



OFFICIAL REPORT
AITHISG OIFIGEIL

Public Audit Committee

Thursday 14 September 2023

Session 6



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PUBLIC AUDIT COMMITTEE

22nd Meeting 2023, Session 6

CONVENER

*Richard Leonard (Central Scotland) (Lab)

DEPUTY CONVENER

*Sharon Dowey (South Scotland) (Con)

COMMITTEE MEMBERS

*Colin Beattie (Midlothian North and Musselburgh) (SNP)

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

*Graham Simpson (Central Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Catriona Dalrymple (Scottish Government)

Eric McQueen (Scottish Courts and Tribunals Service)

Neil Rennick (Scottish Government)

CLERK TO THE COMMITTEE

Lynn Russell

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Public Audit Committee

Thursday 14 September 2023

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Richard Leonard): Good morning. I welcome everyone to the 22nd meeting in 2023 of the Public Audit Committee. The first item on our agenda is a decision on whether to take agenda items 3, 4 and 5 in private. Do members agree to take those items in private?

Members indicated agreement.

Section 23 Report: “Criminal courts backlog”

09:00

The Convener: Agenda item 2 is consideration of the Auditor General for Scotland’s report on the criminal courts backlog. I am pleased to welcome three witnesses. From the Scottish Government, we have the director general for education and justice, Neil Rennick, and the interim director of justice, Catriona Dalrymple. We are also joined by Eric McQueen, who is the chief executive of the Scottish Courts and Tribunals Service. We have a number of questions, but, before we get to them, I invite Mr Rennick and then Mr McQueen to make some opening remarks.

Neil Rennick (Scottish Government): Thank you, convener. I will be brief. This is my first opportunity to appear before the committee in my new role as director general for education and justice. I am not new to the justice system, however. I have worked in various roles over the past 14 years, including through the Covid pandemic and its aftermath. I welcome the Audit Scotland report that looks at the impact of the backlogs that unavoidably built up during the pandemic, and I am particularly pleased that the report acknowledges the quick and effective work that partners across the justice system undertook during the pandemic, and have done since, to respond to the pressures that were raised. Importantly, that was not just senior leaders such as Eric McQueen but included a whole range of staff in local courts, the judiciary, members of the legal profession, social workers and fiscals, all of whom worked tirelessly throughout the pandemic.

The other point that I want to acknowledge is the one made in the Audit Scotland report that the backlog of cases is having a significant impact on victims, witnesses and people who are accused of crime, especially those who are being held on remand. Part of the work that we have undertaken throughout the pandemic and beyond is to try to mitigate the impact that the necessary health restrictions had on the justice system.

I am sure that those are all issues about which the committee will want to raise questions. I am happy to leave it at that.

Eric McQueen (Scottish Courts and Tribunals Service): Good morning, committee. This is also my first time at this committee, so it is nice to be here this morning. A lot of what Neil Rennick has said are things that I was going to cover, so I can be probably even more brief than he was.

First, I thank Audit Scotland for the report that it produced. Audit Scotland took extensive time to understand the challenges and complexities that we dealt with in the criminal justice system during the pandemic. I take significant reassurance from the report's findings. It recognised that we responded quickly and effectively to the pandemic through our planning; that we have made significant progress in reducing the backlog—it has been reduced by 66 per cent, as we stand—and that we made very good use of data and modelling to help to inform our decision making. Equally, the recommendations that are made will help us in the future as we take forward the next phase of the work, which is much more about transformation.

None of us could have foreseen the pandemic to that extent. It moved us very much into the unknown. At the start, we set ourselves three guiding principles to help us to work through it. Our first priority was to protect the life and safety of all court users. Secondly, we wanted to maintain essential court business, which involved categorising what was meant by "essential". Thirdly, we tried to ensure that whatever steps we took would facilitate the road back to recovery as soon as the pandemic was over. Those guiding principles worked throughout the whole pandemic as we went through our planning.

Data and modelling were a key part of that. We were clear from the start that everything had to be evidence based. The pandemic was going to have a significant long-term impact on the criminal justice system, and we needed to ensure that we had the data and modelling to guide us through it. We recognised that modelling is not an exact science but a prediction and that there was a whole range of variables that could change—which they did, at different stages—as we went through the pandemic. The fact that that underpinned our decision making and continues to do so is a very strong attribute.

There was an awful lot of change during the pandemic. We brought in an awful lot of innovation, including remote jury centres, virtual custody hearings, moving to electronic processing of business and moving tribunals and civil cases into a largely virtual world. Although the changes were brought in at pace, the vast majority of them are now creating the foundations of the long-term change that we want to see. None of the benefits of the changes that we brought in have been lost; they underpin the way that we are going forward.

On Neil Rennick's point, through the pandemic, relations strengthened across the entire justice system, both within the formal justice organisations and, importantly, across the legal professions and the third sector. The discussions and relationships that we have now have been

greatly enhanced by the close working that developed during the time of the pandemic.

I am looking forward to this morning's discussions and questions.

The Convener: Thank you. I will bring in the rest of the committee shortly, but I will begin by asking about something that Mr Rennick alluded to in his opening comments, which was that the backlog in our criminal courts has had a really significant effect on victims and witnesses who are waiting for justice to be served. What additional support has been given, either directly by the Scottish Government or the Scottish Courts and Tribunals Service or through other relevant support and advocacy organisations, to allay some of the impacts that the delays have had on victims and witnesses?

Neil Rennick: That is a really important point. I do not want to downplay in any way the significant impact that those unavoidable delays have had on individuals. It was recognised right from the beginning of the pandemic that one of the most significant impacts was going to be on the people who were in the system. Therefore, during the early part of pandemic, while restrictions were still in place, staff in the justice directorate met victims organisations fortnightly to talk through the experiences that people were having and the mitigating factors that we could take forward.

As we emerged from the pandemic, we reviewed the funding that we provide to victims organisations and established the victim-centred support fund, which is providing £48 million over three years for victims organisations. Through our equalities colleagues, separate funding is provided directly to organisations that work with victims of violence against women and girls. Funding is also available through the victim surcharge fund. There is a range of support for victims and victims organisations. Following the initial period of the pandemic, we have maintained engagement with the organisations through the victims task force, which meets regularly to talk through the experience and make sure that we reflect it. As we emerge from the pandemic and look forward to what the future system will look like, we are trying to ensure that the decisions that we take are focused on the needs of individuals in the system. I am sure that we will get into that further.

The Convener: Do you have anything to add, Mr McQueen?

Eric McQueen: Similar to what Neil Rennick has said, we tried to ensure, throughout the pandemic, that we engaged regularly, particularly with victims organisations. Along with the Crown Office and Procurator Fiscal Service, we had a minimum of monthly meetings at every stage throughout the pandemic, at which we discussed

the latest implications of the restrictions for court business and for the changes that we were trying to bring in.

We brought in a range of things, such as the increased use of TV links to enable witnesses to give their evidence without coming to court. At the same time, we significantly increased evidence by commission; we now have about 800 cases a year in which evidence is taken by commission, which avoids witnesses having to come to court to give their evidence. That allows them to give their evidence significantly in advance of the trial. It is about the different steps that we are trying to take, coming out of the pandemic, to build on the reforms that are in place and deal with issues around timescales.

It is worth saying that the timescales are starting to reduce. At the moment, in the High Court, the average period from when a case is first called in court to when the evidence-led trial takes place is 43 weeks. That is significantly longer than it was pre-pandemic. That gives an idea of the timescale. It is a similar period in sheriff and jury cases: it is currently 38 weeks in the sheriff summary courts. Sometimes, there is a concern and an impression that, when we talk about a backlog not being cleared for a number of years, cases are taking two, three or four years to go through the court system, but that is not the case at all. We have significantly increased the capacity in the courts, and we are starting to manage cases within a more reasonable timescale, given the constraints. Obviously, we expect that, as the recovery programme goes on, that timescale will continue to reduce.

I am just trying to make a general point about the backlogs. The backlogs do not mean that cases are sitting in the court for two or three years as we work through the period. The period is longer—as I said, it is currently 43 weeks in the High Court—but it will start to reduce as we work further through the recovery programme.

The Convener: Thank you. We will come to your relationships with the victims support organisations a bit later on. Notwithstanding what you have told us in the first 10 minutes, there are some quite direct criticisms of your failure to engage sufficiently with those organisations. However, we will come on to that later.

Mr Rennick, may I ask for some clarity on the answer that you gave? You said that there is £48 million for victims support organisations. Is that additional money that has been put into the system? Over what timeframe has it been put in? We often hear about figures such as £48 million, but is it over a year, two years or three years?

Neil Rennick: Yes—

The Convener: Forgive me. How is that split between direct Government expenditure and grants or support that is given to those advocacy and support networks?

Neil Rennick: The £48 million goes to more than 20 organisations in the form of direct grant funding. As Mr McQueen said, there is separate funding that we have provided over time to support access to pre-recorded evidence and so on; clearly, that supports victims as well. Obviously, the ultimate intention of all the money that we have provided to the Covid recovery programme is to speed up the process of recovery to benefit victims, witnesses and accused.

I am happy to provide the committee with a description. Funding for victims organisations has increased over time. The £48 million is a mix of existing funding and additional funding. I am happy to reflect that and give the committee a more detailed update.

The Convener: Off the top of your head this morning, do you know roughly how much of the £48 million is additional and how much of it is recurring?

Neil Rennick: Yes. For example, the money that is being provided—roughly, just under £1 million; around £900,000—through the victim surcharge fund is entirely new. That was funding that did not exist before. The vast majority of the £48 million is existing money, but it is not all going to the same organisations. For example, we provided extra funding to Victim Support Scotland for families who are bereaved by crime; that was additional funding. Therefore, it is a mix of additional and existing funding. Over time, however, we have prioritised increasing funding for victims organisations. Specific additional money amounting to around £100 million was provided during the pandemic to support victims organisations.

Catriona Dalrymple (Scottish Government): I believe that it was £100,000—

Neil Rennick: Sorry—£100,000.

Catriona Dalrymple: —that was given to Victim Support Scotland's victims fund. That was to help the immediate financial needs of the most vulnerable victims. They were entitled to access support of up to £3,000 for assistance, for example, if they had to leave a residence. There was a particular focus on domestic abuse victims.

The Convener: For us as the Public Audit Committee, getting that breakdown is quite important. You mentioned a figure of £48 million, and we need to understand how much of that is additional. What proportion of that £48 million is additional, or is it just transferring from one budget heading into another? You might well, in the light

of circumstances, want to reprioritise how you spend your money as a department and through your agencies. Having some transparency around that would be helpful for us.

Neil Rennick: I am happy to cover that. It highlights a wider point about trying to reflect what resources in the justice system actually benefit victims. There is, obviously, direct funding to advocacy organisations, but, as I say, there is much wider funding that is intended to respond to crime and reduce victimisation overall. Again, one of the positives over the past decade or so has been the reduction in the number of victims in the justice system.

The Convener: The deputy convener will turn to another part of the justice system that has faced increased pressure and, I presume, increased costs.

Sharon Dowey (South Scotland) (Con): The Auditor General has previously reported that prisoner numbers are exceeding the operating capacity of Scotland's prisons. To what extent are the court backlog and the number of people on remand adding to the existing pressures in the prison system?

09:15

Neil Rennick: From the very beginning of the pandemic, we recognised that this was going to be a system challenge. It was not just a challenge for the courts; it was going to be a challenge for Community Justice Scotland, the Scottish Prison Service and the legal profession. We have tried throughout to view it as a system challenge.

During the recovery process, from the beginning of and throughout 2022, we saw significant reductions in the overall backlog of cases. That was really positive progress. During that time, the prison population remained relatively stable, as the flows in and out were relatively balanced. During 2023—since, roughly, January—we have been seeing a significant upswing in the prison population of around 600 extra places. That is still below the highest levels that we had before the pandemic and the level that we had just before the pandemic, but it is the highest level that we have had since the pandemic hit, and it is having a significant impact on the prison population.

The assessment from our analysts is that a mix of factors is causing that. It is not simply the recovery programme. We were projecting that the recovery programme would see the remand population fall off as the sentenced population began to go up because those cases were being dealt with. However, we have seen both sentenced and remand populations increase during the current year, and we think that that is a reflection of not only the recovery programme but

wider pressures in the system in relation to more complex cases, particularly in the solemn courts, feeding into the system, as well as people spending longer on remand overall. It is a mix of different factors. It is not purely the recovery programme directly impacting that; it is both the recovery programme and other pressures in the system.

Sharon Dowey: The Scottish Courts and Tribunals Service's modelling for 2021 initially stated that its target for clearing the backlog was to reach 390 outstanding High Court trials and 500 outstanding sheriff court solemn trials in order to return to normal. The report that Audit Scotland published earlier this year notes that that has now shifted to 567 High Court trials and 1,892 sheriff court solemn trials. That is quite a moving of the goalposts. Why has the backlog target changed so much?

Eric McQueen: That largely reflects the point that Neil Rennick made about the increased level of solemn business that we are seeing. Solemn indictments, both in the High Court and sheriff and jury courts, have increased by around 38 per cent over the past five years. Throughout the pandemic, although there was a feeling that crime might drop, the level of petitions and indictments that came through continued to be at that very high level.

Over the past five, six or seven years, we have seen a continuing trend of an increase in the more serious cases that have come into the system, and we found throughout the pandemic that that trend continued. If anything, we have started to see a slight increase, which may again go back to the issue of prison numbers.

The whole thing about the modelling is that it has to change and evolve as the position changes. As we have started to see more cases coming through the system, the modelling needs to reflect that. That is why we are quite clear now that, in the High Court and the sheriff and jury courts, returning to pre-pandemic levels is just not a realistic proposition. The level of cases coming through is significantly higher, and, therefore, the modelling now reflects what we think will be the realistic level of cases that will be in the system.

Sharon Dowey: Has there been any kind of analysis on the reason for all those solemn cases coming through?

Eric McQueen: The vast majority of the cases coming through are related to sexual offences. That is the one area where there is a big increase. I think that a part of that is about the much more proactive role that is taken by police in those investigations now and the more detailed investigations that look at past partners, histories and behaviours. We are finding that different types

of cases are now coming into the system that have much greater complexity than they would have had previously. On the one hand, it is a great credit to what is happening with investigations that more of those cases are being reported and are coming forward. Quite clearly, it creates an impact on the courts, but, when it comes to societal benefit, I imagine that is exactly what we want to see.

Sharon Dowey: How much more funding would be required in order for the courts service to return to the backlog targets that it originally set in 2021?

Eric McQueen: It is not really a question of funding. This is about capacity across the whole justice system, in which I include the legal profession and the third sector. We are pretty much working at flat-out capacity. There were already signs of creaking, particularly in the legal profession, which has real concerns about the level of court business that is going through the courts. We do not feel that it is at all viable to increase the capacity any further.

The capacity increases are quite sizeable. The High Court is operating at 40 per cent above its pre-Covid capacity. Sheriff and jury courts are operating at 45 per cent above their pre-Covid capacity. That puts an enormous stretch on the legal profession and the resources across all the organisations. Based on our modelling analysis, the level of capacity at the moment is the most that the system could manage. If we put more capacity in, the system would start to fold at the edges: we would see cases being adjourned and it would start to be counterproductive. Like all these things, a balance needs to be struck. It is about trying to find the optimum level, and our feeling is that we are pretty much there at the moment.

Sharon Dowey: Okay. Paragraph 44 states:

“The Scottish Government has committed to providing over £40 million of ongoing Covid-19 ... funding ... to continue addressing the criminal courts backlog.”

Is that funding still committed for that purpose? Is it still available?

Neil Rennick: That funding is in place in the current year. We have always acknowledged that this is a process that will have to continue over a number of years to work its way through the backlog.

Sharon Dowey: Okay. What impact has the switching of resources from summary courts to solemn courts, through the court recovery programme, had on the backlog of solemn cases and summary cases?

Eric McQueen: What we have seen is a significant increase in the throughput of cases in the High Court and in sheriff and jury courts. We publish monthly reports that break down quite

clearly the throughput of business, how many evidence-led trials there have been and how many cases have been concluded. What we have seen in the courts is that the increased capacity—40 per cent in the High Court and 45 per cent in the sheriff and jury courts—pretty much matches the throughput. That gives us real confidence that the modelling that we have suggested, with the High Court being back to its revised baseline by March 2025 and sheriff and jury courts being back to their revised baseline by March 2026, is a very realistic proposition. At the moment, that is tracking pretty much in accordance with the model.

On the summary side, we have reason to be a bit cautious. Based on earlier modelling, we were of the view that the backlog would be largely cleared by March 2024. We now think that it will be further into 2024 before that happens. During the past five or six months, the level of complaints registered monthly in court has increased by about 400—we were running on a pretty steady forecast of around 5,000 a month but that figure is now averaging at about 5,400. That is largely because the Crown Office has cleared the backlog of cases that were awaiting marking. It had about 18,000 cases awaiting marking. The normal figure is about 9,000. It has gone through those cases, and they are now coming to court. That created additional trial demand in the court that we did not expect in that period. It now looks like it will probably take a while longer—as we get into 2024—to clear the backlog of summary cases.

Sharon Dowey: How does the SCTS get the baseline figure? How does it reach that?

Eric McQueen: We base it on forecasts and estimations, particularly from the Crown Office, of the likelihood of cases coming through. We use those to calculate what that will mean for the baseline, the proportion of cases that is likely to be set down for trial and the proportion of cases that will go to an evidence-led trial. We feed that into the modelling to try to work out the best baselines. As I say, those are all based on forecasts, but, so far, they have been pretty accurate as we have worked through the modelling. We have a good degree of confidence that they are keeping us in the right direction. As I say, modelling is never exact, and it will change monthly as forecasts change or as different variances in the system change.

Sharon Dowey: Paragraph 73 states:

“SCTS measures the average time in summary cases between a plea being entered and the scheduled trial date. It measures from the point that the plea has been entered, and therefore does not include the time those involved in the case have been waiting prior to this.”

Has that length of time increased, or is it the same as it was before Covid?

Eric McQueen: It is pretty much the same time; there is no real difference with summary cases. Essentially, trials cannot be set until someone has pleaded not guilty. The plea of not guilty kicks off the system: trials are then set and witnesses cited. That can happen at different stages. Normally, it kicks off fairly early, within a few weeks of a case being registered in court, so it is not a significant time difference.

Sharon Dowey: How does the Scottish Government plan to support the continued reduction of the criminal courts backlog beyond 2023-24?

Neil Rennick: We are absolutely committed. We have recognised that this is a multiyear process, particularly for the solemn court, stretching on over the next three years, at least. That is understood and reflected, and it will be reflected in our budget discussions and in the budget process.

The Convener: Some committee members have questions that will seek to develop on, some of those themes.

Colin Beattie (Midlothian North and Musselburgh) (SNP): I would like to go back to the issue of remand prisoners. The Auditor General's report indicates that, in 2021-22, one in four people in prison was on remand. To a layman, that seems to be a high figure. Is it a high figure? Is it as a result of the Covid epidemic? Does it represent a longer-term upward trend?

Neil Rennick: It is a high figure. Going into the pandemic, Scotland had a high level of remand, by international standards, of between 20 per cent and 25 per cent of the prison population. That increased significantly during the pandemic and has remained high throughout the pandemic and beyond. Significant factors underlie that position. The Scottish Government has taken a range of actions to try to respond to Scotland's relatively high use of remand, by international standards. The actions include the introduction of an opportunity for electronic monitoring for people who are being held on bail, and a significant number of people are now being monitored through that process. The Bail and Release from Custody (Scotland) Act 2023—the bill was approved by Parliament before the summer—includes proposals to adjust how bail law operates, with part of it being the aim to ensure that remand is used only when it is absolutely necessary to protect public safety or to protect the operation of the justice system. We have also put extra resources into alternatives to remand, such as supervised bail, but it is still the case that the remand population is high.

Decisions around remand are taken by the judiciary who look at the facts of each case. We

have more complex cases feeding through, but we also have people on remand for longer when they are in there. That is part of the impact of the court backlogs. Hopefully, that will be dealt with through the recovery process. However, the high level of remand in Scotland is a significant issue; it is high compared with England and Wales and equivalent European countries.

Colin Beattie: You say "high". Can you quantify that? We are at 25 per cent. Are other countries at 10 per cent or 15 per cent? What is the norm elsewhere?

Neil Rennick: It is variable, because it partly relates to the overall levels of the prison population. Countries with very small prison populations tend to have very high remand populations; other countries do not. Prior to the pandemic, England and Wales had something like 15 per cent, relative to our higher levels. We were high compared with equivalent countries. Published international statistics show that Scotland tends to come out very near the top with regard to our overall use of imprisonment per capita and our remand population as a proportion of the prison population.

Colin Beattie: I was interested to see it noted in the Auditor General's report that remand prisoners do not have the same rights as prisoners who have been convicted and that they can spend up to 22 hours a day in their cell. That must have a huge impact on their mental health—probably their physical health as well. Has a review been carried out to examine the extent to which remand impacts on various aspects of the prisoner's life? Mental health is a big issue, but there is also employment and housing—all the things that go with it.

09:30

Neil Rennick: Absolutely. We have done significant work around the impact of short periods of custody on exactly those issues. That applies to short sentences, but exactly the same factors—the disruption to employment, housing and family lives etc—apply to people on remand.

It is important to say that the vast majority of people who go in on remand do so for relatively short periods and then come out. However, increasing numbers of people are on remand for three months and beyond, and that has a significant impact on someone's life. Remand includes people who are awaiting sentence after a trial, but the largest proportion are people who are awaiting trial.

Colin Beattie: You say that you carried out a review. Is that available?

Neil Rennick: It is certainly public. We published evidence prior to the pandemic on the impact of short periods of custody on people's lives. That evidence acknowledges that the impact of those short periods applies equally to people on remand and people who have been sentenced. There is a difference within prison: because someone on remand has not been convicted, they do not have access to the same programmes as people who have been convicted, so that is part of what limits their access to purposeful activity. Also, within prisons, we have to keep people who are on remand separate from the sentenced population, and that has an impact on how the prison service manages the population.

Colin Beattie: I have not had the benefit of seeing that review, but, presumably, it came to some conclusions about how to mitigate those impacts. Maybe you could briefly give us an overview of that.

Neil Rennick: Yes. There is not just our review but the review that was undertaken by the previous Criminal Justice Committee. That looked at the levels and impacts of remand and recommended that further work be done to look at the levels of remand and whether they were too high. That has been reflected in the work that has been taken forward in relation to the Bail and Release from Custody (Scotland) Bill, the work on providing the opportunity for electronic monitoring for bail and so on. A lot of our work on trying to find ways in which we can adjust how remand is used in the Scottish justice system draws on that other work.

Colin Beattie: The report states that, in July 2020, the concept of remote jury centres was successfully piloted in Glasgow and Edinburgh, and it was implemented. The Scottish Government gave the Scottish Courts and Tribunals Service an additional £12 million to implement the remote jury centre model. Was a value-for-money assessment carried out before that additional funding was required?

Neil Rennick: A review was undertaken. I will let Eric McQueen speak to the work that was undertaken by the Lord Justice Clerk looking at the opportunities for restarting jury trials, which recommended that remote jury centres were the most effective way of allowing courts to restart. Without that, it would not have been possible to allow jury trials to restart, and that would have had a significant human impact on the accused, victims and witnesses. The normal budget processes in the Government were followed around the allocation of resources for that, but the priority was allowing jury trials to continue. At the time, they were paused and not able to proceed at all.

I will allow Eric to talk about that and the evaluation that was done of the remote jury centres.

Eric McQueen: We carried out an options appraisal on the different possibilities for the restarting of juries. Our initial proposal was to see whether we could use a number of jury courts to hold a jury trial. The trial would take place in one court, and other participants would be spread over two or three courts. That would have limited capacity inordinately—by up to two thirds. Our projections were that that would simply mean that trial delays would carry on until 2030, so that was not a viable proposition.

We looked at a range of alternatives. We looked at schools and university establishments. We looked at hiring retail space or space in sports centres or hotels. We also looked at the cinema option. The cinema option came out as the most cost effective because, essentially, cinemas were ideal, purpose-built facilities that fitted jury trials. Cinemas already had high-quality digital technology in place. They had an auditorium, screen viewings, on-site catering, toilet facilities and secure access so that we could protect the jury. Cinemas were therefore as close to a perfect model as could be devised for remote jury centres.

Cinemas' other major advantage was that we knew that there would be pressures on other areas as the world started to reopen. University halls would start to come back into use and hotels would be in use, but cinemas are not busy places during the day. Their main busy times are on Thursday and Friday nights and at weekends, so we knew that we could pretty much guarantee continuity of service with cinemas if we put a long-term contract in place. We were able to negotiate good terms and conditions with them. That gave us the option of having a continued occupation beyond the move out of lockdown, which, in turn, gave us security to plan for the long term. We still use a remote jury setting: the cinema on Lothian Road serves Parliament house as a remote jury setting and will do so for the next few years.

Using cinemas therefore gave us continuity of service, and we knew that, if the pandemic restrictions took a step back at any stage, we could quickly move back to using them. Cinemas became a clear choice through their being able to provide a service, being able to get up and running in a short time and being value for money compared with the other private sector options.

Colin Beattie: The pandemic drove a lot of innovative change. It would appear that the courts service and others have responded well to that. The Auditor General's report states that remote balloting of jurors, which was part of that innovation,

“has now been made permanent”,

and that seems to make absolute sense. Are there any other changes that were introduced in response to the pandemic that either have been made permanent or you are considering making permanent?

Eric McQueen: Almost every change either has been made permanent or is being made permanent. Remote jury centres are the only example that, we think, will have a limited lifespan. There will come a time when we can move away from using the final remote jury centre that we have, but this has opened our eyes to how we might be able to deal with certain types of jury cases in the future, particularly serious organised crime cases, for which there are concerns about jury intimidation. We might not use a cinema, but it might be sensible to have a jury located in a different area, where the jurors are not in direct contact with the court and nobody knows the location from which they are viewing the trial. That is something that we see as being a future development.

The world has moved on enormously with virtual hearings. They are now standard not just in criminal hearings but across the entire range of services, including civil business and all procedural business. Civil court hearings now take place virtually. New court rules were produced by the Scottish Civil Justice Council. It now mandates the way in which the courts will operate in the future. A big part of that is virtual hearings.

The whole of the tribunals’ operations moved very quickly into the virtual world, initially by telephone and then through the introduction of full virtual Webex facilities, which have remained in place across the vast majority of tribunal hearings. The only area in which we are moving back more to in-person hearings is where mental health is involved and patients are being held against their liberty in hospitals; in such cases having an in-person hearing is sometimes a better way of dealing with individuals.

For dealing with the criminal world, the electronic exchange of information is staying in place, so the vast majority of information that moves around the system does so digitally rather than on paper. The digital evidence sharing capability—DESC—initiative that has been funded by the Scottish Government and is being led by the Crown and the police is looking at a new way of bringing evidence to court. Rather than physical productions, DVDs or laptops being brought in, evidence is now stored in one safe digital environment. It is shared among the Crown, the defence and police, and it is digitally brought into the court environment. That is being trialled in Dundee and will stay with us for the long term.

The challenges that we are having with GEOAmev, of which I am sure members will be well aware, mean that we are looking to resurrect the thinking around virtual custody courts. We used virtual custody hearings during the pandemic. Almost 20,000 people appeared from police custody units via video link, and we are now looking at whether that would be a sensible move to make in the future. Rather than moving thousands of people around the country in white vans daily, we could have high-quality video links between portable communication units and virtual courts and have cases taken in a virtual environment. It would reduce costs enormously, be great for emissions and vastly improve the experience for the vast majority of accused. Rather than being bundled in a van, driven across Scotland and sitting in court cells for seven or eight hours before their two-minute hearing takes place in the court, it could be done directly over a video link from a PCU.

The pandemic has opened our eyes to the way in which we can use technology. We have to be clear that, during the pandemic, a lot of things were put in place very quickly. A lot of them were sticking plasters, but the essence and the thinking behind them were absolutely right. We are now trying to develop those into long-term, robust, safe and secure solutions that have the right technology in place so that we can enhance the systems.

Colin Beattie: Are there any areas in which you would like to see innovation but there are barriers to achieving it?

Eric McQueen: There are fewer barriers now than there were. The pandemic has changed a lot of the thinking. Where there were barriers previously, were they more in people’s imaginations and minds than they were real? I do not get any sense at all from justice organisations or the legal profession that, where we are doing things for the right reason and with the right solutions, people are not up for that change. There is a recognition that digital will play a part at the heart of justice in future.

Quite clearly, it is about getting the standards right. Things need to be gold standard. We need to make sure that the technology operates and works. We need to make sure that the audio and the video are of the highest possible standard. As I said, there has been quite a mindset change by everyone, including my organisation, about what might have been possible before and what is possible now.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): My question is about innovations and changes. The fiscal service in Kilmarnock told me that the earlier presentation of evidence to the defence, and, therefore, to the accused, was

bearing fruit and yielding success in getting earlier guilty pleas. How successful do you think that has been? In many ways, that could have been done at any time. It probably took Covid for us to think about doing it, but it is not really related to Covid and it could have been done. It is not really an innovative change; it is just a change that we thought about making, which is bearing positive results. Will you tell us a wee bit more about your experience of that?

Eric McQueen: DESC started before Covid; it was becoming quite well developed before we got to Covid. Covid initially put a pause on it, but it is now starting to be resurrected. That work is being led by the Scottish Government, the police and the Crown—those are the main organisations at the moment. Like all these things, it is quite a challenge to implement it. At the moment, the pilot is operating in Dundee. We understand that it is operating very successfully: the feedback from the court is that the presentation and quality of evidence are vastly different from what they were before. It is an enormous change for the police and the Crown in the way in which they operate. Big investment is needed in the infrastructure. It is like all these things: we can just add video screens to make things easier, or we can exchange things electronically, but having the underlying technology and infrastructure is critical to making it work. That is part of the reason why it has taken time to get that in place and get it delivered.

The evaluation will take place shortly in Dundee. We expect, quite quickly after that, to start to see a roll-out point. Initially, that will be across the summary courts but, quite clearly, moving that into the solemn courts will be a significant advantage.

Willie Coffey: Ultimately, does it lead to a shorter time between the case arriving on your desk and a plea being offered? That is the ultimate benefit.

Eric McQueen: That is the whole principle behind it. It fits in with other work that is being done at the moment called the summary case management pilot. The two of them link very closely together. We are in the position—we have been for a long time—where, in sheriff court summary business, there are, on average, about 33,000 or 35,000 cases a year that are set down for trial. The likelihood is that only 5,000 or 6,000 of those will ever go ahead, so we have 28,000 cases for which a lot of preparation is being done, and 300,000-odd witnesses are being cited to give evidence, even though only 5,000 trials will proceed. The vast majority of witnesses who are cited will never appear at a trial, and only about one in 10 police officers will appear to give evidence at a trial.

09:45

The summary case management pilot is trying to make sure that cases are resolved at the very earliest stage by making sure that evidence is shared before the case first comes to court and that the discussion takes place between the Crown and the defence on the evidence basis of the court so that, when a plea of not guilty is made, the likelihood is that that case will actually go to trial and will not just settle at a later stage. Again, that pilot is in its quite early stage. It has run properly from January this year. It is a judicially led pilot, and it involves strong judicial case management being applied by the sheriffs. That is one of the important tangible parts of it. The evaluation of that pilot is due in October, and I anticipate that, after that, we will see a roll-out of it to the other courts. Bringing together increased judicial case management with the early sharing of evidence will be a significant game-changer for the way in which the summary criminal business operates.

Willie Coffey: That is really good.

The Convener: Can I go back to a fairly fundamental question? Do you accept the findings of the Auditor General's report?

Eric McQueen: Absolutely.

Neil Rennick: Yes.

The Convener: Good. Do you accept the recommendations and the timescales set out in the Auditor General's report?

Neil Rennick: We accept the recommendations. We saw the timescales in draft and did not raise any concerns about those. Obviously, decisions on actions that are taken will reflect approval from ministers and engagement with stakeholders. We are aware of those timescales, and we did not object to them when they were set out. However, the actual timescales that we follow will flow from dialogue that we have with the various justice stakeholders. We will make sure that that is reflected. As Mr McQueen said, we are operating within a dynamic system, so there are factors that can impact on that as well. We have seen some of that over the past year. I have no objection to the timescales that were set out, and we are trying to work to those, but I want to make sure that the actions that we take are helping to progress both the recovery programme and the longer-term direction of the justice system.

The Convener: I am not entirely clear from that whether you are going to meet the timescales set out in the recommendations. For those people who are following this, the Auditor General's report sets out a series of recommendations, some of which the Scottish Government should carry out in the next three to six months and others for which

the realistic timescale is in the next 12 months. There are others that should be carried out in the next two years and, finally, there is a section of recommendations that the Auditor General thinks should be carried out in the next 12 to 18 months. Do you agree that they are realistic timescales, and is it your intent to meet those timescales?

Neil Rennick: Yes. We think that those timescales are realistic, and our aim is to meet them. Obviously, as I said, it is not purely our decision but is partly a matter of engagement with various stakeholders as well. I want to make sure that we are reflecting that and being clear that there are system-wide issues under a lot of the recommendations, and we will work with our partners to take those forward. Equally, the document was shared with the partners, and I am not aware of them raising any issues with the timescales that were in the report.

The Convener: Just to be clear about it, you are the accountable officer for the Scottish Government, and these recommendations are ones made to the Scottish Government.

Neil Rennick: Yes, and we will work to respond to those timescales. Obviously, we are dealing with a dynamic situation with the pressures in the system. I want to acknowledge that, and I do not want to pretend to the committee that that is not the case. We will work to respond to the recommendations, taking account of the timescales that Audit Scotland has set out.

The Convener: You are not on trial here, Mr Rennick, but I am not sure what a jury would think of your answer to that question. I will bring in Graham Simpson, who has some more questions on this theme.

Eric McQueen: Can I come in?

The Convener: Yes, of course, Mr McQueen.

Eric McQueen: I am the accountable officer for the SCTS. We have no difficulty with the recommendations that are specific to the SCTS or the timescale, and the vast majority of them are now embedded into our programme. The actions that we have on evaluation and on carrying out equality impact assessments are now embedded in the programme for all our future development.

The Convener: That is very helpful, Mr McQueen.

Graham Simpson (Central Scotland) (Con): I am going to have another go at that question. Will you meet the timescales?

Neil Rennick: Yes, we will aim to meet the timescales.

Graham Simpson: No—"aim to meet" and "meet" are two different things. Will you meet the timescales?

Neil Rennick: We are operating within a dynamic system. I want to be absolutely clear that, over the past 10 years and particularly over the past few years during the pandemic, the justice system has experienced significant pressures and challenges, and issues have arisen. We did not predict the growth in the prison population that we have seen over the past few months, and we need to respond to that and take account of it.

It is absolutely the case that we will work towards meeting those timescales.

Graham Simpson: To summarise your answer, "We'll do our best, but I can't promise you."

Neil Rennick: Our aim is to work within those timescales, but I am realistic about the range of pressures that exist within the system.

Graham Simpson: Okay. I think that I was right.

I was interested to hear about the summary case management pilot, which I guess will save many people a lot of time and hassle. I guess that it could also save money. Will you evaluate what the savings in time and money are?

Eric McQueen: Absolutely. A comprehensive evaluation plan has been set out for that. The pilot is going through its interim evaluation at the moment. That will be ready by the end of October. The final evaluation will be carried out in March 2024. Primarily, it is about speeding up the system and changing the impact on people who come through the system.

Early results show that, in some court areas, there has been a 30 per cent decrease in witness citations and, in some, a 50 per cent decrease in police citations. Even from the point of view of the disruption to witnesses, the impact is significant. If we can get to a position in which we can take cases out at a much earlier stage, that might avoid significant additional work for the Crown in preparing for trials that we now know are unlikely to go ahead. Therefore, the pilot has the potential to create savings and opportunities for the vast majority of organisations that are involved.

Graham Simpson: It sounds really sensible to me.

Can I ask about the remote balloting of jurors? Anyone who has been a juror or who knows people who have been jurors knows that it can be an enormous hassle—

Eric McQueen: Absolutely.

Graham Simpson: —to turn up at a court only to be told that you are not required. How is that process working? How much notice do people get that they will be needed on a particular day?

Eric McQueen: Jurors know the day on which the ballot is taking place. They are notified of that day. The ballot then takes place. At the moment, jurors are telephoned on the day of the ballot to advise them to attend court the next day.

Graham Simpson: They get 24 hours' notice.

Eric McQueen: Yes.

Graham Simpson: Right—so someone will know that, tomorrow, they will be on a jury.

Eric McQueen: Yes.

Graham Simpson: Are people also told for how long, roughly, they will be needed on that jury?

Eric McQueen: Yes, we give people estimations. For all trials, there are estimations of roughly how long they will last. Obviously, that will vary for specific trials, case by case.

For some of the remote jury trials, we are trying to bring jurors in that afternoon. The fact that that approach has been successful has quite surprised me. I thought that there would have been more difficulty in telephoning jurors in the morning to ask them to appear in court in the afternoon but, in fact, in the cases where that approach has been taken, it has not been an issue at all. It seems to be widely accepted, because it means that people are not having to take a day off work or to arrange childcare unnecessarily. Normally, we would bring in between 60 and 80 potential jurors for every trial for which we require 15 jurors. The way in which we are reducing inconvenience for an enormous number of people also has wider benefits.

Graham Simpson: That is good.

Having listened to some of the answers that were given earlier, Mr Rennick, I have a picture of jails that are pretty rammed or full up. Is that accurate?

Neil Rennick: Yes, we have a high prison population by international standards and relative to the capacity that we have.

Graham Simpson: Are you at or over capacity?

Neil Rennick: The current level is below the pre-pandemic level and below the design capacity, but we recognise the risks and pressures that are there, which were reflected in the chief inspector of prisons' report yesterday.

Graham Simpson: So, you are below capacity; you are not quite full up yet.

Neil Rennick: The situation is variable across individual prisons. Some prisons are above their design capacity; others are below it.

Graham Simpson: That is a concern. Do you think that you need more prisons?

Neil Rennick: We already have one of the highest prison populations in western Europe, if not the highest. That has to call into question whether the right response is additional prison capacity, and that is not a quick decision or choice: it takes time to create the capacity. A large part of what we do is about trying to balance the system that we have with the pressures. As Mr McQueen said, even over the past two years, we have seen real growth in the number of more serious cases that are more likely to reach trial and to result in people being on remand or in prison, and we constantly try to reflect that in our projections and modelling.

Graham Simpson: You cannot control the numbers. People are sent to you through the court system. If you know that you are getting more than you thought, there is clearly a capacity issue.

Neil Rennick: Yes.

Graham Simpson: Mr McQueen, when you were speaking earlier, I got the impression that you were describing a court system that is over capacity. Is that accurate?

Eric McQueen: What do you mean by "over capacity"?

Graham Simpson: I thought that, when you were talking about the High Court and the sheriff courts, you said that the number of cases was higher than expected.

Eric McQueen: We are working to optimum capacity. We now have the capacity in place to match the level of business that is coming through. When I referred to cases that were unexpected, I meant the very recent cases in the summary courts. That was more of a short-term issue that was about the Crown clearing out some of its backlog of cases that were still to be marked. In the High Court and sheriff solemn, we have increased capacity by 40 and 45 per cent. We believe that that is the right level of capacity for the types of cases that are coming through.

Graham Simpson: So, you have increased the capacity.

Eric McQueen: Yes.

Graham Simpson: How have you done that?

Eric McQueen: Through the recovery programme and the funding from the Scottish Government. We have put in place more courts for solemn business in the High Court and in the sheriff and jury courts. Previously, in the High Court, we had, on average, about 16 courts a day sitting; we now have 22. On the sheriff solemn side, we normally had about 18 courts sitting; we now have 26. We have increased capacity across Scotland to provide the right level of accommodation and court capacity for the case

levels that are coming through. That means a commensurate increase in the number of judges and sheriffs who deal with the cases, our staff and Crown Office staff. That is what puts the pressure on the legal profession, because there is the same demand on their time and capacity.

Graham Simpson: Correct. This is the obvious next question: that requires an increase in staff, does it not?

Eric McQueen: Yes.

Graham Simpson: Judges, lawyers and court staff.

Eric McQueen: Yes.

Graham Simpson: Can you put a monetary figure on that?

Eric McQueen: The total cost for us in terms of staff and judges is somewhere around £19 million.

Graham Simpson: Extra?

Eric McQueen: Yes. That is part of the overall recovery programme that is funded by the Government.

Graham Simpson: Okay.

You have been asked about the backlog. The Auditor General's report was about the backlog. According to the Auditor General's report, the backlog for the most serious cases—murders, rapes and sex offences—will not be cleared until March 2026. That may have changed since the Auditor General wrote his report.

Eric McQueen: It is March 2025 for the most serious cases.

Graham Simpson: March 2025?

Eric McQueen: Yes.

Graham Simpson: What is the longest time for which a case would be on the books before it is dealt with?

Eric McQueen: That is a difficult one for me to answer. What I can say is what I said earlier, which is about how long they are in the court system for. The evidence-led trials that have taken place this year have taken place within 43 weeks. From the preliminary hearing to the trial, it is 43 weeks. There will be a much longer period, potentially, when a person has been on remand, as the Crown goes through its decision making in terms of the marking for the case, and there will be a longer period when the police undertake their investigations before they bring the case through. Looking at those three separate parts would give the totality. I can only comment on the part within the court area. In the High Court, at the moment, it is 43 weeks before a case will reach its trial.

10:00

Graham Simpson: Is that the maximum?

Eric McQueen: That is the average. There will be some cases for which the period is slightly longer and some for which it is slightly shorter.

Graham Simpson: There could be cases for which the process takes more than a year.

Eric McQueen: That is possible, but there will not be many. The vast majority are pretty close to the average period for going through.

Graham Simpson: Okay. I do not know who will answer this question, but there was talk of a three-year delivery plan. The Scottish Government was due to produce that three-year delivery plan last August, so it is over a year late. What has happened to that?

Neil Rennick: I am happy to answer that question.

A one-year delivery plan was published following the justice vision document in February. That covered the period from summer 2022 to summer 2023. That delivery plan was in place, and the intention had been to publish a longer-term delivery plan for the next three years. In the period between the publication of the vision document and the timescale that we were looking to work to for the longer-term delivery plan, there was a significant impact on the justice system from the rapid rise in inflation and the associated impact on pay settlements and industrial relations.

At the time when we would have been working on the longer-term delivery plan, it was clear that there were significant pressures on the justice system and there was significant uncertainty around what the budget position would be. That was caused by the rapid rise in inflation, which was impacting largely on pay settlements but also on other issues, such as food in prisons and contract costs that are index linked. It was clear that there were significant uncertainties and that it would not have been responsible of us to publish a three-year delivery plan at a time when justice organisations' budgets faced significant uncertainty and pressure. The decision was therefore taken not to publish the delivery plan at that stage and to hold off until after the budget round.

As we came through that, we had a change of First Minister and a new policy prospectus. We also had engagement with our justice partners, drawing on some of the issues that Audit Scotland raised about the governance arrangements that we have around our reform programmes. That was reflected in work that we did to develop the transformational change programmes. Catriona Dalrymple can talk more to the committee about that, if that would be helpful.

The important thing to say is that the decision not to progress the delivery plan has had no impact at all on the court recovery programme or on dealing with the backlogs. That programme was in place and was funded, and there has been no impact at all on that programme. As Audit Scotland noted, that has also not stopped innovations moving forward during the period. Work on a whole range of innovations, including the digital evidence-sharing capability that Eric McQueen mentioned, has continued, as has work on a range of other issues.

The question is: how do we set out our longer-term direction, and what are the high-level priorities around that? As I said, Catriona Dalrymple would be happy to talk some more about the transformational change programmes and the governance arrangements around those that are informing the longer-term plan.

Graham Simpson: I have to say, Mr Rennick, that you have blamed uncertainties for not producing that delivery plan, but there are always uncertainties.

Neil Rennick: Yes.

Graham Simpson: If I may say so, that is a rather pathetic excuse. When will we see the delivery plan that the Auditor General has described as

“critical for ensuring work continues to modernise the criminal justice system”?

Neil Rennick: I agree. We need to ensure that that delivery plan adds value to the work that we are doing, sets a clear direction, and has measurable targets and appropriate governance around it. That has to be the test. It would be easy to meet the target and say that we have delivered our delivery plan, but at a time when organisations were under significant financial and other pressures, it was sensible and was the right decision not to proceed on that timescale. That has given us the opportunity to do some further work and think about what the longer-term priorities are. We are in a better position to move forward with that, and we are in a better position to engage with our stakeholders, particularly victims and witnesses, and others.

We have not simply not published a plan and not done anything; a huge amount of work has been going on. It would be irresponsible not to reflect the reality, in the same way that, when Covid impacted, it would have been irresponsible not to take account of that. The impact of inflation has been significant on the justice system and its operation, and it is right for us to reflect that.

Graham Simpson: According to the Auditor General, the plan was due in the summer of this

year. You still have not told me when we will see it. When will we see it?

Neil Rennick: Work is progressing on that. As I have said, I am keen that we publish that delivery plan only when I am—

Graham Simpson: I am sorry, Mr Rennick, but what do you mean? I am asking you when we will see it.

Neil Rennick: Our aim is to have that plan published within the timescale that Audit Scotland set out in its report, which is six months from May. Obviously, that brings us fairly close to the next couple of months. As I have said, I want to ensure that that plan is in an appropriate state and has been engaged with appropriately by our stakeholders before it is published. I hope that the committee agrees that we need to ensure that that is the case. We should not publish delivery plans unless we are content that they add value.

Graham Simpson: Obviously, it needs to be a good delivery plan, but you cannot just keep delaying it for ever.

Neil Rennick: No. However, as I have said, that has not delayed our taking forward a range of really important and positive work, some of which we have discussed today.

Graham Simpson: Okay. I will leave it there. Thank you.

The Convener: I find it quite unusual to hear the preparation and implementation of a three-year delivery plan being described as an “irresponsible” act. I think that most of us would view that as the responsible thing to do, given that, as Mr Simpson pointed out, it was initially intended to be produced in August 2022 and was again promised for the summer of 2023.

I am sure that the committee’s view would be that we want to see a delivery plan because that gives some concrete sense of the direction of travel. I do not know about you, Mr Rennick, but I do not know what the rate of inflation will be in two or three years’ time, yet I still have to make plans that are based on reasonable assumptions or otherwise. I think that there is a degree of impatience in the committee that that delivery plan has yet to be produced.

I think that you mentioned that Catriona Dalrymple has been working on some of the transformational arrangements, so maybe these questions are for her.

The report refers to the importance of the transformation of the criminal courts being a fully costed project while the delivery plan is being developed. Will you tell us a little more about the extent to which you have worked out the costings, notwithstanding the high winds of inflation that are

around us? How did you get on with the costing of those plans?

Catriona Dalrymple: It might be helpful to start with the approach that we are taking to the transformational change programme itself. I should highlight that that approach had commenced before the Audit Scotland report, but that report has really validated the approach that the system is taking in respect of putting the governance around the system collaboration and trying to develop system-level programme management.

We have the justice board. Obviously, as the justice vision owner, we have the criminal justice board as the sponsoring body. What we see in the transformational change programmes—I chair the community justice programme board and the criminal justice programme board, which has two of the transformational programmes—is collective accountability across the system and collaborative leadership. We are also making sure that there is interaction with existing mechanisms. The victims task force reflects lived experience and directs strategic priorities, and the transformational change programmes flex to make sure that they take all of that into consideration.

We have set up a programme management office in the justice directorate, which supports all three transformational change programmes, so that we are really clear that, within each project in the transformational change programme, we have the baseline information and data across the system that support the work and the projects that we are doing, to make sure that we can measure evidence of success and progress within the system. Those interdependencies that we are seeing in the system-level programme management are key.

Eric McQueen and Neil Rennick have talked about a number of projects, most of which are within the transformational change programme. Most of the ones that Eric McQueen has talked about sit within TCP3, as we call it—that is, criminal justice system efficiency. There are a number of dependencies in that—for example, the summary case management pilot that was talked about working alongside the digital evidence-sharing capability, and looking towards the future of the trauma-informed domestic abuse service pilot. All those things are interdependent, and we are making sure that different parts of the system do not work against one another in any way but, rather, work collaboratively in order to get the best result.

Each project will have that baseline information and will take a costed approach within existing budgets. It is fair to say that, at this stage, all that work is being done within the existing financial budgets of each organisation. Any additional funds

would have to come through Government and go through the normal budget process that we have every year. We are certainly working within the confines of our existing financial arrangements.

The Convener: Okay. I take you back to my original question. To what extent is that currently fully costed?

Catriona Dalrymple: All those projects are under way. They are all being developed at the moment within the current financial arrangements. It is fair to say that, with some of the projects, we may get to a stage at which additional investment may be required. We will then have to come back to the budget process round and identify whether and from where money can be found for those projects. Looking at all the different costs in each part of the system is part of the process of developing a programme management approach.

The Convener: Forgive me but, again for my benefit, is that work in progress?

Catriona Dalrymple: Yes.

The Convener: Have those streams advanced by 50 per cent or 100 per cent?

Catriona Dalrymple: They are all at different stages. The example with which I am probably most familiar, from a previous role, is the community justice programme board. That transformational change programme is about shifting the balance between custody and community. It is slightly behind the other transformational change programmes because we have oversight of the national community justice delivery plan that was published in June 2023. A commitment was made to publish it. We have done so, and the programme board, with all the relevant partners and stakeholders at the table, has oversight to make sure that we are developing all those projects and making progress. At the moment, we are working out the baseline data so that we can evidence success.

The Convener: Thank you. I am conscious of the time, so I will move on to Willie Coffey, who has a couple of questions to put to you.

Willie Coffey: As you know, the committee is interested in service improvement and in how we can provide evidence of that not only to the committee but to the public at large. As part of that, we are keen to explore with you what level of stakeholder engagement you have to inform decision making and to make improvements. In the Auditor General's report, there is a bit of criticism of the recover, renew, transform advisory group, which is supposed to interface with victims, the accused and the third sector. There is criticism of that group's failure to engage at that level, so I am keen to understand how you have overcome that, or plan to overcome it. What are you doing

now, and how can you assure the committee and the public that the experiences that people have had are part of the transformational change programme that you are talking about?

Catriona Dalrymple: The RRT advisory group played an important role in the pandemic and highlighted a lot of impacts of the recovery programme on service users. It is fair to say that the advisory group evolved through the development of the transformational change programme and that the themes that were identified and the lessons that were learned will be reflected in the transformational change programme approach. The key there, for example, is all the work that the RRT group did on getting lived experience voices to be heard directly, because we are really keen to make sure that, in all the transformational change projects, lived experience feeds through to our development and that we take cognisance of it every step of the way.

There is a transformational change programme, for example, that looks at person-centred justice. That has already established feedback loops with the victims and survivors advisory board. It is looking to collect live service-level feedback—not old service-level feedback but good up-to-date service-level feedback—and will ensure that that is fed in to inform the delivery of all the improvements. We have some really good work on-going with our victims and witnesses organisations to make sure, certainly for the transformational change programme approach, that we can get the best outcome.

10:15

Willie Coffey: The report says that the RRT advisory group stopped meeting in December 2021. Is that correct? Has it reconvened since?

Catriona Dalrymple: It has not been reconvened. The transformational change approach has moved on from that. The group was quite focused on the impacts of the recovery programme on service users, so its remit was very wide. The transformational change programme uses the existing loops, and each project within the change programme is engaging at that project level with victims organisations, third-sector organisations and all the relevant stakeholders.

Willie Coffey: How would we see evidence to support that so that we can share and understand that experience? Have any reports been produced about that, or are there any updates for Parliament or the committee?

Catriona Dalrymple: We will be doing high-level health checks across the transformational change programme system. I can have a look at

what information could be provided to try to support and evidence that for the committee.

Eric McQueen: I will give you two practical examples of where we are trying to get that engagement. We talked earlier about the remote jury centre: from the start, Rape Crisis Scotland, Victim Support Scotland and other sector organisations were involved in that centre, from the genesis of the idea and its development through to the delivery. We have now extended that.

Catriona mentioned the trauma-informed domestic abuse pilot that we are trying to create in Grampian and Highlands and Islands. Again, Victim Support Scotland is heavily involved—its chief executive sits on the project board. We ran a trauma-informed training course three weeks ago and brought together all the participants that are involved, including those from the third sector, to go through trauma-informed training and explore what it means for domestic abuse. When we take that to the very local level across Grampian and Highlands and Islands, again, we will bring together all the practitioners, whether that is court staff, judiciary, accounting staff, the third sector or legal professionals, into the same group.

We are trying to change the way in which things work. We have seen some of the good examples that came out of Covid, such as the remote jury centres, and we are trying to develop that as a practical method to bring people into the tent at a very early stage, so that we have their collective views at the start of the development.

Willie Coffey: You involve user and stakeholder experiences in shaping the transformational programme that you are devising, but how do you feed back to those stakeholders to demonstrate to them that you listened and incorporated what they wanted? How is that loop closed?

Neil Rennick: That is an important question. One of my reflections from the experience of the Covid pandemic is that, as Mr McQueen said, we were engaging in lots of different routes. Justice officials were engaging directly with victims organisations. The Lord Advocate and the cabinet secretary were engaging with them through the victims task force. There was engagement with individual victims organisations on specific initiatives, involving them in the decisions around those initiatives. There were lots of opportunities for that engagement and involvement.

One of the reflections was about how we ensure that that adds up to a process that reflects victims' experiences and provides them with the opportunity to give feedback on that. That is partly why one of the transformational change programmes is specifically focused on person-centred services and the experiences of those. We

are building that feedback loop that you are describing in order to determine what it actually feels like for people to go through the system, and we are feeding that into how we are driving the transformational change.

Willie Coffey: Do the stakeholders get a chance to say whether they think that the direction of travel is correct? Do they get to offer a commentary?

Neil Rennick: Yes. That is a really important point. For example, through the victims task force, victims organisations get an opportunity to comment. Alongside that, there is a specific group that has victims who have direct experience on it so that the Lord Advocate and the cabinet secretary can hear directly, and not just through the organisations, from people who have been in the system and who can describe what that experience felt like. We know that one of the key areas that we still need to improve is the experience of going through the system, despite all the things that we have done over a number of years.

Willie Coffey: Thanks very much.

The Convener: Mr Rennick, you will have heard the Auditor General's evidence to the committee on the report that we are discussing this morning. He said that Victim Support Scotland and Rape Crisis Scotland

"were not used to the extent that we might have expected".—[*Official Report, Public Audit Committee, 8 June 2023; c 9-10.*]

Have you reflected on that over the summer and are you redoubling your efforts to address that shortfall?

Neil Rennick: I reflected on that throughout the pandemic. I have spoken directly to the chief executive of Victim Support Scotland and others about it. I can point to lots of examples where there was engagement on both the generalities and the specific issues, but I can 100 per cent understand that victims organisations, which work directly with people and hear about their experiences, feel that we should go further and do more. Absolutely; it is their job to challenge us to do that.

As Mr McQueen said at the beginning, the pandemic was unprecedented. None of us wanted it to happen, and the harm that it has caused is recognised. It is right for us to be challenged and to work with victims organisations around that, but I fully accept that they want us to go further and to do more to improve the experience of victims. That is their role and their right.

The Convener: For clarity, I am saying that it is not just the victim support organisations that are

saying that: the Auditor General for Scotland is saying it to you.

Neil Rennick: Yes, and I assume that the Auditor General is saying that on the basis of the feedback that he has had from the organisations. I recognise that point, and I recognise that that was reflected in the discussions that we have had with victims organisations as well, notwithstanding all the engagement that took place through the pandemic.

The Convener: Finally, let me turn to another related aspect. The report is quite critical of your approach to considering the equality impact of decisions that you have made and of the transformational change programmes that you have.

At paragraph 79, the Auditor General rightly points out the "unequal impact" of the court backlog. For example, he points to three categories of people. One is young children who are going through a formative experience in life. If they are witnesses or, indeed, victims, those delays will have a disproportionate and potentially devastating impact on them. The Auditor General's conclusions were that he did not see enough evidence that those issues were being sufficiently taken into account.

Secondly, women disproportionately are caught up in the court backlog system, again as witnesses and, unfortunately, often as victims in the system. What account has been taken of that in addressing where the resources need to go and where the priorities are?

Thirdly, the Auditor General points out—this goes back to earlier questions that we had this morning—the situation that we have with people on remand in our prisons. You described how we have both the highest prison population and the highest proportion of those in the prison population who are on remand of almost anywhere but, even within that, there are great inequalities. The Auditor General points out that 25 per cent of males in prison are on remand, 30 per cent of women in Scottish prisons are on remand and 48 per cent of young people in Scotland's prisons are on remand.

Why have you not sufficiently built equality impact assessments into decisions on the work that you have been doing, that you are doing and that you will do in the future?

Neil Rennick: There was a lot in that question. I will try to cover it. Equalities are at the absolute heart of the justice system. We know that it is disproportionately people from protected groups who are in the justice system. Women and children are disproportionately affected by certain types of crime. People who are in custody disproportionately come from our most deprived

communities. Equalities are an inherent part of the justice system—they are fundamental to the way in which the system operates and to how we respond to the justice system.

At the outset of the pandemic, we recognised that the necessary health measures would impact disproportionately on people in the justice system. For as long as jury trials were not able to progress, that was disproportionately going to affect women, particularly those who are the victims of sex offending. An equality impact assessment was prepared for the original coronavirus legislation that came to Parliament. I am hugely grateful for the pace at which Parliament responded to that and took on board the recommendations on the changes in the system. The evidence that we have provided since the initial legislation came in confirmed that it had a positive impact by improving how the system was able to mitigate and respond.

Equality impact assessments were prepared for elements of the project. We have talked about the work on remote jury centres, for which equality impact assessments were prepared. There were also underlying decisions in the system that Mr McQueen can talk to. For example, in prioritising cases, it has always been the case that priority is given to cases involving children. Through the pandemic, the evidence shows that priority was given to cases involving domestic abuse and other forms of violence against women. Equality impact assessments were considered throughout that process, but that does not diminish the fact that people were significantly impacted by unavoidable backlogs in the process. That has had an impact on people on remand and victims. It is not the case that equality issues were not considered in that, but they are having a disproportionate impact.

One issue that Audit Scotland highlighted for me is the need to think about the process of where we are inherently taking those equality decisions and where we are applying equality impact assessments. Again, that is feeding into the work on the transformational change programmes by considering how we ensure that equality impact assessments are prepared on individual projects at the right time. I accept the challenge from Audit Scotland about how we have evidenced that. I can confirm that equality issues have been considered throughout the whole pandemic.

I do not know whether Mr McQueen wants to say more about the decisions taken in the courts and how those impacted on different types of cases.

Eric McQueen: As for the various changes made in the courts during the pandemic, every time that we put out court guidance, we set out clearly what the priorities were. In virtually every

piece of guidance that went out, we stated that the priority was cases involving people in custody, children, vulnerable witnesses and domestic abuse. That was clear in all the guidance, and that remained our priority throughout the entire period. As I say, that was confirmed in all the guidance. Although there may not have been a formal EQIA done on that, clear consideration was given to how we were going to prioritise the cases that we felt were at greatest risk throughout the pandemic.

The Convener: Just so that we are clear, at the end of paragraph 81, the Auditor General concludes:

“we found very limited evidence that equality impact assessments were developed in a timely manner for most of the RRT workstreams and initiatives, with only two equality impact assessments prepared.”

That is a very poor result, is it not?

Neil Rennick: It partly reflected the different stages that various other projects were at, but I agree. One of the lessons that we have drawn from the Audit Scotland report is about deciding when equality impact assessments are taken forward for individual projects. I do not think that that diminishes the overall approach to equalities that underlies that, but it is important that we do further work on how we evidence that. One thing that Audit Scotland highlighted was that we did not do a good enough job of evidencing.

The Convener: Is it not the case that equality impact assessments and equality considerations, rather than being some bolt-on at the end to check how you did, should have been built into the foundation of the work that you were doing?

Neil Rennick: Yes, and they were in the initial legislation and in some of the key projects. I agree that some of the other projects, as they were being developed, should have had equality impact assessments at an earlier stage. Part of the challenge is often that we see projects that are specifically targeted at dealing with issues or inherently trying to reflect those equality disadvantages in the system, but we need to find a way of evidencing that more now. I strongly support and agree with that.

The Convener: Okay. On that note of agreement, I draw this morning's evidence session to a close. I thank Mr Rennick, Ms Dalrymple and Mr McQueen for their time. We have quite a lot to consider in the evidence that we have taken. We will certainly consider what our next steps are. Thank you very much once again for being here with us this morning. I will now move the committee out of public session and into private session.

10:30

Meeting continued in private until 11:26.

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