



OFFICIAL REPORT
AITHISG OIFIGEIL

Criminal Justice Committee

Wednesday 15 September 2021

Session 6



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CRIMINAL JUSTICE COMMITTEE

4th Meeting 2021, Session 6

CONVENER

*Audrey Nicoll (Aberdeen South and North Kincardine) (SNP)

DEPUTY CONVENER

*Russell Findlay (West Scotland) (Con)

COMMITTEE MEMBERS

Katy Clark (West Scotland) (Lab)

*Jamie Greene (West Scotland) (Con)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

*Pauline McNeill (Glasgow) (Lab)

*Collette Stevenson (East Kilbride) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Bruce Adamson (Children and Young People's Commissioner)

Ashley Cameron (The Promise Scotland Oversight Board and the Independent Care Review)

Superintendent Colin Convery (Police Scotland)

Ash Denham (Minister for Community Safety) (SNP)

Diane Dobbie (Social Work Scotland)

Fiona Dyer (Children's and Young People's Centre for Justice)

Phil Fairlie (Prison Officers Association Scotland)

Gemma Fraser (Community Justice Scotland)

Hannah Graham (University of Stirling)

Professor Lesley McAra (University of Edinburgh)

Professor Fergus McNeill (University of Glasgow and Scottish Centre for Crime and Justice Research)

Teresa Medhurst (Scottish Prison Service)

Dr Katrina Morrison (Howard League Scotland)

Allister Purdie (Scottish Prison Service)

Niven Rennie (Scottish Violence Reduction Unit)

Wendy Sinclair-Gieben (HM Inspectorate of Prisons for Scotland)

Alan Staff (Apex Scotland)

John Watt (Parole Board for Scotland)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 15 September 2021

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Audrey Nicoll): Good morning and welcome to the Criminal Justice Committee's fourth meeting in session 6. We have received apologies from Katy Clark.

The first agenda item is to decide whether to take in private item 6, which is consideration of today's evidence. Do we agree to take that item in private?

Members *indicated agreement.*

Subordinate Legislation

Conference of the Parties to the United Nations Framework Convention on Climate Change (Immunities and Privileges) (Scotland) Order 2021 [Draft]

European Union and European Atomic Energy Community (Immunities and Privileges) (Scotland) Order 2021 [Draft]

10:00

The Convener: Our next item is consideration of two affirmative instruments. I welcome to the meeting Ash Denham, the Minister for Community Safety, and from the Scottish Government legal directorate Susan Black, senior policy officer, civil law and legal system division, and Jo-anne Tinto, solicitor, constitutional and civil law division.

I refer members to paper 1 and invite the minister to speak to the draft Conference of the Parties to the United Nations Framework Convention on Climate Change (Immunities and Privileges) (Scotland) Order 2021.

The Minister for Community Safety (Ash Denham): The draft order confers various legal immunities and privileges on the conference of the parties to the United Nations Framework Convention on Climate Change—COP26—and specified participants.

COP26 is considered to be the most significant climate change event since the 2015 Paris agreement. It is the biggest summit that the United Kingdom has ever hosted and it is a huge honour to welcome the conference to Scotland.

To enable COP26 to fulfil its purpose and take place successfully, it has been agreed that certain privileges and immunities require to be granted to certain attendees. A host country agreement, negotiated between the UK Government and the UNFCCC secretariat, regulates the privileges and immunities that are to be afforded to certain COP26 attendees—for example, certain tax exemptions and immunity from legal process. The agreement obliges the UK to abide by the terms of the protocol on privileges and immunities.

The draft order gives effect to those agreed obligations in so far as they relate to devolved matters in Scotland. Equivalent provision in respect of host country agreement obligations for reserved matters and devolved matters in the rest of the UK is being made by order in council at Westminster. However, to the extent that the privileges and immunities relate to devolved matters, the issue rightly falls to the Scottish Parliament. Subject to parliamentary consideration

in this Parliament and at Westminster, both orders in council will be signed.

To assist the committee, I will say a little about the nature of the privileges and immunities. The draft order provides that the representatives of parties to the UNFCCC, the Kyoto protocol and the Paris agreement, the representatives of observer states and the officials of the specialised agencies of the UN will have immunity from suit and legal process. Those immunities cover things done or omitted to be done only while they are exercising their official functions in connection with the Glasgow conference and during their journeys to and from conference premises. The order also provides for the inviolability of any private residence used by representatives during COP26, as well as exemptions and privileges in respect of personal baggage and exemption or relief from all devolved and local taxes.

Importantly, the draft order permits that immunity can be expressly waived by an appropriate party or state. It also provides limited immunity from suit and legal process for representatives of the clean development mechanism executive board. That immunity is conferred only while the executive board exercises its official functions as part of the conference and can be waived by the secretary general of the UN.

It is customary for a sovereign state to grant such privileges and immunities to diplomatic missions and international organisations, to enable them to function. The host country agreement between the UK and the UN on COP26 is broadly in line with that global practice and includes provisions to ensure that immunities and privileges do not impede the proper administration of justice. It is important to emphasise that immunity does not provide *carte blanche* for ignoring the laws and regulations of the host country. The privileges and immunities that will be conferred by the order are granted primarily on the basis of strict functional need, and it has been agreed by the UK and the UN that they are of no greater an extent than is required to enable COP26 and the specified individuals connected with it to function effectively.

The immunities and privileges are limited in that they apply only to official functions that are undertaken in connection with the Glasgow conference, they can be waived and they do not give an individual freedom to commit criminal activity. The immunity is similar to but more limited than that which has, for generations, been conferred on diplomats working in foreign jurisdictions. As with diplomatic immunity, all individuals who benefit from such privileges and immunities in Scotland are expected to respect Scots law, both criminal and civil.

The order will implement the agreement that the UK has reached with the UNFCCC secretariat in

line with global practice. It will enable COP26 to be held in Glasgow and the conduct of associated activities in the UK, while ensuring and upholding protections for the effective administration of justice. As a good global citizen, the Scottish Government has a responsibility to bring the draft order to the Parliament.

The Convener: Thank you very much, minister—that is very helpful.

As no member has indicated that they wish to ask a question, I invite the minister to speak to the draft European Union and European Atomic Energy Community (Immunities and Privileges) (Scotland) Order 2021.

Ash Denham: The purpose of the draft order is to confer immunities and privileges, in so far as those are within devolved competence, on the delegation of the EU and Euratom, their staff members, diplomatic agents and family members. The privileges and immunities are conferred in accordance with the UK-EU establishment agreement. The order will give effect to the devolved aspects of that agreement.

Equivalent provision for reserved matters and devolved matters in the rest of the UK was conferred by legislation at Westminster in July 2021. However, to the extent that the privileges and immunities relate to devolved matters, the issue falls again to the Scottish Parliament.

Before I go into the draft order in further detail, it might be helpful to set out the background. Following the UK's departure from the EU, the EU established the delegation of the European Union to the United Kingdom, which replaced European Commission representation. The delegation is responsible for representing the interests of the EU in the UK and for co-ordination among the 27 EU member states. EU delegations exist in more than 140 countries outside the EU around the world. The EU negotiates establishment agreements with each of those countries to regulate its status, privileges and immunities.

Legislation is required to implement in UK domestic law the obligations of the UK-EU establishment agreement. Two separate orders are required: a Scottish order and a parallel UK order. The UK order came into force on 22 July 2021. Contingency measures are currently in place by virtue of the European Union (Withdrawal) Act 2018. However, if a Scottish order is not made, disparity will remain between Scotland and the rest of the UK in giving effect to the establishment agreement.

I turn to the detail of the draft order. It treats the EU delegation, including Euratom, in terms that are broadly similar to those that have been agreed with other non-EU Governments globally. Important provisions are included to ensure that

the immunities and privileges that are conferred do not impede the proper administration of justice.

The draft order provides the EU delegation with criminal, civil and administrative immunity when operating within its official activities. The premises and archives of the delegation, in so far as they are in Scotland, are also to be inviolable, and the property and assets of the delegation in Scotland are to be immune from search, confiscation or other interference.

EU staff members who have been notified to the Foreign, Commonwealth and Development Office as diplomatic agents will have criminal, civil and administrative immunity, and their residences will be inviolable. Diplomatic agents and their family members will not be obliged to give evidence as witnesses, and their personal baggage will be exempt from inspection unless there are serious grounds for such inspection.

The draft order confers criminal, civil and administrative immunity to staff members, including immunity from personal arrest and detention, but only in respect of the exercise of their functions within the scope of their official activities. Staff members' official papers and correspondence will also be inviolable.

The draft order provides certain fiscal exemptions for the delegation, its staff and their family members. Those include exemptions from direct taxes on the assets, property, income and operations of the delegation. The diplomatic agents, staff members and their family will also be afforded various exemptions in respect of their furniture and personal effects, as well as relief from paying council tax. However, they will not be entitled to any devolved benefits that are paid.

Importantly, the draft order permits that immunity for diplomatic agents, staff members and their family members can be expressly waived in certain circumstances. For example, immunity and inviolability will not be conferred in respect of any alleged road traffic accidents and road traffic offences.

The draft order implements the establishment agreement that the UK has reached with the EU regarding its delegation in London, in line with global practice. It enables the delegation to conduct its activities in the UK while ensuring and upholding protections for the effective administration of justice. The European Union delegation plays an important role in the UK-EU relationship, supporting a partnership based on friendly co-operation.

I commend the draft order to the committee.

The Convener: Do members have any questions?

Pauline McNeill (Glasgow) (Lab): I thank the minister for her thorough explanation. I do not have any questions, but it is worth noting that the minister specifically said that there will be no immunity in relation to road traffic offences, which was an issue that sprung to my mind.

Ash Denham: I thank Pauline McNeill for noting that change. That specific carve out has been agreed for the draft order.

The Convener: The next item is formal consideration of the motions to approve the two affirmative instruments. I invite the minister to move the motions.

Motions moved,

That the Criminal Justice Committee recommends that the Conference of the Parties to the United Nations Framework Convention on Climate Change (Immunities and Privileges) (Scotland) Order 2021 [draft] be approved.

That the Criminal Justice Committee recommends that the European Union and European Atomic Energy Community (Immunities and Privileges) (Scotland) Order 2021 [draft] be approved.—[*Ash Denham*]

Motions agreed to.

The Convener: I invite the committee to delegate to me the publication of a short factual report on our deliberations on the affirmative Scottish statutory instruments that we have considered today. Are we agreed?

Members indicated agreement.

The Convener: That completes consideration of the two affirmative instruments. I thank the minister and her officials for attending the meeting.

Prisons and Prison Policy

10:14

The Convener: Our next agenda item is a round-table discussion about prisons and prison policy. I refer members to papers 3 and 4. We will take evidence today from a round table of witnesses, who will be joining us virtually. I am sorry that you cannot join us in person, which is due to the current rules on social distancing.

I welcome our panel of witnesses. Alan Staff is the chief executive of Apex Scotland; Mr Bruce Adamson is the Children and Young People's Commissioner Scotland; Wendy Sinclair-Gieben is Her Majesty's chief inspector of prisons for Scotland; Dr Katrina Morrison is committee secretary of the Howard League Scotland; John Watt is the chair of the Parole Board for Scotland; Mr Phil Fairlie is the assistant general secretary of the Prison Officers Association Scotland; Professor Fergus McNeill is a professor of criminology and social work at the University of Glasgow's Scottish centre for crime and justice research; Ms Teresa Medhurst is the interim chief executive of the Scottish Prison Service; and Allister Purdie is the Prison Service's interim director of operations. We very much appreciate your taking the time to join us this morning. I thank witnesses who have provided written submissions, which are now available online.

I intend to allow around an hour and 15 minutes for questions and discussion. I ask members to indicate to which witness they are directing their remarks. We can then open the floor to other witnesses for their comments. If other witnesses wish to respond, I ask them to indicate that by typing R in the chat function in BlueJeans. I will bring you in, if time permits. If you agree with what another witness is saying, there is no need for you to intervene. Other comments that you make in the chat function will not be visible to committee members or recorded anywhere, so if you want to make a comment, please do so by requesting to speak.

We will move directly to questions. I ask members and our invited guests to keep their questions and comments as succinct as possible. I am keen to encourage a free-flowing discussion.

I start by inviting Ms Pauline McNeill to ask some questions. I will then bring in Rona Mackay.

Pauline McNeill: Good morning, everyone. My question concerns the conditions in which prisoners on remand and other prisoners are held in our prison estate. I am sure that I do not need to say it, but—for the record—we have among the highest numbers in Europe of prisoners on remand. Prisoners are on remand for an average

of 18 months. Notwithstanding the pandemic, the figures are alarming.

I am interested to hear answers from quite a few members of the panel. Wendy Sinclair-Gieben, Dr Katrina Morrison from the Howard League, Phil Fairlie and Teresa Medhurst might like to answer the question. Is it time to consider specific rights, in particular for remand prisoners, but also for the prison population generally, in relation to being out of cells for a certain amount of time in a day? I am certainly keen that all prisoners have the right to fresh air. I realise that there are capacity issues and estate issues.

I record my admiration for the work that is done by prison officers and others who are involved in running our prison estate. The papers that have been provided dig deep into the intricacies of having a rising and ageing population, and all the other things. I am very conscious of that.

I am interested in moving forward and looking to the future to where we would ideally like to be. Is it time to have specific enforceable rights—even a charter of rights for prisoners—such that they would be allowed out of their cells once a day for a prescribed amount of time to get fresh air?

I suggest that we start with Wendy Sinclair-Gieben, who is the chief inspector of prisons.

Wendy Sinclair-Gieben (HM Inspectorate of Prisons for Scotland): Good morning. I would be delighted to answer that question, actually. The issue of remand prisoners has exercised me for a long time. First, there are some fundamental principles that need to be explored, one of which is that there are human rights that apply to all prisoners, regardless of whether they are on remand or convicted. A charter of rights already exists, and we should be following those guidelines, because we signed up to OPCAT—the Operational Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The second thing is that there is a real need to review the prison rules that inhibit some of the things that would make a difference for remand prisoners.

The third thing, for me, is that we need recognition of the fact that when somebody is remanded in custody they have already tangled with the police and entered the criminal justice system, so we need to tackle the criminogenic reasons behind that, even if the reasons are poverty, debt and so on.

I see no reason for remand prisoners not to be afforded the existing privileges. Furthermore, remand prisoners should be able to access everything except the activities that relate specifically to convicted offenders.

Dr Katrina Morrison (Howard League Scotland): Thank you for the question. We believe strongly that it is not good enough that, first of all, we have so many people on remand and, secondly, that their regime is so reduced and restricted, especially in light of the fact that 57 per cent of them do not receive custodial sentences, either because they are found to be not guilty or because they receive community sentences.

The time for which remand prisoners are in custody must be spent well, because the stigma for them and, potentially, their families is the same as that for sentenced prisoners. Therefore, we support any proposals to give them the same opportunities for work and access to programmes as the rest of the prison population.

Phil Fairlie (Prison Officers Association Scotland): Good morning, and thanks for the question, Pauline. You touched on the answer yourself. The issue for us is capacity and having the resources and time to give to the untried prison population. We will probably get into some of the reasons why capacity is tied up as it is in the prison system; I am sure that overcrowding will come up.

Overcrowding is partly because of the number of untried people in the system; there are too many untried people sitting in our prisons and we simply are not able to do with them all what we would want to do. There is no pride or satisfaction felt by prison staff about that. By and large, they are doing no more than warehousing some of the population behind doors for long periods of time. By doing that, staff are not delivering anything meaningful, other than keeping somebody out of the community.

If we are serious about tackling the problem, we must acknowledge that it is an issue of capacity and resource. It is often the elephant in the room in the discussions that we have about prisons, but if we are genuinely serious about tackling it, we will need to rethink what we mean by resourcing it.

Pauline McNeill: Lastly, I ask Teresa Medhurst to answer that question.

Teresa Medhurst (Scottish Prison Service): Good morning. Thank you for the question. I agree with several of the points that have been made. Prison rules are one area in which there is a requirement to refresh and to better reflect a more modern prison system. The amount of time that prisoners spend out of their cells and getting fresh air is enshrined in prison rules. That time was limited during the early part of the pandemic, but it has been consistently in place since then for everyone—not just those on remand.

Finally, on service provision, the fact is that, as was pointed out earlier, people who come into custody on remand have the same disconnect

from their families and communities as people on short-term sentences. Although services and support are available in prisons for prisoners on remand, provision is variable, so we need more consistency in that respect. That will, as Phil Fairlie rightly pointed out, give rise to resource and capacity issues, but with a real focus on improving our digital capacity and capability we could do a lot more as a service to ensure consistent provision, regardless of whether a prisoner is on remand or serving a sentence.

The Convener: I think that Mr Adamson is also quite keen to say a few words on the subject.

Bruce Adamson (Children and Young People's Commissioner): I am, convener, and I thank Ms McNeill for her question.

It is important to remember that a number of children are on remand in the adult system, so I strongly associate myself with the comments of the office of Her Majesty's Inspectorate of Prisons in Scotland that a human rights framework is already in place, particularly in relation to children, who are, through the United Nations Convention on the Rights of the Child, entitled to additional rights. Scotland's track record on remanding children in young offenders institutions is really concerning—indeed, it is much more concerning than the situation in the adult population. I believe that the figure is 26 per cent in the adult population, while the average for children and young people is 80 per cent to 85 per cent. The figure fluctuates, but the fact is that a much higher percentage of children in YOIs—indeed, the vast majority—are there on remand. That is a significant concern, because they have to spend a lot more time in cells than those who have been sentenced, and they experience the least support and activities. We need to address that situation, primarily by getting those children out of detention.

It is also important that we look at the bail and remand and early-release provisions, particularly in relation to the Covid regulations. After all, no child under 18 should be remanded or sentenced to custody, and there should be a presumption of alternatives to custody. I am concerned that since the onset of the pandemic there has been no proper assessment of whether the children in Polmont pose any risks, or of why they cannot be managed in the community. They should have been included in the early-release scheme, but that did not happen, contrary to all the human rights advice from not only the United Nations Committee on the Rights of the Child, but the Council of Europe's statement on principles in relation to the pandemic and emergency measures.

Children are disproportionately affected—remember that by “children” I mean everyone up to the age of 18. We need to take urgent action to

get all children out of young offenders institutions, particularly in the context of Covid, and into more appropriate means of support.

Pauline McNeill: Can you confirm that you referred to a figure of 80 per cent to 85 per cent?

Bruce Adamson: Yes. The figure is around 88 per cent at the moment, but from the figures that we get from the daily population data, we see that it has been fluctuating. The figure was previously about two thirds, but since Covid, it has gone up and has been fluctuating between 76 per cent and, in April, 94 per cent. We are talking about relatively low numbers; the figure fluctuates, but it is about 120 individuals over the year and 20 at any given time.

I appreciate that that plays into the statistics, but the underlying point is that the majority of children—again, everyone up to age 18—whom we put into the adult prison system are on remand. That is hugely concerning and is a really urgent issue on which we need to focus. We also need to talk about why children are in prison in the first place when they should not be, but we need to look at remand children in particular.

The Convener: I believe that Alan Staff would like to respond, too.

10:30

Alan Staff (Apex Scotland): I want to amplify a comment that Teresa Medhurst made. A person in any kind of custodial sentence suffers significant disruption to their life, particularly with regard to employment continuity, relationships, accommodation and so on. There is no distinction between a person on remand and a person who has been sentenced, except that a number of services are available to assist people after they have served a sentence, but those services in general do not cater for people coming out of remand. Even though the problems that both groups face are in many ways identical, those who come out of remand might be more disadvantaged. We should not take our eyes off what is a significant problem.

The Convener: I will keep the flow of questioning going by bringing in Mr Findlay and then Ms Mackay.

Russell Findlay (West Scotland) (Con): My question is for Bruce Adamson, who has already touched on the issue of young people being remanded in prison and the initial cycle of violence defining them and setting off the whole chain of continual offending. When we visited the Lord President of the Court of Session a couple of weeks ago, he told us that we would look back and regard how we have treated young people as “barbaric”—that was the word he used.

I note that this morning brings news reports that the Scottish Sentencing Council is calling for the courts to make rehabilitation rather than punishment the primary consideration. The judiciary seems to be on the same page on the matter. Have we turned a corner, or is this just more of the same from a Scottish Government quango?

Bruce Adamson: I very much welcome today’s announcement from the Scottish Sentencing Council. The starting point must always be that we see children as children in the first instance, and our approach must be rights based. We have been making progress in Scotland, but not with the level of urgency that is required as far as the rights of children and young people are concerned.

I agree with how the chief inspector of prisons set out the challenges that we face. The primary point is that children under 18 should not be deprived of their liberty in prisons or young offenders institutions. Instead, we must ensure that children receive really good-quality intensive support, perhaps in a secure setting but not in the prison system. The situation needs to change urgently.

Given that sentencing is a part of that, it is really useful that we have made some progress with, for example, “The Promise”, the proposed children’s care and justice bill and incorporation of the Convention of the Rights of the Child. However, things need to move much more quickly, because locking children in prisons as punishment is contrary to international law and standards.

We also need to focus on the fact that children go all the way up to age of 18. Indeed, the UN Committee on the Rights of the Child, in particular in general comment 24, has made it clear that this is about child justice, so we need to rethink our focus on how we support children under 18 who are in conflict with the law.

The Scottish Sentencing Council’s new guidance is a very welcome step that is based on really strong research on brain development, taking into account issues including trauma, poverty, addiction, mental health and adversity, and setting all that within an approach that is based on human rights.

The announcement that the guidance has been submitted to the High Court this month is really important; that will allow courts to have greater regard to rehabilitation for all young people up to the age of 25. Obviously, that will include how children are dealt with in the justice system, which is also important. I know that the committee is having a round-table session on child justice after this session. I think that that will provide insight.

The really important focus is on getting children out of the criminal justice system and on properly

respecting and protecting their right to be seen as children first. In her report “Rights Respecting? Scotland’s approach to children in conflict with the law”, Claire Lightowler highlighted that 37 per cent of children aged 12 to 17 who have been charged with offences were dealt with in the adult system rather than in the children’s hearings system. The figure goes up to 83 per cent for 16 and 17-year-olds. Until we rectify the situation, our justice system will continue to fail to support and recognise the rights of children as children in the first instance.

That is the long answer to your question. In short, the announcement is a good thing, but things are not happening fast enough.

Russell Findlay: I have a question for Teresa Medhurst. This week, ITV News has had a series of reports from Barlinnie prison. I will ask more about that later, but the Howard League Scotland’s submission to the committee says that the throughcare support officer initiative has not been reinstated and describes that as

“an abdication of responsibility on the part of the Scottish Government”.

One Barlinnie officer talked proudly and passionately about the work that he does to liaise with prisoners once they have left prison and how beneficial that can be. Why is there such a gap between the rhetoric from the Scottish Government and the reality? Do you know whether the scheme will be reinstated?

Teresa Medhurst: You are right to highlight throughcare support and the scheme that existed in the Scottish Prison Service until, I think, 2019, when there was significant overcrowding and a need to focus staff on operational delivery.

Evaluation of the throughcare support scheme was undertaken. It was highly positive and the staff who were involved in the scheme brought real-life experience to share across the service to help our staff to understand some of the barriers and difficulties that people face when they leave custody and some of the reasons why we have the revolving door, with people continually returning to custody. We are looking at the throughcare support scheme for prisons and will consider how best to move forward in light of the learning from the initial scheme and learning from other services throughout Scotland.

The Convener: I ask the witnesses to keep their answers fairly succinct and members to do the same with their questions. We have a lot of subject areas that we would like to get through.

Rona Mackay (Strathkelvin and Bearsden) (SNP): I put on record how much I agree with what Bruce Adamson said about keeping children out of prison. The situation is clear cut and urgent. I

agree on that for all the reasons that he articulated.

My questions are on the number of women prisoners and are directed to Wendy Sinclair-Gieben and Dr Katrina Morrison. It is nearly 10 years since Dame Elish Angiolini’s report on women offenders but we seem to have made little if any progress on the number of women prisoners. Earlier this month, the total female population was 290, including 93 remand prisoners. We know that women are often victims of abuse or have experienced trauma, and we know the disruption that is caused to families. Why are the numbers still so high? Are alternatives to custody not being used enough? Why do we not seem to have made a lot of progress on the matter?

Wendy Sinclair-Gieben: That is a delightful question, actually, on an issue that has exercised the inspectorate for a considerable time. When you walk into a women’s prison—I strongly urge all committee members to do so—you will find caring and compassionate staff who are determined to work with a trauma-informed approach and manage the women as best they can within that parameter.

That is not an issue. What stands out when you walk around is the number of women who are apparently mentally unwell. It is clear to me that, if we had a presumption of liberty for women, particularly when they are doing a good job caring for their children, the number of women coming into custody would not be so high. If we could transfer more rapidly to in-patient care those mentally unwell women who are waiting for a bed, that would also reduce the number of women coming into custody.

We also have to look at the remand figures, although they are not anything like as shocking as the figures for children. I just want to say that I agree absolutely with Bruce Adamson, and the time to strike is now, and not four years down the road. We need to get children out of young offenders institutions.

About 26 per cent of women in prison are on remand and about 70 per cent of them do not go on to receive a custodial sentence, so it beggars belief that they are in there anyway. I strongly urge the committee to visit Cornton Vale. You will find compassionate and caring staff who are determined to do a good job—there is no question about that—but the level of people’s mental health there will appal you. I think that that is all that I need to say.

Dr Morrison: The Howard League Scotland has been raising that issue for a long time. We know that women in custody are especially vulnerable. One of the written submissions highlighted the

number of women in prison who have head injuries, which were thought to be mostly as a result of domestic violence. As Wendy Sinclair-Gieben said, the staff do their very best, but it is clear that prison is not the right place for those women at all. Most of them have been sentenced for non-violent offences and, as Wendy said, many of them are on remand.

Why do we continue to have the numbers of women in custody that we do, despite numerous reports, including the Angiolini commission report and others before that? The situation is not new. It may be that some sentencers feel that prison is a place of safety for people or a place where they can receive care. It may be that there are not enough places for them in secure healthcare settings that would be more appropriate. It may be because sentencers do not know about the alternatives.

We need to be mindful of the temptation to say that we need to create more non-custodial alternatives—we might get on to that later. From the work of Professor McNeill, we know that those have tended to increase alongside the prison population, so we need to think about a more systematic diversion away from the system, at either the prosecution stage or the sentencing stage. We know that such diversion has been effective for young people, which we will discuss later, and it might be very useful for women.

Rona Mackay: Thank you for those helpful answers. Has any research been done on the reasons of the judiciary or sheriffs for giving women custodial sentences? Do they feel that there is not enough care in the community for them? It would be good to know what percentage of women are in prison because it is thought to be a safe environment, which would seem pretty contradictory. Do you know whether research has been done in the past or whether any will be done?

Dr Morrison: I do not know of any research specifically on sentencers' views about sentencing women. In our written submission, we highlighted the lack of engagement in policy discussions from the judiciary. Of course, we absolutely support the principle of judicial independence and we want to uphold it, but we cannot have a discussion about prisons policy without their being round the table as well. When it comes to remand and sentencing children, women or, indeed, anyone, we really need to hear from the judiciary as well. The fact that we do not have that evidence is one of our frustrations, I am afraid.

Rona Mackay: I completely agree.

10:45

The Convener: We will move on to questions on the modernisation of the prison estate.

Jamie Greene (West Scotland) (Con): I will try to stick to that general theme, but I have some specific questions. I would like to interrogate Her Majesty's Inspectorate of Prisons. I thank Wendy Sinclair-Gieben for her written submission, which I thought was quite stark. The first page paints a rather grim picture of Scottish prisons. It talks about overcrowding, high levels of substance abuse, mental health challenges, what is described as a

"fragile organisation with aging infrastructure"

and critical inspections. Given what we now know about the endemic problem of drug and substance abuse in Scottish prisons, have we simply got it wrong in Scotland? We have high remand rates and one of the highest incarceration rates in northern Europe, and Scottish prisons seem to be a revolving door of drugs, reoffending and poor mental health outcomes. What are we getting so wrong?

Wendy Sinclair-Gieben: The issue is a bit of a hobby horse for me. The concept that punishment and prohibition work has never been proven, and the concept of punishment for and prohibition of substance misuse is simply not working. The cycle of reoffending is huge, the distress to families is huge and the difficulties in communities are huge. I have welcomed a fair number of recent reports, particularly Dame Carol Black's report, which says that we need to look at substance misuse as part of the public health agenda.

We have got it wrong. We will need to undertake significant change to turn that concept around, to look at rehabilitation and support in the community and to remove the presumption of punishment as a way out. In other words, people should not go to prison for offending relating to substance misuse that is not violent—including domestic violence—or sexual; instead, such offending should be seen as part of the public health agenda, with considerable support being given in the community. That will require a significant shift in how we deal with substance misuse in Scotland. It will involve looking at the availability of safe rooms for injecting and at community support all the way through to a change in prison rules, whereby we do not punish people for relapsing.

I look at the matter in this way: I have a complete addiction to chocolate and, in all my life, I have never succeeded in overcoming that addiction. Why we assume that punishing people will help them to overcome a drug addiction is beyond me. We need to rethink our entire strategy.

Jamie Greene: In your submission, you say:

“The choice is stark—either we put fewer people in prison or we recognise that we have to pay for the prison population that we do have”.

We know that we are not putting fewer people in prison. Does that mean that we are not paying for the prison population that we have?

Wendy Sinclair-Gieben: Yes.

Jamie Greene: My question for the Scottish Prison Service follows on from my colleague’s question. We gave about 8,000 prisoners a mobile phone for in-cell use during the pandemic, when there were obvious reasons for doing so. Those mobile phones were supposed to be unhackable. Why are so many of them being used to buy drugs in prisons?

Teresa Medhurst: Obviously, I saw the programme from Barlinnie. At the start of the pandemic and particularly during the lockdown, we were uncertain about for how long families would not have access to people in custody. We have never faced such a situation before. Physical visits have always been arranged for people in custody, so the situation was unprecedented.

We needed to identify at pace other means by which people could maintain family contact, not just to reassure families, who were incredibly concerned and scared for the wellbeing of their loved ones in custody, but for the mental health of those in custody. The two options that were identified were mobile phones and virtual visits. At the time, there were strict security criteria that we had to apply at pace with a provider, and we implemented the mobile phones after around four months. That was unprecedented—we would never do that in normal times, but we face unusual and unprecedented times. Since then, we have become aware of some of the areas of vulnerability and we are working to look at other potential solutions. We have continued to look at our internal security measures and technological solutions in order to minimise risks.

Jamie Greene: That was a very good answer that explained the rationale behind the policy, but it did not quite answer my question. My question was about why so many phones were hacked. The obvious next question is: what will be done about that? Are those 7,600 prisoners being allowed to keep the devices when we know that many of them—hundreds, or perhaps even thousands—are being broken and used for illicit purposes in your prison estate?

Teresa Medhurst: I apologise if I did not answer your question specifically. I alluded to the fact that we have security measures in prisons that enable us to identify phones that have been tampered with and there are arrangements to ensure that we apply an appropriate degree of

punishment and/or withdraw the phone, depending on the circumstances and the nature of the tampering. We need to ensure that those risks can be minimised and that appropriate additional measures are put in place.

Specifically in relation to illicit drugs coming into prisons, we work closely with Police Scotland colleagues, particularly around serious organised crime, to ensure that all those risks are minimised and managed as best we can.

Jamie Greene: Thank you for clarifying that.

On the theme of the modernisation of the prison estate, that comes back to the premise of how we get prison numbers down, what type of prisons we build and how we best use public money to ensure that prisons are places that people can come out of adequately rehabilitated and suitably ready for transition back into the community, which is something that everybody wants.

Does any of the panel members have a view on that? We have some submissions on what we should do. Clearly, there is a limited amount of public money. There were announcements in the programme for government on capital spend on the prison estate, but we know that HMP Greenock and HMP Dumfries, for example, are old Victorian buildings, and it is claimed that they breach human rights by their physical nature. What do you need the Scottish Government to give you to ensure that the prison estate and the general prison environment are conducive to getting numbers down and criminals back on the straight and narrow? That is an open question for any of the panel. Perhaps you could use the chat function.

The Convener: In the spirit of timekeeping and of keeping to our themes, I suggest that this is an opportunity to bring in Professor McNeill, who I am aware has been keen to come in.

Professor Fergus McNeill (University of Glasgow and Scottish Centre for Crime and Justice Research): The obvious answer to the question is that prisons offer a spectacularly bad return on investment—if you are trying to invest in crime reduction, that is. Prisons, by virtue of imprisoning people, tend to debilitate, incapacitate, disable and disintegrate them. When you invest in prisons to try to improve the rehabilitation and reintegration of the people who go through them, you are spending money to recover from harm that you have created in the first place.

Basically, punishment is not a smart response to the kind of social problems that have already been discussed in this evidence session, such as problems related to physical and mental health, head injury and substance misuse. The solutions to none of those problems will be found in prisons.

Rather, prison staff and prison leaders and managers will have to struggle against the grain of what imprisonment does to people in order to produce any positive effects. Prisons strip people of liberty, status, responsibility, the capacity to act, the ability to develop as human beings, and social connections. Those are the things that help people to move away from offending and that address many of the social problems that are often associated with offending.

We need to radically rethink how we spend public resources. Because we are a liberal democracy and consider ourselves a civilised nation, when we revert to punishment, we have to create a huge and complex system that applies due process and protections before we impose it. If we put a much smaller number of people through that system, and instead spent the money that we spend on making decisions and then controlling people on providing help to people with social problems, we would begin to get a significant return on investment. Any criminologist would tell you that, if you want to reduce crime, you invest way upstream of the criminal justice system and that, when you invest in criminal justice, you invest in diversion at every possible turn.

The Convener: Do you have any further questions, Mr Greene?

Jamie Greene: My other question is about parole. However, it is not on this theme, so I am happy to come back in later, if you will allow that.

The Convener: There were some questions earlier about drugs in prisons. I would like to jump back and allow members to ask some further questions about that. We will then return to modernisation for a couple of final questions.

Russell Findlay: This is another question for Teresa Medhurst.

We all understand the reasons for introducing mobile phones and the incredible logistical challenge of doing so at pace. However, in the ITV news report, one prison officer said that those supposedly tamper-proof devices were hacked “within hours” of their arrival at Barlinnie.

Did you or any of your staff raise the issue with the Scottish Government? If so, what consideration was given to disclosing these serious problems to Parliament and/or the public?

Teresa Medhurst: Over the past year—it has probably been about a year since we introduced mobile phones—we have continually looked at where there are vulnerabilities and sought technological solutions to minimise them. We have worked through that process with Police Scotland colleagues and our technological provider.

11:00

We have also ensured that, as we move forward on this journey, some of the difficulties have been shared with the Scottish Government. Some are operational issues that we have to deal with, and I have already mentioned the security measures that we have put in place for monitoring purposes and to ensure that we can identify when phones have been tampered with and can withdraw them. However, there are other, more policy and Government-related issues, such as whether the service should be continued and what shape it should take or whether the continuation of something like the mobile phone service would be preferred to something more technologically focused that would have a much greater ability to restrict things.

This has been a learning process for us over the past year. Much of that learning will be used to inform how best our organisation can move forward, and we will do that in conjunction with Scottish Government colleagues.

Russell Findlay: On that issue, it is worth pointing out that vulnerable prisoners are often targeted by the 600 prisoners who are marked as being members of organised crime groups.

Coming back to the security issues that you referred to in response to my colleague Jamie Greene, I spoke to Peter Smith about some of the stuff that was not broadcast. He told me that prisoners are now smuggling in seals that allow them to tamper with and reseal phones so that the staff who inspect them have no way of knowing what has happened. Is there any way in which you can get to the bottom of that? Can you quantify how many phones have been compromised?

Teresa Medhurst: I do not have that information at the moment. I know that Mr Smith conducted a number of conversations while in Barlinnie, but the different means and methods by which serious organised crime can infiltrate not just our country but our prisons is clearly a significant issue. That is why we have such close working relationships with Police Scotland colleagues and why we work with them fairly intensively on the various threats to and vulnerabilities in our prison service that arise. The dynamics of drugs not just in prisons but in the country are rapidly changing, and things are becoming ever more sophisticated. As a result, it is important for us to be as forward facing and up to date as possible, and we work with a range of experts and organisations to get a better understanding of the issues around drugs in prisons and the measures that we need to take to minimise those risks.

The Convener: If you have no more questions, Mr Findlay, I will pull the discussion back to Ms

McNeill, who I think has some questions on the modernisation of the estate.

Pauline McNeill: My question is for Teresa Medhurst. I understand that Barlinnie is the largest prison in the estate. It has had some refurbishment through the years and I visited it a few times before it was refurbished. I am a bit surprised that it has taken so long for the replacement to come around given Barlinnie's importance to Glasgow and the west of Scotland. The prison was meant to house mainly short-term prisoners and, as I saw from the piece on STV that was referred to earlier, it is continually over capacity.

We cannot possibly fulfil any of the aspirations that we talked about unless prisons are modernised. I ask you to talk me through what is happening. I believe that the replacement will not be completed until 2024-25. I have lodged a parliamentary question on the matter but I am still waiting on an answer. I know that it took some time to secure the land for the prison but there seems to me to be quite a delay between 2021 and 2024-25. Will you speak to why it will take so long? Do you agree that there is an imperative to replace Barlinnie prison as soon as possible?

The Convener: I think that that question was for Ms Medhurst. Is that correct?

Pauline McNeill: Yes. It is for the chief executive.

The Convener: I think that we have lost the connection to Ms Medhurst.

Pauline McNeill: We have Allister Purdie.

The Convener: Mr Purdie, could you pick up that question while we try to get Ms Medhurst back?

Allister Purdie (Scottish Prison Service): Yes, absolutely. Thank you for the question.

To refer to Fergus McNeill's point, the ideal position further down the line would be for us to stop bringing people into prison and to stop building a new prison in Glasgow for 1,200 people.

The date relates to us being able to secure the land, as Ms McNeill rightly said, and receive the capital money to do that. The design stage—the discussion and collaboration with our partners about what the prison needs to be—has already started. It is part of what will be delivered in Glasgow overall.

That is what has taken the time. The land has been available and the money is now available, so we will move the project forward as quickly as we can, going into design and then to construction through to 2025-26.

Pauline McNeill: My question is why it has taken so long. Why would it take to 2025-26? Is that just how long it takes to build a prison? It seems an extraordinarily long timetable. That means that, for five years, until we imprison fewer people, the largest prison in the estate, which is over capacity, will still take the wrong prisoners—it is meant to be a short-term prison but it is taking long-term prisoners—and we will not be able to get prisoners out of their cells. What is the explanation for why it will take until 2026? I thought that it was 2025, but now you are saying that it is 2026.

Allister Purdie: The first thing is that we need to get the capital money to be able to build it. It is possible to build a prison in three to four years from design through construction to opening it. We need to secure the capital funding to be able to do that, which allows us to move the project forward in the time frame that I just discussed.

Pauline McNeill: So you have the money, but it takes three to four years to design and build a prison.

Allister Purdie: Yes.

Pauline McNeill: That is your evidence. When we built Kilmarnock and Addiewell prisons, they took four years to complete. Is that right?

Allister Purdie: It takes us three years at least to get a prison ready—to get it designed, have it constructed, open it and mobilise. We are talking about a three to four-year period to do that.

Pauline McNeill: I am sorry to dwell on this. Obviously, I do not know anything about the design of prisons—no, I know a little bit about it because I remember the design of Addiewell and Kilmarnock and how it was changed to make prison officers' lines of sight easier. Does it take three years up and down the country to design a prison? Would it be the same in England or Wales?

Allister Purdie: No. Things can happen simultaneously. We have to appoint a contractor and get planning permission. The design is then agreed and we discuss with the partners what the establishment needs to do. Then we start the construction phase, which typically takes 18 months. Then we have the mobilisation to bring the people in. It takes that period to do that. That is our experience from building and opening Low Moss prison in Bishopbriggs, and from designing, building and opening HMP Grampian up in the north-east.

The Convener: Thank you. After Collette Stevenson, I will bring in Wendy Sinclair-Gieben for any final comments that she may have.

Collette Stevenson (East Kilbride) (SNP):

Good morning. I thank all the witnesses for their good submissions.

I want to touch on prison modernisation, which Pauline McNeill commented on. It would be remiss of me not to ask about sustainability and climate change in relation to the buildings. Has sustainability been part of the talks about Barlinnie? Can the building be more sustainable? What will that look like?

The issue was mentioned yesterday by Michael Matheson, the cabinet secretary, at the Net Zero, Energy and Transport Committee. One comment featured the buzzword “prosumer”, which means a producer and consumer of energy and is relevant to energy efficiency. I am keen to know about that aspect.

My other question involves Pauline McNeill’s comments about Barlinnie’s being over capacity. When I was an independent prison monitor at HMP Shotts, one of the most common requests that I got was to do with progression. The majority of people in HMP Shotts were high-tariff prisoners who wanted to progress down the prison estate. Their problem was not only that Barlinnie was over capacity but that they were unable to get on to any rehabilitation programmes that were available.

I put those points to Allister Purdie and, if she is back online, Teresa Medhurst.

The Convener: Mr Purdie, will you respond?

Allister Purdie: Sorry—I did not know whether Teresa was going to pick that up. I thank Collette Stevenson for her questions.

The progression pathway has been impacted by coronavirus. The number of long-term prisoners who come in through the local prison at Barlinnie and then progress through to Shotts is a consistent pipeline. That creates a backlog of people who could move on to rehabilitative programmes in order to start their journey towards the semi-open estate and then on to our open estate up at Castle Huntly.

This is about trying to match the dates that are critical for release and review through the Parole Board for Scotland to make sure that things are done fairly and consistently. It can sometimes feel unfair to someone who has been in custody for a while that somebody who comes in later with a critical date can overtake them—for example, because that person’s review is sooner—and so progress forward and have an opportunity to participate in the programmes before they do. The backlog was previously a problem, and the pandemic has concentrated it.

Collette Stevenson: Thank you. Is Teresa Medhurst not with us?

Teresa Medhurst: Sorry—

The Convener: She is back. Would you like to pick that up quickly, Ms Medhurst?

Teresa Medhurst: Ms Stevenson asked two questions. The first was about the sustainability of the new builds. I assure the committee that we look at all aspects of our new builds in relation to sustainability, zero carbon and so on, and we make sure that we are connected to new developments, new technologies and new legislative requirements. We try to future proof, as best we can, as part of our planning and projections.

Secondly, as Allister Purdie has rightly pointed out, issues with progression have been exacerbated by the pandemic. However, considerations of progression go wider than prisoner programmes. We have in each establishment risk management teams who consider the wider risk issues and the risk profile of the individual and who take that information into account as part of the individual’s progression journey.

The Convener: Thank you, Ms Medhurst. Ms Mackay, I think that you have a couple of questions, before I bring in Wendy Sinclair-Gieben.

11:15

Rona Mackay: I have a question for Teresa Medhurst and Allister Purdie about temporary and permanent arrangements for Covid challenges. In a previous evidence session, Ms Medhurst, you said that family video contact would be continued when we finally get through the pandemic, which is very welcome. Will you expand on that? Are any other measures being taken? The organisation Families Outside is very keen to make the best possible use of technology—for example, so that a parent could go to a parents’ evening.

I will tag on my second question, so that you can roll your answers into one. I welcome women’s custody units. We know about the importance of attachment between mothers and babies. Are any mother and baby units planned within the women’s custody units?

Teresa Medhurst: On the issues around the Covid challenges and the use of technology, we are working on a digital strategy to increase and enhance our technological capacity. We are doing that to free up time for staff to spend on the relationships that are critical in supporting rehabilitation and motivating those in custody to take on more of the opportunities that are available to them. We are also doing it to expand the range of opportunities for those in custody to access a wider range of support through

technological solutions. Clearly, the most important of those will be access to family. That is a critical and central part of the digital strategy.

The community custody units have been designed in a flexible way to ensure that we have the ability to support a range of needs, including the needs of mothers and babies, for whom being close to home is critical. The potential for that to happen has been designed into the facilities that are being developed and built as we speak.

Rona Mackay: The potential is there, but will it happen? I am thinking about overnight stays, for example, which would greatly enhance the mental health of the women and help with many of their problems. Is that actually going to happen?

Teresa Medhurst: I would strongly suggest that we would be failing if it did not happen, but we need to understand some of the issues and factors at play in smaller residential units and ensure that we take account of the needs of everyone in those units as well as those broader family needs. With regard to children and their ability to spend time with their mothers, including overnight, we will assess each case individually, as we always do. We will then identify how best to meet the individual's needs, particularly taking into account the points that were made earlier about the rights of the child. We absolutely need to take cognisance of that.

The Convener: I am keen to move on as quickly as we can, as we still have a wee bit to get through. However, before we move on, does Wendy Sinclair-Gieben, have any final comments to make on these issues?

Wendy Sinclair-Gieben: Yes, I will gladly make some comments. It is worth the committee knowing that HMIPS has undertaken a thematic review on progression, which, basically, is what happens to people as they walk through their prison journey. We have had full co-operation from the Scottish Prison Service, the Risk Management Authority and the Parole Board, and I think that we will be able to address some of the issues, find the underlying causes and come up with some recommendations to resolve the issues. Allister Purdie is exactly right, in that the problems existed to some degree before Covid but were extremely exacerbated by it.

On substance misuse, I would really like the committee to look at the evidence around diversion, depenalisation and all the issues that will help us to reduce the prison population and, I hope, make the replacement of Greenock and Dumfries prisons, and even Barlinnie, unnecessary. That would be my dream.

I absolutely agree with Bruce Adamson. We need to get the children who are in prison at the moment out of there. That does not mean that

they do not have to be in secure care; it simply means that they should not be in a prison. The committee must, urgently, think through and look at the evidence on that. I am really pleased that there is an evidence session on that later this morning.

The Convener: We have about 20 minutes left, so I ask members and witnesses to keep your questions and responses as succinct as possible. We will now focus on the parole system, starting with questions from Russell Findlay.

Russell Findlay: I declare an interest, in that I have recently submitted objections to a prisoner being released—the prisoner is in custody for attacking me. My question is for John Watt. In the first line of your submission, you describe the Parole Board as “Scotland’s parole court”. How can the public attend these courts?

John Watt (Parole Board for Scotland): The public cannot attend parole hearings, as the Parole Board is a court for very narrow parole purposes. The parole rules, as they presently stand, tend to militate against public attendance. There are those with an interest in parole—victims, for example—who can attend. Others can attend for educational or developmental purposes. It would require a change in the rules to allow wider access for the public at large. That is my answer. I would like us to be as open as we could be.

Russell Findlay: There is perhaps a perception that anonymous middle-class professionals such as you and I decide the fate of dangerous individuals and whether they are returned to the type of communities that we tend not to live in. If sentencing is, quite rightly, transparent, why is there no transparency on the time that is served? Has the Parole Board had any discussion with the Scottish Government about moving in that direction?

John Watt: I do not quite understand the question. Will you enlarge on it, please?

Russell Findlay: As things stand, the public have no means of knowing when individuals are granted parole. Is there any move involving the Parole Board and the Scottish Government to change that and to bring in increased transparency?

John Watt: Yes, there is. The Parole Board's view is that there is no reason why release on parole should not be made public. For the sake of transparency, I would be content to have limited information available on the board's website covering that kind of thing, unless there were security or safety implications—there are cases about which we would have to be careful. Other than that, and resources permitting, I see no reason why that should not happen.

Russell Findlay: That is good to know.

John Watt: On the second part of your question, which was about discussions with the Scottish Government, the Management of Offenders (Scotland) Act 2019 restricts the provision of information to when release is granted in life cases, which is a narrow band of publicity and a very limited number of cases. The act also requires complete anonymity. That is the law, so we apply it.

The Convener: I will bring in Mr Greene before we move on to look at care of prisoners.

Jamie Greene: Thank you, convener. I have a supplementary on the line of questioning on parole. I indicated that I also have a question on alternatives to custody, because we have not really discussed that issue today, but I am happy to keep that for later, if we have time.

The number of people involved in the victim notification scheme is dropping year on year. At the moment, it is an opt-in service. I vividly remember from reading the Parole Board for Scotland's submission that the word "victim" was not used once. Is that not the root of the problem? The entire submission is centred around how we make parole better for those involved in the hearings—in other words, those in prison. None of the submissions says how we can proactively improve the victim notification scheme, so that we tell people who have been affected by serious crimes that those who perpetrated them are back out on the street, in order that they do not bump into them in the queue at the supermarket.

John Watt: The board is committed to providing as much information as possible to victims. Next Wednesday, I am due to take part in a round-table meeting for which I have a lengthy paper consisting of six pages about the board's desire to assist victims as far as possible. The focus of this meeting is not victims, but I am very happy to talk about how we would like to support victims.

We go above and beyond our statutory requirements. Some considerable time ago—before there was a statutory requirement—we arranged for victims to attend in person a tribunal at Greenock, which I chaired, so it is perhaps unfair to castigate us for not mentioning victims, given that we are scheduled to talk about them next week. If you have specific questions, I am happy to deal with them.

The board has to be as open as it can be in providing victims with as much information and support as it can. Whether it does that directly or through other, perhaps better-qualified, bodies is an open question. I agree with the sentiment of your question; victims must understand what is happening.

Jamie Greene: I am sure that we will have that discussion in future sessions. I look forward to reading your submission.

Convener, would you like me to ask my other question now?

The Convener: I am keen to move on to look at care of prisoners and deaths in custody.

Jamie Greene: Sure. Those are important issues.

Collette Stevenson: I have alluded to the fact that I was an independent prison monitor, and I inspected the national health service and the health of prisoners. When I visited the healthcare suite in Shotts prison, most prisoners were allocated their prescription drugs on a Friday. That was quite concerning, because it led to a lot of them sharing those drugs when they were locked up over the weekend with very little in the way of purposeful activity, as no educational facilities were available over the weekend. Those drugs became a currency, with them being swapped and whatnot. People who were suffering, to a varying degree, with mental health issues were also at risk of overdose. Angela Constance, the Minister for Drugs Policy, talked about slow-release injections that could be given by the NHS.

Has that situation changed? Is the NHS still dispensing drugs on a Friday afternoon? If so, could that be changed? Could slow-release injections be used so that there is no risk of overdose to the prison population? What can be done to address the challenges with drugs in prisons, such as their being used as currency?

11:30

Wendy Sinclair-Gieben: Thank you for that interesting question. The drug by injection that you mentioned is Buvidal, which is highly regarded by prisoners and staff because it removes the risk of people being bullied out of their drugs or having them stolen when they leave prison. We view it as a good success story, if you like. Although there are some problems, prisoners have told us that the fog in their brain that comes with methadone lifts under Buvidal. All in all, it is a success story.

Drugs in prison are a major issue. I have talked about revising the prison rules, and one thing that needs to happen is a reduction in the amount of drugs coming in through the post in almost undetectable quantities. Prisons are phenomenal at detecting drugs and preventing them from coming in—indeed, when you look at reports about how much they stop getting in, it is amazing—but novel psychoactive drugs, for example, can come in on paper. A solicitor's letter, say, can be forged and the paper soaked in drugs to be sent in, popped in a kettle and sent out

again. That sort of thing can cause real problems. We could change the prison rules to prevent all legal letters, at least, coming in by post, and we could also consider photocopying prisoner letters.

However, as you will know from being an IPM, we are always playing catch-up with drugs. It is a major problem in prison; stopping them coming in is a major problem, as is providing support and rehabilitation to prevent people from wanting to take drugs. It is a huge issue for the prison service, and we need to move to a recovery model, which is something that the next panel can discuss at length.

Teresa Medhurst: As you will know from your time as an IPM, Ms Stevenson, there are different means and mechanisms for dealing with the issue, with different arrangements for people who are vulnerable with regard to in-person medication. As Wendy Sinclair-Gieben said, slow-release Buprenorphine has much more potential to minimise risk to individuals and ensure that people can be better supported on their recovery journey. Wendy is right: anecdotally, people seem to be much more able to focus on rehabilitation and release with that medication in a way that they find difficult with methadone.

As for whether it has changed anything, quite a lot of prescribed medicine goes into prisons every day, and with the amount of time that that takes, it very much drives how we operate our prisons. It is a matter that the NHS can talk about, but we would warmly welcome things such as Buprenorphine in making more time available for rehabilitation and ensuring that risk is minimised.

On recovery and the arrangements that Wendy Sinclair-Gieben referred to, I think that psychoactive substances have been a game changer for everyone. The methods and means by which people can traffic them are, for the most part, well known, but we are considering other measures that we can take, particularly with mail coming into prisons, to minimise those risks as much as possible.

The Convener: Collette Stevenson, is there anything else that you want to raise?

Collette Stevenson: I wanted to touch on electronic mail, because you can now email prisoners rather than sending hard copies. I suppose that depends on the volume that is sent. I am conscious of the time, so I could write to panel members about that.

The Convener: Thank you for that response. I know that Fulton MacGregor was keen to ask some questions on purposeful activity in prisons and the transition phase into the community.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Fergus McNeill touched on my

area of questioning earlier and I know that he has been waiting in the chat to come back in, so I will give him the opportunity to do so. I completely concur with what he said about where the balance should be as we move forward to the society that we want to become.

My question for the panel, starting with Professor McNeill, is this: what impact can rehabilitation services in prisons have, whether those are services that prisons provide or those that are outsourced to third sector organisations, local authority workers or NHS workers? What impact has the Covid-19 pandemic had on that area, particularly in relation to the outsourcing of services? It is quite a broad question.

Professor McNeill: Do you want me to come in on that first?

Fulton MacGregor: Yes. I know that you had been looking to come back in anyway, so please bring up any other points that you want to cover.

Professor McNeill: I will try to be brief. I put on record what I put in the chat, which is my frustration that when we talk about modernising the prison estate and responding to problems such as the issues with mobile phones or psychoactive substances, it feels as if we are talking about redecorating the house and buying new furniture when a structural engineer has told us that the foundations are collapsing. If you read the submissions to the committee carefully enough, you will see lots of criticism of the foundations on which our system is built.

Having put that point on the record, I want to say that rehabilitation in prison is really difficult and the evidence on rehabilitative programmes is that they work better in communities than in prisons. The obvious reason for that is that you can try to learn something in an institutional environment, but the first thing that you have to do when you are released is transfer that learning to a new context. That is difficult for social work students on placement or medical students who are moving from universities to hospitals; the transfer of learning is a complicated activity and prisoners are not well supported in taking that learning from inside prison to out in the community.

One way that we can ease the transfer of learning is by ensuring that it happens through partnerships with outside organisations. Criminal justice social work, the third sector, educational institutions and health services have a huge role to play there. The short answer is that if we are to try to rehabilitate people in prisons, which is not the best strategy, we have to do it by developing partnerships.

If prisons are overcrowded, meaningful rehabilitation cannot be provided, and the

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment repeatedly tells us that our prisons are overcrowded. I cannot dress this up any differently: we do not rehabilitate prisoners well, we do not prepare them for release well and we do not support them on release well, because our system is chock-a-block with people who should not be in it. That is the first and fundamental problem that we need to address. I will shut up and let others in.

Fulton MacGregor: I completely agree. We send too many people to prison and there is definitely a job to be done, but I am aware that this evidence session is on the prison estate. On that basis, I want to ask Alan Staff about how the pandemic has impacted on the work that takes place in prisons—whether that is what prisons provide themselves or what is provided by external people coming in.

Alan Staff: It has been interesting to see how many organisations have responded to the pandemic in various ways, from changing to remote ways of working to variations in gate liberation work. However, you cannot deny that access—face-to-face relationship building, which is essential—has been the key loss over the whole Covid period. We talk about rehabilitation, but perhaps we forget that the single most important factor in rehabilitation is hope. If we do not have hope, there is not a lot of point in rehabilitation. In order to create hope, we must have a pathway—some sense that there is life and a future outside the prison. We cannot afford to continue to keep treating prison as containing some sort of subset of humanity or being a silo on its own. It is part of the journey, and the third sector has been very efficient and effective in creating an in-reach process, but that is nowhere near complete; it is nowhere near being available everywhere.

Funding has been a particular issue, and committee members may or may not be aware that, at the beginning of next year, European social funding will stop. European social funding has been the one source of funding that has allowed organisations such as ours to work specifically with people with additional needs, such as people with sexual offence records, people with domestic violence—[*Inaudible.*]—group of the prison population. That group of people has not been recognised with regard to the additional responses that we need to put in place to allow them to transition safely and effectively into the community. The third sector is capable of doing a lot of the work on rehabilitation, but we need to be involved.

Fulton MacGregor: I know that we are running out of time. Dr Katrina Morrison and John Watt want to come in. Will you pick up briefly on my

question and perhaps address the general issue—Rona Mackay raised this in relation to women's prisons—of family contact in rehabilitation and how that can be done safely? I will not ask any further questions, in the interest of time, convener.

Dr Morrison: I agree absolutely with Fergus McNeill's point about rehabilitation in prison. It is not the place where we should be rehabilitating people, given that when someone re-enters the community, they are trying to undo many of the damages that have been done. I also agree that it is much harder to do anything positive in a context where everything is overcrowded.

I want to make a point about work. At the moment, there is a real opportunity with regard to work and provision of skills and qualifications for people in custody, given the significant labour shortages. We will all have read about the shortages in construction, joinery, catering and so on. With a real concerted effort and partnership working with organisations and community partners, there is the potential to allow people to gain skills in sectors in which there are jobs for the future. That will certainly give them a lot of hope for the future, to echo Alan Staff's point.

That work should be properly remunerated. There are many jurisdictions in which people in custody are paid properly for the work that they do. That work is taxed in Italy, meaning that it generates revenue that can then go back into the system. The feeling of earning an income can really help the individual. They can send some of that money back to their family, and it can provide them hope for the future. There are many things to consider there regarding work.

11:45

The Convener: I ask you to be as brief as you can, Mr Watt. I will then bring this evidence session to a close.

John Watt: The parole system in this country is wasteful. Delays in rehabilitative programmes and the consequences after that, evaluation, the granting of permission to go into the community and the wait for a place in the open estate can potentially add two years to the time when a prisoner can realistically be considered for parole. That is two years in a cell when that is perhaps unnecessary.

To echo previous comments about community alternatives, we should be searching for proportionate ways to restrict liberty. That means that there should be options in the community that are proportionate to the risk. Custody in a prison is perhaps not proportionate to the risk. That may well allow more prisoners to be released and fewer prisoners to be recalled into custody. Without that proportionate restriction on liberty in

the community, the choice is a binary one: it is either in the community or in jail, which is inflexible and results in people being in prison who really should not be there.

The Convener: I know that we probably did not get through a lot of the questions and responses that we would have liked to, so I extend an invitation to the witnesses: if you wish to raise any outstanding points with the committee, please feel free to contact us in writing, and we will very much take your evidence into account.

I extend my thanks to all our witnesses today. Thank you very much for your contributions. We will now take a short break before we hear from our next set of witnesses.

11:47

Meeting suspended.

11:54

On resuming—

Reducing Youth Offending, Offering Community Justice Solutions and Alternatives to Custody

The Convener: Our next item is a round-table discussion on reducing youth offending, offering community justice solutions and alternatives to custody. I refer members to papers 5 and 6. We will take evidence in a round-table format from witnesses who join us remotely. I am sorry that you cannot join us in person due to the current rules on social distancing.

I warmly welcome our panel of witnesses: Fiona Dyer, who is the interim director of the Children's and Young People's Centre for Justice; Gemma Fraser, who is a senior reporting officer for recovery, renewal and transform at Community Justice Scotland; Ashley Cameron, who is a member of The Promise Scotland oversight board and who worked on the independent care review; Superintendent Colin Convery, who is from Police Scotland's partnerships, prevention and community wellbeing team; Diane Dobbie, who is on Social Work Scotland's justice standing committee; Professor Lesley McAra, who is from the University of Edinburgh; Dr Hannah Graham, who is a senior lecturer in criminology at the University of Stirling; and Niven Rennie, who is the director of the Scottish Violence Reduction Unit. We very much appreciate your time in joining us this morning. I thank the witnesses who have provided written submissions, which are now available online.

I intend to allow about an hour or so for questions and discussion. If witnesses wish to respond to a question, I ask that you request to speak by typing an R in the BlueJeans chat function. I will bring you in if time permits. If you merely agree with what another witness is saying, there is no need to intervene to say so. Comments that you make in the chat function will not be visible to committee members and will not be recorded anywhere, so, if you would like to make a comment, please do so by requesting to speak.

We will move directly to questions. As ever, I ask members and our invited guests to keep questions and comments as succinct as you can. I am keen to encourage as free flowing a discussion as possible.

I will start with a question for Gemma Fraser from Community Justice Scotland. I would then like to bring in Fiona Dyer, if I may. This morning, the Scottish Sentencing Council published a new proposed guideline on the sentencing of young

people. If it is approved, the guideline will apply to the sentencing of all young people under the age of 25 and will require the courts to consider rehabilitation issues and the availability of a range of non-custodial options. I appreciate that members and witnesses might not have had a great deal of time to consider the guideline, but I am interested in whether our representative from Community Justice Scotland, in the first instance, welcomes the report. What difference, if any, would the guideline make?

Gemma Fraser (Community Justice Scotland): We happily welcome what has been proposed, both for use by Community Justice Scotland and for wider community justice delivery.

For a long time, we have put forward the case that individuals are exactly that. They are individual and bring their own offending experience to the table as a product of that. If that could be considered in the sentencing of young people—or people across the adult population—it would be of huge benefit. It would provide support through the ability to access the correct services in the system at the correct time.

The more community that we can put into justice, the better. We already understand that networks, relationships and connections truly change lives. That is as true for young people—more so, probably—as it is for others. If the guideline results in more individuals with community orders and in more access to education and early support, that would be hugely welcome.

12:00

The Convener: Thank you very much. Ms Dyer, do you have any comments to make?

Fiona Dyer (Children's and Young People's Centre for Justice): I echo what Gemma Fraser has said. We welcome the proposals, especially in relation to remittal to the children's hearings system. Currently, an average of only 7 or 8 per cent of children who appear in adult courts are remitted to the children's hearings system, in which, as members will know, children can participate and have their needs taken into account. We especially welcome that move.

Moreover, we feel that young people's needs must be recognised up to the age of 25. We have seen the evidence on brain development and know the complexities faced by many young people in our justice system. Issues such as language and communication needs, brain development and injury and the trauma in young people's lives need to be taken into account, and the decision to do so when sentences are handed down is definitely welcome.

The Convener: I have a follow-up question for Ms Fraser and Ms Dyer. How can the important principle of judicial independence be implemented throughout Scotland instead of only in a few areas or sheriffdoms? As we have seen from Audit Scotland's work, sentencing data show some geographical variation in the use of community sentences. For example, in 2019-20, the number of community payback orders per 10,000 of the population ranged from 16 in East Renfrewshire to 69 in Clackmannanshire. Do you have any comments on or response to that?

Gemma Fraser: As far as geographical variation is concerned, it is important to note that areas do not experience the same types of crime and offending and therefore do not need to employ the same responses. We should put those figures in the context of the number of individuals who are in custody; who are diverted, thus getting earlier access to the system; or who could be brought closer to the system.

Judicial impartiality is hugely important in Scotland and should be preserved, because it supports a system that is hugely admired across the world. However, ensuring that not just the judiciary but the public have confidence in what is being delivered in our communities will require our effective communication of what underpins community justice. If we are to ensure that such things come through and are not used for only a small subset of individuals, we will have to keep lines of communication open with not only our community justice deliverers but the individuals who experience community sentences, so that we hear the benefits that they get from them. That would go a long way towards helping such things get promoted and put into place at the right times, and we in Community Justice Scotland are supporting an information project to achieve that. The question, though, is how we influence the Crown Office, defence agents and other individuals in their decision making and their thinking about what might be suitable for individuals who receive such sentences.

The Convener: Thank you very much. I will bring in Ms Dyer, after which I will ask Hannah Graham to respond.

Fiona Dyer: Again, I agree with Gemma Fraser. There are differences in decision making, as we have seen in some of our research at the Children's and Young People's Centre for Justice on bail and remand, supervised bail, what sentencers believe is appropriate and the number of chances some young people might or might not get. I hope that the sentencing guidelines will be supported by training and that there are other guidelines for the judiciary to ensure that there is some consistency in decision making. That is also important.

The Convener: I will bring in Ms Graham at this point and then Professor McAra. I am trying to keep things moving smoothly.

Hannah Graham (University of Stirling): In today's round-table session, I am expressing views as a criminologist who works in academia, so I am not officially speaking for the Scottish Sentencing Council, but I declare an interest in that I hold a public appointment as a member of the Scottish Sentencing Council.

Many of the points that I wanted to raise have already been raised by witnesses in the earlier round-table session and in this session. The council's development of the guideline on sentencing for young people has been informed by a range of evidence: research has been commissioned and there has been public and judicial consultation. Therefore, the experience and expertise of not only organisations and people with lived experiences—such as those represented today—but a much wider range of groups, bodies, academics and members of the public have contributed towards that consultation.

Gemma Fraser summarised some of the key issues and opportunities quite well. I will add some points to what has already been said. The guideline has been drafted quite carefully not to limit judicial discretion but to guide the determination of an appropriate sentence. It requires sentencers to consider the purpose of rehabilitation in sentencing young people, but it does not preclude consideration by the judiciary of other sentencing purposes, such as public protection or punishment, if they are relevant.

If it is approved by the High Court, the guideline will apply to approximately 14,000 cases involving young people per year, and there is potential for an increase in community sentencing—particularly for the 21 to 24-year-old age group—and for more review hearings in courts. For example, if the judiciary impose a community payback order, in order to encourage and monitor compliance, the young person might be brought back before the court, with input from justice social work and relevant others, to consider how they are complying with that order, which could last a short time or for anything up to three years. Therefore, the guideline encourages more rehabilitative outcomes, in the hope of reducing reoffending, which we hope will result in fewer victims in future.

Victims groups and their representatives have also been part of the consultation, the engagement and the research that the council commissioned. It has been a large undertaking and, if people would like to learn more, there is a lot of information on our website, and an impact assessment will be released after the High Court consideration.

The Convener: Professor McAra, would you like to come in?

Professor Lesley McAra (University of Edinburgh): Thank you, convener, and thank you for inviting me to give evidence today.

Most of my evidence will be based on the findings from our longitudinal study, "The Edinburgh Study of Youth Transitions and Crime", which Susan McVie and I have been running for the past 23 years. We have followed the same people since the age of 12. They are now aged 35, so we are getting results from phase 8 of our study. Some of the things that I will say relate to the longer-term information about people's journeys through life up to that age.

In 1982, my first job was in the Scottish Office as a researcher, evaluating the implementation of ring-fenced funding for community justice and social work criminal justice services. At that time, the ambition was that those services would reduce short-term imprisonment. On some levels, the policy was successful, but it was not successful in reducing the prison population. The principal reason for that was that sheriffs and judges continued to give short-term sentences, because they felt that they had no alternative and did not feel tremendously confident in community disposals.

I absolutely welcome the Scottish Sentencing Council's recommendations and guidelines, but the proof of the pudding will be whether they are absorbed and followed by the people who are able to sentence. When we want to transform the prison population and what happens to people in Scotland, it is really important to think about what the judiciary are doing. We must always accept that we have to have an independent judiciary and that they are the gatekeepers to the criminal justice system, in relation to disposals in the community or in prisons.

As has been drawn to the committee's attention, there is now compelling neuroscience research on brain development and neurodevelopment that looks at how children mature and at how the brain matures up to the age of 24. Given those biological considerations, rehabilitation seems to be the most just approach to dealing with young people who come into conflict with the law. However, there are other contexts to young people's lives that mean that the court setting is simply not appropriate for 16 and 17-year-olds.

Ten years ago, I gave evidence to a previous justice committee about trying to extend the system, so that a different venue is used to deal with children who come into conflict with the law at 16 or 17. That is still needed. Although the children's hearings system can, technically, deal with 16 and 17-year-olds, it very rarely does, so

some of the most vulnerable transition into the adult system and get up-tariffed very quickly. That is shown by our study. The longer-term outcomes for those children are very poor. The conundrum of how we manage older children in justice systems has yet to be solved by the Scottish system.

The Convener: Thank you, Professor McAra. That was very helpful.

Fulton MacGregor has a couple of questions about violence reduction before we move on to questions about alternatives to custody.

Fulton MacGregor: I have a general question about Scotland's approach to youth offending. The Scottish Violence Reduction Unit has done some fantastic work. What can we learn from the work of that team in our approach to youth offending? Many positive things are happening—people would expect me to say that given that I used to work in the sector. What can we learn from the Violence Reduction Unit's public health approach and message in our other work? I will start with Niven Rennie.

Niven Rennie (Scottish Violence Reduction Unit): Thank you for the opportunity to speak to you today. There are a lot of things involved in that question. First, by taking a public health approach, we recognise that the answer to our problems does not lie with justice and the police alone—we all have to play a part. Many people start their journey into criminality and violence pre-birth. We know from work that we have done on adverse childhood experiences and the impact that growing up—[*Inaudible*.]

I totally agree that interventions need to be made earlier. We need to try to keep people out of prison. We have shown that people who have a history of offending can turn their lives around in a couple of years and help to take other people out of a criminal justice journey—there are people like that who work for me. There is so much that I could talk about, but it would take up the rest of the meeting. I hope that that touches on some of the issues.

Fulton MacGregor: That is a very helpful overview. Superintendent Convery, do you want to come in on that and expand on the point that Niven Rennie made? How important is it that we take into account all the different factors, including child welfare, when dealing with youth offending? You probably heard Bruce Adamson in the previous session talking about taking a human rights approach.

Superintendent Colin Convery (Police Scotland): We absolutely support Niven Rennie's comments about taking a trauma-based approach. We believe in that as an organisation, and we are working towards that. That runs through all the

legislation that is being delivered or developed to support youth justice, ranging from UNCRC incorporation to the promise of a division for youth justice strategy, addressing the age of criminal responsibility and so on. There are lots of moving parts and we have a fantastic opportunity to try to pull things together.

Looking at the wider picture and taking a public health approach is the right way to support our young people. I am aware of the Scottish Sentencing Council's announcement this morning, which is about trying to underpin and fix the challenges that young people are facing. We absolutely support that approach in order to try to prevent offending in the first place. The fact that the guidance extends to young people up to the age of 25 recognises the trauma-based aspect of the issue.

We would advocate the use of lived experience, so that service users' perspectives and views are listened to, engaged with and understood. Niven Rennie has done a lot of work on that. That is clearly about witnesses, too. Another challenge that we face is balancing justice and welfare and how we meet and manage community expectations to try to deliver and maintain confidence.

There is a lot going on. I absolutely agree that the UNCRC offers huge opportunities. As an organisation, we are fully committed to a rights-based approach. I would like to think that that is the direction that we would take as an entity, and I am sure that we will all work collectively towards that.

12:15

Fulton MacGregor: Superintendent Convery makes an important point. Some of the young people who display the most challenging behaviour in our communities, which affects those communities badly, are also some of our most traumatised young people. How important is it to find a balance there, and how can we get that right? How do we ensure that we put welfare, and a human rights approach to our children, at the centre of our system? Perhaps I can bring in Diane Dobbie on that.

Diane Dobbie (Social Work Scotland): Thank you for the opportunity to respond to that question. Young people who are in conflict with the law have unmet needs. Social Work Scotland acknowledges the research on brain development that shows that children's and young people's brains are not fully developed until they reach 25 years old. Many young people who are either on the edges of the justice system or involved with justice services have experienced some level of trauma or adversity, but they are all individuals. The whole-

system approach that was introduced in 2011 has already demonstrated some good outcomes for some young people. However, the challenge relates to some of our older young people, and the need to ensure that they get the right help at the right time and that any response is proportionate, trauma informed and child centred.

Young people do not fare well in the adult justice system, so it is important that, where possible, they are kept out of adult justice services through early and effective intervention in the first instance. In addition, they should be diverted from custody and remitted to a hearing to ensure that they get multi-agency support and that a child-centred approach is taken to create a plan that responds to their needs. We should also take a child-centred approach to those young people who pose a significant or imminent risk of harm. We should not put them in custody—where possible, we should use secure care, although there are some legal barriers to its use, as some of the written evidence to the committee has acknowledged.

The research shows that young people who are over 18 are still not fully developed or fully mature. It is often a challenge to get those young people to comply with community payback orders because, at times, their maturity means that they are testing boundaries, raising challenges and taking risks. We need a multi-agency approach to those young people that is flexible and supportive.

An intervention that has worked well is the structured deferred sentencing approach for young people who have been convicted of an offence but have not yet been sentenced. There is a level of flexibility in that—young people can have their progress monitored regularly by review courts. There is some evidence that such a flexible response has resulted in positive outcomes for some young people, who have gained a greater sense of citizenship through that intensive support.

Fulton MacGregor: I am happy with that response to my general question. I have another question to put later on, but three witnesses still want to come in on this subject; I defer to you on that, convener.

The Convener: I will bring in Professor McAra, followed by Fiona Dyer, to pick up on that topic.

Professor McAra: One of the things that we in Scotland should celebrate is the major reduction in the number of young people aged 16 and 17 who are in custody. It would be good to get that figure down to zero, but it is much better than it was. There has been a huge reduction since the introduction of the whole-system approach. There has also been a reduction in criminal convictions for 16 and 17-year-olds. There is a strong set of downward trends in the criminal justice statistics

that indicate, to some degree, that diversionary approaches are working. That is very pleasing to me, because our Edinburgh study was one of the pieces of evidence that was drawn on to give the Government confidence that diversion worked and could be used. We can see that, on some levels, it is working.

However, those figures disguise the fact that although the system is dealing with a smaller number of young people, as everyone in this meeting will recognise, those young people are much more intensely vulnerable. It is an intensely vulnerable group—those who end up in Polmont are absolutely the most challenging young people, who are suffering from extremely difficult circumstances.

Our study follows the trajectory of young people up to the age of 35. We have been able to do what is called trajectory modelling, in which we look at different patterns of offending. One group in our cohort contains young people—not very many—who are at a chronic level of self-reported offending, and are intensely involved in it. Those young people—as with many of those who become persistent offenders, whether it involves serious or less serious offending—come from the poorest backgrounds. The young people in our cohort who are still picking up criminal convictions—they are a very small proportion—are intensely poor and come from extremely difficult backgrounds.

In the justice system, poverty is often the elephant in the room. Poverty underpins the lives of so many of the young people who get caught up in the justice system, and we never deal with the problem holistically. We look at it not in the round, but in terms of individual families, housing or jobs. We never consider the ways in which those issues are intersectional. It is poverty that leads to chronic patterns of offending.

Poverty is very strongly predictive of chronic patterns of offending, and it also prevents people from stopping their offending. Most people desist from offending in their early 20s. With the small group of people who continue to offend into their 30s, we see that they are trapped by poverty, poor skills, poor education and having been excluded from school early, and they cannot break free. Until we start thinking about rehabilitation and youth justice in a broader, holistic context, we will continue to see those highly vulnerable young people coming through the system. They are very difficult to help and support, because the context in which they live traps them and does not allow them to move on.

Fiona Dyer: There are fewer such children in the system now, which is great. However, given the difficulties that they face, their needs—

especially for those up to the age of 18—are best met in the children’s hearings system.

We need to examine our legislation. There are so many contradictions in Scottish legislation about who is a child and where their needs can be best met, which is why we have so many children in the adult courts system. Ultimately, if we are to be UNCRC compliant, children—those up to the age of 18—should not appear in any adult court. At present, if a child who is 16 or 17 is not open to a children’s hearing or is on compulsory supervision, and their needs have to be met in a secure environment, they cannot be sent to secure care and must go to a young offenders institution instead, because, under the legislation, they are deemed to be an adult.

As I already said, low numbers of young people are remitted to the children’s hearings system. Scotland needs a system that treats all children as such, and the children’s hearings system must have the support to be able to deal with all children up to the age of 18.

The Sentencing Council’s new guidelines are fitting for those aged from 18 to 25 and would take their additional needs into account. Until the legislative changes are made, however, children over the age of 12 in Scotland will still appear in adult courts. We must change that.

The Convener: If there are no more questions on that topic, I am keen to move on to alternatives to custody and diversion from prosecution, before we go on to community sentencing.

Rona Mackay: Professor Lesley McAra and other witnesses have talked about the reasons why that should happen, and why it may not be happening, and I agree with them. We have also talked about the provision of secure care; I would like to explore secure care in general as an alternative to incarceration in prisons or in young offenders institutions. The witnesses will probably have heard Bruce Adamson’s powerful evidence in the round-table session earlier. He said that children should never be in prison—I agree with that, and I suspect that others do too.

The submissions from Fiona Dyer and Ashley Cameron express great concern about that, and point out that those settings are not appropriate for children. They certainly do not reflect the recommendations in “The Promise” report or the whole-system approach, nor do they fit in with the getting it right for every child agenda. We know that there can often be tragic outcomes for children in those settings.

Ashley Cameron, you made a powerful submission. Secure care can offer a holistic setting with trauma-informed care and can provide training for young people. What are your thoughts on that? Fiona Dyer and Diane Dobbie have both

said that there are legislative barriers to the use of secure care. I would like to tease that out a wee bit.

Ashley Cameron (The Promise Scotland Oversight Board and the Independent Care Review): The Promise Scotland and, more formally, the Independent Care Review have issues with secure care because, as you rightly said, it sometimes has tragic consequences and can lead to the further criminalisation of young people. There are issues with the kind of secure care that we are talking about. We may define it in law as a secure place for those young people to be as they are rehabilitated, but young people’s experience of secure care is very different. Their privileges are completely taken away from them; many care-experienced young people told the care review that secure care feels just like prison. If that is what we are doing to our young people, we are doing it very wrong.

There are further issues regarding secure care, such as cross-border placements, which have come up time and again in the Scottish Parliament. Young children are moved from England to secure care places in Scotland, which further reduces the number of placements that we have available for kids who are from, or living in, Scotland.

Young people in secure care are often criminalised and stigmatised—that is prevalent. We in Scotland should not take great pride in locking up our kids, even if it is in a secure care placement. Many care-experienced young people who are placed in secure care feel as if their voices have been totally shut down. They are told what to do and when to do it, and that is that: there is no conversation.

I have heard of some tragic experiences among young people who have been in secure care. That has furthered their existing trauma and led to complete mental health breakdown and the complete breakdown of their relationships with family and community. There is no chance of rehabilitation for some of those young people, because they are now adults and are deeper into the criminal justice system. It is a complex issue, but The Promise Scotland remains firm that we should not be locking up our children and young people.

12:30

Rona Mackay: I put it on record that the secure care home in my constituency is excellent. It has trauma-informed care and offers qualifications to young people so that they can go on to positive destinations. I have visited it many times, and the experience that I have had and that I hear that the young people have is very good.

The problem of the lack of uniformity across Scotland in relation to secure care homes has been highlighted. It is great that there are good ones for young people, as there should be, and that some offer holistic care, but that is not commonplace or uniform. I am aware of the cross-border issue that has been mentioned. That is a result of the funding mechanism for secure care homes, which seems to be inappropriate and inadequate. Again, there is no uniformity—secure care homes have to bid for money and some get more than others, which just does not work. We need to look at that issue as a whole.

The secure care home that I have visited is excellent. I agree that the last resort should be to deprive children of their freedom but, as an alternative to prison and young offenders institutions, secure care homes have a place.

Ashley Cameron: I will respond to that. I am not saying that every secure care placement in Scotland is absolutely tragic, but those are the experiences that I have heard throughout my time campaigning in the care sector. There are good placements and currently secure care is one of the only alternatives to a custodial sentence. I did not make it clear that we are sorely lacking the mental health support that is needed to help children and young people to understand, accept and move on from the trauma. The funding for mental health provision, especially for young people, is not enough. If we are to prevent further criminalisation of the care-experienced community, we need to get in there early doors to ensure that they can understand their journey and move on from their trauma.

Rona Mackay: Thank you—I agree with that.

Fiona Dyer: I totally agree. We do not want to lock up any children but, unfortunately, some children need that form of security, to protect themselves and others. In Scotland, our secure estate is a better place than a young offenders institution and, as you say, some good work is happening.

A lot of work has recently been done on the secure care pathway standards that were co-produced with young people with secure care experience. Those were introduced earlier this year to try to bring some consistency and improvement to the journey into and out of secure care. As Ashley Cameron said, that involved listening to children who have been in secure care and learning from them.

Children who have complex needs and who have experienced a lot of trauma in their lives need support, and secure care homes need resources. Secure care is a form of care, not a form of punishment. Those facilities have care staff, social workers and mental health staff who

work in small units within the larger secure environment to try their best for children who have had real trauma and adversity in their lives. That will not be a quick fix, but it is definitely a better environment for them than a young offenders institution.

Rona Mackay: Will you comment briefly on the legislative barrier that you mentioned?

Fiona Dyer: If someone is in court, they need to be classed as a child in order to be remanded or given a sentence in secure care. They need to be under the age of 16, or a 16 or 17-year-old on compulsory supervision through the children's hearings system. Otherwise, the sheriff is unable to make that placement and remand or sentence a young person in that way. Even if an assessment has shown that a young person's needs would be better met in secure care, a sheriff or judge would have no option but to use a YOI.

Rona Mackay: That is helpful.

The Convener: We have been covering elements of custody and secure care. Collette Stevenson is keen to ask questions about alternatives to custody.

Collette Stevenson: On the question of options for young people other than putting them into custody, I want to explore two elements. What stands out for me, as it did in the previous session, is the issue of alternatives to custodial sentences and the need to protect our communities. Having spoken to somebody who has gone through open prison, I know that they were able to engage with the Prince's Trust, go out to work and play football. Should we have more of that?

I also want to ask about structured sentencing. How effective is that, and how could social work play a bigger part in it? I have worked in outdoor education, and what stands out for me is the empirical research in that regard, in particular around youth offending and people who are at risk or who are going into the criminal justice system for the first time.

Another initiative that stands out, which could work really well, is campus cops. I do not know whether any of you can come back on that. Campus cops came into a big school—probably one of the biggest schools—in South Lanarkshire, and they were able to gauge whether there was an element of offending coming through. How effective would that approach be?

I am throwing quite a lot at you, but I am keen to hear your thoughts, and to hear about what evidence exists in those areas.

The Convener: Perhaps Mr Rennie can pick up those questions.

Niven Rennie: I will pick up some of them, in particular the points around outdoor activity and campus cops. We regularly encounter young people caught up in the system who have never had any positive role models in their lives. Through the provision of experiences outwith the justice setting—for example, in the countryside or at sporting events, or through contact with campus cops—young people are gaining not only experience but a positive influence in their life. In my opinion, that is the role of campus cops. They are there not only to support the teachers and to be in school when problems arise but to form positive relationships with the young people. We cannot get enough of that.

Some of the young people whom we recently took to an outdoor activity had never previously been outwith the estate on which they live in their whole lives. There is a need to give people alternatives.

Before I pass the questions over to the other witnesses, I emphasise that the system is currently focused on activity after the fact. We need to focus on prevention—we need to stop people coming into the system. That should be our sole focus. I could not agree more with what Professor Lesley McAra said earlier about poverty. Just now, we tackle each of the issues that we face in isolation. If we were to tackle poverty, that would be a great step forward.

The Convener: I will bring in Superintendent Convery on the back of Mr Rennie's response, if he would like to pick up on some of those points.

Superintendent Convery: In our experience of deployment, campus officers are invaluable, because of all the benefits that Niven Rennie laid out. Essentially, they provide positive role models and support, and offer an alternative route for policing.

One of the big benefits that we see from that is the ability to identify the underlying factors, and the pattern of behaviour, that may lead to a young person becoming involved with the justice system. The campus officers are uniquely skilled, and they are placed where they can support teaching staff and other colleagues across the sector to help to identify the issues and step in at an early stage with the right intervention before someone even gets to offending in the first place.

The Convener: Perhaps Gemma Fraser would like to come in with a couple of brief comments.

Gemma Fraser: I completely agree with Niven Rennie in highlighting the need for prevention at the earliest stage. However, in answering the question that was asked, it is important to remember that prevention is about preventing not only the first, but the 41st, offence. We need to think about how we use the community, as well as

the criminal justice system and its set of options such as diversionary activity, community payback orders and custody, as an opportunity to continue that support and help young people to achieve their potential.

As the Scottish Sentencing Council highlighted in its report "Sentencing young people", it is young people who experience the greatest capacity for change. We need to think about how we use all those elements and what we can do better, or differently, with regard to what young people need and want to achieve, which is no different from the needs and wants of young people outside the system.

In that way, we can ensure that, wherever possible, we do not use justice services in the delivery of that support. Instead, we should connect young people to universal services in their communities, through existing community planning networks and landscapes. Through that approach, we can ensure that they have a trajectory that does not otherise them, or continue their otherisation, in justice, but instead places them firmly in a community that welcomes them back and integrates them, and supports rehabilitation on a different level.

The Convener: This is obviously a topical discussion. I see that Diane Dobbie would like to come in, and we will then finish off the discussion with some comments from Professor McAra.

Diane Dobbie: I will try to be a bit more concise in my response this time. I want to elaborate a little on structured deferred sentencing. In the Lanarkshires, a pilot was undertaken—it was evaluated by the University of the West of Scotland and Community Justice Scotland—to try to reduce the criminalisation of young people under the age of 21. It was applied to young people who had complex needs, and introduced a partnership approach between the court, Action for Children—[*Inaudible.*]—and our colleagues in housing services.

The scheme involved doing an expedited assessment, getting support for the young person and fully following their journey after leaving court. It focused on links to poverty—for example, it connected young people with a bus pass, and ensured that they were registered with a general practitioner and had stable housing. At other times, it involved supporting them in their relationships with family, and supporting them to appear in court when they had to do so.

At the end of the pilot, the majority of young people—over 80 per cent—had ended up being admonished at the end of their order. Of course, as much as that was a great result, we ultimately do not want young people to be in the justice system at all. However, there were really positive

outcomes from the structured deferred sentencing. The bit that worked was the relationship—it took time to build relationships, and that was pretty intensive work, so it required a lot of resource, but it was a particularly good return on the investment for those young people.

One of the other measures in the scheme, which links with Collette Stevenson's question, related to the other support that was available. Many of the young people moved along the employability pipeline so they were more ready for work; some of them ended up in college placements and so on. Overall, the outcomes of that one study were really positive—the programme was a positive alternative to custody that was tailored to meet the needs of young people.

12:45

The Convener: I am conscious of the time. Let us focus briefly on secure care again. Pauline McNeill has a question on that. I will then move on to community sentencing, when I will bring in Jamie Greene.

Pauline McNeill: I will make it quick. To be honest, I am not sure who is best placed to answer this, but I hope that the witnesses can help me.

We have heard a lot of important stuff, including from Ashley Cameron, about secure care, which probably needs to be reviewed and so on. I know that we are going to come on to discuss deaths in custody, but I want to highlight the case of William Lindsay—also known as William Brown—although I am sure that there are others. He was a 16-year-old who should have been referred to secure care and not to a prison—everyone involved in the case was clear about that. However, my understanding is that secure care was not available.

Has anything happened since that case? I know that there have been other cases to deal with—there seems to be a lack of secure care. I believe that we are only mandated to a maximum of 70 or 80 per cent, leaving the remainder for English placements. I do not understand why we have done that, so can anyone help me understand it? Does anyone have any answers as to whether we have actually acted since that case? To me, it is a death that could have been avoided.

Fiona Dyer: The case of William was really tragic, and I believe that it was through a lack of beds. One of your colleagues referred to the issue of funding in secure care. The providers are charities, and they need to generate their own income in relation to the number of young people that they have. I believe that all the units have emergency beds, but 50 per cent of our secure-care beds currently have young people from

outwith Scotland—I believe that that was the figure as of yesterday. That is just due to the funding. One positive is that we do not need a lot of beds in Scotland, because we manage a lot of young people in communities and in different ways.

That case was tragic, and it should not have happened. We need to examine the funding model and consider how we can always have beds available. There have been discussions on the issue, but they are still progressing, and I am sure that they will take time. However, that does not mean that what happened to William will not happen again.

The Convener: Ms McNeill has touched on the issue of deaths in custody. I have a follow-up question, which should perhaps be directed to Hannah Graham. Do you have any concerns about deaths in custody or deaths following custody? That could involve delays in fatal accident inquiries, a lack of findings of concern or a lack of support following release. Is there anything that you would like to pick up on in that respect?

Hannah Graham: My written submission and that of my colleagues at the University of Glasgow for an earlier round-table discussion on prisons both cover deaths—deaths on community sentences, in my case, and deaths in custody and following release, in the case of my University of Glasgow colleagues. The reason we have highlighted that analysis—in some cases, our figures, which are newly in the public domain, have not been highlighted in that way before—is that we are very concerned. We can speak for years, we can have commissions for years and we can have reviews for years about the problems of imprisonment or the use of custody, or we can speak about wanting alternatives to custody and community sentences.

In my written submission, the analysis shows some quite serious considerations. In community sentences of one type, over a seven-year period, 1,178 community payback orders were listed as finished because of a death. My colleagues' submission also talks about substantive concerns around deaths in custody. What both submissions have in common is our concerns about, in particular, suicide and drug-related deaths, as well as all other deaths. When we raise such a sensitive topic, we must do so not only with compassion and dignity but with the passion and fire that it deserves. We need to pay attention. In her written evidence, the chief inspector of prisons has recommended that there needs to be a review into deaths in custody and following release, which could include parole and non-parole licences.

The figures that I have presented on the people who are dying while serving community payback orders could probably be summarised in four or

five words: young, mostly unemployed, criminalised and dead. That should spark an interest, because criminologists, human rights advocates, healthcare workers and social workers have been trying to draw attention to what happens when earlier needs—such as those relating to mental health care, substance use and physical healthcare—are not met and earlier inequalities and disparities are not addressed. Unfortunately, we have substantive concerns around what happens, and that includes the deaths of young people in custody as well as the deaths of young people on community payback orders.

In 2019-20, 61.3 per cent of the people who died while serving community payback orders were aged between 16 and 40 years old, and that is not an age at which we typically expect people to die, so there are bereaved families. The media will pay attention to the deaths in custody, which is wholly understandable given the gravity of what has happened under the care of the state, and because they have access to fatal accident inquiries afterwards, if the Lord Advocate and Crown Office and Procurator Fiscal Service decide to hold them. We have far less data on people on community sentences who are dying, and there is underreporting of the deaths as serious incidents to the Care Inspectorate. We have worrying concerns not only for community payback orders but for eight or nine types of orders or licences in the community, and that area has not had as much attention or understanding as it could have had.

The resources and relationships are needed much earlier in the system and process, so that we can learn, because it is very hard to hold anyone to account if we do not count the deaths of those on community sentences. The Scottish Prison Service has a statutory duty to report, on its website, data on the deaths of those in prison custody; my colleagues at the University of Glasgow have provided an analysis of that data and they will release more on that in the weeks to come. Underreporting is a big issue, which is concerning. Because of the criteria, the Care Inspectorate is notified only of a fraction of deaths of those on community orders or licences, but it says that the majority of the deaths that it has been notified of are drug deaths or suicide related.

The Convener: Thank you for that, Dr Graham. I very much appreciate your passion and insight. Because of the pressure of time, we will move on to looking at community sentencing.

Jamie Greene: I thank the academics, who have put in great work on the important issue of deaths in custody, which has, rightly, been highlighted in today's media. Dr Graham has done excellent work on an area that was perhaps

previously unreported, as has the University of Glasgow on FAIs. It is worrying that nine in 10 of the FAIs that were analysed by those academics were found to have produced no recommendations at all on things that can change. The mother of one girl who died in a young offenders institution was widely quoted as saying that the FAI system was broken. We have heard that time and time again. That may be an observation rather than a question.

We could spend all day talking about community sentencing. I want to ask about prevention. There may be a perception that Scotland does not suffer from the same level of youth gang violence as other parts of the UK or the world. However, we know from the number of inmates who are involved in serious organised crime that that is an issue. What work is being done—or not done—to ensure that people are not sucked into serious organised crime at a young age? We want to prevent them from falling into the trap of ending up in prison as high-tariff, high-profile offenders. The main thrust of my question may be crime prevention.

Niven Rennie: By virtue of my post as the director of the Scottish Violence Reduction Unit, I chair a UK-wide body called the hope collective, which includes 17 violence reduction units and a number of other organisations. That body has the aim that Mr Greene asked about. The key way to prevent people from becoming involved in serious organised crime or criminality is to give them hope, aspiration and opportunity. People need alternatives—it does not matter whether you are in London, Liverpool, Manchester, Glasgow or Aberdeen.

That goes back to some of the other issues that we have touched on. People who are brought up in poverty lack opportunity. Harry Burns, the former chief medical officer, calls it a sense of hopelessness. If we leave people with no choice, someone else will fill the gap, and the people who tend to fill it are the ones offering a quick buck or the opportunity to wear Gucci trainers or drive a fast car. They tend to be serious organised criminals.

The answer to our problems comes back to one issue: tackling inequality in our towns and cities.

Jamie Greene: We also know that 80 per cent or more of the current backlog of court cases relates to sexual crimes or crimes of violence against women and children. I suspect that the average age of the accused may be higher than for other types of crime. We know that such crimes can come from adverse behaviour and experiences at an early age. We aim to prevent violent crime; what is being done to prevent people from going on to commit sexual crimes?

Niven Rennie: There is a lot of work. We have a project working with young people that looks at harmful sexual behaviour in schools, and a mentors in violence prevention programme delivered by Education Scotland is also doing that kind of work. However, a lot more could be done. The academics might be better placed to answer that question.

Superintendent Convery: Mr Greene's first question was about support for young people who are exposed to, or who are becoming involved in, serious organised crime. The SOC strategy and our consultation with the Government on the national effort focus on that—particularly on trying to divert young people away from that opportunity.

We also recognise that there are always some individuals who will get caught up in that and might end up incarcerated, and we are making a big effort with our colleagues in the SPS. A police officer is deployed at Polmont to work with the young men to help create positive opportunities and offer them positive lifestyle choices. That feeds into the work that Niven Rennie and his team do at the Scottish Violence Reduction Unit.

There is a need for diversion, but there is also a need to understand the fundamental problem. Services should be provided that allow us to support those young people and give them hopes and aspirations that they can achieve.

13:00

Fiona Dyer: Especially since the start of the pandemic, there has been an issue with criminal and sexual exploitation of children. Those children are victims. They are being victimised by adults and are brought into criminal or sexual behaviour. Much of that happens online. A lot of it happened online during the pandemic, but, now that we are back to doing more face to face, there is evidence that it is happening in person again.

We must bear in mind that those children are victims first and should be treated as victims. There is some work on that in Scotland, but probably not enough. We do not really recognise those children as being victims first instead of criminalising them. There are some young people in Polmont who come from a Vietnamese background, and we think that they have been trafficked. They are victims, but we are locking them up. That may be for their own protection, but they have been criminalised. We must get better at dealing with that situation in Scotland.

The Convener: I am conscious of the time. If members have no further questions, I will draw the meeting to a close. If any of the witnesses would like to share anything else with the committee, they can do so in writing and the committee will take the evidence into account. I thank all the

witnesses. I am sure that our discussion could have continued for much longer. Thank you for your participation.

13:01

Meeting continued in private until 13:07.

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