OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 17 January 2017

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 17 January 2017

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JUSTICE COMMITTEE
2nd Meeting 2017, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*Mairi Evans (Angus North and Mearns) (SNP)
*Mary Fee (West Scotland) (Lab)
John Finnie (Highlands and Islands) (Green)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Ben Macpherson (Edinburgh Northern and Leith) (SNP)
*Liam McArthur (Orkney Islands) (LD)
*Oliver Mundell (Dumfriesshire) (Con)
*Douglas Ross (Highlands and Islands) (Con)
*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

David Harvie (Crown Office and Procurator Fiscal Service)
Rt Hon James Wolffe QC (Lord Advocate)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 17 January 2017

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Margaret Mitchell): Good morning and welcome to the second meeting in 2017 of the Justice Committee. We have received apologies from John Finnie. We are joined in the public gallery by the Speaker of the New Zealand Parliament, the Rt Hon David Carter MP, and we are very pleased to have him with us this morning.

Agenda item 1 is a decision whether to take item 6 in private. The item is consideration of written evidence on the legislative consent motion on the Criminal Finances Bill, which is United Kingdom Parliament legislation. Do members agree to take that item in private?

Members *indicated agreement.*

Crown Office and Procurator Fiscal Service

10:01

The Convener: Agenda item 2 is an evidence-taking session for our Crown Office and Procurator Fiscal Service inquiry. I welcome to the committee the Lord Advocate, the Rt Hon James Wolffe QC, and David Harvie, Crown Agent and chief executive of the Crown Office and Procurator Fiscal Service.

For this item, I refer members to papers 1 and 2. I understand that you do not intend to make an opening statement, Lord Advocate. Is that right?

The Lord Advocate (Rt Hon James Wolffe QC): I do not intend to do so, convener, although I want to wish the committee a good new year.

The Convener: We reciprocate.

As this is likely to be quite a long evidence session, I propose to suspend the meeting for a comfort break around 11.15. I now invite questions from members.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Lord Advocate, I want to give you the opportunity to lighten my personal darkness. I got a little bit confused when speaking to the cabinet secretary about the nature of the relationship between the Lord Advocate, the Government as a body, individual ministers and your independent role as the head of the prosecution service. It would be useful to hear your statement on that. If I have any supplementary questions, I might ask them afterwards.

The Lord Advocate: Indeed. The Lord Advocate, by statute under the Scotland Act 1998, is a member of the Scottish Government, as is the Solicitor General for Scotland. As Lord Advocate, therefore, I am a member of the Government and in that role I have a number of responsibilities in relation to the legal advice that the Government takes and upon which it acts, as well as other constitutional responsibilities. As head of the prosecution service and head of the system of the investigation of deaths in Scotland, by statute, I am required to exercise those functions entirely independently.

Those functions are described in statute as my “retained functions”, which refers to the fact that they were exercised by the Lord Advocate long before devolution—they go back to at least the 16th century—and that they are essentially separate from, and independent of, the devolution settlement and attach to the office by virtue of the office. I exercise those functions

"independently of any other person".

I am personally responsible for the activities of those parts of the Crown Office and Prosecution Service.

Is that helpful in teasing out a little about the two roles that I play?

Stewart Stevenson: I think that that is sufficient.

The Lord Advocate: The important point from the perspective of this inquiry is that my role as head of the systems of prosecution and investigation of deaths in Scotland is one that I exercise independently and personally.

Stewart Stevenson: Are you satisfied that ministers are always clear which hat you are wearing when they interact with you?

The Lord Advocate: I have not been aware of any difficulty in that respect and I have not detected any interest on the part of ministers in trespassing on my independent responsibilities as prosecutor.

Douglas Ross (Highlands and Islands) (Con): Lord Advocate, what is the single biggest failing that you have identified in the Crown Office and Procurator Fiscal Service since your appointment?

The Lord Advocate: The evidence that you have received and which I have looked at with interest has identified a number of issues, and I have no doubt that we will look at the detail of those in the course of this evidence session. A number of those issues have been recognised and identified by the service itself, and it is taking steps to address them. I have no doubt that, as we go through the morning, we will discuss some of that work in more detail.

I hope that you will forgive me for not taking up your invitation to pick out one particular issue and identify it as an inherent failing on the part of the service. There are a number of challenges that the service needs to address, and you have heard evidence on them. Many of those challenges are recognised by the service and it is taking steps to deal with them.

One of the issues that you have heard evidence on relates to staff. You have heard evidence on the fair futures programme, which the Crown Agent and the senior management are putting into effect to seek to address issues, and on issues that relate to the operation of the broader criminal justice system and the challenges that that presents for us all, including the Crown. You have also heard evidence that work is being done, particularly through the court service evidence and procedure review, to effect a transformational change to address some of those issues.

We recognise that there are challenges for the service in providing support to victims in a way that victims would most like support to be given. The former Solicitor General, Lesley Thomson, has carried out a study, which was published last week and points the way forward.

I am not going to take up your kind invitation to pick out one particular issue. The service has to meet a number of challenges and steps are being taken to seek to meet them.

Douglas Ross: I would not really describe my question as an invitation; rather, it is a question arising from a committee inquiry looking at the office that you manage. I was asking whether, after six months in position as head of the Crown Office and Procurator Fiscal Service, you had identified one issue that needed to be addressed as a priority. I understand that you referred to many issues in your answer, but I am concerned that if there are many issues, nothing will be a priority.

Given your response to that question, do you think that anyone could read the 20 pages that the Crown Agent has submitted in response to our inquiry and consider that the Crown Office is taking a number of the concerns seriously? I read the submission very carefully and was disappointed to see that a large bulk of what was submitted by the Crown Agent and the Crown Office and Procurator Fiscal Service basically said that the evidence that the committee had received was wrong and that there was no real concern. If that is the response to the evidence that has been heard over the five months of the inquiry, I worry whether—depending on what the Justice Committee puts in our report—anything will change or whether you will just be determined to say that small things can be tweaked but there will be no overhaul of the justice system of the kind that witness after witness has said is required.

The Lord Advocate: I will make three points in relation to that question, the first of which is that it is unfair to read the Crown Agent's letter in that way. All the committee members will have read it for themselves. On a number of issues on which the committee has heard evidence, the Crown Agent has sought to provide data that puts the evidence that the committee has heard in its proper context, and I invite the committee to focus on the relevant data where it is available. The Crown Agent will speak for himself, but he acknowledges the challenges that the service faces, particularly the ones that I mentioned a moment ago.

Secondly, a look at the available data puts the position in a different light from the evidence that you have heard from some witnesses. No doubt we will discuss that as we go through the morning.

Thirdly, there are challenges, as the Crown Office and certainly I recognise. Mr Ross, I was pleased to hear you refer in your question to the need for significant change in the criminal justice system. I take many things from the evidence that you have heard but one thing that has come across to me eloquently was the support that it provided for the programme of significant reform in which the parties in the justice system are currently engaged, particularly with regard to the evidence and procedure review. Much of that evidence makes the case for the need to do criminal justice in quite a different way from the way in which we have been doing it.

Douglas Ross: Given that you have to save £700,000 in staffing costs over the next year, how many jobs do you anticipate losing in the Crown Office?

The Lord Advocate: I invite the Crown Agent to deal with that aspect of the budget, but, as you will appreciate, we have the same funding in cash terms as we had the previous year. I accept that that involves—

Douglas Ross: It is a £1.4 million cut in real terms.

The Lord Advocate: It involves a real-terms cut. Perhaps the Crown Agent can deal with that.

David Harvie (Crown Office and Procurator Fiscal Service): I am happy to give a straightforward answer to that, Mr Ross. The position is that the £750,000 probably equates to around 30 jobs. As for how that will be achieved—and this has been communicated to staff—the fact is that we will be unable to replace everyone who leaves through the natural turnover in the organisation. However, we anticipate that we will be in a position to replace around half of them.

Douglas Ross: Your submission says:

"There has been a reduction in senior staff"

since 2009. You say:

"there were 39 senior civil servants. As of 31 October 2016",

the figure is 23, which means a reduction of 16 jobs at senior level. However, there has been

"an increase in deputes and senior deputes, the first operational grades for prosecutors".

Those staff have increased over a similar period by 69 from 285 to 354. Do you feel that you have cut all the fat at senior levels? Given that you have increased the number of deputes and senior deputes, is that the most vulnerable area for job reductions as a result of your budget cuts?

David Harvie: As I said in my submission on the last occasion that I came before the committee, when we gave evidence on the budget, things are becoming increasingly challenging and options are reducing. There is no doubt about that. However, there are still choices that can be made, and at our previous meeting, I made reference to "intelligent choices". We have identified the benefits of having a core number of front-line legal staff, and one of the key things that we would seek to do is to protect that.

10:15

Douglas Ross: Are you saying, then, that it is more likely that those reductions will come from the depute and senior depute levels?

David Harvie: No. I am saying that I will be seeking to protect those grades.

Douglas Ross: So they will be protected, and you have already reduced the number of senior civil servants. Where will the job losses come from?

David Harvie: They will have to come from other grades.

Douglas Ross: Staying with the Crown Agent, I have to say that I thought that we were speaking about £1.4 million. Half of that—50 per cent of staffing—comes to £700,000, but you have talked about £750,000.

David Harvie: I am sorry. From recollection, the overall number was £1.5 million, because there is £0.1 million in relation to capital as well.

Douglas Ross: Okay. With regard to the other £750,000 that you are taking from non-staff costs, you said in December that you could not give a timescale for that because you were waiting for additional analysis. Has that analysis been done, and when do you expect to be able to say where that other 50 per cent of the real-terms £1.5 million cut that you have received from the Scottish Government will come from?

David Harvie: That analysis is on-going, but it is certainly becoming more concrete. Previously I mentioned that we identified that savings would be required particularly from our estates but also in other matters that you have noticed. For example, we provided evidence on savings that we have made in relation to expert witness costs. Those costs have been going down, and those are the kinds of costs that we would seek to reduce. I also referred to a focus on pathology. We are seeking to pull a variety of different levers over a period of time, some of which might enable us to make more significant savings in certain areas that will then give us choices about how to redeploy those funds.

Douglas Ross: Is there not a risk in that respect? After all, you still have to complete that analysis, there is no timescale in place and you

have to save £1.5 million in real terms this coming financial year. If your analysis takes longer and the timescale has to be stretched, do you then have to save more in staffing over that period to compensate for not being able to achieve the 50 per cent saving from non-staff costs?

David Harvie: There is that risk, but I do not think that it is a significant one.

Douglas Ross: Okay.

David Harvie: Our plans are sufficiently in train that we are confident that we will be able to do that.

Douglas Ross: Lord Advocate, can I ask whether you would ever make a request for additional Scottish Government funding that was "naive" or "foolish"?

The Lord Advocate: I would like to think not.

Douglas Ross: Thank you. That is just for the record, in light of evidence that we received from the cabinet secretary last week.

Moving away from funding, can you tell us the average time that it takes your office to respond to letters from MSPs?

The Lord Advocate: I do not have that information to hand, but I am happy to—

Douglas Ross: Would you be able to provide both the average time that it takes and the longest wait that MSPs have had for correspondence from your office? This really comes back to evidence that we have heard during this inquiry. Indeed, there was a particular case that I struggled to communicate with you about; I had a letter that took some time to get a response, and that was acknowledged in the final response. However, having spoken to other MSPs, I think that that seems to be a theme.

I then thought that that might relate to defence solicitors' comments that they quite often write to fiscals and depute fiscals two or three times before they ever get a response. Does that happen because the fiscals see that it takes a long time for people at the very top of the organisation—the Lord Advocate, the Crown Agent, the Solicitor General and so on—to get back to correspondence?

The Lord Advocate: I am certainly happy to see whether that data can be provided.

Douglas Ross: Thank you. Can I—

The Convener: We will move on, Douglas, because a lot of people want to ask supplementary questions. You will have another opportunity to come in.

Before others come in, though, I want to ask about the submission from the Crown Agent that has been referred to. In three places, I have written the phrases "Very good", "Listening" and "Definitely taking on board", but my initial reaction to the submission was that a lot of the evidence had not been taken on board. You might be hearing what is said, but are you really listening?

I am talking in particular about staff concerns. The Crown Agent has provided a very fulsome description of the service, and we all agree that it is a very dedicated, hard-working service. My question, though, is: are you taking advantage of those dedicated and hard-working people? Going back to the workload that staff say they have, including adjournments, 40 per cent say that they do not want to remain in the service and 44 per cent say that their workload is unacceptable, which is 2 per cent higher than the civil service average. We know from evidence that the cabinet secretary has supplied that, in sheriff courts and summary sheriff courts, the adjournment rate as a result of Crown motions is increasing year on year and now stands at 8,387. The figure for solemn cases is 1,572, which is three times higher than the number of adjournments requested by the defence.

It is a serious question. Are you listening, or are you taking advantage of your very dedicated workforce, who, although they have expressed some fear about coming to give evidence to the committee, have not been short in their criticism?

The Lord Advocate: Perhaps I can say a few words, and then I am sure that the Crown Agent will want to say something.

First, I have been very clear—and continue to be clear—that the service's greatest resource is its staff. I was not surprised by the evidence that you have received about the quality of the Crown staff. That has been my own view and one that I have sought to reinforce repeatedly since I came into office. The committee should be in no doubt about the value that I place on the staff who prosecute in my name and, indeed, all the staff who support them across the service.

In the evidence session that we had on the budget, I drew the committee's attention to the most recent staff survey and pointed out that the numbers in that survey are moving in the right direction, which I was pleased to see. That is not to suggest that there are not challenges or that there is not a great deal of room for improvement, but on any view, the numbers are moving in the right direction. On the particular issue of staff's desire to remain in the service, it is encouraging to see that the proportion of staff who wish to stay over the long run—in other words, more than three years—is very significantly higher than the civil service average.

A key feature of the service's response to the challenges that the staff face is the fair futures programme, which you have heard about. The Crown Agent can speak about the programme in more detail, but one of its purposes is to address any staff morale issues. I hope that that sets in context my view of the importance of the staff who perform these important public functions.

On your point about the number of adjournments, convener, I can provide statistical information about that. The important point that I take from the data that I have is that, with regard to summary courts, 80 per cent of Crown motions to adjourn were as a result of the non-attendance of an essential witness—that is, someone who had been cited but who failed to attend. That illustrates the challenge that we all face in operating the criminal justice system; it depends on everybody getting into the same room on the same day at the same time and being ready to go.

That is part of the picture and the background for thinking seriously about whether we can deal with summary justice in a different way through significant procedural reform. As I have done previously, I invite the committee to look at the part of the evidence and procedure review project, with which the Crown is fully engaged, that is seeking to move that agenda forward. If we can get that agenda right, it will effect transformational change in the system, which will not only benefit members of the public who are currently inconvenienced by the way in which the system operates but alter the landscape within which prosecutors, defence agents and all of us operate.

The Convener: My question was specifically on workload, which is why I mentioned adjournments. There may be reasons for them, but the staff feedback shows that 44 per cent—or 2 per cent above the civil service average—said that they thought that their workload was unacceptable.

David Harvie: I will address the points about the letter before I come back to that particular point.

You raised three points in your question, convener. The first was an observation on the letter, which reflected Mr Ross's comments, and I would like to pick up on that, if I may. The second point was about issues relating to the staffing position, and the third related to adjournments. I will seek to draw those three points together.

The letter was intended to serve multiple purposes. First of all—and far from Mr Ross's characterisation of our not accepting the need for significant change—I highlight on the second page that there is a strong argument for changing the system in its entirety. What I am advocating—the Lord Advocate supports this idea, and you have heard evidence from others on it—is that a significant contributor to the difficulties that have been identified not only by the committee but by other professionals in the system relates to that system issue, so there is a need and an opportunity for transformational change. That is what I was trying to communicate. It is not about things staying the same as before, but about acknowledging the challenge and trying to approach it in a different way.

The second purpose of the letter was to provide a level of reassurance that many of the issues on which the committee had heard evidence had been recognised and that work on them was on-going. For example, the victim information and advice service review, the evidence and procedure review and the fair futures programme are all relevant to the evidence that the committee has heard, and a purpose of the letter was to provide, as far as possible, a level of reassurance to the committee that those matters had been identified and were already being taken seriously.

The letter's third purpose was to acknowledge that new matters—perhaps the items that the convener marked as "Very good"—had been raised in evidence that required a response. I identified a number of those in the letter. It is not that I was saying in the letter that we were not responding to those matters; I was simply highlighting that they were new matters that had not been previously identified as significant priorities but which, having heard the evidence, we completely accepted required to be addressed.

The committee has heard some evidence that is not supported by data. The final purpose of the letter was to seek to provide the data that is available to both the COPFS and the organisation as a whole, as well as to the wider system, to inform the committee and allow it to take a view on the weight to be attached to the evidence that it has heard.

Those were the multiple purposes of the letter. In it, I also highlight—and for the avoidance of any doubt, I am happy to reconfirm this to the committee—that our staff are our most valuable resource. There is no question whatever of our seeking to take advantage of them. I hope that, from the efforts that have been made to secure and maintain staff numbers against a challenging budget position, you will recognise that significant steps have been taken to ensure that staff are appropriately resourced and supported. I am very happy to look at that in more detail as we go through the evidence on how we have sought to approach that and how we will try to meet the challenges in the future with that mindset.

10:30

As the Lord Advocate has indicated, 80 per cent of Crown adjournments relate to non-attendance of witnesses. They are members of the public who, for whatever reason, choose not to engage with the system as currently structured, and the system has to chase them to get them to co-operate and contribute. Part of the reason is that they perhaps do not want to give evidence on a particular issue and part of it is that they do not feel particularly vested in the justice system as it is currently structured. Those matters should be of concern to the broader system, including this committee, in considering how we can move the conversation on.

For example, if a member of the public does not attend a general practitioner appointment, that is an issue, and there is a level of public support with regard to the debate on that, because of the waste that it creates. That lost appointment impacts on the individual and their health, and it impacts on the doctor, who is left with a vacant slot. If a member of the public fails to attend for trial, that inconveniences a far wider range of people than are impacted by non-attendance at a GP appointment. Those people include every other witness who has bothered to turn up on that day to give evidence, the court and the accused, who is left with the matter that requires to be determined by the justice system hanging over them, unresolved, and having to be continued.

We have a real opportunity with this inquiry and the evidence and procedure review, and there is a willingness on the part of the system, supported and driven by the court service—it was, as you will recall, driven initially by Lord Carloway's report—to look at the issues in a different way, ask a different question about how the justice system operates and ask something different about the engagement of civilian witnesses in particular. The latter conversation is, as I have tried to convey in my letter, the most significant one that we must have. Let us not kid ourselves about the significant civilian co-operation issues in the current system; instead, let us improve the system for those civilians.

The Convener: We have a number of questions to get through and there are some supplementaries.

Stewart Stevenson: I wanted to pick up on what seems to be a very valuable source of evidence on how the service is doing. On the issue of the staff survey, which the Lord Advocate has already opened up, does he think that it was pretty good that in 2016 there was an increase of 15 per cent in staff reporting that they had an acceptable workload and an 11 per cent increase in the number of staff who said that they had an adequate work-life balance? In addition, the Lord Advocate might have said that the planning-to-stay figure is 17 per cent above the civil service average. Of course, that is not the whole picture, and it does not remove the need to identify further challenges, but does it not suggest that the staff themselves, when they look at the work that they face, think that things are moving in the right direction in some important aspects?

The Lord Advocate: I am grateful for the opportunity to speak about the survey. I entirely agree that it is encouraging—the figures are moving in the right direction. However, that is not at all a basis for complacency. As we have said, the service has recognised the need to engage more fully on staff welfare through the fair futures programme.

Given the question that the convener asked me a moment ago, I should perhaps make this point about the plans of staff for the future. In the 2016 survey, 60 per cent of staff stated that they wanted to stay working for the COPFS for at least the next three years. That is 6 per cent up on the previous survey and 17 per cent higher than the civil service average. The figure for the least favourable category—if I can put it that way—which is

"I want to leave COPFS as soon as possible",

is 8 per cent. That is down 5 per cent from the previous survey and is 1 per cent lower than the civil service average. I would love it if all those staff wanted to stay with the service for the next three years, but I take comfort from those figures with regard to the commitment of staff to the work of the service. Against the background of those figures, I do not recognise the figure that the convener put to me.

The Convener: I think that there is a direct correlation. If 60 per cent want to stay, 40 per cent do not.

The Lord Advocate: It is important to look at the options. The options in the survey were:

"I want to leave ... as soon as possible",

"I want to leave ... within the next 12 months",

"I want to stay ... for at least the next year"—

24 per cent are in that category, which is 3 per cent up on last year—and

"I want to stay working for COPFS for at least the next three years".

The figure for that final category is 60 per cent. You are absolutely right that 40 per cent are not saying that they want to stay working for COPFS for at least the next three years but, of that 40 per cent, 24 per cent want to stay for at least a year. Those two figures are—

The Convener: I think that we have ironed that out.

The Lord Advocate: The two figures are up and, in particular, the top figure is significantly higher than the civil service average. As I have said—without in any way wishing to suggest any level of complacency on the issue, because we are not complacent about it—there is encouragement to be taken from the survey and from those particular figures.

The Convener: I think that Fulton MacGregor has a supplementary. Do you still have one, Fulton?

Fulton MacGregor (Coatbridge and Chryston) (SNP): You have asked whether I still have a supplementary, convener, but I want to raise a procedural point first. I have waited for nearly 25 minutes to get in for a supplementary. Members will know that, with supplementaries, the momentum can kind of go.

I actually wanted to raise two points. The first is an issue with regard to Mr Ross, who mentioned his contact with the Lord Advocate. I want to put on record that I had to contact the Lord Advocate's office on one occasion and I got a response almost immediately. I wanted to put that on the record just for balance.

My second point is on an issue that was raised 15 or 20 minutes ago, but—

The Convener: I point out to the member that bringing in people with supplementaries is entirely at my discretion. This is going to be a very long evidence session. If it is helpful to cover things at this point that are relevant, we will do that. Is your point relevant?

Fulton MacGregor: Yes. I will take this opportunity to ask my supplementary—thanks very much for giving me that, convener.

I want to come back Mr Ross's question and his comment that the Lord Advocate and Mr Harvie have not suggested that there is any need for change. Mr Harvie went on to answer that question somewhat, but I wonder whether either the Lord Advocate or Mr Harvie could expand on exactly what some of the changes that might be made would mean for people involved in the justice system, including the accused and witnesses. For example, what would be the impact on child witnesses from the changes that might come in that area?

The Lord Advocate: I will make a couple of points that derive from the work that is being done on the evidence and procedure review. The Scottish Courts and Tribunals Service has produced a helpful table, although it is clear that it is not a prediction but an indication of the scope for improvement. At the moment, 52,000 trials are set down in a given year and, of those, 9,000 run. Every time that a trial is set down, all the witnesses have to be cited to attend. The court service's document identifies that approximately 460,000 witnesses are cited to summary trials. If we set down only the 9,000 trials that actually run, we would be able to save 368,000 witness citations. We have to be clear that that is not a prediction by the court service, but it indicates the scope if we can get the procedures right and not fix trials in cases that are not likely to run and the scope within the system for effecting a transformational change.

The other part of the evidence and procedure review is looking closely at how we deal with children and other vulnerable witnesses, and there is a real focus on seeking to capture the evidence at as early a stage as possible and in advance of trial. When I was in my former role as dean of the Faculty of Advocates, we held a conference on the approach that the system takes to vulnerable witnesses, and we were addressed by Lord Judge, the former Lord Chief Justice of England and Wales, who has spoken eloquently to the point that, in future years, people will look back and be astonished that we put children into the traditional court setting.

The ambition is to deal with the evidence of children and other vulnerable witnesses in a different way, and children are the obvious first focus for that. As I have said, that work is on-going and it would be wrong to prejudge where it will get to, but I can certainly say for my part—and I am sure that I can say it on behalf of the Crown Office, too—that we, along with other parties in the justice system, are actively engaged in it.

On the subject of correspondence, it will be appreciated that every letter raises its own issues, and the time that is taken to respond will reflect a range of factors including the ease with which the issue can be addressed.

The Convener: That was a very wide supplementary. Liam, do you still have a question?

Liam McArthur (Orkney Islands) (LD): Yes, and it follows on from the Crown Agent's letter. It was helpful that David Harvie set out the intention behind it. In the main, I found it useful, although one could get the impression that some of the evidence that we have heard on a range of issues was being dismissed. However, I will leave that aside, given Mr Harvie's explanation of the letter's purpose.

We have heard concerns from key stakeholders of the Crown Office and Procurator Fiscal Service about pressure on staffing and staffing levels, the impact of the central marking of cases and prosecution policy. I am struggling to understand why the evidence that we have heard is, in a

sense, at odds with where you see current policy and practice resting. One would have thought that those people would be closely involved in the reviews that you have mentioned, which have been under way for some time now and are perhaps building towards addressing some of the concerns that have been raised. I am also struggling to understand the lag effect between the evidence that they have given us about concerns that they believe are still relevant and live and the evidence that you are giving us, which suggests that the situation is not as it has been portrayed to us and that those people are either misrepresenting what is happening or referring to something that is more historical and is not so relevant now.

David Harvie: I would not seek to say that anyone is misrepresenting the situation. Where data is available, I have sought to provide it to enable the committee to assess the true position from its own perspective instead of hearing a perspective on that position.

Your point about the lag is interesting. After I was appointed, and with the appointment of the new law officers, we sought to take forward a number of issues. We have alluded in previous discussions to those issues and the changes that we would like to make not only to the way in which COPFS approaches casework but to the wider system. I hope that you have seen from the letter that those matters are being taken forward—and indeed were being taken forward, to the extent that that was possible.

As I have said, one of the key points was to try to provide a level of reassurance that matters that were being raised as concerns with the committee had already been identified and that we were seeking to address them. That work was already on-going in, for example, the VIA service review, but implementation does not happen at the flick of a switch or overnight.

The reassurance that we can give is that these issues have been recognised; reviews have been or are being conducted; and thereafter we will seek to implement the fruits of those reviews, which include input from stakeholders. Indeed, we undertake to do so.

10:45

Liam McArthur: At the very least, it all tends to point to a perception among many stakeholders that there are still issues that they feel are relevant and in need of addressing. Many of those who gave evidence used live examples or examples from the very recent past to illustrate the points that they were making. Again at the very least, it sounds as if the data that you are providing to this committee is not necessarily data that you have been sharing with those who, as I think the Lord Advocate indicated, have been raising issues directly with the Crown Office in other fora for some time now. That gives cause for concern.

David Harvie: The data is available and has been shared with stakeholders. One of the advantages of this committee inquiry is that it gives stakeholders an opportunity, through the committee, to engage with the wider public on the role of COPFS, the issues that the justice system faces and the sharing of that kind of information. Some of the issues that have been raised are more historical; others are definitely live issues, which the committee has heard examples of and which we are seeking to address; and the third category is matters on which you have heard evidence that we have learned from. Indeed, I sought to highlight that in the letter.

Not only have I sought, where possible, to differentiate across that full range of issues—the slightly historical matters, the live issues that we are seeking to address and the genuinely new issues that we will now take forward—and to provide levels of reassurance about what is on-going, but, for the avoidance of any doubt, I have also provided a level of reassurance that the input from the inquiry and the other evidence that we have heard will form part of the considerations in those reviews. It is not that we are simply reaching our own view, saying, “That’s that done” and closing the door—there has been valuable evidence on, for example, case marking, communications and wildlife matters that we will use. I have highlighted those examples, but many more matters have been raised that we will take forward.

The Convener: I have allowed a lot of supplementaries because the opening questions took a very broad-brush approach to the inquiry and your response to it to date. This is our final evidence session.

Mary Fee has a supplementary, and then we will go into more detail.

Mary Fee (West Scotland) (Lab): Thank you, convener. For completeness on the matter of staff, Mr Harvie, I will ask you about fixed-term contracts. You mentioned the matter briefly in your submission, in which you talk about the good progress that you have made in moving staff from fixed-term to permanent contracts and from temporary promotions to permanent posts. In relation to both legal and non-legal staff, do you see a point at which you will have no staff on fixed-term contracts? Does the progress that you hope to make this year in moving staff from fixed-term contracts apply to all the staff? Will some of the staff on fixed-term contracts be caught up in the staff savings?

David Harvie: First of all, the move to having more permanent, as opposed to fixed-term, contracts was initially in relation to legal staff. I provided evidence on the numbers. It is a continuing journey—there will be further work done on the matter.

Similarly, in the next phase, significant numbers of—although not all—non-legal staff will be appointed on permanent contracts. I think that in my letter I made reference to a continuing requirement for short-term contracts. However, the proportion of those will be significantly smaller, and short-term contracts will have a purpose, as opposed to being what has perhaps become an all-too-commonplace type of appointment.

The third category, which I mentioned in the previous evidence session, is the number of temporary promotions. I have provided evidence that the number is currently more than 100, which is too high. As I said in that session, there are a number of obvious consequences of that: uncertainty for individuals and teams, and issues to do with training, loss of expertise and so on. I fully accept all that. Those are the motivators for changing our approach.

There will be significant changes in relation to the non-legal staff and the proportions in the coming weeks and months. I hope that at or around the start of the new financial year the position will have been changed significantly, although it will not be the case that absolutely all staff will be on permanent contracts.

The Convener: For the avoidance of doubt, is it the case that in 2009 there were 558 full-time-equivalent prosecutors and that as of October 2016 there are 534, which is 24 fewer?

David Harvie: That is correct. The all-time high in legal staff was in December 2009.

The Convener: The figure is quite telling. We will probably come on to that.

Oliver Mundell (Dumfriesshire) (Con): I am probably going to ask questions that are a little too general. I accept the points that were made in the letter about the data, but data is just one part of the picture. When people perceive that there are shortcomings in the Crown Office and Procurator Fiscal Service, it affects the integrity of the system as a whole. Is it worrying that a number of witnesses have expressed a lack of confidence, at least, in the current position?

The Lord Advocate: First, if important stakeholders have a poor impression of the service, that is plainly a matter of concern and something that the service ought to address. I have sought to reassure the committee that we are seeking to address the challenges that face the service.

Secondly, it is important to look at the data, where we have it, and to assess the position as objectively as one can.

Thirdly, let me pick up on your word "confidence". I immediately recognise that there is a range of perceptions of the service and that the committee has heard evidence on confidence on issues to do with communication and how the service has engaged with particular victims. It is important to make the point that I do not detect a lack of confidence—I hope that there is no lack of confidence—in the robustness of the fundamental work that the prosecution service does, which is effective, rigorous, fair and independent prosecution of crime.

If there is a want of confidence on that issue, it is important to look at the data that were published today, which indicate that, in cases that are prosecuted our conviction rate is more than 80 per cent, there is a not guilty verdict in 6 per cent, a not proven verdict in 1 per cent and the balance of cases are discontinued. Such figures suggest, first, that decision making is robust, and secondly, that the fundamental work of prosecuting cases before our courts is being done effectively by the service.

The public ought to have confidence that the service is an effective, rigorous, fair and independent prosecutor. I accept entirely that you have heard evidence about important parts of the service's engagement with the wider community, but one should not lose sight of the fact that that is the fundamental public responsibility that I and the service have.

Oliver Mundell: I accept that. To return to the first point, do you accept, given what we have heard from witnesses, that key stakeholders have significant concerns about important aspects of your work?

The Lord Advocate: You have heard the evidence and I have read it, and I do not think that it could be disputed.

Oliver Mundell: I think that public confidence is key. I listened to the Crown Agent's remarks earlier about how willing witnesses are to engage with the service, the likelihood that they will turn up and the amount of importance that people attach to being cited as a witness in a case, which was worrying evidence about how people feel that it is not worth their while to engage with the service. You state on page 10 of your letter:

"As prosecutors, we can only do our job if victims and witnesses are willing to come forward and give evidence".

Some of the evidence that we have heard, particularly about the culture in the Crown Office, indicates that people do not necessarily believe that they will get the very best possible justice.

The numbers are strong in terms of prosecutions, but a lot of people still feel that justice has not been done for them.

David Harvie: There is a distinction to be drawn between the service's contribution to that and the wider system issue. The people to whom you referred are people who are not engaging with the system. There are a number for reasons for that, some of which might lie at the door of the COPFS and some of which might lie elsewhere, particularly in relation to some fundamental structural issues about how we conduct our business and how we try to choreograph—for want of a better term—the attendance of so many individuals at a particular location at a particular time in order to progress a trial. As the Lord Advocate has indicated, the evidence and procedure review and examination of other systems suggest that there are alternative and—to be frank—better ways of securing co-operation and key inputs from members of the public for the justice system.

On the data, you have heard evidence from individuals and stakeholders in relation to particular failures—for want of a better term—in service provision. Again, I said in the letter that we accept that, regret it and will seek to learn from it. As I said previously, in any reviews that are ongoing and in any new activity that is required, that evidence will be key.

However, in relation to the data on such matters, we must look at the context of the number of victims and witnesses that VIA deals with in order that we can get a sense of perspective about the nature of the service complaints. The vast majority of individuals who engage with VIA are provided with a good service. However, that is not to say that there are not good examples of individuals who have not had the standard of service that I, as head of the service, expect or that the people who deal with them expect to provide. That, too, is a learning point, but the data should be viewed in the context of the number of interactions. As I said, the vast majority of interactions are positive.

The Lord Advocate: Mr Mundell quoted from our letter with reference to the importance of victims' confidence in the system. We indicated that

"As prosecutors, we can only do our job"

of bringing criminals to justice

"if victims ... come forward and"

speak up and are willing and are enabled to give evidence effectively in the system. That is part of what we need to do as prosecutors.

The former Solicitor General's review shows how far we have come in a remarkably short time—starting as recently as 2000—in how we deal with victims. Within my professional lifetime, we had a criminal justice system that paid no regard to the special needs and particular importance of victims. In the scheme of things, we have come a remarkable distance in a short time.

I do not doubt that the commitment of the COPFS and law officers to dealing appropriately with the victims of crime has greatly enhanced the confidence of victims in coming forward. The fact that victims have more confidence is one of the reasons for the change in prosecution of sexual offending, but we would like them to have yet more confidence in the system. We think that the way forward has been signposted by Lesley Thomson in her review. You make an important point about the need for us to give victims the confidence to come forward, speak up and give evidence.

11:00

Oliver Mundell: I appreciate that answer. One of the most difficult experiences for me as a member of the committee was meeting victims of crime at one of our early meetings. They talked us through their experiences; although we spoke to only three people in total, the impression that we got from those victims was that things had been good for them.

In its submission, Victim Support Scotland poses questions about how things operate in practice. It welcomes a lot of the directives that are coming from the top of the organisation, but says that, day to day, things have not changed at all for a lot of people—for example, victims still come into contact with the accused on the way in to the courtroom and VSS is not given enough time to do its work to get people ready for their day in court. A lot of good practice is starting to come through the system, but it is not yet there for people on a day-to-day basis. I hope that you will take that work forward.

David Harvie: I am conscious that there has perhaps not been sufficient time for you to consider in detail the Thomson review, which makes a number of points on those very issues. As I have accepted, there were service issues—you heard evidence on them from witnesses—whereby the service fell below the standards that we accept or expect from VIA in relation to its responsibilities. Parts of that evidence were interesting in that there was a misunderstanding among witnesses about VIA's role and what it is intended for. There were also misunderstandings about the role of the prosecutor—I think that reference was made to MyLawyer. Those are matters that we need to take cognisance of and learn from. We need to make absolutely clear to those with whom we engage what they can

reasonably expect from VIA support, and what the role of the prosecution is in the system in Scotland.

That is not to say that there is not a legitimate expectation among witnesses—which is highlighted in the letter and in the Thomson report—to expect to get consistently more support than they currently receive. However, whether that support could or should be provided by the prosecutor—therefore by VIA—and whether there are separate issues about how an appropriate level of support might best be provided are legitimate subjects for the debate that has been opened up by the Thomson report.

In due course, I would welcome the committee's significant and robust views on how that work might be progressed. It comes back to the fundamental questions about how we ensure that, regardless of whether someone is a victim, a witness or an accused person in the criminal process, the system collectively finds a way of supporting them to give their best in order that we can secure justice.

As things stand, the vast majority of the service delivery through VIA is excellent, although we accept that there have been service issues. However, there are also issues in relation to the patchwork provision of other support across the country and how VIA engages with that. There is an issue about whether the totality of support in certain locations is sufficient and meets the legitimate expectations of victims and witnesses in the 21st century. That is a matter of legitimate debate and concern as part of the transformation of the justice system that I alluded to in my letter.

The Convener: We have two supplementary questions on that.

Mary Fee: Very briefly, one of the points that came out in the evidence session that my group had with victims and witnesses was that the service is not proactive enough in reaching out. Victims and witnesses are notified by letter that the service is available, but it is up to them to reach out to the service, rather than the other way round. I have not had an opportunity to look at the Thomson review, but will you look at that issue in taking forward the service? I know that you cannot have a one-size-fits-all approach and that you cannot reach out to everybody because of the resources that are involved, but is there some way of being more proactively involved, particularly with vulnerable witnesses?

The Lord Advocate: I can comment in response to that and then I will let the Crown Agent respond. The issue perhaps comes back to the point that the Crown Agent alluded to about the role of the victim support provided by the prosecutor. It is entirely right that we provide information—we should be providing accurate and timeous information—and that we administer the arrangements for special measures, which help victims and other vulnerable witnesses to give their evidence. It is also entirely right that we provide a point of contact within the prosecution system that, in an ideal world, helps victims to feel that they can engage appropriately with the system. It is entirely appropriate that, where we can, we signpost people to other services that might be available.

However, we are not a counselling or advocacy service. We do not provide advocacy support—with a little "a"—for victims. The important and significant work that we do in seeking to support victims is done in the context of our fundamental responsibility as prosecutors. That is why the key point that I take from the Thomson review is that we need to look in a much more system-wide way at the needs of victims. We need to start there and identify who in the system is the right person to provide different services, and then try to deliver those services in a much more effective way.

That is a sort of high-level response. The Crown Agent might wish to say something on the specific issue.

David Harvie: There are two aspects of the approach that was legislated for by Parliament following the European Union directive on the issue. The first is that the identification of those who might be suitable for VIA support is partly driven by crime type, and there is a question in the Thomson review about whether that is appropriate. If I am the victim of a housebreaking, do I need VIA support? On the other hand, if my grandmother, who is still alive, is the victim of a housebreaking, I would fully expect that she would benefit from VIA support. However, as things stand, we would both be offered that information and advice, because of the crime type.

There is a separate point about the way in which people are identified as suited for special measures. The approach has benefits, in that it simplifies the process in relation to identifying categories of individual who are deemed suited for special measures by age or otherwise, albeit that it could be simpler still, as is alluded to in the letter. It does not seek to identify whether the individual thinks it appropriate that they should have those special measures.

The Thomson review questioned whether services should be more appropriately targeted to those who are identified as vulnerable and therefore requiring support, as opposed to being given to victims of particular crime types or people of a particular age. There are some individuals who fall within the categories who are—candidly—quite indignant about the suggestion that they need special measures and support. However,

that is the approach of the current legislative framework.

Mairi Evans (Angus North and Mearns) (SNP): My point is almost identical to the one that Mary Fee just raised. Something that became apparent from speaking to victims of crime was that, having suffered that trauma, whatever it might be, they were then thrust into the prosecution situation, in which many organisations seemed to be involved, and they did not know their way through that. In essence, what they need is some kind of one-stop shop with somebody to guide them, tell them what is going to happen next and who the people are who will contact them. I hope that I will never be in that position, but if it was to happen to me that is what I would hope for and expect.

To touch on a point that Oliver Mundell made, in relation to victims of crime coming into contact with perpetrators even in the court setting itself, is that something that you see it as your role to tackle? Obviously, with the set-up of the courts and some of the buildings that they are in, contact can be quite hard to avoid, but is it something that you are looking at?

The Lord Advocate: I am very grateful for your first remarks, because they chime exactly with Lesley Thomson's recommendations.

The other bit of work that has been done in relation to victims is the vulnerable witness part of the evidence and procedure review, in which we are looking at the way in which children and other vulnerable witnesses are dealt with by the system in a much more general sense. We are looking at different ways of approaching the taking of evidence.

We should not underestimate the difficulty for many vulnerable witnesses and victims of crime of the process of giving evidence and having that evidence tested, as it might entirely properly have to be. It is right that as a system we look at what can be done to allow that process to take place in a way that, as far as possible, does not retraumatise the individual or exacerbate the impact of the original crime.

Issues about court buildings are matters for the Scottish Courts and Tribunals Service. The accused is, of course, entitled to be present throughout the trial. When special measures are available they will allow a victim to give evidence in a way that shields them from the perpetrator or give evidence from a remote site by closed circuit television; there are mechanisms available. Of course, victims might well encounter the accused in the court buildings in the context of a case.

David Harvie: Mairi Evans mentioned a one-stop shop. The Thomson report talks about a one-front-door approach. In other words, from the individual's perspective, they have one point of access and collective multidisciplinary services thereafter respond according to need. That is the principle that is proposed, from which we can seek to develop a model. It might assist the committee to know that the Thomson report is on the justice board agenda for this week.

11:15

The Convener: That is helpful. There is no doubt whatever of the sincere wish of the Government and the COPFS to ensure that victims have the best experience in court. However, the evidence that we heard from serious assault and rape victims was that there are problems with communication. The Thomson report identified that as a problem more or less between agencies, but we heard evidence of a much more fundamental problem. It was as fundamental as giving out misinformation about the verdict that had been arrived at. At every stage of the process, victims have been given misinformation or no information.

I very much welcome your commitment to work on the issue and I hope that you take on board that there seems to be a fundamental problem. I particularly welcome the commitment in the Crown Agent's response to look at language and have less legalistic communications, so that victims and witnesses understand exactly what is being asked of them when they get a communication from COPFS.

David Harvie: Some people feel that they are not being fully engaged with, which stands to reason. You have heard examples of the service not being of an acceptable and expected standard. I suggest that they are the exception to the rule, but the mere fact that the exception is so significant means that it is worthy of serious reflection and further work. I fully accept that.

The Convener: A person whom some of us met said, "If you asked me if I would do it again, I would say, 'absolutely not.'" Given what you said in your opening statement, if the criminal justice system and the COPFS are to work, all the players need to be keen and to have confidence in the system.

David Harvie: Indeed.

The Convener: I hope that if we had such an interview again, that person would say, "Absolutely—my experience was good." That is what we are all aiming for.

We still have questions from Ben Macpherson and Rona Mackay. We will see where we get to with those, then perhaps we can take a break and regroup at about half past 11.

Rona Mackay (Strathkelvin and Bearsden) (SNP): I seek clarification on centralised case marking, which we have discussed several times during the inquiry. Was that brought in as a cost-saving exercise? Has it been successful? We have heard concerns that local knowledge has been lost. Where are we with centralised case marking?

The Lord Advocate: That is perhaps an example of an issue—if I may pick up on a point that Liam McArthur raised—on which there are clearly different views about the advantages and disadvantages and where the balance lies.

From my perspective, as the head of the system of prosecution for the whole of Scotland, a national service ought to be applying consistent national standards to our decision making across the country. A benefit of a national case-marking approach, at the level of principle, is that it allows the dedicated teams that work together to do the task to develop expertise, skill and a level of consistency across the system. The teams are organised by reference to sheriffdoms, so although they are physically located in the national case-marking service at two locations, they are, in effect, servicing particular sheriffdoms and can therefore build up knowledge of those sheriffdoms.

The system can accommodate matters that are of concern in local areas. Indeed, in their reports, the police might identify a particular issue as being a matter of concern. I can put it in this way: through having a national approach, we can ensure that, where there is justification for a variation from the norm to be applied in a particular locality, that is done consistently and does not depend on the views of a particular individual in a particular local area.

There is a separate issue, which is knowledge of local diversion schemes. Let me take a step back and say that, as the head of the service, I have reflected on the matter in light of the evidence in that regard, and I think that a question that the committee might be interested to consider is whether it is satisfactory that we do not have consistency across the country on the availability of diversion schemes.

On national case marking, the system is able to ensure that the staff in that part of the service know, or have information about, what is available in particular areas. However, perhaps a more fundamental question is whether there should be consistency of availability across Scotland. I pose this as a question, rather than particularly inviting an answer: is it right that the decision to prosecute or to adopt a diversion scheme might depend on the particular locality in which a person lives? There is a series of questions about that.

The key point about national case marking is that the system is able to provide relevant information to those who are making the decisions about the position in particular areas, so it ought to be able to accommodate the concerns that have been raised. Perhaps the Crown Agent can add to that.

David Harvie: Again, I will try to be brief, but there are a few points that I need to touch on. First, again, this process has not happened overnight. As I think that I said at our previous evidence session, it has been many years since every local case was marked by the local procurator fiscal—we could count that in decades rather than years. In the variety of different structures that there have been in COPFS over recent years, cases have been marked in hubs or, because of the advantages that come from our electronic systems being portable and transferable, when capacity has been made available on a particular occasion, they have been transferred over. Therefore, long before now, deputes in Dundee, for example, might have been marking cases where the offending took place in Inverness. To that extent, the issue of locality is not a new one.

The second point is that, prior to the current model, marking staff were not ring fenced, which led to all sorts of issues arising in relation to their time—for example, individuals were called upon to go into court, which meant that in particular locations significant backlogs were developing. Abstractions were one reason for dealing with the issue. Another is that, particularly in relation to custody cases but in marking generally, when the marking case load was spread across a wide range of deputes—not just ring-fenced staff—case marking was another duty that deputes had to perform when they might have been, for example, going into court. You have heard evidence on court preparation time. If someone is freed up from having to mark cases before they go in to do their trials court, because other staff are ring fenced, they can focus more on their trials court, so the approach has had that advantage.

You have heard evidence on the provision of training on the new developments in legislation and the changes to prosecution policy. The prosecution policy review enables us to target smaller numbers of staff with intensive training, to ensure that policies are consistently put in place and thereafter implemented.

The model has enabled us to learn and adapt. It is not set in stone. The Lord Advocate has alluded to the division into a sheriffdom model, to allow that level of contact and understanding. That was not in the original proposal but came post the changes to our structure, whereby we moved to the local court model with the sheriffdoms in April

last year. It seemed to be the next logical step, to create those connections.

Another thing to say by way of providing context is that when one analyses crime types across the country—I think that you heard evidence about the 10 most commonly committed offences—they are broadly similar. There are no significant variations in the nature of the criminality that is most common in different parts of the country.

It is also important to highlight the difficulties with previous models. You might recall reading in the press at the time—indeed, depending on your previous roles, you might have some knowledge or experience of this, perhaps from being on previous committees and hearing evidence—of custody courts in some locations, classically in Glasgow, still running at 9, 10 or 11 o'clock at night. That does not happen now.

The new models have enabled us to deal with the work in—frankly—a more professional and consistent manner, and in a way that ensures that we are able to service the custody courts across the country successfully. That is certainly the feedback that we have had thus far. However, that is not to say that the model is set in stone. Given the evidence that you have heard from others and our learning in relation to, for example, the change to the sheriffdom model, we will continue to review and revise the model.

Rona Mackay: Has it saved money?

David Harvie: In the sense that it has saved court time, yes.

The Convener: Oliver Mundell and Liam McArthur have supplementary questions.

Oliver Mundell: I accept that some aspects of the central marking system have brought about benefits, but do you acknowledge that taking marking away from local fiscals has fed into the narrative of their now having less ownership and discretion in cases? Does the fact that they have to follow more centralised policies have an effect on people's perception of how local to them justice is?

The Lord Advocate: There is an important point there, which ultimately is a constitutional one. I am the head of the prosecution service and the prosecutor in all solemn cases; and in summary cases, it has always been the case that fiscals have acted within instructions and guidelines that are given to them by the Lord Advocate. One of the reasons for that is to ensure that there is consistency in how the prosecution service operates across the country.

Baron Hume, our greatest writer on criminal law in the 19th century, said that my role as Her Majesty's Advocate is to vindicate Her Majesty's interest in the due and equal distribution of criminal justice to all her subjects. The way in which I secure that constitutional obligation is by setting prosecution policy.

In the context of this debate, it is important to recognise that a consistent approach across the country is part of ensuring that all Her Majesty's subjects in Scotland have equal protection of the criminal law and that similar cases are treated consistently.

11:30

A separate issue is the confidence and trust that I have—and I certainly do—in those who prosecute in my name that they will exercise judgment and make realistic and robust decisions within the policies that I set. Since the day I was appointed, I have made it clear that I have absolute trust and confidence in the judgment of those who prosecute on my behalf up and down the country.

I recognise that there is a perception of withdrawal of discretion from fiscals, but it is important to put the matter in context. The background was a system in which decision making in individual cases across the country might be significantly affected by the views of individual fiscals on issues that, in essence, one might regard as matters of policy, so there was an entirely appropriate shift to a much greater commitment to and clarity around the need for national policies within which all prosecutors are expected to operate.

If it were necessary to do so, I have been sending clear signals that, within my policies, I expect prosecutors to exercise their judgment. That is the privilege, as well as the burden and responsibility, of being a prosecutor—

The Convener: We will probably come on to that later, but let us stick to the marking system.

Oliver Mundell: Have changes to the case-marking system contributed to a perception among fiscals locally that their role in the service has been downgraded and they have less ownership of prosecution policy?

The Lord Advocate: I cannot speak directly to the perception that people have. However, I want to make it very clear that there is no downgrading of the role and responsibility of fiscals in my mind.

David Harvie: May I come in on that, convener? As I said, it has been decades since every local case was marked locally. The point is that there can and should be a sense of collective ownership about decision making. Let me make two brief points in that regard, in relation to the lag and to whether certain issues are being addressed.

An issue that came out in the prosecution policy review was that it was less about the policies themselves than it was about the approval levels for local deputes' ability to make decisions. As part of the review, a significant number of approval levels have been entirely removed and any requirement for approval that remains has been tested and the grade for approval reduced to a local level. That has changed in the past few months to create a sense that there is local decision making and, for the avoidance of doubt, to emphasise the Lord Advocate's point about trust and confidence, by specific reference to the policies.

The Lord Advocate mentioned the conviction and acquittal rates—not guilty and not proven verdicts—that were published today in the statistical bulletin. A key point is that we do not proceed with 8 per cent of the cases that we start when either a not guilty plea is accepted or we choose to desert the proceedings. I respectfully submit that that is local discretion in action.

Oliver Mundell: There are still some bigger concerns. We heard from Derek Ogg QC, who is himself a former depute. He said:

"It is a bit like an arrow leaving a bow—once someone has made a decision somewhere, no one wants to interfere with the decision and it just rattles on down the track, sometimes ending up in court by accident, rather than design."—[*Official Report*, *Justice Committee*, 15 November 2016; c 48.]

Is that an analysis that you simply do not accept? Do you think that you have the balance right?

The Lord Advocate: Speaking across the system, as it were, the Crown Agent has already referred to the data that shows that 8 per cent of cases are discontinued. That will happen for a number of reasons but one would surmise that a proportion of those are cases in which new information has come to light and new evidence has arisen and so the decision has been made that it is no longer possible or in the public interest to continue with the prosecution.

David Harvie: The need to reinvigorate the discontinuation policy has been the subject of discussion with ministers. The service wishes a refresh and relaunch of that policy so that the expectation on individual members of staff and the trust that we have in them to meet that expectation are absolutely apparent.

The Lord Advocate: For the avoidance of doubt, when the Crown Agent uses the term "ministers", he means me and the Solicitor General.

Liam McArthur: I welcome the point that Mr Harvie made on approvals, because that was the focus of the early evidence that we took. Nevertheless, the insistence on the importance of consistency rather ignores the point that, historically, marking took place under guidance that was set centrally and that, therefore, presumably secured a degree of consistency across the piece. If the service focuses its efforts on building up the skill levels of the people in the central pool at the two locations, is there a risk that it extends the gap in knowledge between those people and the ones who prosecute locally, whose understanding of the latest developments in policy and law might be a far cry from that of those in the central pool?

David Harvie: Forgive me if I have unintentionally misled the committee on the way in which we operate our training. The national initial case processing unit creates the opportunity to have a first targeted audience for training. However, the entire staff has received training on, for example, the most recent changes to our policies, which came about through the prosecution policy review. I think that I am right in saying that that training has now concluded.

The NICP gives us an opportunity to focus initial training on a targeted group of individuals, but then the training is provided to others. A key point is that regardless of whether somebody is involved in the initial decision to raise proceedings or is the depute with responsibility for the case at the very end, when it gets to trial, the obligation to keep revisiting the nature and strength of the Crown case continues. That is reflected in the point that I made earlier about 8 per cent of cases being discontinued. Whether because key witnesses have, regrettably, failed to engage for reasons about which we have already spoken or because of representations and evidence provided by the defence that were not previously available, prosecutors are deciding in 8 per cent of cases that they will not continue with the prosecution. Therefore, they are demonstrating that they are meeting that continuing obligation. That is not to deny that you have heard evidence, which I fully accept, that greater clarity on that obligation and greater confidence among staff members in exercising that discretion would be beneficial.

That is why I say that the discontinuation policy, which as the Lord Advocate will confirm was one of the first items on the agenda when we had a discussion following his appointment, will be key in ensuring that the individuals who make those decisions have trust and confidence that when they make a professional judgment as part of that continuing obligation to reassess the case, their decision will be supported.

The Lord Advocate: I can confirm that. The change in the prosecution policy through the prosecution policy review, the change in the approval levels and the anticipated discontinuation policy are all part of a suite of practical measures

that seek to implement and underpin the message that I have been confirming from day 1 about the responsibility that individual prosecutors have and that I trust them to exercise, recognising, as we all do, that they fulfil their decision-making functions in the context of the policies that I set.

Liam McArthur: That is helpful. I am slightly surprised that neither of you has picked up on the role of the community justice partnerships, which I understand have delivered some benefits for that two-way flow of information.

Finally, I want to pick up on the invitation from the Lord Advocate by answering the question that he posed earlier about whether the same diversionary options should be available consistently across the country. I would turn that on its head and ask whether he thinks that it is remotely realistic for there to be the same number and variety of diversionary options in, for example, Orkney, as there is in Glasgow. Assuming that the answer to that is no, I return to the point that it is absolutely essential to have an understanding of what is available in Orkney rather than assume that there will be the same number and variety of options as in Glasgow or other urban centres.

The Lord Advocate: I certainly hope that I did not give the impression that I believe that there is the same level of provision—I did not intend to. Of course I recognise that the circumstances are different in different parts of the country and that what is feasible in a densely populated part of the country might have to be thought about in a different way in a less densely populated part. Equally, I entirely accept that information about what is available in a particular area should be available to the case markers and can be made available to them through the systems that we have.

I suppose that I was inviting a reflection on what the aspirations should be. If a diversionary option is available for a particular case, that provides the opportunity for the individual who is accused of the crime to engage in a process that might be more beneficial to them and to society and that, ultimately, might mean that he or she does not have a criminal record. The question that one might reflect on is whether, looking to the equal distribution of criminal justice to all Her Majesty's subjects, wherever they may be in Scotland, we should aspire to have similar opportunities available. We recognise that there will be significant differences in the challenges that are faced in delivering options in different parts of the country, but should that not be the aspiration?

David Harvie: That is not to say that exactly the same options need to be available. It is about agreeing what the minimum availability and quality should be and, thereafter, what is the minimum that we collectively, as a society, can reasonably expect could be diverted from prosecution consistently across the country. To take it to its logical conclusion, if the only alternative for us is to prosecute and then, after a conviction, another decision maker—this time not a prosecutor but a judicial decision maker—has the opportunity to consider the disposals, they will be left with the same dilemma if options are not available locally, and an individual might have a conviction although that is not the disposal that anybody would reasonably think is appropriate. In that respect, there is not a true alternative, because in many instances the judicial decision maker does not have options available either. Again, there is a wider system discussion to be had about whether that is regarded as acceptable in modern society.

11:45

The other point that Mr McArthur made was about the community justice structures. Forgive me for not mentioning those, but there are so many different sources of information available. We are enthusiastically engaged in the community justice structures and with the national authority. We are having discussions about not only what is available locally but what might be available in the future. Collectively, as a system, we need to have a better understanding of what really works and, thereafter, we can try to find ways of making that available in a greater number of locations, in the same form or another form that suits the practicalities and the resources that are available in different locations. It is worth while to have that debate, rather than simply to accept that a patchwork of services is available, which may lead to inconsistencies in approach. However, the situation is not a result of conscious choices to be inconsistent because of local issues; it is a result of constraints.

The Convener: To conclude on the national initial case processing unit, is there currently a backlog of cases?

David Harvie: There is work in hand—we never describe it as a backlog—and it currently sits at just under four weeks of work.

The Convener: Would that equate to 5,000, 10,000 or 20,000 cases?

David Harvie: I think that the latest figure is just under 16,000—forgive me, but it changes on an almost daily basis. I am happy to write to the committee with the latest numbers.

The Convener: Is that not a staggering amount of cases?

David Harvie: It has been higher. I will provide the committee with more detail on how high it has been, how low it has been and where we are currently.

The Convener: I want to press you a little further on that. Have the unions met the head of the NICP unit to express concern about how it is operating?

David Harvie: The unions are in positive discussions about the new unit and can see benefits in it. As I have said, changes have already been made in the unit, for example in relation to the sheriffdom structure, and we will continue to make changes as appropriate.

The Convener: Have there been several meetings and have the issues been resolved or have people left discontented and feeling, for example, that their comments were not taken on board and that the meetings were to no avail?

David Harvie: I am not sure what information you have, but certainly the information that I have is that positive discussions are on-going.

The Convener: Will you perhaps look into that? I have a specific reason for asking.

David Harvie: I will do.

The Convener: Okay. That is a good place to take a five-minute break, after which we will return for the second half of the evidence.

11:47

Meeting suspended.

11:54

On resuming—

The Convener: We will now resume our questioning.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): Lord Advocate and Crown Agent, I want to ask a few more specific questions on themes that came up earlier. My first question is about staffing. You have talked about the natural turnover of staff and cost saving. I was grateful to see in the supplementary written submission an entry on trainee solicitors and the concerns that we have heard about trainees. The last paragraph on trainee solicitors states:

"Over the last three intakes, 30 have since secured permanent contracts ... and a further 10 have secured fixed-term contracts."

Will you comment on the importance of the trainee process in the service and on the need to retain top young talent as it comes through the system? Is there a commitment to continue the recruitment drive to hold the best talent in your service?

The Lord Advocate: I am certainly very committed to the importance of recruiting able, young and enthusiastic lawyers as trainees. It is important to recognise that trainee solicitors are young professionals who play an important part in the service at the same time as they receive training. As someone who has had a career in advocacy, I know that often what young lawyers want to do is get into court. One of the unique features of the Crown Office traineeship is the range and depth of the opportunities to engage in that in-court advocacy.

I am very committed to the recruitment of trainees. That is hugely important for the service's long-term health. I picked up from somewhere the comment by one of my predecessors that you cannot knit deputes. It is essential that we recruit some of the brightest and best into the service.

Ben Macpherson: Is there a similar commitment to increased retention, to build capacity in the service?

The Lord Advocate: One can see that in the numbers that you have alluded to. I do not know whether the Crown Agent would like to add anything to that.

David Harvie: I will speak about the context and then the commitment.

On the context, there is absolutely no doubt that the training that the Crown provides remains highly desirable. That is reflected in the number of applicants for the training. By definition, that means that we are given the opportunity to select from a really high-performing group. That has been evidenced in the past and has consistently been the case. When I started in the service, I think that four trainees were taken on. The most that we have taken on in any given year is 21 or 22, I think; again, I think that, this year, the figure is 20 or 21.

We are maintaining that commitment because we know about the quality. That is evidenced by the fact that all three deputy Crown Agents are former trainees. A very significant proportion of the senior civil service in the organisation started off as trainees in it; indeed, a number of former Crown Agents were trainees, although I was not. The acknowledgement of the quality goes back a long time.

In the early days of the recession, there was a period in which very difficult choices about retention had to be made that we did not have to make previously. I am pleased to say that a number of former trainees have returned to us through the more recent depute recruitment processes. That is an indication of their view of the training that they were provided with and of the service. I hope that, in recruitment exercises in years to come, we will get more of the group of talent that was lost in the years in which we were not able to recruit.

I have summarised the current position in the supplementary written submission. Some people initially came in on short-term contracts as deputes and subsequently secured permanent contracts. The position that I identified in the supplementary written submission is, in essence, the net position. Over the past three intakes, 30 have secured permanent contracts with the organisation and others are on temporary contracts.

We have talked about the inevitable natural turnover of legal staff. Without any doubt, our trainees will be my first port of call. I will seek to recruit as many of them as possible to be the deputes of the future.

12:00

Ben Macpherson: Thank you. The committee would be grateful if we were kept informed of how that retention level increases or is maintained.

I am glad that you raised the point about trained deputes who have gone to work in other areas of practice subsequently returning to the system. The Lord Advocate's earlier comments about the proportion of the workforce that is dissatisfied and is thinking about leaving the service are interesting. I wonder whether a comment needs to be made about the fact that some individuals within the service who are thinking of leaving it might be doing so for entirely career-orientated, constructive reasons—to work for a portion of their career on the defence side of practice. They might then come back. Is that a point worth raising in setting the context of why people might consider a move away from the service?

The Lord Advocate: The numbers are the numbers, and I cannot give any concrete evidence as to the particular career choices that people might wish to make. Undoubtedly, over the course of a legal career, people make choices for a variety of reasons that are not always to do with dissatisfaction with their current position.

However, I would not want to overstate the point. We recognise from the sickness statistics, for example, that there is an issue that needs to be addressed. The service is actively engaged, through the fair futures programme, in seeking to address the areas where there is an issue with morale.

David Harvie: Similarly, a good proportion of those who are on fixed-term contracts will, by definition, be looking to secure greater certainty for their careers, whether they are on the legal or non-legal side. There are any number of motivations at any given time for that. From our perspective, the key commitment is to seek to provide, within the financial envelope available, as much security and certainty to our greatest resource as we possibly can.

Ben Macpherson: I have one more question, on a separate theme. We spoke earlier about the need for procedural reform and how evidence is collected. An interesting theme has come up throughout the inquiry—it was touched on earlier in general terms when we discussed witnesses. One point that I was keen to raise during other specific evidence sessions relates to the use of specialist witnesses, in particular the cost to the COPFS and the inconvenience to those who wish, or are required, to give evidence. Can you comment further on what capacity and determination there may be to make greater efficiencies in the use of specialist witnesses?

The Lord Advocate: There are two points there. One is the importance of expert and specialist witnesses to the prosecution of crime. It is undoubtedly the case that as investigative techniques have changed, and as the nature of the evidence that we are able to lead has changed, there is increasing use of a greater variety of types of expert and skilled witnesses. It is important that we use those witnesses appropriately.

I read the evidence from the forensic medical examiners. One cannot but have sympathy with the position in which they find themselves. They are a particular category of skilled witnesses whose services may be called on in a number of cases, and that plainly presents them with challenges, given the system as it currently operates. The lesson that I take from that is the need to think much more creatively about the system as a whole.

We should try to minimise the setting down of cases for trial when the trial is not actually going to proceed, because part of the issue is witnesses being cited for diets that will simply be adjourned. It is about trying to secure as early a resolution of the case as possible, so that it is resolved before we reach the point of considering having to cite a witness for a trial diet. The answer might lie partly in greater use of video technology to take evidence from witnesses, particularly witnesses such as the forensic medical examiners.

Ben Macpherson: I am glad that you have raised that point, because it has come through in much of the evidence that we have taken that there is great enthusiasm for the use of video technology, whether in the context of a live link or for pre-recorded evidence. It is enlightening to hear that you, too, are enthusiastic about it. I do not know whether the Crown Agent would like to comment on that, as well.

The Lord Advocate: It is important to communicate to the committee that there is

enthusiasm across the criminal justice system and, indeed, across the justice system as a whole for significant transformational change. One of the reasons why I was pleased to be asked to take on the office of Lord Advocate and was pleased to accept the invitation to do so was that I am extremely enthusiastic about the job that I do at a time when, across the system, there is a collective commitment to trying to make the system work significantly better for the people whom we are all here to serve.

Ben Macpherson: Therefore, a cultural change involving the greater use of technology might not face the psychological barriers that less-informed observers might think could exist.

David Harvie: On the way here, we reflected on the fact that what we have—notwithstanding the various amendments that have been made to the legislation in the interim—is criminal procedure that was developed in 1995. I do not think that I had a mobile phone in 1995. It is fair to say that there are great opportunities to update our procedures in a way that reflects not only the technologies that are available, but the public expectation of the use of those technologies. The evidence that the committee has heard from the professionals and the experts—those are two distinct categories—has been extremely helpful in supporting that cause, for which it is fair to say that there is a deal of enthusiasm.

With the introduction of the new criminal justice provisions, the use of video technology is about to change, but it does not yet go far enough to cover the type of situation that you have described. A further debate will be necessary about the propriety and the best use of video technology for the taking not just of pre-recorded but of live evidence from witnesses, particularly in the categories that the committee has heard about.

At the committee's request, we provided some further evidence in relation to the costs of expert and professional witnesses. That evidence is twofold. First, it demonstrates the opportunities that exist to make savings in that respect by being ever more robust in testing whether the evidence of the expert and/or the professional witness is truly necessary for proof of the case. The flipside of that coin is that, by definition, as our costs decrease as we apply those tests, we will inconvenience fewer expert and professional witnesses by asking them to engage fully in the court process all the way to trial, so there is a mutual benefit.

However, there is still an issue with regard to situations in which such witnesses require to be engaged in the process. I go back to the earlier point about engagement, which applies to expert and professional witnesses just as much as it applies to broader members of the public who have been eye witnesses. We are talking about people who, by definition, have significant demands on their time, and we want them to engage with the criminal justice system in a spirit of enthusiasm about the contribution that they can make. It is incumbent on the system to find ways to make that process as straightforward as possible, and there is a way to go on that.

Ben Macpherson: Thank you very much. I am aware that other members want to pursue the same point, so I will conclude by saying that I look forward to working with you to build on that enthusiasm.

David Harvie: That is reciprocated.

Liam McArthur: The advantages of technology and what it can deliver in terms of system change, which Ben Macpherson has helpfully raised, is an issue that has come up time and again.

However, the committee is aware that promises around information technology as an enabler can come unstuck. The i6 fiasco at Police Scotland is an obvious example, and there are others. I suppose that rather than ask a question I am making a plea that the undertakings that you make about what the new technology will deliver are tested as robustly as possible before it is rolled out.

I have another plea to make. Technology can be a great enabler in opening up access to justice, but what will be delivered will look very different through the prism of someone in Orkney, Shetland or the Western Isles, as opposed to someone in the central belt. If the technology is to be deployed in a balanced way across the piece, the perspective in such areas needs to be understood and taken cognisance of, every bit as much as the perspective in more urban centres, which will be very different, albeit that the benefits are potentially huge.

The Lord Advocate: The point is well made. As a boy from Galloway, I entirely understand the different context for the work that is done in rural areas as opposed to the urban centres. Of course, a potential benefit of technology, provided that it is robust and effective, is precisely to enable us to provide a consistent service across the country.

Liam McArthur: Yes, if the technology is seen as an enhancement; the concern is that it provides an excuse for withdrawing something that is deliverable face to face. Perspectives on the matter will probably be very different in different parts of the country, as I said. I hope that that is borne in mind as the strategy is taken forward.

David Harvie: Let me go back to the VIA example. The provision of information to people at their convenience—if they have ready access, which is a key issue, and if they are minded to use

such facilities—could have significant benefits. However, we would not provide information in that way with a view to saying, "This is the sole mode of delivery"; we would say, "A category of people get their information via this route, which enables resource to focus on others, who are unable or unwilling to use that option or who are not suited to using it." It is about having a menu of options for providing information to individuals and localities.

The Convener: I want to drill down into that. Since the beginning of our dialogue with you, a reliance on digital improvements to make the system more efficient has come through. I quite see the case for conference calling and an approach that means, for example, that you do not have to physically transport a witness to court or bring the accused from jail, if that is not necessary. However, are there computer improvements—i6-type improvements—on which you are relying? If so, what cognisance have you taken of the fact that just about every other public service IT contract has ended in tears?

David Harvie: An advantage of not having millions of pounds to spend on technology is that one does not try to embark on such exercises. A key area in which we have invested in recent years is the provision of a stable platform with our existing systems. That exercise has recently been completed, and our director of IT would say that we are moving into "the app phase". That is about having a series of interfaces, to get the data that is available out to the user, whoever they might be, in the appropriate format. It is about creating and securing readily accessible gateways into the databases that we already have, rather than a huge redesign of the system. For example, there would be a platform for access to VIA information and, potentially, information for a witness website—all of which are things that we are looking at.

It is not about having a blank sheet of paper and building something new. We have an excellent platform on which we can build and we need to decide how best we can allow people to have access in a way that is effective for them and gives them a level of certainty about, for example, when their case is calling.

12:15

Fulton MacGregor: During the inquiry, we have heard about an issue that concerns domestic incidents. One line of thought is that there is a zero-tolerance approach to domestic incidents. That is generally accepted, and that represents a positive change, given the harm that the incidents can cause to the victims. However, some people have said that the zero-tolerance approach takes precedence over all else, even when a case should not go to court, although other people have said that that is not the case and that there is always a sufficiency of evidence. Is the Lord Advocate in a position to explain how he sees that issue?

The Lord Advocate: The first point to be clear about is that no case of domestic abuse—or, indeed, any other case—should be marked for prosecution or be continued if there is not sufficient evidence. The starting point for decision making on any case, including cases that concern domestic abuse, is the question whether there is sufficient evidence in law. I was not surprised that the prosecutors from whom the committee heard—if I read the words correctly—took as something of an attack on their professional integrity the suggestion that they would ever mark a case for prosecution if they were not of the view that there was sufficient evidence in law.

The second point is that, as you said, against the background of an assumption that there is enough evidence in law, the current policy is robust, and the presumption will be in favour of prosecution. It is not an absolute presumption, but it will be for prosecution. That policy was deliberately put in place by my predecessor because domestic abuse is a form of criminality that has a significant impact on the immediate victim and other members of the family and is one that, for far too long, the justice system collectively did not take sufficiently seriously.

I do not apologise for the existence of a robust prosecution policy. However, that policy starts from a position of there being sufficient evidence in law that a crime has been committed. It is important always to bear those two points in mind, as well as the fact that the issue is in a context in which, although the policy is robust and has strong presumptions, those presumptions are not absolute.

Fulton MacGregor: You will be aware that the Scottish Government has made tackling domestic violence a priority; I think that that position is supported by a range of political parties. How do you take cognisance of Government policies, not only in relation to domestic abuse but more generally, when implementing them in the criminal justice system?

The Lord Advocate: The first point to make is that the setting of prosecution policy is my responsibility and that, by statute, I must exercise that responsibility independently of any other person.

In setting prosecution policy, I seek to respond to criminality as it affects people in communities in society today and to respond to changes in our appreciation of different forms of criminality. Domestic abuse is perhaps a good example of a form of criminality that, as I said a moment ago,

was for too long taken insufficiently seriously. There is a collective commitment across the justice system and the Government to tackle it, because of the impact that it has on individuals and families and, therefore, indirectly on communities. I reflect that in the policies that I set for prosecutors.

The Convener: There has been a huge increase in the number of complex sexual offence cases, which puts pressure on the service. We have had evidence from Glasgow Bar Association that indicates concern that equally complex cases that involve

"drugs, public order, dishonesty and violent offences",

which should be properly prosecuted, might be being squeezed because of the focus that there has—rightly—been on domestic abuse and serious sexual assaults.

The Lord Advocate: I certainly hope that that is not the case. As you know, there are a number of specialist units in the Crown Office, one of which is the serious organised crime unit. Within that unit's ambit is dealing with serious organised crime of all sorts. The case that was popularly known as the coke boat case, which got a lot of publicity, is perhaps the tip of the iceberg, but it is an example of a significant case that involved drugs that was prosecuted successfully to a conclusion.

As I said, we have specialists in the serious organised crime unit. I certainly take the view that we have to take economic crime seriously. I therefore do not accept the proposition that that type of case is being squeezed. It is true that we devote resources to dealing with sexual offending. As I said a moment ago, that reflects the need to address criminality as it affects people in our society today. We have seen a significant increase in the number of serious sexual offence cases; I have no doubt that there are a number of reasons for that and, as prosecutors, we have to respond. Part of that response is about giving victims confidence that we will take those cases seriously, handle them appropriately and, when it is appropriate to do so, prosecute them to a conclusion.

The Convener: Suffice it to say that you are aware that there must be resources to provide future proofing for all complex cases.

The Lord Advocate: Indeed.

Liam McArthur: Fulton MacGregor alluded to the evidence that we received from the Scottish Police Federation on the policy and guidance on domestic abuse. It was evident in what we heard from the bar associations that, although they accept the policy of zero tolerance, they are concerned about what appears to be a zero-discretion approach, if I can characterise it as that, to handling those cases. You alluded to Rachael Weir's evidence in which she robustly denied that that would ever be the case. However, we have heard from current fiscal deputes that they have raised concerns about the matter in the past, which to an extent calls into question the absolute assurances that we have had.

Do you see an issue with allowing levels of discretion, albeit within the framework of a zero-tolerance policy? Do you think that you have got the balance absolutely right at this stage?

The Lord Advocate: You are absolutely right and I am grateful to you for putting the matter in the way that you have. It is undoubtedly the case that the robust policy is not and has not been without its critics. One can debate whether the policy is right or wrong, and I would be glad to engage in that debate. I absolutely do not accept the suggestion that a prosecutor would, by virtue of the policy, knowingly or deliberately raise proceedings when they did not believe that there was sufficient evidence to prosecute the case. If that happened, it would be a serious matter.

There might be an issue about discontinuation, which the Crown Agent has referred to. As he said, we are looking at a discontinuation policy to reinforce the importance of prosecutors continuing to assess cases as they go through the system.

We must ultimately look at the data, however, which shows that there is a conviction in 80 per cent of the domestic abuse cases that we prosecute. That is the case in 80 per cent of the cases that go to trial, which is probably the right way to put it. That does not suggest that we are getting the decision making seriously wrong in relation to that class of case.

Liam McArthur: So that relates to about 80 per cent of the cases that go to trial.

David Harvie: I will make a point about discretion, which I refer to in the letter, and I accept the points about data. I refer on page 12 to the fact that, for a range of offences,

"decisions not to prosecute ... were taken in 4.7% of reported cases",

but decisions to take no action were taken in 7 to 8 per cent of reported domestic abuse cases. The basic point is that, at the first opportunity to assess a case, the prosecutor is less likely to decide to commence a domestic abuse case than to commence the average case. To me, that is a clear indication of tests being applied appropriately in relation to evidential standards.

To make no bones about it, the nature of domestic abuse offences—I have no doubt that the Parliament will debate this during the progress of the forthcoming domestic abuse bill—is such that, by definition, some of the offences take place

in private. There are therefore issues in relation to how the offences are corroborated that need to be robustly tested. Not embarking on 7 or 8 per cent of domestic abuse cases that are reported, which is a higher percentage than for the average case, demonstrates that a critical eye is applied at the first examination of the case.

I think that there was evidence from the Scottish Police Federation about police attending a house and someone leaving the house in handcuffs. My understanding is that such criticism is not borne out by the information about police attending domestic abuse incidents and the numbers of people who are subsequently charged. I understand that approximately half of such incidents that the police are called to result in someone being charged. That suggests that, rightly or wrongly, the police apply a filter in relation to the incidents that they attend, whether they find evidence of criminality or, beyond that, whether their view is that there is a sufficiency of evidence to be able to bring forward a charge. There is a series of filters.

Liam McArthur: It might be impossible for you to answer this question now, but what does the trend look like? At the start of a process of taking a zero-tolerance approach and issuing new guidance, people will respond in a particular way. Is there evidence to suggest that people have been taking very much a precautionary approach at the outset but that over time discretion is starting to be reinserted as people become comfortable with the way in which the new policy is applied?

12:30

David Harvie: There is an interesting debate about such offences generally. As the Lord Advocate has indicated, there is an issue about the sufficiency of evidence, and I hope that our position on that is perfectly clear from our letter.

On the on-going review in relation to sufficiency of evidence, which we spoke about, there is an interesting public debate to be had about the obligation on the prosecutor. Some stakeholder groups will take one view, and some of the judiciary may take a different view, as may some defence solicitors. A key witness—most often the complainer, who is the victim of the allegation—can be reluctant to engage. There are those who say that, because of the disparity in power, by definition of the nature of the relationship, one of the defence mechanisms for the relationship is the ability to say, "I was forced to give evidence," and therefore to say, "It wasn't me who was choosing to do this to you." There are complex discussions to be had about the particular nature of such offending, the interaction in the power relationship, whether the individual's desire not to co-operate in a case is motivated by fear and what we as a society and as a system should do to respond to that.

That comes back to how we assist such a person to give of their best. What can we do to ensure that justice is done? It is not a simple binary choice whereby the person writes in and says that they no longer want to co-operate. We have to consider the nature of the offending and the position that the person is in. We have to consider what support we can give them, if support is needed, to get them to the position that they truly want to reach, which is for justice to be secured. That might not be their initial position in how they represent themselves to us. They might just say, classically, "I forgive him." That is what the statistics indicate. However, that is because of the power relationship and is not a true reflection of the person's views.

The committee will hear from stakeholder groups—it has probably already heard their views. The type of offending that we are discussing is different. When Parliament comes to debate the domestic abuse bill, the particular issue of the power dynamic will be front and centre.

The Convener: The committee is conscious of that point, and draft legislation will be coming forward.

David Harvie: Indeed.

The Convener: Let us move on. I wish to press you a little on the 80 per cent of the cases that were taken to trial that resulted in convictions. How is that figure broken down? How many people were admonished? How many were given a very low fine, perhaps indicating that, although the trial had been conducted, the sheriff was left wondering about the sufficiency of the public interest? What number does the 20 per cent that did not result in convictions equate to?

Finally—we are conscious of time—there is something that I noticed and have taken on board as a very positive sign. In his letter that we received as a supplementary submission, the Crown Agent recognises that the issue is around "sufficiency of evidence" for the prosecution. There is sometimes a contradiction. Is this about the Lord Advocate's guidelines, or are we now on to the Lord Advocate's instructions? If they are instructions, is there not a contradiction in terms between that and the ability to exercise discretion?

I am heartened about the recognition that was given in the Crown Agent's letter, which says:

"We recognise and accept that this issue is a cultural one and that robust and entirely appropriate prosecution policies for certain offending may have led to a perception - including amongst our own staff"

and, I have to say, among the judiciary and other people who have given evidence to us—

"that the ability to exercise professional judgement has been curtailed. We are now seeking to address this through the review of prosecution policies."

I understand why you do not accept some of the evidence, but the committee is hugely heartened that you have confirmed that there will at least be an attempt to see how that perception has arisen.

The Lord Advocate: I am pleased by that remark, convener.

I set the policy; the application of that policy in an individual case depends on the evidence that is available in that case. I depend on prosecutors to assess the evidence in the individual case and make judgments about how the policies that I set should be applied.

It is important to understand what is meant by "discretion" here. I can set a policy, as I do in relation to domestic abuse, that sets a strong—although not by any means an absolute—presumption for prosecution if there is sufficient evidence, but the individual prosecutor has to look at the evidence, assess it and decide whether it meets the test. Then they have to look at other relevant considerations.

There are other areas of prosecution policy in which staff are given a range of relevant factors that tell in favour of a decision one way or the other. Again, I am not dictating the outcome of an individual case; I depend on the professional prosecutors who are employed in the service to take my policy guidance or instructions, however you like to phrase it, and apply that to the evidence in the individual case that is in front of them.

On the 80:20 split, it is perhaps important to recognise that a non-conviction—a case that ends up in an acquittal—does not necessarily occur because the case should not have been prosecuted. It may well be that there was sufficient evidence that amply justified the decision to prosecute the case but, at the end of the day, the fact-finder—the judge or the jury—was not satisfied beyond reasonable doubt. That is a high standard and does not just depend on sufficiency. It would be surprising in any criminal justice system if there were not a proportion of cases in which the ultimate outcome was an acquittal. That is the system working, not failing.

The Convener: The last thing that was brought up was the absence of senior prosecutors in summary cases. That is something that you could perhaps look at and comment on. The implication is that, if the prosecutor is relatively inexperienced, there may be delays as they go back and ask for more guidance. Perhaps you could take on board the idea that the presence of more senior prosecutors in those cases would help.

The Lord Advocate: I will ask the Crown Agent to deal with that.

David Harvie: I will just pick up on another point. You asked for a statistic and I have the reverse statistic—perhaps we can do the maths later. You asked about the number of acquittals. Against a conviction rate of 80 per cent, the most recent figures, which were published this morning in the statistical bulletin, show that there were 12,374 convictions in 2015-16 for cases with a domestic abuse aggravator. There has been a slight decrease for the first time; there has been a 1 per cent decrease on the year before, which represents what is characterised in the report as a "stabilisation". In 2010-11, there were 8,500 convictions, so in essence there has been a jump of about 4,000 convictions in such cases and 2015-16 is the first year in which the number is beginning to flatline.

The Convener: Can we have those statistics, and we will look at that as part of the report?

David Harvie: Indeed.

The Lord Advocate: Because I would not want unwittingly to have said something that I should not have, can I just say that the 80 per cent figure is the one that I gave you when we appeared before the committee in December; it was the statistic that was available at that point. I have to confess that I have not checked what the statistics that were issued this morning show.

The Convener: We will take that on board.

The Lord Advocate: Just for the avoidance of doubt.

The Convener: We are trying to cover everything, so can we keep the next questions brief.

Mairi Evans: The exact information that I was looking for about the conviction rate was pretty much what Liam McArthur was able to tease out in his questions. The fact that there is an 80 per cent conviction rate is an important point. You also touched on the comments that were made by Calum Steele of the Scottish Police Federation, who talked about people not being able to have a row in their homes any more. I think that that was unhelpful and just wrong, so I am glad that we have been able to discuss that a bit.

I am also looking for more information on a broader point. We are completely new to this and learning as we go along about the relationship between the Crown Office and Procurator Fiscal Service and the Government. We have talked a bit about your policy making and, in the budget discussions, I think that you said that you liaise

directly with the finance minister. Does the Government consult you on other policies relating to criminal justice? I am interested in the discussions that take place around that. How regularly do those occur?

The Lord Advocate: To some extent, that touches on the two hats that I wear. As a minister myself, I am directly involved in the Government's process of decision making. Justice policy is a matter for the Cabinet Secretary for Justice but, if justice officials are dealing with an issue that relates to criminal justice and that engages the interest of the Crown Office and Procurator Fiscal Service, I would be surprised if they did not engage with the officials in the Crown Office and the service on the matter.

There is a broader point about justice policy. We are at a moment when the various institutions that are engaged in the justice system have a common commitment to real reform that will make a difference to people. By its nature, the Crown Office is actively engaged in that process. I do not know whether David Harvie wishes to add anything from a practical point of view.

David Harvie: I can give a practical perspective on the policy side. We have a policy unit that liaises with Scottish Government officials when there are proposals relating to legislation to ensure that any views on the impacts on prosecution and the criminal process generally are taken into account.

In some instances in the past, albeit exceptionally, the genesis of proposed changes has been in the prosecution service. You will recall that the former Solicitor General for Scotland was a key proponent of the changes in the Domestic Abuse (Scotland) Bill. There is a dynamic relationship that gives us the ability to make proposals, and that is reflected in the work that we have alluded to—both the evidence and procedure review and how we intend to take the Thomson report forward—which we are undertaking on the basis of that collective willingness to reform and improve.

Mary Fee: I am interested in your opinion on whether the establishment of permanent domestic abuse courts across Scotland would be beneficial.

The Lord Advocate: One has to approach that issue mindful of the point that Mr McArthur made. In Scotland, we are dealing with a very diverse country in which the concentrations of population are quite different in different parts of the country. What is practically feasible in one part of the country may be much more difficult to achieve in another part of the country where the population and the throughput of cases are different.

12:45

What seems to me to be key is that those who prosecute such cases are appropriately trained and skilled to prosecute them, regardless of whether they are in a court that is called a domestic abuse court. A practical issue could arise if one were to take the view that one needed to have dedicated domestic abuse courts and that domestic abuse cases could be tried only in those courts. In the more dispersed parts of the country, people might well have to travel much further to attend a domestic abuse court, or the throughput of cases might be such that the court sat relatively infrequently and the timescales would get longer.

There is a range of issues that one has to think about. For me, the key issue is not what the court is called but whether we have appropriately skilled people handling the cases and, therefore, the cases being appropriately dealt with by all those who are involved.

David Harvie: The model is obviously successful in a number of locations. Decisions on court programming rest with each of the sheriffs principal, and I know that they are cognisant of the benefits. They are weighing up the advantages and disadvantages, as set out by the Lord Advocate, to determine whether it would be appropriate to introduce domestic abuse courts in particular locations. There are live discussions about the introduction of further domestic abuse courts in locations across the country where there are currently none, but that is an incremental process based on those considerations.

The additional funding meant that we were able to recruit additional prosecutors, which meant that we were able to man courts that would not otherwise have sat, and they focused on domestic abuse cases. In particular, we tried to ensure that, on an incremental basis, the time between first calling and trial was reduced initially to 12 weeks in year 1, and thereafter down to 10 weeks across the country. I think that I am right in saying that the time is now under 10 weeks across the country. If not, it will be due to an exception of 0.5 per cent somewhere. That in itself has been a significant development in trying to progress these cases, regardless of whether there is a bespoke domestic abuse court.

Mary Fee: Do you think, though, that the establishment of a permanent court in a specialist area such as that would help not only to build the specialist knowledge that prosecutors need but to build relationships between prosecutors and the support organisations that exist to support the victims, and to build confidence in the prosecution of such cases?

David Harvie: There is no doubt that, where the model operates, it works well. As we have said,

the issue is the balance between that and the disadvantages. If there was to be such a court in—I will pick random locations for illustrative purposes—Inverness and it was also to deal with cases from Wick, a question would arise. At present, domestic abuse cases in Wick are dealt with within the parameters that I have talked about, with the first call-in to trial being within 10 weeks. If such cases were called to Inverness, there would be an issue about, first, whether it would still be possible to meet that 10 weeks, and secondly whether witnesses would want to travel to Inverness.

There are pros and cons that need to be carefully considered in each instance. However, there is no doubt that, where the approach has been introduced and there are sufficient cases to justify a bespoke and exclusive court—for want of a better phrase—that deals only with domestic abuse cases, it has been a success.

Mary Fee: Thank you.

Douglas Ross: How many times has the Crown Office paid damages or compensation to victims or witnesses as a result of their being detained because of errors by the Crown Office?

David Harvie: I do not have that statistic to hand, but I can get it for you.

Douglas Ross: Will you also be able to tell us the amount that has been paid out in compensation?

David Harvie: I will.

Douglas Ross: That would be good. It would be good to have the amount for each year for the past 10 years.

David Harvie: Ten years?

Douglas Ross: If that is okay. Or whatever you can provide.

David Harvie: I will try to do that.

Douglas Ross: Thank you.

Lord Advocate, we have had a small amount of discussion about the Inspectorate of Prosecution in Scotland, and some concern was expressed about the division in responsibilities between your office and the office of Her Majesty's chief inspector of prosecution in Scotland. Time is short, so I do not want to focus too much on the matter, but do you agree that it is important that your office and the Crown Office are as accountable as possible to the public?

The Lord Advocate: It is certainly right that I am accountable. One of the reasons why we are here today and why the service has at its head someone who is required by statute and constitution to act independently but who is also a minister, is to provide that conduit of accountability to you, as parliamentarians, and, in turn, to the public at large, whom you represent. That is the structure of accountability, and it is absolutely right that it should be so.

At the same time, it is important that, as prosecutors and as a prosecution system, we are clear that we act independently of any other person. It is essential to the integrity of the justice system that, just as judges act independently in their decision making and the judiciary is independent in the role that it plays in our system, the prosecution service acts independently. As I said earlier, I exercise my responsibilities as head of the system independently, personally and uninfluenced by any other person.

Douglas Ross: That is absolutely right, and I think that you said that when you were here in December. I understand from what you have been saying that you agree that there should be openness and transparency and that you should not be held to a different level of accountability from that of other public agencies.

The Lord Advocate: Absolutely. Like other public agencies, we have obligations under the Data Protection Act 1998; we have obligations of confidentiality. We deal with highly sensitive information about individuals and individual cases, there are therefore things that we may not disclose, and which it would be quite improper for us to disclose. However, in terms of the operation of the service, I, for my part, am very comfortable with transparency and accountability.

Douglas Ross: That is useful to hear. I accept that there will always be occasions when you cannot release information. However, if I make a freedom of information request but do not think that the response fully answers my query, your office and the office of the Scottish Information Commissioner are the only ones in relation to which I cannot appeal the decision. Surely if you want to be as open and transparent as possible, as you said in your previous two answers, a way of showing that would be to ensure that we can appeal to the Scottish Information Commissioner about decisions that your office has made.

The Lord Advocate: I have to say that I did not know that a particular rule applied to my office. I can certainly find out what the position is. On freedom of information, we will of course comply with the legal structures and requirements that have been placed on us by Parliament.

Douglas Ross: They are in part 4 of the Freedom of Information (Scotland) Act 2002. Section 48 provides that appeals to the commissioner under section 47 are excluded if they are about a request to

"(a) the Commissioner;

(b) a procurator fiscal; or

(c) the Lord Advocate".

I think that there are examples of a legitimate case being put to your office—or, I presume, your predecessor's office—in relation to which an appeal would have been useful in teasing out more information. I am grateful to you for putting on record that there would be no general objection to that.

I quickly move on to—

The Lord Advocate: If I might just say—

The Convener: Mr Ross's point had only a tenuous link to our inquiry, so if you do not mind, we will move on.

The Lord Advocate: May I just be clear about one thing, convener? I am not sighted on that issue. As I said a moment ago, we will operate within any structures that Parliament imposes on us. Whether it would be appropriate to change a particular rule is not something that I am expressing any view on today.

The Convener: We are looking to cover the issues that we have not covered so far in the inquiry.

Douglas Ross: No one has asked about the inquiry point. We heard about that from the defence solicitors very early on. In December, you accepted that there was a change to the 0300 number.

One of the things that struck me in the 20-page document that we received is that the average length of time for which people wait on the current inquiry point is between one and four minutes. The upper end of that average, four minutes, is a long time. This morning, the Lord Advocate paused for 10 or 15 seconds. If we multiply that 16 times, that is how long people are waiting to get through to a service that should be giving them information.

Does the Crown Agent believe that that is why there has been so little interaction with and uptake of things that the service offers, as he pointed out in his letter? Is the issue that defence solicitors and so on have failed many times when they have tried to communicate with the service? If that is not the case, why is there such a low uptake on the part of defence solicitors of the alternatives that have been put forward, even though they have made clear that they are not happy with the current system?

David Harvie: First, the alternative methods that I listed were intended to illustrate the efforts that have been and will continue to be made to resolve some of the issues that we are talking about, and to emphasise the point that was raised earlier, which is that one size does not fit all and that certain solutions work quite well in certain localities and with certain cadres of the local defence bar, while others are less successful. One of the solutions involved a depute carrying a work mobile phone around them, but they did not get a call in eight months—I cannot recall whether I listed that one.

A number of solutions that have been put forward do not involve the inquiry point number. One of the things that we have acknowledged is the extent to which the 08 number is seen as an inhibitor, and that has been addressed.

With regard to the waiting times, that point was included because we want to be open about the realities of the current service provision. From my perspective, the key is whether, once the individual gets through, their issue is addressed and they get the information that they want or are signposted and passed on to someone who can provide information to them. The letter refers to the requirement for improvements in that regard.

I am happy to provide statistics on this matter, but my recollection is that more than 80 per cent of calls that come into the inquiry point are resolved by staff at the inquiry point. Some calls need to be passed on to other individuals in the organisation. My sense is that that is where the vulnerability in the system arises. The inquiry point staff make an effort to get hold of the person to whom the solicitor or member of the public says that they need to speak. Part of the issue is whether they need to speak to that person or to someone who has access to the information that they need. That is why, for example, I have raised the need to put a lawyer into the inquiry point who can, for example, conduct a plea negotiation, because one of the benefits of our system is that material is available online, which means that it should not matter whether the call goes through to David Harvie, John Dunn or anyone else in the organisation. What is important is that the person to whom the caller speaks is able to resolve their issue.

Another thing that I tried to convey in the correspondence is that the phone numbers and other points of contact are really only part of the issue. You have heard about issues in and around the criminal justice secure mail network, which is a service that we sought to provide because there is an issue in relation to the secure transfer of personal data—I am sure that all of us agree that such data needs to be securely transferred. That service was already available and was made available to the defence bar.

We have acknowledged that the system is not perfect and that there is a need to drive forward with a better one, whether that involves a bespoke website with communication or a secure email system. However, there is a collective responsibility for the difficulty that has arisen in the

past. Rather than us saying that the criminal justice secure mail network is the solution whereby others can transfer data securely not only to the COPFS but to the Scottish Courts and Tribunal Service and, in between, to organisations such as the Scottish Legal Aid Board, there is an issue about a system response to ensure that members of the public can have confidence that their data is being securely transferred. That is why I said in the submission that there is a real need for further engagement with the Law Society of Scotland, to understand how solicitors will meet those obligations and how we can assist them in doing so.

13:00

The Convener: We have reached 1 o'clock. I would be very pleased if the remaining questions and responses were succinct.

Mary Fee: I will ask about health and safety cases. The witnesses will know that we heard some concerning evidence about the low level of prosecution, particularly in relation to employers who lack liability insurance. Is there a particular reason for the low rate of prosecution in liability cases?

The Lord Advocate: I will deal with the employer's liability insurance point in a minute. It is important not to assume that every accident at work involves a crime and breach of the criminal offences in the Health and Safety at Work etc Act 1974. We prosecute cases that are reported to us. In the context of health and safety, the primary reporting agency is the Health and Safety Executive. We are able to direct to the police to make enquiries but we do not direct other reporting agencies such as the Health and Safety Executive so, for the cases that we prosecute, we depend on those that are reported to us by the HSE. I suspect that, while I have been speaking, the Crown Agent will have identified the statistics for the health and safety cases that have been reported to us that we prosecuted and in which a conviction was secured.

Part of the answer is that we take the cases that are brought to us, make prosecutorial decisions and prosecute them appropriately. If employer's liability insurance cases are not brought to us, there may be a question to be picked up with the reporting agency. It is certainly a question that we can raise with it.

I suspect that the Crown Agent has the numbers.

David Harvie: I think that the matter is reflected in my submission, so I wonder whether we might leave it, in light of time.

The Convener: That would be fine. Your submission included a positive response on examining the low prosecution rates.

David Harvie: Indeed. It is subject to not being able to direct.

Mary Fee: The other concern that was raised on health and safety cases was that they are treated almost like civil cases. In your submission, Mr Harvie, you said that that is not the case. However, health and safety cases often enter into lengthy negotiation periods when there is likely to be a guilty plea at the end of the process. There is no limit on the length of time that it can take to negotiate an agreed settlement, and that often causes considerable distress to families. Can anything be done to assist the process or shorten the negotiation?

David Harvie: The point that I was trying to make in the submission was that it is not a matter of policy to have the approach that you describe. However, the reality of seeking to identify the issues in such cases is that they are among the most complex that we deal with and, to be candid, some of those who are accused are among the best resourced to defend themselves. That is perhaps the way to look at it. Therefore, many points are tested and there is a clear benefit to ensuring that, when the charges are libelled, they are appropriately tested.

By way of historical context, there was a time before we had the specialist approach and I regret to say that the case law is littered with cases in which the Crown tried to bring prosecutions, particularly in health and safety cases, and the courts flung out the entirety or, at least, a significant part of the Crown case, because of the way in which it had been libelled. Lessons have been learned from the past about ensuring that, in those most complex of cases, the Crown libels that which can be proved as a result of the specialist input and subject to the testing of some of the best-resourced defences that are available.

Rona Mackay: Will the Lord Advocate comment on the implications for the service and effective prosecution arrangements if co-operation between partner agencies in Europe is diluted in any way following the decision to leave the EU?

The Lord Advocate: It is a feature of the world in which we live that crime is not confined by borders. We have not had time to touch on cybercrime, although we would be happy to discuss that. It is a good example of a type of criminality that has no regard to jurisdictional boundaries. People move around in a way that means that, to be effective in dealing with some of the challenges that we face in the criminal justice system, we have to engage with agencies in other parts of the world, including Europe.

To go back to the point about specialisation, our international co-operation unit is the central authority in Scotland for mutual legal assistance. I am personally what is called the territorial authority for Scotland under the Crime (International Co-operation) Act 2003 and have responsibilities in relation to extradition, so I get personally involved.

It is hugely important that we have effective relationships with criminal justice agencies in other countries. It is also hugely important that we have the legal and institutional structures that allow us to deal effectively with investigation and evidence gathering and with extradition from Scotland to other countries, so that we do not harbour criminals and so that we can bring people from other countries to Scotland when we wish to prosecute them.

Those mechanisms are important to the work that we do, and departure from the EU will not change that importance. I have spoken publicly about the importance of ensuring that, as we move forward with the Brexit process, we maintain the advantages of the international arrangements and have secure mechanisms in place so that, whatever the outcome of that process, our ability to deal with transnational crime is not diluted.

Rona Mackay: Are you confident that the practicalities will be realised as we go through the Brexit process? I understand what you say about the importance of that, but will it be possible to have the same effectiveness?

The Lord Advocate: There are decisions that are yet to be made. Wearing my independent prosecutor's hat, I can make it clear that, unless the right decisions are made, our ability to deal effectively with transnational crime will be adversely affected. It was encouraging that the United Kingdom Government decided to opt into the new Europol regulation. Of course, that is a decision made for now; what the position will be as and when we leave the European Union remains to be seen and is a matter on which decisions are yet to be made, as far as I am aware. All that I can say is that it is important to make the right decisions.

Liam McArthur: I will take you from the macro level back down to the micro level and ask about direct measures. You will be aware of the concerns that were raised with us about fiscal fines; Mr Harvie's submission responded helpfully to some of them.

The concern was expressed to us that there was perhaps an overzealous or inappropriate deployment of fiscal fines in instances when potentially—but not exclusively—as a result of cumulative fines, there was an inability to pay and there would almost be a denial of justice in diverting the case from the court.

It would be helpful to get your response to that, particularly in relation to the point in your letter that suggests that

"more than 80% of direct measures are paid",

which suggests that 20 per cent are not. Whatever the numbers are, a fifth of the fines are not being paid, even if we allow for staggered payments or instalments over a period.

David Harvie: In the information that is provided in the letter, I indicated—from SCTS information rather than COPFS information—the impact in the form of the percentages of individuals who have had more than one fiscal fine over a period.

As I understand it, the other important point from the evidence that was given by Eric McQueen, the chief executive of the SCTS, is that at any given moment in time collections are on-going, and the SCTS strives to recover the full amount over time. However, at any given time there is an outstanding balance, which is a moveable feast as new fines come on board.

As for the use of the fines, forgive me—for once I have not managed to find the relevant page to draw on in the statistical bulletin. However, it is available and published today and, if I have a moment, I can perhaps draw the figures to your attention. The fiscal fines and fixed penalty numbers have gone down quite significantly in percentage terms, so I draw your attention to that and will allow you to reflect and draw conclusions based on that as to whether the issue is on-going and live or whether the approach to the number of fiscal fines and fixed penalties has changed.

The Convener: It would be good if you sent that information. One in five fines not being paid means a loss to the public purse of quite a significant amount of money, and we always seek to improve such situations.

I want to say just one more thing at the very end but, first, will you give a brief explanation of the fair futures programme? How do you liaise with and get feedback from staff on that?

David Harvie: The fair futures programme arose from our shaping the future programme, which concerned the restructuring that took place. During that significant staff engagement, we got more than 1,800 lines of feedback—

The Convener: How was that gathered?

David Harvie: It was gathered in a wide variety of ways, which included face-to-face discussions. There was also the ability to provide information online and to provide it anonymously. People could even put their comments on a poster, which was then collected. Feedback was collected in a huge range of ways and there was a significant level of engagement, with regular updates and

regular face-to-face discussions with staff who were leading on that work. We seek to continue that level of commitment.

The Convener: That is helpful and encouraging. However, I ask you again to reflect on the workload issue and on the fact that the committee has had absolutely no success in getting anyone to appear in front of it to express their concerns about various things. People have given written evidence and have appeared in private, but there was a bit of fear that criticising the service would affect people's career prospects.

From the beginning, we have been encouraged by your can-do attitude to the need to move forward and address the issues—perceived or otherwise—that have been raised. I hope that you will take on board the particular issue that I just raised. That would be much appreciated, although I am encouraged that there was the opportunity to give feedback anonymously and for staff to engage in various ways.

I thank both witnesses for what has been a very long but very worthwhile and detailed evidence session.

The Lord Advocate: Convener, I hope that it is in order for me to thank you for giving us the chance to give evidence at length and for all the work that the committee has done in eliciting evidence, which I hope that you are reassured that we are taking on board and have taken seriously and which, to a significant degree, reflects issues that the service is already seeking to address.

The Convener: Thank you.

Public Petitions

Justice for Megrahi (PE1370)

13:15

The Convener: I propose to defer to next week discussion of the three sets of petitions that are on the agenda, apart from the petition on an independent inquiry into the Megrahi conviction, in deference to the fact that we have people in the public gallery who have sat through all of the meeting to hear about that issue.

PE1370 is discussed on page 4 of the clerk's paper 3 and annex F provides an update from Justice for Megrahi. The committee agreed to keep the petition open pending the completion of operation Sandwood, which we understood was to be completed by the end of 2016. However, according to the clerk's recent update, the operation is still on-going and we do not have a completion date for it.

I ask the committee to consider and agree on what, if any, action it wishes to take in relation to the petition.

Stewart Stevenson: The petitioners, in their letter to us, conclude by asking the committee to allow the petition to remain open until the conclusions of operation Sandwood have been announced. That is a reasonable request, to which we should accede.

Mary Fee: I would have made the point that Stewart Stevenson just made if he had not made it, so I am grateful to him for making it.

The Convener: In that case, the petition remains open.

Subordinate Legislation

Police Service of Scotland (Amendment) Regulations 2016 (SSI 2016/419)

Firemen's Pension Scheme (Amendment and Transitional Provisions) (Scotland) Order 2016 (SSI 2016/431)

13:17

The Convener: Item 4 is consideration of two negative Scottish statutory instruments. The Delegated Powers and Law Reform Committee made no comments in relation to the instruments. I refer members to paper 4.

As members have no comments, does the committee agree that it does not wish to make any recommendations in relation to the instruments?

Members *indicated agreement.*

Justice Sub-Committee on Policing

13:18

The Convener: Item 5 is on the Justice Sub-Committee on Policing.

Mary Fee: Paper 5 from the clerk covers the item, and annex A to that paper briefly details the sub-committee's work programme. If it assisted the convener and the committee, I would be happy to defer the discussion to next week, when we will have more time to cover it.

The Convener: That would be appreciated.

The committee's next meeting will be on 24 January, when the main item of business will be a round-table evidence session on demand-led policing.

13:18

Meeting continued in private until 13:19.

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