



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Criminal Justice Committee

Wednesday 9 October 2024

Session 6



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CRIMINAL JUSTICE COMMITTEE

31st Meeting 2024, 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 Dowey (South Scotland) (Con)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

*Ben Macpherson (Edinburgh Northern and Leith) (SNP)

*Pauline McNeill (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Angela Constance (Cabinet Secretary for Justice and Home Affairs)

Patrick Down (Scottish Government)

Keith Gardner (Community Justice Scotland)

Karyn McCluskey (Community Justice Scotland)

Lynsey Smith (Social Work Scotland)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 9 October 2024

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Audrey Nicoll): Good morning and welcome to the 31st meeting in 2024 of the Criminal Justice Committee. There are no apologies. Our first agenda item is to decide whether to take item 6 in private. Do members agree to take the item in private?

Members *indicated agreement.*

Subordinate Legislation

Coronavirus (Recovery and Reform) (Scotland) Act 2022 (Extension of Temporary Justice Measures) Regulations 2024 [Draft]

Coronavirus (Recovery and Reform) (Scotland) Act 2022 (Early Expiry of Provisions) Regulations 2024 (SSI 2024/246)

10:00

The Convener: Our first main item of business is an oral evidence session on an affirmative instrument and a negative instrument. We are joined by the Cabinet Secretary for Justice and Home Affairs; I also welcome Patrick Down and Vallath Kavitha Krishnan, from the criminal justice division, and Nicola Guild, from the legal directorate, in the Scottish Government.

I refer members to papers 1 to 3, and I intend to allow up to 30 minutes for the evidence session. I invite the cabinet secretary to make some opening remarks on the Scottish statutory instruments.

The Cabinet Secretary for Justice and Home Affairs (Angela Constance): Good morning, convener. As the committee knows, the Coronavirus (Recovery and Reform) (Scotland) Act 2022 includes a range of temporary justice measures, which were introduced to make sure that our justice system had the necessary flexibility to respond to the impact of the pandemic.

Since then, justice agencies have made significant progress towards recovery, and the need for some of the temporary measures has disappeared or reduced. Last year, the Scottish Government made regulations that expired several measures. Our continuing determination to reduce the number of temporary measures is shown by the expiry regulations that the committee is considering today, which expire two further measures because those are deemed no longer necessary or proportionate—including one of the extended time limits that were put in place at the start of the pandemic.

The proposed extension regulations would extend the remaining temporary measures so that those stay in force until the end of 30 November 2025. My decisions on which measures to extend are based on consultation with justice agencies, the legal profession, the judiciary, local government, and victim support organisations and other third sector bodies. The statement of reasons, which I laid alongside the regulations, sets out in some detail the findings of that

consultation and review. For now, I will outline briefly why we need to retain the provisions.

We continue to see the impact of the pandemic on criminal court backlogs. Considerable progress is being made on reducing those backlogs. The total number of outstanding scheduled trials fell by more than 40 per cent between January 2022 and August 2024. However, modelling by the Scottish Courts and Tribunals Service predicts that backlogs of solemn trials will persist above the target baseline until 2026-27.

The measures in the extension regulations will continue to help in the effective use of court resources. For example, the availability of higher maximum fines will mean that more summary cases can be diverted from prosecution, which will reduce the number of cases that need to go to court.

The two extended time limits—which, under the extension regulations, would continue for one final year before reverting to their pre-pandemic level—will increase the courts' capacity to hear trials rather than spend time on procedural matters. That will help the throughput of cases and protect victims' access to justice.

I am committed to the reversion of the time limits next year; indeed, there is no ability under the 2022 act to extend them any further, and ministers have no intention of legislating to make them permanent, so they will end no later than 30 November 2025. However, justice agencies are clear that the extended time limits will continue to play an important role in helping the courts to manage the current solemn case load. The data that I offered shows the progress that has been made so far, but we should allow the justice agencies to continue their work to reduce the backlog. Their view is that, without the provisions, the timescale for reducing the solemn case backlog would be extended, and that there would be a risk that some cases would not proceed at all.

I am sure that none of us wants to jeopardise the courts' capacity to focus on the throughput of trials. It is plain to me that the two remaining extended time limits must be continued for one final year, after which they will expire.

The other measures in the extension regulations include the conduct of business by electronic means, attendance at court by electronic means, and a national jurisdiction for callings from custody. Although the pandemic was a catalyst for introducing those measures, they have shown their value in modernising our justice processes and making those more efficient. They deliver better outcomes and experiences for people who use Scotland's justice services. It is right that we look to extend the use of those valuable measures, which will promote the on-going

recovery of the justice system and ensure the continuation of modernised practices that were much needed and welcomed.

Permanent reform will require primary legislation. Last month, we introduced the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill, which proposes making permanent those measures that have a proven broader and longer-term benefit. To be clear, convener, that bill does not make any provision to continue extended time limits. As I said, those cannot be retained beyond the end of November 2025.

It is clear that, collectively and as a package of temporary measures, the extension regulations are vital in supporting our justice system's continued recovery and resilience in the coming year.

The Convener: Thank you, cabinet secretary. I open the meeting to questions from members.

Russell Findlay (West Scotland) (Con): A couple of issues that we raised at this time last year are still of concern. The first relates to the increase of fiscal fines from £300 to £500. At this time last year, the cabinet secretary asked for a one-year extension to that. We objected and put the matter to a vote. Labour supported us but, nonetheless, the Government got its way. Here we are again: the cabinet secretary seeks another one-year extension to what was supposed to be a temporary power that was necessary only because of the pandemic.

When we raised that matter last year, the cabinet secretary told the committee that there would be a public consultation. The findings from that were published in July. Some respondents raised concerns specifically about the increased use of fiscal fines. Comments were made that that would

"negatively affect the ability of the criminal justice system to deliver its public protection function".

Concerns were also expressed that those fines were being used for more serious offences that would normally be prosecuted in a court. That has been borne out by recent reports that a number of serious crimes, including assault, are being dealt with by way of fiscal fine—there is no trial and no conviction and, often, the victims are not informed of the outcome.

Does the cabinet secretary genuinely think that further extension is appropriate, given the misgivings about the use of fiscal fines?

Angela Constance: Thank you, convener, and thanks to Mr Findlay. I know that he has long-held objections to and views on fiscal fines.

As the committee will be aware, fiscal fines have been part of our justice system for decades. To be clear, the specific measure that we are talking about is a new level of fiscal fine. Instead of the maximum fine being £300, there is an additional level of fine of up to £500. The statistics show that only 2 per cent of the fiscal fines that have been applied have used that fine of up to £500.

For the record, the long-term trajectory shows that the use of fiscal fines has fallen significantly. In 2018-19, 21,678 fiscal fines were issued initially, and the 2023-24 figure was 12,108. I am happy to share those figures with the committee in full.

If prosecutors did not have the facility to look at a case and think that a maximum fine of £300 would not be appropriate but that a fine of up to £500 would be, there would be 200 to 300 more cases going through the justice of the peace courts. For that reason, I think that it is necessary to retain the measure. It is an extension of the maximum fine limit. That is pragmatic.

I say to Mr Findlay that there are good commonsense reasons for extending the provision for another year, and for building it into the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill, as I set out to Parliament with the introduction of that proposed legislation.

Russell Findlay: I am sure that we would like to see those statistics. It is interesting to see that fiscal fines appear to have reduced significantly, but that should be seen in the wider context of all direct measures. If we are being provided with those figures, they should also include recorded police warnings, antisocial behaviour, fixed-penalty notices and any other such measures, because it might well be that some of them have reduced but others have increased.

Last year, I suggested that, if the Government wanted to extend the provision, it should introduce primary legislation. The cabinet secretary has today said that she does not intend to extend it after this one-year extension, I believe. Is that correct?

Angela Constance: No. Forgive me, convener—I thought that I was crystal clear. The statutory instruments will extend the provisions for one year, but the ability to issue a fiscal fine of up to £500 is part of the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill, so we have already included that in our proposed primary legislation. That bill was introduced in Parliament either last week or the week before.

Russell Findlay: The other issue of concern relates to the power that the Crown Office has been given to extend how long it has to put

someone on trial. Previously, it was 80 days from the serving of an indictment in a solemn case, which, of course, are the more serious cases. However, that was increased by way of these temporary Covid measures to 320 days for those who are not on remand and 260 days for those who are held on remand. That is a huge increase and, as we know, was supposedly temporary, but if the motion is passed today, the extension will now run until 2025. Does the cabinet secretary agree that those extensions, which keep people in remand for so much longer, are only adding to the crisis in the prisons, which are already dangerously overcrowded?

10:15

Angela Constance: I hope that Mr Findlay and the committee realise and appreciate that there is nothing that I take more seriously than the situation that our penal establishments currently face. If I thought that removing the time limits this year as opposed to next year would help, I would propose that.

My concern is that, if we remove the two time limits that I propose to extend for one year only, that will add to the problem of remand, rather than alleviate it. If we remove the limits right now, instead of the focus being on the throughput of criminal justice cases, decisions will be made, on a case-by-case basis, to extend the time limits. The system has always had the ability to extend time limits on a case-by-case basis. If that is being done for a substantial number of cases, that will only add to delay.

I propose that we give the system one more year to transition. I am not making permanent, in primary legislation, the temporary Covid time limits. Four of those time limits have now expired, and I am proposing to expire another one.

To cut to the chase, the increase in remand is affected by the backlog, and extending the time limits is a result of the backlog. To reduce remand, we have to reduce the backlog.

Russell Findlay: I have a final question. Do you or your officials have any data on how often the extensions have been used since the temporary measures were introduced?

Angela Constance: We will have it. Patrick Down, could you speak to that, please?

Patrick Down (Scottish Government): We would have to come back to you on that in writing. I am not sure that we have statistics specifically on the number of extensions that are granted on a case-by-case basis. We would have to speak to the Crown Office about that.

Pauline McNeill (Glasgow) (Lab): Good morning. It is interesting to note that the use of

fiscal fines has fallen. Is there any information on the levels of fiscal fines that have been used? How often have the maximum fines been used? In the pandemic period, the maximum fine was increased to £500, and you propose to extend that.

Angela Constance: As I said to Mr Findlay, the information that I have been sighted on is that the new levels of fiscal fines—from £300 up to £500—have been used in around 2 per cent of cases. At 2 per cent of 12,000 cases, it is a very small proportion overall.

Pauline McNeill: Is there any information on how often the maximum fine has been used? My reason for asking is that £300 to £500 is a significant jump. That maximum has been in place and you are asking the committee to support its extension.

Angela Constance: Yes. I am asking the committee to support the extension. I would like it to remain in place permanently, which is why it is part of the primary legislation that we have introduced to Parliament. I do not have more granular information on how many fines have been £400 or £500.

Pauline McNeill: That is fair enough. I presume that, when you lay the new bill before Parliament, you will let the committee see some detail on use of the maximum fine and what offences it has been used for. The problem is that we are being asked to accept something in the dark, because we do not really know how it is used.

Angela Constance: My understanding is that the Crown Office regularly updates the committee on the matter. I stand to be corrected by members, but I am told that it last updated the committee earlier this year and that another update is imminent—it will be in October. However, I take Ms McNeill's point on board and we will relay the request to the Crown Office to provide the committee with information at a more granular level.

The Convener: We receive regular updates on a range of things, some of which are shared by email and some of which are in our weekly bulletin. I am comfortable that that information will have been shared with the committee.

Pauline McNeill: It looks as though some progress is being made in relation to the pleading diet. Forty-three weeks is 301 days—I have just used my calculator—and the legal limit without the extension is 110 days. You want to extend the time limits significantly, but how confident are you that progress will continue to be made if you do that, given that, as you know, the system was not meeting the time limits by quite a long way even before the pandemic?

Angela Constance: I want to reassure Ms McNeill. I cannot be any clearer that extending the remaining two Covid time limits for solemn cases is not in the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill. I hope that I have been crystal clear with Parliament and justice stakeholders about that. The reason for the final year of extension to the time limits that I propose is, in essence, to enable a smooth and effective transition. I wish for the progress that is being made to continue and I will continue to support it.

To date, the Government has invested £180 million in recovery. That is a significant amount of resource, and I am accepting the plea of the various justice agencies that the time limits be extended for a final year to assist with good planning and transition, because this is not in my plans for primary legislation.

Pauline McNeill: I welcome that. However, as you know, I share Russell Findlay's concerns about the impact on remand in particular. I know that you cannot answer this question, but I have questioned quite closely the Crown's continual pushing for the indictment process to be 180 days, and I still do not have an answer as to why that would be necessary. However, I understand that setting a pleading diet is more difficult.

Do you want the national jurisdiction to remain in place under the SSI that is before the committee? Before the pandemic, the principle in Scots law had always been that a person would be tried in the particular sheriffdom where the crime was committed. The reasons for that were that the sheriffs who serve in a sheriffdom will know the area and that that approach makes sense for the accused and those who attend court for the case. Is the problem with the national jurisdiction not that, for example, someone in the sheriffdom of Glasgow—forgive me, but I cannot remember its full title—could end up in court in Aberdeen? It concerns me that you intend to make the measure permanent. The committee has no information on where people are being tried under the provision. We accepted that it was necessary and proportionate during the pandemic, but I question that provision, too.

Angela Constance: The provision on a national jurisdiction for callings from custody is not used to the maximum. My view is that it allows flexibility, bearing in mind that public health emergencies have been a factor in our recent history, along with the weather in this small, inclement-weather country. There are, therefore, pragmatic arguments for retaining that flexibility. I recall that, last year, Ms Clark asked whether, after the initial custody hearing, further hearings could be held anywhere. That is not the case, because we do not want witnesses to have to travel all over the

country. It is a limited provision, and there are pragmatic reasons for keeping it because it allows flexibility.

Sharon Dowey (South Scotland) (Con): I have heard concerns about prisoners who are on remand not getting the same access to services or rehabilitation while they are in prison as those who are serving sentences. Has that been considered, if we are extending the time that they will be held on remand?

Angela Constance: It is not directly related to the specific and quite technical provisions that are in front of the committee today. The broader point is that people on remand are held on a different legal basis from convicted prisoners. There are expectations about sentenced prisoners' participation in particular activities, whereas people on remand are considered to be innocent until proven otherwise. Although the Scottish Prison Service will do a lot to encourage remand prisoners to participate in purposeful activity, a different legal basis is involved.

Sharon Dowey: I am just thinking about that. If someone ends up going into prison for a substantial time but they do not get any rehabilitation while they are there and they do not attend any courses to give them skills for when they come back into the community, is there any—

Angela Constance: Someone who is being held on remand has not been convicted of an offence and will probably go on to plead their innocence, so that is not the environment for them to do offending behaviour work. Indeed, they would be advised against making any admissions. When people participate in such work, much of it is based on the offence that a court of law has decided they are guilty of. Part of the work, and particularly the preliminary part of it, is about prisoners owning their actions and talking in detail about the offences that they have committed. That work is difficult to do with remand prisoners, because they are innocent until proven otherwise—it is a completely different legal basis.

However, there are arguments that there should be support for remand prisoners' other needs that are not offence based. For example, their healthcare needs should absolutely be attended to on the same basis as those of any other prisoner.

Sharon Dowey: Are there instances where somebody is held on remand and, by the time they go to court, they have already served their sentence?

Angela Constance: Yes.

Sharon Dowey: If they are found guilty but they have already served their sentence so they are released straight away without having had any rehabilitation, courses or anything else while they

were in, the likelihood is that they will go out and offend again.

Angela Constance: That is why one of the range of actions that we must take to address the length of time that people are spending on remand is to reduce court backlogs. That will benefit the remand population because it will make a significant contribution to reducing the time that people spend on remand.

Sharon Dowey: In your submission to the committee, you say that the Scottish Government consulted the

“judiciary, legal profession, victim organisations and third sector organisations”

and that there was

“strong support for retaining such measures.”

Were there any objections to the measures being extended? Is there anything that it would be helpful for the committee to know?

10:30

Angela Constance: I do not recall there being any strong objection to the measures. That is narrated in the statement of reasons that I submitted. Understandably, some stakeholders will raise issues of digital access. The Scottish courts and tribunals system does not want there to be a wholesale return to the use of paper, but people can access and use physical documents. That is why the Scottish Courts and Tribunals Service is working with Citizens Advice Scotland and has a strategy to support digital inclusion.

Russell Findlay: When you asked the committee last year for a one-year extension, did you tell the criminal justice agencies at that point that they had one year to sort themselves out, or did you intend to come back to the Parliament again this year to ask for one more year?

Angela Constance: The coronavirus legislation permits me to make extensions only year by year. To be prudent and sensible, you want to be making an assessment of progress throughout the year. It would always be my desire to be making as much progress as possible, but you want to see that progress is being made and to have discussions about it.

The Convener: We have to move on. The next item of business is consideration of the motion to approve the affirmative SSI on which we have taken oral evidence. I invite the cabinet secretary to make any brief additional comments that she would like to make and move motion S6M-14590.

Angela Constance: I do not have any additional comments, convener.

I move,

That the Criminal Justice Committee recommends that the Coronavirus (Recovery and Reform) (Scotland) Act 2022 (Extension of Temporary Justice Measures) Regulations 2024 [draft] be approved.

The Convener: Would members like to come in with any final points?

Pauline McNeill: I welcome the progress that has been made, but I remain concerned about the extension of the time limits and a number of other things in the SSI. I might have considered the national jurisdiction differently, but I accept that it all has to be in one SSI. I am concerned about the lack of information on the use of fiscal fines. I have a long-standing concern about that. I was concerned about it even when the previous Government was in place, because we must be clear about the range of offences that the fines are used for and how well they are used. I note that there has been a reduction in their use, which is interesting. I would have liked to know whether sheriffs are using £300 or £400 fines and what tariffs they are using for the fines. In the absence of that information, I cannot vote for the SSI.

I expressed my deep concern about the issue in meetings that I had with the Scottish Courts and Tribunals Service before the pandemic. As the cabinet secretary will recall, the Parliament took a lot of pride in the time limits that were established, which were unprecedented. We extended the time limits because we felt that they were far too tight. Now, they have been relaxed to such an extent that it is having an impact on the prison population, and particularly on the remand population. Sharon Dowey was quite right to make the point about the restrictions on what we can do with someone who is on remand while they are in prison, and the proposal would prolong their situation for another year. Katy Clark and I argued that time limits could have been extended case by case. Although that would have been more cumbersome, we felt that it would be a better alternative.

For those reasons, I cannot vote for the SSI.

Russell Findlay: I note the concerns that we expressed last year about the increased levels of fiscal fines and, more generally, the lack of information that is available to the victims of crimes.

The second issue concerns the increased time limits, especially for prisoners who are on remand. In the same year, up to 500 prisoners have been released early due to catastrophic overcrowding in prisons, but I have not really heard from the Government today any sense of urgency or any evidence about what has been done in the past 12 months to remedy the problems so that we would

not need additional 12-month extensions for both issues. I therefore cannot support the SSI.

The Convener: As no other member wants to speak, I invite the cabinet secretary to wind up and press or withdraw the motion.

Angela Constance: I reiterate that addressing the backlog is one of the key factors in addressing the time that people spend on remand. The provision would extend the time limits for only one year. I do not want to see any premature lifting of the two remaining time limits. The other five either went or are included in the expiry regulations.

I appreciate Ms McNeill's long-standing concerns. It has long been the case that our system can review on a case-by-case basis, but I am concerned that reorienting that system wholesale to spend time on procedural matters would reduce the throughput and have a direct impact on the progress that we hope to make on reducing backlogs over the next year. That reduction would be part of the contribution to reducing the remand population and, in particular, the time that people spend on remand. I also point out that it is the Crown Office and prosecutors, rather than sheriffs, who make decisions about fiscal fines.

I press the motion.

The Convener: The question is, that motion S6M-14590 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
Nicoll, Audrey (Aberdeen South and North Kincardine) (SNP)

Against

Clark, Katy (West Scotland) (Lab)
Dowey, Sharon (South Scotland) (Con)
Findlay, Russell (West Scotland) (Con)
McNeill, Pauline (Glasgow) (Lab)

The Convener: The result of the division is: For 4, Against 4, Abstentions 0. As there is an equal number of votes for and against, I use my casting vote as convener to vote for the motion.

Motion agreed to,

That the Criminal Justice Committee recommends that the Coronavirus (Recovery and Reform) (Scotland) Act 2022 (Extension of Temporary Justice Measures) Regulations 2024 [draft] be approved.

The Convener: As no member wishes to make any recommendation in relation to the negative instrument, are we content for the Coronavirus (Recovery and Reform) (Scotland) Act 2022 (Early

Expiry of Provisions) Regulations 2024 to come into force?

Members indicated agreement.

The Convener: Are members content to delegate responsibility to me and the clerks to approve a short factual report to Parliament on the affirmative instrument?

Members indicated agreement.

The Convener: Thank you. That will be published shortly.

I thank the cabinet secretary and her officials for attending the meeting. I will suspend the meeting briefly to allow for a changeover of witnesses.

10:39

Meeting suspended.

10:46

On resuming—

Pre-Budget Scrutiny 2025-26

The Convener: Our next item of business is to take evidence from two organisations as part of our on-going pre-budget scrutiny. From Community Justice Scotland, we are joined by Karen McCluskey, chief executive, and Keith Gardner, specialist adviser; and, from Social Work Scotland we have Lynsey Smith, chair of the organisation's justice standing committee. Welcome to you all.

I refer members to papers 4 and 5. I intend to allow around 75 minutes for this evidence session.

I will start with a fairly broad opening question to get started. I will work from my left, so I will bring in Lynsey Smith then Karen McCluskey and Keith Gardner. What are the main financial challenges that your organisations face, and what are the main things that need to be done in the budget context to address them?

Lynsey Smith (Social Work Scotland): One of the main financial challenges for justice social work probably sits with the whole system in relation to the prison population. Conversations about the opportunities that are presented by shifting the balance from prison to community and the impact that that should have on the financial envelope for justice remain a challenge. How we do that as a whole system and how we shift the balance from investment in court systems, policing and holding people in prison to community justice is our key challenge, but it is also a key opportunity. It feels as if we need to grasp hold of the opportunity to try to transform the justice system and ensure that we are dealing with people robustly, appropriately and well, within the community.

The Convener: I will come back with some supplementary questions, but I will move on to Karen now.

Karyn McCluskey (Community Justice Scotland): Good morning. There is a famous phrase that goes, "Don't tell me what is important to you, show me your budget, and I will tell you what is important to you." Community justice gets around 2 per cent of the overall justice budget—that is minuscule compared with the complexity of the people who we are managing. Over three quarters of the sentences that courts give out are short-term sentences, so we are talking about people going into prison and revolving through, people who are in addiction and people who are homeless. That is a very small amount of money in terms of managing people into a life that is more

predictable, understandable and manageable and getting them into employment. That needs to shift.

There is a theory that, for significant change to happen, you need a compelling narrative. I caught the last vestiges of your earlier conversation. The compelling narrative is already made. The justice system and community justice are in a really fragile state. We need to recognise the zeitgeist and find the right time to act, and the time is absolutely now to shift justice into the community and to create the services that are required. You need a compelling shovel-ready plan that means that you know what you want to do to address the situation, and you need some targets so that I can come and convince you that we are moving in the right direction.

Yes, it is challenging, and it is not going to get any easier. The fiscal envelope is tightening. I think that everybody will take a deep breath when Ms Reeves presents the budget, but this really matters, not only with regard to justice but with regard to drug deaths. The contact with the justice system of people who have died as a result of overdoses and drugs and alcohol is significant. We are dealing with the same problem and we are spending the money in different places.

Keith Gardner (Community Justice Scotland): Good morning. I do not have a great deal to add other than to say that the term “community justice” can seem a bit ethereal to people. However, we need to think about the reality of what community justice can bring to this landscape, particularly with regard to the issue of the prison population, which has vexed us. Community justice has the capacity to reduce the flow of people who are progressing into the system. It has the capacity to get people who are already in the system out of it as quickly and safely as possible and it has the capacity to keep people out of the system once they are out of it.

There is recognition of the fact that there will never be enough money, but we can look at where across the justice landscape that money achieves the most effect and where it can improve not only people’s lives but the lives of communities.

The Convener: I will focus on work with young people and the budget side of things. There has been some movement on keeping young people out of young offender institutions, and there is a clear understanding that that is the right thing to do. However, that needs to be underpinned with community justice approaches and interventions so that detention is, in essence, a last resort. I am interested to tease out more detail on the importance of that approach and of smart budgeting. Keith Gardner, what more, if anything, do we need to do to make that approach work so that young people do not enter the prison environment?

Keith Gardner: The strides that were made on getting young people out of Polmont in particular are to be applauded. It took us a wee while to get there, but we need to celebrate our successes. The same mentality should apply whether young people are in Polmont young offenders institution or secure accommodation. The reality is that all roads lead to Rome and they will be back in the community at some point. The difference with regard to young people is that there is a potentially bigger return if we invest more in services for young people in the community.

When young people reach secure accommodation or when 18 to 21-year-olds enter the system, they do not appear out of nowhere. By and large, they have a history, and we need to be conscious of the opportunities further upstream for young people when they start to get into conflict with the law and how we can intervene at that point.

There is a yield in preventing 16 and 17-year-olds from going into secure accommodation in the first place. It is not a simple decision to put a young person into secure accommodation; it is complicated. When I was a chief social work officer, one of my tasks was making those decisions. We need to look at the opportunities to intervene with young people at an earlier stage. There is very little difference between a 17-year-old person and a person who is 17 years and 11 months old or a person who is 18 years and one month old. There still needs to be a focus on 18 to 21-year-olds, particularly those who are engaged in—this is not a great phrase, but it is the phrase that we have—prolific offending. We need to look at how we break that cycle.

The Convener: Karyn McCluskey, in your opening remarks, you spoke about targets. We all know the value of targets and why we need them. I am interested in a wee bit more detail on whether we should be looking at different targets and why we should be doing that. How do we make those targets meaningful? Again, I am thinking about the budgetary context.

Karyn McCluskey: That is a great question. Sometimes we hit the target and miss the point with some of these targets, such as whether someone has been seen within seven days or whether they complete an order. For colleagues in social work, I know that it is about making somebody’s life better and not worse. Human beings are complicated and they need a great deal of work to move them to a different place.

We know how to measure improvement journeys much better than we used to, but we do not give that evidence to committees such as this one, because we do not gather it in a rounded way. We need to have a look at all the services that the budget pays for and how they contribute

to improving someone's life by getting them out of offending and into employment. The metrics that we have right now are very simplistic.

The Convener: Lynsey Smith, one of the key messages in the joint submission from Social Work Scotland and the Convention of Scottish Local Authorities is around the community justice strategy and delivery plan, with particular reference to the Bail and Release from Custody (Scotland) Act 2023 and its significant implications for resourcing across justice social work. Can you add a wee bit more detail on what those implications could look like?

Lynsey Smith: There are proposals for increasing the number of bail assessments and ensuring that everybody who has gone through court is being assessed for bail. That would instantly increase demand on the service that is not there at the moment. We would normally focus on those who had bail opposed rather than everyone. It would be a welcome development, but there would be a resourcing implication if it was to be brought in.

There are also other implications in the early release of prisoners. We would absolutely support the initiative to get people into the community early to ensure that we can work with them and support them to access all the key services. If the services are not there to support them, we would offer support to try to fill that gap. Again, if we are releasing more people who require support into the community, it will need investment. Justice social work might not be delivering that investment—it might be the third sector—but whatever way it goes, it will require further investment.

The Convener: I will bring in members now. Sharon Dowey will be followed by Rona Mackay.

Sharon Dowey: Karyn McCluskey, you have spent years trying to persuade the Scottish Government to introduce remote alcohol monitoring tags, which are used to great effect elsewhere in the United Kingdom and have been proved to save money. Has there been any progress from the Scottish Government on that, and what financial savings could be achieved through the use of RAM tags and other such measures?

11:00

Karyn McCluskey: That is my specialist subject, so you might have to stop me. Current legislation makes provision for the use of monitoring tags, so we have the ability to use them but we now have to implement that. There are two technologies that are waiting to be implemented. One is a global positioning system, which is a much more sophisticated way of managing

people's movements; the other is remote alcohol monitoring, which is a tag that is attached to your ankle that measures the ethanol in your sweat every 30 minutes and electronically transmits that information. It is almost 100 per cent accurate.

It is very useful for people who have a course of conduct in their offending that involves alcohol. They normally put the tag on their ankle and use it for 120 or 180 days. You say, "You need to stop drinking and I'm going to help you stop drinking." It is not for people who are addicted. It is used all over England and Wales, with some success. I think that we could do it better—we have some very good alcohol services in Scotland. We could use it in the court service.

I have been an advocate for monitoring for a number of years. It is fair to say that we have been slightly slower in implementing the technology, and colleagues know that that is my view. I still think that it has a purpose. Around 80 per cent of the crimes that we see in the court system involve alcohol, and it is not always people who have an addiction—it is people who are going out on Thursday and Friday nights. It is about getting people to find their sober friends and sober places, and it can be very advantageous to use technology to support that. However, the approach requires support—just as you cannot just put smart watches on people's wrists and think that everybody is going to take some exercise, people need to be supported if they are going to make that change. Therefore, like any electronic monitoring technology, it is not just about the technology, but it can be very efficacious.

Sharon Dowey: Have you made any progress on that?

Karyn McCluskey: No, not yet, but it is in the legislation. It took us a long time to get it into legislation and Covid happened in that time. In fairness to colleagues who are trying to bring this technology into use, I should say that Covid caused a bit of a hiatus, but I am still hopeful.

Sharon Dowey: I will turn back to the joint submission. There are references to the Scottish Government's national strategy for community justice and the delivery plan as well as the recently published community justice performance framework. However, throughout the submission, there are references to funding. It also refers to

"significant implications for resourcing across JSW"

and

"a depleted and tired workforce."

The submission goes on:

"The Scottish Government's Vision for Justice, published in February 2022, includes a visual routemap to a transformed justice system by the end of the Parliamentary term in 2026."

The submission then draws the committee's attention to the one of the commitments in the vision:

"We will invest in a substantial expansion of community justice services, supporting diversion from prosecution, alternatives to remand and community sentencing."

It seems as though we have a framework that everybody has done a lot of work on in order to tell us where we need to be, but it then also says:

"It is our view that the 23/24 spending priorities are not fully in line with the above commitment."

Is change happening quickly enough? Do you have the resources or are all these frameworks just words on pieces of paper and is it the case that the frameworks will never be achieved if we do not start focusing on this?

Karyn McCluskey: I think that it is fair to say that things never happen too quickly; they happen too slowly.

Sharon Dowey: Yes, absolutely.

Karyn McCluskey: There has been some success. You asked about young people. The change to the justice system for young people was transformational in Scotland. It was achieved through early diversion—getting young people out of the system. It was a really brave focus to say, "We know that we have to do this." The fact that we have zero young people in prison just now is the result of teachers keeping kids in school, diversion approaches and a real focus on the issue. We need to do the same with the adult population, but that will require some verbs in a sentence, as you say—we need some doing words—and resources.

I am a great advocate of some of the work that the third sector does, but it is depleted. I sit on four or five third sector boards, so I know that it is scrimping and in need of money.

I give the example of the throughcare services that we are commissioning just now, which involve meeting people who are coming out of prison and trying to get them back into their homes and communities. The annual budget for those has been £3.7 million for the past 10 years—it never changed in that time. It has now gone up to £5.3 million, but if we were to provide throughcare for everyone who is coming out, it would probably cost us about £19 million. There is therefore a "Mind the gap" situation in relation to what we can actually achieve. It is expensive to provide such services. I know that people will be clutching their desks when I talk about money like that, but it is a case of either pay now or pay later.

At the end of the day, our aim should be to reduce victimisation. We could spend loads and loads of money on great victims services—I absolutely think that we should—but it will not

create any fewer victims. Instead, we need to spend money on services to stop people perpetrating crimes. That will involve providing addiction services where they are needed and having problem-solving courts. It will also involve facilitating the third sector to carry out the work that statutory services cannot do, because they have a different relationship with people. That will cost money.

We know what works, though. It is not as though we need to go and find the evidence base for it, because that is already there. The question is whether we choose to follow it or instead try to build more prisons. HMP Berwyn, the last big prison that was built in Wales, cost something like £460 million. Then we are talking about a cost of £80,000 per year to keep someone in prison, given all the on-costs. It depends where you want to spend your money. I know where I would spend my money, and where it would be put to best effect.

I know, too, that community justice can deliver better outcomes than just cycling people in and out of prison and making them homeless, which is what we do. Then we wonder why people come back out, end up in sleeping bags on the street and go back into addiction. I am not sure who said that phrase about the definition of insanity, but you know exactly what I am talking about.

Sharon Dowey: The criminal justice social work—

The Convener: I am going to bring in other members then I will come back to you, Sharon. I know that several members have a keen interest in this area, so we will move on.

Rona Mackay (Strathkelvin and Bearsden) (SNP): First, I want to tell our witnesses how much I value the work that they do against all odds, it would seem. It is crucial.

The 2024-25 budget includes a £14 million increase in funding for nationally commissioned community justice services. Clearly, that is not enough. How much of your work has been restricted by not having enough funding? Is there a realistic ballpark figure by which you would want your budgets to increase? I put that to Lynsey Smith first.

Lynsey Smith: We would make a strong argument for retaining the investment that is already in the system and having it mainstreamed into our recurring budget. We received £11 million of that funding.

I will start with an answer to the previous question. Our submission mentioned a report from last year. Since then, there has been progress and investment in the area, and we have seen some of our key services move on. For instance, the figure

for our structured deferred sentences work has risen by 8 per cent; diversion from prosecution has risen by 28 per cent over the past year; and there has been an overall rise of 17 per cent in bail supervision. We are starting to see movement as a result of the investment that came through last year.

We have focused on early intervention, which is about trying to divert people from the system, in line with the priorities and the incentivisation money that was given. We have seen some success, but it has not been consistent across the country.

To answer Ms Mackay's question, one key area that we need to do more work on is further strengthening our community sentences, such as community payback orders and unpaid work. I probably could not put a financial value on that, though. We have seen a slight reduction in the issuing of community payback orders, but there is huge potential for strengthening and improving them.

One of our key challenges is judicial confidence. The judiciary has grave concerns about the system as a whole. We do not exist within a vacuum. Service users require drug and alcohol services, homelessness services and mental health services. Various parts of our universal system are creaking, and that is having an impact, but I could not put a cost on it.

Rona Mackay: That is fine. That is really helpful.

Lynsey Smith: More work needs to be done.

Rona Mackay: Sure.

Karyn McCluskey, do you want to comment?

Karyn McCluskey: I suppose that the question is: where do you stop? I will mention addiction services. I went up to Edinburgh sheriff court with a colleague yesterday. It was like being in the waiting room of an addiction service. I know the harm that is caused by crime and that there are no excuses for committing crime, but there are loads of reasons why that occurs. We know that we are failing people within the system. They are not getting the treatment that they need. We do not have the necessary stickability.

Edinburgh and the Lothians do not have any drug treatment and testing orders just now, because a DTTO is too expensive. We do not have any services at all for people who come into the justice system. That is replicated throughout the country to a greater or lesser degree. Money absolutely needs to be spent. We need to look at the people who come into the system and cost out the services. I think that we could provide a cost. Can I give that to you right now? No, I cannot.

However, the amount of people who are in the system is not that great. I know that people are often overwhelmed by the volume of people who are in the justice system. They think that it is huge, but it is not. We have a small amount of people who come in frequently: the people who prolifically offend.

We need to use problem-solving courts with all the services in them and to have stickability so that we can provide swift, visible justice. Community justice suffers in comparison with the prison system because we do not have a big building or a GEOAmev van. We are invisible. We need to be better at making community justice more visible for sheriffs so that offenders can do their unpaid work on the day that they are sentenced or get an electronic monitoring bracelet on the day that they are in court. That would increase judicial confidence.

Work has been done on costings elsewhere in the UK. The Greater Manchester Combined Authority did some work on how much it thought that it would need for its probation service, which is justice social work. It would require a fundamental shift. If we aspire to be like some of the Scandinavian countries—we talk about it all the time, regardless of who I am speaking to—we need to invest in the right place. That means a big shift. It is not 2 per cent of the budget.

Keith Gardner: It is a critical area. When we think about more resources, we think about increasing the number of workers at the coalface. There are other elements as well. For example, we know the yield that comes from structured deferred sentences. We know that the number of admonishments at the end of the deferred period is remarkable. To enable those to happen, we need to schedule in court time, but that is at a premium these days. Lynsey Smith and I spoke to a colleague recently who would like to increase their structured deferred sentence provision, but that is sorely limited simply because they cannot get court time. I understand the pressures on the courts, but that is one part of court business that, if it was expanded, would make a difference in the process.

Rona Mackay: I have a question for anybody who wants to answer. What is the impact of annual funding for services on your ability to make progressive plans?

Karyn McCluskey: It impacts on justice services and statutory services, but it really impacts on the third sector. Come January, if a third sector service does not know whether it will be funded, it already puts letters out to its staff saying that they might be out of a job. That is a terrible thing to do, and I have sat on boards where that has happened. You lose really skilled staff. In particular, work with women who offend is

a really skilled role. We cannot afford to lose people who are really skilled in that sector just now. They will go into retail or other jobs that are a bit more predictable, so it really has an impact.

We have been quite lucky in relation to throughcare. The Scottish Government has said that it will fund that for three years—and perhaps longer. We need that, particularly for the third sector, because otherwise we cannot depend on services being there in April.

At the moment, 36 per cent of the female prison population is on remand. If we had better services in the community, we could probably get a lot of those women back into the community with their children, because only one in 20 children whose mum goes into jail stays in their family home.

11:15

Rona Mackay: I agree 100 per cent with what you have said. You will also be aware of the restrictions on the Government because we do not know what our budget will be. I am not using that as an excuse—it is just a fact.

That was a really useful contribution. Does anybody else want to comment, or has Karyn McCluskey said it all?

Lynsey Smith: Karyn McCluskey has touched on the main points. There is some uncertainty, because we are unable to provide permanent contracts, which makes recruitment and retention more difficult. Where we have more stable funding streams, we are able to think longer term about service development, innovation and retaining staff.

The other key issue is the flat-cash nature of budgets and the challenges that that poses with pay inflation. There are probably challenges in the near future.

As Karyn pointed out, when a local authority commissions a third sector service, there can be—end to end—six months between entering into a process to procure a service and awarding a contract. That leaves only six months.

Katy Clark (West Scotland) (Lab): My office has submitted a number of freedom of information requests in relation to the implementation of some community-based disposals and electronic monitoring. For example, the issue is not just about the implementation of measures such as community service orders when they are ordered by the court but about whether electronic monitoring happens when the court orders that it should happen. Some of the figures are quite shocking—in half of the cases in some parts of the country, there has not been implementation of the measures.

I am not quite sure who would be best to answer my question. Karyn McCluskey, do you have any insight as to why that might be, from your experience of the system?

Karyn McCluskey: Keith Gardner has been involved in electronic monitoring, so he can probably give you a more detailed response.

The use of radio frequency technology, in which you have to put a monitoring box in people's houses, causes an additional layer of complexity. GPS monitoring is easier, but Keith Gardner probably knows more detail about that.

Keith Gardner: It is a good question. The restriction of movement requirement in a community payback order is a fairly new development. There are parallel issues with that and electronic monitoring for bail, but I will stick with the CPO just now.

There has not been a huge uptake in what they call the 10th requirement. There are a number of reasons for that. Part of the reason is that the management of the—

Katy Clark: Sorry—I am talking about situations in which the court has ordered that those measures take place, but they do not happen. For example, a court will say that there is to be electronic monitoring—I am referring to the electronic monitoring system that we use, because we do not have GPS yet—but that does not happen. The same can apply to apply community service orders. A court order is made, but the sentence is never implemented, so the offender is never asked to carry out the sentence, through no fault of their own. Do you have any insight into why that happens so often?

Keith Gardner: A very thin issue in that regard is the restricted movement requirement in a community payback order. The legislation does not say that the monitoring has to be electronic, but, logically, that is the easiest way to monitor movement.

If somebody has a condition or requirement for monitored restriction of their liberty as part of a CPO, I honestly cannot fathom—and I have no evidence on—why that would not be taken back to court, unless the social worker was of the view that it was not practicable to do so and to ask for that requirement to be removed.

Katy Clark: The responses that I have had to my freedom of information request have been in the media, but I will provide them to the witnesses, and you might be able to respond in writing afterwards. It would be helpful to understand why, in such a high percentage of cases, there has not been implementation.

I will pick up Rona Mackay's powerful point about women. I want to get an understanding of

the availability of alternatives to custody for women and the geographical spread of that availability. Sheriffs have raised with us the issue that, in some parts of the country, alternatives are unavailable, but that might be partly because there are fewer women offenders in many parts of the country. In more rural parts of the country, there are no alternatives available to sheriffs. Will you say a little about that, and where there is good provision and where there is not?

Karyn McCluskey: You are absolutely right. We put together a community services tool because we wanted to show the services that were available. I will send a link to that. The tool outlines all the services that are available in community justice throughout the country. We are now adding recovery services, as well as services for veterans and women.

You are right that there is geographical spread. In Glasgow and Edinburgh, there are fantastic women's services, and there is the one-stop women's learning service—OWLS—in Perth.

Members understand that we deal with complicated and vulnerable women in the system. I am not saying that they have not caused harm, but they are incredibly vulnerable, and the services need to be specific. In rural areas, that is really difficult. Sometimes, I have seen women come in front of a sheriff, and the sheriff almost makes a Hobson's choice, by saying, "What is the least bad thing I can do here?" I fear that some women go into prison because the sheriff thinks that they will get a warm roof over their head and three meals a day, and that they might get access to some services. However, as members have just been asking about, prisoners who are on remand do not get all the services that they need in order to recover. A lot of those women have committed low-level crimes. It is not like they are appearing before a sheriff and jury or in the High Court. They are in the summary courts. They are incredibly vulnerable, so it is a real challenge.

I do not have a good answer for you, but I can tell you where the services are. They are on our service tool, which is now available on the judicial hub, so sheriffs can look at it. Defence agents can also look at it so, when they are doing their plea and mitigation, they can say that there is a great service in Glasgow or Perth and encourage sheriffs to consider more creative sentencing.

Katy Clark: Is there more provision for men, or is it, again, the case that, in certain parts of the country, there is better provision and, in others, it is not as good? Will you give us a bit more detail on where there is adequate—or something approaching adequate—provision on offer, so that sheriffs have alternatives available to them? If there are large parts of the country where that is not available, is that something that you can talk

about today or share with the committee in writing?

Karyn McCluskey: I can certainly send you some information later on. I support colleagues in Argyll and Bute, which is a vast geographical area. For somebody who is offending on Islay, there will be no or very few services there, and they will be incredibly expensive.

I know that we focus on women, because we have had the Angiolini commission and we have had a lot of real focus on women. The issues for men are similar but different, obviously. In a big urban area where we are able to commission services, it is fine. In Glasgow and, to some extent, in Edinburgh and Aberdeen, there is more availability. The further out we get, there absolutely is postcode justice. People will get a different outcome from what they would get if they lived in an urban environment.

Even in an urban environment, services are stretched. There will be waiting lists and it will be challenging, and it goes back to money and availability. It is much more difficult. We do Highlands and Islands impact assessments, and throughcare is a really good service. We have managed the throughcare; we have interviewed people in prison and tried to work out how much money is needed.

We have also thought about things such as spot purchasing for some of the islands areas, where we cannot have a standing army of people waiting for one or two people who end up in the justice system, but we can spot purchase services. We have looked at some of that, but it is not a perfect solution.

Katy Clark: You have spoken about the cost of a new prison. We know that prisons soak up huge amounts of money and that the stated policy of the Scottish Government is for a shift to non-custodial disposals. After years of cuts or flat budgets, there was a slight increase in funding last year, which might be partly due to the work of the committee. Given the prisons crisis, to what extent is that new money having an impact, and how much more would it require in the coming budget to make a dent on prison numbers?

Karyn McCluskey: If you want a community first approach, you will have to put in more than £14 million. That amount was absolutely welcome, but it probably barely met inflationary costs. Salaries are under pressure, as are local authorities. It will take something pretty seismic and structural to change the whole system and go for that community first approach.

People might say, "Aye" when I talk about Scandinavia, but it has good outcomes, lower offending and much more moderate thoughts about justice. The people there just do not want

everybody to go to prison, because some of the outcomes from doing that are pretty poor.

Again, I do not have a number, but the issue needs a plan, which then needs to be costed, then the money needs to be found in the budget. Otherwise we will be here for the next 10 years, talking about some of the same issues.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): I will pick up on themes that others have raised. First, there are preventative spend considerations when it comes to prisons—both the capital costs of building them and the operational costs of having people in them. Will you say a bit more about the preventative spend and social prescribing through which community justice can provide savings in police time, national health service resource and local authority spend? A higher level of community justice can provide a wide benefit, can it not?

Karyn McCluskey: Absolutely, and it is about how far back you want to go with that preventative spend. Do you want to go down to primary prevention? That has been evidence based. When James Heckman, the Nobel laureate economist, came to Scotland, he said that, for every pound we spend on supporting parents and children when those children are aged nought to three, we would have to spend £15 or £16 by the time that they reach 15 or 16, to get the same effect.

Then there is the work that we do in schools. I am endlessly proud of some of the work that people have done to keep kids in school—trying to engage them, and looking for their assets, not their deficits. There is also youth work in the community. Good youth work is as close as it gets to magic without actually being magic. We denude it at our peril.

At the COSLA conference a couple of weeks ago, someone asked me about having a defined element of preventative spend in a budget. The problem is that everybody produces a narrative in which they sell everything as prevention. We therefore have to be really clear about what we are trying to achieve. For example, is it to keep younger people out of the system? You can absolutely identify the preventative spend in that. However, I sometimes think that, if a core part of the budget is preventative spend, it will just be plundered, because everybody can say that what they do is prevention—for example, having smoother roads would mean fewer potholes. That is a bit of a challenge.

However, some preventative spend concerns the Promise for young people, and keeping families together. We know that the outcomes for children who end up in care are sometimes really poor. Only around 2 per cent of young people end up in care, but almost 25 per cent of people in

prison—the figure is probably higher for those who are in the justice system—have been in care. That tells us that something about that trajectory is not good. Spending more money on keeping families together is a great place for preventative spend—for example, some of the work that Aberlour is doing in putting family support workers into complex families, where mum needs a bit more support and we need to get the kids out.

Ben Macpherson: That is really helpful on identifying the third sector and youth work services. I think of Circle Scotland, which is headquartered in Pilton in my constituency and serves all of the central belt, so I know about some of the challenges that organisations face in continuing to finance their important work. From what you have just said and what has been said earlier in the committee, is that an identifiable ask? If the third sector and youth work services could be identified for more spending, it would make a real impact.

11:30

Karyn McCluskey: Absolutely. It goes right back to Christie. I think that he said that 40 per cent of what we spend is spent on preventable outcomes, so we need to try to get more spend on prevention. We have a really good third sector in Scotland: we are lucky that we have such dedicated and skilled people and we should not expect them to be funded just from year to year.

The third sector picks up intelligence. A person might not come to our services, but the third sector will know when that person in a community such as Pilton is struggling, so it might be able to go in and prevent them from coming into the system. We are really expensive—the public sector is really expensive and policing is really expensive—so we need to try to invest that bit earlier, but we need to decide that we are going to do it: we cannot just talk about it.

Ben Macpherson: Absolutely. Do any of the other witnesses want to say anything on those points?

Lynsey Smith: Prevention is critical but, as Karyn McCluskey has said, we need a plan around how to get on that journey towards tipping the balance more to that space. I am talking about a whole-system tip of the balance.

In the past few years since Covid, community justice and social work justice have seen some real improvements through an increase in early and effective intervention. We have seen the advent of problem-solving courts in Glasgow—for example, the youth court, which is tackling some of the challenging issues for the young people whom we are trying to get out of the justice system, at that juncture; the women's problem-

solving court; and the alcohol court. Some prevention work is being done, but it needs more investment to grow it and realise its potential.

We have just been talking about how urban local authorities sometimes have the luxury of resources, capacity and a whole-system approach. If a local authority is part of a health and social care partnership, it can work with a whole system to meet the needs of its citizens. However, we need to think about where we need investment in the whole system for community justice and what that might look like. For instance, we need understanding of how we can meet the needs of women who do not have a bespoke service such as the one in Glasgow, and how the one-stop-shop ethos that has been proven to be successful translates to Islay, for example, where there might be challenges in delivering the service. People can bring new thinking about how to meet a variety of needs for an individual, so we need to think about how justice social work, for instance, can play in successfully with other services in a rural area.

We need to challenge ourselves and create space to think about how we can improve and strengthen community resources. We need to undertake work in order to better understand the challenges. We have not had the space to do that and to really understand what the barriers and challenges are for local authorities that cannot deliver bespoke services. That is not to say that the outcomes in a bespoke service could not be achieved elsewhere in the system using a different model, but we need space and investment in order to realise potential.

Ben Macpherson: We spoke earlier about the benefits that the Children (Care and Justice) (Scotland) Act 2024 has realised. I was on the Education, Children and Young People Committee when that bill went through stages 1 and 2. One of the strong pieces of evidence that we heard at stage 1 was from your colleagues at Social Work Scotland, who talked about the challenge of resourcing implementation of that legislation. Is there anything that you want to say today about where we are with that?

Lynsey Smith: I cannot comment on that specifically, but I can comment on investment in intervention at an intense level early on.

The youth court in Glasgow favours structured deferred sentences, which means not imposing community payback orders, the requirements of which are often really difficult to fulfil. However, if a cluster of services works alongside the court and key youth services, and if we invest in a level of intensity at that point, we can divert young people out of the system. As Keith Gardner pointed out, people are being admonished then entering employment or education in the future.

You will appreciate that that is not the outcome for every young person who goes through that system, but we have enough evidence to suggest that we need to use sticky outreach: we need services to be well co-ordinated and co-located, when possible. A lot of the success that we have comes when we are able to pull together teams that include colleagues from health, addiction and mental health services backgrounds, so that we are not dealing with the added barrier of trying to access universal services where we can deliver them as a one-stop shop. Homelessness services have also been key. They provide supported accommodation for young people as they transition to living on their own, but they also help also across the board.

Pauline McNeill: Good morning. Lynsey, I will continue by asking a follow-up to Ben Macpherson's question. In answer to his question, you said that there is a level of intensity required to pull together teams. Is one of the key issues that it is expensive to have the intensity to pull teams together?

The reason why I ask that is that when we first created drugs courts, I assumed that anyone who had a drug addiction would go to the drugs court, but I was told that they would be for the people who it was felt had the most difficult problems. That is because of the cost of pulling teams together, and their being resource intensive. Has the situation ever been better than it is now, or do you envisage that it is always going to be a problem because of the intensity of the resource that is required?

Lynsey Smith: Resources are often expensive. As you suggested, part of the trick in using a finite resource is to route the folk who require that level of intensity to the right place, so that we match need and risk with the right intervention.

You mentioned the drugs court. We are thinking creatively about how we can strengthen community sentences and create efficiencies in the system. We want to review that model and think more about substance misuse, so we are considering whether to expand that provision to include alcohol dependency. You are right that the drugs court has tended to be held for people who have significant dependency issues, whereas folk who are not having significant issues with drug misuse tend to be dealt with by universal services. There is a degree of intensity and cost associated with services such as drugs courts.

Pauline McNeill: I remembered that Karyn McCluskey gave strong evidence to the committee the last time she was here, so I went back to look at it. You said to the committee that community-based disposal orders are an issue, and that 80 per cent of sheriffs would like to give such sentences but cannot, because users of drug

services simply lead chaotic lives and the disposals take place at specific times. Sheriffs end up giving short-term sentences because they cannot see a way around that. Is there a way around the problem of sheriffs not having confidence that structured community sentencing in its current form can work?

Karyn McCluskey: Services should be available, and be swift and visible. People should not have to wait 13 weeks to get an appointment: they need things to happen there and then.

I do lots of sheriff training. I have found them to be very engaging and thoughtful about how they want to sentence, and they want to do smarter sentencing. They are bringing in procedural justice and asking the person in front of them what they think they need. Most people are the best diagnostician of their own condition; they understand what services they need. We need to try to get services into the court and show them that the person is on drugs, or whatever.

We have around 12,000 people in Scotland who are offending and have an issue with drug use, so we need to uptick the number of problem-solving courts that consider drug issues. We need that stickability. It is not about there being just one intervention for somebody who is trying to change their behaviour. Relapse is common—you will know that if you have tried to lose weight, stop smoking or whatever. People need to go back again and again and they need stickability, but that costs money.

We almost separate things out. The drug death figures come out, and they are terrible, so we wring our hands and lament them, but we miss the opportunities that we have to intervene. If we had thought about that more coherently, we would have trained some sheriffs and got some better problem-solving courts.

I do not want to say that we should have hived off some of the drug budget to address those issues in the justice context, but we would probably get better outcomes. The evidence base from New York and places where problem-solving courts exist shows that we do not need to pilot them because they work. Our ability to deliver is the challenge. Creating court time and getting the appropriate sheriff to sit is the challenge.

Pauline McNeill: The sheriffs have a problem when they are looking at whether someone is a drug user, because drug services are available at specific times. I am trying to establish whether there is a way around that in a community sentence. If you cannot fix that bit, there will be an unending cycle.

Karyn McCluskey: I have pulled information out for you. Obviously, DTTOs are how we have approach the issue, but there is a slight problem

with them in that addiction is a public health issue and we are trying to manage it within the system. My previous point was that there are 12,000 people who offend and have drug issues. Last year, only 301 orders were imposed on 264 individuals. That is one of the lowest numbers on record and it will probably be even lower this year. There has been a general decline over the past decade in use of CPOs with drug or alcohol requirements: we have had only 117 CPOs with a drug treatment requirement and 122 with an alcohol requirement. You see the gap between the number of people who need support and treatment and the number who actually get it. Sheriffs see the same people again and again, and I think that they sometimes get frustrated.

Pauline McNeill: Does a drug treatment and testing order get around the problem of not applying a community sentence? In my understanding, a community sentence is an alternative to prison. You do something for a specific length of time, and if you are a drug user you cannot do that because you have to go and do that thing. Does applying a drug treatment and testing order get around that?

Keith Gardner: Sheriffs can and do do that, but the question is—correct me if I am wrong—how we make services available for people, whether they are at a DTTO court or at sentencing for a CPO with a drug treatment requirement. How do we translate that into services being available there and then? There are gaps and people need to wait for services. There are waiting times. Do addiction services prioritise people in the justice system? No.

Pauline McNeill: I am not sure that I understand the answer, to be honest. In case I was not clear, I will note the reference again. Karyn McCluskey said that 80 per cent of people whom sheriffs would like to give community sentences to cannot comply with them, so they give them short-term sentences.

Karyn McCluskey: That is because the services are not there. Is that the question?

11:45

Pauline McNeill: You said that sheriffs like to give those sentences because some people cannot

“be at a drug service”—[*Official Report, Criminal Justice Committee*, 1 November 2023; c 61.]

at a specific time, simply because they lead “chaotic” lives. I think that that means that they cannot complete the requirements for a community sentence, so sheriffs give them a short-term prison sentence. When you said that last time, I wondered whether there was a way

around that so that sheriffs can award community sentences if they can get around the challenges.

Karyn McCluskey: The difficulty with DTTOs is that there are often breaches. They are testing people, and people will fail. When conditions are breached, people often think, “I’ll just send you on a short-term sentence”, but the evidence is that that does not work. Trying to punish or mandate a person out of addiction does not work, so we need other services. I might be misunderstanding the question, so we can pick the matter up offline, because I have some other data on the drug services that are available around the country.

Pauline McNeill: Are you saying that we need to combine the community service orders that anyone could get with community service orders for people who have drug or alcohol addiction issues, so that sheriffs can be confident that they can apply a community service order as part of a prison sentence, because they are satisfied that, within that, they can work around the issues, so that a prisoner can get access to the drug services that they need. Is that correct?

Karyn McCluskey: Yes.

The Convener: We got there in the end.

Fulton MacGregor (Coatbridge and Chryston) (SNP): It is probably a good point for me to ask my first question. Much of our discussion has been about where community justice sits with other services. We have been talking about drug and alcohol services, which are in the health space, and there has been quite a lot of talk about children’s services.

What are your thoughts—not from a policy angle, but more considering the budget-related possibilities and concerns—on the proposals for a national care service? At this point, it has not been proposed that justice services could be included in the proposed national care service, but there are proposals for the National Care Service (Scotland) Bill to include a provision so that justice services could be brought in at a later date. Our committee is not convinced on that and we have made our views known, and I have my own views on that proposal.

That aside, given what we have talked about regarding the justice system’s interaction with other services, what budgetary possibilities do you think that the creation of a national care service could bring, and what concerns would you have about that? I know that the question is broad, but I am interested to hear your views. I think that it has been a year since we have directly discussed your position on that.

Lynsey Smith: For me, the detail on the proposed national care service remains unclear. The general argument regarding justice social

work being included is that if was to be situated separately, it would potentially be sitting outwith the universal services that service users use and justice services work with, such as health, mental health and addiction services.

We have not yet touched on public protection, but justice social work services are built into a public protection framework. We look at multi-agency public protection arrangements and managing risk in the community, alongside working with children and family services and adult support and protection services.

I will answer your question about the financial implications. At the moment, justice social work receives ring-fenced funding from the Scottish Government to deliver justice services. The view of members across the country on Social Work Scotland’s justice standing committee is that that is critical in protecting key services that deliver a justice response. When it comes to a national care service, I know that COSLA’s position is that it would want ring-fenced funding to come to an end. It is a really good question, though, and I do not know what the financial implications would be for justice social work and the national care service.

I would say, though, that it is taking quite a bit of resource to try to articulate a position, and we have spent some time trying to think whether justice should be included or taken out. There is some strength of feeling on the justice standing committee that we could have used that resource to focus on some of these issues. However, at this point, we are unclear about the future of the national care service, albeit that the legislation appears to be continuing to go through the motions.

I do not know whether I have given you a coherent answer, but you will forgive me for being vague about any tangible impacts and the financial implications.

Karyn McCluskey: The position is inchoate. We just do not know how much it will cost. Obviously, we are talking about budgets now; Derek Feeley was very clear about health and social care, but there was less detail about justice and children and families, and I think that that is still the case. We have made a response, but because we have not seen the detail, it is actually very difficult to respond on what things will look like.

The fact is that the cohort of people whom we support in the community do not tend to get lots of votes. People do not really care about them. I agree with Lynsey Smith; I quite like ring-fenced funding, because it says, “This group of people need care and support but also supervision, because they have caused harm.” I just wonder

where that money would go and whether it would be diverted to other areas if we were not getting it.

Fulton MacGregor: So that would be a concern for you.

Karyn McCluskey: Yes, because I heard the other day somebody talking about the prisons and so on and asking, “Does anybody care?” This group is very othered, but they absolutely need services and we need to address that. After all, they all have kids and families. They are coming back into the community, and they need support if their lives are to change. I have just not seen enough detail on this, and I know that Audit Scotland has outlined challenges with regard how much it is all going to cost.

Fulton MacGregor: Did you want to come back in, Lynsey?

Lynsey Smith: Again, thinking about the lack of detail, I wonder whether there is an opportunity for the national care service to cover social care in prison. One would hope that bringing together the commissioning of health and social care within a prison environment would provide opportunities to improve things and have more cohesive service delivery.

Part of the challenge is our ageing prison population as well as some of that population’s complexities, be it physical disability, physical needs or health needs. One key area of concern is mental health and neurodiversity, but the absence of detail makes it difficult to say whether this presents a really exciting opportunity to transform that aspect of justice.

Fulton MacGregor: Keith, do you want to respond?

Keith Gardner: You have asked a good question. Notwithstanding the lack of detail about the NCS, the premise and logic behind it are that, if more services are joined under one umbrella, they will have better access, better connection and so on. However, the experience of integration joint boards across Scotland is that, although roughly half of justice services are in IJBs and roughly half are outwith them, all areas report exactly the same issues with regard to access to health, alcohol and drug services, and psychiatric and mental health services. There is an expectation that an integration joint board arrangement should mean closer links, but the reality is that that is not particularly the case. There is no evidence to say that it makes a difference to justice services whether they are in or outwith an IJB.

Fulton MacGregor: That is interesting.

My next question is probably for Lynsey Smith. It comes from my own experience as a criminal justice social worker; I will tap into that, although it

is a while ago—coming up for eight years now—since I last worked in the sector.

Is Social Work Scotland thinking about the workload of criminal justice social workers in particular, and whether it can make asks of the Government or various other agencies in that regard? I will set out what I mean by that. I am not giving away any secrets by saying that social work has moved to almost 70 per cent or 75 per cent of the job involving paperwork at times—you will hear that quite a lot. There are risk assessments for social workers to fill in when they are working with an individual, and there are reports and various other assessments to be done, too.

Is anything happening that could perhaps free up a bit more time? That would almost have a budgetary effect, as there would be more direct intervention. I know what the challenges are, because I have done the job. The challenges are real—there are various different people wanting assessments for everything. What are your thoughts on that?

Lynsey Smith: You are obviously right that there are challenges in relation to carrying out risk assessments and paperwork. We try to balance the need to record keep and ensure that records are sound, and the only way to do that is to have a manageable case load that enables people to keep records appropriately. We set great store by carrying out a risk assessment in order for that assessment to inform our case management and risk management plans so that there is a balance.

Karyn McCluskey spoke about the use of the third sector. We find that successful management of a case often involves not just the criminal justice social worker but a number of people who are working with that person to meet their needs.

Some of the core functions of a criminal justice social worker are probably hard to negotiate away, but there are other aspects around stickability and more specialist hand-holding types of mentoring support on which social workers do not have the time to spend two or three days with an individual each week. There is a balance, but there is a need to ensure that record keeping is a priority. We need to invest in keeping case loads manageable so that a proportion of the time is spent on that and people also have the time to undertake one-to-one interventions.

Fulton MacGregor: Have I got time for another question, convener?

The Convener: A quick one, and then I will bring in Sharon Dowey.

I see that Sharon is okay, in fact.

Fulton MacGregor: I do not know how quick my question will be, convener, because it is quite

general. It is probably for Karyn McCluskey and Keith Gardner.

I certainly do not need to be convinced of the societal change that needs to happen. However, I feel that, although you have spoken about this being an opportune time, there seem to be so many barriers in the way.

What would you say to the committee, and to the Scottish Government, about that? What case would you like us to make for more investment in community justice services to deliver the results in a way that will mean that society will come with us? How much time do you think that we need in order to see that change? It is not going to happen overnight.

Karyn McCluskey: No.

Fulton MacGregor: What would be your plea?

Karyn McCluskey: If you are not convinced of the challenges that we have, including the prison population, I do not know what would convince you. You are right to highlight what we need. As I laid out, we need to tackle prolific offending, and we need to act smarter. We need a strategic centre that looks at the whole system, so that we do not make decisions in one part of the system that affect the other parts of the system. Having more courts is great, but the outcome is more community sentences and more prison sentences.

12:00

A decision needs to be made about how we look at the system. A plan covering five to 10 years is probably needed, but that does not mean that we cannot get quicker results right now. At the moment, people are coming out of prison after serving short sentences, or they might never have been given a sentence and have spent their whole time on remand. I do not know how that is justice. People are not getting the interventions that they need. We are depriving people of their liberty without there having been a case for doing so.

A compelling case has already been made, but we need a plan. We need to speak uncomfortable truths among friends about how difficult it will be to change direction. At the moment, for us, sending people to prison seems like the easy choice, but it is not working. We need to reserve prison for those who would do us serious harm. Those who go to the sheriff court or the High Court, with a jury, will end up in prison if that is needed to protect the rest of society, but we need a different thought process for those who are just churning through the system. Perhaps we need to do a philosophical thought experiment with ourselves about what success could look like, and what Scotland could look like in the next 10 years, if we start to make changes right now.

Keith Gardner: As Karyn McCluskey said, the compelling argument is that nearly 8,500 people are in prison in Scotland. There are some issues that we could tackle. For example, we could slow the flow of people through the courts, which would usually involve things further upstream, such as increasing the use of diversion from prosecution, but that would require resources.

At the other end of things, people who have read the recent report by His Majesty's Inspectorate of Prisons for Scotland on progression and risk management will know that the progression system through the prison estate is problematic. For people with longer sentences, we need to think about how we change the progression model and allow them to safely—always safely—spend part of their rehabilitation in the community, while still being within the ambit of the custodial estate. We supported and welcomed the early release of short-term prisoners, but the reality is that those spaces fill up very quickly.

We should slow the flow of people coming into the system and getting to court, because once people get to court, it is almost a lottery in relation to where they end up. On the other side of things, 52 or 53 per cent of the prison population are long-term prisoners, and we need to find a different mechanism to allow those people to come back into the community so that we can support their longer-term rehabilitation.

The Convener: We are just about out of time, but I have a couple of quick final questions. My first one picks up on Fulton MacGregor's question about case management and the time constraint around recording information. Community Justice Scotland's submission states:

"The Committee may wish to consider whether funding should be provided to facilitate or require more national multi-agency working arrangements in areas such as data and information sharing."

That comes back to the recording and sharing of information and being a bit smarter in how we work together. Will you expand on what you have said? I am quite interested in how efficient that part of the system is.

Karyn McCluskey: It is not very efficient. We use very old systems. We do not use artificial intelligence in the way that others, including those in the health system, use it. AI is not used to great effect in the justice system, for a range of reasons, such as the biases with AI.

Fulton MacGregor asked about case loads. New technologies are coming in, and the Probation Service down south is looking at how new AI could make the system more efficient, so that people are not double keying lots of information.

My background was in intelligence analysis, so I know that we need to bring data sets together.

That would mean that when members made a decision, they would be stepping off a firm platform of data that enabled them to say, "We know what the case is and we are going to make this decision." That is not really in place just now. The police have systems that do not talk to the procurator fiscal service ones, and the SCTS has its own data, so it is a case of trying to merge it all.

We have been doing work on failure to appear at court, which is a huge issue. Thousands and thousands of warrants are granted for people who fail to appear. Trying to work out why they do that—by looking at times, dates and locations—so that we can aim to do something about it has probably taken me six months or longer.

We should be able to do that sort of stuff at the press of a button. We should have the data sets merged so that, when it comes to appearing before the criminal justice programme board or, indeed, this committee, I can give decent information and intelligence. It is not just about the information; intelligence tells us how we can shape and change things. That needs to happen more. I do not want to say that we are in the 1990s as far as merging data sets is concerned, but perhaps we are even slightly further back.

As colleagues who have done counterterrorism work will know, down south there is a joint terrorism analysis centre where such information is brought together. We need that approach in Scotland. There are only 5.5 million of us here, which is not a huge number of people. We do have old-fashioned systems, but we could still bring the data from them together so that it could be meaningful and allow us to make better decisions.

The Convener: Thank you for that.

For our final question, I will come first to Lynsey Smith. We have mentioned the prison population a lot. You will recall that, back in the summer, we saw 477 prisoners being released early. The Scottish Government is also consulting on legislation to release certain long-term prisoners early. Presumably, all that will place additional demands on justice social work and other services. I am interested in whether the costs of doing that have been assessed or covered. Where are we with that?

Lynsey Smith: Alongside officials, we have been modelling the potential costs for the predicted numbers of prisoners who could come out in each of the scenarios, whether it be where they have served two thirds of their sentences or under the reduction from serving 50 per cent to 40 per cent of their time. We have arrived at figures with costs attached to them.

Again, we would be keen to become involved in that area. Prisoners who would be released under

the proposed reduction from 50 per cent of sentence served to 40 per cent would not regularly have justice social work involvement, but we can see that there is a requirement there. Such provision is not currently in place, although the throughcare service has successfully stepped into that space across the nation. We are in transitional arrangements on that.

We have costed up what those scenarios would mean in the system as it is, but we have also explored what might be missing in the system that could make the process of reintegration into the community more successful.

The Convener: That is really interesting and very helpful. Have you detail on that that you could perhaps share with the committee?

Karyn McCluskey: We have done some work on the impact on throughcare. We have to meet people who are coming out of prison. They need houses and a connection to services. All that needs to be modelled through. Of course, those are shifting sands for us just now. We have already modelled that, but we need to remodel it and look at how much it might cost.

The Convener: Would you like to have the final word, Keith?

Keith Gardner: In the context of the reduction from 50 per cent of sentence served to 40 per cent, the committee might find it interesting to see our costings on release at two thirds of sentence served, based on the scenarios, the risks that people present and the costs that local authorities would have to meet.

The Convener: It would be interesting and helpful for the committee to see that detail. Thank you.

I am going to bring our session to a close. I thank all our witnesses for their attendance; your evidence has been very helpful and interesting. We will now move into private session.

12:10

Meeting continued in private until 12:40.

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