



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Justice Committee

**Tuesday 1 November 2016**

**Session 5**



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**JUSTICE COMMITTEE**  
**8<sup>th</sup> Meeting 2016, 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:**

Chief Superintendent Gordon Crossan (Association of Scottish Police Superintendents)  
Liz Dahl (Circle)  
Annabelle Ewing (Minister for Community Safety and Legal Affairs)  
Steve Farrell (Community)  
John Foley (Scottish Police Authority)  
Professor Nick Fyfe (Scottish Institute for Policing Research)  
Nigel Goodband (British Transport Police Federation Scotland)  
Deputy Chief Constable Adrian Hanstock (British Transport Police)  
Assistant Chief Constable Bernard Higgins (Police Scotland)  
Audrey Howard (Social Work Scotland)  
Professor Nancy Loucks (Families Outside)  
Darren Townsend (British Transport Police Federation Scotland)  
Greig Walker (Scottish Government)

**CLERK TO THE COMMITTEE**

Peter McGrath (Clerk)

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



# Scottish Parliament

## Justice Committee

Tuesday 1 November 2016

[The Convener opened the meeting at 10:02]

### Subordinate Legislation

#### Sheriff Court Simple Procedure (Limits on Award of Expenses) Order 2016 [Draft]

#### Courts Reform (Scotland) Act 2014 (Relevant Officer and Consequential Provisions) Order 2016 [Draft]

**The Convener (Margaret Mitchell):** Good morning and welcome to the eighth meeting of the Justice Committee in session 5.

Agenda item 1 is consideration of subordinate legislation. I welcome Annabelle Ewing, the Minister for Community Safety and Legal Affairs, to speak to the three affirmative Scottish statutory instruments before us today. We will take evidence on the first two SSIs together because they relate to similar matters to do with civil procedure reform.

I also welcome the two Scottish Government officials who are accompanying the minister this morning: Walter Drummond-Murray is from the civil law and legal system division; and Greig Walker is from the directorate of legal services. I remind members that officials are permitted to give evidence under this item but may not participate in the formal debate on the instruments under item 2. Items 1 and 3 give members a chance to put to the minister and her officials any points on which they seek clarification.

I invite the minister to make an opening statement.

**The Minister for Community Safety and Legal Affairs (Annabelle Ewing):** I am pleased to have the opportunity to speak briefly to the first two SSIs, which continue our work to implement the reforms set out in the Courts Reform (Scotland) Act 2014.

The draft Sheriff Court Simple Procedure (Limits on Award of Expenses) Order ensures that the current policy restricting the recoverability of expenses in small claims is maintained in the new simple procedure, which is to replace the small claims procedure on 28 November 2016.

The draft Courts Reform (Scotland) Act 2014 (Relevant Officer and Consequential Provisions) Order provides for a number of consequential

amendments as a result of the reforms, including those related to the introduction of simple procedure. In addition, after the appointment of the first auditor of the sheriff appeal court this year, the order adds that post to the list of relevant officers in section 107 of the 2014 act with regard to the imposition of fees.

That is a brief introduction. I am happy to take any questions.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** On the limits on award of expenses order, I note that the Delegated Powers and Law Reform Committee made a couple of observations. I want to address its second observation, which relates to the

“drafting error in paragraph 2 of the table of civil legal aid fees in new Schedule 2A”,

which provides an incorrect description of the paragraphs. The note says:

“The DPLR Committee noted that the Scottish Government Intends to correct this error by correction slip but called on the Scottish Government to correct the error by amending instrument”.

Can the minister give us feedback on her position on the Delegated Powers and Law Reform Committee’s request? I certainly instinctively feel that that committee is correct to request that the error be replaced rather than simply corrected by a correction slip.

**The Convener:** I seek clarification that you are definitely speaking about the right instrument.

**Stewart Stevenson:** I may have got it wrong. I am talking about the Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2016. Am I on the wrong instrument? Have I got ahead of myself?

**The Convener:** I think so. We will come to that instrument later.

**Stewart Stevenson:** In that case, can you read that into the report when we come to that instrument, convener? I will not bother saying it again.

**The Convener:** Okay. Thank you.

If there are no other questions, do you want to make any closing remarks, minister?

**Annabelle Ewing:** No, thank you.

**The Convener:** We will move on to deal with the motions.

*Motions moved,*

That the Justice Committee recommends that the Sheriff Court Simple Procedure (Limits on Award of Expenses) Order 2016 [draft] be approved.

That the Justice Committee recommends that the Courts Reform (Scotland) Act 2014 (Relevant Officer and

Consequential Provisions) Order 2016 [draft] be approved.—[Annabelle Ewing]

*Motions agreed to.*

### **Maximum Number of Judges (Scotland) Order 2016 [Draft]**

**The Convener:** We move to agenda item 3, which is also subordinate legislation. I invite the Minister for Community Safety and Legal Affairs, Annabelle Ewing, to speak to the third affirmative SSI before the committee today, on the maximum number of judges.

**Annabelle Ewing:** Thank you, convener.

The draft Maximum Number of Judges (Scotland) Order deals with the maximum number of judges, as set out in section 1(1) of the Court of Session Act 1988. The order that is before members will increase the maximum number of judges in the Court of Session by one, so that the total will be 35.

Judges of the Court of Session also sit as judges of the High Court of Justiciary, of course. An increase in the number of judges in the Court of Session is required as a consequence of the recent appointment of Lady Smith as chair of the Scottish child abuse inquiry. Lady Smith is an inner house judge of the Court of Session on secondment to the inquiry. During the secondment, she will not be available to sit in court, but she will remain a judge for the purposes of the statutory limit that is set forth in the 1988 act.

As the Scottish child abuse inquiry is expected to last until at least October 2019, the Lord President requested an additional judge to meet the demands of business in the Court of Session and the High Court. In that regard, the Lord President did not consider that a series of temporary appointments for that period of time would secure the most efficient disposal of court business and took the view that it would be neither realistic nor sustainable to proceed in such a fashion. That is why we have brought the order before the committee.

**Douglas Ross (Highlands and Islands) (Con):** What will happen to the number of judges following the completion of the inquiry in 2019?

**Annabelle Ewing:** It will depend on the circumstances at the time. If the inquiry finishes in 2019, Lady Smith will remain an inner house judge. The total number of judges at the time will depend on who else is there and who is seeking retirement.

Further to the Lord President's request for an increase in the overall number of judges to 35—although, in effect, there will be 34 operational judges—the Cabinet Secretary for Justice has

made it clear to the Lord President that it would be sensible to review the desirability of maintaining the number of judges at the maximum each time a request is made for a new senator appointment in the future. The issue will be kept under consideration as we go forward.

**Douglas Ross:** Do you think that it is fair to assume that a request will be made to reduce the number to 34 on the inquiry's completion?

**Annabelle Ewing:** We cannot know that at this time. We would have to take a view on the circumstances that obtained at the time. While Lady Smith is leading the child abuse inquiry, she is not available to sit in the inner house. In those circumstances, the Lord President requested that that de facto gap be filled, and that is what the order seeks to do. We want to ensure that Lady Smith is in a position to get on with chairing the inquiry.

**Douglas Ross:** As the committee considers whether to agree to the motion on the order, it must consider the problem of the financial implications, which are dealt with in paragraph 10 on page 2 of our paper. The proposal that you are putting forward will have no financial implications at the moment, because Lady Smith's salary and pension will be paid for by the inquiry. However, following the inquiry's completion, the cost of the salary and pension of an additional judge will have to be met. Where will that money come from? Is it the case that, immediately after the completion of the inquiry, a proposal will be made for the change to the number of judges to be confirmed at 35 and for the costs associated with that to be met?

**Annabelle Ewing:** The inquiry is scheduled to finish no earlier than October 2019, but we do not know whether that will be the final date for the inquiry's completion. We will have to see what the circumstances are at that time. We will consider the position carefully and in the light of any further requests from the Lord President at the time.

I am unable to foresee exactly what the position will be on the inquiry's completion because we do not know when the inquiry will be completed and we do not know what the position will be as regards the number of judges or senators in post at the time—things could happen in the interim period.

**Douglas Ross:** Therefore, it is incorrect to say that the proposal is cost neutral. It is cost neutral at the moment, but when Lady Smith finishes her inquiry, 35 judges will have to be paid for. Greig Walker is shaking his head, but I presume that Lady Smith's salary and pension will be paid for by the inquiry only for as long as the inquiry is ongoing. When the inquiry finishes, we will have 35 judges, so the proposal is not cost neutral because, at that point, we will have to pay for the

salaries and pensions of 35 rather than 34 judges, as is the case while Lady Smith's salary and pension are being paid for by the inquiry.

**Annabelle Ewing:** We are saying that the measure is cost neutral as of today. I am not making any predictions with regard to the future. As I said, there are at least two variables. First, we do not know exactly when the inquiry will be completed. The inquiry should be allowed to do the job that it has been tasked with under the excellent direction of Lady Smith. Secondly, we do not know what the situation will be as regards the number of judges that there will be at that unspecified date in the future or which senators might be seeking to retire.

I am trying to be helpful, but I do not have a crystal ball. As of today, the order will be cost neutral. We will keep the matter under consideration in future years. As I pointed out, the cabinet secretary has already made it clear to the Lord President that the issue will be kept under consideration. I hope that the member takes reassurance from the fact that we are always looking at the cost of the operation of the justice system.

**Douglas Ross:** Would any change come back to this committee for consideration?

**Annabelle Ewing:** I am fairly confident that any change to the legislative position would require to be considered by the committee. If I am still in post, I would be happy to come back to the committee at a future date.

**Douglas Ross:** Can you confirm that it would be a change to the legislative position if, after the inquiry has ended, a decision is made to maintain the increase in the number of judges to 35 that we are being invited to agree to today, which at present is cost neutral but which will no longer be cost neutral? Would the matter come back to this committee if the number does not change but the financial implications do?

10:15

**Annabelle Ewing:** If it was deemed to be a change to the legislative position that would trigger the committee's involvement, the matter would come back to the committee.

**Douglas Ross:** Would the financial implications trigger that change?

**Annabelle Ewing:** I would have to look carefully—as would the committee clerks—at what would trigger the committee's involvement. If the change was proposed by way of an order that required the committee's involvement, the matter would come back to the committee.

**Douglas Ross:** We are being asked to agree to the motion on the order today on the basis of the fact that you have said that it has no financial effect—it is cost neutral. If that position changed, I would expect the matter to come back to the committee and I would be worried if a Government minister did not want it to come back to the committee.

**Annabelle Ewing:** I am not making a suggestion either way. You have posed a technical question about what might happen down the line and whether that would require a legislative change through an order. That is the nub of the matter. If such a change was required, of course, the committee would have oversight of that. I am trying to be helpful, but I do not have a crystal ball that tells me about all the variables that are involved, including the two principal ones that I have mentioned.

**The Convener:** The order is cost neutral as long as the inquiry continues. As soon as the inquiry ceases, there will potentially be a cost implication. If you cannot tell us today whether the matter would come back to the committee or what the procedure would be in that eventuality, perhaps you can write to the committee on that.

**Annabelle Ewing:** I am happy to do that, convener.

**Stewart Stevenson:** Is the Government, as a matter of policy, continuing with the view that the number of operational judges that are required is 34?

**Annabelle Ewing:** I understand that that is the position. However, we have the particular circumstances of the very important child abuse inquiry—Lady Smith has agreed to take over the direction of that inquiry—which is why we are in the position that we are in.

**Stewart Stevenson:** Sure. Therefore, the policy surrounding the number of operational judges remains unchanged. The processes for removing a judge from judgeship are extremely onerous and are not within the gift of politicians. Therefore, in a practical sense, the option of removing a judge to conduct the inquiry is not available—is that correct?

**Annabelle Ewing:** I think that there are particular rules that are not within the gift of the Scottish ministers—and rightly so, given the separation of powers. The decision was made that Lady Smith would take up the role of chairman of the inquiry, which leaves a de facto gap in the number of senators that are available to ensure the smooth administration of justice in Scotland. The Lord President made the request and the Scottish Government was minded to accede to it in the particular circumstances that pertain at this

time. That is the background to the order that is before the committee today.

**Liam McArthur (Orkney Islands) (LD):** I want to follow a similar line of inquiry. The situation at the moment is cost neutral, but you said that, without a crystal ball, it is impossible to gauge who may step down from the role and where we might be in, say, 2019 and thereafter. In acceding to the Lord President's request, have you made any assessment of the pattern of retirements over the previous five or 10 years or, in looking ahead, of the likelihood of retirements between now and 2019 that may leave us in the position that, come 2019, the situation will remain cost neutral because we will still have 34 judges?

**Annabelle Ewing:** I do not have that information to hand, but I am happy for my officials to look into the matter and see whether there is any information that we can helpfully provide to the member.

**The Convener:** Is there a statutory age at which judges retire? Is it 70 or 75?

**Annabelle Ewing:** It is 70.

**The Convener:** You can perhaps answer Liam McArthur's question by looking at the ages of the existing judges and provide that information to the committee.

**Annabelle Ewing:** Certainly.

**The Convener:** Thank you. If members have no further questions, do you wish to add anything, minister?

**Annabelle Ewing:** No.

**The Convener:** In that case, we move to the debate. I ask the minister to move motion S5M-01715.

*Motion moved,*

That the Justice Committee recommends that the Maximum Number of Judges (Scotland) Order 2016 [draft] be approved.—[Annabelle Ewing]

**Douglas Ross:** I just want to check something. Does the wording of the motion mention the order being cost neutral?

**Annabelle Ewing:** The wording of the motion? I do not know what you have before you, but I am looking at the order.

**The Convener:** The background information mentions the order being cost neutral.

**Douglas Ross:** If we are waiting for further written information from the minister, we will be agreeing to something today without knowing the implications of what the minister is going to write to us about.

**The Convener:** I do not think that the information affects the motion today, per se. I think that the issue is that we will not quite know what the implications will be when the inquiry ends. If we were perhaps dubious about appointing Lady Smith—

**Douglas Ross:** No, that is not where the dubiety is. For me, the dubiety will occur in 2019, if someone looks back to the *Official Report* of this meeting and sees that we agreed to the motion even though we were waiting for outstanding information from the minister.

**The Convener:** Do you mean on the issue of cost neutrality?

**Douglas Ross:** I am talking about what will happen after 2019.

**The Convener:** We have until 10 November to agree to the motion. I think that, if the minister could get the relevant information to us in advance of that, it could be circulated to members. However, I will defer to the clerk.

**Peter McGrath (Clerk):** I understand that we must report to the chamber by 10 November. The plan is not to have a meeting next week, as we are away on business. An option would be for the committee to request the information by a particular date. The committee may or may not agree to the motion today. If it does, members could delegate authority to the convener to agree the report, in line with normal practice. There could be an informal opportunity for members to see a draft of the report, including the information that will be provided by the minister, and indicate whether they are content with the reply, and the committee could report to Parliament in those terms. To be clear, if members agree to the motion today, that must be set out in the report; there is no going back on the decision to agree to the motion.

**Douglas Ross:** I would be quite happy to follow that approach.

**John Finnie (Highlands and Islands) (Green):** It is important that we send a clear signal that our difficulty is not with the individual, and that there is a compelling need for that individual to be appointed. Previously, we have considered issues around succession planning and retirement—such planning is appropriate in any part of the public sector. I would be very keen that we make this appointment.

**Stewart Stevenson:** I will just point out a matter of process. It is, of course, not this committee but the Parliament that approves the order. In other words, the order's approval does not happen today.

**The Convener:** The committee can approve it today and, pending the information from the

minister, Parliament can confirm that approval. Is everyone happy with that?

**Members** *indicated agreement.*

**The Convener:** We are agreed on our course of action. Do you wish to make any closing remarks, minister?

**Annabelle Ewing:** No.

**The Convener:** In that case, the question is, that motion S5M-01715 be agreed to.

*Motion agreed to,*

That the Justice Committee recommends that the Maximum Number of Judges (Scotland) Order 2016 [draft] be approved.

**The Convener:** That concludes consideration of the three affirmative instruments on today's agenda. The committee's report will note and confirm the outcome of the debate on the instruments.

Are members content to delegate authority to me as convener to clear the final draft of the report?

**Members** *indicated agreement.*

**The Convener:** I thank the minister and her officials for attending. We will have a brief suspension.

**Stewart Stevenson:** If I may, convener, it would be helpful if the minister could remain to answer a question that I have on one of the negative instruments that we will deal with under the next agenda item.

**The Convener:** The issue was referred to earlier, minister. It is entirely up to you if you want—

**Annabelle Ewing:** Yes, but different officials are involved, and I would need time to consult with them.

**The Convener:** If you do not mind then, Mr Stevenson, can we move on? How important is it?

**Stewart Stevenson:** It is only a matter of process.

**The Convener:** Well, if it is just a matter of process—

**Stewart Stevenson:** It would be helpful, though, if the Government could indicate what its intentions are in respect of the Delegated Powers and Law Reform Committee's comments on the errors, which I accept are comparatively minor. That is all there is to it—I am not necessarily looking for an answer now.

**The Convener:** The important point is that the second instrument amends all those things and

that they were picked up. However, an on-going concern for the committee is that errors persist.

Thank you for your attendance, minister. I suspend the meeting to allow the minister to leave.

10:25

*Meeting suspended.*

10:26

*On resuming—*

### **Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2016 (SSI 2016/290)**

### **Civil Legal Aid (Scotland) (Fees) Amendment (No 2) Regulations 2016 (SSI 2016/317)**

**The Convener:** Agenda item 5 is consideration of two negative SSIs that relate to civil legal aid fees. I refer the committee to paper 3 and ask for members' comments.

**Oliver Mundell (Dumfriesshire) (Con):** I was concerned to read in the financial effects section of the policy note on the Civil Legal Aid (Scotland) (Fees) Amendment Regulations that the measure is expected to represent an increase in current costs and that the legal aid bill will go up by 43 per cent. Given the analysis in that section and the intention to simplify matters, we could do with some more information from the minister on why that should be the case.

**The Convener:** As I understand them, the regulations take cognisance of the fact that there might be less legal representation and therefore less of a need for legal aid. In that light, the comment in the policy note that

"We would expect any increase in costs to be modest, in the region of £93,000"

seems a little bit strange, and perhaps we can seek some clarification on that. Do members have any further comments?

**Stewart Stevenson:** I am not opposed to seeking more information, but I am not quite sure what information we are going to get that is not before us already.

**The Convener:** Despite this relating to simple procedure, under which a person might not need representation—indeed, it encourages more people not to have representation—there will still be an increase in costs. It does not seem to make any sense. Is that your point, Mr Mundell?

**Oliver Mundell:** Given the challenges that have been posed with regard to the accuracy of the calculations, I am also keen to understand where

those numbers have come from and find out more about the expectation that moving away from a block fee to a detailed fee will increase the bill. If going down the detailed fee route is going to increase costs significantly, we should know why that is.

**John Finnie:** There is always a danger in dealing with percentages. The figure that has been quoted sounds very compelling, but we could put it another way and say that we would be spending £93,000 on getting a simpler procedure. To be honest, it does not seem an issue to me.

**The Convener:** We could write to the minister for clarification. In the meantime, are members content that we note the instruments and that, aside from seeking that particular clarification, we have no other recommendation to make on them?

**Members indicated agreement.**

**The Convener:** I suspend the meeting briefly to allow the witnesses for our round-table session to take their places.

10:30

*Meeting suspended.*

10:35

*On resuming—*

## **British Transport Police**

**The Convener:** Item 6 is a round-table evidence session on the British Transport Police. It is a pleasure to welcome the various witnesses. I do not intend to name everyone; we will do quick introductions from everyone around the table so that everyone knows who is who.

I am Margaret Mitchell, the convener of the Justice Committee.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** I am the deputy convener of the Justice Committee.

**Nigel Goodband (British Transport Police Federation Scotland):** I am chairman of the British Transport Police Federation.

**Darren Townsend (British Transport Police Federation Scotland):** I am general secretary of the British Transport Police Federation.

**Mary Fee (West Scotland) (Lab):** I am an MSP for West Scotland.

**Stewart Stevenson:** I am the MSP for Banffshire and Buchan Coast.

**Assistant Chief Constable Bernard Higgins (Police Scotland):** I am assistant chief constable in operations and justice, Police Scotland.

**Mairi Evans (Angus North and Mearns) (SNP):** I am the MSP for Angus North and Mearns.

**Oliver Mundell:** I am the MSP for Dumfriesshire.

**Douglas Ross:** I am an MSP for the Highlands and Islands.

**Chief Superintendent Gordon Crossan (Association of Scottish Police Superintendents):** I am president of the Association of Scottish Police Superintendents.

**Liam McArthur:** I am the MSP for Orkney.

**Deputy Chief Constable Adrian Hanstock (British Transport Police):** I am deputy chief constable of British Transport Police.

**John Finnie:** I am an MSP for the Highlands and Islands.

**Professor Nick Fyfe (Scottish Institute for Policing Research):** I am director of the Scottish Institute for Policing Research.

**Ben Macpherson (Edinburgh Northern and Leith) (SNP):** I am the MSP for Edinburgh Northern and Leith.

**John Foley (Scottish Police Authority):** I am the chief executive officer of the Scottish Police Authority.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** I am the MSP for Coatbridge and Chryston.

**Diane Barr (Clerk):** I am a Justice Committee clerk.

**Peter McGrath:** I am the clerk to the Justice Committee.

**The Convener:** Thank you. The idea of a round-table discussion is to stimulate conversation without formal questions and answers. From that, we get a better discussion and understanding of the issues.

I will open by highlighting that British Transport Police has proposed a number of options for the future of British Transport Police in Scotland. They range from administrative changes to full-blown integration with Police Scotland. I open that up for the witnesses to give their views on which option they would prefer. Who is going to kick off?

**Deputy Chief Constable Hanstock:** Thank you for inviting us. We have made clear in all our submissions that we understand the right and the will and direction of elected members. We are working to ensure that we contribute properly to any changes that emerge.

I will stick with the question on which would be the preferred model. If I had to nail our position down at this stage, we would recommend option 2, which is more of an interim and incremental development that would preserve the best of what we think is already in place for the force. It would not introduce additional layers of complication but would ensure that the Scottish Government retained direction, control and accountability and had control of funding, or some control of funding, whichever is chosen. The Scottish Government would take more of the direct leadership of the force and ensure that we are accountable, but the operational capabilities that we think are significant would be preserved. The transport policing ethos that we describe throughout our submissions is at the heart of BTP and is why it is different and specialist.

**The Convener:** I should have said that if anyone wants to make a contribution, they should catch my eye or the clerk's eye. You do not have to press any buttons because your microphone will come on as if by magic.

**Oliver Mundell:** If you are saying that option 2 is your preferred route, the question is what you and some of the other panel members make of the haste in bringing forward such a significant change. What is motivating that?

**Deputy Chief Constable Hanstock:** I guess that it hinges on the influence that Scotland would like to have over the way in which the force operates. There have been a number of comments throughout the process, certainly from the public, to the effect that—to use a hackneyed phrase—if it is not broken, what are we trying to fix? However, the force executive and, significantly, stakeholders accept and acknowledge that the Scottish public and Scottish politicians want a controlling hand and a clear say in what the force is doing. Arguably, nothing is currently out of kilter with what that might look like. We are absolutely open to stronger accountability, and to more exposure of what we are doing and why, and why we feel that our work adds value for the public and for the stakeholders who run the railways. In a nutshell, that is why option 2 feels like a win-win for both sides, without adding additional expense and controls and without in effect creating a border for operational policing that we do not need.

**The Convener:** You are saying that one of your strengths is that you have a free-flowing operation across the whole United Kingdom, which might be challenged by some of the other models.

**Deputy Chief Constable Hanstock:** Indeed. In our submission, we give examples such as football policing—we know that the movement of large numbers of people can be problematic for all passengers—and the impact of various incidents. Without putting too fine a point on it, the disruption to services that is caused by fatalities, bomb hoaxes or abandoned luggage can be significant, and we need to understand the impact of those incidents.

In stark terms, an incident that occurs in Edinburgh will very quickly, within an hour, impact on the midlands, London and elsewhere. We can swing into place automatically, without any control or negotiation, a response to that disruption, whether that involves managing people or rerouting services through our embedded staff in regional train control centres. It just happens: we do not have to negotiate and say, "We've had an incident—can you arrange for your people to take on these additional measures for us so that we can preserve services?"

If the committee will indulge me for a second, I will describe some feedback that I received from a train operating director just last week, although not in relation to this issue. He said that, years ago, if there was a disruption to service, replacement bus services would be rolled out and there would be marshals to deal with crowds and great big pieces of communication. He said that, now, there is a level of confidence that BTP will hand the service back to the train operator within 70 minutes. For 70 minutes the situation is inconvenient, but the

operator can manage that because it is confident in the way in which BTP brings all the elements together. That includes the other train staff—it is not just a policing response. How do we preserve that without introducing a dual control that could introduce further delay? That is our position.

**The Convener:** I will give the witnesses priority and then bring in committee members. Darren Townsend can go next, followed by John Finnie.

**Darren Townsend:** I reiterate the point that my deputy chief constable made by saying that our organisation acknowledges and respects the wish of not only the Scottish Parliament but the Scottish people to have accountability for and ownership of how policing is conducted in their environment. That is absolutely understandable.

The need to be evidence based is flagged in much of policing at present, and the term “evidence-based policing” is constantly used in the current policing models. One of our concerns is that we would like to know what the evidence base is, and where the decision is coming from, to change what has been shown to be a successful policing model that works not only for England and Wales but, more importantly in this respect, for the people and the travelling public in Scotland. I was hoping to get from today an understanding of the evidence that supports the reason for the proposed change.

10:45

**The Convener:** I am not sure that anyone round the table is qualified to give that evidence or talk about that, but it is most certainly a point that is worth making.

**Rona Mackay:** I have a quick remark on that. The change was brought forward as part of the Scotland Bill—that is where it emanated from. That does not reply to Mr Townsend’s point about the evidence for it; I am just saying that that is where it comes from.

**The Convener:** Yes, but I think that the measure was introduced at the end of the Scotland Bill process and was perhaps not given the due scrutiny that it could have received.

**John Finnie:** I cannot let that pass, convener. Regardless of how the change was brought in, it was brought in and, significantly, it was agreed by all the parties. That is important.

I do not know whether the BTP submission was written by Mr Hanstock, but there is a recurring theme that things could only get worse. I presume that things could get better. For instance, there is the comment:

“an attack in Scotland may well be prevented in England.”

Under present arrangements, similarly, an attack in England could be prevented in Scotland.

Mr Townsend asks why anyone would seek change, given the good evidence about the performance of BTP. Not least of that evidence—although this is not a motivator for me—is that on the compelling financial imperative and the efficiency with which you discharge your duties, particularly in relation to tragedies such as fatalities on the line.

However, I would like to ask about option 3, because again your comments on that are predicated on a particular approach. You talk about option 2, which involves BTP continuing to

“align to principles set in Scottish Law”

but, in the introduction, you talk about “domestic burglary”, which is of course clearly not applicable in Scotland. Later, you mention that

“43 different forces were involved in delivering the service”.

That is 43 in England and Wales, so again there is not a broad perspective.

I particularly want to ask about the comment on “The challenges associated with providing duplicate central support functions and ... dual accountability”.

Counterterrorism activity takes place not just across the UK but beyond that. As regards the support functions, I presume that the rail operating companies in Scotland, and not just ScotRail, pay for those as well, so why would there be any diminution of those?

**Deputy Chief Constable Hanstock:** We are not saying that there would necessarily be any huge diminution or difficulty in working with colleagues. That is absolutely possible, and we do it now. Our point about the 43 forces—44, with Police Scotland—is that there are protocols and understandings through which we take responsibility straight away without having to negotiate with command teams and leadership, whether we are operating across boundaries or in force areas. For example, we might be dealing with an offender who resides in a particular county, but we do not have to negotiate to operate in that area.

Of course, operationally, it is all absolutely doable. The issue is that we would introduce for operating companies the need to negotiate with two different police forces to arrange the funding and to understand who to contact in the event of delay.

I mentioned different train operating directors. If an issue is affecting the east or west coast main line, the directors will pick up the phone and speak to one command team. If that has to be done through two organisations, there is an issue about knowing where that team is and how to influence.

However, those relationships develop. I do not think that any of the points that are being made is in any way a showstopper; our point is that it introduces another layer of consideration and potential complexity.

**John Finnie:** Yes, but you would acknowledge that there are arrangements that are not exclusively connected with transport that apply across the police services of the United Kingdom and beyond.

**Deputy Chief Constable Hanstock:** Indeed. Some of those of course relate to reserved powers, as you will undoubtedly be aware. All police forces in the UK have to commit to elements of the strategic policing requirement to deal with threats to the UK, whether those are from terrorism, organised crime, people trafficking or similar risks to the public. We are the police and we work in the public interest. I do not think that we would ever put any delineation on those responsibilities.

**Mary Fee:** John Finnie has more or less asked the question that I was going to ask, which is on how you work across the country to deal with terrorism or threats of it. Will you expand a bit more on what you do now practically to ensure that there is almost a seamless operation across the country of sharing information and knowledge? What practical impact would it have on what you do day to day were the British Transport Police to be part of Police Scotland?

**Deputy Chief Constable Hanstock:** I will deal with your first point, on how we understand the intelligence picture. Like Police Scotland and all other forces, we are part of the national counterterrorism arrangements, and we work very closely with the Metropolitan Police-led counterterrorism arrangements. That could be seen most starkly when, last week, we dealt with a bomb that was left on the tube in London. That was a national counterterrorism response that involved a number of agencies and forces working together. Day to day, that is exactly how it would operate wherever an attack might occur. We often see the focus on London and other capital cities but, equally, Scotland has been touched by terrorism and attacks, and those day-to-day activities would swing into place.

It is about looking at the impact within a railway environment. I will again use the example of the bomb on the tube. That was not just about an incident that happened at North Greenwich, where we had to close part of a tube line. We also had to recognise that passengers travelling into London were disrupted and that there was fear of travelling. Straight away, we needed to consider how our resources across the entire country stepped up their visibility to reassure people that we were alert to any potential threat. That can

happen in any case; it is just about a service mobilisation of the police. The point that we are making is that those things happen seamlessly. There are rehearsed plans, so when you press the button to move to critical, what needs to happen next is completely rehearsed and understood.

As we have made very clear throughout, putting in place any of the opportunities is not insurmountable. However, the point of having a dedicated resource is that it absolutely understands what an issue means for the railway and the people who use it.

Terrorism probably overinflates the debate, to be honest. If a terrorist attack occurs, the natural national response is to deal with it, because it is a threat to us all. A starker example would be the prioritisation of things that might not be seen as quite as important. How would somebody trespassing on lines be prioritised against somebody fighting in the town centre? How would somebody who is a victim of domestic abuse be prioritised over a member of staff in the railway environment who has been spat at? Those matters are all important and things to which we give enhanced priority, because they affect the confidence of people to work in the railway environments. If they do not have that connection and dedication, that undermines their ability.

I saw that situation starkly in London. I was responsible for the transport policing element in the Met, which had about 2,000 officers policing the overground section of transport. Those dilemmas existed for senior command. Should we resource the buses or those parts of the city that are suffering from youth violence and knife crime? Of course, we know where that decision would be placed. Our fear is not that the high-level things would be affected; rather, it is probably more that the things that are generally less prioritised would be affected.

**Mary Fee:** That is very helpful. Thank you.

**Nigel Goodband:** The deputy chief constable has possibly answered the question, but I wanted to echo the term about not simply focusing on terrorism. British Transport Police officers, whatever shift they work, don their uniform to parade and to work within the transport environment. It is not diluted by any other outside influence. That is solely their responsibility, what they specialise in and what they understand. Putting that responsibility into a bigger organisation like Police Scotland would make it just another cog in a bigger wheel. I genuinely believe that it would not get the same daily attention or that the same service would be delivered, because that is our sole responsibility. We do not have to attend calls into the city centre; we are solely focused on policing that environment. We are specialised because

transport is a particularly difficult environment to police—it is unlike any other environment in policing.

**Deputy Chief Constable Hanstock:** I will follow that up, as I may not have fully answered the point. Where that flows through more pertinently is in the leadership. All the leaders and people who have been promoted in the force have experienced that environment as constables and first responders. Where I have seen it become difficult in other places is where people move between commands without understanding the specialism.

**Mary Fee:** I will ask a very brief supplementary. Would a concern of yours then be that, if you are subsumed into Police Scotland and there is any kind of pull back from the daily operation of policing on the railway, the responsibility for the day-to-day incidents that happen on trains may be passed down to ScotRail staff?

**Nigel Goodband:** I am not sure whether it would be passed down to rail staff, because rail staff could not deal with some of the policing issues.

The service that BTP delivers has been proved to be excellent. Let us not deny that this is about the service that we provide, not only to the train operating companies and Network Rail but to the travelling members of the public. I believe that if BTP were to be a cog in a big Police Scotland wheel, its priorities would be diluted in the priorities of Police Scotland, which are totally different from those of the train operating companies and the passengers.

I suspect that there are many communities that would love to dictate to Police Scotland how they would like police officers to function within them. The train operating companies have that relationship with us and get involved with discussing and negotiating those priorities. We try to achieve them, successfully on many occasions. I believe that that could be diluted were BTP to be part of a bigger organisation.

**The Convener:** I am conscious that I have not heard any comments from Police Scotland or the Association of Police Superintendents. Perhaps Mr Crossan would like to come in before I take Douglas Ross?

**Chief Superintendent Crossan:** There could be a detriment to service, and everybody gets that. I would also say that there could be an enhancement to service, from the ability to flex resource that exists within Police Scotland, which could assist with incidents on the railway. We have to make sure that there is no detriment to the service that the public gets from Police Scotland as it exists now or from the British Transport Police.

The bigger issue that has not been discussed is cross-border policing powers. We know that the British Transport Police do a lot of work for us now, particularly around events such as football matches, where they seamlessly move across the border, protecting the public. It would take a legislative change for that to continue if BTP officers become part of Police Scotland. If that legislative change did not come through, we could not provide the seamless service to the public that exists now.

**The Convener:** Backfilling is already an issue in Police Scotland and we are now subsuming the British Transport Police into it. Do you have any concerns about that?

**Chief Superintendent Crossan:** As has already been discussed, the intention would be to look at a railway division, or BTP being subsumed into part of ports policing, with protection round that. To my mind, that protection would not mean that the officers would definitely stay in a particular area. It would allow us to flex resource. We are all mature enough to understand that, at times, that would mean that people would have to move from doing something on the railway to assisting elsewhere. Likewise, within normal policing we would assist on the railway.

At present, Police Scotland responds to a lot of rail incidents as first responder, particularly in outlying areas. We have the relationship with BTP to deliver that. I am confident that, if we get the right processes in place, as Mr Hanstock has articulated, those processes and the relationships that we have in place will continue to deliver a quality and, we hope, enhanced service.

**The Convener:** I will get to Douglas Ross, but I will let Deputy Chief Constable Hanstock come in again; it is the witnesses that we really want to hear from.

11:00

**Deputy Chief Constable Hanstock:** I am very grateful for Chief Superintendent Crossan's point. If I may, I will offer a counterpoint. Absolutely, we work in collaboration with Police Scotland now. Similarly, BTP officers respond to Police Scotland issues in some of the more remote areas. This is very much about policing communities and environments, and that happens now.

On cross-border legislation, of course it is entirely possible to legislate for jurisdictional capacity, but why would BTP provide that additional cover if it no longer has responsibility for Scotland? You mentioned events policing, which we do seamlessly now; we will move people from our C division up into D, which is Scotland, without any consideration of the implications. That is because that is our end-to-end policing. However,

if we did not have responsibility for Scotland, why would we want to move those resources in that way? It would, I guess, be a commissioned service that Police Scotland would have to pay for.

**The Convener:** I will bring in Bernard Higgins, because we have not heard from him.

**Assistant Chief Constable Higgins:** Good morning, colleagues. I do not have too much to say other than to give a broad overview of Police Scotland's position and give some general comments.

This is not land grabbing on the part of Police Scotland. We will respect and deal with the decision of the Parliament.

I agree with the deputy chief constable about the operational issue: it is complicated but not insurmountable. Operationally, we could police the rail network in Scotland. There would be some massive transitional issues to overcome and we would need to plan very carefully for the future, in terms of the intimate knowledge that senior officers have built up over a number of years, which the deputy chief constable talked about, but it cannot be said that the operational issue is insurmountable.

Things are more complex in the back office, in terms of conditions of service such as pensions and contracts for existing staff and officers. However, that is something that brighter people than me can work out.

On resilience, if we entered into a service level agreement with the rail operators, the chief constable would undertake to maintain that level. We would absolutely undertake to maintain the current level of staffing in train stations across Scotland. As Gordon Crossan rightly pointed out, on many occasions that would be supplemented by existing Police Scotland asset and resource.

Police officers are police officers, however. I am sure that the deputy chief constable would agree that if there is a threat-to-life incident outside a train station, the expectation is that officers will deal with it, as BTP officers would just now. To give the committee some reassurance, I say that we would enter into an agreement with the train providers and give the guarantee that we would maintain the current level of officer provision. In addition, we would afford grandfather rights to all existing BTP officers, which in essence would mean that if they wanted to continue in service with the BTP for the remainder of their police career, we would respect that wish.

**The Convener:** I will let Douglas Ross in, because he has been waiting patiently.

**Douglas Ross:** I have a few points to make. I return to the point made by Rona Mackay and John Finnie. Yes, there was cross-party

agreement on the Smith commission's proposal to devolve the functions of the BTP to the Scottish Parliament, but there is certainly not cross-party support for the disruption of the BTP as it is—

**John Finnie:** I never said that.

**Douglas Ross:** I am speaking, John. There is not cross-party support for disrupting the BTP and subsuming it into an organisation that is still going through the considerable challenges that it has faced since the formation of the single police force more than three years ago.

I will start my questions with one for Police Scotland and John Foley of the SPA. What specialist and national forces available to Police Scotland are you currently withholding from the BTP?

**Assistant Chief Constable Higgins:** None. We have a very close working relationship with the BTP. Whenever we have a major event, such as the Ryder cup, the Commonwealth games or the recent old firm game, the BTP is at the planning table. If it requires any of our specialist assets, such as dogs, firearms officers or public order officers, we would absolutely supplement it with them. That is the right thing to do.

**Douglas Ross:** It is absolutely the right thing to do. I am encouraged by what you said, because it stands in stark contrast to what the First Minister said earlier this year, when she told the chamber that the move to subsume the British Transport Police into Police Scotland will allow it to have

"access to the specialist and national resource that Police Scotland has access to."—[*Official Report*, 8 September 2016; c 12.]

The First Minister is telling MSPs in this Parliament that you are withholding access, but you have just said clearly that there are no functions that you currently have—for example, the dogs, the organisation of major events such as the Ryder cup and so on—that you will not give to the British Transport Police in its current format. I am therefore very encouraged to hear your response, because it is certainly not the impression that the First Minister gave to Parliament.

**Assistant Chief Constable Higgins:** It is certainly not for me to speak on behalf of the First Minister, but I should point out that our specialist assets are not routinely deployed to the BTP. It is a matter of request and consideration, although to my knowledge we have never refused such a request. What I am saying is that if the merger were to occur we would be talking about the routine deployments of additional assets into the railway estate, rather than deployments made on a needs-must and request basis, as is currently the position.

**Douglas Ross:** It is good to hear about the good working relationship that you currently have and which does not deny any of that availability.

I wonder whether Assistant Chief Constable Higgins or Mr Foley can tell us about the discussions that the SPA or Police Scotland had with the Scottish Government prior to the Government's consultation on the future of the BTP in Scotland.

**John Foley:** We would have had discussions with civil servants around that time to understand what such a move might mean. We have jointly set up a BTP programme board, on which the chief executive of the British Transport Police Authority, civil servants and I sit, to manage the process through to integration. Assistant Chief Constable Higgins referred earlier to what I would describe as workforce matters—pensions and so on—and we are working through those aspects to ensure that everyone involved is taken care of and that we get the best possible outcome.

**Douglas Ross:** That is useful, but you are talking about post the announcement of the Scottish Government's consultation. The Scottish Government could have had a consultation on what to do with the British Transport Police in Scotland; instead, its consultation was on how to integrate the British Transport Police with Police Scotland. I am trying to get at what discussions were had with the Scottish Government before it announced its consultation, which basically and unambiguously said that the BTP would be merged with Police Scotland. It could have said that there were three options of varying degrees of complexity. Given that it has gone for the most complex and difficult option—that is, merger—it must have had assurances from Police Scotland and the SPA before the consultation that such a move was acceptable.

**John Foley:** I cannot say that it is definitely the most difficult option, because—

**Douglas Ross:** I am saying that.

**John Foley:** Yes, but I cannot. After all, we are working through it at the moment.

**Douglas Ross:** On that point, would it not be less difficult to maintain the BTP's functions but have more accountability to and scrutiny by either the Parliament or the SPA? We could have taken that route instead of having to go into all the personnel, staffing and cross-border issues that Assistant Chief Constable Higgins has talked about.

**John Foley:** I would not say that it is necessarily more or less difficult—it depends on the outcome at the end of the day. Clearly, Scotland has a single police service and the SPA would look to ensure that, on its integration into

the single Police Scotland service, the BTP operated as effectively as part of that unit as it had before—if not more effectively. However, I cannot say that that is a definite outcome, because we are still working through the processes.

**The Convener:** I think that the question is: what led the SPA or Police Scotland to say, "This is the definite model that we think is best, from a financial or any other point of view"? Were there any discussions on that?

**John Foley:** We have not taken a view to that extent, convener, because we are largely following the will of Parliament as set out in the Scotland Act 2016. That is what we as an authority have to carry out—our function is to do what Parliament wishes.

**Assistant Chief Constable Higgins:** My response is similar to Mr Foley's. You will be well aware that this recommendation came out of the Smith commission. We have specifically not responded to the public consultation, in which I believe the three options have been developed, because we are simply awaiting the Parliament's decision.

**The Convener:** Is your response on this point, Mr Goodband?

**Nigel Goodband:** Yes, it is. The Scottish Government has promised that specialist railway policing expertise and capacity will be maintained and protected within the broader structure of Police Scotland. I do not know how it can guarantee that, because the current level of uncertainty in the offices of BTP Scotland means that the retention of staff is not guaranteed. Certain members of staff are at a time in their career when they will not want to take a particular risk by changing terms and conditions, pension rights and so on and transferring over. Such a transfer would not be voluntary, but very much enforced. Therefore, some individuals will choose to leave policing if they are no longer to remain British Transport Police officers.

How can the Scottish Government and Police Scotland give the public a guarantee that expertise will be retained, in the knowledge that officers will potentially be leaving the force?

**The Convener:** Douglas Ross has had a good go at the issues, so we will move on to Stewart Stevenson.

**Stewart Stevenson:** I will broaden out the discussion in a couple of ways. The BTP is long established and was created in another era. BTP staff are specialists in moving large numbers of people around, but at present they are responsible only for rail. I wonder whether their skills, abilities and experience could sensibly be equally applied

to other modes of transport, such as ferries and air travel.

There was an incident last week in which it appears that a CS gas canister was released at London City airport. If the person in question had walked the four minutes that it takes to go from the airport check-in desks to the Docklands light railway, the British Transport Police would have dealt with the situation, whereas I presume that, as it happened, the local special branch officers and the armed response people who are resident in the airport dealt with it. The need for seamlessness in that respect strikes me as obvious.

There is a further complication. The current mayor of London is interested—as was the previous mayor, Boris Johnson—in merging the City of London police, the Metropolitan Police and the British Transport Police in London. With Transport for London taking over many of the operational responsibilities for heavy rail in that area, that argument is being made. I wonder whether that touches on the argument that we are looking at today. It is probably quite different, but I would be interested to hear your views.

Six or seven million people a year travel from Edinburgh and Glasgow to London by air, whereas on the railways it is two or three million. Specialists from Police Scotland and Edinburgh airport might be deployed in different transport areas. Ports are one example: there are special branch officers at Stranraer for crossings to Ireland, and so on. I wonder what opportunities there are in that regard.

**Deputy Chief Constable Hanstock:** You touch on a number of issues that are very much live. Some members may be all too familiar with the fact that BTP was once responsible for ports policing, so it has a long history in that respect.

I will touch on two aspects. First, there is the question whether we should be doing more than transport policing, as it says on the tin. There is a debate in Government in London around an expansion of infrastructure policing that would lead to the creation of a single force—not necessarily called British Transport Police—that would be responsible for policing arterial roads, airports and the other transport modes that you describe.

You are quite right that airport policing is just another public service agreement that could be subsumed by a number of other areas. You pick up on the fact that the end-to-end journey is the important bit. The final link in the chain is some of the work that we do. Again, to bring the discussion right down to a basic level, we protect people from the theft of cycles, which is important so that people do not travel 30 miles on a commuter journey only to get to their station and find that they cannot get the last two miles home because

somebody has nicked their bike. That is why our focus is sometimes at odds with what geographic policing might see as a priority.

Infrastructure policing, yes—

**Stewart Stevenson:** To interrupt briefly, you are not including the Ministry of Defence's responsibility in relation to critical national infrastructure policing, which is another specialism.

11:15

**Deputy Chief Constable Hanstock:** It is and there are a couple of models—they were referenced in our submission—that are under debate. I can almost paraphrase Assistant Chief Constable Higgins in saying that we could do that if asked. We could expand our remit to provide a seamless transport service if that were the will.

Turning to London, there have been a number of occasions when the Met has taken over responsibility for the three forces that operate in London. However, policing the tube and the rail networks that end in London is only one element of policing rail transport, as that somewhat misses the point of the end-to-end impact right across the network. Dealing with a fatality in Milton Keynes very quickly stops all movement of people at Euston and the other termini in that part of the capital. The issue is how we seamlessly make the connection without having to have layers of activity.

**Stewart Stevenson:** That argument would also apply if there was a road traffic accident at the entrance to a railway station or to a major airport. Unless we have a single police force covering this whole island that does everything that all police forces do, there will be interfaces.

**Deputy Chief Constable Hanstock:** Absolutely. Bernard Higgins made the point that we respond as we need to in order to preserve life when dealing with the most serious incidents. BTP officers have jurisdiction throughout England, Wales and Scotland; they are no longer restricted to the environs of railway stations. We have had any number of such incidents.

It is interesting that, when I moved across to the BTP, people gave me an epithet and said, "You are going to be walking up and down corridors collecting fares now, aren't you?" and I said, "Actually, no, we do everything that I was doing in the Met, but we have the added complications of high voltages, heavy rolling stock, cramped environments, tunnels, cuttings and heights." It is a double whammy when you are policing railways, rather than a single extension of what you do when policing the streets.

**Stewart Stevenson:** Do you cover light rail such as the trams in Edinburgh, Manchester or Sheffield?

**Deputy Chief Constable Hanstock:** I do not think that we cover the Edinburgh trams, but we cover the trams in Croydon and the metro in Newcastle.

**The Convener:** I am conscious that we have not heard from Professor Nick Fyfe. If there is anything that you would like to say, Professor Fyfe, we would be happy to hear it.

**Professor Fyfe:** To put my contribution in perspective, I should say that I am part of the team that is responsible for the evaluation of police and fire reform in Scotland. Our evidence looks at the challenges for integration of the police and fire legacy forces. In it, we have attempted to highlight the fact that we should be mindful of those challenges in considering integration of the BTP, although none of the challenges is insurmountable.

I have two or three key points. The first is about the need to clearly articulate the benefits of integration, to go back to Mr Townsend's point about having an evidence base for this kind of policy decision. The question is not just why change is needed, but how change will happen—being clear about the process and the mechanisms by which integration will happen and about how integration will deliver specific benefits.

The second point is about recognising the timescales required for integration and the skills that are needed to achieve it. The journey of police reform over the past three years has taken longer than people anticipated. Three years in, we are in the consolidation and integration phase, rather than in the transformation phase. We are just reaching the stage of radical change. As we have already heard, the integration of the BTP into Police Scotland would be a highly complex task given the distinctive characteristics of what the BTP deals with.

My final point is about recognising the importance of differences in organisational cultures. A point made in the evidence from the BTP and the BTPA was that the policing of the railways has a distinctive culture and ethos. Just as was experienced in integrating the eight forces in Scotland, those cultural differences are really important for a smooth transition when creating an integrated service. We have to be mindful of all those things.

**The Convener:** Do witnesses want to respond to that?

**Darren Townsend:** I would like to ask Professor Fyfe about the year 1 summary evaluation report that I got from Social Research,

in which the Police Service of Scotland and the Scottish Fire and Rescue Service are described as still being on a journey. I think that you have made the point, Professor Fyfe, that that journey has not yet concluded and that evaluating it has been quite complex, and certainly the report says that the journey has not yet been completed and is still on-going. Therefore, is another complication on the journey required at the moment—one that adds another respect in which the organisations have to evolve and change?

I give credit to my colleagues in Police Scotland because, despite all the changes, they still deliver a magnificent service to the people of Scotland, without a doubt. However, could not these proposals make that task even more complex, and add a degree of uncertainty to a journey that is not yet complete and for officers for whom—as my colleague has touched on—there have not yet been any definitive answers on terms and conditions or pensions? Those are the areas that the staff association would pick up on for our members. I wonder what Professor Fyfe's thoughts are about adding another layer of complexity.

**Professor Fyfe:** The issue of timing is relevant. My point would be that we are just entering the phase of transformational change. A lot of work is going into a 10-year strategy for Police Scotland and we expect that the challenges around transformation will be just as great as the challenges around integration and consolidation have been in the past three years.

This is a critical moment in the development of Police Scotland, which will be dealing with a lot of change during the next three or four years as the new 10-year strategy is implemented.

**Mairi Evans:** The convener has asked my question, which was about backfilling and how resources would move between the two organisations.

I also had some questions about pension arrangements and the different conditions of employment. Have there been any discussions about that so far? What assurances on pension arrangements and conditions of service would be looked for to ensure that there is no financial detriment to officers should the changes happen?

**Deputy Chief Constable Hanstock:** That is probably the overarching complication. We have explored some of the operational limitations, which—arguably—it would be quite possible to overcome with some dual controls, although, ideally, we do not wish to see those. However, pensions, terms and conditions, legacy rights, travel arrangements, resettlement obligations and so on are all issues that are complicated by the fact that British Transport Police officers and staff

are employees, not Crown servants. We have referenced some of the complications, but we have not yet seen a clear way through, although I understand that officials are looking at that. However, those are issues that are of deep concern to the members of the force, as the federation has pointed out.

On Professor Fyfe's point about culture, there is a reason why our officers chose to join the BTP, which is a specialist policing role. They could have chosen to join Police Scotland, but they wanted to be part of our specialist force and function.

I have had the luxury of working in both environments—this is now my third police force—and I see a distinct difference in the policing in the BTP. The responsibilities and some of the things that officers do are unlike those in any of the other police services. In stark terms, in dealing with the tragedy of fatalities on railways, the officers deal with things that I am not aware of any other officers I have worked with having to deal with so frequently. I am not saying that other officers cannot do them—of course they can—but there is a reason why British Transport Police officers in Scotland elected to join that force.

To return to your point, preserving the rights and terms and conditions of British Transport Police officers is highly complex. As Bernard Higgins said, it will take some big brains to work through it, but undoubtedly it can be done.

**The Convener:** Stewart Stevenson and Douglas Ross have brief follow-up questions.

**Stewart Stevenson:** My question is tiny. I am ignorant: I do not know what the difference is between Crown servants and employees. Is it possible to explain that concisely? If not, could you point me to where I could read about it?

**Deputy Chief Constable Hanstock:** It is probably worth explaining the formal distinction between the two. As employees, British Transport Police officers have employment rights in relation to redundancy and resettlement, and if they have been employed under a contract that guarantees travel rights, those have to be preserved. Police officers, on the other hand, can be moved anywhere and work to a nationally set pay and reward framework.

**The Convener:** John Finnie also wants to come in. We will take his and Douglas Ross's questions together.

**Douglas Ross:** My question is for Professor Fyfe, so John Finnie might want to go first.

**John Finnie:** I just make the point that police officers in Scotland are not Crown servants; they are public servants.

**Douglas Ross:** Professor Fyfe, in the "Conclusions" section of your submission, you note that there is a need for

"careful scrutiny of the financial, strategic and operational aspects of a merger".

Indeed, you say that that is "imperative".

Based on what we have heard today, it seems that the discussions with the SPA and Police Scotland were not prior to the consultation and about whether the proposed integration was the right way forward; they were about how it would be done after the consultation. Given that only the one option has been consulted on, has the Scottish Government carefully scrutinised the financial, strategic and operational aspects of the proposed integration? Has it not given the answer without looking for further information?

**Professor Fyfe:** As I go on to say, I think that Audit Scotland and Her Majesty's inspectorate of constabulary in Scotland potentially have a role to play in carrying out further scrutiny before integration proceeds further so that there is scope for more detailed investigation into the financial and operational aspects.

**Douglas Ross:** But, ideally, that would have been done prior to announcing the preferred option, which is what the Scottish Government has done.

**Professor Fyfe:** I can see that that would make sense.

**John Foley:** I accept the point that Mr Ross makes, but I give the committee the assurance that the BTP programme board will review the financial aspects of the process. It is very mindful of the pensions and terms and conditions issues. It is my intention to consult colleagues in the British Transport Police Authority with a view to having HMICS carry out an inspection next year, which would be prior to any implementation.

**The Convener:** We note what you say.

**Oliver Mundell:** I note what Mr Foley says, but it misses the point that we keep coming back to, which is that there is only one option on the table in the discussions and consultations that are taking place with the British Transport Police. I, for one, do not think that that is good enough.

I want to make two points. My first is about Professor Fyfe's comments on the continued change and transformation in Police Scotland, which I think is extremely worrying. In my region, a further eight police stations have been identified for closure, and there are continual challenges around rural policing. The new structures do not provide the level of service or the type of policing that the public have been used to and expect. If we rush this decision—to me, it feels that the

current process is being rushed—there is a real danger that we will not take the public or individual officers in the British Transport Police with us on the journey, which will mean a loss of expertise and continued diminishing trust in what the single police force in Scotland is all about. I think that we really need to look at those issues.

My second point is about the number of officers who will be dedicated to policing the railways. We have heard the terms “diluted” and “flexing of resources” being used. To me, those sound like opposite sides of the same coin, which is about using police officers who are currently dedicated to railway policing to plug gaps that have emerged through the implementation of a single police force. I am not clear that when we say that we will maintain the current level, that actually means that there will be dedicated officers who will be solely focused on the railways. That is of great public concern.

11:30

**Assistant Chief Constable Higgins:** First, on the current state of Police Scotland—yes, we are in a transition period. We have a strategy based on 2026. I would argue that that is the action of a responsible organisation—moving forward and creating a more effective and efficient police service for the changing needs of all Scotland’s communities.

You could argue that this period of transition is the best time to integrate BTP into the wider Police Scotland, if that is the will of Parliament. Again, I make no comment on the decision of Parliament; I am merely saying that if we are going through a transition period over the next three or four years, it makes sense to me to include that element of it.

“Ring fencing” and “diluting” are not words that I used, sir. However, as the current strategic lead for Police Scotland, I was very clear that should the integration occur, we would ring fence the current establishment of BTP officers, which I believe is sitting at 225-plus staff, or thereabouts. Therefore, Police Scotland would enter into a service level agreement that would guarantee that that figure of 225 remains in policing of the railway estate, augmented by additional Police Scotland resources. However, the caveat would be that, in times of crisis, the chief constable would, of course, have the right to redirect those resources. I underline the term “in times of crisis”, which I hope gives you the reassurance that you seek.

**Oliver Mundell:** I am sure that the term “in times of crisis” will provide a lot of reassurance to members of the public. For a lot of them, it seems as though Police Scotland is in crisis almost every day. What will happen to those officer levels? Will dedicated rail officers be considered as part of the

review as well and potentially have their number reduced?

**Assistant Chief Constable Higgins:** The short answer is no. We have said publicly, on a number of occasions, that we would respect the rights of the BTP officers to remain within the railway environment and that we would maintain the current establishment on our service level agreement with the railway operators.

**Oliver Mundell:** So we are going to have a review based on evidence for every other officer in Police Scotland but continue to have a ring-fenced number of officers for the BTP?

**Assistant Chief Constable Higgins:** Yes. The rail providers pay a sum of money for policing services, which is based on the number of officers who are deployed. If that sum of money reduces, clearly the number of officers would be reduced. They pay for the assets deployed within the estate.

**The Convener:** That is clarification. Is there anything else that you want to add to that?

**Assistant Chief Constable Higgins:** The only other thing that I would say is that the lead-in period for this is potentially to April 2019, as I understand it.

We have many specialists—whether they be in road policing or are forensic examiners—who undergo a massive amount of training, which is then maintained. My belief is that we would simply look at policing the railways with that sort of discipline. To deal with a fatal road accident on the A9, you need to be an accredited road policing officer or a crash scene investigator. Just as Deputy Chief Constable Hanstock has mentioned, there absolutely are specialisms within the BTP, and we would simply seek to replicate those along similar lines to the many other specialist areas that we have in Police Scotland.

**Chief Superintendent Crossan:** In any transition such as the one that is proposed, we must remember the people who are involved. Our human resources department is still dealing with three and a half years of change, and I am in discussions with Mr Foley of the SPA to ensure that we are confident that, as the change takes place, we support the people who are moving and look after their wellbeing. We all know that change presents people with significant challenges, and we are also looking at the provision of training as people move across. I reiterate that there is an opportunity for people in Police Scotland to benefit from the experience of well-trained British Transport Police officers. Similarly, there is an opportunity for some of our BTP colleagues to learn from good practice in Police Scotland. Our HR strategy needs to be robust enough to look after people during the change.

**Nigel Goodband:** Mr Higgins may be able to give a guarantee on the numbers but he certainly cannot give a guarantee on the expertise of the officers who police the railways. That expertise will, indeed, be diluted because—I can personally guarantee this—there will be officers from the British Transport Police who, as the deputy chief constable pointed out, joined the British Transport Police because of the nature of its role. If they had wanted to join Police Scotland, they would have applied to Police Scotland. Ultimately, those officers will want to remain officers in the British Transport Police and their expertise will be lost.

In addition, officers at a certain level of service will leave the organisation due to the uncertainty. Some of those individuals are in middle and senior management, and they provide leadership as well as expertise. I do not think that Mr Higgins can guarantee that he will replace that leadership immediately. I accept that that may be possible in the long term, but there will be a timeframe during which that expertise will be diluted.

**Darren Townsend:** Mr Higgins mentioned the figure of 225 British Transport Police officers. However, there is talk of the transition process going on until 2019, which is a real concern, because that number will potentially decrease the longer the process goes on and the more we progress towards 2019 without any concrete details or assurances around the pensions situation. There is the potential for a liability for the Scottish taxpayer because the pension scheme is entirely different. I ask Mr Foley to ensure that the matter is progressed so that we can try to give Mr Higgins some assurances around the numbers.

We must start to see some figures, detail and structure around how the pension situation will be managed. Given that BTP officers are in an entirely different pension scheme, they cannot just transfer into the current Police Scotland pension scheme, which is entirely different and is closed. We have officers with 30 and 35 years in schemes in which they will not be able to continue when they move to Police Scotland, because the option will not be open to them. In order to give some certainty and to try to sustain the number of officers if the transfer does happen, work needs to be done on the pensions issue, and it needs to be done quite soon. We keep talking about 2019, but we do not seem to be getting any further forward.

**John Foley:** I understand Mr Townsend's point and give a personal commitment that we will address the matter. We have started to look at it. The programme board to which I referred earlier has representation on it from the British Transport Police Authority, and work streams have been established to look at the issue and other workforce matters as we move forward. For me, the workforce issues are the top priority.

**The Convener:** I am very conscious of the time. I will bring in ACC Higgins, then Mr Hanstock and then the three remaining members, whose questions should be quite succinct. I know that they have waited for a long time, but we are looking to stop at probably no later than 11:50. The questions and answers should be succinct.

**Assistant Chief Constable Higgins:** Thank you, convener. I will be succinct.

Please do not interpret what I have said as trying to make the issue seem straightforward. It is not straightforward; I accept that it is massively complicated and complex.

I accept Mr Goodband's points about potentially losing staff. In many ways, it is just the circle of life that people come and go. However, with a transition period of just over two years, the complex work that we would undertake would involve seeking to recruit within Police Scotland, training and identifying exactly what the training needs analysis is for BTP. I am certainly not trying to minimise the task in front of us, which would be massive and complex, but as DCC Hanstock has said on several occasions, operationally nothing is insurmountable. However, the terms and conditions are massively complex.

**Deputy Chief Constable Hanstock:** I will keep what I say very brief. Some of this issue has been covered.

It is easy to retain the numbers; it is a matter of prioritisation. I have seen elsewhere that the obligations of the contract can be maintained; the issue is what skills are put in. If we had a choice, would we put our experience towards detective roles, addressing risks to the public in other areas—whether that is in domestic abuse, child sexual exploitation or other high-profile areas—or into the area that we are discussing? Transport can be at risk from that.

Similarly, I agree—and we have said a number of times—that the operational delivery is possible, but we might want to ask why British Transport Police exists now if it is so easy for it to be absorbed into a geographic response. Forty-three forces are not screaming to take responsibility for policing the railway. On the rationale for why the specialism is so valued by the industry and passengers—the nearly 3 billion people who use it annually—there is a case for saying that it has not just emerged out of the want for some enthusiasts. There is a real need for policing the railway in a different way.

**Liam McArthur:** I want to follow on from the exchanges on the back of Oliver Mundell's questions.

We have focused very much on the impact of BTP and the complexities of what the Government

proposes to do under the legislation, but the state that Police Scotland is in in its own progression strikes me. That has been mentioned many times.

I wonder what the response would be in Police Scotland to concessions that are given in order to address the concerns that have been quite rightly and legitimately raised, on behalf of their members, by those who represent BTP. The more that is conceded, whether in respect of pensions, terms and conditions or ring fencing numbers, against the backdrop of an on-going review in which all of that is off the table for Police Scotland, the more we will end up folding BTP officers into an organisation in which, right from the get-go, there will be a degree of conflict, and an eye will be cast over the treatment of component parts of Police Scotland compared with that of those who are currently in the force.

I suppose that that is more a question for ACC Higgins. It strikes me that, because we are focusing on BTP issues, we are rather losing sight of some well-documented issues that currently confront Police Scotland and are reflected in statistics on morale, for example.

**Assistant Chief Constable Higgins:** The important distinction to make is that Police Scotland would be paid by the rail provider for a service. There would be a contract between us and the rail provider, so we would be legally and lawfully obliged to maintain those officer numbers.

Mr McArthur made a valid point about pay and conditions. When Police Scotland was formed on 1 April 2013, we brought together eight legacy forces and two other organisations, and the terms and conditions have still not been resolved. Therefore, a number of officers retain legacy terms and conditions that are not applied to other officers who do exactly the same job. For example, the allowances that dog handlers receive depend on the part of the country that they are in. That is based on the legacy arrangements. To change that, we would need to go to the Police Negotiating Board.

Over the life of Police Scotland thus far, we have had the unusual situation of officers across the country being on slightly different pay and conditions because of their legacy force arrangements. There is therefore a comparison with what would happen with BTP officers transferring in.

11:45

**Liam McArthur:** I entirely understand your point about the relationship with rail operators, but against the backdrop of a revenue deficit that seems to be ballooning—the last figure that I saw was about £27 million—will there not be pressure on Police Scotland to look at those areas such as

rail operators where revenue is coming in and say, “Well, in order to deliver the commitment on maintaining numbers with regard to former BTP policing, we’ll have to hike the charges to rail operators”? Even maintaining the numbers will have consequences, given your current position.

**The Convener:** To add to that question, I wonder whether there is also a risk that the stakeholder base for the BTP service could just walk if it is not satisfied. Would such an assessment be right?

**Assistant Chief Constable Higgins:** I am not aware of the intricacies of the contract arrangements, but I believe that the rail operators are required to provide funding. Is that correct?

**Deputy Chief Constable Hanstock:** Part of the franchise agreement is that operators have to pay for the policing requirement.

**The Convener:** And that is regardless of the service, which is where I think Liam McArthur is coming from.

**Liam McArthur:** Indeed. I was about to ask whether that was capped or not. How is that figure arrived at?

**Deputy Chief Constable Hanstock:** There is a negotiation over cost, and there is quite a challenge around budgets. I know that a significant concern of the industry is that any additional cost for new pension arrangements or for boosting and bolstering legacy rights will be charged back to the operators. They might say, “How is this beneficial to us? We’re paying even more for what we have currently got and arguably for a worse level of service.” That is the shorthand.

**The Convener:** Do they have any option, or do they just have to accept the hiked charges?

**Deputy Chief Constable Hanstock:** Charges can be defrayed but, again, that would not be without challenge. We are talking about quite a complex set of financial arrangements in that respect.

**Ben Macpherson:** Good morning and thank you for your contributions so far. I have two quick questions, the first of which is for ACC Higgins. Can you elaborate on your response to Douglas Ross about the operational benefits of a specialist railway policing service with direct access to Police Scotland’s local, specialist and national resources?

Secondly, with regard to the earlier exchange between Mr Townsend and Mr Foley on pension arrangements, might there be any open-mindedness around the SPA becoming a participating employer in the current scheme, particularly for existing members? Can you reveal more about any discussions that might have been

had about the creation of a new scheme and whether it is envisaged that that is something that would be required? I presume that that would be a defined contribution scheme, but if you were able to give any further detail—I appreciate that that might not be available yet—I would certainly be interested in hearing what stage discussions might have reached with regard to pensions.

**Assistant Chief Constable Higgins:** I guess that the answer to your first question is volume. A significant amount of specialist assets, whether they be dog officers, firearms or public order officers or crime scene examiners, is spread across the entirety of Scotland. After all, there are areas where the BTP might not have the resource and it would take several hours for it to get where it needed to go, whereas Police Scotland can provide that assistance. I guess that there is also the issue of specialisms that Police Scotland has and which the BTP also has but which are not based in Scotland.

I should re-emphasise that we have an excellent working relationship with British Transport Police, and we will happily deploy resources as requested. However, the difference with this course of action, should it occur, would be that, instead of waiting for a request to come in, we would put additional assets into the railway estate on a more routine basis.

**Deputy Chief Constable Hanstock:** That is absolutely right, and if we had to work in collaboration on something of such significance, we would do so. However, specialist skills are not at the heart of what the BTP gives the industry; it is our specialist knowledge of the things that cause disruption, delay and impact. Dealing with crime is a policing matter. We all do that; we draw on the skills that we need, and at times of most extreme need, we all pull together.

What is different with policing the railways is the ability to understand an incident and its impact much further along the line. The industry treasures the fact that we can risk assess that quickly and with some precision and return the service quickly. That is where we add true value to the industry, the economy and the ability of those franchises to operate. If we put more costs on, that could bring into question viability and the ability to deliver a service that is actually treasured.

**The Convener:** Fulton?

**Fulton MacGregor:** Thanks, convener. I—

**Ben Macpherson:** I am sorry, convener, but I asked a second question.

**Darren Townsend:** I can answer your second question quite quickly, Mr Macpherson. We have not been a part of any discussions on pensions at this stage. I am aware that contact has been made

with Railway Pensions Management Ltd, which is the pensions management company that looks after all the pensions for the BTP officers, but as a federation we have not been party to that. As a result, I cannot tell you where those discussions have got to and whether it was being looked at as a participating employer.

**John Foley:** Perhaps I can add some clarity. I have already referred to the BTP programme board, which has representation from the British Transport Police Authority and the Scottish Police Authority. We have been looking primarily at legislative matters thus far, but in the summer we set up six workstreams, one of which will absolutely focus on the issue of pensions and terms and conditions. The work is under way, and I am quite sure Mr Townsend will be contacted very soon.

**Ben Macpherson:** So, just to be clear, the opportunity to become a participating employer in the current scheme is still, as things stand, available.

**John Foley:** To be more specific, I think that there is an open mind on that. I believe that you are referring to the possibility of admitted body status, which can sometimes be given in pension schemes. The issue will be looked at. I cannot give you an answer at the moment, because the work has still to be undertaken, but we are absolutely considering the options.

**Fulton MacGregor:** I want to make a very small point in relation to earlier comments that were made about Police Scotland and to challenge them somewhat. For example, the word “crisis” was used, but we should reflect on the fact that that might not be the view of the committee. It is certainly not my view. Since Police Scotland was set up, it has faced many challenges, and I believe that it has done so head on. I am confident that, whatever the Parliament’s decision on this matter, Police Scotland will be more than capable of implementing it.

**The Convener:** Did you have a question, Mr MacGregor?

**Fulton MacGregor:** No.

**The Convener:** You just wanted to put those comments on the record.

**Fulton MacGregor:** Yes, convener.

**The Convener:** Okay; that is noted.

I think that we have had a worthwhile and full-flowing discussion, in which a lot of very important points about legislation have been raised. That legislation will be very important and will be scrutinised—by the Justice Committee, we hope—very fully.

With that, I thank the witnesses very much for their evidence, and I suspend the meeting briefly to allow the room to be rearranged for the next panel.

11:53

*Meeting suspended.*

11:59

*On resuming—*

## **Crown Office and Procurator Fiscal Service**

**The Convener:** Agenda item 7 is an evidence session in our Crown Office and Procurator Fiscal Service inquiry. Before we start, Mary Fee has a brief comment.

**Mary Fee:** I thought that it would be useful to make members aware that I convene the cross-party group on families affected by imprisonment and, as such, I work closely with Nancy Loucks and Families Outside. Although that is not a registrable interest, I thought that it would be prudent to mention it prior to the evidence session.

**The Convener:** Thank you, Mary.

It is my pleasure to welcome the witnesses. This is our second week of taking evidence in our inquiry. We have with us Liz Dahl, who is the chief executive of Circle; Steve Farrell, who is the lead organiser for Community Scotland—or should that be lead organiser for Scotland Community? Which way round?

**Steve Farrell (Community):** Any way.

**The Convener:** Good.

We also have Professor Nancy Loucks, who is the chief executive of Families Outside, and Audrey Howard from Social Work Scotland. I thank Audrey Howard in particular for stepping in at very short notice. It is important that we hear from Social Work Scotland, so the committee is grateful to you.

Without further ado, I open up the session to questions from members.

Who is going to be first? It is unusual that members are not all wanting in.

Go for it, Douglas.

**Douglas Ross:** I thank the witnesses for their written submissions. Liz Dahl's submission said:

"As an organisation we have developed a specific service to promote greater use of restriction of liberty orders amongst women who face custodial sentences".

Could you tell us a little more about that?

**Liz Dahl (Circle):** We have a new service in Lanarkshire. Our intention is to go to court with the women so that they get a non-custodial sentence rather than a custodial one. That has been working very effectively, to date.

**Douglas Ross:** Could you explain how that works? Do you speak on the women's behalf?

**Liz Dahl:** We provide a family support service. Women are referred to us through the community payback order system. The service is for women who are not managing their community sentences. We provide a service with the whole family to help women to manage their community sentence and to prevent them from getting a custodial sentence.

**The Convener:** That is of particular interest, because people often default on a community payback order for good reasons, such as that the times are unsuitable for allowing them to manage childcare. If it is a choice between the children and the order, women sometimes opt for the children and thereby default on the order. In that situation, the only solution or sanction seems to be a custodial sentence. In effect, your service bridges the gap, which is useful.

**Douglas Ross:** I also have a question for Steve Farrell. Can technology be used to a greater extent? Your organisation did not make a written submission, but one of the other written submissions expresses the view that we could do more in that regard to save money and to save the hassle of transporting prisoners and people on remand.

**Steve Farrell:** As far as our members are concerned, particularly those in escort services—we escort prisoners from the Borders right up to the Highlands and Islands—there are a lot of wasted resources and wasted transit trips. There is also the risk factor. Within the prison sector, risk is apparent every day of the week. Many people would argue that, especially with longer-term prisoners, while they are within the prison walls the risk is less but it becomes greater the minute they get into an escort vehicle and start travelling on Scotland's roads. For both those reasons—the risk element in the prison service and the resources issue for our members who do escort work—we would like greater kudos to be given to direct videolinks to courts from prisons.

Sometimes with pre-sentencing procedures, prisoners leave, for example, HMP Kilmarnock at 8 o'clock in the morning and do not return until half past 5 or 6 o'clock at night. Two officers will have sat with them in court all day, and the prisoner may not even have been seen because of court business that day. That is a complete waste of time and resources for all stakeholders.

**Douglas Ross:** Indeed it is. Do you think that the barrier is financial? There are systems in place that can be used—they are used to a limited extent in the Highlands and Islands, and I think that they could be used far more. Why do you think that, in this day and age, we are still transporting prisoners great distances for what are often quite short appearances in court?

**Steve Farrell:** That is a good question. I noted the use of the word "silo" in some of the written evidence that was submitted by others. I genuinely believe that there needs to be a more collective and collaborative approach on the part of all stakeholders. People who are working in their silos have many good ideas, but we need to enable unions, prison stakeholders, community-based stakeholders and experts in the field to come together to talk about the subject so that we can take a collaborative and joined-up approach with regard to how we move things forward. You are right to say that the facilities exist, but whether they are being used to their maximum potential is a different question.

**The Convener:** Is the message that there should be a more holistic approach and better use of technology, as Douglas Ross mentioned?

**Steve Farrell:** That is definitely the case from the point of view of our members.

**The Convener:** Could you elaborate on the technology that you are thinking of? How would it be used?

**Steve Farrell:** As Douglas Ross said, there are facilities in some prisons that enable a direct link to some courts. To use them, a prison officer would simply escort a prisoner from their residential area to the visits area, where the videolink facilities are situated. At that point, in effect the officer would be there as a known person in court. That would definitely help with regard to the resource issue that I spoke about earlier.

**The Convener:** That is helpful.

**Rona Mackay:** My question is to Audrey Howard. It is a two-pronged question, but I will ask it all at once.

Could you outline the experience of the accused people whom you work with of the justice system? What is your experience of the justice system? How do you and other social workers liaise with the criminal justice officials and so on?

**Audrey Howard (Social Work Scotland):** As has been pointed out, I am a last-minute stand-in, so I have not had the opportunity to consult widely with my Social Work Scotland colleagues. I will, therefore, be drawing largely on my own experience. My authority is part of the North Strathclyde community justice authority, and I am aware of the issues that have been encountered and raised by my colleagues on the CJA.

I am conscious that Social Work Scotland did not provide a written submission to the inquiry, so I have come with some thoughts that I would like to share with you. They are around three areas: diversion from prosecution, bail and remand, and community justice.

Diversion from prosecution provides us with an opportunity to keep out of the system people who, because of the low seriousness of the offence, the low volume of their offending or issues that have triggered the offending in the first place, do not really need to be in the system. If we want to be ambitious in terms of the community justice agenda, early intervention and diversion are critically important.

However, use of diversion varies across the country: for example, in my local authority area it has been in steady decline for decades. That is largely to do with the direct measures that are available to police and procurators fiscal, and the move away from local procurators fiscal marking papers to the centralised system. In the main, direct measures are financial penalties. I am conscious that one of our local justices of the peace, Sam McEwan, has made a submission that speaks to his frustrations about having people appear at the JP court with financial penalties that they have not paid and which, in some instances, they do not have the money to pay, as a result of which they have clocked up a number of financial penalties. There is also the question of people getting access to services that would have addressed their issues. Again, research will show that if you get in early enough with supports, when people's motivation is high after an incident, you probably have the best chance to move people forward.

As I said, I am bit concerned about the level of use of diversion. Diversion provides the opportunity to provide people with person-centred support. There is concern about direct measures, which is that the financial penalty may be excluding people from that support.

The other thing that I said about diversion concerned the structural arrangements of the Procurator Fiscal Service. Centralised marking has resulted in loss of local knowledge about diversion schemes that would previously have informed decisions about marking. The fiscals who mark papers now do not know about local schemes—which is fair because they are in a central place—and they have not built up confidence about the robustness of the schemes. They do not have that kind of local knowledge.

I am not necessarily saying that we should go back to how things were; I am just saying that that is a problem that needs to be addressed. We are looking within our own local authorities, as part of the community justice agenda, at how we might try to address the situation in terms of the information that goes in police reports to fiscals. That is part of an early intervention diversion strategy that we are looking at with our partners in north Strathclyde.

We need to recognise that papers being marked away from a local base is a problem, so we need

to put on our thinking caps and think about how we solve it.

**Rona Mackay:** When did centralised marking start?

**Audrey Howard:** Do you mean the decrease?

**Rona Mackay:** No. I mean—

**Audrey Howard:** I can only reflect on what has happened in my own authority. There has been a steady decline since 2000.

**Rona Mackay:** I mean the centralised marking process.

**Audrey Howard:** I could not put a timeframe on that.

**Rona Mackay:** Has it been going on for years or months?

**Audrey Howard:** It has been going on for years.

There is also bail and remand. This probably taps into G4S's comments about people going across the country. You will be aware of how remand can disrupt people's access to treatment and impact on their housing, benefits, family relationships and so on. Most people who are on remand do not end up with a custodial sentence. It is imperative that the justice system and justice partners ensure that bail information and bail supervision services are available to courts, as an alternative to remanding people.

A critical issue in relation to the efficiency and effectiveness of bail is the communication from the PF service to court social work. We need to know who is in custody. We get the custody list from G4S first thing in the morning—which is not a problem—but we do not know for whom the fiscal is opposing bail and why. It is not enough to know that bail will be opposed; we need to know why. If it is about issues to do with accommodation, we can try to seek alternative accommodation. It might be because somebody has had a court order already: the view could be taken that if the person is already on a community disposal, something must be going wrong for them to be at court again.

If we know what the issues are, we can provide the information. We are not advocates for bail, but we provide information to ensure that the best decision is made. To be honest, that decision has to be based on risk. People should not be remanded rather than granted bail because of their social circumstances or difficulties. We can provide that information and support, and we can provide supervision on bail if we can get in with sufficient time.

Prior to coming to the meeting, I talked with my bail information worker about the fact that although

the custody court should be heard at 12, at five to 12 we might still not know whose bail will be opposed or their circumstances. I do not believe for a minute that that is about people not wanting to impart information; I believe that it is about pressures in the system and about resourcing. I am sure that procurator fiscal colleagues could speak to that. I can tell you only what the outcome is at the other end. In some instances, we are not able to provide bail information or put forward a bail supervision case, because we do not know why the person's bail is being opposed.

**The Convener:** Before we move on from that point, do any of the other witnesses want to comment on information from fiscals about what is going to happen with bail and custody, or on the issues that are involved in considering whether to remand a person?

12:15

**Liz Dahl:** The three main issues are the length of time between arrest and prosecution, communication, and the lack of use of technology.

Last year, I was a witness in a child assault case. I was called to court three times, so I spent three half days in court. On the first two, we were sent home after lunch. That involved me, another manager from the next-door organisation and two police officers. All that time and cost were wasted, whereas we could have been sent an email saying that the case would not go ahead on those days.

**The Convener:** So there are perhaps some communication issues.

**Rona Mackay:** That was helpful. Does Audrey Howard want to add anything?

**Audrey Howard:** The community justice agenda is really exciting. It is an opportunity to place communities at the heart of what we do by developing services that best meet their needs. There are two performance indicators on which help from the fiscals is critical. They are about planning and delivering services more strategically and collaboratively and about access to services.

The fiscals are the gatekeepers in relation to the people who come into the system and progress through it or are diverted away from it, and their capacity to engage in the community justice agenda is a real challenge for them. The fiscal service is a national one and there are 32 local authorities, so it will be challenging for fiscals to work out how to have a dialogue with us about how best to support us with the outcomes, but they are certainly up for that. There has been email correspondence between the service and all 32 local authorities about fiscals wanting to engage in that conversation and how they can

come up with a fit that best suits being a national service that deals with 32 local authorities.

**The Convener:** A lot of issues were raised in that. Perhaps members will pick them up in their questioning.

**Mairi Evans:** I thank the witnesses for the evidence that they submitted. My question is for Circle and Families Outside and relates to a couple of points that they made in their submissions.

One thing is clear: the issues that the witnesses are talking about—technology and communication—come up time and again. Families Outside talks in its submission about simple things, such as the use of plain English, which is an important point. In its submission, Circle talks about

“the introduction of Child and Family Impact statements”,

but mentions that there is

“no experience of them being operational”.

When were the statements introduced and what is their potential impact?

**Professor Nancy Loucks (Families Outside):** Child and family impact assessments have not been introduced yet. They were recommended in a submission from us, Together—Scotland's Alliance for Children's Rights and the Children and Young People's Commissioner Scotland to the United Nations Human Rights Council under the universal periodic review. The recommendation was accepted by the United Kingdom Government as a whole but not implemented in any way.

One of your colleagues ran a member's bill proposal consultation on child and family impact assessments and received tremendous support for their use. They were introduced in a slightly watered-down fashion through the Criminal Justice (Scotland) Act 2016 in January, but that provision is on hold because it referred to the sharing of information with the named person. Because that system is not yet up and running, the impact assessments are still not in place. That is a real lost opportunity.

As I say in my submission, there is a common theme of communication and working in silos. Families are not consulted in any way. They are not included in the decision-making process leading up to a prosecution or sentencing. That is a real problem, because the impact, even of a remand into custody, is potentially enormous on the family, but it is not part of the discussion or something that, as far as we are aware, the Procurator Fiscal Service inquires about in making its decisions. The families with whom we work have certainly had very little experience of fiscals, unless they have been called as witnesses. It is a

continuing frustration, given that the impact on housing, income, mental health and so on can be severe; certainly, children do not distinguish between remand and a custodial sentence. We are very concerned about the issue.

**Mairi Evans:** In your submission, you mention the framework for support to families affected by the criminal justice system, which the CJAs and then the community planning partnerships signed up to. You also talk about the Crown Office and Procurator Fiscal Service's role and the implementation of the framework. How is the service being made to buy into that system, if you see what I mean? I realise that the framework has been signed up to, but how do you envisage it working and what needs to be done to ensure that it happens?

**Professor Loucks:** The main points are about training, ensuring an awareness of the impact on families and the service's role in supporting those families. Again, we have to ensure that the wider impact of any decision that the service makes is taken into account, including the impact on the families who are left behind.

**Mary Fee:** My question is very similar to the one that Mairi Evans asked. In previous evidence-taking sessions, we have heard a lot about lack of communication and lack of support before, during and after the court process and the impact of delays. Of course, with this morning's witnesses, we are getting a different perspective, this time in relation to families. Whether we are talking about the victim or the perpetrator of a crime, not just the individual but their whole family is affected. Although the move to child and family impact assessments might help to plug that gap, if you like, small practical things can be done just now. What do you think can practically be done to help and support families? Is it just a matter of including them in the line of communication or offering them support, or can something else practical be done to include them?

**Professor Loucks:** Communication is certainly a huge part of this and a good first step would be to identify what issues might be affecting families. There is also a very real recognition that, no matter what information you might have about their family, there are people who need to be remanded or sentenced to custody. That is fair enough. We also need to recognise that community-based decisions also have an impact.

We then need to take the next step and say, "This person has been remanded into custody—what support does the family need?", instead of just accepting the decision and moving on. We need to ensure that there is some kind of follow through and that those families are receiving support.

**Mary Fee:** Who would be best placed to do that?

**Professor Loucks:** That is a very good question. Whether the matter is referred to social work, whether the fiscals might play a role or whether it is a case of simply flagging up that support is available in communities from organisations such as ours and Circle, we need to recognise that, although there is scope for support to be provided, families often do not have any information about what support is available, let alone receive it.

**Liz Dahl:** I suppose that we also have to be realistic and recognise that the tariff might well not be high enough for children and family social work teams to get involved, so it will come down to organisations such as ours that provide family support services.

**Mary Fee:** Thank you.

**Liam McArthur:** I want to take Audrey Howard back to her reference to Sam McEwan's evidence on the impact of direct measures. That was in a written submission, but it might be helpful to get some oral evidence on it. As I understand it, the cumulative impact of direct measures can often leave individuals unable to make payments, whereas had they been dealt with in a different and perhaps a little bit more burdensome way at the outset, the measure would have been more effective and appropriate.

**Audrey Howard:** It depends on the individual. If you have, say, an alcohol issue or some other chronic—not one-off—condition, you might pick up a number of fixed penalties for being drunk and incapable or for various other activities related to your alcohol use. However, you might be unable to pay because you do not work, you have no income and all your money is going on your addiction. The fact is that direct measures will come nowhere near doing anything for you.

If you have a job and go out one night and there is a one-off incident, a direct measure is probably the most appropriate thing. You have a fixed penalty, you pay it and move on—there are no other issues. However, given the circumstances of certain individuals, direct measures come nowhere close to solving the problem. If you end up repeat offending over a short period of time, you will just accumulate a series of fines that you do not pay and the case will be remitted to the JP court.

I mentioned that, in our CJ area, we were looking at an early intervention diversion strategy through the community justice agenda. I think that we have to help our fiscal colleagues here, because the issue is structural rather than anything else. We think that if we can work with police colleagues—there may be a need for some training for community officers and beat officers—

we can agree a strategy with them so that when they see certain issues, they know that we have schemes that it would be helpful for them to highlight in their remarks in the police report that goes to the fiscal. In that way, we would not have to rely on local knowledge, which we are not going to get in a centralised marking system. Instead, the fiscal is given a clear steer from the local police as to where the case needs to go. It is a decision for the fiscal but the fiscal has the information to make that decision. I think that that is one way of resolving the issue.

I have met Sam McEwan to talk about community payback orders and so on, and I know about his frustration with the number of people in who come before his court who, as a result of issues that relate to their addiction, may have problems such as benefits sanctions because they have not turned up for appointments. The issue that really needs to be addressed is their alcohol addiction, or their mental health. For chaotic or vulnerable individuals, direct measures are hopeless.

**Liz Dahl:** It also needs to be recognised that the vast majority of people who are caught up in our community justice system are living in poverty and have mental health problems or addiction problems. We are not talking about the minority but about the majority.

**Liam McArthur:** That is helpful.

I would like to take us on to the issue of diversion from prosecution. From the bar associations in particular, we heard evidence of a kind of rigidity in the system: if a case had a particular element to it, the options for any discretion to take on board the specific circumstances of that case were immediately limited. Individuals undertaking that decision did not necessarily have the confidence or experience to explore the raft of available options, including diversion away from prosecution. Does that mirror your experience of how the system is working at the moment? If so, are there ways in which the situation can be improved?

**Audrey Howard:** I think that both sides have that experience—in the fiscal service and in criminal justice social work in relation to the assessments that we do of people's suitability for diversion and whether to pass them to a service that we provide directly or to third sector colleagues. However, there are certain categories of offence, of which domestic violence is one, about which people are quite hesitant about diversion—and rightly so, in some regards. There has been a practice of prosecuting people in order to send a clear message that domestic violence is not acceptable behaviour and needs to be prosecuted and dealt with through the court.

We know that the problem is complex. There will be people at the periphery, where it is not about entrenched attitudes relating to power and control but about individual circumstances that have given rise to an offence.

We have witnessed situations involving two damaged people in a relationship where there have been weekly, if not almost daily, disturbances. The issue is, given the circumstances that they have come through, how do we intervene to sort that out? It is a complicated area that relates to people's confidence and feeling that there is support to sort things out.

The same applies to sexual crimes—I am talking again about the low-level stuff. The practice—the default position—has been to prosecute, and I understand what has driven that practice. We all know that in such black-and-white situations, there are people at the edges and it is not appropriate to drag them through the court system.

12:30

**Liam McArthur:** Despite all that complexity, is there something that would improve the situation, even if it does not resolve all the issues in the areas that are perhaps less black and white? Might something nudge us towards a situation where fewer of those cases end up in court?

**Audrey Howard:** It is about empowering people. I say to my social work staff that we have to move away from automatically returning papers to the fiscal service and saying that we are not going to assess that person. We must look at things case by case—that is our bread-and-butter assessment. We need to see whether there is something that we can offer in such situations.

Fiscals have Lord Advocate's guidelines for certain offences and there will be presumptions about what happens in those cases, but I think that it is about empowering people to use their skills in terms of making decisions for PFs about the risks and whether it is in the public interest to prosecute.

**Fulton MacGregor:** I want to follow up on that useful exchange between Audrey Howard and Liam McArthur. As you are aware, the domestic violence agenda is very big at the moment, and the Government is committed to tackling the issue. You will have seen that with recent legislation.

With that in mind, what specific programmes can be offered to offenders who have committed acts of domestic violence? What are the different stages at which those programmes can be brought in, including at the level of diversion? My questions are probably for Audrey Howard.

**Audrey Howard:** I can speak only from my experience in Inverclyde—or rather for the North Strathclyde CJA. We do not have the Caledonian programme, which is the Government-funded programme for male perpetrators of domestic violence. I understand that the programme is being evaluated, but I do not know what the intention is or whether it will be rolled out. It is quite frustrating that although Inverclyde, Renfrewshire and West Dunbartonshire have some of the highest rates of domestic violence, we do not have access to that programme. That is a challenge.

I have very dedicated staff who do their best to come up with individual programmes for people—I am talking about people who are on court orders rather than people who have been diverted from prosecution. We have used our own budget to buy in advice and guidance on how we might work with people individually while we wait to see what will happen with the Caledonian programme.

I go back to the issue of the confidence of staff who work in this area. Staff are always concerned about making a situation worse rather than better by starting to explore with somebody what the challenges are for them in relation to their behaviour. The Caledonian programme provides support not only for the perpetrator but for the victim and any children—it takes a whole-system approach—whereas we are trying to do stuff with individuals, and there is a staff confidence issue around how we do that. I think that the area will probably be picked up by the community justice agenda and our partners. What is the offer that we are making to perpetrators and their victims about how we move forward? I am sorry that I do not have a better answer for you.

**Fulton MacGregor:** No, that was the sort of answer that I expected and it covered a wide range of points.

I should declare an interest, as Mary Fee did earlier: I was a social worker and am still registered with the Scottish Social Services Council. I worked in justice until my election in May and had noticed an increasing trend towards community-based disposals for domestic violence. That trend continues to increase and case loads are becoming more weighted towards that approach. Therefore, it strikes me that different levels of programme would be a good way forward not only for people on community payback orders, for whom the Caledonian programme and its predecessor, the change programme, are still being used in South Lanarkshire, for example.

What do the witnesses think about the idea of a smaller programme, perhaps in line with tagging—that is, restriction of liberty orders? Perhaps Liz Dahl can answer that.

**Liz Dahl:** The problem with the Caledonian programme is that a person has to be prosecuted to get on it and we want to avoid that.

**Fulton MacGregor:** That is exactly my point. I wonder whether there is scope for smaller programmes.

**Liz Dahl:** Many of the families we work with are not ready to go on groupwork programmes, but we use a programme called parents under pressure, which allows us to address issues such as domestic violence, mental health and addiction. Using that programme, we work with the whole family in the family home. Parents under pressure is one of the best programmes that I have found that allows us to work with the individual family to address all the issues that impact on it.

**The Convener:** May I clarify what you are asking about the Crown Office's role, Fulton? Are you saying that, rather than automatically sending somebody to court, it should be aware of such programmes?

**Fulton MacGregor:** I probably did not articulate the question as well as I would have liked. I was looking for the witnesses' views on whether something like the change programme or the Caledonian programme could be run for a shorter time at an earlier stage—perhaps for somebody who has not committed a series of offences. The change and Caledonian programmes are 13 or 16-week programmes and usually require an order to be in place. I am asking about something that does not really exist at the moment.

**The Convener:** Is the issue COPFS's awareness of the programmes or its ability to consider them as alternatives?

**Fulton MacGregor:** No, I wanted the witnesses' views on whether a shorter programme would be useful as the number of people who are convicted of domestic violence offences increases. It was a hypothetical. I am happy to leave it at what I heard. The answers have been good.

**Ben Macpherson:** I have a question for Liz Dahl. First of all, I state that Circle is headquartered in my constituency and I am grateful to Liz and her team for all that they do in my constituency and beyond.

Circle's written evidence touches on something that came up repeatedly in previous evidence. It concerns the support that Circle provides before the trial process begins, particularly in discussing the different roles of professionals and what to expect in the court setting. I know that Liz Dahl's evidence will be somewhat anecdotal, but I ask her to elaborate on the submission and highlight any ways in which the court service could be more supportive in terms of communication or

introductions—anything that she thinks might be advantageous.

**Liz Dahl:** Many of the people we work with are often victims of crime as well as the perpetrators of crime. In fact, that is usually the case with all the families we work with. It is much easier to work with a victim of crime and take them through that process than it is when someone has been charged with a criminal offence, unless you can get in early enough. Again, I think that it is very much the whole silo thing—the different stakeholders working in silos. If there could be much better communication between us and the procurators fiscal, an awful lot of those issues would be resolved.

**Ben Macpherson:** Do you think that the support and mentoring that you have provided either to victims or to perpetrators throughout that process has made a big impact in easing them through it, particularly in the case of vulnerable witnesses and victims?

**Liz Dahl:** Absolutely, and especially when a parent is sent to prison and we are able to continue working with the family through that process and reduce the impact of parental imprisonment on the children. We are often able to negotiate that the children go into a kinship care arrangement rather than into foster care. We are able to negotiate how the parents hold on to their house.

One of the simplest things that would reduce the financial impact and so on would be if no one was put on remand unless it was assured that they were going to get a custodial sentence. That would lead to such a reduction in cost to society as a whole and to the families we work with. The way in which the use of remand has gone up is just unbelievable. It has a huge impact, especially for women.

**The Convener:** I think that we know that the work that Circle does on that is superb. It would be helpful to focus more on the impact that COPFS has and the kind of measures that Circle has described in its written submission.

**Ben Macpherson:** I will just follow that up very quickly.

Thank you for that insight into your experience of dealing with perpetrators. Could you touch briefly on the positive impact that that sort of guidance and communication has for victims? I am thinking in particular of making introductions to professionals and creating greater awareness before the court proceedings begin of what the setting, the scenario and the process will be like.

**Liz Dahl:** We often have to work with children who have been victims of abuse, whether that be physical or sexual. If we are able to take the child

into court, to organise video links and to sit with the child while the trial is on, it makes the whole process an awful lot less traumatic.

**The Convener:** Ben, were you asking whether COPFS could do more of the kind of work that Circle does to fill that gap just now and whether that should be done automatically by COPFS?

**Ben Macpherson:** Indeed.

**Liz Dahl:** I think that it should be offered automatically.

**The Convener:** That is very helpful.

**Mary Fee:** I would like to ask Nancy Loucks about something in the evidence that she submitted. She talked about an offender with a learning difficulty who was sentenced and then was not able to contact his mother for three weeks, by which time she thought that he was dead. I just want to be absolutely clear: if, for whatever reason, someone is sentenced to a custodial sentence or is placed on remand, is there no contact at all with the family to tell them that?

**Professor Loucks:** No. There is no automatic contact. Sometimes, if the person is fortunate, their solicitor will make that contact, but that does not usually happen. Families ring our helpline at Families Outside to say that their family member has been sentenced but that they have no idea where they are. There are data protection restrictions on prisons so, if you contact a prison, it cannot say whether someone is there. It is a real problem. No questions are asked automatically. It is hoped that the Criminal Justice (Scotland) Act 2016 will help with that. No questions are asked automatically about family members, or who to contact or whether to contact someone. There is a new requirement under the UN minimum standards for prisons; the Nelson Mandela rules that were agreed in 2015—rule 7, in fact—say that we must gather information about the family members of people going into custody. At the moment, we are not doing that.

12:45

**Mary Fee:** If an individual cannot request information from a prison, can an organisation do that?

**Professor Loucks:** We can ask, but data protection restrictions prevent the prisons from telling us. There are ways of doing it; for example, we encourage families to write to the Scottish Prison Service headquarters, which can forward that information and ask the person in prison to contact the family. However, it is quite a process and it can mean a long time for families not to have any idea what is going on.

**Mary Fee:** Has Liz Dahl come across similar situations?

**Liz Dahl:** Yes. Often we have parents who go to court not expecting to get a custodial sentence and who therefore have not made prior arrangements for their children. None of that is taken into consideration on the day.

**The Convener:** There are themes coming through that are very helpful for our inquiry: the central marking of papers, the lack of local knowledge sometimes, and the lack of knowledge about the diversions or referrals that could stop people defaulting on fixed-penalty fines and ending up in court with a measure that does not address their reoffending. There are communication issues.

To finish off, I ask Steve Farrell whether there are other practical measures that would reduce delays in court.

**Steve Farrell:** It has been an interesting debate. I will break my answer into two parts.

As a former prison officer, I think that this country is fantastic at retrospective rehabilitation; I ask you to park that thought. Prison officers are asked to work retrospectively when people are convicted and come into prison. I was born and raised in the famous scheme that was on the TV. Without naming names, I would say that one of the people in that scheme has probably been in prison more than 30 times in the past 10 years. We have to ask whether there is any merit to a conviction: it is the same old, same old, same old. I tell you as a prison officer that the chance of purposeful meaningful rehabilitation is very low because, frankly, it is too late. When some of those people—particularly short-term prisoners—reach their mid-20s and commit the same crime again and again, retrospective rehabilitation is almost impossible.

With regard to earlier prevention, I met the minister two weeks ago and he asked for the trade union's view on tagging and monitoring. We are the only trade union in this country that represents members who are currently doing tagging and monitoring. Tagging and monitoring is an alternative to imprisonment and it relieves a burden from our members, but it needs to be better than it is at present. At the moment, somebody is put on a tag but there is no joined-up approach to evaluation and monitoring. Tagging and monitoring is a way forward and is a real alternative to imprisonment, but what matters is what that model will look like in the future. We told the minister that a complete joined-up approach is needed, and a debate.

There is a place for tagging and monitoring in society, both for prevention and for potential rehabilitation. Where better to rehabilitate a person

than at home when they are with their family—but it needs to be a different model than what we have now.

**The Convener:** That is very helpful.

**Liz Dahl:** That is why we set up the project in Lanarkshire. That is where most tagging is done, and it does not work unless there is proper family support to go along with it.

**Audrey Howard:** We would have to be careful that tagging does not become the alternative direct measure. It needs to have person-centred support around it or that is what it will become.

Being a glass-half-full person, I will also say that we must resource or support the Procurator Fiscal Service to be a full partner in the community justice agenda. The aim is to consider every stage of somebody's journey, what services do, what the gaps are and what people say about their lived experiences and how we could improve them. We need the Procurator Fiscal Service to be a full member round the table.

**The Convener:** However, it has to be resourced to play that part.

**Audrey Howard:** Yes.

**Professor Loucks:** I will summarise the tone of the conversation. Communication is essential. Staff need to be given confidence, but they need the training to give them that confidence. Staff need to be willing to consult beyond their own circles to make decisions that have an impact on other people. Following on from Fulton MacGregor's point, I think that there needs to be universal—or at least wider—availability of services to help staff to make those decisions. We see that particularly in relation to women who offend. There are huge gaps in what is available for them and, therefore, they are usually pressed into a custodial sentence rather than an alternative that might be available in the community somewhere else. We need collaboration, even if it means collaboration between local authorities to share services so that they do not each have to provide their own.

**The Convener:** That concludes our questioning. I thank the witnesses very much for their contributions, which were extremely helpful.

That concludes this week's business. There will be no formal meeting next Tuesday. Instead, the committee will be in Lanarkshire meeting criminal justice stakeholders.

*Meeting closed at 12:51.*

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

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