



OFFICIAL REPORT
AITHISG OIFIGEIL

COVID-19 Committee

Thursday 4 March 2021

Session 5



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COVID-19 COMMITTEE
8th Meeting 2021, Session 5

CONVENER

*Donald Cameron (Highlands and Islands) (Con)

DEPUTY CONVENER

Monica Lennon (Central Scotland) (Lab)

COMMITTEE MEMBERS

Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

*Maurice Corry (West Scotland) (Con)

*Annabelle Ewing (Cowdenbeath) (SNP)

*John Mason (Glasgow Shettleston) (SNP)

*Stuart McMillan (Greenock and Inverclyde) (SNP)

*Mark Ruskell (Mid Scotland and Fife) (Green)

*Beatrice Wishart (Shetland Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Michael Clancy (Law Society of Scotland)

Alex Rowley (Mid Scotland and Fife) (Lab) (Committee Substitute)

Iain Smith (Inclusion Scotland)

Calum Steele (Scottish Police Federation)

Alison Watson (Shelter Scotland)

CLERK TO THE COMMITTEE

Sigrid Robinson

LOCATION

Virtual Meeting

Scottish Parliament

COVID-19 Committee

Thursday 4 March 2021

[The Convener opened the meeting at 09:30]

Next Steps

The Convener (Donald Cameron): Good morning and welcome to the eighth meeting in 2021 of the COVID-19 Committee. The committee has received apologies from Monica Lennon and Willie Coffey, and I welcome Alex Rowley as Monica's substitute.

The committee will take evidence on the next steps to take in the Covid-19 pandemic. Today's witnesses are Michael Clancy, who is director of law reform at the Law Society of Scotland; Iain Smith, who is national and local policy manager for Inclusion Scotland; Calum Steele, who is general secretary of the Scottish Police Federation; and Alison Watson, who is director of Shelter Scotland. I welcome you all to the meeting.

We will start with short opening remarks from each of the witnesses, starting with Michael Clancy, who I understand needs to leave the meeting by 11 am.

Michael Clancy (Law Society of Scotland): Thank you very much for the opportunity to attend the meeting.

In talking about the next steps on Covid-19, while a lot is going on at the moment, we have to think about the way in which the disease is managed in the immediate future and, I hope, controlled in the not-too-distant future.

In publishing "Our Priorities for the 2021 Scottish Parliament Elections", the society has identified that Covid-19 has been a terrible and destructive element in our society since last year. Many of the secure and stable bases on which we were proceeding prior to last year have been radically altered. The effects have stretched across all aspects of society and civic life. Our justice system, business, family life and the work and legislative output of the Parliament have all been affected, and the terrible toll of death has affected almost every family in the country.

It is a solemn thing to do to think about moving on, the future and a release of the restrictions under which we all currently live, but we can consider, for example, how to ensure that the justice system is improved and made resilient for the future, how we can improve our approach to emergency legislation for future threats, and the

health of the country and how we prepare for any future pandemics or other such events.

I will leave it there, because I know that others have things to say.

The Convener: Thank you, Mr Clancy. We move to Mr Smith.

Iain Smith (Inclusion Scotland): Inclusion Scotland is the national intermediary for disabled people's organisations. We try to ensure that the lived experience of disabled people is taken account of in all policy-making decisions. We have expressed concerns that the rights of disabled people have been impacted negatively by the United Kingdom and Scottish Covid-19 emergency legislation.

When the emergency legislation was drawn up, insufficient account was taken of the UK's state obligations under the United Nations Convention on the Rights of Persons with Disabilities. There are particular concerns about the provisions relating to assessments for adult social care and some of the provisions in relation to mental health in the UK legislation, which have either not been commenced or have been suspended. There are also concerns in relation to the adults with incapacity provisions in the Scottish acts, which we feel were unnecessary and represent a direct and serious breach of the human rights of adults with incapacity.

In general terms, we are one year on from the imposition of what was emergency legislation to deal with what was then an unknown—how services, including those that I referred to, would be able to cope with Covid-19. We now have one year's experience, and we know how services have adapted and coped. We have to question whether simply rolling forward the initial emergency legislation is the right way forward. Surely, after a year, there has been time to review it and to introduce new legislation to address the continuing issues of Covid-19, instead of rolling forward the same emergency legislation.

In particular, we feel that the legislation that was initially introduced was about how services would cope with delivery during Covid-19, rather than approaching the situation from the perspective of individuals who would be affected by it. When it comes to new legislation, we should work with disabled people—for example, people with mental health issues, people with learning disabilities and people who receive social care support—to ensure that their rights are respected in any emergency legislation that is introduced to deal with Covid-19 or any future emergencies.

The big question that we have is why the Scottish Government has not introduced fresh legislation to take account of what has happened over the past year. We also want the provisions in

the Scottish acts that relate to adults with incapacity to be withdrawn. We feel that those provisions have a serious impact on the human rights of adults with incapacity. One aspect of the issue is the fact that the working group that is looking at how the provisions relating to adults with incapacity work does not include any representatives of people with learning disabilities. That is because the focus of the legislation has been on those who are charged with delivering services, rather than those who receive services.

There is an issue about how we ensure that, as we move forward, we involve people with lived experience in the design of any future emergency legislation. Inclusion Scotland strongly urges the committee to recommend to the Scottish Government that it does more to ensure that people who are affected by emergency legislation are included in the decisions about how it is drawn up and implemented.

The Convener: Thank you, Mr Smith. We turn to Calum Steele from the Scottish Police Federation.

Calum Steele (Scottish Police Federation): Thank you. From the get-go, it is important to highlight that the emergence of the global coronavirus pandemic led to an emergency. As an emergency service, the police were, unsurprisingly, asked to step in to help with some of the public health expectations and to assist with the management of the governmental response to the pandemic.

I believe that the police service in Scotland—probably significantly differently from the police service south of the border—has approached the challenges of the policing of the pandemic very well and effectively. That was not always easy in the legislative environment in which the police were operating. The speed and frequency with which legislation was changing, and the notice that was provided to those who were expected to enforce provisions—which were often incompatible with the accompanying political narrative at the time—were enormously challenging for the police service.

It is important to reflect on the earlier comments about the way in which emergency legislation is utilised and whether, almost 12 months after the introduction of the first piece of legislation, we necessarily serve the institutions of the state best by continuing to roll over emergency legislation, or whether we take time to take stock and look genuinely at what has worked well and what has not worked so well.

The Convener: Thank you, Mr Steele. Finally, I ask Ms Watson to make a statement.

Alison Watson (Shelter Scotland): On behalf of Shelter Scotland, I thank the committee very

much for the opportunity to provide insight and evidence from the more than half a million people Shelter Scotland helps every year with their housing. Housing is very much at the centre of this public health emergency. “Stay home” is the key message about how we all stay safe individually and how we keep our communities safe. The Scottish Government has shown great leadership in putting in place emergency protections and ensuring that everyone has been housed during the pandemic. If people have a home, their chances of losing it have been significantly reduced.

However, we need to recognise that, before the pandemic, Scotland was already in the grip of a housing emergency. We had had three consecutive years of rising homelessness and record numbers of families trapped in temporary accommodation. We need to recognise that being housed is vastly different from having a home.

As we begin to look to what we hope is the end of the pandemic, we have a unique opportunity, because we can decisively end Scotland’s housing emergency. We can look at the structural cause of that emergency, which is a lack of social homes, and ensure that we drive up the supply of social homes. There is an immediate need to tackle some of the backlogs in our housing system by looking at the allocations of social tenancies to homeless households.

That takes Shelter Scotland to a place where we strongly support all elements of part 1 of the Coronavirus (Scotland) Act 2020 being extended to September 2021. We are still in the pandemic, and a lot of people are still not vaccinated, so it feels important that people should not face the threat of eviction at this time.

The pandemic has also shown us where our housing system has weaknesses. There is an opportunity to enshrine in legislation some of the emergency actions, such as the pre-action requirements in the private rented sector, and make them permanent.

Along with key partners, we are seeing a worrying level of housing debt building up during the pandemic, so we need a clear exit strategy for that. We need to provide an exceptional response to what looks as though it will be an exceptional level of rent arrears. The latest monthly statistics from the Scottish Housing Regulator show that, in the social rented sector alone, rent arrears are now £20 million more than they were before the pandemic. Just before Christmas, Shelter Scotland commissioned research that showed that one in four people who pay rent or a mortgage are really worried about how they will keep pace with that and are doing things such as skipping meals and leaving the heating off in cold weather so that they can continue to meet their housing costs.

We are getting a strong sense of the real strain on household budgets of trying to keep up with housing costs. This is not the time to take away the emergency protections that have done so well, and we cannot have a cliff edge.

The Convener: I thank Ms Watson and all our panel members for those opening remarks. We will now move to questions. Members will have about eight minutes each to ask questions so, as ever, I ask that we keep questions and answers as concise as possible. If there is time for supplementary questions, I will indicate that once all members have had a chance to ask their questions. To assist broadcasting, I ask members to say who their questions are directed at.

I will ask the first question. I want to explore an issue that a lot of people have grappled with in relation to enforcement of the emergency legislation. It is about the difference between guidance and actual regulation. The Scottish Police Federation makes some observations on that in its written submission, but before I go to Calum Steele, I ask Mr Clancy whether he has any reflections on that dynamic.

09:45

Michael Clancy: It is an interesting question. Guidance crops up in statutory interpretation in many ways, and it has been particularly noticeable in connection with the coronavirus legislation. There are a couple of reasons for that.

First, the coronavirus legislation presents a hitherto unprecedented set of restrictions on personal liberty. The provision of guidance to explain that legislative framework is important to enable people to understand on which side of the law they fall. That is particularly important in that, when we think about good law, we want law that is clear, consistent, comprehensible and accessible. Without any disrespect to the parliamentary counsel who have drafted the measures, some of the more than 130 pieces of subordinate legislation that the Scottish Parliament has passed in connection with the coronavirus crisis could be interpreted by people as being dense and difficult to comprehend. Therefore, additional guidance is quite important.

It is also important that, when that guidance is explained by ministers and others, people understand the difference between guidance and the law, and I would say that that should include ministers and others. At the very beginning of the crisis, we were frequently told that we could go out to exercise for an hour or for two hours, but when one looked at the coronavirus legislation, one found that there was no such time limitation in it. I think that consistency between what is in the law and the messaging around the guidance that

informs people's understanding of the law has to be a front and foremost objective. I hope that that answers the question.

The Convener: That is very helpful. Mr Steele, do you have further observations?

Calum Steele: I agree almost entirely with Mr Clancy's comments. I would only add that I am not sure that I would take the view that much of the guidance that accompanied the legislation did, in fact, accompany the legislation. In many instances, the guidance that was issued by the Government was almost separate from the provisions of the legislation. The guidance frequently went beyond what the legislation provided. The issue of exercise duration is one example; another is the distance that individuals could travel to exercise. For a long period of time—I dare say that, to some extent, this probably still prevails—there was genuine confusion among the public our members interact with about what they were meant to be doing.

The general message that, if you follow the guidance, you will almost certainly be within the law, is probably accurate. Of course, it is ultimately for parliamentarians to decide whether we want to enforce the will of ministers on co-operation through guidance, or whether that should sit within a statutory framework.

In that regard, the disconnect between guidance being applicable to the provisions of the law and guidance that often went beyond the provisions of the law was not particularly helpful. Had the guidance been in line with the description that Mr Clancy fairly articulated, that would have been much more helpful, not just for the police service but for the general public, who at some points did not really know whether they were coming or going.

The Convener: I will stick with policing. I was struck by the suggestion in Mr Steele's submission that, if charges were brought, they were brought using the culpable and reckless conduct charge under the common law and not so much, it appears, under the emergency legislation. Is that correct? If so, is there a reason for doing that, and does it have any implications?

Calum Steele: There are many implications, if I may be so bold. Not least among them is the fact that legislators should be asking themselves whether the scope of the legislation goes as far as they wished it to extend in the first instance.

Some fundamental difficulties present themselves. Under the emergency legislation that was brought in to deal with a particular set of circumstances, individuals who are considered not to have complied with the restrictions that the legislation provides for are finding themselves charged under common law. That suggests that

judgments are being made that the provisions of the legislation do not go far enough to cover the examples of behaviour that police officers are encountering.

There are also examples—I cannot specifically go into them, for obvious reasons and as I hope you understand—where it appears that individuals have not contravened the coronavirus regulations in any way, shape or form, yet they have found themselves liable under common-law charges. That in itself suggests that there has been an indirect expectation placed on the police service almost to police the guidance, to an extent, rather than the law.

The Convener: My final questions are directed to Mr Smith and Ms Watson. Should any element of the emergency legislation that affects disabled people and housing and homelessness be retained in the long term? I ask Mr Smith to respond first, and then Ms Watson.

Iain Smith: As far as disabled people are concerned, most of the provisions in the emergency legislation were about suspending existing legislation because of the emergency. For example, the power was there to suspend the requirement on local authorities to carry out assessments for social work care support under the Adults with Incapacity (Scotland) Act 2000, which is still to be kept on the statute book. That involved suspending the time limits, or stopping the clock, so that people who were subject to a guardianship order could remain subject to a guardianship order for however long the situation remains. I do not think that there are any grounds for those provisions to be retained, and certainly not in the long term. We questioned at the time whether those provisions were appropriate, as there were serious breaches attached to them.

There may be different ways of delivering a service as a result of what we have learned from the Covid-19 pandemic, and there might need to be some amendment to existing legislation to pick up the good things, such as the fact that it is possible to have hearings online, rather than in a courtroom. That is not necessarily a bad thing, and the legislation might need to be updated to take account of what we have learned that we can do during the Covid-19 pandemic. However, we should certainly not seek to extend the existing restrictions that are being placed on human rights and on disabled people.

Alison Watson: As I said in my opening remarks, we have an opportunity to apply some learning, particularly in relation to the provisions covering the private rented sector. We would certainly recommend that we retain the pre-action requirements that are currently in place and that provide stronger rights for tenants. I say that in a context where, throughout the pandemic, despite

the eviction protection being in place, Shelter Scotland has continued to take calls from tenants in the private rented sector who have been threatened with eviction by their landlords. There is a mismatch between what the legislation says should be happening and what is happening on the ground.

We have a real opportunity through the provisions on the private rented sector to close that gap. It is about taking that learning and ensuring that there is nothing whereby having rent arrears in the private rented sector should always automatically trigger eviction. We are beginning to learn that we can take a different approach, and we would certainly recommend that that be considered.

The Convener: I will now turn to colleagues.

Alex Rowley (Mid Scotland and Fife) (Lab): I will start with Mr Steele, and perhaps Mr Clancy will want to add something.

Has the Government got the balance right when it comes to policing? Mr Steele, you have said that it is for others to decide whether the extension of police powers is desirable, and, if it is, whether it should be conveyed through emergency regulations instead of primary legislation. Obviously, we need to learn the lessons of this period before considering such questions, but do you agree that the approach has to be measured, and that the more legislation and regulation there is, the more difficult that could make it for the police?

The First Minister has said quite a number of times that people need to be able to use their common sense to stay within the rules. Do you think that the legislation that exists is effective enough, or do you believe that the police need further powers? More specifically, if we move back to a tiered system, will that make it more difficult, or will more resources need to be called upon for the police? Do the police have enough resources to deal with the pandemic and with everything that is being asked of them?

Calum Steele: Thank you for those questions. I will try to take them in reverse order.

You will not be surprised to hear that, whenever anyone asks someone in the police whether they want more resources, the answer will always be yes. That has to be stacked in the balance with what the public expects. Ultimately, the success or otherwise of the regulations from a policing perspective will be determined, first of all, by the willingness of people to comply with any restrictions that they encounter and whether those ultimately contribute to the bringing down of infection rates across the country.

A remarkable thing about the proliferation of legislation was that, the more legislation we got, the more offences we got. I suppose that to some extent that is inevitable but, when we faced restrictions just after mid-March, about 12 months ago, we had no legislation but public compliance was enormous. Obviously, you could argue that fatigue, general boredom and being scunnered with the realities of life and being stuck at home all day resulted in the requirement for legislation. However, when situations apply universally across the whole country, that is much easier to deal with than when there are fragmented arrangements that apply to different tiers—tiers 4, 3, 2 and 1—and the travel-related obligations and restrictions that go with them.

The policing of the stay-at-home requirement—or, to be more accurate, the requirement to not be outside your home—is much easier than any of the other elements, simply because it is an explicit offence, unless you have a reasonable excuse. The starting point is that, if you are outside your home, you have committed an offence, subject to the qualification that you might have the defence of a reasonable excuse. The ability to detect further offences, such as ones relating to travel or crossing between tiers without a reason for being out of the home, presents questions about the right of individuals not to self-incriminate, which is far from easy to deal with from a policing perspective, when you are dealing with a set of restrictions that are applied—[*Inaudible*.]

Alex Rowley: On the point about expectations, this morning, I saw an article in *The Courier* in which Chief Superintendent Andrew Todd described how he visited and spoke to members of a committee of Angus Council yesterday. He said:

“We are finding that a number in our community want us to do more and complain when we don’t, and a number want us to do less and complain when we don’t.”

10:00

In general, I have found that the public are totally behind the approach that the police have taken. However, it is interesting that the same report notes that a comparison of the number of complaints in Tayside this year with the figures for last year shows a 14.6 per cent drop in Angus, an 11.8 per cent drop in Perth and Kinross and a 12 per cent spike in Dundee. Does that tell us that geography or the differences between rural and urban areas are significant in relation to Covid-related offences? Across the various areas, are we finding a difference in the aspects of policing that are being called on and the demands that are being made?

Calum Steele: On the specifics, we are probably talking largely about house parties, which

are the most prolific examples of breaches that the police are called to attend and which take place across the length and breadth of the country. There is an increase in general non-compliance with those particular restrictions. Such examples are increasing among a relatively small proportion of the population, who have just decided that they have had enough and no longer intend to play by the rules.

I am not sure that that is an urban-versus-rural problem. Inevitably, because there are more police officers in our urban centres than there are in our rural locations, if the public phone the police to ask them to attend gatherings of individuals in population centres, there is a greater expectation in our cities that they will be there. In some rural areas, there is more of a grudging acceptance that there is probably no point in phoning the police because, by the time that they get there, the whole thing will be finished.

Therefore, I am not sure that there is anything particularly distinct in the psyche of those who live in our cities versus those who live in our rural communities in relation to the levels of compliance. Simply because of the strength and weight of numbers—even if we go by pro rata numbers—we will see more such incidents in our densely populated centres.

Alex Rowley: For parliamentarians who are looking at the legislation and at an extension of it, the two key questions are whether the police have enough powers to enable them to do the job that they are being asked to do and whether they have enough resources. I know that you will always say that you need more resources, but that is a different question from whether you have enough, given the shift in what you are being asked to do and the increasing pressures on all police officers. Do the police have the resources to enable them to do what we are asking them to do, and do they have the powers for that?

Calum Steele: I assure you that this is not a cop-out, but I am mindful that, to an extent, it is for parliamentarians to put a check on the powers that the police have and use. However, if you are asking me whether there are deficiencies in the law as it currently exists, in terms of the expectation that it places on police officers, the answer is yes. Some very obvious difficulties present themselves on powers of entry to houses. I have given an illustration of that in my written submission. When police are dealing with offences that are associated with travel, there are difficulties with the requirements to provide information without potentially coming into conflict with the right not to self-incriminate. Those areas could be looked at.

It is also important to highlight that, simply because of the coronavirus, the police service has

not stopped dealing with all the things that it is tasked with. There was a lull in the early days of four to six weeks when there was a definite downturn in the demand placed on the police service, but that came back with gusto. The police service is now dealing with exceptional levels of demand, which is compounded by the reality of the pandemic and by preparing for events that will place further pressure on the service throughout the year, not least the 26th United Nations climate change conference of the parties—COP26—in Glasgow in November. The police service is required to prepare for all that and increase certain levels of training exponentially, which by extension removes police officers from the tasks that they are normally required to do.

Although I might have glibly said that the police will do all that, I will always say too that the police service could do with more resources—genuinely, the police service could do with more resources. However, I suspect that Ms Forbes would argue that, with the funding that has been provided for the service—Mr Yousaf would also have this view—the maintenance of the status quo is probably as good as we are going to get just now.

Alex Rowley: I have a quick question for Alison Watson on housing. I can see locally the major impact of the pandemic on the social housing sector, which has virtually closed down in many areas, with a lack of transfers, allocations et cetera. Do we need a national recovery plan that will co-ordinate with each local authority area to get social housing moving again?

Alison Watson: You make a good point. We are concerned that more than 14,000 households are now trapped, in effect, in temporary accommodation. That figure has increased by 22 per cent during the pandemic, but even before then it was at a record high. That tells us that there is tremendous pressure on the system. Coupled with that, we have concerns about a lack of suitable accommodation for people to be placed in during the pandemic. It is great that people are being housed but, as I said in my opening remarks, being housed is not a home and hotels are certainly not a home.

In our two largest cities—Glasgow and Edinburgh—hundreds of people are still being housed in hotels. We are struggling to see the flow of accommodation to take them out of the hotels and give them permanent accommodation. Shelter Scotland has been calling for a short-term temporary accommodation task force, because the pandemic has highlighted a problem that was already significant, which is the backlog of demand. The central pillar of the Scottish Government's agenda on ending homelessness is rapid rehousing, but it is still stuck on the starting blocks because we cannot get the supply issue

sorted. We still cannot get a flow of lets for homeless households. Until that is tackled, the policy agenda and its broad terms will not move forward and we will not deal with the additional pressures from the pandemic.

Alex Rowley: My time is up, but I am sure that other members will pick up on that answer.

Beatrice Wishart (Shetland Islands) (LD): I address my first question to Ms Watson, but Mr Smith might want to come in after her. Domestic abuse is a major cause of women's homelessness in Scotland. Earlier in the pandemic, Scottish Women's Aid warned that increased risks for emergency accommodation coincided with a reduction in their capacity because of distancing requirements and delays in being able to move individuals to more permanent homes. Are there any groups of people like domestic abuse victims who need more support as a result of the pandemic and as we continue through it and come out the other side? You referred earlier to applying learning from the pandemic. Do you have any indication of other groups that need additional support?

Alison Watson: A welcome measure taken during the pandemic was to ensure that people who otherwise would have been rough sleeping were housed. In the main, that is about people being accommodated in hotels in Edinburgh, Glasgow and some other locations. There has been a lot of success in taking that as an opportunity, given that we now have a group of people in one place, to build relationships with them, understand what the issues are and work with them to ensure that the right support is put in place so that they can sustain accommodation. Our concern is that that is not happening for everyone, particularly people who have more complex needs. I am thinking particularly about people who have substance misuse issues. We are also aware of women in hotels who have a background in sexual abuse or domestic abuse, which is what you are talking about.

We see a system that is struggling to cope and is struggling to put enough support in place to avoid bringing together in hotels a large number of people who have very significant vulnerabilities. That is dangerous if there is not sufficient support or sufficient accommodation to move people on to. Although there has been some success in that regard, that success is not happening at sufficient volume.

There is, of course, the issue of what happens when it is felt that the emergency measures can be withdrawn. If we cannot accommodate people just now, there is a danger that there will be a dramatic spike in rough sleeping when the emergency protections, and the investment that makes those protections possible, are removed.

That goes back to my earlier comments about the need to ensure that there is not a cliff edge.

We need to recognise the extent of our opportunity to act. We need to understand what is working at the moment and when the system, with its overstretched resources, is simply not able to cope and reach everybody.

Beatrice Wishart: That is helpful. Mr Smith, do you have a response on the issue of vulnerable groups that might need further assistance and support with housing at this time?

Iain Smith: I do not have a specific response on housing, but there are clearly a number of issues—which I could explore all day—about the amount of additional support that disabled people need. On housing, I suspect that one of the big issues is ensuring that people are living in suitable accommodation, because I am sure that aids and adaptations have been impacted by the crisis. People are living in overcrowded accommodation, which makes social isolation more difficult, and there are other such issues.

There are general issues relating to the benefits system. People cannot get access to the advice and support that they would usually get when applying for benefits, and that might mean that they are not getting access to the support that they need to meet their housing costs.

In general, disabled people who find it more difficult to access services in normal times will find it even more difficult to access those services during the current Covid pandemic, particularly because disabled people are less likely to be online and have access to online services. That might be because of poverty, because of the need for equipment to be adapted in order to get online or simply because they live in areas with inadequate broadband, which impacts a lot of disabled people in rural and remote communities, as I am sure Beatrice Wishart is aware.

Beatrice Wishart: Absolutely. Thank you for that.

I want to ask Ms Watson about student accommodation. We know that student finances were particularly hard hit. Just this week, there have been reports of more students using food banks. A significant financial burden for students is the need to pay rent, and many students with private landlords have not been able to get rebates. Were the guidance and regulations for the second lockdown sufficiently clear for students in short-term accommodation? Does the renewal of the legislation provide sufficient protection for students in the event of another lockdown?

Alison Watson: To take the second part of your question first, I think that there should be continuing protection for students, particularly to

enable them to terminate their leases with 28 days' notice. We are very far from being out of the woods, and we have seen the volatility of the crisis and how that has impacted students in particular.

I will make a more general point about whether there is enough support in place for students. Throughout the pandemic, Shelter Scotland has found that, in general terms, nobody seems to know enough about their rights. We are calling for a broad-based campaign to raise awareness so that people are clear on what rights they have and know where they can get support to ensure that those rights are consistently enforced. I include students in that. A lot of what students are experiencing is due to significant confusion about what their rights are and who they can ask to help them fulfil those rights, but students are not alone in that; there are a lot of affected groups. Earlier, we spoke about people in the private rented sector. A huge proportion of calls to our national helpline come from renters in the private rented sector who are genuinely confused about what rights they have. An awareness-raising campaign in the context of this being a pandemic that is very far from over would be welcome.

10:15

Beatrice Wishart: You make a good point. As we go into another academic year, it will catch up with us pretty soon.

I turn to Mr Clancy to ask about Scottish Government messaging on the legislation and how people have been able to understand what they can and cannot do. Is there anything obvious that could be improved in getting messages across to the public?

Michael Clancy: That is an interesting question. I do not have any statistical information about the extent to which people have or have not understood the Government's messaging. However, we have considered it in our committees and, from our perspective, its communication seems to be pretty reasonable.

Messaging occurs in various ways. It comes from ministerial briefings, which are frequently done by the First Minister and sometimes by the Cabinet Secretary for Health and Sport. Those are good ways to convey information to people about the current state of play.

There is a significant presence of information online—guidance and legislation are online. However, we spoke about the difficulties in how that gets. It is fair to say that the general public are pretty law abiding. Therefore, when a law is passed, most people will say, "That is the law, and I will abide by it." I accept the issues to which Calum Steele referred, about people who go out of their way to not comply with the law. Some people

will always do that, but I get the sense that, in general, most people abide by the law. That implies that the message is getting through.

If I had a silver bullet to get that information to people in a more useable way, it is likely that I would be doing something else this morning. However, clearly, to use all the media at the Government's disposal is the best way forward.

We can tailor media to different categories of person—young people, children and the elderly—both to ensure that there is a constant flow and also to give people as much notice of updates as possible, in language in that is as accessible as possible, so that they are able to grasp what is happening and figure out how to comply. Those are my words of guidance on that.

Beatrice Wishart: Thanks, Mr Clancy. I was going to ask Calum Steele to comment, but I see that Iain Smith would like to reply.

Iain Smith: It is very important that we ensure that accessible communications are at the centre of what we do, so that people who have other communications needs—such as British Sign Language or EasyRead—are getting access to information. Quite often, that is forgotten about.

We were pleased that the Government accepted our request to have BSL translators at its daily briefings. The UK Government has still failed to do that. However, there is still an issue with getting communications in formats that are accessible to all disabled people.

I have one further point, which is that I do not think that anyone can remember what FACTS stands for, apart from Jason Leitch.

Beatrice Wishart: Mr Steele, do you have any comments on the messaging?

Calum Steele: I do not think that anyone can criticise the way in which the messaging is delivered. The one thing that is specific to my area and the individuals I represent is the difficulties that inevitably present themselves when the messaging and the legislation do not strictly align. I would go so far as to say that the biggest difficulty that police officers face has been the inelegant nature of how the legislation has been presented. I defy anyone with moderate computer skills to navigate the legislation website to find specifically what provisions apply in any area at any time. I imagine that anyone who can find that will be applying for jobs in the Parliament.

Stuart McMillan (Greenock and Inverclyde) (SNP): Before I begin my questions, given Mr Smith's comment on FACTS, it is important to put on record what it stands for: wear face coverings; avoid crowded places; clean your hands regularly; keep a 2m distance; and self-isolate and book a test if you have symptoms.

There has been a significant volume of, particularly, secondary legislation. As someone who was a member of the Delegated Powers and Law Reform Committee in this and the previous parliamentary session, I generally have a healthy respect for the work of that committee and for those who are involved in preparing secondary legislation.

Let us consider what has happened throughout the coronavirus pandemic: there have been 86 made affirmative, 34 negative, 11 draft and three laid only pieces of legislation. That comes after the huge amount of work and legislation due to Brexit. Does Michael Clancy recommend that, when we get to the point of considering the effects of Covid and how parliamentary scrutiny has taken place, the Delegated Powers and Law Reform Committee should commission a specific piece of work or that the Parliament should ask the DPLR Committee to look at the effects of the legislation, particularly the secondary legislation? Should there be some other type of activity on that committee's work over the past 12 months?

Michael Clancy: You are not alone in commending the Delegated Powers and Law Reform Committee for its sterling work. It is a fashion in legislation that primary legislation—acts of the Scottish Parliament—frequently loan law-making powers to the Scottish ministers and that those are implemented through a range of regulatory powers that the DPLR Committee struggles, albeit successfully, to scrutinise properly, doing its best to ensure that the law is compliant with the parent act.

Our broad themes for dealing with legislation—if you do not mind a slight digression before I get to the meat of your question—include that there should be adequate parliamentary scrutiny to uphold the rule of law when making legislation in respect of the coronavirus. We have seen broad regulation-making powers in, say, section 11 of the Coronavirus (Scotland) Act 2020 and section 14 of the Coronavirus (Scotland) (No 2) Act 2020. Those sections deal with significant new powers to deal with the coronavirus pandemic.

Parliamentary scrutiny of the legislation was not of the standard that we would ordinarily expect when dealing with primary legislation in the Scottish context. It was certainly a lot better than the United Kingdom Parliament's consideration of its Coronavirus Act 2020, which went through all its stages in the House of Commons in one day on 23 March last year. Even so, we could do better in the future when making legislation that affects public health and emergency circumstances.

The key to good law making is practicality, consistency, clarity and accessibility. A lot of that comes from having adequate pre-legislative consultation. In order to do that, we have to know

what the Government is thinking about, so that it is able to issue consultation documents and get views from a broad range of stakeholders. Those who are figuratively around the table today represent some of those voices.

We were also concerned about respect for human rights. Lots of the provisions in the acts and the subordinate legislation intrude on some of our fundamental rights. They engage the European convention on human rights in a number of ways, including in the criminal justice sphere and on freedom of movement and the right to a family life. We must be aware that human rights should be foremost in our future considerations, and we should take account of the competence provisions of the Parliament.

On subordinate legislation, you are correct—there were 132 Scottish statutory instruments at the point at which we wrote our briefing. One of the orders that the committee will consider, the Coronavirus (Scotland) Acts (Early Expiry and Suspension of Provisions) Regulations 2021, is a made affirmative instrument. The fact that it comes ready-made presents the Scottish Parliament with a difficulty. Can we have enough scrutiny of legislation that is essentially already effected, even if it might not come into force for some time yet?

That leads me to the extent to which subordinate legislation is used, and to the bulk of it. There have been 22 Scottish statutory instruments since the turn of the year, and there have been 25 regulations amending the Health Protection (Coronavirus) (International Travel) (Scotland) Regulations 2020. We are dealing with the product of a Government that is trying to catch up with the movement of the virus and trying to be agile and flexible enough to deal with issues as they appear. The disease spreads and the expertise of scientists and virologists is applied to that. Those who are unwell are mapped. It is important that we bear in mind that this is an extraordinary situation, but I think that we can do better.

The question why the Civil Contingencies Act 2004 was not deployed is a matter over which people still argue. We must settle on what the law is by having something that is fit for purpose in the 21st century and agile enough to deal with fast-moving situations while satisfying the requirements of proper legislative scrutiny, including pre-legislative scrutiny.

10:30

The Delegated Powers and Law Reform Committee should be looking at something that sketches the landscape for the future. We must also bear it in mind that the Public Audit and Post-legislative Scrutiny Committee has a post-

legislative scrutiny function. Perhaps there could be some way in which both the DPLR Committee and the PAPLS Committee could engage with the issue, bringing the pre-legislative and subordinate legislation skills of the former to the post-legislative scrutiny role of the latter.

Stuart McMillan: Thank you for that, Mr Clancy.

My second question is for Calum Steele. You mentioned COP26. If things go to plan, Euro 2020 will still take place in Glasgow in the summer. You also spoke about resources. Do you believe that Police Scotland will be able to fully deal with COP26 and Euro 2020 as society begins to reopen in the coming months?

Calum Steele: The short answer, particularly in relation to COP26, is no—not on its own. That should not surprise anyone. That is not an admission of shortcoming on the part of the Police Service of Scotland; it is simply that the sheer scale of the event will require policing resources from across the United Kingdom to be drawn into Glasgow. There is an increasing belief that the size of the event will only grow with the success of the vaccination programme, which is accelerating and will give people confidence to travel to the event.

On the other activities, the short answer is yes, of course, the police service will manage those. However, the obvious question is whether the police service is able to manage them to the best effect that it should, or as it would manage them were it not for coronavirus.

The biggest challenge that presents itself to the service at this time is when it comes to specific activities that police officers undertake that must be delivered to a standard that is accredited, often by reference to the College of Policing in England and often in the most high-risk areas of policing, which include public order, security escort driving and firearm activities. The capacity limitations—human and physical limitations, buildings and the manner in which training is being delivered—that are being placed on the service mean that, at this time, our preparations, with the best will in the world, are being hindered because of the virus.

Discussions are taking place separately with the Scottish Government about whether people undertaking those forms of training should be prioritised for consideration in the vaccine programme, for example, which would make the service much more agile and able to respond. Doing that would certainly remove a fairly healthy chunk of risk from the police service in that regard.

I think that we, as a police service, have shown time and again that we are able to respond, almost regardless of what is thrown at us, whether that is weather-related emergencies and disasters,

significant terrorist incidents, other types of major crime or mass public order events.

We have had the Commonwealth games and the G8 in the past. The service is in good shape numerically to respond to the vast majority of what is asked of it. However, the reality of the virus and what it means for how we prepare is a limiting and significantly hindering factor at this point in time.

Stuart McMillan: Are you satisfied that an appropriate testing regime is in place for front-line police officers?

Calum Steele: No.

Stuart McMillan: Can you provide the committee with information about the number and frequency of tests that have been carried out?

Calum Steele: That has been a hoary old chestnut in the service. Without being too indiscreet, I note that it has also been a point of significant conflict. To an extent, I have sympathy for the chief constable on this, because I suspect that his ability to furnish access to testing is limited by the general availability of testing. One of the issues that has been most forgotten, rather than ignored, is the fact that the Parliament legislated to put police officers in positions in which they have to intervene in what have been recognised as high-risk situations. Despite that, there was no corresponding testing regime to identify the risk of officers' exposure to the virus as a consequence of attending those incidents, which, in turn, would have helped to inform the policing response and the public health response as to whether there were risks thereafter being introduced into subsequent engagement with members of the public.

Some lateral-flow testing has been introduced recently across a small part of the police service, but, in our view, that does not go anywhere near far enough. The vast majority of response officers who attended parties last night and who will attend them tonight and every night of the month generally do not have access to testing. There is, to an extent, testing on request, which has certainly improved over the past weeks. However, in general, that exposure of police officers and, by extension, police officers' families and the general public thereafter could have been mitigated more with more frequent testing.

Stuart McMillan: I have a final question for the whole panel. When should the legislation that has been introduced over the past 12 months be reviewed?

Alison Watson: That is a big question and a hard one to answer when we are very much still in the pandemic and the Scottish Government is taking a cautious view of how we will wind back from the pandemic. It certainly feels as though

there is an opportunity to capture a lot of learning on the housing side—my previous comments echoed that—and we would do ourselves a great disservice if we did not capture that learning. It will probably be about three to six months before we can start to look back and capture it. My concern is whether we are capturing the right data now to inform that evaluation when we start to wind the measures back. That is a significant concern that I would raise.

Iain Smith: As I indicated in my opening remarks, I believe that the time is already past for that review to happen. The emergency legislation was brought in largely on the basis of not knowing how the virus would impact a lot of areas. There have been questions and learning already over the past year that could have been brought forward to update the legislation and make it more appropriate. In particular, too little account was taken of the needs of disabled people in the planning for dealing with the coronavirus. Disabled people and their representative organisations have not been included in the contingency planning processes, so the legislation needs to be reviewed and amended to take account of that.

Calum Steele: I agree with Iain Smith. I believe that the time is long since past for a review of the legislation. That being said, the fact that we are having this meeting and that these questions are being asked to some extent points to some form of review in its own right. There is a temptation to be slightly flippant and say that 6 May would be a good day on which to start the review of the legislation, but I am not sure that that would be particularly helpful. Parliament is constrained by the realities of time, particularly with the forthcoming elections.

Given the range of issues, it is a bit like the old advert for calling your solicitor: it is never too early to start the review. That is true particularly because of a number of factors, one of which is that we are coming into better weather. I think that there is a general increase in fatigue among the general public who are facing restrictions, and I do not think that it would be particularly helpful to continue to deal with a public that is hungry for freedom and release through what is seen to be the rolling over of emergency provisions. Some early attention to the realities of human nature should come into the thinking, and I hope the review happens before the Parliament rises.

Michael Clancy: The issue of timing is an imponderable. The difficulties that Mr Steele has talked about, including the election period being nearly upon us, with the recess starting later this month, and the issue of the new Government and what its priorities will be, are political factors rather than legal ones. Clearly, even if some might say that the time for a review is already past, that will

not prevent us from starting a review at some point in the future, probably when the disease and its spread have been stable for some time and when there is sufficient capability to connect with the health and virology communities about what sort of learning they have done. I am sure that academics in our universities will be thinking about the effect of the coronavirus on their various subjects, so the Parliament might undertake some kind of literature review between now and the commencement of the new session.

The committee's legacy paper will want to emphasise the need for future law making in the area to be evidence based. We did not have evidence before, but we will have it in the future.

The Convener: Before I turn to Mark Ruskell, I know that Mr Clancy has to leave at 11, so I want to ask Mr Steele, Mr Smith and Ms Watson about their ability to stay on beyond 11. We are taking slightly longer than expected—are you all okay to carry on?

Alison Watson: Yes, indeed.

Iain Smith: Yes.

Calum Steele: I have an 11 o'clock meeting, but the next time that the camera is off me, I can easily push that back 15 minutes.

The Convener: That would be helpful.

Mark Ruskell (Mid Scotland and Fife) (Green): I want to pick up on Calum Steele's points about workplace testing in the police. I understand that there was a commitment in the Government's announcement last week to testing front-line officers who work in emergency control rooms. However, that seemed to be the extent of identifying a workplace testing strategy for those working in the emergency services.

Can you clarify what the testing regime in the police is at the moment? Earlier, you seemed to suggest that it is a bit random and that there is perhaps a policy of testing on request rather than a specific policy of regular asymptomatic testing.

10:45

Calum Steele: That description is accurate. The expansion of testing to emergency control rooms across all the emergency services seems to be a policy decision that has been taken by the Government. My understanding is that it also extends to fire and ambulance control rooms, for example. Although that is welcome—because, let us be honest, we cannot afford for those who answer the telephones to go down like dominoes—it does not deal with the realities, the pressures and the vulnerabilities that police officers who are going through doors and attending mass gatherings are concerned about.

As I said in response to Mr McMillan, there has been some improvement in access to testing. However, in general, the facility to request and access tests is available to them is for officers who are symptomatic, or who believe that they are. The SPF does not believe that that goes far enough, either organisationally or politically. The legislative intent is that police officers should place themselves in high-risk situations, so there should also be support and safety mechanisms to ensure that, as a consequence of having done that, they are not exposed to the virus, which thereafter they take to others, who are also then exposed.

We are long overdue a better testing regime. My very strong view is that one that covers at least every police officer who has been to any gathering—particularly those inside premises—should be available. Officers should probably be tested within a number of days after the event and again a number of days thereafter, just to ensure that nothing is missed.

Mark Ruskell: Would you argue for the kind of testing regime that teachers have, in which they regularly—every single week or, in some areas, twice a week—have lateral flow tests? Alternatively, should testing be done only in certain circumstances? You said that officers who attend mass gatherings could make a judgment.

Calum Steele: This might surprise some people, but I am inherently a libertarian, so I do not believe in anything that tends towards compulsion. However, my belief is that, if the ability to get tested were to be available to the police service, the vast majority of officers would participate in a regime that is similar to the one that is available to teachers, and that the number of objections would be down to almost single digits.

Obviously, not every single member of the police service works in police buildings and police stations or in the environments that we have discussed. If it is simply a question of capacity and of where the area of greatest risk is, I would say that those who attend calls should be front and centre. However, if a testing regime were able to go more widely in the interests of the greater resilience of the service, we would not object to that in any way, shape or form.

Mark Ruskell: How has the review on the use of police powers under the Covid regulations that John Scott QC has been undertaking panned out? Has it been constructive? At this point, I have not seen any conclusions from it.

Calum Steele: Mr Scott regularly reports to the Scottish Police Authority. I am sure that individuals who have a massive interest in its activities can view all his contributions online, where they are

made available in much the same way as the Parliament's video content is made available.

In general, the review and those assisting with it have been very complimentary about the police approach. In Mr Scott's contribution at the authority last week, he was able to demonstrate what the data showed, and to highlight and burst myths about those who were seen as disproportionately affected. He was fairly critical about some areas of the legislative approach. I think that it would be unfair to ask me to paraphrase that, but it is available for anyone to look at.

Mark Ruskell: We have touched on testing, and you have previously raised concerns about personal protective equipment. As a workforce, the police will not be prioritised for the vaccine—officers will just have to wait for the programme to work its way through the age cohorts. Do you have any current concerns about PPE?

Calum Steele: I have no concerns about the availability of PPE at this time. However, that is a relatively new position. The concern about PPE prevailed for a long period over the early days of the pandemic, certainly. We had a strange situation, in that the analysis showed that we used more of what I would describe as high-risk PPE over the summer months, when the virus was in abeyance, than we used at the start of the second wave, when infections were increasing. That, in its own right, was an area of concern.

There are some internal issues relating to the use of PPE, but, without being unkind, I do not think that it would be appropriate to raise them at this committee, unless, of course, members feel that they need to press.

Mark Ruskell: That is tempting, but I need to move on. Perhaps you could write to the committee with those—[*Inaudible.*]

I turn to Alison Watson. A number of my colleagues have been pushing for a ban on evictions over recent months. One option is to make the winter eviction ban a permanent feature of housing policy. Do we have a model for that?

You might have heard some of the concerns that the First Minister raised about whether having a winter eviction ban would effectively create a cliff edge whereby, as soon as the winter was over, people would get evicted. I suppose that there would also be some concern about the build-up of debt over the winter. Is there a workable model that we should adopt?

Alison Watson: I have said a couple of times that we absolutely need to avoid that cliff edge. Although the eviction ban has been extremely welcome for renters, we must recognise that it does not cover everyone. For example, cases

have been proceeding through our courts where an eviction action was raised before the start of the emergency protections in early April last year.

We need to learn from what is happening and ask whether the policy is comprehensive enough. Although banning evictions during the winter is particularly welcome, I think that there is an opportunity for us to be more progressive.

Scotland has a fantastic track record on housing rights. We have internationally recognised housing rights—they are the most progressive housing rights in the world. There is an opportunity to ask, through the lens of those progressive rights, how we want evictions to be managed, particularly in the social rented sector.

You mentioned rent arrears, which are a particular and acute concern. I referred to the recent figures from the Scottish Housing Regulator, which indicate that there are rent arrears of more than £160 million just in the social rented sector. The figure is difficult to quantify for arrears in the private rented sector.

The Joseph Rowntree Foundation has done fantastic research recently that highlighted that well over a third of renters are in the industries that are most impacted by the pandemic. We have a real sense that the worst is still to come, unfortunately, for a lot of people who rent. I do not think that we can end eviction measures just as we come out of lockdown. We need to understand the full extent of the economic fallout and the consequences for people's jobs and incomes before we can take any definite measures.

There is a real opportunity to ask, as a progressive nation with progressive housing rights, what the arguments are for ever evicting people simply on the grounds of rent arrears, when we have such fantastic examples of good practice in our local authorities and registered social landlords. If you make changes, such as intervening early when someone is just starting to get into difficulty, and put in place benefits and money and debt advice, you can prevent the eviction from happening in the first place.

We also know from landlords that evictions are a costly business for them—we understand that the full cost of an eviction can be between £10,000 and £15,000.

What is the best use of public money? Is it to take people through a legal process, which will only leave them homeless? We still have a responsibility as a nation to that person who is homeless. Alternatively, is it to put in place everything to help them keep a roof over their head?

We have an opportunity to learn from what we are doing currently, which is progressive, and not

end our approach at the end of the pandemic, partly because of the long-term economic impact, but also because that would be right and fitting for the progressive nation that we want to be on housing rights.

Mark Ruskell: We need to see housing much more as a fundamental human right rather than it being all about property rights.

Finally, I move to Iain Smith. One of the major impacts on people with disabilities during the pandemic has been the cancellation of medical appointments. Do we have a clear handle on the data on that and what the impact has been? Do you think that the Government is factoring that into the recovery? In my constituency case load, I am certainly seeing lots of people who are really struggling and who are waiting months on end for medical interventions that do not come.

Iain Smith: I do not think that we have any specific data on that. We have done surveys of disabled people across Scotland and, most recently, just in the Highlands, and we know that access to medical services is a key concern for them. That concern is not just about the ability to physically access their general practitioner, but about the loss of the services on which they rely, including support groups, clinics, pain relief and a whole range of the ancillary services that the national health service provides, which have been more difficult to access and which cannot be accessed online. As I said earlier, disabled people do not necessarily access the internet in the same way that others do, so some of the online services that are provided as an alternative to physical meetings are not available to some disabled people.

Transport is an issue—it is more difficult for disabled people in rural communities to get to services. That is partly because of shielding: they cannot use public transport and may not have access to a car of their own.

There is a whole raft of ways in which disabled people have found it more difficult to access health services, and that has resulted in their physical health deteriorating. There are also issues in relation to mental health. The situation is a big concern.

I do not think that the Scottish Government is doing enough work to monitor the impact of Covid-19 on disabled people. On the statistics on deaths and admissions to hospital as a result of Covid-19, we have been struggling to get the Government to take account of disability as one of the factors to address—we do not even have any statistics on that. It is a big issue, and the Government needs to work with disabled people's organisations to take more account of the needs of disabled people when it is drawing up statistics.

Mark Ruskell: Thank you very much.

The Convener: We are under time pressure, and two of our witnesses—Mr Clancy, and then Mr Steele—may need to leave quite soon. I ask members to put questions to Mr Clancy first.

Maurice Corry (West Scotland) (Con): The response to the pandemic has operated on a four-nation basis. Is there anything that we can learn from the legislative processes and the scrutiny that takes place in Cardiff, Belfast and Westminster?

11:00

Michael Clancy: In our submission, we suggested that there should be some kind of interparliamentary group that allows for the development of best practice across all the legislatures in the UK. That worked with varying degrees of success—it was certainly considered to be very useful—during the Brexit negotiations, when there was an interparliamentary group that involved Lord McFall, in his position as Deputy Lord Speaker, getting representatives from the Scottish Parliament, the Welsh Senedd and the Northern Ireland Assembly together. That might be a way in which the Scottish Parliament could share its good practice with others and, we hope, get some benefit of learning from them.

Maurice Corry: Therefore, there has been no progress on that.

Michael Clancy: You would have to ask the parliamentary authorities. I have not seen any interparliamentary discussions, but that does not mean to say that they are not taking place out of the public gaze.

Annabelle Ewing (Cowdenbeath) (SNP): Good morning. Time is marching on, so I will pare back the questions that I wanted to ask. I should declare my entry in the register of interests: I am a member of the Law Society of Scotland, and I hold a current practising certificate, albeit that I am not currently practising.

Michael Clancy, time is brief for you to give a full response, but perhaps a plot-line summary would do. First, what impact has the coronavirus pandemic and the approach taken to the emergency legislation had on the rule of law in Scotland? Secondly, given all the circumstances—the facts that we are still in lockdown, that the pandemic is still very much here, that the Parliament is about to go into recess and that a new Parliament will be elected on 6 May—what would be the alternative at this stage to proceeding with an extension of the emergency legislation to 30 September 2021?

Michael Clancy: I will answer your second question first. I do not believe that there are any alternatives to the legislation. The coronavirus acts

are quite clear: the date of expiry is September 2021, so for those provisions to survive, they must be extended. That strikes me as pretty clear, but I have no doubt that someone will have an alternative view.

On the impact on the rule of law, I will define the rule of law here as issues relating to the justice system and, in particular, ensuring that those who are accused of having committed crimes are dealt with promptly, that the victims are satisfied and that the courts can operate. As you and other committee members know, there has been significant disruption to the operation of the criminal and civil justice systems in the country. We are delighted that High Court trials are back on, and the society has participated in providing its expertise to, for example, the Scottish Government, the Cabinet Secretary for Justice and the court system. We appear as members of various working groups in that connection.

In the context of the Government's emerging policy to recover, renew and transform the justice system, we certainly want to be front-line participants in that. That means being members of the criminal justice board and the advisory board that supports that from an independent standpoint. We are not included at the moment, and I would hope that this committee could make the plea that the Law Society of Scotland should be so included. We have done a lot of good work in that area. The idea of using cinemas as courts emerged from our jury trials working group, and we were delighted to support the faculty of solicitors in Dumfries in relation to the changes that the Scottish Courts and Tribunals Service announced yesterday, which will save people from going to Ayr in person for court cases. There is quite a lot going on. We want to participate, and we think that we have done a good job so far.

The impact on solicitors is of course very significant. Their businesses have, in many cases, been very badly affected by the coronavirus legislation and the lockdowns. We are grateful to the Government for its fund to assist primarily legal aid solicitors, but more has to be done in relation to resources and the opportunity for time to be given for legislation concerning legal aid and other such matters. We can write to the committee about those things in the very near future, if you would like.

Annabelle Ewing: Those were very interesting proposals. I am sure that the committee would be happy to receive any submission that you wish to make. I think that the convener is now going to somebody else in order to allow them to ask Michael a question.

The Convener: If you have any further questions for Michael, please feel free to ask them now.

Annabelle Ewing: I have a question for Calum Steele, but I think that somebody else wants to ask Michael a question. Given that he has to go first, perhaps we could go to that colleague.

The Convener: Yes—thank you. We will go to John Mason, who has a question for Mr Clancy before he goes.

John Mason (Glasgow Shettleston) (SNP): I am grateful for that. It is a follow-up question to Annabelle Ewing's questions.

On the backlog in the courts, it had been suggested previously that we should go ahead with court cases without juries. In retrospect, was it a mistake not to do that? Can we speed up the process of catching up on the backlog of court cases? Sometimes, I feel like we are always looking for a gold standard—to speed things up, could we go for a silver standard?

Michael Clancy: The standard is the extent to which we comply with human rights, Mr Mason. I do not need to tell the committee the articles of the European convention on human rights that are engaged when you get to criminal justice matters: articles 5 and 6 about liberty, security and fair trials. It is about making sure that trials for the most serious matters are fair, which the Lord Justice General has been quite clear about.

The proposal to remove the jury was met with universal disdain, as it would put at risk some of those principles that we hold most dear. It was right for the Government to think again on that. The important aspect is the resources that are made available in the renewal and transformational parts of the Scottish Government's recover, renew and transform policy. That is where we need to be looking for improvements in the justice system, rather than looking at what we can pare off from the existing arrangements.

The Convener: I thank Michael Clancy for his evidence this morning and for staying on slightly beyond the time that he indicated that he had to leave.

We turn now to Calum Steele, who also requires to leave shortly. We will take questions for him specifically in the same order, going to Maurice Corry first of all.

Maurice Corry: Police officers, including special constables, have been on the front line in responding to the Covid-19 outbreak since its outset, but do you feel that your members were given adequate training on enforcing the new legislation?

Calum Steele: The only honest answer to that is no. The speed with which the legislation and many of its subsequent revisions were landed on the police service meant that opportunities for

preparation, training and briefing were rarely available. I do not criticise the police service for that in any way, shape or form; I believe that it did as much as it could with the information that was available to it and in the timeframe that was available to it. However, almost in spite of that, I fundamentally believe that—with the exception of obvious examples where we did not always get things right—police officers did a sterling job within the limitations of the environment in which they were operating.

What was helpful, though, was that the police service did not look to be overly punitive to officers when they got things wrong. There was a genuine recognition that we were working in difficult situations. The service was quick to put its hands up and say, “On this occasion we may not have got that as right as we could have done,” penalty notices were either withdrawn or rescinded, apologies were issued and so forth. However, the reality was that because of the time and speed at which things were landed on the service the ability to have such training was not there.

Maurice Corry: What are the key issues that you would want to be addressed if you could do that now?

Calum Steele: I wrote to the cabinet secretary back in May to highlight the fact that opportunities to enable us to inform legislators’ thinking on emergency regulations were not taken. The Scottish Police Federation, among other bodies, is more than adept at turning round intended provisions quickly, to highlight and to intimate to legislators what the practical impediments could be.

It would be fair to say that, after that correspondence, engagement with the Scottish Government at official level improved significantly, but it always felt as though it was too late in the day to be able to inform the structure of what was coming—often within hours.

Annabelle Ewing: I thank Calum Steele for hanging on for a few minutes. I wish to say at the outset that I very much commend all officers and staff in Police Scotland for all that they have done, and continue to do, to get us all through to the other side of the pandemic safely.

My question concerns the fundamental tenet of policing by consent, which in Scotland has always been the key approach. Has there been any impact on that fundamental principle? If so, is it merely a short-term impact, or might elements of it persist into the future?

Calum Steele: To some extent, my comment in the written submission in the name of the Scottish Police Federation, which highlights that

“the policing acts of today are often judged more harshly”

through the eyes of tomorrow, means that, in all honesty, that question cannot be answered properly. At this point in time, our experience is in line with the comments that have been made previously to the effect that the vast majority of the public are more than happy with the manner in which the police are approaching the issue. Of course, as time passes, as legal challenges arise in different jurisdictions, and as there is an examination of the relationship between the fundamental rights that individuals enjoy and how the law applies to those, it might be that the realities of today are distorted by the passage of time.

However, the chief constable set a helpful tone early on—often possibly to the dismay of ministers when clear indications were given that the legislative line would be much more stringent than the policing style ultimately delivered.

Annabelle Ewing: Time will tell, but I agree with your main proposition that the majority of people in Scotland felt comfortable with Police Scotland’s approach.

11:15

John Mason: I will follow on from Maurice Corry and the idea that the rules were changing so quickly. Was there any alternative? Given the infection rates, things had to change. There was no point saying that we would change things in a month’s time. I think that you suggested in your evidence that primary legislation would have been preferable to regulations. Would that have been possible?

Calum Steele: We are in the realms of hypothesis now. My personal view is that, where there is a will, there is definitely a way. I would have much preferred for the Parliament to have taken slightly more time to put in place a significant set of frameworks, through primary legislation, that could have predicted without too much difficulty that there would be flare-ups locally, impacts in certain sectors, the potential for a second wave and infection rates across communities ebbing and flowing.

I believe, with a fair degree of confidence, that the Government could have put in place a legislative framework that was capable of responding to events as they arose, rather than dealing with them through emergency legislation. We were often chasing the outcomes, rather than dealing with them in advance. For example, the second wave started before we had started to put in place the mechanisms to respond to it, whereas all the scientific evidence and all the virologists to whom I listened certainly suggested that ebbs and flows and peaks and troughs were an inevitability

of the pandemic. To my mind, the Parliament should have looked further, sooner.

John Mason: Secondly, and finally, there was a feeling that there was a bit of inconsistency in the policing, sometimes, and maybe that was because there was confusion about the rules in the regulations. For example, the Black Lives Matter protests were treated fairly leniently, as were the crowds at Celtic park, but the people defending statues in George Square were treated more strictly. Do you think that there was inconsistency?

Calum Steele: I think that there was inconsistency in how the messaging surrounding the mass gatherings issue in the round was dealt with. From a policing perspective, if we take the reality of that environment away and look at people gathering in a peaceful manner versus people gathering in a more aggressive manner, I do not think that the police service could have done much more.

However, I believe that there was a bit of hand wringing by some parliamentarians—there was certainly a lack of strident condemnation of the fact that the gathering was taking place, regardless of whether there may have been some sympathy for the reason for the gathering in the first place.

One of the most strident examples of that is two events that took place in Glasgow on the same day. There was a mass gathering in George Square at which I do not believe many, if any, penalty notices were issued. Later that afternoon, there was a mass gathering in Kelvingrove park and penalty notices were issued. Such inconsistency risked undermining to some extent how the police approached such gatherings. However, that certainly was not helped by the messaging that accompanied the politics of it at that time, regardless of the sympathy for the cause over which people were taking to the streets.

The Convener: I again thank Calum Steele for allowing us to ask him questions beyond the time that he said that he would be available.

I will return to the pre-arranged question order for the remaining part of the meeting. Maurice Corry, do you have any questions for our remaining witnesses?

Maurice Corry: Yes, I do. My first question is for Iain Smith. Do you know why the provisions in the Coronavirus (Scotland) Act 2020 relating to the assessments of adults requiring support were suspended but those relating to children were not?

Iain Smith: You would have to ask the Scottish Government to answer that question. Our view is that neither set of provisions should be in force and that the requirements for children should be suspended.

It is important that disabled people, or people with additional needs, get a proper assessment of what those needs are and the services that they need to support them. We can see no justification for the Coronavirus Acts suspending the requirements for those assessments. Indeed, the experience is that, although some local authorities suspended the assessments, there is no need to do that now and assessments can be carried out.

We think that there should be a review to ensure that, where it is necessary, assessments can be carried out in different ways. They should happen and they should not be suspended.

Maurice Corry: What did Inclusion Scottish do about that? How powerful was your argument to the Scottish Government in trying to ensure that your wishes were implemented? What effort was made?

Iain Smith: When the UK Coronavirus Act 2020 and the subsequent Scottish Coronavirus Acts suspended the requirement for assessments for social care, we put pleadings to the Parliament based on our concerns, which were primarily on the grounds that the provisions breached the United Nations Convention on the Rights of Persons with Disabilities in relation to the rights of disabled people to receive the support that they need.

We also raised concerns in relation to the cuts in support for social care, which resulted—directly or indirectly—in a commitment from the Scottish Government to ensure that funding was made available to local authorities to prevent further cuts in social care support.

We have conducted a number of surveys of disabled people on social care issues and on Covid-19 more generally. The results of the surveys have been presented to MSPs and the Scottish Government. We hope that those have helped to influence the decisions that have been taken, including the decision to suspend the adult social care support assessment requirements. We think that that should also apply to children's assessments. We do not have as much contact with children's services, because we are primarily an adult disabled people's organisation.

Maurice Corry: Your survey results are clear that there was a detrimental effect on adults, and, from what you know, there was a similar effect on children.

Iain Smith: Yes, absolutely. That is on-going—some people have not yet had their service restored to what it was before Covid hit. In particular, there is the huge increase in the reliance on unpaid carers to fill the gap. Unpaid carers are not, for example, receiving the same respite support that they used to receive so they are under huge pressures. There are massive

concerns. I stress that we did not think that social care support was adequate before Covid-19, and it certainly is not adequate during Covid-19.

Maurice Corry: Thank you for that.

Alison Watson, you said that one of the key weaknesses in the housing sector clearly relates to evictions and rent arrears. How would you advise that that be dealt with within the extension of the Covid legislation?

Alison Watson: The measures that are in place do not look like they will be extensive enough to do the job. There is a £10 million tenement hardship loan fund. As of 15 February, our information is that only £200,000-worth of loans have been paid from the fund to 73 tenants. We are hearing—this is consistent with the position of the Scottish Federation of Housing Associations—that many people either do not qualify for the loans or are reluctant to take them.

Some people's credit ratings mean that it is difficult for them to get such loans; others have concerns about their credit rating being affected by taking one. That tells us that for people who are in housing debt, looking at getting into more debt as a response to it is not working for them. We would ask the Scottish Government to consider broadening the existing support package and providing non-repayable forms of support. As I said in my earlier comments, there is a lot of fantastic evidence, from local authorities and housing associations, of housing providers who have put early intervention in place—chiefly, advice on money, debt and welfare benefits—to ensure that people can be supported to repay their rent over a reasonable period.

Maurice Corry: Focusing hard on the effect on credit ratings, which seems to be a big issue, what would you advise the Government to do through legislation to rectify the hardship that people are feeling?

Alison Watson: As I said earlier, the answer needs to be a non-repayable form of support—for example, a grant rather than a loan. We are seeing people getting into absolutely uniquely exceptional levels of rent arrears and, unfortunately, the worst is yet to come. We have the opportunity to put something in place now to avoid the problem of people getting into such unsustainable levels of housing debt that they risk losing their homes, with all the costs to the public purse that come with that.

Maurice Corry: What would Shelter Scotland advise the Government to do about dealing with credit rating agencies?

Alison Watson: The Government's approach to the effect of housing debt on credit ratings should be to put in place a non-repayable form of support

for people—for example, a grant to alleviate their housing debt—so that such debt is not a trigger for a credit rating issue.

Maurice Corry: I am not particularly happy with that answer, but we will drill down into that issue in the future.

The Convener: Our next questions come from Annabelle Ewing.

Annabelle Ewing: I had several questions for both panellists, but they have been asked and well answered, so I will not detain the committee unduly. I am happy to leave it there, convener.

The Convener: As long as you are sure. That is very helpful; thank you, Annabelle.

Our final questions will come from John Mason.

John Mason: Just to be difficult, I will ask one or two questions if I may. My first question, which is on evictions, is for Shelter Scotland. Some of the housing associations were concerned that if no evictions were happening, tenants might ask why they should bother paying their rent. I get the impression that some tenants who could pay have chosen not to, because they know that they cannot be evicted. Is there a potential problem with that? Arrears have gone up quite a lot.

Alison Watson: We hear mixed stories from across the range of social housing providers. As I said, even before the pandemic there were really great examples of positive practice. One that comes to mind is Queens Cross Housing Association, which is a large housing association in Glasgow. For a period of 12 months it adopted a position of having no evictions; instead, it put early interventions in place, such as getting people advice on debt and benefits. Not only was no one evicted during that 12-month period, but the housing association raised an additional £900,000-worth of rent. We can therefore see that looking at things differently, through the lens of a progressive position, can be better for both the landlord and the tenant. We must ask how we can take such learning and ensure that it is applied more consistently across all forms of housing.

John Mason: That is a helpful answer—thank you. I think that evictions were still allowed in cases of antisocial behaviour, but in practice those were difficult to carry out. I had constituents who had antisocial behaviour happening next door to them. It was one of the worst cases that I have come across. Eventually the decent tenants simply left, because nothing was happening. I felt very much for them. Did we get the balance right on antisocial behaviour?

11:30

Alison Watson: [*Inaudible.*]—I do not have that to hand but I am happy to furnish the committee with it at a later date. When we look at the reasons for evictions in the social rented sector, we see that people who are evicted on the ground of antisocial behaviour are a very small proportion of the problem. Going back to the pandemic, we at Shelter Scotland were very concerned about steady year-on-year increases in evictions purely on the ground of rent arrears, which had gone up by 46.5 per cent in the two years before the pandemic. There is clearly an issue about why rent arrears are triggering that response to that extent.

Antisocial behaviour always needs to be taken seriously. Landlords need to get the balance right between the support that they put in place for vulnerable tenants and, as you say, making sure that other tenants have a sense of safety and security about the place where they live, but the proportion of tenants who fall into the antisocial behaviour category is very small.

John Mason: That is helpful as well. I have one more question for you. You said that hotels are not suitable and I am broadly in agreement with you on that. Is there other accommodation available now or is it a question of increasing the amount of accommodation?

Alison Watson: We need to increase the supply of affordable accommodation. We are calling on all political parties to commit in their manifestos to building 37,100 social homes over the next five years. That is based on research that we did with the Chartered Institute of Housing Scotland and the Scottish Federation of Housing Associations. We gave ourselves the challenge and worked with a number of universities to quantify affordable housing need in Scotland, so we are very clear about how many homes we need.

In the shorter term, we need to increase the number of social homes that are allocated to people in the homelessness system, because we had a huge backlog of demand in the system even before the pandemic. That has got worse by more than one fifth. Thousands of people are now trapped in temporary accommodation that varies in quality.

One of our other concerns is that with the suspension of the unsuitable accommodation order exemptions, people do not have the right to enforce a suitable standard of temporary accommodation, which is absolutely front and centre of people's health concerns at the moment. If somebody is in a form of temporary accommodation where there are shared kitchens

and bathrooms, they cannot safely self-isolate when they need to do so.

There are a number of things that we could do now to drive up the standard of temporary accommodation, and we need to increase the supply of temporary accommodation. Ultimately, we need more social homes in the system. The weaknesses in our housing system have been thrown into very harsh relief by the public health emergency.

John Mason: Thanks for that. My final question is for Mr Smith and is, in a sense, a rounding-up question. You have said a lot about disabled people not being involved in the decisions. Is your main concern that the decisions were wrong or that the way in which they were made was wrong?

Iain Smith: It is a bit of both. If you involve disabled people in the decision-making process, you are more likely to get the decisions right first time. There are simple examples of where measures have been put in place with all best intent to improve social distancing, such as shops having a one-way system. However, they then discover that the one-way system does not have an accessible exit, because they have not involved disabled people in helping them to work out what is needed. It is simple things like that.

Disabled people are experts in their own lives on how to adapt to different situations. Involving disabled people in making the decisions and setting up the systems, whether at national or local level or even at the local shop, will ensure that the decisions are better not just for disabled people, but for everyone. One in four of the population is disabled, so it is surely not too hard to take account of those needs in the contingency planning. One of the key things that we are calling for in our manifesto for the next election is ensuring that disabled people are fully involved in the contingency planning for any future emergency. Get us involved now and we can help to ensure that when something like this happens again, we will not make the same mistakes.

The Convener: We have a final quick supplementary from Alex Rowley.

Alex Rowley: Developers continually talk about affordable housing, but that seems to mean all things to all people. There are major blocks in the planning system and others caused by land ownership or availability.

Do we not need a national housing recovery plan after Covid? Rather than talking about building 30,000 affordable houses, we should set out a clear plan across the country. Does Shelter Scotland support that?

You have mentioned a number of statistics. I have looked at your website. Do any of your

recent publications have those statistics in them? I have been finding it difficult to find them on the website.

Alison Watson: You asked about how many homes we need, and where. I was referencing research into affordable housing that we did with the Chartered Institute of Housing in Scotland and the Scottish Federation of Housing Associations, which we published last June. I am happy to furnish you with that. It should be on the website.

I agree that we must turn the aspiration for social housing into a plan. Like many others, we await the publication of the "Housing to 2040" consultation results. We want to see not only a vision for the homes that we need in the places where we need them, but a vision for the delivery detail. We must get that right. I agree that there are challenges.

Against that backdrop, we should also recognise that the current supply of affordable housing is one of the biggest success stories of this Parliament. We have developed our capacity to build. Shelter Scotland is saying, along with many others in the sector, that we should keep up the good work. We have to make up for decades of underinvestment in social housing. The commitment to social housing should transcend parliamentary cycles and party politics. We must hardwire that commitment into our system. That is what we hope to see in "Housing to 2040": the vision, the delivery detail and the investment plans all coming together to ensure that we decisively end Scotland's housing emergency.

The Convener: That concludes our evidence session. I thank all participants, especially our witnesses, for their time and evidence, and I thank colleagues for allowing us to juggle the evidence to get around availability issues.

Our next meeting will be on Wednesday 10 March, when the committee will take evidence from the First Minister. We will also take evidence on the Scottish Government's refreshed strategic framework and its legislative proposals for the renewal of its emergency powers.

Meeting closed at 11:37.

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