



OFFICIAL REPORT
AITHISG OIFIGEIL

Criminal Justice Committee

Wednesday 7 December 2022

Session 6



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CRIMINAL JUSTICE COMMITTEE

31st Meeting 2022, 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:

Keith Brown (Cabinet Secretary for Justice and Veterans)

Nicholas Duffy (Scottish Government)

Helen Nisbet (Scottish Government)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 7 December 2022

[The Convener opened the meeting at 11:07]

Northern Ireland Troubles (Legacy and Reconciliation) Bill

The Convener (Audrey Nicoll): A very good morning and welcome to the 31st meeting in 2022 of the Criminal Justice Committee. We have received no apologies this morning, but I should say that Collette Stevenson has had to leave the committee room. Hopefully, she will be able to rejoin us soon.

Agenda item 1 is an evidence-taking session on the legislative consent memorandum to the Northern Ireland Troubles (Legacy and Reconciliation) Bill. I welcome to the meeting the Cabinet Secretary for Justice and Veterans Keith Brown and, from the Scottish Government, Helen Nisbet, deputy director, defence, security and cyber resilience; Michael Sim, defence policy manager; and Nicholas Duffy, senior principal legal officer. I refer members to paper 1.

I invite the cabinet secretary to make a short opening statement.

The Cabinet Secretary for Justice and Veterans (Keith Brown): Thank you, convener.

The Scottish Government has recommended that Parliament withhold consent to the provisions in the United Kingdom Government's Northern Ireland Troubles (Legacy and Reconciliation) Bill. Our reasons for doing so focus on our concerns about the bill's impacts on those who were affected by the troubles, as well as the effect of the bill on the Lord Advocate's role as independent head of the systems of criminal prosecution and investigation of deaths in Scotland.

I will deal first with those who had the misfortune to be directly affected by the troubles. We believe that the bill is incompatible with the Scottish Government's view that those who suffered during the troubles should have the opportunity to obtain justice and that those who committed offences during that time should be appropriately held to account and/or punished. The bill will effectively mean an amnesty for those who have committed serious offences such as murder and crimes involving abuse and torture.

We are not the only ones who hold that view. The Council of Europe's Commissioner for Human Rights, whose very mandate is to foster the

effective observance of human rights, has raised her apprehensions about the bill. In her report to the Council of Europe, she gives the opinion that the bill also runs a very significant risk of being found in court to be non-compliant with the European convention on human rights. In that same report, she points out that there is minimal support for and confidence in the bill in Northern Ireland.

Even more significant is the opinion of the Northern Ireland Human Rights Commission, which has recommended that

"the entire draft of the present Bill"

requires

"immediate and thorough reassessment, which should take place through meaningful engagement."

It also expresses its grave concerns that the present draft of the bill

"is therefore incompatible with human rights and the Belfast (Good Friday) Agreement."

Ensuring justice for those who suffered in the troubles is not our only concern when considering the bill. As I said at the outset, we believe that the bill makes novel and unwelcome changes to the functions and responsibilities of the Lord Advocate as head of the systems of criminal prosecution and investigation of deaths in Scotland. The Lord Advocate's independence, of course, predates devolution and is protected by section 48(5) of the Scotland Act 1998, but some of the powers proposed for the independent commission created by this bill undermine that independence and breach a fundamental cornerstone of our criminal justice system.

For example, the commission is given powers to grant immunity from prosecution in certain circumstances, which, in practice, would prevent the Lord Advocate from investigating criminality or a fatality where she would otherwise have jurisdiction. Even where immunity is not granted, the Lord Advocate's role could be similarly impeded by the commission refusing to refer appropriate cases to her. Although it is the Scottish Government's view that the clauses pertaining to the Lord Advocate do not require consent, many clauses that do require consent are integral to the Lord Advocate's ability to perform her role and, if this Parliament were to give its consent to them, the practical effect would be to undermine her independence in those areas.

It is for those reasons—that is, our concerns about the bill's effect on those who have suffered during the troubles and the lack of regard to the role of the Lord Advocate and the protections enshrined in the 1998 act—that the Scottish Government cannot recommend consent to the bill in its present form.

The Convener: Thank you very much indeed, cabinet secretary. I open it up to questions from questions. If anyone has any questions, they should indicate as much now.

I call Jamie Greene.

Jamie Greene (West Scotland) (Con): Thank you, convener. First of all, I welcome Collette Stevenson back to proceedings. Are you okay, Collette?

Collette Stevenson (East Kilbride) (SNP): I am sorry—I look like a pirate.

Jamie Greene: We will just call you Popeye. Do not put that in the *Official Report*.

Thank you for your opening remarks, cabinet secretary, and for bringing the Scottish Government's position on the bill to our attention. However, I seek clarification on what seem to be two different strands to the Government's position.

I will start with the latter strand, which is the perceived technical issues, notably around the bill's compatibility with rights and legislation associated with the ECHR and the interaction with the role of the Lord Advocate in instigating criminal prosecutions in Scotland. The first of those issues is perhaps more political or policy led, and you have gone into some detail about incompatibility with the Scottish Government's view that those who suffered during the troubles should be able to obtain justice. I will start with that and then move on to some more technical aspects.

First, you have gone to great lengths to explain the perceived view of the bill in Northern Ireland. I have to wonder, though, about the relevance of that to the Scottish Parliament and to the question of the Scottish Government's consent. After all, this is a bill with five parts and 58 clauses that address a number of wide areas, not just the issue of immunity and prosecutions. Other things in it—for example, the extension of the prisoner release agreement—have been in place for a number of years, and I would just point out that it also establishes and instigates the independent commission for reconciliation and information recovery, about which many positive things have been said. Being a big bill, it will perhaps have some controversial aspects, and it addresses a number of issues on which there will be a range of views. Can you start by explaining the policy or political problems that you have with the bill, cabinet secretary, before we talk about the technicalities?

Keith Brown: First of all, I concede that there are parts of the bill with which we would have no issue, if they were standing in their own right. However, in the overall context of the bill, there are three areas where we—and human rights organisations in Northern Ireland and elsewhere—

think that this Parliament's ability to comply with its human rights obligations will be undermined.

As I have said, the bill infringes on the Lord Advocate's independence. Under its provisions, she could not be—as she currently is and as all the parties in the Scottish Parliament have hitherto generally agreed should be the case—the person who decides on all investigations into certain serious offences in Scotland. That is a fundamental objection to the bill; even if some of the bill's elements are absolutely fine on their own, our objection has to be seen in that context.

11:15

You have also asked about the impact on people who suffered during the troubles. This is not just some academic thing; such cases could come to and be tried in Scotland. Perhaps the issue of human rights standards is, as you have suggested, political—although it does not seem to me to be so, given how these matters have not been so contested in the past—but if somebody has been subjected to torture or abuse or knows somebody who has been murdered, it is important that those matters receive due process. The bill would insert a new body into that process in a way that we think would undermine the independence of the Lord Advocate and this Parliament's role in relation to human rights.

I am not sure that those are necessarily political objections. I think that they are well founded, and they are founded on principles such as the Lord Advocate's independence and the human rights basis of this Parliament.

Helen, do you want to add anything?

Helen Nisbet (Scottish Government): No, cabinet secretary. You have already highlighted the views of the Northern Ireland Human Rights Commission and other bodies. It is a matter for the Scottish Parliament as to the extent to which it is prepared to give way to them, but the Scottish Government has taken a position on the legislative consent memorandum that has been lodged.

Jamie Greene: Just for clarification, then, is it the Scottish Government's position that any form of reconciliation that offered amnesty to individuals, irrespective of their background or circumstance, would be a matter subject to a more fundamental principle of disagreement? In short, is it the Government's position that such a process should not take place? Moreover, is it the Government's position, therefore, that the independent commission would not, in that sense, be truly independent?

Keith Brown: We are, of course, not against the idea of reconciliation—or, possibly, amnesties—as we have already seen under the

Belfast/Good Friday agreement. There is no in-principle objection to that; it is just the way in which the proposal has been constructed, with the insertion of the commission into a process that, we believe, undermines the two principles that I have mentioned: the independence of the Lord Advocate and the human rights basis of this Parliament and Government. Those are the two principles that I am highlighting. It must be at least theoretically possible to contrive a commission that can do such things without undermining those principles; this is not, in principle, about the commission itself.

Jamie Greene: Let me pose a hypothetical question: what if a solution were to be found to those barriers, namely the interaction between the role of the Lord Advocate and the role of the independent commission? First, are you aware whether the Lord Advocate has made her views on the matter open to the Northern Ireland Office or the Secretary of State for Northern Ireland and, if so, whether she has had any response and whether the Government has been privy to that correspondence? Has that approach been in any way helpful or constructive in, perhaps, finding a possible solution?

If a solution could be found through whatever means—I am sure that there are a number of means by which that could take place—would that make the bill as a whole more palatable to the Scottish Government? Even if the issue were addressed and further advice given on ECHR matters, would the Government still have a problem with the fundamental premise of the legislation?

Keith Brown: I will get Helen Nisbet to give us an update on the engagement between the Lord Advocate and the Northern Ireland Office. There has been engagement, and the Lord Advocate has suggested remedies that might help deal with the situation, but I do not think that there has been a response yet.

However, any answer that is given will be to what is, as you have said, a hypothetical question. We have to deal with the bill before us. If the issues with regard to the two fundamental principles that I have mentioned—that is, the independence of the Lord Advocate and the human rights aspects—were to be resolved to the satisfaction of the Lord Advocate and the Scottish Government, it would at least be possible to see some way through, because those are our two main objections. Again, though, that is hypothetical, and we have to deal with the bill as currently constructed.

I do not know whether there is any update to what I have just set out.

Helen Nisbet: No. The Lord Advocate has written to the Northern Ireland Office and explained where she feels her constitutional position as Lord Advocate of Scotland in respect of the investigation of crimes and fatalities would be impacted by the bill. She has proposed avenues that could be explored as a means of closing that gap but, as far as I am aware, she has not had a response to her proposals.

Keith Brown: On Mr Greene's question whether the human rights side of things could be overcome, it might be worth pointing out the Northern Ireland Human Rights Commission's comment that the bill is—and these are its words—"fatally flawed" and that it is "not possible" to make the bill compliant with the European convention on human rights. It has also expressed grave concerns that the

"the Bill is incompatible with Articles 2 (right to life) and 3 (freedom from torture)"

of the ECHR and with the Belfast/Good Friday agreement. There will be a long way to go to overcome those objections.

Jamie Greene: I am not sure, convener, how much of that correspondence can be made available to the committee either privately or publicly or to the wider public with an interest in it, but that communication would certainly be helpful, as, indeed, would any response from the United Kingdom Government to the Lord Advocate or the Scottish Government, in so far as it is appropriate. I also note that a letter was sent by the Parliament's Delegated Powers and Law Reform Committee to the UK Government in, I think, early November, but I am not sure whether that committee has had a response either. Certainly, all of that in the round would help committee members in future.

Cabinet secretary, I am pleased to hear you at least making it sound as if a constructive conversation could be had. However, as you have said, you can judge this only on the merits of what you have in front of you today, and I understand that. Thank you very much for your time.

The Convener: I call Pauline McNeill, to be followed by Russell Findlay.

Pauline McNeill (Glasgow) (Lab): Good morning, cabinet secretary and everyone.

I must confess that I think that the committee was given quite a lot of information to consider on what seems to be a vital issue of principle on a number of matters and the highly sensitive issue around the commission. I want to take my time to decide whether I want to support the Government, which has set out some good reasons, and whether, in principle, what is intended by setting

up the commission is perhaps a long-term objective.

Cabinet secretary, you have set out the Lord Advocate's independence. I have questions around why civil issues, for example, would be included. If we were to support the LCM in the Parliament, criminal and civil jurisdictions would be severely restricted, so I have questions around that.

In a nutshell, is the Scottish Government fundamentally opposed to the principles behind the commission or to the principles within it? That is the bit that I have difficulty grappling with, as well as the human rights issues on which you replied to Jamie Greene. Would that mean, therefore, that the overall purpose of the commission could not really be achieved on any other basis?

Keith Brown: We are trying to consider what would happen if the bill were passed. The effect of that would certainly be to undermine the Lord Advocate's role, because there would be cases that she could no longer prosecute that she might otherwise want to prosecute. In fact, even if the commission decided not to prosecute, if it decided not to refer a case to the Lord Advocate, there would be nothing that she could do to prosecute a case that she might want to prosecute. That is one of the effects, and it is that effect that we are talking about.

I mentioned the specific articles that some of the human rights organisations have expressed concern about, and we have the same concerns. You know the basis on which the Parliament was founded in relation to human rights. However, it is also true to say, I think, that every Opposition party at Westminster and all the parties in Northern Ireland are similarly concerned about aspects of the bill.

I am trying to point out the practical effects for the Scottish Government and why we would object to them. You asked about the principles of the commission. If the principles of the commission allow for that intervention in the legal system in Scotland in a way that undermines the Lord Advocate's position, it is a principled objection. It is certainly a principled objection to say that we do not think that the commission is compliant or to say that we have sufficient concerns about compliance with the ECHR. It is a principled objection to the basis on which the commission is founded, rather than to the idea of a commission itself.

Pauline McNeill: That is helpful. Put simply, is it fair to say that to take those powers away from the Lord Advocate and the Scottish criminal justice system and place matters entirely in the hands of the commission would place too much trust that

the commission would achieve its objectives and not undermine any interest that we might have in Scotland?

Keith Brown: You will know better than I do that the basis on which the Lord Advocate's role is constructed is undermined by the bill. She might suddenly be no longer able to say, "I think that there is a crime here, and it is in our interests to prosecute", because somebody else is allowed to say, "No. In fact, it will not even come to you until we have done our business here, and we might not let it come to you afterwards". It is that fundamental change to the position of the Lord Advocate that is detrimental. For all the reasons that it is good in principle to have an independent prosecutor in Scotland, the role is not really beholden to anybody else, and certainly not to the Government. This would be the first time that you would see that power and independence being fettered by another body. That is our objection.

Pauline McNeill: That is the bit that I understand. The bit that I wrestle with is that the general principle behind the commission is to get some of the stories and to get to the truth about what happened in Northern Ireland. In that framework, the commission would have the powers to invite people to come forward without prosecution or would, I suppose, indemnify them. That is the principle behind it, and the Lord Advocate would need to trust completely that the commission would do it in the right way and would not upset families or individuals who want justice for their family or for themselves but cannot get it because the commission is trying to do something else—namely, provide indemnity to get to some of what happened.

Keith Brown: You are right. There might be laudable purposes behind what is intended, and it might be that, given the exchange and engagement between them, the Lord Advocate and the Northern Ireland Office can find a way around the more fundamental objections. The issues that we have objections about undermine those perhaps laudable purposes. There might well be merit in getting people to come forward without fear of prosecution, but it does not overcome our fundamental objections.

You raised a point about the civil side of things, and it might be best to get someone who is more expert than me to address that point, if that is okay.

Nicholas Duffy (Scottish Government): Under the bill, if a civil claim is not raised before 17 May 2022, it cannot be raised at all. That is basically a retrospective stop on all civil claims. That is the date when the bill was introduced at Westminster.

Pauline McNeill: Finally, given that the issues are historical, are there likely to be many civil claims?

Nicholas Duffy: It is really hard to tell. Stuff is coming out, but I do not really know. It is hard to tell.

Russell Findlay (West Scotland) (Con): I want to touch quickly on something that Helen Nisbet said about the letter, which Jamie Greene suggested should be made public, if possible. Is it already in the public domain?

Helen Nisbet: I am not aware that it is in the public domain. I am not here on behalf of the Crown Office, so I cannot say one way or the other, but I noted what Mr Greene said.

11:30

Russell Findlay: No problem.

This question is for the cabinet secretary. We have heard your concerns in writing and verbally. Pauline McNeill asked a version of this question. Do you agree with the sentiment behind what is intended by the bill, which is to find truth and justice for many of the people who suffered loss during the troubles? Do you back that principle, even if the bill is not the way to achieve it?

Keith Brown: That is a difficult question to answer. Certainly, I back the general idea that you want to get as much truth, openness and justice as possible through any such process. However, you cannot get justice if you undermine, on the one hand, the role of the Lord Advocate and, on the other hand, the accepted basis of human rights. In general terms, why would you not support trying to achieve greater truth, transparency and, hopefully, reconciliation? Justice must be at the heart of it, however, and we do not think that justice is served by the bill. All that we can go on, rather than sentiment or hypothesis, is what is presented to us. That is why we are opposing it.

Russell Findlay: As a continuation of that, if not through this bill—clearly, you have serious misgivings about it—do you agree in principle that, given the sensitivities of the troubles and everything that goes with them, a United Kingdom-wide approach is preferable and, indeed, necessary?

Keith Brown: Yes. There is no way that it can be other than an approach that is taken forward by the UK Government. The powers are all reserved powers that rest there. It is just the interface with the justice system in Scotland that we are concerned about.

Any system must be based on the principles of justice, and I have outlined why we think that that

is not served by the current proposal. It is for those who want to initiate this to come forward with an amended proposal, if they want to do so, to see how it can be achieved without undermining human rights and the position of the Lord Advocate. Justice is a broad concept, however. People need to feel that justice is served. To do that, you have to observe other principles, such as the independence of the judiciary and the fundamental nature of human rights.

Russell Findlay: It is not a closed door, as far as the Scottish Government is concerned—is that a reasonable interpretation? Are you willing to look at whatever form it might take?

Keith Brown: Yes. We are obviously interested to hear the outcome of the Lord Advocate's engagement with the Northern Ireland Office. As Helen Nisbet rightly says, it is not for us to take a decision on publication; that is entirely for the Crown Office and the Lord Advocate. It might, however, help to find a way forward on the issue.

It is regrettable that we were informed so late in the day. That has not allowed us to carry out the consultation that we would have liked to carry out. It is becoming a more regular occurrence. We were advised of the bill on the day that it was introduced at Westminster, although some paragraphs had been shared with us beforehand. We will, of course, look at any changes that come and will discuss with the Lord Advocate how she feels that the engagement and the suggestions that she has made have been received by the Northern Ireland Office.

Russell Findlay: That is great. Thank you.

The Convener: I thank the cabinet secretary and his officials for attending. We will have a short suspension before moving on.

11:34

Meeting suspended.

11:36

On resuming—

The Convener: I have a quick update on the point that Jamie Greene raised about the correspondence that was sent to the UK Government from the Delegated Powers and Law Reform Committee in relation to the bill. I can confirm that, to date, there has been no reply to that letter, which was dated 10 November.

In view of the questions that were raised in response to the update given by the cabinet secretary and some of the comments made by his officials, and also in view of the Scottish Government's position on the LCM, I propose—I am happy to discuss this further with members—

that we do not put the question of consent today and that we consider the matter as a committee, so that we can obtain more information for further consideration. That is my proposal, and I am interested in hearing members' views on it.

Jamie Greene: I apologise for having instigated the conversation about the correspondence, but LCMs are important.

The convener's suggestion is very helpful, and I appreciate it. Whatever our views on the substantive elements of the bill, such as the commission and other aspects, that would give us the opportunity to seek more information.

Specifically, it would be helpful if the Northern Ireland Office was pressed to respond to the DPLR Committee on its feedback. There was a very late submission to members of that committee last night from the Law Society of Scotland, which raised a number of valid points.

The DPLR Committee will also need the opportunity to respond to the Lord Advocate's letter. We have not seen that letter and do not know its content, but it sounds like it could be a productive and helpful piece of communication. There might be a question as to whether we could get sight of that letter and of any response in due course, or whether we could at least get confirmation about whether any impasse is insurmountable or whether there could be a positive way forward that would alleviate some of the Lord Advocate's potential concerns. We have not heard directly from the Lord Advocate, and I do not want to put words into her mouth, but, from what the cabinet secretary said, it seems that she has some concerns that have led, in due course, to the Government's position. The Lord Advocate might wish to write to that committee or to the Government and then to us; I am not that fussed which it is. However, if we could look at all that correspondence, that would help us to make a better-informed decision about whether to agree with the Government's position.

The passage of the bill through Westminster—I am not sure of the timeline for that—might present an issue, given that recess is nearly upon both Parliaments. We would not want to stand in the way or affect that.

That is certainly a middle ground, if nothing else, given that this is quite a big and, as members have pointed out, sensitive issue. We all want to do the right thing.

Pauline McNeill: That was a helpful contribution from Jamie Greene. I start from the viewpoint that the commission's central purpose is a good one in principle. However, if it achieves what it wants to do, it will have wide-reaching implications, especially in indemnifying anyone

against criminal prosecution and, as we have heard, civil proceedings.

I am clear in my own mind now, having read the DPLR Committee's report and listened to the cabinet secretary. That committee noted that

"There is no requirement in the Bill that the UK Ministers obtain or seek the consent of the Scottish Parliament or Scottish Ministers before exercising the powers in the Bill within the Scottish Parliament's devolved competence."

It is important to uphold the principle that Westminster should seek the consent of this Parliament when seeking to do something on a UK-wide basis that is within the competence of the devolved Parliaments, such as criminal legislation. That principle needs to be upheld.

There is a lot to consider in all this. There are a number of substantial issues and, for that reason, I would like us to take more time. I am sympathetic to the Government's position, now that I have heard it, but I would like us to take time over it in order to balance the overall objectives against some of the principles. However, it is really hard to overlook that principle because, at the end of the day, if we were to give up the powers of independence of the Lord Advocate, we should seek Parliament's consent to do so.

Rona Mackay (Strathkelvin and Bearsden) (SNP): I take a more straightforward view: I completely and utterly oppose the bill. There are two sides to it. There is the mission creep into our competencies and judicial system, which is quite blatant. The other side is the content of the bill. I really do not understand why the UK Government is trying to introduce this. I am not sure what its objective is. In relation to the commission, people say that it is good to investigate things, but if you look at the detail, you see that, even if it investigates, nothing can happen. There is a block on any access to justice for victims.

I cannot see any good in the bill. I realise that I might be outvoted, but I do not think that there is any purpose in delaying our decision. There should be a flat rejection of the bill. I am not sure of the worth of getting further information, because the bill, as it stands, is clear cut. I would oppose it completely right now.

Russell Findlay: There is probably universal agreement that truth and justice are paramount, and we should not lose sight of the fact that that is the intent behind the bill. So many families have still not got answers after so many decades. I was reassured that the cabinet secretary agrees with that principle. Importantly, he also seems to agree with the need for a UK-wide approach.

I cannot agree with Rona Mackay's interpretation of this being some kind of nefarious mission creep into the Scottish justice system. To oppose the bill on principle would be wrong and,

indeed, premature. Pressing pause, as has been proposed, is the right thing to do, for the reasons that have been outlined by Jamie Greene and others.

The Convener: I thank members for their comments.

To summarise, we are looking to strike a balance. There is our desire to deal timeously with the LCM, and, as has been pointed out, we have to take into consideration timescales elsewhere. However, it is important that all members are comfortable that we have fully considered the implications of the bill and, accordingly, feel that we, as individual members, can take a position on it.

On that basis, I propose my initial suggestion to delay putting the question of consent to committee members today so that we can obtain more information. I note Jamie Greene's comments about seeking copies of correspondence, if possible. He also mentioned the Lord Advocate, which is entirely appropriate, given her role in this. We will come back to the matter at a future meeting, when we will give it further consideration and, I hope, come to a conclusion. Do members agree to that approach?

Members *indicated agreement.*

Policing and Mental Health

11:45

The Convener: Our next item of business is consideration of some recent work that we have undertaken on policing and mental health. I refer members to papers 2 and 3.

Before we begin our discussion, I record our thanks to all the police officers who spoke to us privately. Their brave and incredibly helpful testimony is really invaluable to our ability to question Police Scotland on how it supports its officers and staff.

In paper 3, the committee is invited to agree to a series of recommendations on follow-up actions as a result of our conversations. I invite members to comment and give their views on the suggested actions.

Russell Findlay: I put on the record my appreciation for the officers who spoke to us. Some of the accounts were truly harrowing and they really brought home the nature of what the police do day in, day out on our behalf.

I have long had concerns about the response from Police Scotland and the Scottish Police Authority. Way back—I think that it was at some point last year—I asked them about police officer suicides. First and foremost, I asked whether those were even counted. We were told that they did not have that data and that they would perhaps provide us with it, but I have not seen anything to that effect. I also asked about the number of police officer suicides reported in the public domain that have been subject to fatal accident inquiries. No FAls have taken place, as far as we can establish, which seems absolutely staggering.

There was a particular exchange in which Police Scotland told the SPA that, in effect—I summarise—none of the suicides reported in the public domain was due to work-related issues. To be frank, that is just not true. Suicide is complex; no one is saying that it is black and white. However, I know about cases where what certain officers were experiencing in relation to work and, indeed, the complaints and disciplinary process was absolutely a factor in their taking their own lives. The lack of curiosity from Police Scotland, the SPA and, indeed, the Government around that is highly questionable.

As well as the officers who have, tragically, died, we have heard first-hand accounts both in committee and outwith it of officers coming close to taking their lives due to exactly the same pressures of regulation, discipline and so on.

Police Scotland, the SPA and the Government are all saying the right things now, but I do not

have entire confidence in what they say. I do not doubt their intent—I absolutely believe that they have the officers' welfare at heart—but the systems as they are set up clearly do not work. If they do not radically change them, more officers will die. That is inevitable.

I have some suggestions for follow-up work in addition to what has been proposed. We should go back to the Crown Office and ask it why the deaths of officers, some of them on duty, from suicide or suspected suicide have not been subject to fatal accident inquiries, which would have helped to establish the facts and whether lessons can be learned. We might want to engage with His Majesty's Inspectorate of Constabulary in Scotland, which I understand is doing work on this right now and speaking to officers who have been impacted.

We might also want to revisit Police Scotland and the SPA, given the exchange that I mentioned, to ask whether they record officer suicides and whether they have done any meaningful work on the number and nature of these tragic cases. We know from the accounts that we have heard that police officers see and do things that most people in society do not, and they deserve proper support.

Jamie Greene: I want to clarify something. Are papers 2 and 3 part of the publicly available pack of meeting papers or are they restricted to members?

The clerk has confirmed that they are public papers. That will save me some time in my comments. The summary notes in paper 2 go into great detail on the nature of the meetings that we had. It is worth putting on the record our huge thanks to the officers and ex-officers whom we spoke to, and to the Scottish Police Federation for mediating and attending meetings with them.

The evidence that we heard is all fairly self-explanatory. Many of the issues that were raised were no surprise to us, but they still came as a shock. I was struck most of all by the sheer scale of the trauma that the individuals whom we met had experienced and the effect that it has had on their lives and the lives of their families.

As Russell Findlay said, we have unfortunately lost a number of officers who have seen ending their lives as the only way out of their trauma. Others are still suffering. It is clear that, in so many aspects of how the police assist officers not just in their day-to-day work but in dealing with post-traumatic stress, so many have been let down. We met only half a dozen officers, which is probably a drop in the ocean. That was reaffirmed to me last week, when I attended the Scottish Police Federation awards just across the road. I spoke to officers there who repeated quite a lot of what we

heard, although I think that what we heard was often at the extreme end.

On what should happen next, it is really important that the SPA and Police Scotland read in detail the notes that the clerks have produced about our sessions, and that they respond specifically on the many issues that we have raised. I will not go into them all in detail, but they include dealing with the trauma and stress of the job; the organisational culture; how the SPA and Police Scotland deal with complaints; lack of resources; lack of time off; financial pressures; mental health; how the human resources systems, including the employee assistance programme, deal with the issues; and how HR deal with people who are on sick leave. We heard a number of frank—and quite shocking, actually—comments about how such people are dealt with. A private employer in that position would be looking at a number of serious civil cases being brought against them.

Paper 3 asks us to consider what we should do next. All the questions that have been posed are relevant and it is really important that Police Scotland responds to them in great detail. I do not want to get a one-page response that thanks us for our work. Police Scotland really needs to be open and frank with itself. We have had evidence sessions where quite senior people from Police Scotland and the SPA have sat in front of us and said that they hear what we are saying and they hear the feedback. They told us about a range of steps that they are taking to make things better, but that was very high-level feedback. I would like to see much more detailed, in-depth information on how they are addressing each of the issues that we are presenting to them and their direct response to the criticisms. That is key.

It is only fair that Police Scotland and the SPA are given the opportunity to respond. They may not agree with everything that we report or with the assumptions in the summaries that we will give them in the papers, but it is entirely appropriate that they at least say so. If they agree and accept responsibility in some of the areas, it is important that we give them the opportunity to say what they will do moving forward, because it is the moving forward that is really important.

We know that mental health and work stress are among the key drivers for retirement and early retirement from the force. We have had a lot of discussion around that. It is really important that that plays into our wider remit of keeping a watching eye on police numbers and churn and generally supporting those who are on the front line, which is important to all of us on the committee.

I hope that those comments are helpful in some way and that they set the bar for what I would like to see from Police Scotland and the SPA.

Rona Mackay: I broadly agree with what Jamie Greene has said. The response to our letter was a wee bit defensive. It did not show much in the way of actual understanding of the issues that we presented, even in the case of the part in the notes about the employee assistance line. Somebody called it and was told to phone back later, but when he phoned back, he was told that they could not help him because he did not meet the specific criteria.

David Page described the trauma risk management model as a proactive model of support that officers and staff are expected to access by self-referral. We heard that that was not working, but he has not really addressed that in his responses. Those are just a couple of examples. We need to dig deeper. I agree with Jamie Greene: we need some recognition that there are problems and that we need to fix them. We have not really had that.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I back up what others have said. The notes are really good and they capture what we heard from officers, which needs to be taken really seriously.

I will keep my comments brief, because the key points have been clarified and they are in the public domain, but I want to mention the issue that came up about police treatment centres. The one at Castlebrae at Auchterarder was talked about in particular. The consensus is that those centres are really helpful, and I wonder whether their expansion could be looked at. The point was made that, although the centres are there for people who experience any of a range of health issues while they are in the police, that is not necessarily the case when they retire. I think that the help is available only for officers who have retired on physical grounds, although I might be wrong about that. Perhaps that could be clarified in any response. However, if that is the case, will the police consider making that help available to people who have had to retire on mental health or emotional wellbeing grounds as well?

12:00

The Convener: I missed a bit of what you said, Fulton. Did you suggest exploring opportunities for retired officers and staff to access the treatment centres?

Fulton MacGregor: Yes. My understanding is that they can already do that in some instances but, given that the information that we received says that the centres are not for everybody, perhaps they could be expanded.

Pauline McNeill: I felt that the response that we got was inadequate. It could have been written by anyone, but it should have been responding to the police officers who, we have heard, are serving on the front line in specialist units where, without even hearing the evidence, you would surmise that being in those undercover situations or dealing with weapons would be challenging mentally. There is no acknowledgement of that. I would have expected the Scottish Police Authority to recognise in its letter that it is responsible for a service in which police officers, who are in a profession that is on the front line, are probably more challenged than people in other professions. It is certainly among the professions that have the most far-reaching mental health challenges. There is no admission of that.

The SPA's letter is very dry, in that it responds to some of the administrative issues. It says that it will review the situation. I would say to the SPA that if it is going to review the situation, it should take a different attitude from the one that it is taking with the Criminal Justice Committee. I want to hear more from the SPA about how it understands what we have heard from officers. Obviously, that is a snapshot. I want to hear more from the SPA that shows that it understands.

As I have said before, the fact that police officers were not categorised as a priority by the Joint Committee on Vaccination and Immunisation always astonished me. That probably had a psychological impact on the police officers who served in the middle of Covid. Nobody seemed to bother about the fact that they were not vaccinated. I want to hear more from the SPA than what is in the letter. We should send a strongly worded response.

Russell Findlay: I would like to come back in briefly to touch on what I said before and to put it into some context. The exchange in committee in which I asked about officer suicide numbers was on 18 May. The later exchange was on 7 September, when I quoted from a letter from the SPA to the committee. It stated:

"Based on the information available at that time, there was nothing to suggest that any of the recent cases were caused directly by the pressure of work."

I disagree with that point, because there is an abundance of accounts and evidence to hand that completely contradict it. That is the kind of thing that a fatal accident inquiry should and would have looked at.

I have one other small but important point. There are other cases—at least one—in which an officer attempted suicide and was then required to sign a non-disclosure agreement. We are told that non-disclosure agreements are being used properly, in line with the Advisory, Conciliation and

Arbitration Service guidance, and not to keep people quiet. Again, that is part of the problem.

Jamie Greene: I have a request for information. I wonder whether the clerks could perhaps assist us in liaising with the SPA or Police Scotland. In today's press coverage pack, there were a few articles relating to statistical data around exit surveys. The figure that was quoted is that one in five officers have exited the force because of the effect of the job on their health, mental, physical or otherwise. Those articles point towards freedom of information data that had been requested and subsequently published. That sort of information would be helpful to the committee—20 per cent is quite a high statistic—rather than our just taking what we read in the newspapers at face value. The two stories in *The Times* and *The Scotsman* are clearly from the same source.

I wonder whether we could get that information, provided that it would not breach individuals' confidentiality. If the numbers are low, for example, that would be difficult, but I would really like the police to be transparent about their exit surveys and their findings when people leave the force, retire early or leave for health reasons and have not just come to the natural end of their career. That information might help to back up all the points that have been made today about the scale of the problem. One in five officers is a huge number. It should be a concern if the statistics that we read in the newspapers are true. I wonder whether we can ask for more information about that.

The Convener: My ever-helpful clerks have just confirmed that that appears to be connected to a freedom of information request that was submitted by our Liberal Democrat colleagues. It should be in the public domain, but we will see whether we can find it, circulate it to members and incorporate it in our on-going correspondence.

I have jotted down some of the points that members have made. It is clear that concerns still exist about the response that we received from Police Scotland. In relation to that correspondence, I still have questions about training, which I am very interested in, and, in particular, supporting operational supervisors to recognise and respond to changes in a member of their staff, and to instigate the appropriate support before things escalate for them.

In the correspondence from the SPA, I noticed that some of the timescales for processing retirements seem exceedingly long. That raises a concern, particularly where there is a health and wellbeing issue connected to that. For me, the other question that remains is around access to, and referral to, specialist support in circumstances in which the mental wellbeing of an officer or a member of support staff has declined to a point at

which referral and access to more specialist support is appropriate. The timescales around that are difficult. Those are some of the issues that I am interested in continuing to scrutinise.

We have covered a number of issues: obtaining data on suicides; establishing whether there is a link with officers' work roles and the collection of data on that; and the possibility of FAIs. It is important to acknowledge that HMICS, the SPA, Police Scotland and the Scottish Police Federation are committed to addressing the issue, but the view that there is a lot more work to be done is loud and clear. Fulton MacGregor spoke about widening access to the police treatment centres, which is a good point, and the situation with regard to vaccinations, which Pauline McNeill raised, is an issue that has attracted scrutiny and criticism in the past.

Going forward—to pick up on Jamie Greene's point—it is important that the SPA and Police Scotland have an opportunity to respond. I am happy to propose that we give them some time to respond on the notes of meetings with officers and the suggested follow-up. We could also invite the federation and even the Association of Scottish Police Superintendents to comment, perhaps in 2023. In the meantime, I am keen that we write again to Police Scotland and the Scottish Police Authority to request a full and detailed response to the correspondence that we have sent them.

I also propose that we engage with the Crown Office and Procurator Fiscal Service, perhaps on cases around FAIs, which Russell Findlay raised, and suicides, and raise those issues with it. As I said, we can certainly track down the information around the FOI that was referred to earlier.

Are members happy with that proposal? There is still a wee bit of work to do, but it is all important stuff.

Collette Stevenson: Can I quickly pick up on what our paper says about the summary case management pilot? It says that the testing of the new system is not due until 2023.

The Convener: Are you looking at the correct paper?

Collette Stevenson: I am looking at page 28 of our papers, where there is a section on rest days. [*Interruption.*] I am sorry—I am way ahead. I apologise.

The Convener: You are way ahead of us.

Collette Stevenson: I am sorry.

The Convener: No worries. Thank you.

We will ask the clerks to support that follow-up work and to keep on top of that piece of work into the new year.

Correspondence

12:12

The Convener: Our next item of business is consideration of two items of correspondence that the committee has received. The details are in paper 4. Do members wish to comment on the suggested course of action on those items?

I will start with the letter from NHS Scotland on medical prescriptions for prisoners on their release. Does anyone wish to comment on that? Are we happy with that? There is a helpful outline of the situation in NHS Scotland with specific reference to access to medication. I note that, at the end of the letter that we received from Caroline Lamb, she has undertaken to

“ask Health Boards to work with the Scottish Prison Service to consider the issues raised by the Committee and the Wise Group and identify any practical actions that could help ensure people leaving prison can access prescriptions.”

Are members happy to note the information in the letter and to await a further update?

Members indicated agreement.

Pauline McNeill: It is important to pursue an update on that, because it is a case of “Maybe aye, maybe no,” depending on the local area. We wanted progress to be made and we wanted an acknowledgement that, if we really want to tackle the wider issue of released prisoners getting medication, which, in many cases, they need for five days, because they cannot get to their GP, we must monitor that. Given that we have started something, we should pursue the issue vigorously and see whether we can get some real action to be taken.

The Convener: That is a fair comment. I am happy to do that.

If there is nothing else on that letter, we will move on to the letter from Police Scotland on cyberkiosk training. Do members have any comments on that? Did you want to come in on that, Collette?

12:15

Collette Stevenson: I wanted to comment on the pilot scheme. Is that the same thing as cybersecurity? I am sorry—I am not sure whether I have picked that up wrongly. I was alluding to the issue of time off and police officers getting their rest days.

The Convener: Okay. Perhaps what you were referring to was in relation to the previous agenda item, but we picked up the key points that you were making on that.

Collette Stevenson: Yes. From an efficiency point of view, bearing in mind that we are scrutinising the budget, I would like to know what the reasons are for the pilot scheme being put back until 2023. That is what I was getting at. Officers should get their rest days.

The Convener: Okay—we will note that point.

If members have nothing to raise on the letter from Police Scotland, I will bring the public part of the meeting to a close. The next meeting will be on Wednesday 14 December, when we will start our oral evidence taking on the Bail and Release from Custody (Scotland) Bill. We move now into private session.

12:16

Meeting continued in private until 12:50.

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