



OFFICIAL REPORT
AITHISG OIFIGEIL

Criminal Justice Committee

Wednesday 13 November 2024

Session 6



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Pàrlamaid na h-Alba

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CRIMINAL JUSTICE COMMITTEE

34th Meeting 2024, Session 6

CONVENER

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

DEPUTY CONVENER

*Liam Kerr (North East Scotland) (Con)

COMMITTEE MEMBERS

*Katy Clark (West Scotland) (Lab)

*Sharon Dowe (South Scotland) (Con)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

*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)

Don McGillivray (Scottish Government)

Dr Brian Plastow (Scottish Biometrics Commissioner)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 13 November 2024

[The Convener opened the meeting at 09:31]

Decision on Taking Business in Private

The Convener (Audrey Nicoll): Good morning and welcome to the 34th meeting in 2024 of the Criminal Justice Committee. We have no apologies this morning and Pauline McNeill is joining us online. Our first item of business is to ask the committee to agree to take item 5 in private. Are we agreed?

Members *indicated agreement.*

Pre-budget Scrutiny 2025-26

09:31

The Convener: Our next item of business is to conclude our evidence-taking as part of our pre-budget scrutiny. I am pleased to be joined by Angela Constance, who is the Cabinet Secretary for Justice and Home Affairs, and her officials Mr Don McGillivray, who is the director of safer communities, and Ms Gillian Russell, who is director of justice. Thank you for joining us.

I refer members to papers 1 and 2 and to the written submissions from a range of other organisations, which are set out in the annexe to paper 2. We are, as ever, grateful to everyone who sent in their views.

I intend to allow around 90 minutes for this session and I ask the cabinet secretary to make a short opening statement.

The Cabinet Secretary for Justice and Home Affairs (Angela Constance): Thank you very much, convener, and good morning to colleagues. I appreciate the invitation to contribute to the committee's pre-budget scrutiny.

Before looking forward to 2025-26, let me reflect on the current financial year. In recognition of the fundamental importance of the justice system in supporting safe, thriving and inclusive communities, we are investing almost £3.8 billion this year right across the justice portfolio. That investment is supporting vital front-line services, providing support for victims and witnesses and tackling the underlying drivers of offending.

Nevertheless, we are still feeling the effects of a period of high inflation. Driven by several external factors, that inflation has been particularly acute in relation to our capital budget and, although it has reduced, the budget pressures have remained. The United Kingdom budget is a step in the right direction but we still face significant cost pressures, including through the uncertainty that surrounds the impact of the national insurance hike on public services and the third sector, which means that difficult decisions will still be required. I remain committed to securing the best possible settlement for the justice portfolio and will align our plans with the available resources.

We are starting from a strong position. Crime is at one of the lowest levels of the past 40 years; the reconviction rate is at its lowest rate since records began; dwelling fires have been consistently reducing over the past 10 years; and significant progress has been made in tackling the courts' backlog. We have also continued to support victims organisations as part of our commitment to put victims at the heart of our justice system.

Members are aware of the challenges around the rise in the prison population. I will continue to progress a range of actions to support a sustainable reduction in that population and, as you know, I am introducing an emergency bill that will change the release process for prisoners.

During the next financial year, I will continue to focus on delivering the priorities set out in "The Vision for Justice in Scotland" and in the programme for government so that we can deliver better outcomes for the people of Scotland. That work will include: investing in our public services; prioritising the front line to keep our people safe; supporting our justice agencies to reduce court backlogs; continuing investment in the prison estate and the work towards replacing prisons in Inverness and Glasgow; and progressing delivery of the national community justice strategy.

I will also continue driving forward a range of initiatives on crime prevention and reducing reoffending, which are key to reducing demand across the justice system. I will continue working with our justice organisations and with my cabinet colleagues to ensure that we make the best use of resources to maximise the benefits to individuals and communities, while also supporting on-going reforms and transformation to deliver a more effective and efficient justice system.

I am happy, as always, to answer any questions.

The Convener: We will move to questions. I remind members to focus on the budget and to keep questions and responses as succinct as possible because our time is limited.

I will kick off with a question about multiyear funding. The organisations that took part in our evidence sessions on budget scrutiny consistently told the committee about the benefits of multiyear funding and said that any move towards that should take place across the whole justice system.

Do you agree that that would bring benefits for long-term planning and managing resources and would give financial certainty? If so, can you provide an update on the Scottish Government's position on that change?

Angela Constance: In general terms, I am very supportive of longer-term planning and multiyear budgets, but putting that theory into practice is a different matter because neither I nor the Scottish Government are given multiyear budgets.

There is some suggestion that the UK Government is considering reviewing spending over a longer timeframe, which would certainly help. I very much agree that there is something inefficient about the annual budgetary process and that our justice stakeholders, justice officials and the Scottish Government as a whole would certainly welcome being able to take a longer-term view.

There are some examples of multiyear funding in Government. The victim-centred approach fund was a three-year fund and longer-term funding is particularly important for capital investment.

The Convener: You mentioned the UK Government. The UK budget process has recently been completed but the Scottish budget has not yet been announced. Has there been any early consideration of the impact that UK budget announcements will have on justice? For example, we are aware of some possible concern regarding the impact that the budget might have on third sector organisations and know that those organisations are a big part of some service delivery within justice. Has there been any early consideration of what the budget for the justice sector might look like?

Angela Constance: Obviously, we want to do as well as we possibly can for our justice agencies. We have a good record to build on in that regard. Crown courts, prisons and community justice courts all received a significant uplift—the fire service as well—and for some of those organisations there was a significant percentage uplift in terms of capital investment.

As you will know, the Scottish Government has welcomed the UK Government's autumn statement. It is broadly in line with our planning assumptions. Nonetheless, the financial challenges continue. It is a very welcome step in the right direction, but one budget does not end the impact of austerity. We have seen an erosion of the Scottish budget, in particular since 2021,

and that is around the cumulative impact of consumer prices index inflation, which has seen price increases of nearly 20 per cent. That, of course, has a huge impact on households but also on Government.

The Convener: Thank you. I will move straight to members and bring in Liam Kerr.

Liam Kerr (North East Scotland) (Con): Good morning. Police Scotland advised the committee that a flat-cash settlement, or a 3 per cent real-terms reduction in funding, would see officer numbers drop to as low as 15,100, or to below 15,000, respectively. It is important to be clear that Deputy Chief Constable Connors followed that up by saying that she did not believe

“that public safety would be compromised”

by such reductions, but that Police Scotland would need

“to prioritise and make more difficult choices around the threat, harm and risk.”—[*Official Report, Criminal Justice Committee*, 30 October 2024; c 9.]

Does the cabinet secretary accept the projections of those numbers in those financial scenarios? If so, what does the cabinet secretary understand that the police would have to do in terms of prioritisation and making those difficult choices?

Angela Constance: Given the operational seniority and expertise of the deputy chief constable, I would accept her narration of scenarios and would always accept her assessment of any impact on public safety. I appreciate that Police Scotland, along with other justice agencies, is, understandably, scenario planning. They will submit budget bids to the Government and be very transparent on that with the committee, as well. On the one hand, you will see their asks on what they could do with additional resource. You will also see in those budget bids what they assess as the consequences if they do not receive their bid in full or, indeed, in the scenario that you have laid out, Mr Kerr, in terms of flat cash or reduction. Obviously, the pay award is an important factor in all that.

In an endeavour to give the committee as much comfort as I can, and given that the budget is not done until it is done—this is pre-budget scrutiny—I point out that the police budget has increased, year on year, since 2016-17. In this financial year, we have seen a record investment of £1.55 billion. That is a big chunk of public money that goes into policing, which has resulted in an additional £75 million for front-line policing. The budget that I secured for Police Scotland last year has enabled the chief constable to meet her commitment to increasing officer numbers to 16,500. I know that she informed the committee that that has been achieved.

I do not want in any way to downplay the significance, if hard choices have to be made. Nonetheless, one could say that past behaviour is the best prediction of future behaviour.

Liam Kerr: Sticking with the investment that may or may not be coming down the line, in your response to the convener you talked, rightly, about the need for capital investment. The committee heard from Police Scotland and the Scottish Police Authority that, as they put it, an increased capital allocation of £83 million is required to allow them to deliver a basic rolling replacement programme—an estates master plan. If they do not get that—if that is not what they see in the budget—what does the cabinet secretary understand will have to not happen as a result?

09:45

Angela Constance: [*Inaudible.*]—as a result of the overall budget. The specifics of that will be for the chief constable, under the scrutiny of the Scottish Police Authority, for very good reason. I point to the fact that, in the budget for this year, capital increased for policing by more than 12 per cent, so we are starting from a more positive base than might otherwise have been the case.

I am very supportive of the work that Police Scotland has taken forward and is endeavouring to take forward in having a longer-term view. It talks about the estates master plan, and there is no doubt that there are aspects of the police estate that need to be reformed, refurbished and repurposed. I am particularly in favour of co-location; I have seen the benefits of police co-locating with other public services—other justice services, in particular—in my constituency.

I am working closely with the police, as well as with other justice partners, on their asks. It is fair to say that it will be somewhat difficult to meet everybody's ask for additional capital, but I will endeavour to do my very best.

Liam Kerr: I might press you for one more question, convener.

I say with deep respect, cabinet secretary, that the previous money will no doubt have been very welcome. I have no doubt that the police will have been pleased to receive the sums that you talked about, both in capital and resource. However, this session is about looking forward and about what is coming up in the budget. The committee has heard that, if the police do not get what they need for resource, there will be a drop in officer numbers; if they do not get the £83 million capital allocation, there will be a problem with the rolling replacement programme.

Cabinet secretary, you accepted the seriousness to the police of not being able to

deliver one or both of those, in the event that the budget does not deliver the money. What representations have you made to the finance secretary in relation to those specific asks from the police? Have you said to the finance secretary, "This is what we need to see, because the consequences of not seeing that are a disaster"?

Angela Constance: I have an on-going dialogue with the finance secretary, as you would expect. That is particularly intensive in this part of the budget process, but bilateral and cross-Government discussions continue all year round. That is part of the necessity of the annual budget process. In many ways, you are never far away from budget planning and looking ahead. I take the point that we are all trying to look to the future, although I think that it is fair and appropriate that I point to our current investment.

I reiterate to Mr Kerr and the committee as a whole that the front line is an absolute priority. That is reflected in the programme for government and the vision for justice. To demonstrate the seriousness with which I take the front line with respect to police and other justice agencies, I say that the current budget has enabled the chief constable to reach her aspiration of 16,500 police officers and that, in this financial year, Police Scotland is having its highest year of recruitment since its inception in 2013.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): Good morning to you and your officials, cabinet secretary.

You said that there was a 12 per cent increase in capital for Police Scotland in the past financial year. Given that that was, of course, in the context of a 9 per cent decrease for the Scottish Government overall, that 12 per cent increase clearly shows that investment in policing is a priority for the Government. However, as you have laid out, there is a need, whether it be in the estates review or otherwise, to continue to enhance and rationalise appropriately for a 21st century police force.

In relation to capital, the SPA and Police Scotland mentioned to the committee not only that multiyear funding would be beneficial, but that using the powers in the Police and Fire Reform (Scotland) Act 2012 to enable the force to borrow and hold reserves could make a difference. Will you comment on those proposals that the SPA made, and can you give us any update on the conversations that the Scottish Government is having, particularly with the SPA? I appreciate that the overall call from the SPA was for more capital investment at a UK level, which would help the Scottish Government provide more capital funding.

Angela Constance: I recognise that there have been significant consultations on the

modernisation of the police estate. For a start, there are serious dignity at work matters and issues with reinforced autoclaved aerated concrete. I am also aware—because I answered a parliamentary question on it in the chamber a few months back—that the rationalisation of the police estate released £31 million for reinvestment in policing.

I have had conversations with Police Scotland and the SPA on a number of occasions about borrowing and the holding of reserves. I have also had discussions with the Cabinet Secretary for Finance and Local Government on the same matter, and I will be facilitating on-going discussions about reform, borrowing and flexibility between the SPA, Police Scotland and the cabinet secretary.

It is fair to say that this is a particularly tricky area, and it is not the first time that justice officials have explored it. Nonetheless, I am sympathetic to Police Scotland's frustrations, because it makes sense to have flexibilities and, particularly when it comes to capital, multiyear funding. We have seen a medium-term increase in the capital that will become available to the Scottish Government, which is welcome, but we await further clarity on the UK Government's longer-term capital plans.

The difficulty with borrowing is that the UK Government sets the limits of the Scottish Government's borrowing powers and, because Police Scotland is classified as a public body, any borrowing that it incurs will count against the Scottish Government's balance sheet. I think that the overall limit in any year for Scottish Government borrowing is £450 million, which is a small amount.

Ben Macpherson: So what makes it tricky is the fact that the Scottish Government is constrained in its capital borrowing powers.

Angela Constance: I do not think that I am giving away any state secrets when I say that the Scottish Government has long called for reform of borrowing limits on its overall budget.

Ben Macpherson: Clearly, that would make a difference to the estate and to Police Scotland more generally.

Angela Constance: It would make a huge difference.

The Convener: Mr Macpherson, do you want to keep going and ask an additional question about the Scottish Fire and Rescue Service?

Ben Macpherson: In a similar vein, there has been much public deliberation about the capital position of the Scottish Fire and Rescue Service. The SFRS has told the committee that it has a backlog of around £818 million, and that it requires investment to increase by £80 million annually in

the next 10 years, compared to the £43 million that it currently receives. What is the Government's response to that deficit and to what the SFRS has said that it will require for its capital backlog to be met? What is the Government's position on the need to fund and modernise the Scottish Fire and Rescue Service, while ensuring that risk is mitigated and that suitable cover is available in both urban and rural Scotland?

Angela Constance: I understand the position that the Scottish Fire and Rescue Service is facing. I am also very mindful of the extensive parliamentary interest in capital investment for the SFRS. Mr Macpherson correctly narrates that the capital budget for the service was increased by £10 million to £43 million. Apart from the Scottish Prison Service, it had the highest capital increase among the main justice agencies.

The Scottish Fire and Rescue Service is facing a range of significant issues in and around its capital estate—I do not demur from that view. It has commenced work on a programme to address the need for separate areas in order to avoid contamination; I also know that it has ambitions for a hub approach and, indeed, I have visited fire stations, particularly in rural areas, where there is co-location.

Right now, we are wrestling with the fact that there are significant asks for capital right across the justice sector, and I will have to endeavour to negotiate the best possible capital deal that I can and be as fair as possible to all our partners. There is a particular issue with the cost of construction materials, as a result of which capital investment will not go as far as it has in the past. For example, the cost of pre-cast concrete has gone up by 62 per cent. Those are the sorts of things that you find out, Mr Macpherson, when you are in the depths of capital budgets.

I do not demur from the fact that, although we have seen welcome movement, capital remains challenging in essence, because of some of the difficulties with the construction industry and inflation.

Ben Macpherson: Lastly, in the context of a borrowing position that is, in my view, wrongly constricted by the UK Government, if that Government's plans for the period—whether they be multiyear or just for single financial years—continue to move towards a position where increased capital resources are available and there are Barnett consequential as a result, will making improvements to the SFRS and the police service's capital position be top priorities for the Scottish Government? I am assuming that the answer is yes.

10:00

Angela Constance: The justice agencies are always my top priority. As you will know, consequentialism comes from the Scottish Government, and, because we are democratically elected, we make choices accordingly. However, the point about having robust infrastructure that supports the safe delivery of services to our communities is important. We know that the risk profile is changing, and there are changes in relation to how the SFRS wants to model the service and pursue its work. Of course, we want that to be reflected in its facilities, both to improve working conditions and to serve communities.

The Convener: Katy Clark has questions on the SFRS, too.

Katy Clark (West Scotland) (Lab): As you have said, cabinet secretary, this has been an area of great concern to you and the Minister for Victims and Community Safety, and very powerful representations have been made, particularly in relation to decontamination. It may well be that we are far more aware of the risks than we were a few years ago. It is clear that the Scottish Fire and Rescue Service is potentially exposed to legal claims, but I do not think that that is the avenue that the Fire Brigades Union wants to go down at all; it wants to ensure that there are safe systems of work. I think that you are aware of the support that you have from MSPs in that area.

However, the Scottish Fire and Rescue Service says that in order to achieve a balanced budget, it has had to delay bringing new employees into the service and has introduced a 10 per cent vacancy factor in support staff functions. There seems to be an issue in relation to not only capital budgets but revenue budgets. Given the parliamentary representations that have been made, can you tell us a bit more about the Government's approach to overall funding of the fire service? It seems to be a significant area of concern.

Angela Constance: One of the challenges that the SFRS and other large justice agencies such as Police Scotland will face is that their biggest cost is staff and pensions. Eighty per cent of the resource across the justice portfolio goes on staff and pensions, and in some justice agencies, that figure is even higher. That means that when there are budget pressures, whether they be expected or unexpected, the biggest lever that any justice organisation has is to slow down recruitment. That is not where I want matters to be; having the right support on the front line is pivotal. We will, of course, continue to work with the Fire and Rescue Service and its FBU partners and constantly look at the current challenges.

I support the work that is taking place to reshape the service. In essence, it seeks to

ensure that resources are in place to deal with those risks. I know that, with the best will in the world, we cannot predict every risk at every moment in time, but there is a good wealth of information and evidence that points to a changing risk profile. There has been a 19 per cent reduction in the number of incidents that the Fire and Rescue Service is called out to attend, while the amount of fire incidents has reduced by 10 per cent and is now at its lowest on record.

One issue that has been difficult to progress, but which I would certainly like to see progress on, is the expanding role of firefighters. I see an appetite for change from the FBU and the SFRS, and we need to find a way of unlocking that progress. As the Government as a whole grapples with the affordability of pay in the public sector, we might be able to link negotiating future pay deals to workforce reform.

The fact is, though, that fire service terms and conditions are agreed at a UK level. Nonetheless, we have in the past engaged at a UK level around the reform of the firefighter role. It seems to be one way of unlocking the service's potential.

Katy Clark: I appreciate everything that you say, but you are also aware of some of the increased risks that we face, such as wildfires. There was also the flooding in Valencia—we do not know why that has happened, but we know that such events will increase with climate change.

On the staffing budget, are the delays in bringing in new employees and the 10 per cent vacancy factor in the fire service representative of the justice sector or are they outliers? Is that happening across the justice sector?

Angela Constance: I accept the point about wildfires and flooding. Climate change is certainly with us. The other aspect that I have in my portfolio is resilience. There were 16 storms last winter; I hope that we will not have 16 storms this winter, but we shall wait and see.

It is a matter of public record that, at the start of this calendar year, Police Scotland paused recruitment to bring itself within budget after significantly overspending in the first quarter of the previous financial year. That is why the chief constable, to her credit, has had such a focus on taking a balanced approach throughout this financial year. I was just making the broad point that, if the biggest lever is staff, that can be the lever that justice organisations will utilise.

I am conscious that we have more firefighters per head of population than other parts of the UK, but that just reflects the rural nature of some of our country. Although the public sector workforce has increased since the pandemic, that has not been the case in the justice system. I certainly make that point in my negotiations, where I want to focus

on the front line, support for police numbers and the number of firefighters.

The Convener: Some members are interested in asking questions on the courts and prosecution service.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Good morning, cabinet secretary. Last week, the Scottish Courts and Tribunals Service said that it is at the point of beginning to pilot a virtual domestic abuse court, but that it needs an agreement on funding. Will you provide a wee update on that? Obviously, women's organisations and others welcome virtual courts.

Angela Constance: I had a meeting—probably about a year ago—with Sheriff Principal Pyle, at which he talked me through the plans and the aspiration for the virtual domestic abuse court.

More recent information that I have received indicates that it is hoped that the pilot will be introduced in Aberdeen alongside the roll-out of the digital evidence sharing capability. I note that, as part of its case for funding, the Scottish Courts and Tribunals Service has made an ask of £6 million for reform funding. I will continue to work with it to work through its bid, as I would with all partners. I have not had any formal approaches about specific funding for the pilot, but I know that my officials have a meeting arranged to catch up on the project at the end of November.

Rona Mackay: That is helpful. The Lord Advocate's references to the court of appeal on corroboration in relation to sexual offences could result in a greater number of cases being prosecuted. Is the Scottish Government thinking about the budgetary implications of that? Will that be factored into the budget proposals?

Angela Constance: I know that the Crown Office and the Scottish Courts and Tribunals Service are engaged on the matter, and I have seen the written evidence from the Crown Agent and the SCTS. The Crown Agent narrated that, in reviewing the law of evidence, the appeal court has expanded the scope of the sexual offence cases that can be prosecuted, and the SCTS has reflected that that could result in increased demand on the solemn courts. I know that my officials will be meeting the Crown Office in the near future. That change is very recent, and there is no modelling that shows how the appeal court's ruling will play out.

Rona Mackay: I am flagging the possibility that that might require extra budget. It is a case of shifting sands; it is all in the mix.

Angela Constance: Most people would expect that change to have an impact, but there is no modelling as yet that suggests what scale the

impact would be, either for the number of cases or the financial impact.

Liam Kerr: Rona Mackay has raised an important point. The SCTS has told us that, if there is a flat-cash settlement in the forthcoming budget, that will lead to a reduction in court and tribunal business equivalent to the removal of 10 solemn courts. It suggested that that could lead to a three-year wait for cases to get to court. What impact would a flat-cash settlement for the SCTS have on the cabinet secretary's wider planning on work to sort out the challenges and backlogs that our court system currently faces?

Angela Constance: As other partners have done, the Scottish Courts and Tribunals Service has illustrated what, in its opinion, a flat-cash settlement would mean for it. In the event of such a settlement—we are talking about an "if"—we would, as you would expect, discuss and test the SCTS's assumptions. I do not want to give the impression that I am disbelieving of the consequences of a flat-cash settlement, because it is clear that that would have consequences; I am simply pointing out that we are having on-going discussions to understand more about people's positions in the event that that happened.

More importantly, all our endeavours with the Scottish Courts and Tribunals Service have been to address the backlog. That has been the number 1 focus, and it remains a priority. Progress has been made on that backlog; it is down from its peak by 46 per cent.

In addition, in all fairness, I must acknowledge that the level of demand that is experienced by the Scottish Courts and Tribunals Service will not return to pre-pandemic levels in the future. We are working hard to reduce the backlogs, but we also recognise that there is a new level of demand on the service. I think that we are all at one on that.

10:15

Liam Kerr: On a related point, the Crown Office and Procurator Fiscal Service told the committee that it needs to receive an increase in resource funding of £16 million. If that does not happen, the consequence would be that work would be

"slowed down, shelved or stopped completely."

What work have you advised the finance secretary would need to be slowed down, shelved or stopped completely if the forthcoming budget does not show a £16 million uplift?

Angela Constance: I will make two points in response to that, one of which is that the budget for the Crown Office and Procurator Fiscal Service does not sit in my portfolio, so I do not have a direct role there. I do not negotiate the Crown Office budget. That is for the Crown Agent and the

law officers to do. As ministers, they engage directly with finance colleagues on that. I am not the minister in charge of those negotiations or representations.

However, I am sure that we all agree that we need to take a whole-systems approach to the justice system. You will have heard me say in relation to challenges such as that of the prison population that we need to stop looking at the justice system in its component parts and look at how it all works together. Therefore, I cannot underestimate the importance of the work that the Crown Office does and its impact on the court system and, potentially, the prison system. It is a demand-led organisation. We know that the sexual offence casework has increased. As with the other justice agencies, the vast majority of COPFS's resource goes on payroll; I think that the figure is 82 per cent. I also point to the fact that, since 2016-17, its resource budget has increased by 85 per cent.

I am not sure that I can say much more than that, because it is not my budget.

Liam Kerr: Can I clarify that point? The Crown Agent puts it to the Lord Advocate, and it is for the Lord Advocate to negotiate with the finance secretary for budget—is that correct, or have I misunderstood?

Angela Constance: What I am clearly saying is that I am not the minister who negotiates the Crown Office budget. I think that I have narrated that correctly. The Crown Office would inform the law officers.

Don McGillivray (Scottish Government): The law officers negotiate directly with the finance secretary; in fact, it is in a separate chapter in the budget.

Liam Kerr: I am very grateful. My final question is about an interesting point that came up during our evidence sessions. John Logue of the Crown Office advised the committee that the ending of extensions to statutory time limits in solemn cases in November 2025 presents it with “significant risk”, as he put it. What is your response to that? What can the Government do to avoid that situation?

Angela Constance: I have now had the experience on two occasions of taking extensions to the coronavirus regulations through this committee. The time limits issue has been the focus of much attention—indeed, it has probably been the issue that has been debated most in this committee. Since the Coronavirus (Recovery and Reform) (Scotland) Act 2022 was passed, we have all known that the measures in it were temporary and that they could be extended on a year-to-year basis up to and no later than the end of November next year.

Many MSPs have pressed me on the issue of time limits, so I am pleased that, this year, we have got to a position in which five of the seven time limits have been lifted. For one year only, we still have the two remaining time limits for solemn cases.

This is a transition year. In my engagements with the Scottish Courts and Tribunals Service, I have made it aware of the strength of feeling that exists in Parliament about time limits. Regarding the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Bill, there are some parts of the coronavirus temporary measures, such as those to do with digitalisation, that we will want to build into the system, because we do not want to turn the clock back. Right now, however, I have no plans to make the last two remaining solemn time limits permanent.

The committee and the Parliament will scrutinise the criminal justice modernisation bill, but I have been clear on the issue of time limits in what I have said to the committee and in my comments in Parliament. I am conscious that Mr Kerr spoke on the relevant Scottish statutory instrument a week or two ago, although his concern was about fiscal fines. Bearing in mind the content of the committee's scrutiny, I took more time in my statement to talk about time limits than about fiscal fines.

The Convener: Fulton MacGregor has a quick supplementary before we move on to the subject of prisons.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good morning, cabinet secretary. I have a quick supplementary that relates to the area of the Crown Office and prosecution, and it comes ahead of a question from John Mason that you will answer at question time later today. It relates to the amount of time and cost that is involved in police officers attending court. The issue has come up in our pre-budget scrutiny sessions, and it is one that comes up regularly.

During our evidence sessions with the police and the Crown Office, their representatives said that they were making progress in that area. I want to get your views on that. Is the Government doing anything to support that process or to hurry it along?

Angela Constance: I am very supportive of the calls that have been made by the chief constable, the SPA and the Scottish Police Federation for reform in that area, which is one that the police and, crucially, the Scottish Courts and Tribunals Service are taking very seriously. There are two crucial reforms in that area. One of those relates to DESC—the digital evidence sharing capability—which involves the digital sharing of crime scene

evidence with the courtroom. That leads to earlier resolution of cases, and it also has the benefit of taking up less witness time.

Crucially, bearing in mind that the majority of cases are at summary case level—65 per cent of courts' business is at summary level—the work on summary case management has been judicially led, which is to the credit of the Courts and Tribunals Service. Sheriff Principal Aisha Anwar has blazed a trail in that work. The evaluation of the pilots that have taken place in Glasgow, Dundee and elsewhere has shown some positively stark outcomes in reducing the time for which professional witnesses are required to come to court. In part, that is to do with the earlier resolution of cases, which has resulted in a reduction in the number of trials to be fixed. It is part of our transformational change programme 3, which is all about the efficiency and effectiveness of the criminal justice system.

The digital evidence sharing capability programme, which is being rolled out between this summer and next autumn, is enabling plans for the roll-out of summary case management. Those are very important reforms, because we do not want police officers to be called to court and to then be turned away without giving their evidence. We do not want that churn in the system. Significant reform is under way in that area, and it is vital that we continue to support that reform.

Fulton MacGregor: Do you have an early indication of how much that might save in time or in cash, or will we simply have to wait and see?

Angela Constance: There are some very encouraging numbers on that. I am happy to send that information to the committee. In September, a report was published that said that, in the 19 months of the pilot, among the outcomes that were achieved,

"It is estimated that 530 summary trials did not require to be fixed";

if summary case management

"had been in place at a national level during the pilot period, it is estimated that at least 3270 trials would not have been fixed, a potential 5% reduction in fixed trials;"

and summary case management

"mitigated the impact of higher levels of complaints registered in 2023/24 so that the volume of outstanding scheduled trials reduced by 31%".

There are also statistics, which I do not have in front of me, on the reduction in witness citations for professional witnesses and victims. Those are encouraging as well.

The Convener: The committee might be interested in some follow-up on that, cabinet secretary, as that is an area that we have been looking at closely.

Angela Constance: There was a 34 per cent reduction in the first citation of police witnesses and a 25 per cent reduction in the first citation of civilian witnesses in domestic abuse cases in the aggregated pilot courts. We will provide further information about that. The BBC covered the pilot extensively not that long ago. It is really good work, and our partners—the police and the Courts and Tribunals Service—need to be commended for it.

The Convener: Thank you for that.

We will move on to questions on prisons. We still have a wee bit to get through, and we have about half an hour left, so I ask for succinct questions and responses.

Sharon Dowey (South Scotland) (Con): Good morning, cabinet secretary. The SPS advised the committee that it was in discussions with the Scottish Government over an additional in-year funding requirement of £20 million this year. Will you give us an update on whether that will be available for the SPS?

Angela Constance: We are engaging closely with the SPS on that. I meet the chief executive frequently—every three weeks or so—and am aware of that ask. I am conscious that we are just over halfway through the financial year, so I want to understand more about the SPS's ask, particularly between now and the end of the financial year.

The underpinning challenges for that pressure relate, of course, to the prison population. If you have more people, you have more people to look after, feed and clothe.

I will not go into the detail, because the Public Audit Committee did a lot of work on GEOAmev, but there was additional work in and around the prisoner transport contract that required intensive attention from the prison service. That has had a good, positive outcome.

Social care costs have been higher than expected, and I am keen to understand more about those costs. As always, we will do our best.

10:30

Sharon Dowey: In its evidence, the SPS also said that it was carrying out its own pilot for body-worn cameras. It stated that early signs indicate that the pilot has impacted staff safety. Obviously, with high prisoner numbers, that is really important. If the pilot is successful once it is complete, SPS would require to make a budgetary submission to the Scottish Government. Has the SPS had any conversations with you about the pilot and the budgetary request? If so, do you expect to be able to give it to the SPS in next year's budget?

Angela Constance: I have had some discussion with SPS about it, but it has been more about the potential benefits of different types of technologies. There is an on-going discussion about technology more broadly, particularly in preventing contraband coming into prisons.

I am aware that the initial findings of the pilot did not show an overall reduction in violence, but Ms Dowey is absolutely correct that it did show a reduction in violence towards staff. The pilot period has therefore been extended and I am very interested to see the outcome of that.

The Convener: I have a question that sticks with the Scottish Prison Service. In its evidence, it advised that it will require an increased budget of £387 million in 2025-26. The bulk of that would be for the construction of HMP Highland and HMP Glasgow—we understand that a contract has yet to be signed for the replacement of HMP Barlinnie. Will the cabinet secretary give us some more detail about the costs of its construction and whether they will be met, regardless of whether they increase beyond the current capital budget ask by the Scottish Prison Service?

Angela Constance: As I said earlier, I am aware of all the justice partners' asks for capital. Nonetheless, we have clear commitments around HMP Highland and HMP Glasgow, the replacement for HMP Barlinnie. The current contract for HMP Highland is now signed, so we have contractual obligations in and around the funding.

If there were to be any additional costs in a contract that is signed and agreed, it would tend to be when there are overruns. I went to visit Inverness during the summer and I have been reassured that the revised timetable for HMP Highland is making good progress. I have been up to Inverness twice now.

The only minor caveat that I am always alert to, as the resilience minister, is the impact of weather on construction projects. That would be the only worry at the back of my mind about HMP Highland. However, we are anticipating that it will cost £209 million, which is baked in as a result of the contract.

I am told that the contract for HMP Glasgow is at an advanced stage. There are issues around commercial sensitivity. The design is complete and it informs the contract, so the detail of the contract will inform costs, the allocation and phasing of resources and the timeframe. We are committed to the replacement of HMP Barlinnie, which is a Victorian prison.

The discussions continue with Kier, the contractor for the stage 2 construction contract. It is important that we continue, because prisons are not cheap. If you look at the cost of prisons south

of the border, you will see that any prison is a substantial investment. We need to make absolutely every effort on due diligence, value for money and the shaking out of any savings where we can do so. Once that contract is signed, I will be able to talk more about time and cost.

The Convener: Thank you for that.

Pauline McNeill (Glasgow) (Lab): Good morning. Cabinet secretary, you will be aware of press reports that indicate, not for the first time, an on-going crisis in legal aid. Some press reports have said that, since 2021, we have lost more than 400 solicitors from the system. Not all of those were lost because of the legal aid situation, I am sure, but certainly a high number were. There has already been a 23 per cent drop in the number of cases that solicitors have been paid for, so there has been less demand on the budget. However, that is a flat-line budget, so, in effect, there has been a cut to legal aid.

What approach is the Scottish Government taking to the crisis, given that it has not allocated an increase in the legal aid budget, and what is the thinking behind that?

Angela Constance: I will focus first on the financials. It is important to recognise that the legal aid budget is demand led and that—unlike elsewhere—we have maintained the scope and resourcing of legal aid. To demonstrate that demand-led nature, the final spend for the previous financial year was £151 million, whereas the budget was set at £141 million, if I recall correctly. Demands for legal aid are one of the pressures in the justice portfolio. The figure could, of course, change, but the spend on legal aid is projected to come in at £171 million by the end of this financial year.

That is the other issue for the justice portfolio as a whole. As well as 80 per cent of our resource going on staff costs, a chunk of resource is demand led. Legal aid is demand led; criminal injuries compensation is demand led; and, on top of that, there are contractual obligations—for example, on HMP Highland, GEOAmev and so on. We have not cut the legal aid budget in any shape or form.

I note Ms McNeill's comments about solicitors. I will look at those overall figures. I have recently had reason to look at the figures for criminal defence agents who operate in the legal aid sphere. For the past three or four years, that has been largely stable, at around 800. Having said that, I recognise that there are challenges for the profession and, in particular, for criminal defence agents.

Pauline McNeill: Thank you for that comprehensive answer. Fees for defence solicitors in particular have been in crisis for many

years. The key question, which I do not think has been addressed by the Scottish Government, is in the way in which the rate is set. In the criminal justice system, prosecutors are paid a certain salary, but defence solicitors do not seem to have kept pace with the people that they are working alongside in the criminal courts. That is why we are losing solicitors from the profession. I know that the cabinet secretary will share my view that, if there is to be fairness in criminal justice for accused persons, it is important that we retain good solicitors in the profession. How will the budget address that specific point, and what are the cabinet secretary's thoughts on that?

Angela Constance: I cannot comment on the salaries of, or payments to, people who work in the Crown Office or in prosecution. However, there have been changes over the past few years. As a result of the Evans review, I think, it is possible to claim interim payments. There have been legal fee uplifts since 2019; their compound effect is just over 25 per cent.

I certainly appreciate the point about the workforce, and that matter has been raised in my discussions with criminal defence agents. I agree that they need to attract people to that aspect of their profession. The working group on the future of the legal profession, which is led by the Minister for Victims and Community Safety, is important in that regard. It is important that all stakeholders, including ministers, continue to engage in the challenges—people will always want to discuss the quantum of funding. However, we should also be prepared to discuss the prospect of reform, to ensure that we have a sustainable legal aid system and stability in the professions that support the people who seek justice, as well as the accused, because—Ms McNeill is right—that is fairness. At the end of the day, we want a legal aid system that supports the effectiveness and efficiency of the criminal justice system as a whole.

The Convener: Liam Kerr has a follow-up question.

Liam Kerr: I remind the committee up front that I am a solicitor, although I have not done legal aid work for 20 years and I do not do criminal defence work.

Cabinet secretary, I understand and respect the answer that you gave to Pauline McNeill. However, the questions that she put to you are key. We know that there is a huge problem with the lack of numbers of solicitors who enter criminal defence, and evidence shows that that is due to unsustainable working conditions and—according to the dean of the Faculty of Advocates—inadequate remuneration. You will be very aware that Aamer Anwar & Co recently pulled out of doing legal aid work, because those solicitors

cannot continue to fund it themselves. That has led many commentators to talk about an inability to access justice.

None of us—least of all you, I know—wants such a situation in Scotland, so give me a direct answer, please: will the Scottish Government do anything about legal aid in the forthcoming budget, and anything about the structural issues that underlie the situation in which we find ourselves?

10:45

Angela Constance: Your point about the structural issues is important, which is why we need people to work together and have dialogue. I did my best and I thought that I answered Ms McNeill's questions on the overall investment. We are investing heavily in a demand-led budget.

I acknowledge the point about working conditions. Forgive me if I use the example of defence agents. I think that I would be right in saying that the majority of lawyers are now female, and certainly the majority of law students, for some time, have been female. However, there is still a gender imbalance among criminal defence agents, which speaks strongly to working conditions and working hours. I am not deaf to that.

On getting into discussions about specific fees for a specific level of activity, that needs people to be prepared to engage in the nuts and bolts of that, as well as, understandably, to campaign, lobby and narrate what the challenges are. The minister and I are willing to have that engagement.

Given the overall pressure on public finances, resource does not come alone. Resource comes with reform, so it is a bit of a chicken-and-egg situation. If you want more reform, what will that mean for resources? Is it just a call for increasing the quantum? We have increased the quantum. We are putting more money into legal aid year on year. If people are still not satisfied with that, we need to get into the detail of what lies below the top-line budget figures and what we need to change. Are there savings that can be made in one part of the overall quantum that will allow the reprioritisation of resources in another?

I am trying hard to convey that I will do what I can, as the minister will, and as I will ensure that my officials will, so that we have that dialogue, but dialogue is a two-way street. It is not just me sitting here talking.

The Convener: We have just over 10 minutes left and still a wee bit to cover. I want to pick up on community justice. Last year, in the Government's response to our pre-budget scrutiny, there was an indication that the Government would increase investment in community justice services as a way

of contributing to shifting the balance away from custodial sentences. Obviously, we have a difficult situation with the prison population. With that in mind, I am interested in hearing the cabinet secretary's aspirations for what she would like to see this coming year in community justice provision. How might you contribute to shifting the balance away from custodial sentences in the budget process?

Angela Constance: I want to deliver the best possible budget for the Scottish Prison Service and community justice services. Despite the improvement of various community provisions and disposals, and the fact that we are seeing increasing capacity and levels of business in community justice, we also have a rising prison population, and I need to address both.

Members will be aware that our overall investment in community justice is £148 million. That was an additional £14 million last year, on top of the £15 million recovery resource. The recovery resource is committed until, I think, 2026-27. In the past seven years, community justice funding has increased by £41 million, which equates to 43 per cent.

We are seeing an increase in capacity in community justice. I am thinking specifically about criminal justice social work services, where the head count is up by 280. That is welcome, given the increasing demands on those services. There is also a move from temporary contracts to permanent appointments in local services. We are beginning to see an increase in stability in community justice. In addition, I cannot forget the importance of the voluntary sector in that sphere.

With regard to outcomes, I want to build on the progress that has been made in investment and increasing capacity. I also want to build on the progress that has taken root around electronic monitoring, which is increasing year on year. Electronically monitored bail and bail supervision are now rolled out across all 32 local authority areas. The trend of increase in orders over the past decade is up substantially, but it is also up by 33 per cent since 2021-22. The most recent year-on-year increase is 8 per cent.

In short, we are seeing a good expansion of the footprint of community justice, and I need to continue to expand that.

The Convener: Katy Clark has a question on disposals.

Katy Clark: On the issue of footprint, there seems to be quite a difference between England and Scotland in relation to some of those areas. When I submitted freedom of information requests on, for example, the levels of compliance with electronic monitoring that had been ordered by the courts, the figures in Scotland showed 72.6 per

cent compliance, which compares with 97.2 per cent in England. Those figures are for March 2022.

In relation to restriction of liberty orders, there seems to be a significant geographical spread, and it is the same with electronic monitoring. The lowest level of compliance was in Grampian, where the level of compliance with restriction of liberty orders and electronic monitoring was 71.8 per cent, which compares with 100 per cent in the High Court.

There are similar figures in relation to whether offenders are asked to undertake community service orders that have been ordered by the court. I know that you will be alert to that and I presume that there are budgetary implications. Can you say a bit more about that? There does not seem to be consistency in relation to some of the disposals that are ordered by the court being required of the offender. Is it to do with budgets and lack of resource? Is that now being dealt with by targeting resource to ensure that the orders that the courts give are complied with? Clearly, it is not the offender's fault if they are not told that they have to have a tag—they have no control over that; that is a matter for Government. Can you say a bit more about that? Some of the statistics are quite alarming.

Angela Constance: I will address the issues of compliance and consistency. You are correct to raise those issues with me, but I suggest that they are also an issue for the statutory agencies—I would just put that on the record.

Katy Clark: But you are the person who we would raise the issues with.

Angela Constance: Yes but, on the point about consistency, that is where the performance framework is really important. A funding formula distributes the criminal justice social work grant on the basis of case loads, among other things. The important layering of the community justice national strategy and the delivery plan is underpinned by the performance framework. The indicators measure performance around an area and shine a light on who performs well and what areas perform less well. I am not necessarily pointing the finger at people. There can be particular challenges associated with rurality, for example.

Katy Clark: In this budget scrutiny process, though, the budget is the major factor.

Angela Constance: I was about to get to that. I do not believe that it is all about the budget. I am not for a minute denying the importance of the budget in relation to sustainability, increasing capacity and flexible use of resources to get the increased budget to the front line. Of course, we do that with the criminal justice social work grant

because it is ring fenced. I know that not everybody likes that word.

There are recruitment challenges, which can be harder in some parts of the country, but I am not denying that the quantum of budget has an impact. In every portfolio in which I have had the privilege of serving, I have found that, even though we are a small country, we have regional variation in practice and delivery. That is not necessarily a bad thing, but I am never convinced that it is all about money. Money is part of it, but it is not all about that.

That is why we need scrutiny and a focus on community planning partners. Community Justice Scotland has a statutory role in promoting and sharing good practice, highlighting the evidence and advocating for change, but we should not forget the role of community planning partners, who, under the community justice legislation, also have a responsibility to support community justice priorities.

The Convener: We have a couple more areas of interest. I will bring in Fulton MacGregor on criminal justice social work, and then I will bring in Sharon Dowey on a couple of legislation questions, if Sharon still wants to ask them.

Fulton MacGregor: I will try to be as quick as possible, convener.

Cabinet secretary, can you provide an update on the work around reviewing the distribution of section 27 funds in relation to criminal justice social work? Social Work Scotland told the committee that it would like all justice social work funding to be consolidated and baselined in the local government settlement.

Angela Constance: With regard to the distribution model, Mr MacGregor, given your previous occupation, you will be aware that the Scottish Government allocates the criminal justice social work grant and additional money to local authorities. Funding that is outwith the criminal justice social work grant, such as that for the multi-agency public protection arrangements—MAPPA—is distributed via the standard local authority mechanisms.

11:00

The funding review group, which includes the Convention of Scottish Local Authorities and Social Work Scotland, agreed a distribution model in 2017. Recognising that that was a few years ago and that a lot has changed, it has been reviewed by a technical advisory group, which is consulting justice stakeholders on the review. After that consultation, the findings will be returned to the funding review group.

People talk about consolidating and baselining. I do not want to answer a question by asking one, but the funding route of the criminal justice social work grant provides certainty and surety, because it can be spent only on justice services. There is other resource that supports justice services. If people wanted to bring funding together and baseline and consolidate it, I would understand the logic of that, but I would not be supportive of it if it meant the removal of ring fencing.

Fulton MacGregor: That is really helpful.

I have one further question. A new UK-wide protection system will be introduced during 2025-26. Will any further funding be available to justice social work services as an implication of that?

Convener, given the direct nature of my questions and as the cabinet secretary mentioned my previous occupation, I should point members to my entry in the register of interests.

Angela Constance: I was not dropping hints that Mr MacGregor should declare an interest, but I am glad that I prompted him.

We are supportive of the multi-agency public protection system—MAPPS—which is UK led and upgrades the violent and sex offender register, ViSOR. In essence, it is a more efficient way of exchanging information that is highly relevant to public protection. Although the decisions on what use could be made of the system are for the police, the SPS, local authorities, health boards and other bodies, we support the use of MAPPS, principally because we supported Scottish agencies' use of the ViSOR system.

There is Scottish representation on the programme boards. There are representatives from the Scottish Government, local government, police and health. To be fair to the UK Government, we are still in the process of clarifying costs and the model. However, the allocations to local government for community justice this year included additional allocations in anticipation of pressures, particularly the work to support any move to MAPPS.

The Convener: We are slightly over time, but I still want to bring in Sharon Dowey. I ask for succinct questions and responses.

Sharon Dowey: I will try to be as succinct as possible.

My question is on the impact of legislation and the costs surrounding that, cabinet secretary. Will the Scottish Government provide any funding to cover the costs arising from the further implementation of the Bail and Release from Custody (Scotland) Act 2023?

Angela Constance: The cost of implementing legislation is factored in. The cost of the 2023 act

when it is fully implemented is £5 million a year. The cost of legislation that we have firm plans to implement informs our budget decisions. It is not necessarily an additional £5 million, bearing in mind that existing resources can be used for more than one purpose and we always look to make efficiencies. However, we cannot ignore that cost.

Sharon Dowey: The lowering numbers of police officers are well documented. There was a commitment to put 1,000 more on our streets. Do you have any optimism that we can get back to the 17,496 officers that we had in 2013? I ask that given the antisocial behaviour that we have seen on the streets recently, such as around bonfire night.

Angela Constance: I refer Ms Dowey to our more recent manifesto commitments and our programme for government commitment, which was to provide resource to enable the chief constable to return police officer numbers to 16,500. I am pleased that the chief constable has advised that that has been achieved.

Sharon Dowey: We hear from police officers that they are stressed and need more numbers. They obviously feel undervalued. At the moment, salary negotiations are going on for them. Has that process been accounted for in the budget? Do our police officers deserve a better offer than the one that is on the table?

Angela Constance: Police officers work hard and their pay and terms and conditions should reflect their exceptional endeavours and the public service that they give day in and day out. The offer of 4.75 per cent recognises their contribution and is fair and affordable. It is above inflation and is in line with the UK Police Remuneration Review Body's recommendation, which we take into consideration. We do not have to do that. We just look at it for benchmarking purposes.

The Convener: I thank you and your officials very much for your time, cabinet secretary.

We will have a short suspension to allow for the changeover of witnesses.

11:07

Meeting suspended.

11:14

On resuming—

Prospective Prisoners (Early Release) (Scotland) Bill

The Convener: The next item is consideration of paper 3 from the clerks on the written evidence that we have received in advance of the Parliament's consideration of the proposed prisoners (early release) (Scotland) bill. I am grateful to all the organisations that have submitted their views at relatively short notice. I hope that their submissions will prove useful to committee members when the Parliament considers the bill.

I advise members that, next week, the Parliament will be invited to agree to treat the bill as an emergency bill. If that is agreed to, the stage 1 debate will take place on Thursday 21 November. I hope that that is useful for members to note.

As members have no questions or comments, we will move to the next item of business.

Scottish Biometrics Commissioner Annual Report 2023-24

11:15

The Convener: Our next item of business is an evidence session with the Scottish Biometrics Commissioner's team on its work in the past year and its plans for the future. I am pleased to be joined by Dr Brian Plastow, commissioner, and Ross MacDonald, director. I refer members to paper 4. I intend to allow up to 60 minutes for the session. I invite the commissioner to make a short opening statement to highlight the main points in his annual report, before we move to questions.

Dr Brian Plastow (Scottish Biometrics Commissioner): It is always a pleasure to appear before the Criminal Justice Committee to discuss how biometrics are used for policing and criminal justice purposes in Scotland. As the convener said, I am joined by Ross MacDonald. In the real world, he is an experienced detective chief inspector with Police Scotland, but he joined me recently on a two-year temporary secondment, with the approval of the Scottish Parliamentary Corporate Body and the chief constable, in order to help us to build some capacity and capability during what will be a particularly busy period.

With the committee's permission, I will briefly cover three broad areas. First, I will say a bit about my most recent annual report and accounts laid before the Parliament. Secondly, I will say something about the recent joint review of the laws of retention of biometric data that was laid in the Parliament in October and, thirdly, I will give the committee a brief flavour of some of our current and planned activity for the year ahead. I am very aware that the committee will wish to discuss other issues, so I will be brief so that we can cover as much ground as possible.

Turning to the first theme, our "Annual Report and Accounts 2023/24" is the third annual report and accounts that I have laid before the Parliament; the report was laid about a month ago. It includes the audit of the financial performance statements by Audit Scotland. To highlight some key points, the report indicates that, last year, we delivered our third assurance review. Members will remember that we have previously looked at how the police acquire biometric data from children and vulnerable adults. In March this year, the report that we laid before the Parliament looked at how the police use images and recordings.

We continue to operate a low-cost function through a shared services arrangement with the Scottish Public Sector Ombudsman, about which I

have given evidence to the Finance and Public Administration Committee.

We conducted three compliance assessments on the code of practice. Members will remember that the code was approved by the Parliament in November 2022. Last winter, we conducted compliance assessments with Police Scotland, the Scottish Police Authority and the Police Investigations and Review Commissioner. In January 2024, we found each organisation to be compliant. We have also published easy read versions of the code and the code of practice.

In June this year, we hosted the first ever biometrics and criminal justice conference in Scotland. I am grateful to the cabinet secretary, who has just left the committee meeting, for attending and opening the event.

In our earlier reviews that related to children and vulnerable adults, we made four recommendations to Police Scotland for improvement. Two of those recommendations were about honouring the information rights of data subjects. One was about having distinct policies for children and the other was about improving the quality of management information to improve Police Scotland's governance in that area.

The committee will be pleased to learn that, in July this year, subsequent to the period of my annual report, Police Scotland managed to discharge all four of those recommendations. For example, Police Scotland now gives this leaflet, "Your photograph, fingerprints and DNA: what we do with them", to every person arrested. It goes into the prisoner property bag. That little leaflet explains to anybody who has been arrested and had their biometrics taken why they have been taken, what they will be used for and who they will be shared with, as well as information on the functions of the UK Information Commissioner and of the Scottish Biometrics Commissioner. That means that, in around 90,000 custody episodes each year, people are now receiving their information rights.

In relation to children, Police Scotland has introduced a new policy whereby it captures biometric data from children who are arrested in Scotland only if the arrest is in connection with a violent or sexual offence, or otherwise by exception. To give the committee a flavour of what the new policy means, at least half of around 4,000 children who are arrested by the police in Scotland each year will no longer have their biometric data captured.

Police Scotland is now also producing better management information. If you search your browser for "Police Scotland biometrics", it will take you to a dedicated Police Scotland biometrics page with better management information in

relation to things such as the data volumes that Police Scotland holds, which is important for transparency and accountability.

The reason for sharing all that information with the committee is that, now that the impact of our work is starting to materialise, I can advise the committee that we will update our existing strategic plan around February and we will transition away from reporting the output-based key performance indicators that were necessary for a new organisation set up mid-pandemic, towards reporting on the impact and outcomes of our work. That deals with the annual report.

I will talk very quickly about the review of the laws of retention of biometric data. In October, in partnership with the Scottish Government, we published a joint review report that, ostensibly, looked at the provisions in sections 18 and 19 of the Criminal Procedure (Scotland) Act 1995, which deal with the power that the police have to take biometrics from people who have been arrested. The report concluded that there was an insufficient evidence base on which to determine the need for any legislative change, but in the course of doing the review, we directed four recommendations at Police Scotland.

The first recommendation is for Police Scotland to review its existing biometric data retention policies, which we have recommended that it must do by October 2025. It must also build in periodic review, which in any case is a requirement under the Data Protection Act 2018.

The second recommendation is for Police Scotland to accelerate its review of the retention of volunteer data in the same time period.

In the third, we have encouraged Police Scotland to improve its management information in relation to biometrics, to support better decision making around retention periods.

The fourth recommendation is for it to improve its management information more generally, to see whether there is any evidence to support the case for extension of the current one-month period that is allowed for post-conviction sampling, as we heard some anecdotal evidence during the review that that might be a problem. I am pleased to advise the committee that Police Scotland has accepted those recommendations and will look to conclude that work by October next year.

On the last theme, of current and planned activity, the committee might be interested to know that we are doing two assurance reviews in parallel. We are having a look at how Police Scotland and the Scottish Police Authority's forensic services use DNA. We are doing that work in partnership with the Scottish Police Authority corporate and the Leverhulme research centre for forensic science.

At the same time, we are having a look at how Police Scotland uses the retrospective image search capability in the police national database, which is a UK-wide intelligence system, and the child abuse image database, which is a UK-wide database that seeks to protect children and disrupt those who would harm them. In both cases, the objective is to provide assurance to the Parliament that Police Scotland is using the data and technologies lawfully, effectively and ethically. We hope to bring the DNA report before the Parliament in late February and the retrospective image search report probably in late March.

Over the winter, we will rerun a survey that we ran back in 2021 to measure public attitudes to the use of biometric data. This time, we will do it as part of the SPA's public confidence survey, so the sample size will be far bigger. Back in 2021, public confidence in the police use of biometric data was actually very high, so it will be interesting to see whether anything has changed. We will have the results of that survey in March.

We are obliged by the legislation to conduct the first three-year review of the code of practice that was approved by the Parliament in 2022, so we will have that done by the autumn of 2025. At that point, we will have achieved everything that we set out to do in our first strategic plan.

My final point, convener, is to reassure the Parliament that, as I approach my fourth year in office, the way in which biometric data is used for policing and criminal justice purposes in Scotland is generally in a very good place by comparison with other jurisdictions. There are always issues around the periphery but my key message is that it really is in a good place.

The Convener: That was a really interesting update. I commend the annual report, which has a lot of interesting detail that reflects the breadth and detail of the work that has been undertaken this past year.

You have spoken a lot about Police Scotland in the context of the assurance review work and the recommendations that have come out of it, and some of the compliance work that you have done, which is really interesting.

I am very interested, however, in a letter that you sent to Police Scotland in October 2023, with regard to the DESC pilot. The level of detail in the letter is to be commended. Essentially, you set out some concerns that you have with regard to—I will not even attempt to sound as though I have a technical brain—an aspect of Police Scotland's cloud storage. I am sure that other members will want to come in on that point but I am interested in any update that you have with regard to the specific issue that has been flagged. The fact that you are able to pick up something such as that

and take it forward really reflects the value of your commissioner role.

Dr Plastow: Thank you, convener. I will simplify the matter to two issues. Let us rewind time: the police conventionally used to store data on a secure server inside a police building. If somebody wanted to access that data for malicious purposes, they would basically need to break into the police station. The world has moved on and everything nowadays moves on to the cloud. As members will be aware, the digital evidence sharing capability, or DESC, which I strongly support as a concept because it is about a more effective and efficient justice system, is hosted on the public cloud infrastructure.

11:30

I highlighted two concerns in my letter to Police Scotland. The first was about the reach of the United States Clarifying Lawful Overseas Use of Data Act—the CLOUD Act. It was passed by the Obama administration in 2018, for good reasons—it is about fighting international criminality—but its reach is such that it gives authority to US federal authorities to access data anywhere in the world if that data is hosted by US-headquartered companies. My question at that juncture was whether that was a risky thing to do. My second concern related to security, which is important because, as we all know, the internet gets hacked all the time, sometimes by malicious actors and sometimes by kids in their pyjamas who have nothing else to do. I raised those two issues with Police Scotland to make a point about due diligence.

On the question of data sovereignty, the Scottish Police Authority and Police Scotland have done everything within their power, including having clauses inserted into contracts and so on, to mitigate those risks as far as possible, but it is an inescapable truth that the Federal Bureau of Investigation could access that data if it wanted to. Should that concern us? Probably not.

The second question is, for me, more important. It is about the issue of security and I included specific examples in the letter that I wrote to Police Scotland in October 2023 to show that, even at Government level, as we have seen in the United States in recent years, a number of agencies have been hacked and important data has been stolen. We are where we are with that. Since I wrote that letter, the UK Information Commissioner has confirmed that it is lawful to host on the cloud law enforcement data that is covered by part 3 of the Data Protection Act 2018, providing that appropriate safeguards are in place.

I am in a more comfortable position now than I was when I wrote the letter, but my substantive point is that we cannot eliminate all risks.

The Convener: That is really helpful.

I cannot remember whether it was in your letter or elsewhere, but I picked up on the fact that you are having to grapple with reserved and devolved legislation on biometrics. In the context of that particular concern, I am interested in hearing your thoughts. Can that be difficult, or are Governments working well together to allow you to do your job?

Dr Plastow: There is quite a complicated layer of independent oversight because biometric data is used for a number of different things, both overt and covert, in the world of policing.

At a basic level, the UK Information Commissioner is a whole-economy regulator in relation to data protection law. Separately from that, the function that I perform in Scotland is about ensuring that the police, the SPA and the PIRC acquire, use, retain and destroy biometric data in a way that is lawful, effective and ethical under domestic criminal procedure law. The Data Protection Act 2018 does not concern itself with questions of effectiveness or ethics.

In England and Wales, we have a Biometrics and Surveillance Camera Commissioner. That postholder's functions are similar but, at the same time, very different to mine because, under the Protection of Freedoms Act 2012, biometric data is fingerprints and DNA, but it is not images. That seems bizarre because images are the type of data that is used most often.

On the covert side of policing, we have the Investigatory Powers Commissioner, as the police can and do acquire biometric data from people under surveillance legislation. There is also the terrorism dimension, which means that the commissioner for England and Wales, who is often wrongly described as the UK commissioner, has UK-wide jurisdiction whereby biometric data is retained as part of our national security determination. What that means is that someone has come to the attention of the police, they have not been charged or convicted of anything but the police think that they could be involved in terrorist activity.

The landscape is quite complicated but it works really well in the sense that there have now been four biometrics commissioners in England and Wales. The post is not currently filled—that is probably the best way to describe it. I have enjoyed excellent working relationships with those commissioners, and I enjoy an excellent working relationship with the UK Information Commissioner. It all seems to work well. We are all interested in different things but it is ultimately all about the same thing.

The Convener: Thank you for that. I am going to bring in members, so I will hand straight over to Liam Kerr and then Sharon Dowey.

Liam Kerr: I have two questions. First, Dr Plastow, just last week, the Parliament had an interesting debate on artificial intelligence. What do you see as the opportunities and challenges from the increasing use of AI in your field of biometrics?

Dr Plastow: I suppose the first thing to say is that AI is already used in biometrics in policing. I will give you two quick examples. The first is in relation to the child abuse image database that I said we are looking at. There is non-autonomous decision-making AI software in that system that does a number of things such as removing harmful content from the web. It saves police officers or police staff from having to view thousands of horrible images, and so on.

The other example of non-generative AI that is already used in policing is in the UK fingerprint system, IDENT1. It has something called non-verified live identification. When the police arrest somebody, they take fingerprints in a custody suite using what is basically a big photocopier that scans the fingerprints. Within about 20 minutes, if someone has been arrested and has been in custody, and they have provided false particulars to the police, the non-verified live identification AI software will very quickly result in a phone call to the custody centre to say something like, “See that guy that you’ve got in cell 3 that says he’s Ross MacDonald? He’s not. He’s Brian Plastow.”

Those are two types of AI that are already in use. The important point to make is that AI is not used in any evidential capacity. To use the same example as the non-verified fingerprint identification, if the case were to go to court, it would require a forensic scientist—a human being—to compare the two sets of fingerprints and say yes or no.

More broadly, to lead on from that, there is a big place for non-generative AI in policing. For example, applying weeding regimes to massive biometric data sets is complicated. The UK holds 7 million DNA profiles, 8 million fingerprint records and way more than 20 million biometric image templates that are derived from faces. All of that becomes very difficult to weed. However, with the application of good governance and rules-based systems, non-generative AI could help.

The flipside to that is generative AI. For me, autonomous decision-making technology has no place in this space at this time. Biometrics is done to people by people and should be for the good of the people. Does that answer your question?

Liam Kerr: Yes; I am very grateful. It is very interesting.

My second question might be a little more awkward, but I feel that I need to ask it, to get the issue out in public. Your role is to scrutinise the police, at least in part, or to have oversight of the police. Earlier, you talked about public awareness and public perception. You are joined today by Ross MacDonald, who has joined you on secondment from Police Scotland. Now, there is no question about Mr MacDonald’s expertise; I can see that from the committee papers. However, Mr MacDonald is seconded and is therefore still an office-holder of Police Scotland. Given that the public perception of such a secondment might involve a question about independence, why was that route chosen, and is there merit in future in looking beyond the police and perhaps beyond the public sector?

Dr Plastow: That is a good question. Thank you for asking it, because it allows me to explain.

Part of the reason for seconding someone from Police Scotland is because the role is highly specialised. To do the job properly, a person needs a detailed understanding of how the police use biometric data and technologies, from not just a criminal justice perspective—in terms of people who have been arrested by the police—but an investigative perspective, a forensic perspective and a multi-agency public protection arrangement perspective. You cannot easily bottle that and teach it. That is why organisations such as the Police Investigations and Review Commissioner and His Majesty’s Inspectorate of Constabulary in Scotland rely heavily on people coming to their world with investigative backgrounds and a certain level of lived experience of how the police do things. It is about bringing expertise into the organisation.

For the avoidance of doubt, I am the accountable officer. I am not allowed by the Parliament to discharge that duty to anyone. I am the ultimate decision maker. However, Ross MacDonald brings to the role an incredible wealth of experience that is just not out there on tap.

I absolutely understand the premise of your question, but the situation is not unique—and it was necessary for me to seek the prior consent of the Scottish Parliamentary Corporate Body. I hope that that provides the reassurance that you are looking for.

Liam Kerr: I understand. That is clear. Thank you.

Sharon Dowey: Good morning. I want to go back to your opening remarks. You mentioned that the biometrics of children are taken only in the case of a violent or sexual offence, or by exception. Will you expand on that a wee bit, and will you tell me the age classification for “children”?

Last night, some of my colleagues and I took part in a debate in the chamber about the huge rise in antisocial behaviour. A lot of it is caused by youths—children and young people under the age of 24. What age would you class as that of a young person? If you are not taking those details, how are you monitoring whether someone is a repeat offender before the problem escalates and the person commits a violent or sexual offence, perhaps because we have not taken action earlier?

11:45

Dr Plastow: Thank you, Sharon—that is a good question, to which I will give a two-part answer.

In our work, we class anybody under the age of 18 as a child. Obviously, a child in Scotland is defined differently under different legislation.

Sharon Dowey: That is confusing.

Dr Plastow: Yes, it is confusing. However, from the work that we have done previously, such as the assurance review around children who are arrested by the police, and looking at the United Nations Convention on the Rights of the Child, we work on the basis that a child is anybody who is under 18. However, as you rightly point out, in other legislation, people can be regarded as an adult at 16.

To reassure you, the substantive point is that, even if the police do not take biometric data from children who have not committed a serious sexual or violent offence, they still record their details as part of the management of an incident. If a young person comes to the attention of the police for the sorts of things that you described, the fact that their biometric data is not taken does not change the fact that there is still a record of that engagement with the police. If they come to the attention of the police on a second or subsequent occasion, that record is available to the individual inquiry officer.

The point about not taking DNA and fingerprints when you do not need to goes back to the point about weak management of information. For example, when we did the assurance review in relation to children, we asked Police Scotland how many children it had arrested in the past 12 months, and it could easily tell us. We then asked how many children it had taken DNA from, and it could easily tell us. However, when we said, “Okay—in taking DNA from those 4,000 children, how many times did the DNA that you took in custody match to an unsolved crime scene?”, Police Scotland could not tell us. It is important that it should know, because, otherwise, why is it doing so?

Does that answer your question at all?

Sharon Dowey: Partly—I might have more questions on that. At what stage would you take biometric data?

Dr Plastow: The new Police Scotland policy is that, if a child is arrested in connection with violent or sexual offending, the police will capture their biometric data.

Sharon Dowey: That probably leads to more questions because we have lower police numbers and, for some crimes, they say that there is no evidence that they can follow, so the crimes are not getting investigated. That might mean that there is no DNA to follow, because the police have not taken fingerprints for a minor crime. That would perhaps open up more questions for me.

Dr Plastow: You are welcome to send them to us, and we will be happy to answer.

I will make a quick point. Most people out there, who are not involved in the policing world and who perhaps watch programmes such as “Silent Witness” or “CSI”, wrongly assume that biometric or forensic data is a feature of all crime. It actually is not.

I have an interesting statistic for you. We can look at the number of DNA recoveries in the UK where the DNA that is recovered at a crime scene matches a profile that is already held by the police, which means that it matches someone who has already been arrested. Bearing in mind that most—or a lot of—crime is not reported, when we express that number as a percentage of all reported crime, it is 0.3 per cent. That will probably surprise you, but that is what it is: 0.3 per cent of all recorded crime. However, it has a high qualitative value, particularly in crimes such as murders.

Sharon Dowey: I have one final question. In your evidence to the committee last year, you mentioned your concerns about funding in relation to the use of new technologies, particularly body-worn cameras, for Police Scotland.

Another year has passed, and they have still not been rolled out. How disappointed are you about the current situation, and do you have confidence that it will be resolved soon?

Dr Plastow: I absolutely support the need for Police Scotland to deploy body-worn video. I have said that on a number of occasions, and I am grateful to the Parliament for supporting the funding of that.

My understanding is that the delays are associated with technical issues, such as making sure that individual police stations have the correct plumbing—for want of a better word—so that the docking stations work.

It is a bit disappointing, but I guess that there were always going to be technical issues associated with the scale of the national roll-out for so many police officers.

Sharon Dowey: Are you confident that it will be rolled out within a year?

Dr Plastow: Am I confident? I could not express a view on that one way or the other.

Rona Mackay: Good morning, commissioner. From your opening statement, it sounds like you have made great progress. I am really pleased about the children and vulnerable people initiatives that you have worked on with Police Scotland. That is a really positive move.

I want to ask you about Police Scotland's plans to bring in facial recognition and how that would impact on your role. It has been talked about for some time, and concerns have been raised about accuracy. Will you talk me through that?

Dr Plastow: The first thing to say is that, as far as I am aware, Police Scotland has no plans to bring in live facial recognition technology. It plans to have a tripartite conversation around looking at its feasibility, initially with me and the Scottish Police Authority. That journey is yet to happen.

I have said before that there are certain, limited circumstances in which the technology—if it works, is affordable and is used in a proportionate and necessary way—could add value.

To get to the heart of the question that Ms Mackay asked, it would depend on how Police Scotland deployed it. For example, if Police Scotland were to go down the route of deploying the technology in a mobile van, as happens in the Metropolitan Police, there would be no jurisdictional issues for me.

However, if, on the other hand, Police Scotland chose to deploy it by applying software such as BriefCam, which it had bought, through a local authority public space safety camera network, that would give me jurisdictional issues, because I do not have any authority over local authorities. If Police Scotland chose to go down that route—I am not sure whether it will—what would the delivery mechanism be?

There are other big questions, one of which is that the quality of the images that are currently held is probably not good enough to support the technology at this time.

A lot of people think, "Well, we can do this at a passport gate." Yes, you can, but that is because you have given your passport image in a controlled condition, it has a biometric chip and you are standing three feet away from a really expensive camera. That is one issue.

The other issue is about return on investment. Whatever solution Police Scotland might or might not choose to look at in the future, it would have to be satisfied that it got a return on investment. Even the Metropolitan Police, which does this in quite a limited number of deployments, spends well over £500,000, so it would not be cheap. A whole lot of things are in the mix, but, to go back to my original point, there is no secret plan to do that. It is an area that needs to be discussed.

Rona Mackay: That is really helpful.

The Convener: Part of your role involves engaging with international partners at conferences and other events, which are really important opportunities to hear and find out about practice, policy developments and the direction of travel in other jurisdictions. What have you learned? Has any particular practice come to your notice that you feel might be relevant to the Scottish biometrics landscape?

Dr Plastow: That is another interesting question and there is often no right or wrong answer in that territory.

I try to limit engagement outwith Scotland due to the small scale of my budget. I go to London twice a year—although Ross MacDonald will do that next year—to attend the UK forensic information databases strategy board, which is the oversight board that looks after the running of the UK's DNA and fingerprint databases and is an exchange mechanism with the European Union and Interpol.

For the past two years, I have been invited to speak at the Biometrics Institute congress in London, which is the world's biggest global gathering of biometrics policy makers and subject experts. This year, I spoke about the importance of independent oversight; last year, I spoke about the value of biometrics in solving what might seem to be impossible crimes, which goes back to my point about the high qualitative value of DNA.

I can give you a practical example. While I was at the congress this year, I had a side meeting with staff from the US Department of Homeland Security to exchange knowledge and ideas. I shared my thoughts on the future use of biometrics in UK policing and they shared some of the emerging technologies that they are using. They want to move away completely from having electronic passport gates to having walking passport gates. If you go to the United States of America, you have to scan your passport in advance and fill out a form, but they are now trialling a system at Dulles airport in Washington DC where people do not even present their passport at a gate but just walk through and are stopped by a border official only if the technology does not recognise them.

I also have lots of side conversations with people from the Home Office. In my previous annual report I mentioned how, at the invitation of the Scottish Government, we went to Scotland house in Brussels and engaged with European colleagues, which allowed us to be sighted on things such as the EU Artificial Intelligence Act.

We try to cast our net as widely as possible and to deploy environmental scanning to understand what is happening in other areas in order to assess what might or might not be appropriate for Scotland. The answer is always that the approach in Scotland must be right for Scotland.

The Convener: That was fascinating.

To come back to Scotland, as it were, I will pick up on a point that we discussed during your previous session with us. You suggested that there might be potential to expand your remit to include the prison estate because of the extensive biometric data that exists in that part of the justice sector. Will you give us an update on that work? Have you been able to move that forward?

Dr Plastow: No, I have not been able to move any of that forward. I will give you my rationale. I argue consistently that biometric data is used extensively throughout the entire criminal justice ecosystem, and I understand why the commissioner's functions might be restricted to three policing bodies, because the police, whether it is Police Scotland or the PIRC, have the power of arrest and can take biometric data from people without their consent. However, that also happens in prisons. Every prisoner in Scotland has their fingerprints taken. Many prisons have biometric kiosks to save people from having difficulty in carrying money and so on in prisons. There is at least one prison in Scotland where even visitors will not be allowed in unless they surrender their biometric data as a condition of entry.

12:00

At around the time that I was last before the committee, I had a discussion with the then chief inspector of prisons, who was quite happy to say that they did not understand much about biometric data but that they would welcome some support in that area. Subsequently, I had a conversation with the chief executive officer of the Scottish Prison Service and I also appeared before the Scottish Government criminal justice board to say a bit about that.

Ultimately, any decision on the expansion of remit is a matter for ministers. I am mindful of the office-holder landscape review and the call for no expansion of remit before June next year. However, it is a bit of a no-brainer, especially when we start to look at things such as DESC, where criminal offence data, including biometric

data, is shared extensively between partners. I cannot exercise independent oversight of the whole of DESC, only the bit that Police Scotland does.

There are opportunities there, as well as in the surveillance space, as it is often wrongly referred to. We should be talking about public space safety cameras, because that is why local authorities have CCTV systems. It is all about public safety. Increasingly, those systems are piped into police control rooms or police officers in their control rooms. If, in the future, we move to police software interacting with council software, it might get a bit messy for independent oversight.

I have probably said enough about that. I have tried to hammer the point in each of my annual reports. However, there is a requirement in the Scottish Biometrics Commissioner Act 2020 that, no later than one year after the expiry of the period of the first strategic plan, ministers should review the functions of the commissioner. The first strategic plan expires on 30 November 2025, so ministers are required by the legislation to review functions no later than 30 November 2026. That could be about considering whether the function is still necessary, but the legislation also talks about that being the point at which ministers should consider whether any additional bodies should be added or removed. We are therefore coming to a natural point at which this function will need to be reviewed anyway and, as I said in my evidence to the Finance and Public Administration Committee, we look forward to engaging with that piece of work.

We are the model for existing and future bodies to follow in the sense that everything that we do uses a low-cost operating model that is built around shared services. We do not have a human resources function, for example; it is provided to us. Our finance and information and communications technology support is provided to us, too. You can therefore imagine that, if you mix that up throughout the whole environment, there are opportunities for savings.

The Convener: A wee while ago, you mentioned public safety, which made me think about public awareness of all things biometric. In your annual report, you refer to the publication of easy-read versions of the code of practice and the complaints procedure. I presume that your doing that is to make sure that the public understand the implications of the use, storage and retention of biometric data.

We spoke about children and vulnerable witnesses. As a constituency MSP, I feel that I am getting more inquiries from the public about the use of cameras, say, from a bedroom window, that encroach, potentially, on someone else's property. I know that that is not biometrics, but I am

surprised at people's limited knowledge about such practices and the legislation around them, which is really important to understand. I am interested in where you see scope to develop public awareness even further, so that we are not vulnerable to not fully understanding the implications of the use of biometric data.

Dr Plastow: That is a really interesting question. In a non-policing context, most of us love biometric data, because it makes our life easy. You can pay for a coffee with your fingerprint on your iPhone and you can travel almost seamlessly through the e-gates at airports. People are quite happy to surrender their biometric data if it is convenient to them. They do not always realise what then happens with that data.

In a policing context, most people will go through their entire life without ever having much contact with the police. The figure that I gave earlier shows that there are around 90,000 custody episodes in Scotland each year. However, as a percentage of the population of Scotland, most people never get arrested by the police and therefore never have their biometric data taken—so why should they care?

For an organisation such as ours—I have only three members of staff—it is hard to reach out to the wider public. We rely on partnerships for that. For example, once a year, I appear before the SPA board and the SPA policing performance committee. We try to do as much external engagement as we can—for example, through supporting an academic event at the Leverhulme research centre for forensic science or speaking at conferences. We do a bit of that.

It is a niche area but, in getting the message out, the leaflet that I mentioned does more than anything. Police Scotland gives it to every person who is arrested and who has their biometrics taken. That allows those people—the data subjects—to know why their data has been taken, what it will be used for and who it will be shared with.

That never used to happen. I was in the police for about 35 years, and never once in my entire service did we do that. I would just say, "Okay, pal, you've been arrested. We're going to take your fingerprints and your DNA," and that would be it. It is important that people who have been arrested, and who might be at their most vulnerable, are nevertheless given their rights.

To your point, convener, it is also important for victims and witnesses, because people will regularly have their devices seized by the police as part of an inquiry, and, during the course of examining those devices, the police will uncover biometric data.

It is important that there are appropriate safeguards in relation to all that.

The Convener: Thank you. Ben Macpherson has a supplementary question.

Ben Macpherson: Commissioner, you have provoked a question that I have wondered about for some time. It is in relation to what you said about travel. Often, when people enter or exit other countries, biometric data is taken. Do constituents have any ability through your office—not in relation to a criminal justice investigation or any attachment to a crime but in relation to when their data is taken as they travel—to inquire as to whether that data is still held or can be deleted? Do you have that international connectivity?

Dr Plastow: I have the connectivity, but it is not part of our jurisdiction. Obviously, some matters, such as UK border controls, are reserved to Westminster, so we do not have a function in relation to that.

That does not stop us from giving advice to people. For some reason, the most frequent telephone call to our office is from people who want to know how to get a biometric permit for Canada. We know how to do that. Joanna Milne from my office is very good at giving people appropriate advice.

Although we have wider conversations on the use of biometrics in other contexts, my role is specifically about policing and criminal justice. People tend not to come to us for other types of inquiries; if they do, we signpost them to the appropriate organisation.

The Convener: I will ask a final question then draw things to a close. Your annual report helpfully sets out some of the detail of the costs that are associated with the commissioner function, which is very helpful, and you gave helpful evidence at the recent Finance and Public Administration Committee inquiry into the commissioner landscape. That has now been debated in the Parliament, and there is agreement that there will be a review process. What we have heard today has helped in the understanding of the technical nature of the Scottish Biometrics Commissioner. I am interested in any last reflections that you might have about the importance and relevance of the role—about which, given what we have heard today, we have no doubt.

Dr Plastow: I always say to people that the distinctiveness of what I do is to provide assurance to the Scottish Parliament that, when biometric data is acquired in Scotland under domestic criminal procedure law, it is used lawfully, effectively and ethically. That is important, because our national police service, Police Scotland—the second-biggest police force in the

UK—holds massive amounts of biometric data. Some people would argue that it holds too much.

As I said, that data is sometimes acquired from people—whether they are accused persons, victims or witnesses—when they are at their most vulnerable. It is therefore important that there is a level of independent oversight. In this case, that cannot be delivered by the Scottish Police Authority, because it provides forensic services to Police Scotland and jointly administers the DNA and fingerprint arrangements.

It is a good, value-for-money and low-cost public service, on which the Parliament made a good decision when it passed the Scottish Biometrics Commissioner Bill back in 2020. I suppose that it will have an opportunity in 2026 to make up its own mind about how effective or otherwise that has been.

The numbers in the annual report speak for themselves. If we strip out the salaries, our operating costs were £65,000 for the year, £19,000 of which was audit costs. If we strip out the audit costs, the cost of running the organisation, excluding salaries, was £46,000 for the year. That is pretty good value for public money.

The Convener: I agree whole-heartedly.

We draw our session to a close. Thank you for attending; it has been an interesting session.

That completes our business in public.

12:15

Meeting continued in private until 12:58.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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