost them, because they will have to pay for their lawyers to be there. I can see that there are advantages in the approach, but it involves up-front costs. People have to spend money at an early stage in the litigation, hopefully to save money at a later stage.

The Convener: Do you foresee more party litigants, given the changes in legal aid and the changed economic circumstances that people are in? Are there cost implications when party litigants appear?

Lord Hamilton: Yes. Concentrating for the moment on civil business, there is a real risk that more people will be unable to get legal aid and therefore that more people will have cases to bring but no means of obtaining and paying for representation. That means that we will get more people as party litigants in our civil courts. That is a problem for the fair dispatch of business, because whatever people think about lawyers, on the whole, they are able to concentrate on the legal issues in a litigation.

Lay people are often unable to see the wood for the trees—to tell the relevant from the irrelevant. I have found that in many cases with party litigants, a mass of complaints is being made and somewhere in that mass there is a nugget. It is a matter of identifying and addressing the nugget. That involves quite a lot of judicial application,

which takes judicial time and resources. That has implications for the cost and efficient dispatch of business.

The Convener: You may not be able to answer this question, but has anyone ever costed a case that has been presented by a party litigant? Do we have any idea of the additional costs to the system?

Lord Hamilton: I do not think that anyone has done that. It would be an extremely difficult exercise to carry out. That is my impression.

Graeme Pearson: We heard earlier about the interest in some form of resolution process prior to coming to court. From your perspective, should we encourage the formal development of such a process? Would it lead to efficiencies and budget savings that we could invest for the future?

Lord Hamilton: There are arguments either way. In commercial business there was at one stage a scheme, drawing on experience south of the border, that required parties to take certain steps before they were entitled to bring an action to court. At the end of the day, that did not work. It was found that it was much better to allow cases to be brought into court and to be managed subject to judicial supervision from an early stage.

I am all for encouraging people to resolve their differences extra-judicially, and I would support any such encouragement. However, I am not wholly convinced that taking formal steps to require this and that to be done at certain times is necessarily the answer to that.

John Finnie (Highlands and Islands) (SNP): I want to return to a subject that was touched on by John Lamont. I noted Lord Hamilton's comments about not having formulated the criteria for the court review; I suggest that carbon footprint be included in that, for the reasons that my colleague John Lamont alluded to. I am talking about a few carloads heading up the A9 to Inverness, as opposed to busloads of witnesses heading down and all the resulting hotel bills and so on. I ask that that be borne in mind.

The Convener: That is Inverness sorted, is it?

John Finnie: I sincerely hope so. My point, of course, is one that Lord Hamilton touched on about access to justice and things being seen to be done.

I want to touch on another aspect that should impact not only on capital expenditure but on revenue expenditure. The committee has had evidence from Scottish Women's Aid on the issue of the separation of witnesses from accused. I accept that the physical layout of courts cannot readily be changed, but is there a budget line for that? Has any thought been given to it? Clearly, we want victims of crime to come forward, and

anything that would inhibit that is to be discouraged.

Lord Hamilton: I ask Eleanor Emberson to respond.

Eleanor Emberson: We have what you could call a court design guide, which comprises the principles that we would use if we were able to build a new court building anywhere. One of those principles is exactly as you say—the proper separation of witnesses and victims.

As you noted, an awful lot of our old buildings do not conform to the standard that we would like to set. We will consider that when we are trying to decide, as the Lord President said, the court estate for the 21st century. One of the things that we will have to take into account is how far the existing buildings meet, or could be made to meet, the standard that we would want them to meet.

John Finnie: Is there a transitional programme in place between the ideal and the reality? In some instances the measure could be very modest, such as using different entrances.

10:15

Eleanor Emberson: We try to take that into account in all the buildings. We do not have a single, specific budget line that is purely to address security issues. However, our health, safety and security committee is very active and looks at all those matters, and we act on its recommendations. Saying that there should be separate entrances makes it sound easy, but often it turns out to be much more complicated than that.

John Finnie: I accept that.

The Convener: The Lord President and Ms Emberson have referred to co-operation with regard to videoconferencing between the Scottish Legal Aid Board and the Scottish Court Service. Given the other cuts that will be made to the legal aid budget, what other co-operation is taking place? How much is the work joined up—to use that awful expression—so that the organisations work together and do not deal with the issues in their separate pods?

Lord Hamilton: We are very conscious of that and we regard it as a very important matter to address. I mentioned that the Scottish Court Service cannot achieve things on its own; we are part of a larger justice community.

Largely at Eleanor Emberson's instigation, we had a very successful gathering in the earlier part of this year, in which the chief executives of the Scottish Court Service, the Legal Aid Board and the Crown Office and Procurator Fiscal Service came together and addressed a meeting that was

also attended by members of the boards of the three organisations. That was very interesting and gave rise to a number of ideas about future co-operation.

We have worked in combination with the Crown Office and Procurator Fiscal Service so far as managing buildings is concerned. In a sense, we have made a takeover bid in relation to managing some aspects of its buildings, which has resulted in efficiencies and savings. It is very important that we get together and we are taking steps along those lines.

The Convener: Does the information also go to the cabinet secretary? Do you report to the Government at the end of that work?

Eleanor Emberson: Bridget Campbell, the director of justice, and a number of Scottish Government colleagues were present at the event that the Lord President mentioned. A Scottish Government-led programme—the making justice work programme—brings together all the work and joins up efforts across all the justice bodies.

I have been in the Scottish Court Service for seven years, and I must say that we are much better co-ordinated than we have ever been.

The Convener: We are here to look at where the money can be saved. Can you project what kind of savings would be made at the end of the process? There is no point in doing it if it will cost more and no savings are made.

Eleanor Emberson: No, indeed there is not. However, a large part of the joining up that is being done is to make it possible for the various bodies to live within the cuts that we face. It is a bit of a chicken-and-egg situation. It is not a case of deciding that we will all do things and that, thereby, we will miraculously save more money; the money has to be saved and we are doing things to ensure that that is possible.

The Convener: So you are told, “This is your pot; tailor things to fit it.” That is what you have been doing.

Eleanor Emberson: Largely.

The Convener: We do not seem to have any more questions—every time that I say that, a hand goes up somewhere, so I must stop saying it. In fact, two hands have gone up—James Kelly has a question, as does Graeme Pearson.

James Kelly: Thank you, convener. You thought that we had reached the end of our questions.

The Scottish Government is reviewing the tribunals service in order to embed, potentially, not only tribunals that are within the competence of the Scottish Parliament but some reserved tribunals. Is that process realistic, given that there

will be a 10 per cent cut in the tribunals budget over the spending review period?

Lord Hamilton: That is slightly outwith my field, because the Scottish Court Service does not currently have any responsibilities for tribunals, although it is projected that at some stage there might be an amalgamation between the Scottish Court Service and any tribunals service that is set up.

I do not know about the economics of the situation. Obviously, there are difficulties if the budget is to be cut to that extent. I rather think that it will be necessary to do something about setting up a Scottish tribunals service.

We are in a difficult situation at the moment, in that the United Kingdom and Great Britain tribunals that operate in Scotland in terms of administration, as it were, have been thrust on Scotland from the Ministry of Justice because it suits its business to combine the court service and the tribunal service. We have to deal with that and with a variety of domestic tribunals that have their own separate modes of administration. It would be more efficient to have a central organisation that provided services to the various tribunals. I hope that that can be achieved, but I do not know how readily it can be achieved or what money is available for it.

Graeme Pearson: We received information from the Scottish Parliament information centre, which provides us with some of our research material, that indicated in the assessment of solemn procedure cases that there has been a fairly significant fall in the number of cases being processed through the courts over the past three or four years. It amounted to roughly 700 cases over that period, which is about 25 per cent of the annual number. Presumably, there should be savings within that kind of volume. Having listened to the discussions thus far and given how budgets are going—the substantial fall in legal aid moneys for defence solicitors and so on—do you feel that you have an action plan that will deliver not only the savings that will bring you on budget but a plan for the future? Budgets do not look too healthy in the longer term. Can you address the cut in the number of cases and tell us whether there is an action plan that will deliver?

Lord Hamilton: There has been a significant drop in the number of solemn cases; we are conscious of that and of the fact that we must address the costs that arise in solemn cases elsewhere. I should perhaps mention something that will happen in the medium term rather than the longer term: in order to achieve the budget restrictions, we must look at the question not only what moneys we get from Government, but what moneys we raise from other sources, which includes the question of court fees.

We have noticed that there are marked differences in the recovery of fees and outlays between the Office of the Public Guardian, which covers virtually 100 per cent of outlays, and the sheriff court, from which is achieved about 80 per cent of outlays, down to the Court of Session, which has a rather lower figure. It is plain that we shall have to come to the Parliament with a view to getting increases in the recoverable court fees that are at least in line with inflation but which possibly go further. It looks as though the third of the three years ahead will be the most difficult so far as we are concerned, but that is one of the mechanisms that we hope would assist us in meeting our restricted budget at that time.

Eleanor Emberson: The point about the sheriff court solemn cases is much the same as the earlier point about the civil cases. There has been a substantial drop in the number of indictments, but the number of trials with evidence led has actually increased over the period. It is difficult to look at runs of figures and try to understand something about the volume of business that the courts are undertaking, because that is driven not simply by the number of indictments registered, but by the number of trials that actually go ahead.

Graeme Pearson: I am grateful—thank you.

The Convener: I note that the budget for judicial salaries rises only slightly throughout the spending review period, although they are of course settled at a UK level. Are there concerns among judges about the small rise in the budget for judicial salaries? If so, could that result in there being fewer judges in Scotland in the future and does that matter?

Lord Hamilton: There are a number of questions there. The salaries budget concerns all levels of professional judges. One of the issues that arises because their salaries are determined on a UK basis is that they are subject to the recommendations of the Senior Salaries Review Board, which has done a number of reviews over the past few years. On each occasion, other than the most recent, the board has recommended increases in judicial salaries, perhaps even just to keep up with inflation. None of that has been implemented by the Government. In fact, judges are being remunerated at a significantly lower level, in real terms, than they were five, six or seven years ago.

Associated with that is the question of pension provisions. As you will be aware, the UK Government is addressing questions of pensions, including judicial pensions, and there are some real concerns about what is being done in that field. That gives rise to a number of problems, not least of which is ensuring that we encourage the best people qualified for the post to apply to be senators of the College of Justice. One of the

problems that we had last year was that, although there was a competition, the board, having interviewed a number of people, found that nobody who applied was suitable for appointment. We have been running one judge short for the past year or so. That is a matter of concern.

Should it matter in relation to judicial salary? It might depend on what one has in the way of a range of judges. If the Gill review is carried through to its ultimate, you will get cheaper judges, as it were—you will get district judges who will be paid less, equivalently, than sheriffs are paid for doing some of the business that sheriffs do at the moment.

There are things on the horizon for which a smaller judicial pay budget might be required, but it is still important that we get the right people to do the jobs.

The Convener: So it is not appropriate to have a pay freeze for senators.

Lord Hamilton: No. Like everyone else, we are conscious that there are restraints that apply to everybody, and we have to be responsible in that regard. However, it should be borne in mind that, for quite a few years, we have not kept up with inflation.

The Convener: That is on the record, Lord President. I do not know how sympathetic the public will be, of course.

Graeme Pearson: I have been thinking about the consequences of what Eleanor Emberson said about the number of trials and so on. The cut in legal aid, which is immediate and will last for the next three or four years, will create a hurdle, given the fact that there will be more trials at solemn procedure. How do we match that up in this joined-up working environment?

Eleanor Emberson: I said that there has been an increase in the number of such trials. I do not know that I would project a further increase.

We have to match up the two elements as we go. Legal aid is demand led. We work with the Scottish Legal Aid Board to understand what is going on. The arrangements that have been put in place allow all the justice bodies to react to the patterns that emerge. We can all make good guesses, but we do not know. At the moment, we are working on the assumption that the number of trials and so on will be flat, and we will work with SLAB to minimise the costs in that regard.

The Convener: That brings us to the end of this session—we are right on time. I thank our witnesses for their attendance. They have been extremely helpful.

I understand that the Lord President is retiring in June. This might be a little premature, but the

committee would like to wish you well in your retirement. Of course, you might come before us again before that. Who knows?

Lord Hamilton: Just to close, I would like to make reference to something that was said to you in your previous meeting. I think that the dean of the Faculty of Advocates suggested that what was being done amounted to merely an exercise in musical chairs. I am not sure that that metaphor is wholly apt. I do not think that we have a situation in which chairs are being taken away one at a time. We have the same number of chairs, but they are smaller and less comfortable to sit in.

The Convener: On that, I suspend the meeting for five minutes.

10:29

Meeting suspended.

10:33

On resuming—

The Convener: I welcome to the meeting the second panel of witnesses. Kenny MacAskill is the Cabinet Secretary for Justice, Colin McKay is the deputy director of the legal system division, James How is head of the access to justice team in the legal system division, Joe Griffin is acting deputy director of community justice, Richard Dennis is head of the fire and rescue services division, and Nick Bland is head of the police reform unit.

I understand that the cabinet secretary wishes to make a brief opening statement.

The Cabinet Secretary for Justice (Kenny MacAskill): Thank you, convener.

Against the backdrop of the deep cuts in public spending that have been applied by successive UK Governments, we have, since coming to office, invested to deliver a safer Scotland. We have seen the benefit of that investment; recorded crime is at its lowest level since 1976, reoffending rates are at an 11-year low, violent crime levels are lower than they were in 2007, and there are 1,000 more police officers in our communities than there were when we first came to office in 2007.

The results of the Scottish crime and justice survey 2010-11 were published earlier this morning. I am delighted to announce that the risk of being a victim of crime is at a 20-year low, and that it is lower than the risk in England and Wales. The number of crimes has fallen by 16 per cent in the past two years, and the risk of being a victim of violent crime is falling. The public are more positive about crime rates in their local areas, and 72 per cent of Scottish adults agree that community sentencing is an effective way of dealing with less-serious crime.

I want to make it clear that the budget plans that we published in September aim to build on that investment in the next three years. In common with every portfolio, we face significant challenges in delivering the services that our people expect, given the scale of overall reductions that the UK Government has imposed on us.

The justice portfolio has not been immune to the aggressive and unwise reductions in capital budgets that were imposed on Scotland in last year's UK comprehensive spending review. Across the Government, despite that difficult context, we are working hard to deliver by maximising efficiencies, embarking on a wide programme of public sector reform and investing early to maximise the impact of public spending. My portfolio is playing its part in each of those areas. We are delivering efficiencies across services, we are committed to reforming our police and fire services, and we are funding early intervention through our reducing reoffending change fund, which will address the cycle of repeat offending.

To give the committee an overview of our spending plans, I begin by pointing out that the Government's priority for investment has always been front-line services—we will take that approach across my portfolio in the next three years. Despite the difficult financial context, the justice portfolio budget will increase by 6 per cent in cash terms in 2012-13 to support our work in the short term, which will reduce our call on the overall budget in the medium and longer terms. That will enable us to undertake the reform of Scotland's police and fire services to help to maintain services in the medium and longer terms, and to launch a new early intervention change fund to support the initiatives that we know can reduce reoffending.

In the period to April 2015, the justice portfolio will deliver our planned capital programme, which includes the Scottish crime campus at Gartcosh, the Parliament House project, and the construction of HMP Grampian. We will extend the cashback for communities scheme and maintain the 1,000 extra police officers in our communities. We will take action to reduce the harm that is caused by knives, alcohol, drugs and sectarianism. We will continue to support tough and swift community sentences, and we have fulfilled our manifesto commitment to maintaining funding for community payback orders. We will also support the reform and streamlining of Scotland's courts and tribunals.

I hope that I have given committee members a helpful overview of my priorities for the next three years. I and my officials will be happy to answer your specific questions on any of those aspects.

The Convener: That was a swift and helpful overview. You frogmarched us through it, which is not a problem. We now have questions from James Kelly, John Lamont and Humza Yousaf.

James Kelly: Good morning, cabinet secretary. I note the list of statistics that you rattled off, but I would temper those by pointing out that in South Lanarkshire, where I come from, there has been a 366 per cent increase in murders. I am sure that the cabinet secretary would agree that there are still many challenges throughout Scotland's communities.

I turn first to the issue of police costs. The central police budget is set at £480.3 million, which is a flat cash settlement over three years. As the cabinet secretary acknowledged in his response to the committee, further funding for policing comes from the local government grant. The submission that we received from the Association of Chief Police Officers in Scotland indicates that to maintain the current number of police officers, a total spend of £942 million is required. That represents £462 million coming from the local government settlement in addition to the central Government grant. Does the cabinet secretary accept that figure? Has he budgeted for it with regard to the local government settlement?

Kenny MacAskill: In response to James Kelly's preamble, I have to say that there are far too many tragedies in Scotland, but I have no doubt that he will welcome the roll-out of the no knives, better lives campaign in South Lanarkshire and five other areas.

James Kelly: I do.

Kenny MacAskill: On policing, there is a tripartite relationship. We are certain from our discussions with ACPOS and the Convention of Scottish Local Authorities that matters are fully funded. Nick Bland may wish to add something to the assurances that we have received from our partners.

Nick Bland (Scottish Government): Following the agreement that was reached with the Convention of Scottish Local Authorities, the expectation is that the local government contribution to police funding will cover the commitment on 17,234 police numbers.

James Kelly: I asked whether you accept the figure of £942 million, which is cited in the written submission from ACPOS, as being the sum that is required to deliver police officer numbers at their current level.

Kenny MacAskill: Our discussions are around local authorities delivering those numbers; the figure that they put on that is for them to determine. We have provided them with the funding through a 6 per cent increase in the justice

budget, and in reaching agreements with COSLA and ACPOS we have had assurances from both those organisations that the figure of 1,000 extra officers can be maintained.

James Kelly: Have you got a figure, or are you just going to bluster?

Kenny MacAskill: I do not think that I am blustering. I am giving an assurance that we can meet the target to which we have given a manifesto commitment—which was to maintain the visible police presence in our communities and the 1,000 additional officers in our communities. We have provided funding to ACPOS and we provide the overall funding to COSLA, which is dealt with by the Cabinet Secretary for Finance, Employment and Sustainable Growth. In reaching agreements with both those organisations, we have had assurances that the target for police numbers can and will be met.

James Kelly: You are the Cabinet Secretary for Justice, so I assume that you must have done some budget planning and worked out what it would cost to deliver police officer numbers at their current level. Did you do any planning and what number did you come up with?

Kenny MacAskill: Of course we do planning and those matters are factored in. However, the budget that we give to the police is not simply to maintain police officer numbers, pivotal though that is, given the percentage cost. We provide an overall budget; it is for the police to decide how they allocate resources within that. You have previously raised with me the question whether the money should be spent on police officers or on people who are not police officers but who are within the police family. It is for the police to decide how they allocate their budget. We have had assurances from both ACPOS and COSLA that police numbers will be maintained at the current level.

James Kelly: Okay. We are clearly not going to get a figure.

I draw your attention to another issue in the written submission from ACPOS. It points out that the settlement is a challenging one. It is a flat cash settlement, although there are still inflationary pressures on the budget and increments on police officer pay that need to be delivered. It states:

"Accordingly, a continued requirement to maintain Police Officers over time will hit Police Staff numbers hard, most likely to the detriment of front line policing".

Do you accept that view?

Kenny MacAskill: These are difficult financial times, which started when the previous Labour Government made swingeing cuts and have been accelerating since then under the coalition Government. Nobody in any portfolio—least of all

justice—underestimates the challenges that we face. Equally, however, the justice budget has done reasonably well in weathering the storm. I am grateful for the assistance that has been given by my colleague, the Cabinet Secretary for Finance, Employment and Sustainable Growth. I do not underestimate the difficult choices that the police face, but it is for them to make the various decisions.

As I said previously, in our discussions with ACPOS we have had assurances from it and from COSLA that the visible police presence—which we think has been a pivotal part of delivering a 35-year low in recorded crime—will be maintained. It is up to chief constables, who are scrutinised, monitored and held to account by their boards until we move to a single service, to decide how they spend their budget.

James Kelly: Are you not just passing the buck on these issues and not accepting responsibility for the budget that you are outlining?

Kenny MacAskill: I am not doing that at all. It has always been a historical constitutional matter that the police are separate from political interference, and it is fundamental that we maintain that separation as we proceed towards the single service. If you are asking me to call the shots within the police service, I will decline on the basis that it would be political interference from which we are constitutionally debarred. I stand by that constitutional separation of powers and think that it would be a sad day when a justice secretary was directing a chief constable on whom he or she should employ.

John Finnie: My question is to Mr Bland and is about police reform. We have heard from the cabinet secretary about choices, the single-line budgets that were put in place and the autonomy that was granted to chief officers. Am I right in saying that removing seven chief constables from the equation would allow 36 officers to be freed for front-line duties?

Nick Bland: If you have made that calculation on those two aspects, that is absolutely the case.

10:45

Alison McInnes (North East Scotland) (LD): Cabinet secretary, your budget shows £51.4 million extra over the next two years to facilitate your police reform process, but looks for significant savings of £22 million to £23 million in the first year and of another £22 million to £23 million in the following year. Is it realistic to expect such savings in the first year? You might remember that when you convened your international conference on police services, delegate after delegate turned up and said that the proposed changes would take five years or more.

Kenny MacAskill: I recall that the delegates from Finland and Denmark said that, if we are going to reform the system, we should do it quickly. I took that on board. The lesson that I took from Finland was that a regional model would delay matters and increase costs, to be frank.

As I said in my letter of 24 October to the committee, we have made it clear that

“The estimated savings are based on an operating model developed by experts from police forces across Scotland”.

They are certain of that position, which we believe is the correct position.

It is fair to say that some of the up-front costs would have to be met anyway, even if we were not moving to a single service. They include costs of IT systems that operate across Scotland. For many years, we have—sadly—lived in a scenario in which we have not been joined up, which is unacceptable in 2011.

Alison McInnes: What contingencies will be in place if the savings are not realised as quickly as you think they will be?

Kenny MacAskill: We think that the savings will be delivered. Such contingencies would require to be discussed with the Cabinet Secretary for Finance, Employment and Sustainable Growth. As I said, the figures were produced not by me but by experts from the police and the Scottish Government. We have analysed them; we believe that they are robust and we are confident about them.

John Lamont: A large part of your Government's policy on criminals is to keep them out of prison, as far as possible. My question is about the budget that you have allocated to alternatives to custody. The community justice services budget and the criminal justice social work budget will reduce in real terms over the spending review period, and the criminal justice social work budget is flat in cash terms. Does that mean that, despite the Government's objective of keeping more criminals out of jail, less money will be available for community penalties?

Kenny MacAskill: No. First, I put it on the record that we want the right people in jail. Under the Government, sentences have lengthened, especially for knife crime and other offences. We take some comfort from that matter. Those who need to be in prison should be there, and we fully support the actions that the Crown, the police and the judiciary have taken. It is a matter of getting the right people in prison—I need not go beyond what the Scottish Prison Service's chief executive has said.

On community penalties, we must deliver on the community payback order. When I appeared before the committee last year and the year

before, Mr Kelly predicted that CPOs would almost crash and burn and that the funds were insufficient. CPOs went live in February and continue to operate. We do not underestimate the challenges but—because of Mr Kelly's foreboding of doom—we ramped up and took steps even before the spending review to ensure that additional funds were available. We will maintain that. With the change fund, we will ensure that additional funds are available.

We cannot be absolutely certain about the number of people who will be sent to prison or given community sentences, but we are satisfied that we have provided sufficient funds to ensure that the community payback order continues to grow and to operate. Resources for the change fund have come from my budget and from elsewhere. We will also seek to lever in additional money in order to provide new and innovative ways of reducing reoffending.

John Lamont: I want to be clear. The Government has said time and again that it wants to reduce the number of people in prison, and to use community-based alternatives, but you are not increasing the budget to accommodate the additional people who will need community-based punishments as an alternative to prison.

Kenny MacAskill: I am not saying that. At the end of the day, the courts set the number of people in prison, and we do not seek to interfere in that process in any way, just as we do not interfere with the police. We believe in a coherent penal policy. People who have committed serious offences and for whom no other sentence would be appropriate, and those who are a danger to our communities because they use knives, for example, should go to jail. Prisons should not routinely be used for people who have committed less-serious offences and who are not a danger to our communities. The primary reason why is that we know that tough community sentences—not short prison sentences—reduce the likelihood of reoffending.

The statistics are clear, and I will remind members what they are: three quarters of those who are given short prison sentences will reoffend within two years, and two thirds of those who are given tough community sentences will not. We believe that, to make our communities safer, we should move to tough community penalties rather than use short prison sentences, although we accept that it is open to sheriffs or judges on cause shown to impose short custodial sentences when they see fit to do so. That certainly applies in domestic matters, for example, where respite care is required.

Because of the furore—if I may put it that way—and the prophesying of doom before community payback orders came in, matters have been

ramped up. We have ensured that the funding for community payback and other things is protected. There is also the new £7.5 million reducing reoffending fund, which will allow the important changes that we have made to the CPOs to bed in and demonstrate their worth. Community payback orders will be supported by the three-year £7.5 million reducing reoffending fund.

The Convener: I ask for clarification. You have mentioned two funds: a reducing reoffending fund and an early intervention change fund. I take it that they are separate funds.

Kenny MacAskill: The reducing reoffending fund comes from my budget. Other budgets are operated under other portfolios; the reducing reoffending budget is separate.

The Convener: How much is in the reducing reoffending fund?

Kenny MacAskill: There is £7.5 million over three years.

The Convener: How does the early intervention change fund, which crosses portfolios, operate? How much is in it? Which portfolios does it come from?

Kenny MacAskill: I ask Joe Griffin whether he is aware of that.

Joe Griffin (Scottish Government): That fund is not directly my responsibility, but I understand that it is in the region of £100 million. We are in the process of working out the best way of using that money. That involves establishing a steering group, which will include representatives of various interested stakeholders. The convener is quite right: there are two separate funds.

The Convener: Which Cabinet portfolios does the £100 million come from? I think that the cabinet secretary mentioned colleagues. Does the money come from the education and health budgets?

Joe Griffin: Again, that is not my area of expertise. It may be helpful if we gave the committee a written submission on that.

The Convener: That would be very helpful.

Joe Griffin: That would probably be the best thing to do.

The Convener: Is the £100 million for three years?

Joe Griffin: Again, it would probably be best if we covered that in a written submission so that I do not mislead the committee.

The Convener: I want clarification because I think that the committee supports early intervention, but we need to know what that fund is

for, how much is in it, who is responsible for it, and how it will operate.

Richard Dennis (Scottish Government): If you have a copy of the draft budget document in front of you, brief details of the fund are set out on page 38.

The Convener: We will look at that later. I simply wanted to clarify where the various things are. As I understand it, the reducing reoffending money would be for after a person has been through the court process, but we are looking at preventing them from going through that process. I want to clarify matters, as we wish to see where the money can be best spent. I do not know whether what I have said has been helpful to the committee, but we will certainly consider the matter in more detail.

Humza Yousaf: Good morning, cabinet secretary. Last week, Professor Paterson from the University of Strathclyde said in evidence that the legal aid cuts were tough, but if we had to choose between the cuts that are being made here and those that are being made south of border, there would be “no contest”. However, legitimate concerns were expressed about access to justice. What safeguards have been put in place to protect access to justice for the most deprived people in our communities?

Kenny MacAskill: You are right; I saw Professor Paterson’s submission. We have made it quite clear that we are not following the path that is being followed south of the border, where there is a wholesale jettisoning. That is a path that we are not prepared to go down.

We are trying to work with the legal profession because these are difficult times and its members are having to tighten their belts. The Scottish Legal Aid Board is undertaking a review to try to reduce costs. Changes have been made, with the consent of the Law Society. Our emphasis is on protecting the people who are the most vulnerable. Those who can contribute should contribute. That is why we are happy to extend contributions into criminal legal aid. I have always felt that it was a manifest injustice that, for example, a woman—it is usually a woman—who is a victim of domestic violence and is trying to keep family and home together has to pay a contribution to obtain protective orders while the perpetrator of the violence gets criminal legal aid without making any contribution. That has to change. It cannot be justified at any time, and certainly not in a time of austerity.

We are seeking to work with the Law Society, SLAB and others to ensure that we protect the most vulnerable people and that where savings can be made and matters can be dealt with differently, whether through mediation or other

ways, the options are considered. However, that is a matter for discussions that are yet to take place.

Humza Yousaf: It was clear in a number of submissions to the committee that, under previous Administrations, legal aid was not properly monitored. People from SLAB told us stories about people claiming legal aid who were subsequently found to have, say, 19 properties. How can you ensure that—although legal aid is demand-led, of course—there will still be stringent monitoring?

Kenny MacAskill: I think that SLAB is doing an excellent job. It should be remembered that it is a criminal offence to make a false legal aid application, and that prosecutions follow in such cases. In a scenario such as Humza Yousaf mentioned, I would expect action to be taken. Legal aid is not supposed to be used by people who can afford to pay; it is meant to give people the opportunity to pursue an action that they otherwise would not be able to pursue. They might ultimately have to make a contribution, possibly from any proceeds of the action.

We recognise that we are in difficult and challenging times. We do not want to go down the route of wholesale abandonment, as is the case south of the border. We want to ensure that, in conjunction with front-line practitioners, be they lawyers or advice agencies, we get the biggest bang for our buck, that we prioritise the areas that we have to prioritise and that, if there are hard choices to be made, we make them on a consensual basis.

James How might want to add something.

James How (Scottish Government): We introduced a series of changes to legal aid after the comprehensive spending review at UK level last year. We have made quite good progress. We started early and looked at areas in which efficiencies could be made and have presented this committee with a series of regulations over the past year to 18 months.

We will make further savings on the basis of what we have already done. On 5 October, we published a Scottish Government paper entitled, “A Sustainable Future for Legal Aid”, which considers further changes. We have already begun discussions with the Law Society’s civil and criminal legal aid negotiating teams and the Faculty of Advocates. As the cabinet secretary said, we want to work closely and in a consensual manner with those bodies to find areas where we can make savings. That was very much the focus of the submissions that were sent to the committee last week by the Law Society and SLAB. We are working with them to see where we can make efficiencies.

Humza Yousaf: I have one final point. I should have read all the documentation that is before me—

The Convener: Never confess.

Humza Yousaf: It is terrible, I know.

The answer to my question might or might not be in the documentation. As we keep reiterating, legal aid is demand led; how much do you project will be saved over the course of the spending review as a result of the legal aid cuts?

11:00

James How: Based on the savings that have already been made and the information that is available to it, SLAB forecasts that the spend will come down to roughly £146 million next year. Legal aid is demand led, so it is difficult to do such forecasts, but that is what it is saying at the moment.

In the paper “A Sustainable Future for Legal Aid”, we have outlined possible further savings of up to £15 million, including savings from legislation, to which the cabinet secretary referred, that will introduce contributions to criminal legal aid and a series of other measures; savings to legal aid from the use of videoconferencing, which was discussed in the previous session and last week; and savings from other actions that are part of the making justice work programme, which has also been mentioned. We need to make savings on top of those that have already been made, but we are making a good start. We are talking to the professional bodies that we need to talk to and, as SLAB and the Law Society of Scotland made clear last week, we think that it is possible to make the further efficiencies that need to be made.

Colin McKay (Scottish Government): With regard to the numbers, a table on page 4 of “A Sustainable Future for Legal Aid” sets out the board’s spending forecasts based on the current system and the actual budget provision, and the difference between those two figures represents the savings that need to be made. By the end of the spending review in 2014-15, the difference will be about £13 million.

Roderick Campbell: A couple of points arise from “A Sustainable Future for Legal Aid”. First of all, I note that half of the civil legal aid bill relates to family matters. Is there any way of cutting that bill without impeding access to justice? I think that I am right in assuming that any such reduction has not been factored into the savings that you have mentioned.

Secondly, the document also proposes moving “closer to a system in which legal aid is seen as ‘funder of last resort’.”

Obviously, we might be prejudging Sheriff Principal Taylor in this regard, but I must assume, again, that none of that has been factored into the spending review.

James How: “A Sustainable Future for Legal Aid” contains a paragraph on the “funder of last resort” proposal. As actions in that respect have been factored into the spending review, we think that early savings are possible. However, the savings are probably not significant. If SLAB follows our proposal and reviews the verification that it seeks in cases, it might well find that people have insurance policies that cover actions that they want to take. Although the board already carries out that work, it is looking to review verification of the information that it asks for, and to find out whether any additional savings can be made. As you suggest, no win, no fee situations, conditional fees, success fees and other such mechanisms all form part of Sheriff Principal Taylor’s review, which is looking at the longer term.

On the first question, a paragraph in “A Sustainable Future for Legal Aid” proposes that there be a further look at what more can be done in family matters—which, as you have pointed out, account for almost half of all civil legal aid expenditure. Although there are figures for various savings on the civil side, there is none for this particular proposal. We are at the beginning of a journey on the issue and we are considering, as part of the making justice work programme, a variety of actions that we could take. I cannot highlight any specific actions in that respect. As I said, we are at the beginning of a process and are not relying on any particular figures to make the savings that we think we need.

Colin McKay: That said, we think that, with regard to family matters, money could be saved in bar reporters. The committee might be aware that, in cases involving children, the court frequently commissions an independent expert—often a lawyer, sometimes someone with a social work background—to interview people and write a report. A lot of concern has been expressed not just about the cost of that activity but about the training, recruitment and selection processes; it has been suggested that the system needs to be tightened up. We and SLAB will be working with our family-law colleagues on improvements to the system, which might include introducing a proper table of fees for reporters. As I have said, there are concerns that the cost of reports can be quite high in comparison with their value. Some reports are excellent, but some are not. There is a need to tighten things up.

Kenny MacAskill: We have no magic bullet. Instead, we must see whether we can do things smarter and better and, in doing so, take with us

stakeholders such as the Family Law Association Scotland, the Scottish Legal Aid Board and the Law Society of Scotland. I assure members that I am not going to follow what seems to be the direction of travel south of the border and jettison family law from legal aid.

There are clearly ways in which we can do things better. It is agreed that much of family law is fairly routine, although it can be stressful, so we must ensure that we can deal with it through mediation. As Roderick Campbell and the convener know from experience, sometimes it is just about building on good practice.

We must always ensure that we do not jettison the baby with the bathwater. There is a need for protective orders to protect people from domestic violence or child abduction, for example. They must always be available and should not be unavailable through an absence of legal aid.

We are trying to work with practitioners on how to make savings: it is recognised that we have to do so. Some savings will be made through changes to working practices. A few months back, the Lord President commented on a case in a sheriff court that had gone on for a considerable period, but which had not served the best interests of the children involved or, probably, the best interests of the legal aid budget.

Everybody is trying to work together to get a solution. I would rather do that by general consensus on how we can work smarter and use more mediation. I do not want to abandon family law and remove it from legal aid, which seems to have been the decision south of the border.

The Convener: On the proposal that legal aid be the “funder of last resort”, in its written evidence, Citizens Advice Scotland projected a cut of 9 per cent in the budget for citizens advice bureaux. I appreciate that that is local government funding, but now we have the voluntary sector stating its case about the loss of local government funding and, of course, lottery funding. Many voluntary organisations prevent people from entering the legal system. What concerns do you have about the impact of voluntary sector pressures on the justice budget? We are back to early intervention: as I said, voluntary organisations stop people going through the court process, which is expensive.

Kenny MacAskill: We are protecting as best we can the advice centres that we fund. You are correct to say that advice centres receive funding from a variety of organisations—from local government, charitable funds such as the national lottery, and the Westminster Government. They are facing cuts in that funding, but we have done our best to maintain the envelope that we have in order to protect them.

On the proposal that legal aid be the funder of last resort, there is a general consensus among the people to whom I speak in legal practice that it must be the last resort. If somebody can afford to buy an expensive car or a plasma-screen telly, maybe they should take out an insurance policy at the time that would protect them if there were any difficulties with it rather than having immediate recourse to legal aid. I accept, however, that if something fundamental goes awry or if a nasty accident befalls somebody, it is appropriate that they should be able to raise a legal challenge, even if they do not have the funds.

It is about striking the right balance and encouraging people to look at alternatives to legal aid—alternative protection such as insurance schemes and alternative ways of dealing with matters, such as mediation and arbitration. We are trying to discuss with the profession and the advice centres how we can do things better. That will save some of the legal aid budget and it will provide a better outcome for people who face difficulties in whatever walk of life.

The Convener: I am interested in those discussions. When will they come to any kind of conclusion?

Kenny MacAskill: We have sent the consultation out. James How will comment.

James How: The convener made a point about how the advice sector, the voluntary sector and the legal aid budget work together. We have started to projectise that work as part of the making justice work programme. The Scottish Legal Aid Board, the Scottish Government and the various other bodies that are involved need to work together. With the budgets being cut across different areas, we need to work in a much more strategic and co-ordinated fashion. We are at the beginning of that work, although it builds on a lot of work that was done during the previous Administration and even the one before that. We need to ensure that funding is more strategic.

The Convener: When do you expect to come to even an interim conclusion?

Colin McKay: Making justice work is a four-year programme. It is complicated because some of the money does not come from Scotland; for example, funding for Citizens Advice Scotland comes from the UK Government. Similarly, funding for advice in policy areas such as equalities also comes from the UK Government and, as the cabinet secretary said, some of it comes from charities.

It is a complicated set of services to get one's arms around, as it were. However, I imagine that, over the next six months or so, the shape of the project will become more clearly defined. We can share that with the committee as it develops.

The Convener: I think that the committee would like to know more about that. Perhaps you could write to us on progress.

Kenny MacAskill: I make it clear that I am not looking for a millennium moment or big bang with the making justice work programme. As and when good ideas arise and can be formulated, we will get on with them. You asked the Lord President about the use of technology in the courts, which is a matter that is under the auspices of the making justice work programme. I share some of the frustration that members feel. As far as I am concerned, once we can get on with something, we should do so. We do not have to wait for other aspects.

Family law is another example. If the Family Law Association suggests a way in which matters can be dealt with while ensuring appropriate protection, we should consider that. The making justice work programme is looking across the board and we will keep you abreast of progress. I assure you that, as and when good ideas arise that work and which lead to savings and deliver better outcomes, I will not hold them all in line until the last ship joins the convoy. We will just get on and do them.

Roderick Campbell: I have a question on the grant funding of the 23 services that are mentioned in "A Sustainable Future for Legal Aid". Some £1.8 million was allocated for 2011-12, but thereafter the position is unclear. Would anyone like to comment on what is to happen from 2012 onwards?

James How: In the past couple of years the Scottish Legal Aid Board has funded the projects, and some of the work of the civil legal aid office network is included. The funding was extended until towards the end of this year. The board spent the summer evaluating the projects—I think that the work has been completed—and it is comfortable that they have been doing what they should be doing.

We need to take decisions; some reprofiling of projects could be done to ensure that they are focused as much as possible on preventative spend, but overall we expect that the envelope of funding can be carried forward. That is certainly the basis of our projections.

Roderick Campbell: You expect the projects to carry on in the subsequent years.

James How: Perhaps the projects will not have exactly the same profile, but we expect the rough envelope of funding to continue.

Graeme Pearson: I will go back to the IT situation that you mentioned. Videoconferencing is available across the Scottish Prison Service and there is a court within Barlinnie prison. The

videoconferencing facilities are available not only for court appearances but for interviewing of prisoners by solicitors in an environment in which they can confidently hold private conversations. The facilities have been there for a decade but have rarely been used. Is it a priority for the cabinet secretary to see those facilities being used?

Kenny MacAskill: I am aware of the facilities. Better use of technology is a priority for the making justice work programme and for me. I know that some sheriffs have used conference calling to allow people not to travel to hearings and to reduce expense. We have the technology and progress has been made, but using it widely is not simple. If it was, it would have been done within the decade, which would have been before I came into office.

We do not have the luxury of not proceeding on the matter, which is why I welcome the commitment by the Scottish Court Service, but the work involves bringing together the Scottish Prison Service, the Scottish Court Service and the Crown. It also involves bringing agents on board. We sometimes face challenges from agents under the European convention on human rights. That situation is better known to some committee members than it is to me. We have at least to be able to hold back complaints.

I share your frustration. The direction of travel is that there must be more use of technology, not only where there are routine attendances at court and no plea or declaration is made, or where the person is remanded in custody, but in other instances in both civil and criminal cases. We need to get the other bodies on board on using the technology. I understand from my discussions and from what I hear of the making justice work programme that there is a genuine willingness across the board to address the issue. I assure Mr Pearson that I will do everything that I can to drive it forward.

As well as the use of technology for interaction with prisons, a pilot is under way that involves the Crown Office and the Public Defence Solicitors Office in Inverness and Stornoway, which aims to avoid unnecessary travel by, I presume, defence agents. I think that that is up and running in Stornoway, but perhaps Colin McKay can help me out.

11:15

Colin McKay: A pilot project is being established in Stornoway and the intention is to establish another in Fort William. Another aspect of the project is looking at the Barlinnie experience to establish why that facility has not been used, because it is important that we learn lessons from

that about how the technology is set up or about culture and practice within the organisations. Clearly, we do not want to keep on starting projects only for them not to work, and then to start another project. We need the new projects, but we also need to learn lessons from, for example, the Barlinnie project.

Kenny MacAskill: That is right. If it can work in Liverpool, it can work in Scotland.

Graeme Pearson: It can work very well.

Going back to your preamble, I note that there is a 35-year low in crime, there has been an 11 per cent fall in reoffending and there is a 20-year low in victimisation. This month, there is a record high number of prisoners in our prisons and record highs are being recorded almost monthly. In the budget provisions for the next three years, is it your forecast that you will maintain those record levels or do you hope to see the levels fall? How is the budget taking account of those figures?

Kenny MacAskill: Obviously the Scottish Prison Service and I—as the person who answers to Parliament on its behalf and is accountable for it—require to accept the number of prisoners that we are given by the courts. I have never been persuaded by the argument that some people have made for capping the number of prisoners.

We have obviously taken steps to ensure that we prepare for the current position, which is challenging to the SPS. That is why HMP Low Moss will provide a further 700 places. There is also phase 2 of the development of Shotts prison. All those matters are in place. How prisoners are managed within the estate is a matter for the SPS, but it comes back to my response to John Lamont. Some people—male and female—must go to prison and be detained, but prison should not routinely be used for low-level offenders. I seek to work with the judiciary to ensure that we provide adequate alternatives in which the judiciary has trust and faith.

Graeme Pearson: I asked specifically how the budget is taking account of the forecast. Are you forecasting that you will maintain the prison population at the current high levels or do you hope that, over the three-year period, the number of prisoners will fall?

Kenny MacAskill: Another rise is forecast—that seems to be the case across the western world. We have taken that trend into account through the development of Low Moss prison, Shotts prison and the new Grampian prison. We continue to put in additional funds: the additional £7.5 million for reducing reoffending has been mentioned. We also await the result of Dame Elish Angiolini's commission. It is clear that there have been significant increases in prisoner numbers in terms of people on remand and in women offenders.

When crime is at a 35-year low, it is perverse that the number of women offenders is at a record high. That is why I have asked Dame Elish Angiolini to consider what should be done, because something must be going wrong.

Richard Dennis: On the numbers, John Ewing, who is the chief executive of the Scottish Prison Service, submitted written evidence to the committee on 19 October. He sets out the details of the projections on which the budgets are based. The assurance that you seek is given in that letter.

Graeme Pearson: Can you tell us what that letter says about the number of prisoners? Is the number of prisoners expected to stay at a high level or is it anticipated that the number will fall?

Richard Dennis: The budget is set to cover the forecast increases in prison population.

Graeme Pearson: I will ask about two issues. First, I will ask about the arrangements for ensuring that the right housing provision is in place when prisoners are released at the end of their sentences. Such arrangements are about preventing reoffending. Are we satisfied that, across the regions, we have the right housing arrangements in place? I gather that in some local authority areas prisoners are released and no housing arrangements are made for them. In some places they are guaranteed only three days of occupation and then they are on their own. Is that a problem across Scotland or are there problems in particular areas?

Joe Griffin: I do not have specific evidence that I can cite. In the work on reducing reoffending we have to look across the piece. We have to look at all the mainstream services that will rehouse offenders on return from custody in particular, at which point they are citizens as well as ex-offenders.

Graeme Pearson: In my experience, both men and women prisoners are released with only three days' accommodation arranged for them—I am told that on some occasions those three days are three days in a sleeping bag in a homeless unit—and thereafter they are on their own. Will you consider that issue?

On a separate issue, which is to do with methadone in prisons—

The Convener: Before you go on to ask about methadone, I want to stick with reoffending and throughcare. Is your question on that, Alison?

Alison McInnes: No. I was going to ask about women offenders.

The Convener: I thought so. I want to ask about the throughcare budget. We heard that throughcare is mandatory for four-year sentences, but not for sentences that are less than that.

Should it be mandatory for other levels of sentencing? If so, what would it cost?

Kenny MacAskill: Steps are being taken, such as the integration of prison health into the national health service, which we think is progress. You are right that unless people volunteer for the scheme or are doing a sentence of more than four years, throughcare would not apply. I will undertake a formal review of throughcare to ensure that we address what is going on and explore how we maximise benefits and reduce reoffending.

To return to the point that Mr Pearson raised, I attended the routes out of prison conference just last week or the week before. It is quite clear that what breaks the cycle of reoffending is having a home to go to, having family or friends who have maintained contact with you and having employment, or at least something to structure your day, such as sporting activity. Those three things break the cycle of reoffending. For that reason, we are happy to undertake a review of throughcare. We face matters that are outwith the powers of the justice portfolio or the Scottish Prison Service, but we seek to work with local authorities, because housing matters fall primarily to them. As I said, we have made progress in dealing with health aspects. We will, I hope, see the kind of integration to which I referred—which I think goes live today—across a variety of matters.

The Convener: I say on behalf of the committee that we would welcome a review of throughcare. If in due course the cabinet secretary could write to advise the committee of a timetable for it, so that we can monitor it and keep our eye on it, that would be helpful.

I want to continue with a question on prisons.

Graeme Pearson: Can I ask about throughcare? I have one brief question about money.

The Convener: You have a way of putting things that verges on charm—just verges on it.

Graeme Pearson: Thank you. Cabinet secretary, having reviewed the situation, could you foresee money being shifted towards throughcare from other budget heads? At the end of the day, it is about budgets.

Kenny MacAskill: I think that I require to see the outcome of the review. Such things have to be evidence based, which is why the Government has gone in the direction of introducing the early intervention and reducing reoffending change funds. There is a lot of logic to what you say, but I have to see what comes out.

Graeme Pearson: But you are willing to face that.

Kenny MacAskill: I am willing to look at that. If people go away and carry out a review, whether it is Lord Gill on the courts or Henry McLeish, and if some of the great and the good come back with some worthwhile thoughts, we should look at them.

The Convener: Right. I am moving on now. I call Alison McInnes.

Alison McInnes: Her Majesty's chief inspector of prisons has repeatedly criticised the conditions at Cornton Vale, which the cabinet secretary will know exercise me greatly. Not all the problems there are a result of overcrowding. Have you estimated the cost of implementing all Brigadier Monro's recommendations?

Kenny MacAskill: I have no doubt that the Scottish Prison Service has. I have not; what I have done is support the SPS's action to address overcrowding, such as moving prisoners into Ratho hall in Saughton prison to ensure that the problems were alleviated. In the previous session we brought in matters in relation to reducing the likelihood of women offenders coming back into prison by moving them, in limited numbers and as a prelude to going back into the community, into both Inverness and Aberdeen prisons. In due course the SPS will look at all scenarios, including the replacement of HMP Cornton Vale.

Alison McInnes: You have said repeatedly that conditions at Cornton Vale are an operational matter for the SPS, but we heard from SPS witnesses at last week's meeting and it seemed to me that it is clearly not a priority for the SPS to move on some of the serious recommendations. I suspect that that is partly because of the lack of capital provision. Have you made it clear to the SPS that you are not happy with the on-going reports from the inspector of prisons? Have you asked that that work be a priority?

Kenny MacAskill: The SPS does take it as a priority. I meet Brigadier Monro regularly and I am grateful for his work and his challenges to the prison service. Equally, I understand the challenges that the prison service faces.

If you wish me to commit to or take up a Lib Dem announcement—if that is what it is—that we should build a replacement for Cornton Vale, then tell me where the money should come from, because it would probably cost about £140 million, which we do not have. The money would have to come out of front-line police services or, indeed, other portfolios. I cannot ask the SPS to build a replacement for Cornton Vale. If other political parties wish to champion that, that will be for them. The commitment to Low Moss and the steps taken to move people to HMP Grampian are matters that the Scottish Government takes pride in, but it is all that we can manage at the moment. The SPS, in

particular the staff at Cornton Vale, is doing a remarkably good job in difficult circumstances.

Such problems have not crept up on us. Prison numbers are at a record high, but I recall Henry McLeish lamenting as long ago as 1997 that we had far too many women prisoners. In fact, at that time the numbers were half what they currently are. The matter has transcended the transition from Westminster Government to devolution and has seen us go through a variety of people in office. We face difficulties, but the prison service is doing an excellent job. I support the SPS in the action that it has taken in moving women to Ratho hall at Saughton to alleviate overcrowding. We have had discussions about how we can try to improve the mental health of the female prison population; it is a matter of significant concern and work is on-going in that regard.

In these tough financial times, I regret that I am not at the moment in a position to spend £120 million to £140 million on a new women's prison—or a new prison, full stop—beyond what we have committed to HMP Grampian and Low Moss.

Alison McInnes: I was not making a party-political point and I would have expected a cabinet secretary to have been more compassionate and perhaps less flippant about the plight of those most vulnerable women in what I think are quite Victorian conditions in our prison service. We need to find a solution. If the solution is not rebuilding or capital spend, there is clearly a significant need to address the problems in another way. What funds have you set aside in the budget to implement the recommendations from Dame Elish Angiolini's review, given that you asked her to report in February and you clearly expect some solutions from that?

Kenny MacAskill: I will do Dame Elish Angiolini, Sheriff Scullion and Linda de Caestecker the courtesy of reading what they suggest. It may be, as Graeme Pearson suggested, that it is about the reallocation of funding. I will look at what Dame Elish Angiolini comes back with and I will consider it in that instance and in that light. A lot of this is not about spending money on more prisons, but about how we work smarter and change matters. It may also involve how we work across portfolios, which is why Dame Elish Angiolini's commission includes a representative from health. That work is on-going.

The Convener: On that point, cabinet secretary, will you have the option of securing funding from other portfolios if Dame Elish Angiolini's report requires it for housing, health and throughcare, for example? Is there fluidity and flexibility in that regard between cabinet secretaries?

Kenny MacAskill: I would have to discuss that matter with the Cabinet.

The Convener: In general, is that the case? May one know?

Kenny MacAskill: In general, we work together. It is on that basis that as a Government we have recognised that, although the Scottish Prison Service did a remarkably good job in dealing with the treatment of prisoners' health problems, it was much better to address some of the fundamental problems, to which Mr Pearson referred, by integrating matters with the NHS. It is for that reason that I am delighted—I think that it goes live today—that the SPS health service is an integral part of the Scottish Prison Service. We have always sought to work in that way. I cannot, however, prior to seeing Dame Elish Angiolini's report, give you a commitment about what may or may not be the outcome of a Cabinet discussion about it.

The Convener: I was not seeking a commitment. I was seeking an assurance for the committee that when solutions come up to help women not to return to prison and to reduce reoffending—which I think we would support—they would cross portfolios, and that cabinet secretaries would be aware of that. As I understand it, that is the way in which the Scottish Government has endeavoured to work for the past four years. It has tried to amalgamate its budgets to some extent so that it did not build protective silos when it could be using money much more efficiently. That is all that the committee wanted to look at, if I have members' leave to say that.

11:30

Kenny MacAskill: I can assure you that we have always sought to do that. The Cabinet Secretary for Health, Wellbeing and Cities Strategy has been very supportive of where we have gone on prison health, and we have tried to work with other portfolios. We have worked with education by raising issues around dyslexia and the training and education of prisoners, and John Swinney has managed to make money available in an innovative fund to deal with those matters.

It is recognised that some people commit offences out of badness, wickedness and depravity, and we must ensure that they are detained for the security of our communities and for punishment. However, other people go through a cycle of offending that is related to poor housing, lack of education and employment, drugs and alcohol, or other problems. To address those issues we require other agencies beyond the police, the Crown and the courts.

The Convener: That is some expression: badness, wickedness and depravity. I will let that settle.

I see that Roderick Campbell has a question. Is it on that particular topic?

Roderick Campbell: No.

Humza Yousaf: My question is.

The Convener: Humza Yousaf will come in on that point. Is badness, wickedness and depravity your cue?

Humza Yousaf: No—my question is on Alison McInnes's point. We had two specific reports on Cornton Vale that were systematically ignored. Is there a case for saying that much more money could be saved if HM Inspectorate of Prisons for Scotland, headed by Brigadier Monro, were given more enforcement powers? Is that being considered? Could money be saved there?

Kenny MacAskill: I do not think that the chief inspector has ever viewed that as his job, or sought to gain such powers in the discussions that I have had with him. He has quite correctly raised the challenges and difficulties that he sees, and the prison service has sought to react to those.

It is not only Ratho hall that has been used. Going back to a previous parliamentary session, I believe that female prisoners were located in Greenock to alleviate overcrowding, and some are still there. Prisoners were transferred to Ratho to deal with a specific matter that was raised in a specific report.

There are issues around how we interact with the health service on detention, and around certain aspects that relate to one particular hall in Cornton Vale. I am happy to discuss those matters with the prisons inspector. However, he—like HM Inspector of Constabulary and other inspectorates—does not view his role as being directive: it is more about raising issues on which he expects others to deliver.

Humza Yousaf: Where does the responsibility for enforcement lie? Is it with the SPS?

Kenny MacAskill: It ultimately rests with the Parliament, on the basis that the Parliament holds me and the SPS to account.

John Lamont: My question relates to prisons, and pulls together some of the themes that we have discussed. A number of witnesses agreed that overcrowding in the prison estate makes the job of rehabilitation through providing meaningful activity and throughcare—which we have discussed already—more difficult. Arguably, spending money to deal with that is a good use of resources because it prevents more spending further down the line. Does the cabinet secretary agree with that analysis?

Kenny MacAskill: Yes. Anything that can reduce the problem is to be welcomed. If the prison service has to deal with people on very

short sentences, it can do very little for them apart from contain them. I know that Ken Clarke supports that view, and I think that Ed Miliband does too. The prison service cannot carry out the necessary assessments relating to issues such as addictions or education, although it does an outstanding job in very difficult circumstances.

I think that you are trying to make the point that it is much better—and much more likely to reduce reoffending—if we can treat and reform people in prison. That is what the prison service strives to do, but its job is made more complicated by the difficult circumstances and the need to deal with individuals with whom it does not have the time to work appropriately.

John Lamont: You told the committee that, despite the projected increase in the prison population, you have not considered building a new prison to deal with that increase. You say that the number of people in prison will continue to rise and you accept that overcrowding makes rehabilitation measures less effective, but you are not prepared to put in place any realistic or practical measures to deal with the overcrowding.

Kenny MacAskill: That is not true. We will open HM Prison Low Moss, which has an additional 700 places; we will replace the old and dated Victorian prisons in Aberdeen and Peterhead with HMP Grampian; and the Shotts 2 development will come on board. We are in a time of financial austerity. If the priority of individuals and political parties is to build a new prison, that is fine, but it will probably cost £120 million to £140 million. They could reduce the number of police officers in our communities or, alternatively, cut back on building affordable houses or on the provision of schools or health clinics. The time has come for the Government to deliver what we think is necessary to ensure that the prison estate operates safely, not simply for prisoners, but for prison officers, who do a difficult job that is made more difficult by prison overcrowding. They do an outstanding job.

Our priority is to deal with the needs and wants in our communities that relate to housing, health and schools, and not to pander to prisoners. If I have to choose between dealing with an old buddy who is not getting proper care and having a prisoner in a slightly overcrowded prison, I will go with the overcrowded prison, rather than have the old buddy go without.

John Lamont: As you know, I am on the side of the victim, rather than the side of the criminal, and I want to ensure that the person who has perpetrated the crime is behind bars.

Is it not correct that, even with the increased capacity to which you refer, the prison estate will not be able to deal with the overcrowding and

there will still be too many people in the prison estate for its design capacity?

Kenny MacAskill: Yes. Although we are building prisons, prison numbers are unfortunately still rising, albeit at a low rate. That is why we set up the commission under Dame Elish Angiolini. As I said to Mr Pearson, the two areas in which there has been and continues to be a significant increase in numbers are remand prisoners, 50 per cent of whom end up not getting a custodial sentence, and women prisoners. When we are at a 35-year low in recorded crime but we have 450 or more female prisoners, something is going wrong. It is not a matter of building our way out of the problem, even if we could, although we do not have sufficient finances to do that unless we choose to cut spending on other areas. We need to consider how to change other aspects. Something is wrong if prison numbers continue to rise when recorded crime is at a 35-year low.

James Kelly: We heard earlier from the Lord President that an early retirement scheme in the Scottish Court Service has resulted in a reduction of 100 in staff numbers. The Procurators Fiscal Society submission to the committee underlines the doubling in the backlog of cases from 7,000 to 14,000 since April. That is against a backdrop of real-terms cuts in staff budgets. Does that situation potentially compromise the courts' ability to deliver justice under the budget that you have produced?

Kenny MacAskill: I do not underestimate the challenges that the Lord President faces. He is doing an outstanding job in chairing the Scottish Court Service. The Lord Advocate faces challenges, too. However, on the matters that James Kelly raises, which I think relate to points raised by the First Division Association, I stand by the comments in the letter that the committee has received from the Lord Advocate, in which he challenges many of those points and sets out the Crown's position. I cannot remember the precise date of the letter, but the committee has received it.

James Kelly: I have seen that letter. We have a backlog of 14,000 cases; we have run an early retirement scheme; and there are real-terms cuts in staffing budgets. How will we reduce the backlog and continue to deliver efficient justice in the courts?

Kenny MacAskill: I go back to the first question that you raised. Constitutionally, the police are separate from the justice secretary and, constitutionally, the Lord Advocate is separate from the justice secretary. I do not arrest people, nor do I prosecute them. Prosecutions are run in the name of the Lord Advocate. If you are suggesting a change—I presume you are not, and I think it would be the wrong way to go—you must

recognise that prosecutions take place under the auspices of the Lord Advocate. I do not interfere in them, as that would be incorrect. He is a man of the utmost integrity who is doing an outstanding job as Lord Advocate, as did his predecessor, Dame Elish Angiolini. I stand by the letter that, I understand from your clerk, you got yesterday, which puts on the record the Lord Advocate's rebuttal of many of the matters you have raised.

Am I able to drill down? No, because I do not interfere in the operation of the Crown Office or the Procurator Fiscal Service, but I believe that the Lord Advocate has made it clear that the doomsday scenario you portray—perhaps in the same way as you portrayed such a scenario with community payback orders—is not about to befall us. I have the utmost faith in the Crown Office and Procurator Fiscal Service under Mr Mulholland.

The Convener: I have to laugh at the way James Kelly smiles when Mr Domsday comes up.

Roderick Campbell: Cabinet secretary, we live in challenging times. Can you clarify the position in this spending review as regards Lord Gill's recommendations? What will go forward and what will not?

Kenny MacAskill: We have always taken the view that, as I said earlier, when somebody comes back we should seek to press on. Some of that will require primary legislation and we have said that that will happen at the latter end of this session. Other matters can be dealt with by other agencies, not the Scottish Government, and for that reason we are taking steps to ensure that we make the necessary changes to the rules on services so that the Lord President and others can press on.

We want to proceed with Lord Gill's recommendations, but not in a big-bang way—although some will require primary legislation in the latter end of the session. In the interim, we are introducing the necessary primary legislation, as advised by the Lord President, to deal with matters that do not require the fundamental structures to start changing now.

Graeme Pearson: In the six months that I have spent on the committee, my admiration for the governors and staff in our prisons has risen substantially as regards the work they do on our behalf within the halls. I was looking at the numbers supplied in the forecasts and the number of prisoners we already have, and I did my own long multiplication. It seems to me that we are about £10 million adrift this year, given the record numbers of prisoners and the fact that the prison population was ascertained to be 8,000. I mention that in passing.

The Convener: You did not just mention it in passing, but never mind. On you go.

Graeme Pearson: My substantive question is about the health issue of methadone, which forms a big part of daily life in prisons. A growing number of prisoners access the methadone programme, but as I understand it the prescription with which they enter the prison is the same as that with which they leave the prison and there is no attempt during the period of imprisonment, no matter how long it is, to try to alleviate the problem by bringing them off the product. Even if we consider this as a cold-hearted budgetary matter and as part of the process of how we can save money, should we not be investing in the wellbeing of those prisoners and getting them off methadone before they return to the community?

Kenny MacAskill: I am more than happy to discuss that with both the SPS and the appropriate health officials. Obviously, we subscribe to the road to recovery strategy, which was championed and introduced in the previous session by my colleague Fergus Ewing. That is the direction we wish to go in. I have heard anecdotal evidence, both from within and from outwith prisons, about prisoners who said that they wanted to reduce their dose but who were being kept on the same dose, so there is clearly something going wrong, which we must address.

Drugs in prison represent a major challenge. Methadone might have its place but I do not think that our society has positioned itself as one in which people get parked on methadone for ever. We should, where possible, seek to reduce the use of such drugs. I am more than happy to take the matter on board and discuss it with the prison service and those who work in it. Dealing with drugs in prison and those who suffer from addiction are challenges but those who want to come off drugs should be supported.

11:45

The Convener: Would that form part of your analysis of throughcare?

Kenny MacAskill: Yes.

Alison McInnes: I want to follow up your earlier comments about the two areas—remand and women prisoners—where the prison population has greatly increased. I welcome the establishment of the commission on women offenders, but I wonder whether you have considered setting up a commission to try to reach an understanding of the process behind the increase in the remand figures and to examine whether there might be more flexibility in the system to alleviate things.

Kenny MacAskill: Although I am happy to discuss the matter, we should remember that many issues regarding the use of the remand are for the judiciary, whose independence must be

recognised. Obviously, some of the rise in the use of remand is to do with Crown Office guidelines, which I fully support. For those detained and charged with possession and use of a weapon, the presumption must be that they will not be granted bail. Even given the impact on prison numbers, I would not seek to change that in any way.

However, we are looking to change some attitudes. As Mr Pearson might know, some think that giving people a two-week lie-down or some kind of short, sharp shock does them the world of good. We are trying to persuade people that that is not necessarily the best approach, and the challenge is to get the balance right. In order to ensure public safety and to deal with our country's on-going problems with knife crime, the Crown Office has been quite right to change the guidelines and maintain its vigilance on the matter. Equally, however, we have to make people recognise that in most cases a short stay in prison does not serve the perpetrator, their victim or the community well. In certain instances it is appropriate but in the main it does not work.

Alison McInnes: That was helpful.

Roderick Campbell: Last week, Brigadier Monro said to us:

"I see far too many people on remand—of course, they have not been judged guilty yet—sitting in prison and doing very little."—[*Official Report, Justice Committee*, 25 October 2011; c 351.]

Would it be possible to discuss with the prison service any steps that could be taken to provide more remand prisoners with the opportunity to engage in meaningful activity instead of letting them just sit in their cells?

Kenny MacAskill: Again, I am happy to discuss the matter further with the prison service. Some of these problems come back to overcrowding and the separation of prisoners; after all, the need to separate remand prisoners from those who have been convicted can cause difficulties for prison management.

Fundamentally, we need to strike the correct balance. Notwithstanding the principle of ensuring that people are presumed innocent until proven guilty, if a person has carried a knife and has used it or whatever else, the balance shifts and they should face a period on remand, even though prison might not be the outcome of their trial. Getting the balance right might be a challenge not only for the prison service but across the judicial landscape.

The Convener: You might not be able to tell us this, but what percentage of prisoners on remand are not convicted of any offence—not even a lesser one—at the end of the day?

Kenny MacAskill: I do not know, but we can find out for you. As I recall, 50 per cent of prisoners on remand do not get a custodial sentence. However, the percentage who are acquitted will be significantly smaller.

The Convener: It would be interesting to see the breakdown.

John Finnie: Convener, my question is on the portfolio budget rather than on the specific issue of prisons. I can wait, though, if you are still on prisons.

The Convener: No—I am off prisons now and on to anything in the budget that you might care to ask about.

John Finnie: Any organisation that is considering cuts will also look at how it might maximise income. In that respect, I welcome the proposal for contributions to be made in legal aid.

The committee is also aware that in recent years the move to seize criminal assets has been a success in Scotland. Cabinet secretary, I believe that you said that you would extend the cashback for communities initiative, but what is the potential for carrying out more seizures? To what extent are you constrained in your attempts to extend cashback for communities?

Kenny MacAskill: There are a number of constraints. For a start, certain aspects with regard to proceeds of crime are reserved to and legislated on by Westminster, which we lobby on this issue. However, to be fair, we have always had good co-operation south of the border, irrespective of the regime in power, and I have no huge complaints in that respect. Part of our work in the serious and organised crime task force is to seek to improve the working knowledge of police officers, courts and procurator fiscals on certain matters, which we discuss with the Crown and the Scottish Crime and Drug Enforcement Agency.

John Finnie: Is there any potential to increase the number of people involved in that work? Has there been any cost benefit analysis to determine whether there would be more of a return if that happened, or do you think that we have reached the optimum number?

Kenny MacAskill: As I recall, further funding has been put in. We have always worked on the basis that cashback, in the main, is meant to ensure that youngsters can have an alternative lifestyle and can be all that they can be. However, if we can put a little bit more in to get some more out, we will do so. This is not really the department of the officials who are with me but, as I recall, we have recently had discussions about providing more financial analysts and investigators to support the efforts of the police and the Crown in following the money trail, bringing these matters to

the court's attention and getting more cash back. A little goes out to get more back.

The Convener: I thank the cabinet secretary for his evidence. Several issues tangential to the budget have arisen but I have no doubt that when we get the chance to read the *Official Report* we will find various matters—I was trying not to use that word—in relation to throughcare, Cornton Vale and so on that we will want to pursue this session and which we will want to follow up in writing.

I suspend the meeting for five minutes.

11:51

Meeting suspended.

11:57

On resuming—

Subordinate Legislation

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

Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2011 (SSI 2011/356)

The Convener: Item 3 is consideration of two negative instruments. Consideration of the first instrument—Scottish statutory instrument 2011/331—was deferred from last week’s meeting to allow it to be considered alongside SSI 2011/356 today.

Although the Subordinate Legislation Committee has drawn the Parliament’s attention to a number of matters in relation to the original instrument—SSI 2011/331—members will see from the extract of that committee’s report set out in paper J/S4/11/12/3 that it

“welcomes the prompt action taken by the Scottish Government to lay this amending instrument”

—SSI 2011/356—

“to correct defects”

that it had identified.

If members have no comments, is the committee content to make no recommendations in relation to the instruments?

Members *indicated agreement.*

International Criminal Court (Darfur) Order 2011 (SI 2009/699)

The Convener: The Subordinate Legislation Committee has drawn the Parliament’s attention to the order on the grounds that there appears to have been an unjustifiable delay in its laying. A letter from the Scottish Government to the Presiding Officer in annex B of paper J/S4/11/12/4 explains the reasons for that delay.

If members have no comments, is the committee content to note the breach and the reasons for it as set out in the letter?

Members *indicated agreement.*

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

11:58

Meeting continued in private until 12:06.

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e-format first available
ISBN 978-0-85758-907-1

Revised e-format available
ISBN 978-0-85758-922-4