



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Criminal Justice Committee

**Wednesday 22 November 2023**

**Session 6**



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**CRIMINAL JUSTICE COMMITTEE**

**31<sup>st</sup> Meeting 2023, 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)

\*Sharon Dowe (South Scotland) (Con)

\*Fulton MacGregor (Coatbridge and Chryston) (SNP)

\*Rona Mackay (Strathkelvin and Bearsden) (SNP)

\*Pauline McNeill (Glasgow) (Lab)

\*John Swinney (Perthshire North) (SNP)

\*attended

**CLERK TO THE COMMITTEE**

Stephen Imrie

**LOCATION**

The David Livingstone Room (CR6)



# Scottish Parliament

## Criminal Justice Committee

Wednesday 22 November 2023

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

### Deaths in Prison Custody

**The Convener (Audrey Nicoll):** Good morning, and welcome to the 31st meeting in 2023 of the Criminal Justice Committee. We have received no apologies this morning.

Our first agenda item is a review of the correspondence that we have received on the progress that is being made on implementing the recommendations on deaths in custody. Members will recall that we took evidence from Gill Imery to review the progress on delivering on the recommendations in the report “Independent Review of the Response to Deaths in Prison Custody”, and that we wrote to various organisations thereafter. Paper 1 sets out the details of that and the replies that we have received.

I invite members to make comments. In any case, I suggest that we send copies of the letters to Ms Imery for her information and reflection.

**Russell Findlay (West Scotland) (Con):** Gill Imery spent two years producing the report on deaths in prison custody. There have been around 350 such deaths in the past decade, around half of which have been by suicide or drugs. There have been another 11 deaths since she gave evidence to us. Her report contains 26 recommendations and further advisory points but, two years later, only five of the recommendations have been implemented. Her main recommendation was on a new system to investigate deaths in custody but, crucially, she said that that would not even be necessary if the Crown Office fixed what she saw as failings in the fatal accident inquiry system. It is pretty clear from everything that we have heard that the Scottish Government and the justice agencies that are involved are not in agreement with her, but they do not seem willing to admit it. She told us that she feels frustrated but unsurprised. She told us that she feels “humoured” and “patronised”.

In response, we wrote to the relevant agencies—the Government, NHS Scotland and the Scottish Prison Service—and we now have their replies. If Gill Imery was despairing when she came here, I can only imagine how she will feel when she reads the letters. I ask myself whether those organisations actually listened to what she said to us—of course, they did, because she could

not have been clearer. By ignoring her explicit concerns in their letters, they essentially confirm exactly what she said. It took another organisation—the Scottish Human Rights Commission, which saw her testimony and wrote to us unprompted—to address her concerns and sympathise with her.

It is notable that, despite the Crown Office being subject to severe criticism by Gill Imery in relation to FAIs, it did not choose to write to us to state its case. In response to a question that I put to her, she told me that she would be willing to extend her tenure on the deaths in custody review group. It is no surprise that the letter from the Cabinet Secretary for Justice and Home Affairs does not even address that specific point. Again, that confirms what Gill Imery told the committee.

To summarise, we are all entitled to feel frustrated, humoured and patronised. It seems to have been a monumental waste of time, effort and money. What kind of message does all of that send to the families of those who have died in custody?

**Sharon Dowey (South Scotland) (Con):** My colleague Russell Findlay has made most of the points that I was going to make. However, going through the cabinet secretary’s letter, I noted that there is a bit in it about “successive increases” and the fact that resource has been increased by 60 per cent. I want to know more about that, because a 60 per cent increase sounds really good, but if the budget was not there in the first place, was that enough? Was the original budget enough? Did the 60 per cent increase cover things that should have been implemented in the first place?

The cabinet secretary also says that the recommendations

“are complex and require resource”,

which, again, comes back to funding. She mentions the national health service and how it will have everything done by the end of 2023. There is only one month left in 2023, so I would expect an update on how that will be achieved. Basically, we have one and a half months left, and the final two weeks will be the Christmas holidays.

There is no note on whether Ms Imery will be staying on in her role, whether she has been replaced or whether the role has been ended. There is no information on that. The cabinet secretary mentions that she had a meeting with Ms Imery and that there was to be another on 21 November with Mr Matheson. Did that meeting take place? If so, what was the outcome?

I move on to the letter from Caroline Lamb. It says:

"As Ms Imery noted at the Justice Committee there was no timescale set for the implementation of the recommendations".

I imagine that the NHS chief executives get paid a lot of money. Why did they not set their own timescales? It seems bizarre to have a report that made all those recommendations, but to have no timescales for when they will be implemented. What were the reasons for Ms Lamb and the chief executives not putting in their own timescales? She has now said that implementation will be

"by the end of this year."

The Scottish Prison Service has given us an action plan that covers everything that it is working on along with the NHS. I note that one of the columns says what action will be taken

"in the next 2/3 months",

but there is nothing in it. The year will end in a month and a half's time. I would have expected to see all the actions that are happening with the SPS and the NHS. They basically have six weeks or whatever to go and implement all of this, but there is nothing in their action plan. I would have expected to see more in the Prison Service action plan.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** To put into context some of the things that we have been hearing, I note that a pilot project was started in September for the new process. That will be evaluated to assess resource requirements, whether the process is workable and so on. That started in September, as I said, and it is on-going. We need to wait to see what the outcome of that is. There is also the short-life strategic leadership group, which reports to ministers through a cross-portfolio ministerial group for prisoner health and social care.

There are things happening as a result of our meeting with Gill Imery. It is easy to cherry pick things that may still need to be implemented, but I think that the wheels are definitely turning now, and I hope that things come to a good conclusion.

**Pauline McNeill (Glasgow) (Lab):** It is quite hard, reading through our papers, to get a sense of what we are addressing here. I am trying to focus my mind on the deaths in custody that I know about, where there has been a suicide or a death. It would be helpful to get a profile of what the causes of the 86 deaths were. Otherwise, I do not know whether we can make an assessment of whether the response is adequate.

I will be honest: in reading through the papers, I found so much management speak that it was driving me nuts. I was trying to get to what people were actually trying to say to the committee.

On a positive note, I would like to examine what Teresa Medhurst said in her letter a bit more,

particularly about contact with families. The proposal on that is a critical step. The families of Katie Allan and William Brown were concerned about them. They knew that their family members were at risk and they phoned the prison, but they did not get answers. That was one of the issues, from my recollection. It would be worth following that up with Teresa Medhurst, asking how the proposed installation of phone lines is going to work and asking for her assessment of whether it will make a difference. I think that it could make a difference.

I agree with Russell Findlay in that Gill Imery is one of the best witnesses that we have ever had. She does not pull her punches at all. We have a horrendous record on deaths in custody. It is a problem for Scotland's prisons in detaining people, and I imagine that things must now be even more difficult for the Prison Service, given the numbers. I feel quite concerned about that and the implications for the running of the service. That is a really important aspect of the work that the committee does.

In summary, I would like to see a profile of the 86 deaths with information about the causes, and further information about the installation of phone lines and family contact. I agree that Gill Imery should be able to continue her work until we are satisfied that we have made significant progress on preventing further deaths in Scottish prisons.

**John Swinney (Perthshire North) (SNP):** On Pauline McNeill's point about information on the fatalities in Scottish prisons, I have a recollection that we saw some of that data from either Gill Imery or the Scottish Prison Service. It is important to understand the circumstances and the context. There will be different circumstances surrounding deaths in custody. Some of those deaths will be because of suicide and some will be because of health issues. However, the management of those health issues is important to ensure that prisoners are being properly supported with the healthcare that they require when they are incarcerated. That is a fundamental commitment in relation to prisoners' human rights. It is important that we are assured that, in relation to both of those very different situations, individuals' wellbeing is supported to try to avoid circumstances in which people take their own lives or to ensure that prisoners are getting proper access to the healthcare to which they are entitled.

Those issues lie at the heart of the work that Gill Imery has been looking at. I agree with colleagues that she was a very strong and compelling witness in explaining the work that she has tried to do.

I do not question the fact that more needs to be done. I would encourage some clarity on whether Gill Imery is being invited to stay on in post, because the work is not yet complete. However, I

take a different view of the letters from the cabinet secretary, the chief executive of NHS Scotland and the chief executive of the Scottish Prison Service. The letters demonstrate that work is under way here. There might not be as much as the committee would like, or as Gill Imery would like, but work is under way. There is a clear commitment to taking the agenda forward, although it might not be moving as fast as everybody would like. For that reason, it is important that Gill Imery is able to continue her work.

My last point is that an issue that arises here but also crosses over into other areas of responsibility is the approach to fatal accident inquiries. We can ask the Government for information on certain points in that regard, but fundamentally we need to hear from the Crown about those questions. As part of our response to the material, we should put some of the points to the Crown and ask for a response.

**The Convener:** I thank members for their comments. Some very relevant and helpful points have been made across two key areas. First, there have been comments on the terms of the review and the report that led to the work that Gill Imery undertook. Secondly, some wider questions and concerns have understandably been raised about issues that are not specific to the report but are nonetheless important. I would include myself in the category of those who have such concerns. For example, what brings someone to the point where they become one of the statistics on deaths in custody? It is helpful that such questions have been asked.

I probably land with John Swinney and Rona Mackay in that I have taken some reassurance from the submissions that we received. In relation to Sharon Dowe's point about pinning down the timescales, I acknowledge that that is missing from some of the correspondence.

10:15

I suggest to members—I will seek your agreement on this—that we follow up on the points that have been made and the requests for further information. It is obviously appropriate for us to keep the matter under review. I propose that we engage again with Gill Imery and seek an update on her current situation. In the correspondence from the cabinet secretary, we are made aware that she has engaged with Gill Imery. There is quite a bit for us to take away. The final thing is John Swinney's point about some further correspondence with the Crown Office and Procurator Fiscal Service.

Are members in agreement on that?

**Russell Findlay:** I will be brief as I know that we do not have a huge amount of time. We absolutely need to go back to Gill Imery in response to the letters. I made the point that the Crown Office chose not to engage with us despite the criticism of it. Despite all the thousands upon thousands of words, it boils down to the fact that she made one main recommendation and it has been ignored. We need the authorities to come clean on that. Are they intent on doing it, or are they not?

**The Convener:** Can I clarify that? Are you referring to the first recommendation on the establishment of an independent process?

**Russell Findlay:** That is the main, fundamental point of the report, but she goes on to say that, as she sees it, if the fatal accident inquiry system was fixed, that would not be needed. That is central to everything.

**The Convener:** In terms of the existing FAI process, as compared with—

**Russell Findlay:** Yes. That is why I am surprised that the Crown Office, having heard that evidence, which was put in strong terms, has not engaged with us.

**John Swinney:** What Russell Findlay said helps to tease out what we need to do practically. I am not firm in my view—and I do not think that Gill Imery is—that there is a need for a new system, provided that the FAI system works as we all believe it should.

There is a course of action that we need to take. I certainly could not sign up to a new system, and I am in favour of people doing what they should be doing, so I would rather explore the position on FAIs, including what the Crown's view is and what improvements can be secured, before we align ourselves with a proposition for a new system. Going to the Crown and establishing the FAI approach is the first base for us in pursuing the issue.

It is important to hear Gill Imery's view on all this, because she was a compelling witness and has done a huge amount of work on the matter, but we also need to hear from the Government on whether she is being invited to continue in her role. If Gill Imery has been asked to do that, she can tell us, but we need confirmation from the cabinet secretary.

**Russell Findlay:** That point was made during the evidence session, but it was not addressed in the letter from the Government, so it needs to be clarified. Whether Gill Imery would accept is another matter.

**Pauline McNeill:** I have a point about FAIs. It goes back to the profile of the 86 deaths, and it applies only to a few cases. In the case of Allan

Marshall, the family was distraught because they felt that there was a cover-up and they could not get any information about how he had died. We know that there was immunity from prosecution, and the Lord Advocate is taking that forward.

One of the recommendations was that families get unfettered access to prison to get information about how their loved ones died because, previously, they have not had that. They have had to wait for the FAI and, if the FAI takes years, the family gets no real answers or contact. I have asked the same question at every opportunity: will families get unfettered access? I do appreciate the situation—can you make that commitment and, at the same time, not compromise the case where there might be an allegation of criminality, such as in the case of Allan Marshall? Can you make such a commitment without that interfering with the Crown doing its job? I have never had an answer to that. On John Swinney's point about establishing the approach to FAIs, I would say yes, if the system worked, but let us see whether we can make FAIs shorter.

However, there is this other scenario, such as in the case of the death of Allan Marshall. Families should get unfettered access to go and speak to prison governors and see where their family member died. Families should get all that. Why should they not? When the state has detained that person, why should the family be blocked from finding out as much as they would like to know about their loved one's death? I have not had any answers to those questions but I feel strongly about that in such cases. I realise that those are a tiny percentage of the cases.

**John Swinney:** Convener, if you will forgive me, I think that what we discussed as a committee—we might have discussed it in private when we looked at some timescales for FAIs—was that there appeared to be a pattern that prison-related FAIs took longer to be commenced than many other FAIs. That relates to the serious point that Pauline McNeill raised about the Allan Marshall case. Again, that is a reasonable issue to put to the Crown because I do not know the answer. Instinctively, I agree that families should have unfettered access to information, but I do not know how that sits alongside proper investigation about the potential for criminality. Those are legitimate issues that we need to explore.

**Katy Clark (West Scotland) (Lab):** It seems to me that there are two issues. The first is how we reduce the number of deaths in custody and the second is the systems that are in place when there is a death in custody. From my experience elsewhere, it seems that greater political oversight can have an impact on the number of deaths in custody. I have been quite surprised by the numbers. The scrutiny by ministers and the

committee is really important in that area. I agree with the points in relation to the issues around what happens after a death.

The recommendations need to be implemented, but it is not necessarily the case that we need a completely different system. That would be quite a significant decision and one that we would need to scrutinise very carefully.

**The Convener:** Thank you, members, for those additional points. Katy and Pauline, you mentioned queries about the number of deaths, and clerks have, helpfully, had a wee look at that during our discussion. As Gill Imery also pointed out in committee, between 2012 and 2022, there were 350 deaths in Scottish prisons. About half of those were either drug related or as a result of suicide; the other half were a result of natural causes. That reflects the extent of the issue.

We will do some follow-up work on the points that were made today. Members are agreed that we will very much keep the issue under review, and we will communicate with the Crown Office and with Gill Imery in relation to her status, as has been suggested.



## Domestic Abuse (Scotland) Act 2018

10:24

**The Convener:** Our next agenda item is a review of the correspondence received on the implementation of the Domestic Abuse (Scotland) Act 2018. Members will recall that the committee undertook a short post-legislative review of the 2018 act and has been following up issues with the Cabinet Secretary for Justice and Home Affairs.

The clerk's note in paper 2 sets out the details of that and the cabinet secretary's most recent reply. Do members have any comments?

**Russell Findlay:** On page 15 of paper 2, there are statistics from Police Scotland about the number of domestic crimes that were reported to it. It would be helpful to know, of all those reported, how many were subsequently reported to the Crown Office and what happened next. Of those reported, how many were diverted from prosecution and how many were prosecuted and, of those prosecuted, what was the conviction rate? It is all very well saying that the act has been successful if you are judging that on the number of cases that have been reported but, if we do not know what happened consequently, we do not know whether that success is disappearing into a black hole. That would be useful data to acquire, if we can.

On page 18, a contribution from the Scottish Courts and Tribunals Service seems to be making a virtue of the Aberdeen pilot for the domestic abuse court. From my memory of the evidence that the committee heard, it was quite difficult for us to acquire information and, when we eventually did, my memory is that only a dozen or so cases had ever gone ahead. Therefore, rather than the success that it is being presented as, it seems to have been underused, and the numbers were so low as to make it difficult to draw very much by way of a conclusion from the pilot.

**The Convener:** If my memory is right, some of those queries related to the number of trials that were undertaken in a virtual format.

**Russell Findlay:** Yes. I think that the trials were virtual in their entirety; that was the purpose of the pilot. However, from what we could establish, due to reluctance on the part of the accused and their lawyers, that often did not happen, which might have explained—call me cynical—why it took us so long to establish that the court had been used so infrequently. Therefore, for it then to pop up in a letter as evidence of good work and progress is questionable.

**Sharon Dowey:** I was not on the committee when the report was published, so I am not as expert on the matter as everybody else on the committee. Looking again at some of the responses to the committee, I go back to my previous comment about timescales and actions. I have heard a lot about the Caledonian system, which seems to get a lot of good press.

The justice partners round-table discussion is referred to. Again, the response says that areas of focus will be discussed over the next 12 months. There is going to be a lot of consideration and exploration, but there do not ever seem to be any firm actions or timescales for implementation. In the area that we are talking about, the quicker we implement the recommendations that the experts tell us will work, the quicker we will see results and improvements in the justice system for the people who need it most.

Again, we need timescales and actions. It seems that people are just talking about things rather than actually doing things.

**Russell Findlay:** There was another point that I forgot to mention about the cabinet secretary's letter in response to our questions about an awareness campaign. When the act first came into force, there was a publicity campaign to let people know what it did, which was apparently quite helpful. We asked whether there were plans to do something else. In response, the cabinet secretary said:

"We are currently undertaking insight gathering".

There is further documentation from Scottish Government, on page 13 of paper 2, that also uses the term "insight gathering". I wonder whether it is worth trying to establish whether there are any concrete plans, because I do not quite know what that means. It either seeks to do something or it does not. It is a small point.

10:30

**The Convener:** We can certainly follow that up, because it is a fair point to raise.

**Russell Findlay:** I found it. Just to give the context, page 13 includes the phrase

"insight gathering which could inform a future approach to communications."

If they do not have any plans, just say so.

**The Convener:** We will take that away.

**Rona Mackay:** The cabinet secretary talks in her letter about the round table and the working group, which meets again this month. She will feed back on the outcome of the discussion, including the finalised terms of reference for the group. We expect that to be imminent.

**The Convener:** I am encouraged by a lot of what is going on. Different tasks in different areas of work take different lengths of time, obviously. I was particularly interested in the update that we asked for on the single court/judge model. There is a lot in that, but it was helpful to have it set out.

We will take away the points that have been raised, and I ask for members' agreement that we continue to monitor the issue. It is highly appropriate that we do that.

**Members** *indicated agreement.*

**Russell Findlay:** You mentioned the single sheriff model for civil and criminal cases, which I have raised a few times. I found some of the reasons against that to be slightly questionable, if not spurious, although some of them were valid. Watch this space, because I think that that is being looked at.

**The Convener:** That concludes our business in public. Next week, we will begin phase 2 of our scrutiny of the Victims, Witnesses, and Justice Reform (Scotland) Bill. We will take evidence on part 4, which is the part of the bill that deals with the proposed abolition of the not proven verdict and changes to jury majorities.

10:32

*Meeting continued in private until 13:09.*

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