



OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 20 December 2016

Session 5



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JUSTICE COMMITTEE
13th 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:

David Harvie (Crown Office and Procurator Fiscal Service)

Dawn Lewington (HM Inspectorate of Prosecution in Scotland)

Michelle Macleod (HM Chief Inspector of Prosecution in Scotland)

Rt Hon James Wolffe QC (Lord Advocate)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 20 December 2016

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Margaret Mitchell): Good morning and welcome to the Justice Committee's 13th meeting in session 5 and its final meeting in 2016. We have received apologies from Oliver Mundell.

Agenda item 1 is a decision on taking business in private. Items 6 and 7 are consideration of the committee's approach to scrutiny of the Railway Policing (Scotland) Bill at stage 1, and consideration of our work programme. Is the committee content to take those items in private?

Members indicated agreement.

Draft Budget Scrutiny 2017-18

10:00

The Convener: Agenda item 2 is draft budget scrutiny 2017-18. I welcome to the committee the Rt Hon James Wolffe QC, the Lord Advocate, and David Harvie, the Crown Agent and chief executive of the Crown Office and Procurator Fiscal Service. This is the first time that either of you has appeared before the committee and we very much look forward to working with you during this session of Parliament.

I refer members to paper 1, which is a note from the clerk, and paper 2, which is the Scottish Parliament information centre briefing. The Crown Agent has also made a written submission to the committee's current COPFS inquiry, parts of which are relevant to this morning's session. Thank you for that.

I believe that the Lord Advocate would like to make a short opening statement.

The Lord Advocate (Rt Hon James Wolffe QC): Thank you for inviting me to give evidence and for permitting me to make some preliminary remarks, conscious as I am that this is my first appearance before the committee as Lord Advocate. I look forward very much to working with you during this session of Parliament and my period in office.

Your inquiry into the work of the prosecution service is, from my point of view, timely. I look forward to coming back to the committee in January to discuss in more detail the evidence that you have received. I understand that the purpose of today's meeting is budget scrutiny. As you have indicated, convener, I am here with the Crown Agent, who is the chief executive and accountable officer of the service.

I would like to make a few observations to set the discussion about the budget in context. First, the media regularly report on high-profile prosecutions that have been brought to a successful conclusion. Those cases that attract public and media attention are only the most visible part of the work of the service, which day in and day out across Scotland successfully prosecutes crime and secures the fair and effective administration of the criminal law.

It is important that I say that at this, my first appearance before the committee, because I know that some of the evidence that you have received has reflected negatively on the service. I take seriously the issues that have been raised in the evidence before you, but the starting point for addressing the work of the service should be that the Crown Office and Procurator Fiscal Service is

an organisation that, day in and day out, fulfils its basic, fundamental, public responsibilities as the prosecutor of crime in Scotland, and does so effectively.

The second point that I want to make at the outset is that the organisation has, over the past 15 years, shown a remarkable capacity for change. It was at the forefront of recognising the needs of victims of crime. It has adjusted rapidly to significant developments in the law and it embraces the potential of technological advance and procedural reform. The service had already identified some of the issues that had been raised in the evidence before you, and we would be glad to address specific issues that you want to raise with us, but what the evidence taken as a whole really demonstrates is the case for reform of the criminal justice system.

You will be aware that we are at an unusual moment where significant reform across the justice system is in prospect. I believe that we would fail the people whom we serve if we were not to grasp the opportunities of that moment. I am certainly committed—I know that the Crown Agent is, too—to working with all the agencies involved as we seek to create a justice system that reflects the needs of 21st century Scotland.

Finally, I will make just a brief observation about the budget. I have to take a realistic view about the pressures on public sector funding. The revenue and capital budgets of the service are the same in cash terms as last year; that is the basis on which the service has undertaken its forward financial planning. You will no doubt wish in a moment to look in detail at the budget figures, but I make it clear to the committee at the outset that with that budget allocation the service will continue to prosecute crime in the year ahead effectively, rigorously and in the public interest.

The Convener: Thank you. I remind members that this evidence session is on the 2017-18 Crown Office and Procurator Fiscal Service budget, and I emphasise that it is not about the wider issues raised during our current inquiry. Obviously there will be a slight overlap and I will allow a little bit of latitude on that, but in general the session is about the budget. The Lord Advocate will attend early in the new year to answer questions about issues related to our inquiry. With that, I open the session to questions from members.

Douglas Ross (Highlands and Islands) (Con): Thank you, convener, and good morning Mr Harvie and Lord Advocate. My first question is for the Lord Advocate. Your submission through Mr Harvie states that

“to protect his constitutional independence, the Lord Advocate deals directly with the Cabinet Secretary for Finance”.

When you go into those meetings, are you the Crown Office’s representative in the Scottish Government or the Scottish Government’s representative in the Crown Office?

The Lord Advocate: The short answer is that I am the Lord Advocate, and as Lord Advocate I am the head of the prosecution system in Scotland. I exercise that function independently both by statute and for constitutional reasons. I go into those discussions as the Lord Advocate with my responsibilities as Lord Advocate in my mind.

Douglas Ross: But you have dual responsibilities as a member of the Government and the head of the Crown Office. When you are dealing on financial terms with a fellow member of the Government, which priority do you lead with? Is it for the Crown Office within the Scottish Government or as a Scottish Government member on behalf of the Crown Office?

The Lord Advocate: It is, perhaps, artificial to seek to divide up my different functions. I go into those discussions as the independent head of the system of prosecution in Scotland, as I go into any discussions as Lord Advocate. I have to be realistic about the public financial circumstances that we live in, as the head of any public service in Scotland has to be in the current environment. However, my responsibility is to prosecute crime in Scotland effectively, rigorously, fairly and independently.

Douglas Ross: If you cannot differentiate in the way that I am asking you to do, which of the following two statements would you agree with most? As you come out of that meeting with the Cabinet Secretary for Finance and the Constitution, would you agree more with the Scottish criminal bar association, which said that it is “absolutely astonishing” that the Scottish Government should cut the Crown Office budget, or would you agree with Derek Mackay that

“it is a sound settlement for the service”?—[*Official Report*, 15 December 2016; c 61.]

The Lord Advocate: The first thing to be clear about is that the service will receive the same cash funding for the revenue and capital budgets as it received last year.

Douglas Ross: I will come on to that.

The Lord Advocate: I know that you will want to look in detail at that proposition and I understand that.

Douglas Ross: Those are two quite stark responses from different sides. The Scottish Government minister said that it is a “sound settlement” for your service, yet the Scottish criminal bar association said that it is “absolutely astonishing” that there should be cuts to the budget. Which one do you think is more accurate?

The Lord Advocate: It is a settlement that is consistent with the forward financial planning of the service and within which I am confident that we will continue to prosecute crime effectively in Scotland in the coming year. It is a settlement that I am advised is, broadly speaking, consistent with the settlement for other justice agencies. It is a settlement that enables me in the forthcoming financial year to fulfil my public responsibilities.

Douglas Ross: I would like clarity on this, because there is some confusion. Do you agree with the Cabinet Secretary for Finance and the Constitution that it is a “sound settlement” or with the Scottish criminal bar association, which says that it is “absolutely astonishing” that there should be cuts to the COPFS budget?

The Lord Advocate: It is a sound settlement for the service on the basis that I have just described. For the reason that I mentioned, to describe it as a cut in the way that Mr Ross articulated it is not the full picture.

Douglas Ross: Is there a real-terms reduction in your budget?

The Lord Advocate: There is a real-terms reduction.

Douglas Ross: Do you think that that is a sound settlement?

The Lord Advocate: It is, because we have secured in revenue and capital terms the same cash as last year.

There is an important point that I know you will want to discuss, and it may be that the Crown Agent will be better placed than I am to discuss the detail. An apparent reduction of £1.4 million is, as I understand it, a change in the allowance made for depreciation. It does not affect the cash that is available for the running of the service.

Douglas Ross: I will come on to that if I can.

If we look at your level 3 funding, staff costs in 2016-17, for example, were £73.4 million; in 2017-18, they will be £72.3 million. That is a real-terms reduction in staff costs. Office costs remain at the same cash level, so that is a real-terms reduction. I think that you have just touched on the centrally managed costs, but if that is not the case I would be interested in more information.

The headline figures in table 14.2, which is the level 2 spending, show a £4 million reduction. I know that that has been explained in Mr Harvie’s submission, but in relation to the level 3 funding I would be interested in whether you accept that there is a real-terms decrease in the funding available, for example for staff costs.

The Lord Advocate: It would perhaps be more sensible for Mr Harvie to respond.

David Harvie (Crown Office and Procurator Fiscal Service): If I take it hierarchically, in terms of the initial position in relation to the £4 million and then my assessment in relation to the £1.7 million and then drill down to staffing—

Douglas Ross: I would rather that you started with staffing, because I will come on to the other issues. Staffing was my question in this case. Is there a real-terms reduction from last year’s budget to this year’s budget in the amount of money that you can spend on staffing—yes or no?

David Harvie: From our perspective, we have a real-terms reduction on the revenue budget of around £1.4 million. Our estimate is that 50 per cent of that real-terms cut in revenue will have to be achieved by non-staff costs and 50 per cent by staffing costs.

Douglas Ross: So the answer is yes?

David Harvie: Yes. I am trying to give more detail.

Douglas Ross: That is useful. To get a clear answer for the record, is there a reduction in the amount of money that the Crown Office will be able to spend on staff in this “sound settlement” delivered by the Scottish Government? Those are its words and not mine.

David Harvie: We will have a £1.4 million cut in revenue.

Douglas Ross: And 50 per cent of that—

David Harvie: We are planning for 50 per cent savings on staff costs and 50 per cent on non-staff costs.

Douglas Ross: This question may be more for the Lord Advocate. Given the evidence that the committee has received in its inquiry, do you think that it is sensible to be going forward with a reduction in staff costs at a time when we have been told by numerous witnesses, almost unanimously, that you need more resources?

No one has questioned the ability of your staff. Indeed, that has been praised time and time again. However, it has been said at almost every session that they are underresourced. Therefore, if you are going to implement a cut in the staffing budget, does that not raise concerns for the future of the service this year?

The Lord Advocate: It is important not to look at the future of the prosecution service in isolation from the wider criminal justice system. As I said a moment ago, we are looking at systemic change that is likely to alter the system in ways that will make it much more acceptable from the perspective of witnesses, victims and accused persons. It is a mistake to think that one solves challenges and difficulties simply by putting

additional resources into them rather than by looking—

10:15

Douglas Ross: That may be your opinion. However, what I was trying to get across in my question was the opinion of numerous committee witnesses that more resources are required. If you do not feel that more resources are required, we will hear that from you in January. However, all these witnesses at an important inquiry—you said that it was very timeous and that you were very interested in the outcomes—are telling us that we need more resources. People at the coalface are telling us that, yet this budget settlement from the Scottish Government—which was, presumably, agreed in consultation with you—sees a reduction in the amount of money that you can spend on the staff within that service. I am not sure how you can marry up those two statements.

The Lord Advocate: There are two reasons. First, the service has planned for the coming year on the basis of the assumption or the scenario of the same cash in revenue and capital terms and that is the settlement that we have achieved.

Secondly, in terms of specific areas of challenge for the service, I am interested in looking at ways in which we can perform the various functions that we have to perform more effectively by looking at procedural changes—changes in how we do things. I am interested in the very real potential for changes in the justice system across the piece, of which the Crown Office is only one part. All that has implications for resourcing. It is not correct that the only way to solve a problem is simply to apply more resources to it.

Can I just make this clear, Mr Ross? If I am satisfied, exercising my responsibility as Lord Advocate, that in order to fulfil the fundamental functions of the service I require additional funding from the Government, I will not hesitate to ask for it—

Douglas Ross: But you have not asked for it in this settlement.

The Lord Advocate: I can give an example from the period of my predecessor's office, when he sought and was given additional funding, which at that time was required specifically to deal with a series of significant cases.

If I am faced with a specific demand—a specific need—that requires more funding and I am satisfied that, in the exercise of my public responsibilities, I need more funding for that purpose, I will ask for it.

Douglas Ross: I worry that we have a scenario in which you have to go cap in hand to the Scottish Government asking for more money

rather than saying that you need more money at this time, when you go into your discussions with the Cabinet Secretary for Finance and the Constitution as the independent head of the Crown Office to get a “sound settlement”, as the cabinet secretary described it in Parliament. You have reiterated a similar view today, yet when Fiona Eadie of the FDA came to this committee to give evidence, she said:

“I fully expect our senior manager to give evidence to the Parliament and say that he can probably just about manage to deliver the same service again with the same money next year.”

She then went on to say:

“However, if the committee wants to see the sorts of improvements that we have spoken about today and the standard of service that we all want to deliver and that the people of Scotland expect, additional resources are required.”—[*Official Report, Justice Committee*, 15 November 2016; c 41.]

I am not sure that Fiona Eadie, the people in the FDA union, or anyone who has watched the committee's evidence sessions or experienced the issues that have been raised with the committee in the court system up and down the country will take much comfort from your answer today.

The Lord Advocate: Would I like to have more money? There is no head of any public service in Scotland who would not like to have more by way of resources. Can I deliver a prosecution service that fundamentally does the job that it is there to do—to prosecute crime effectively, rigorously and fairly—with the settlement that we have achieved? I believe that I can.

I was very pleased to hear Mr Ross acknowledge the evidence that the committee has received about the quality of the staff in the service. I was also pleased to read that evidence myself. It vindicates what I have been saying since my first day in office to emphasise my trust and confidence in the staff up and down Scotland who prosecute on my authority.

Douglas Ross: I will ask another question now so that Mr Harvie can answer my points together, because the convener will not give me much more leeway. Your submission refers to the £950,000 that was transferred in-year this year for the violence against women initiative. That funding will also be provided during 2017-18. If you know that now, why is it not included in the budget figures that have been presented to Parliament?

David Harvie: The amount was not included last year in the budget figures for the initial position either, because it was received in-year. We normally get that money in September or October. There is a line in the justice budget for it and a commitment that it will be delivered.

Douglas Ross: You were comparing the 2016-17 draft budget with the actual budget. Surely that funding is known for the 2017-18 draft budget, too, yet it is being included after the draft budget settlement.

David Harvie: The funding has received the same treatment as it did last year, when we presented it—

Douglas Ross: That is my question—why should it receive the same treatment as it did last year? Why can it not just go in? If you know that you will get that £950,000 of funding, why is it not in the budget?

David Harvie: The funding could equally be presented in that way, but we have presented it consistently, in the same way as we did last year, as it is funding that arrives during the year rather than funding that we start the year with.

Douglas Ross: How often have you received that funding?

David Harvie: This will be the third and final year of the funding commitment.

The Convener: Stewart Stevenson has a supplementary—

Douglas Ross: I am sorry—I think that Mr Harvie wants to answer my earlier question.

David Harvie: There is also the matter of how we spend money. It may assist the committee to understand the choices that are being made, regardless of what funding we have available for staffing. For the number of legal staff, the up-to-date figure is 533. The high point in the entirety of the service was in 2009-10, when we had 547 legal staff, so we are about 14 away from the all-time high. The number has been growing each year for the past three or four years.

On decisions in relation to front-line staff, the figure for our core staff grades of depute and senior depute was 285 in 2009, and now it is 354. Within the envelope that is available to us, choices are being made to ensure that we invest in staff who are in the courts.

The Convener: Stewart Stevenson has a supplementary question.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): My question is on a narrow technical point that relates to where Mr Ross started his questioning, which was on the relationship between the Lord Advocate and the Government. The Scotland Act 1998 provides for the appointment of members of the Government. Section 45 provides for the appointment of a First Minister, while section 47 is on the appointment of the people whom we now describe as cabinet secretaries but whom the act describes as ministers. The people who are appointed under

section 49, whom the act describes as junior ministers, are not members of the Government. At no point does the act, in its provisions for the appointment of members of the Government, include the Lord Advocate. Am I correct in assuming that, in legal terms, you are an adviser to the Scottish Government as well as being head of the prosecution service, but you are not a member of the Scottish Government?

The Lord Advocate: That is, in fact, incorrect. By statute, the law officers are members of the Scottish Government, in the same way as the Attorney General in England and Wales is a member of the United Kingdom Government. The Lord Advocate exercises what are known as retained functions as head of the system of prosecution and investigation of deaths. The Lord Advocate exercised those functions long before devolution, over many centuries. They are exercised by statute and constitutionally, independently of any other person. Those are the particular functions that we are here to discuss today.

Stewart Stevenson: So you are a man of two hats and two brains—and you leave some of them outside the door when you meet the Government as a member of the Government.

The Lord Advocate: I am clear that, as head of the system of prosecution, and when I exercise my retained functions, the responsibilities rest with me alone.

The Convener: Thank you for that clarification.

John Finnie (Highlands and Islands) (Green): I thank the witnesses for their written evidence and opening remarks. I am glad that the Lord Advocate has picked up the clear message that the committee got, which is that there is no criticism whatever of the staff, whose high standards are appreciated.

I have a few questions for Mr Harvie. I pick up on Mr Ross's point that the settlement of just under £1 million for the violence against women initiative is recurring. The paragraph in your submission that talks about that money concludes by saying:

"This means that whilst it looks as though our cash budget has decreased and expenditure on staff costs has reduced, in fact it has not."

Will you address that?

David Harvie: That is in cash terms. In real terms, there is undoubtedly a decrease in revenue and a small decrease in capital. The submission refers to an overall figure of £4 million, and reference was also made to the depreciation sum. The reality is that we calculate that the real-terms impact on the funding that is available to the

service is approximately £1.5 million in revenue and £100,000 in capital.

John Finnie: I was going to ask about your reference to “our expected depreciation profile”.

You say that you have been reviewing your medium-term financial strategy. Regardless of the settlement’s merits, is it in the scope of what you had considered?

David Harvie: It is within the scope of the various projections that we considered.

John Finnie: You also say:

“Some 7.5% of our budget is currently spent on mortuary and pathology costs.”

I do not know whether that is a misprint, because the figure seems astonishing. Is it correct?

David Harvie: Yes—it is millions of pounds.

John Finnie: You go on to talk about opportunities to reduce those costs. Are the Christie principles of collaborative working being fully examined in that regard?

David Harvie: They are being examined, which is why we highlighted in the submission that there will be opportunities in relation to that service provision.

John Finnie: I do not know whether you are aware that a petition has been brought to the Parliament by a woman in Moray who is concerned about mortuary facilities. You might be able to look at opportunities in that regard.

David Harvie: All such factors are part of our consideration of how we deal with contracts.

John Finnie: You also say:

“We have just appointed a new Director of Procurement”, in the context of the re-letting of contracts and improving contract management, and you say that a telecoms contract has recently been re-let. What have the savings been from that?

David Harvie: We expect the new telecoms contract to save in excess of 15 per cent. It will also deal with the difficulties with the 08 number that the committee heard about from other witnesses. There will be an 03 number, which will enable members of the public and solicitors who have mobile packages to use their free minutes and so on and which will have the same overall cost as an 01 or 02 number.

John Finnie: Finally, you say:

“we expect that overall staff numbers will start to reduce”.

Will that include fiscal deputies?

David Harvie: It might, but we will seek to avoid that where possible. As I said to Mr Ross, choices

are available to us about the staff profile. There have been quite dramatic changes in the past. In 2009, there were 39 senior civil servants in the organisation; the number is now down to 24—I use that simply for illustration. We must assess our options in the context of what demand might be and how we can best deal with it.

Rona Mackay (Strathkelvin and Bearsden) (SNP): I am pleased that there will be no compulsory redundancies and that you hope to achieve savings through the digitisation of processes and through sheriff and jury reform.

I will ask about your long-term financial planning. Your submission talks about the medium term, but the Auditor General for Scotland emphasised the benefits of long-term financial planning. How realistic is it for you to do that at this stage?

10:30

David Harvie: We are engaging in that exercise, which has been fruitful. I noted with interest the Auditor General’s evidence. It is fair to say that, having embarked on the exercise, we have found it extremely beneficial. We have had extremely significant assistance and advice from the Auditor General’s office and from our internal auditors and non-executives.

As part of the financial sustainability plan, a number of assumptions and risks and so on were identified for a variety of scenarios. We have tested them robustly, including with the internal and external auditors and with the non-executives, all of whom were positive about the approach that we are taking and have contributed to those exercises. We feel that we are in a significantly more robust position in the medium and long term.

When the committee took evidence from the Auditor General, there was debate about whether the value of such an approach reduces the further out we look. That is fair, but the key is continually to revisit the issue. I regard the approach as a really positive development that has certainly assisted us greatly in scenario planning. We will constantly revisit that in the months and years to come.

The Convener: Liam McArthur wants to continue that line of questioning.

Liam McArthur (Orkney Islands) (LD): You have heard from a number of members about the evidence that we have received on the quality of the work that is done in the service. However, a constant refrain has been about the problems that are created by having such a large number of staff on short-term contracts. The Auditor General made the point that, to derive the most benefit from your investment in training and all the rest of

it, that does not seem to be a sound strategy, albeit that she recognised that, as has been suggested in the evidence, some level of short-term contracts will probably be required to manage peaks and flows. Will you talk through in a little more detail what precisely is envisaged in workforce planning to allow you to move more staff away from short-term contracts?

David Harvie: That is a key development and, in a strange way, it was quite encouraging to hear that evidence because, as the Lord Advocate touched on, a number of the things that came out in evidence were matters that we had already identified and were working through. The workforce strategy recognised that the balance between permanent and fixed-term staff was a significant issue, for a variety of reasons. You rightly identify that one is to do with training and retraining costs, but a separate point is about the sense of cohesion in teams and about people knowing that those who they are working with will be there in the long term and that it is worth while not only training them but investing time and improving the culture.

I am personally determined that the balance will change dramatically. People will comment on the timing, but that is completely coincidental—it is just that the product of the planning is coming to fruition. I sent out a message earlier this week—in advance of Christmas, as was my intention—that indicated two things. The first related to the quite large percentage of staff who are on temporary promotion, which is an issue. In the first quarter of the next financial year, we will seek to address that by identifying the posts that are demonstrably permanent and seeking to fill them permanently at that grade. Separately and in addition, a similar exercise requires to be conducted in relation to administrative and legal staff. That is coming to fruition and we envisage that it will enable us to recruit, on a competitive basis, a significant number of permanent staff from within the existing pool.

Liam McArthur: I welcome what you say, because it goes some way towards addressing the concerns that we have heard in recent weeks. However, you talk about a dramatic change. How are you accommodating that against the backdrop of staff costs reducing in the next financial year, which Mr Ross explored with you? I presume that it will put additional stress on your staff budget, even if it gives you greater predictability.

David Harvie: It gives greater predictability. One benefit of the approach that we have taken is that it has given us an opportunity to scenario plan when we have the sort of settlement that we have. The reality is that we are already paying for the people, if you like, and they are making a significant contribution. The issue is about the

impact that committing to making them permanent would have in the medium to longer term.

We have looked through the numbers of people who leave the service for other reasons, such as retirement or getting jobs elsewhere. The term “natural wastage” is used; it is a horrendous term, but you know what I mean. Given the figure for natural departures, if we made significant proportions of the temporary staff permanent, we would still be able to flex in accordance with the pressures that we have identified this year.

Liam McArthur: I am looking at the budget profile over recent years. We heard from the Auditor General a criticism—in the way that only she can provide it—that such work really should have been done a number of years back. Why are we seeing the decision to move to more permanent contracts and greater stability in the service now, when there is not a great deal of change in the budget? I presume that such decisions could have been taken two to three years ago at least.

David Harvie: Some changes have been made to the budget that have helped to inform the decision. There are also points about decisions having to be made. For example, there was additional funding a couple of years ago that has now been baselined in the budget and which gives us greater certainty. Beyond that, there is no doubt that we have reached a critical point at which this has become an issue. On the back of workforce planning, we have far greater confidence that we can now address the issue proactively, which is what we will do in the first quarter of the year.

Liam McArthur: Concern about the implications of the move to centralised marking has come up routinely in evidence. One argument in favour of it is the additional level of expertise that can be brought to bear in a more centralised system and another is the efficiencies that it can create in the service. The concerns that we have heard clearly show—to my mind—that what is in place at the moment appears not to be working. What is your view on the efficiencies—the savings—that the system allows you to generate within the budget? What would the financial implications be of going back to a system in which there is more localised input or marking?

The Lord Advocate: I will make an introductory comment and let the Crown Agent deal with the more operational aspects of the question.

My view is that it is not acceptable today to have anything other than national standards and national criteria for a national prosecution service. National case-marking arrangements allow us to secure consistency in marking decisions across the country. The Crown Agent is better placed than I am to speak to the matter, but it is fair to say

that marking being done away from the local area is not a new phenomenon, but it has become systematised in the national case-marking arrangements. The arrangements and systems that are in place can accommodate particular needs and local variations, but by approaching marking on a national basis, we can address the need for local variation systematically, if I can put it that way.

Liam McArthur: Does that not kick against the fact that individual judges and justices of the peace have always, and always will, come at issues from particular perspectives that will influence their conclusions? Even with national marking, there will still be variability in what courts conclude, if not necessarily in the measures that are applied. There is concern that there is a lack of understanding of the options that are available in particular cases because they have been centrally marked.

The Lord Advocate: My understanding is that the systems that are in place can accommodate that and can provide the relevant information during marking. I am making the more fundamental point that it seems to be right for the national prosecution service to approach criminality consistently across Scotland. It is important that I say that—

Liam McArthur: We will come back to the issue in January, but the budgetary elements are relevant.

David Harvie: We will come back to the matter in January; we welcome the opportunity to discuss it in more detail then.

A fundamental point needs to be made at the start. There was not a binary situation in which individual cases were being marked in 40-odd offices across the country, then all of a sudden were being marked in national hubs. The reality is that centralised marking has existed in the service in a variety of forms for many years. Under the previous federation structure, on which I think the committee has heard some evidence, there were federation hubs, so the model that was created was a logical extension of that.

In some of the evidence, there has been a misconception that all of a sudden, as a result of the creation of national initial case processing, there was a loss of local contact. I will be happy to go into that in more detail in January, but NIPC was carefully developed to ensure that localism is protected. There is a preponderance of diversion schemes across the country. That is a matter that we could helpfully discuss with the committee in January in the context of development of a national marking hub, taking into account what is available in local areas and the extent to which

there is an issue with availability of options in particular areas.

From our perspective, one of the key benefits in terms of efficiencies is that we have an identifiable group of people who can be trained intensively when a change of policy is introduced—in relation to the prosecution policy review, for example. That targeted group of individuals will be responsible for the vast bulk of marking, which means that there will be no need to train larger numbers of staff so intensively. There are a variety of efficiencies, which relate not only to staff numbers but to the on-going costs of supporting that model.

As the committee has heard in evidence, NIPC staff have done extraordinarily well with the new model, but we are not insisting that the model as currently defined cannot be refined. A beneficial aspect of the inquiry has been that it has looked at evidence on that, which will be fed in to improve the approach further.

The Convener: The specific point that has been made in evidence is that central marking would dispose of a case in a certain way—it might involve payment of a fixed-penalty fine. The person might appear in court several times thereafter, having not paid that fixed-penalty fine, when local disposals, of which there was no awareness as a result of the case's having been centrally marked, would more effectively have dealt with the situation. The budgetary position—the financial implication—is that people are turning up unnecessarily time and again at local courts because cases have not been dealt with properly. It has been indicated to the committee that that is because of lack of knowledge of referrals that could have been made. Have you taken that on board?

David Harvie: I heard that evidence and I have also seen the supporting evidence. Evidence was given that there is decreased use of diversion schemes, but when the supporting evidence was submitted it did not demonstrate that there had been a decrease—it suggested that the knowledge was still there. I think that it was the Sacro evidence that showed that the number of available options appears to have increased. Again, we can explore that in further detail in January.

On the availability of diversion schemes, I know that prosecutors across the country are, like me, enthused about suitable diversion schemes as a constructive way of dealing with criminality to avoid repetition. On when penalties are awarded, it has been suggested that people are getting repeated fixed-penalty notices or fiscal fines, however we have information on the figures that might assist the committee and which I am happy to provide. It is probably best that I do not go into the detail just now, but I think that we can provide

the committee with some reassurance on the use of fixed-penalty notices or fiscal fines and the recovery rate.

10:45

The Convener: Does the amount of unpaid fines cause you any concern?

David Harvie: Eric McQueen previously gave evidence to the committee and said that the recovery rate is about 80 per cent. I think that the figure for court fines is slightly higher. Forgive me, but I do not have the evidence to hand.

The Convener: What about in monetary terms?

David Harvie: In monetary terms?

The Convener: How much is not collected?

David Harvie: It is 20 per cent, but I do not know what the monetary figure is.

The Convener: Are we going into millions of pounds?

David Harvie: I do not know. I do not have the figure here, but I will get it for you.

The Convener: That would be good to see. The figure of 80 per cent sounds good but, if there are millions being unpaid, that is money that could be going into the system.

Mary Fee (West Scotland) (Lab): Good morning. I apologise for my voice and will try not to croak too much. I have a further question about the savings that you plan to make from staff costs. Given that the huge legislative changes in the past few years have affected the way in which the Crown Office works, and that further legislative changes will also have an impact, are you confident that there will be no impact from the size of the savings that you have to make on the service that you provide, and that you will be able, within your budget, to train and support properly the staff that you have to carry out the services that they are expected to provide? Also, given that there will be an increase in specialist services and specialist courts, which adds another dimension, are you confident that you have enough budget—in the light of the savings that you will have to make?

The Lord Advocate: I will make a couple of high-level observations, then ask the Crown Agent to comment specifically. The first point to make is that the service has absorbed remarkable changes over the course of my professional lifetime. I was an advocate depute when the service was dealing with the arrival of disclosure and the effects of the Salduz and Cadder cases. The service was at the forefront of recognising the needs of victims of crime and responding to them. It is therefore a service that has, in my professional lifetime,

embraced and absorbed significant change. I have every reason to be confident that it will go on being able to adapt to change and to deal with the challenges that face it. That is a general observation about the capacity of the organisation and its approach to the changing environment.

Mary Fee is absolutely right that the world is becoming more specialist. Within the COPFS there are now specialist units that deal with a variety of different aspects of criminality. I think that Scotland was at the forefront in relation to sexual offending in setting up the national sex crimes unit. Specialism is something that the service has shown itself to be comfortable with, if I can put it that way.

As we look forward to future legislative change, we will have to judge each set of proposals on its own merits. There will be changes that will impose demands on the service. Particularly if one considers the broader potential for criminal justice reform and the work that is being done in the Scottish Courts and Tribunals Service's evidence and procedure review, there might be changes that will have benefits for the public at large and which might alter the kind of work that the service needs to do. It is difficult to give a short answer to the question, other than to say that the service has shown itself to be able to absorb changes in the external environment and changes in legislation, and that I have confidence that it will continue to do so.

The Crown Agent might wish to add his own remarks.

David Harvie: I agree with Mary Fee about the importance of training. It might assist the committee if I say that we have increased by 75 per cent since 2011 the amount of money that we spend on training across a range of topics—not only in the specialisms to which the Lord Advocate referred but in other matters, including development of our managers and leaders in the organisation. We are investing in training.

On forthcoming legislation, we are in discussion with Scottish Government officials on preparation of the financial memorandum to the forthcoming domestic abuse bill, for example.

Mary Fee: Is the budget for training increasing while the budget for staff costs is decreasing?

David Harvie: We have managed to increase the training budget by 75 per cent during the course of the five-year period that I mentioned. However, you will recall that we were also able to increase staff numbers in that period. In the context of the budget constraints that we have had to deal with over the past several years, we have been able to make some positive choices in relation to investing in training and staff, and we now have more than 1,600 full-time-equivalent

staff. Again, if you look at the pattern over the past three to five years you will see that that is an increase that we have managed to achieve even in the context of the constraints to which we have been subject. It is about making intelligent choices with what is available to us.

Fulton MacGregor (Coatbridge and Chryston) (SNP): My question has more or less been covered—it follows on from Mary Fee's question. You have identified that you need to live within your current financial circumstances, and the funding cuts that are coming from the Westminster Government are well documented. On specialist areas, are you confident that you will be able to continue to develop the domestic violence agenda and continue to prosecute in the way that you have over the past period?

The Lord Advocate: The short answer is yes. [*Laughter.*] I can elaborate on that for you.

Fulton MacGregor: Please do.

The Lord Advocate: I am conscious that you might wish to discuss with us a number of issues that have been raised in the course of the evidence that you have taken during the inquiry—

Fulton MacGregor: I should have said that I am talking specifically about the funding that you get in relation to violence against women. Is it enough to maintain the current standard of prosecution?

The Lord Advocate: As the Crown Agent said, we expect to have the same funding transferred in-year to support the work on violence against women. That is specific funding that is directed at ensuring that those cases are dealt with as expeditiously as possible. The figures support the view that the funding has been successful in that regard. I have no reason to believe that we will not continue to be able to do that.

David Harvie: I will expand on that and give a little more detail. We have funding for another year. It might assist the committee if I mention some of the tangible benefits that have resulted from the £2.4 million of funding each year to the COPFS and to the Scottish Courts and Tribunals Service. Part of the funding is allocated to the courts service; part of it is allocated to the COPFS, which has enabled us to recruit additional prosecutors and administrative staff to work specifically on violence against women.

Our efforts have involved a lot of excellent joint work with the courts service. The net result is that in the first two years the number of outstanding sheriff court trials dropped from 23,500 to 16,900, and in the JP courts the number dropped from 11,800 to just over 9,000—a collective reduction of just under 9,500 trials. In terms of courts that would not otherwise have been able to run during that period, there were 647 extra justice of the

peace courts and more than 1,100 extra sheriff courts. Those are examples of what £2.4 million buys.

Fulton MacGregor: I will follow up on that without, I hope, straying too much into questions that may be more appropriate for our next panel. Will the focus on domestic violence—as well as the focus that you have just mentioned—help to reduce domestic violence and lead to a cultural change? I know that we are talking about the long term, but will that reduce the number of people who go to court for such offences, because we will have changed behaviour and attitudes towards those offences?

The Lord Advocate: You are focusing very much on a policy question, which is for me to respond to. There are two or three points to make. First, domestic violence is an area of criminality that, for far too long, was not taken sufficiently seriously by the criminal justice system. Secondly, when I or the service prosecute a domestic abuse case, we prosecute it because a crime has been committed. I take the view that, where there is sufficient evidence in law, it is correct that there should be a strong presumption in favour of prosecuting such offending. That is because of the impact that that offending has on victims and other family members, particularly children. As you alluded to, it is also because, against the background of the way such offending was historically dealt with, it is important that the criminal justice system sends out a clear message about what is acceptable and, more important, what is not acceptable in today's Scotland.

The Convener: I will press you a little bit more on that, Lord Advocate. You say that cases are dealt with expeditiously and that there is a strong presumption in favour of prosecution. Surely that cannot be the case when, as the defence agents have said, there is a perception that the prioritisation of domestic abuse cases in the context of scarce resources has meant that money has sometimes been wasted on cases with little prospect of conviction at the expense of other summary cases. Clearly, if that were the case, that would not be in anyone's interests. That would not make sense financially; it certainly would not make sense in emotional terms for the victim, the witnesses or, indeed, anyone involved.

The Lord Advocate: All that is correct, if that were the case, convener. I want to be very clear. First, a prosecution should not be brought in relation to any case unless there is sufficient evidence in law. There have been suggestions in at least one witness's evidence that that basic proposition is not one that is being adhered to. My starting point is that the strong presumption for prosecution presupposes that there is sufficient evidence in law.

11:00

The second point that I would like to make is that, if one looks at the statistics on the domestic abuse cases that went to trial last year, one can see that a conviction was secured in 80 per cent of those cases. I do not think that it will be lost on the committee that those are cases that may be inherently difficult to prosecute. They are cases where, for reasons that will be intelligible, complainants who might initially engage with the system might become unwilling, or less willing, to give evidence.

Notwithstanding the difficulties in those particular types of cases, last year convictions were secured in 80 per cent of such cases that went to trial. That does not suggest to me that the kind of problem that you describe is causing the kind of systemic difficulties that the question that you asked, convener, might convey.

The Convener: There will probably be more questions on that in January. My question was meant to look at the budgetary expense of summary cases, which brings me on to churn. Do you accept that there is churn in court and that it comes at a cost? How do we address it?

The Lord Advocate: I certainly accept that, particularly in summary cases, there is churn. There are a variety of reasons for it. The fundamental answer is to look at systemic reform. I commend a reading of the Scottish Court Service's "Evidence and Procedure Review Report" which sets out the vision that the court service has for summary justice reform. The Crown Office is actively engaged in that work with other criminal justice partners.

The Convener: I will put to you what Derek Ogg, from the Faculty of Advocates, suggested, which is that the decision to make less use of precognitions, based on the lack of resources, could actually prolong cases, thus wasting resources.

The Lord Advocate: There has been a change in the approach to precognition. It followed from the radical changes in the law on disclosure. The current policy is what is called purpose-driven precognition. In other words, rather than a precognition process in which the Crown Office interviews witnesses who have already given police statements, the decision to precognosce a witness should be based on the view that there is a particular need to precognosce a witness in addition to the police statements that have already been obtained and which are available to the accused and their defence agents.

The Convener: Again, that is something that we will pursue in January. Is there a certain art to precognition that the police do not always have?

The Lord Advocate: That might be something to pursue further in January. I understand the point that is being made, but if the question is whether the change was driven by financial considerations, I can say only that it predated my time. The Crown Agent may be able to say more about it, but my understanding is that it was a deliberate policy decision taken against the background of the radical change in practice that followed from the changes in the law of disclosure.

The Convener: Mr Harvie, in answering, perhaps you could address whether, even if the decision was not taken for financial reasons, it is having a financial impact now.

David Harvie: It was not taken for financial reasons. As the Lord Advocate said, it was taken in relation to changes in disclosure law. Also, for good or bad, it reflected the realities of the way in which trials are conducted these days, particularly by what is colloquially known as trial by statement. Witness positions are now traditionally crystallised in police statements that can be put to witnesses, which precognitions cannot. One of the key issues was ensuring that we obtempered our very onerous and important disclosure obligations in a way that enabled the defence to have all the material and in a format that enabled them to put that to witnesses.

There were all sorts of positive reasons for going down the route that we have described. It is not an abandonment of precognition; it is about more focused precognition where we think that that precognition will add value. For example, in serious sexual offending cases, it is highly likely, if not nearly always the case, that that individual would be precognosced.

So far as the cost and the impact are concerned, those are completely intangible, because the way in which a trial is conducted has changed so dramatically since disclosure and particularly since the provision of those police statements. The value or otherwise of what a precognition may or may not have added is speculative.

The Convener: I will put to you something quite tangible that we all saw when we went to the sheriff court, which was that many of the procurators fiscal did not have the information in front of them and were not prepared. Having precognitions would greatly help them to come to court, in the first instance, totally prepared with all the information that they need and therefore avoid the churn.

David Harvie: If you are talking about sheriff summary cases, there never was any precognition of witnesses in those. In sheriff and jury cases, there was some limited precognition; and, in High

Court cases, traditionally, there was significantly more precognition.

In terms of perception and understanding about what was available, certainly when I started as a depute 20 years ago, when I was prosecuting in the summary courts I had the police report and such police statements as were available, and that remains the position in the summary courts.

Mary Fee: I have a very brief supplementary question on churn, which the convener raised. I wonder whether it is possible to put a figure on the amount of resource that churn wastes. I apologise if there is something in our papers that I have not picked up, but is it possible to put a figure on that?

The Lord Advocate: I am certainly going to pass that question to the Crown Agent.

David Harvie: The best figure that I have heard for the overall system is the £10 million in the Audit Scotland report on the working of the sheriff courts, which I think was published at the tail end of 2015.

Mary Fee: I am talking specifically about churn, because that wastes a lot of time. Is that figure for churn?

David Harvie: That was the figure that Audit Scotland attributed to it; it was £10 million per annum for the entirety of the system.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): Good morning. One of the common themes that has come up in the evidence that we have taken, particularly from victims of crime, has been the importance of support for victims and witnesses.

I was interested to see, in table 7.13 of the draft budget, that the budget for support for victims and witnesses will nearly triple to £15.8 million—an increase of £10.4 million. It is my understanding that some of that money will be allocated to third sector organisations that do such important work in that field, but I wondered whether you could comment on what impact you think that that increase will make to the service.

The Lord Advocate: I will let the Crown Agent answer that, but perhaps I will introduce his response by affirming the importance, which you allude to, of providing appropriate support to victims.

My view is that, as prosecutors, we cannot do our job unless we give confidence to victims that they will be enabled to speak up through the justice system; that is an important part of the work that prosecutors do. We cannot provide all the support that victims need, because our primary obligation is to prosecute crime. That is perhaps an issue that we may have to come back to when we return to the committee in January. With that

by way of a policy introduction, perhaps the Crown Agent can answer the specifics of the question.

David Harvie: First, I want to record my thanks to the VIA staff, who regularly deal with victims and witnesses in incredibly distressing circumstances. It is a particularly challenging role in the organisation.

I echo the Lord Advocate's point, to take a system-wide perspective, that we want any individual who is involved in the system, whether as a witness, a victim or an accused, to be able to give of their best throughout the entire process. It is important that there are mechanisms in place to provide support for people in what I think we would all accept is an alien environment for many individuals.

However, as the Lord Advocate said, we need to address some issues at a system level. I would welcome discussion with the committee about the role of VIA and the role of the prosecutor in providing a level of support. That should include discussion of what level of support should be given and the extent to which support is required to be available consistently—I use that word advisedly—across the country to ensure that individuals who find themselves in the system are assisted to give of their best.

Just for information, with regard to the level of commitment from the COPFS in the area of support and advice, the committee will know that VIA is relatively new in the history of the COPFS. It was introduced only in 2004, and at that stage it was innovative and was one of the first initiatives in the world through which a prosecution service was offering a level of support, advice and information to victims. Of the 1,600 full-time equivalent staff in the COPFS, 103 or 104—approximately one in 16—are VIA support staff who engage in that activity on our behalf.

We are making specific choices about how we use funds. For example, we have been able to increase the head count for staff in bands C and D, who support victims through more serious criminality.

Ben Macpherson: To be clear, will the extra funding go partially towards the recruitment of more VIA staff to support that work, or are those decisions still to be made?

David Harvie: No—the extra funding that is identified in other budget lines does not come to the COPFS. That will be for other service providers. That is why I am talking about the role of VIA in relation to the role of other service providers, and about the level of support that it would be appropriate constitutionally for a prosecution service to offer, while acknowledging beyond those parameters the understandable and

legitimate expectations around the needs of victims and witnesses.

It is encouraging that that funding will be available, but it will not come directly to the COPFS. However, I hope that we will benefit, as everyone in society will benefit from investment in ensuring that individuals feel more supported as they go through that alien process.

Ben Macpherson: That is understood—thank you for clarifying that point. I look forward to discussing in the new year the policy and the systemic potential for providing greater support for witnesses and victims.

Mairi Evans (Angus North and Mearns) (SNP): You have answered my original question, Lord Advocate—it was on the conviction rates for domestic abuse cases, and I thank you for providing the figure.

Following on from Ben Macpherson's line of questioning, I have a question about VIA and what you have said in evidence today. I have spoken to victims who have been through the service, and I can only imagine how disorientating it must be to try to navigate the system. Reports on VIA have not always been the most positive.

You said that the implementation of the 60 recommendations is under way; I am not expecting you to outline all the recommendations now. Nevertheless, which areas are you looking at in that regard, and how is the implementation progressing?

11:15

David Harvie: The implementation is phased, and further recommendations will require to be implemented during the next calendar year.

One of the first elements is highlighted in the evidence. As part of our move back towards sheriffdom-focused local court delivery, a reframing of the VIA structure was required to accommodate that. Perhaps more significantly in light of recent legislative changes, the number of referrals that VIA has dealt with has gone up quite dramatically. That is referred to in the additional information that we provided to the committee at an earlier stage. Members will recall a series of fact sheets. Rather than going over the additional challenges that VIA faces, I refer members to those fact sheets for the details.

The approach involved identifying ways in which the processes could be simplified in order to accommodate the increase in demand for particular types of interaction while ensuring that those who require personal levels of support maintain them. It is about striking a balance between ensuring that matters to do with those who are deemed vulnerable and are therefore

entitled to support, for example, are dealt with as expeditiously and effectively as possible and ensuring that there is a focus on those who require additional support.

Mairi Evans: Okay. Thank you very much. I have more questions about that, but it would probably be more appropriate to ask them in the next session.

The Convener: I will bring in Rona Mackay before Douglas Ross to cover an aspect that we have not fully covered.

Rona Mackay: The presentation of Crown Office funding in the draft budget includes a breakdown by type of activity, such as staff costs. Can you provide us with a breakdown by area of work—by summary cases, solemn cases and case marking, for example? Can you highlight the funding that has been allotted to those areas?

David Harvie: We will be able to do that in more detail. The latest headline figures that we have for actual spend as opposed to projected spend are for 2014-15. I can give members the broad figures now, if that would help, but perhaps the convener would prefer us to follow up that question in writing.

The Convener: It would be helpful if you did that.

Rona Mackay: An answer in writing would be fine.

The Convener: We are getting to the end of the session, so questions and answers should be brief, please.

Douglas Ross: I have two final questions, the first of which is about the estate. You say in your submission that, of the non-staff costs, the estate cost is the highest. The only mention of the estate in the budget document relates to incorporating the carbon management plan in the estates strategy. You say in your submission that savings will be made there. By what percentage and value will you reduce your estate? Can you give further examples? I presume that you have not just targeted areas outwith the central belt, although your submission mentions only Dundee, Aberdeen and Perth. What is happening elsewhere in the country?

David Harvie: A number of options develop as each year progresses. For example, when there are lease breaks over the next four to five years, there will be opportunities to discuss and have choices about whether those leases should be renegotiated, whether a different venue should be identified and what the footprint requirement will be. We will seek to take those opportunities as we go along. Perth is the classic example of that. The estate and staff numbers footprint in Perth does not need to be as big as it currently is.

Douglas Ross: Have you set a target for the money that you should save in that period, or for the percentage of your estate that will be reduced?

David Harvie: I have not set a target because I have asked for an analysis of the options. The estate choices will be informed by some of the staffing choices, as well. That means that we will have a richer picture of information. However, I have not set a specific target for savings attached to the estate yet.

Douglas Ross: Finally, I have a question for the Lord Advocate about his direct dealings with the Cabinet Secretary for Finance and the Constitution on the budget. Obviously, we are very interested in our inquiry into the COPFS, and I think that you have both mentioned how interested you have been in it. Our evidence has received widespread publicity. What direct emphasis did you or the cabinet secretary place on the evidence that we have received in the inquiry when you discussed reducing the real-terms budget for the COPFS?

The Lord Advocate: I do not think that it would be appropriate for me to go into the detail of discussions that I have with the cabinet secretary, although I can say that he is well aware of the inquiry.

Douglas Ross: In my opening questions, I alluded to evidence highlighting concerns over resources. Can you say whether that evidence was fully explored before the cabinet secretary, in direct dealings with you, took the decision to reduce the budget for the Crown Office and Procurator Fiscal Service in real terms?

The Lord Advocate: As I said, I do not think that it would be right for me to go into the discussions that I have with the cabinet secretary.

Stewart Stevenson: I have just a tiny wee point. It appeared to be suggested that fines come back to benefit the justice system. I cannot quite recall where they go. Am I correct in saying that they go to the Treasury?

David Harvie: Fines go to the Treasury but other items go to other places.

Stewart Stevenson: I realise that the proceeds of crime, for example, are covered by a different jurisdiction and that a capped amount is retained in Scotland. Whether fines are paid is quite immaterial to funding for the criminal justice system in Scotland. That is all that I wanted to know—thank you.

The Convener: I realised that as soon as you said it, having looked at the matter in some detail and having seen the figure for outstanding fines, which is not insubstantial. I suppose that the point is that there is a continuing churn with non-payment, and there is certainly a cost attached to that.

There are only two more questions—they are related—that we have not covered yet.

The committee has been told that the preparation of court cases is not a job that can be done in normal office hours, with prosecutors regularly taking work home to avoid being ill prepared. Are you aware of that situation? Can you also address the staff organisations' concerns about the impact of work pressures on staff morale and sickness levels? What is being done about that? It clearly has a huge cost implication as well as an emotional implication.

The Lord Advocate: Conscious as I am of the pressure of time, I will make a couple of observations and will let the Crown Agent answer in detail.

I reiterate the point that a number of people have made about the quality of the staff at the Crown Office. I trust in the judgment and professionalism of all the staff who prosecute on my behalf, although I recognise that the work of a prosecutor is challenging—it is a challenging job.

On morale, I was heartened to see that, in the most recent civil service survey of the Crown Office, all the numbers are moving in the right direction, although there is still work to be done. For example, 56 per cent of staff reported that they have an acceptable workload, which is a 15 per cent improvement on the previous survey and only 2 per cent below the civil service average. Although one would like to see that figure rise, it is going firmly in the right direction.

The Convener: When was the previous survey carried out? What timeframe are we talking about?

The Lord Advocate: I think that we are talking about a one-year timeframe.

Furthermore, 67 per cent of staff reported that they have a good work-life balance, which is up 11 per cent from last year and is the same as the civil service average, and 60 per cent of staff reported that they wanted to stay working for the COPFS for at least the next three years, which is up 6 per cent, 17 per cent above the civil service average and 9 per cent above the figure for civil service high performers. Those figures are encouraging.

The Convener: However, every person in the fiscal service has a story to tell. The percentages may be encouraging, but do you accept that there is still an issue to be addressed?

The Lord Advocate: Of course, and one of the jobs that I have as the new head of the service is to reinforce to staff the value that I place on the work that they do, the trust that I have in them and the importance of the professionalism and dedication that they show. I do not know whether the Crown Agent would like to add anything.

The Convener: Do you have anything to add, Mr Harvie?

David Harvie: Quite a lot of detail has been given, so it is difficult to add to that. In so far as I can do so, however, I add that the other thing to bear in mind is that we can partly address the matter at a system level. For example, if we look across the sheriff courts, we see that, in October, the number of appointments or places that prosecutors had to be on any given day varied between 85 and 120. We are working alongside the Scottish Courts and Tribunals Service to try to prevent peaks in demand, which create an impact and put pressure on the entirety of the system, including on prosecutors.

The other way that we are seeking to mitigate that—I refer back to an answer that I gave earlier—is to focus on those who appear in the courts most regularly. If we look back at the figures for deposes and senior deposes, we see that they were 285 in 2009, but they are 354 in 2016, which is an increase of 69. We are trying to make choices to allow as much flexibility as is possible within the constraints that are applied.

The Convener: And you are always mindful of work-life balance.

David Harvie: Absolutely. It was encouraging to see those results in the survey, but I am all too conscious that they represent just a step on a journey and that there is a considerable way to go. Perhaps, when we next meet, we will have an opportunity to discuss in more detail the fair futures work that we are doing, particularly in and around wellbeing. The most recent staff absence figures showed a slight drop, which is encouraging, but I take nothing from that. The figures are still far too high.

The Convener: Okay. Thank you very much. We have had a comprehensive discussion. We look forward to seeing you again in January.

I suspend the meeting to allow a change of witnesses.

11:27

Meeting suspended.

11:31

On resuming—

Crown Office and Procurator Fiscal Service

The Convener: Item 3 is our inquiry into the role and purpose of the COPFS. This is our seventh week of evidence taking. I welcome Michelle Macleod, who is Her Majesty's chief inspector of prosecution in Scotland, and Dawn Lewington, who is assistant inspector. I refer members to paper 3, which is the note by the clerk, and paper 4, which is a private briefing from the Scottish Parliament information centre. We also have a written submission from the chief inspector, which is much appreciated.

Ms Macleod, how long is your term of office?

Michelle Macleod (HM Chief Inspector of Prosecution in Scotland): It is an appointment of three years, with an option for that to be extended. I was fortunate enough to have the term extended, so I have about two and a half more years until the conclusion of my term.

The Convener: Thank you. I invite questions from members.

Mairi Evans: I would like to hear more about the work that you are currently involved in, chief inspector, how you report back and how the information gets out to the public. One of my main concerns, having seen the evidence that the committee has received, is that few people seem to be aware of your work. How do you intend to tackle that problem?

Michelle Macleod: I have looked at the submissions to the inquiry and listened to the evidence, and I have to accept that there seems to be an issue with awareness of the Inspectorate of Prosecution in Scotland and with the inspectorate's profile.

We have agreement that we may look at any part of the operation of the COPFS, with the purpose of enhancing and promoting excellence in the service for the public in Scotland. I act entirely independently in preparing and publishing reports, but the Lord Advocate can require me to undertake a review or inspection in relation to a particular subject. I can also choose to undertake a review

We look at areas where we perceive there to be the most risk, in terms of reputational damage, resourcing—the committee has been discussing that this morning—and the effective prosecution of crime. We take account of a number of factors when we analyse risk, such as current trends, performance data and the views of stakeholders in

the justice board and the criminal justice system generally.

We publish all our reports on our dedicated website, and there is a press release through Scottish Government comms. We get some interest in our reports, although some reports can be quite technical and legalistic, which might limit the interest that we get. For our last report into fatal accident inquiries, we interviewed 21 people from 21 organisations; in addition to COPFS staff, we interviewed defence solicitors and people from the shrieval bench.

People in certain fields are more familiar with our work than others are, and there are some surprising submissions, because we have done a lot of work with individual solicitors who work in different areas. The bar associations might not have a wide appreciation of what we do, but we try to engage with as many people in the criminal justice system as possible. Taking account of the submissions that are made, we have looked at how we can raise our profile and we have engaged with social media. We will put our reports out on social media in future. I will actively look at how I can raise the profile of the inspectorate by using that mechanism.

You asked about our current programme. We are currently working on our follow-up report on the management of time limits. When I took up my post, I introduced a rolling programme of follow-up reports—that approach has been identified as good practice for inspectorates—and we have continued with that programme.

We will embark on a follow-up report on our complaints handling and feedback report early next year. As part of that, we will look at the right of review for victims, which was introduced in July 2015. I feel that ensuring that that right has been properly implemented and that victims actually get the right that the legislation provided for fits in quite well with the complaints handling and feedback report. That work will be incorporated as a new part of the report.

Our main work, which we are scoping at present, is on the investigation and prosecution of sexual offences, which we have identified as a high-risk area. That will be the next substantive report that we embark on.

Mairi Evans: If, in undertaking investigations, you have recommendations for the COPFS, how do you work with the COPFS to ensure that those recommendations are implemented? What obligation is the COPFS under to implement the recommendations that you propose?

Michelle Macleod: There is no statutory obligation, but the purpose of the inspectorate has a lot in common with the purpose of the COPFS, in that we want to improve and to drive up

standards. In my time as chief inspector, I have completed four substantive reports, and all the recommendations in each of those reports have been accepted by the COPFS and the Lord Advocate. As I said, we also do follow-up reports. Following the publication of a report, the Crown Office tends to pull together an action plan, led by a senior civil servant. During the report process, I share my emerging findings and I discuss issues that we come across in the course of our inspection. I feel that that helps people to understand our final conclusions.

I have had no difficulty with the Crown Office accepting our recommendations, accepting the purpose of the recommendations or accepting what we are trying to achieve with the recommendations. That is probably not surprising, given that we both want to improve the service. If we identify a gap or a perceived risk, it would be quite dangerous for a Lord Advocate or a Crown Agent to simply fly in the face of that, unless there was another approach that they wanted to employ to remedy that mischief.

Mairi Evans: You said in your previous answer that the Lord Advocate can ask you to investigate specific areas or issues. I would be interested to hear some examples of that.

Michelle Macleod: The review of sexual offences will be my next substantive report. The former Lord Advocate asked me to look at organ retention as a priority, following public concern regarding the discovery of organs that had been retained without the nearest relatives being notified—I think that there were statements made to Parliament about that. When I took up my post, he was very anxious that I took an early look at that.

Our first report was therefore on organ retention, but it did not just address the system that had been in place to ensure that procedures were robust and to avoid such a thing happening again. As part of the inspection, it became apparent that, due to medical advances, there was no need—in all but exceptional cases—to retain organs. We highlighted that fact, which meant that it is now rare and exceptional for a whole organ to be retained. We did two audits to provide more reassurance for the Lord Advocate, and those audits found only one further case in which there had been temporary retention. All the procedures had been undertaken and the families had been notified. That was our first report.

Our second report was also requested by the Lord Advocate. I have to say that, if the Lord Advocate has identified something as a risk, that generally chimes with people in the COPFS and with me. The second report was on the management of time limits. That report is now one

of the drivers for us turning to look at the sexual crimes review.

I was conscious that those were technical reports that focused on process, and I decided that I would like to do a customer-focused report. There had not been an inspection of complaints handling, feedback and customer service, so I undertook that work. Following that, I undertook the fatal accident inquiries report, again in conjunction with and after discussion with the Lord Advocate. We had identified that there was no real evidence base for understanding what was causing delays in FAIs. There were a lot of anecdotal assumptions, but no evidence base, so we did a case review to give some reassurance on an evidential basis.

In light of the time limits and the increasing business in the High Court, 70 per cent of which we believe is sexual crimes, we have identified sexual offences as the next area that we want to look at, and I have instigated that work and am scoping the review at present.

Stewart Stevenson: We have heard of a couple of instances of the fiscal service asking you to look at something. I recognise the value of the service being able to ask you to do that, but is there a risk that, if it happens too often, your independent ability to decide your work programme could be overwhelmed?

Michelle Macleod: The findings and recommendations are solely attributable to me, so I am independent in relation to the outcome of any report, even if it was the Lord Advocate who requested us to look at the issue. It is not uncommon for there to be provision for ministers to ask an inspectorate to look at significant areas of risk. The Attorney General in England and Wales can ask HM Crown Prosecution Service Inspectorate to look at particular areas, just as the cabinet secretary can ask Her Majesty's inspectorate of constabulary in Scotland for an investigation into aspects of policing or the Scottish Police Authority's work. Given that ministers are accountable to Parliament, it is understandable that there should be an independent body from which they can seek reassurance or an independent review of a particular aspect of the COPFS that is causing some concern, whether that is a public matter or something that has arisen from a particular case.

I agree that the balance needs to be correct. We are a small inspectorate, so we do not have the capacity to do a great number of reports. We want to pick carefully the subjects that we decide to inspect, to ensure that we achieve the greatest value for the service and for Scotland. I return to my point that, if an area is causing concern for the Lord Advocate, for key stakeholders or for the justice board, we usually find that our views

coincide. I was very happy to consider all the areas that we were asked to review, as I felt that they were significant areas where we needed a proper review and examination of the subject.

Douglas Ross: I would like to follow up on some points that Mairi Evans made. I am slightly worried that you are talking about getting on social media to raise awareness. Your office has been established for 13 years. It was established in December 2003.

Michelle Macleod: Yes.

11:45

Douglas Ross: It was established to

"introduce a measure of accountability, which is essential for public confidence".

I will pick out a few examples from the evidence that the committee has received. The Scottish Borders Rape Crisis Centre stated:

"I have no awareness of IPS."

The Scottish Police Federation said:

"The Scottish Police Federation is not aware of the IPS and cannot comment on its resources or effectiveness."

An individual witness to the committee said:

"I have never heard of the Inspectorate of Prosecution."

Even more worryingly, the Sheriffs Association said:

"We do not receive information about the IPS or its practices."

I do not believe that a Twitter handle is going to overcome the problems of being in existence for over a decade but not being known by the legal profession in which you operate.

Michelle Macleod: I have been in post for three and a half years—

Douglas Ross: I am speaking about the role of the IPS, not about you as an individual.

Michelle Macleod: I fully accept that. I was making the point that we have listened to some of the feedback and we will explore different ways of raising our profile. We circulate reports to everybody who contributes to them and to anyone who we think has an interest in the criminal justice arena.

Douglas Ross: Does the Sheriffs Association have an interest?

Michelle Macleod: Undoubtedly. If it is not on our distribution list, that is a fault that we will look at. We had contributions from sheriffs across Scotland to our two most recent reports, on FAIs and the management of time limits. We speak to sheriffs, defence agents and, as you would expect, any stakeholder who has an interest.

As I have advised the committee, we are about to embark on the sexual offences review. We will definitely engage with and seek feedback from many of the stakeholders who have already given evidence to the committee. Although some have said that they do not have much awareness of us, we have had wide contacts. At any event that I attend, I speak to Scottish Women's Aid and the other people there. We see Police Scotland in just about every one of our inspections in some capacity. We saw a lot of people in relation to police work when we reviewed FAIs and we have started to speak to key stakeholders and the police about the scoping of our sexual offences review.

It is disappointing that there seems to be a lack of awareness of us, and we take that seriously. We will look at whether we have the right distribution list and where we might be missing a trick. It is not just about social media. We will ensure that our reports get to the right people who can help us to raise awareness of the organisation.

Douglas Ross: You have two full-time inspectors. Why do you feel that they have to be seconded from the COPFS?

Michelle Macleod: They do not necessarily have to be seconded from the COPFS. During the inspection of complaints handling and feedback, I recruited two associate inspectors. One had a police background and one had a health sector background. Clearly, for that inspection, there was less focus on legal issues and less of a requirement for inspectors to have a prosecutorial background; it was about customer focus. The associate inspectors came from a different organisational background, and that provided a very helpful perspective.

However, having secondees from the prosecution service also brings direct benefits, as they have the legal knowledge of the prosecution service. When we are looking at a subject such as the management of time limits, which is technical and legalistic and raises a lot of legal points, it is helpful to have colleagues in the team who have a prosecution background.

There are three different information technology systems in the COPFS in addition to the management information system, so having seconded deputies who know how to use the systems is very important. It allows us to interrogate the systems and it minimises the disruption to the COPFS, because we can go in and see how many cases of a particular type there are, access the files and download papers. With systems becoming much more electronic, we do not have to trouble fiscals' offices to get hard-copy papers in most cases, although it is necessary sometimes.

The inspectorate allows the seconded people to acquire skill sets that they perhaps would not gain doing day-to-day prosecution work. They can then take that back and, I hope, enhance their development and their work in the COPFS.

Depending on the subject matter, it is not necessary for a person to be seconded, but I need a period of continuity when people come in, so it tends to be easier—

Douglas Ross: You will understand my concern that you started off by saying that people do not have to have that background and do not have to be seconded from the COPFS, yet your whole answer said how good it is that they are seconded from the COPFS. I am now wondering whether, when their period is finished, they will just be replaced by other people from the COPFS. You have spoken about the benefits, but what are the risks? They are investigating and scrutinising a body that they will return to work in, and surely that can be seen as a risk.

Michelle Macleod: As I pointed out, the findings and recommendations are solely attributable to me, and I am an independent person, so—

Douglas Ross: Sorry, but you have an extremely small team. There is you, on four days a week, and you have an assistant. You have three investigators, one of whom is part time, so you have only two full-time investigators and they are from the COPFS. Although your name might be printed at the bottom of the reports, with a team that size, it would not take a genius to work out where the findings of investigations have come from.

Michelle Macleod: Obviously, with a team that size, we all have to play a critical part but, at the end of the day, when I make recommendations and set out findings, if any issue is raised with them, I will discuss that with the COPFS or the Lord Advocate. As I said, it is possible to recruit associate inspectors, perhaps on a temporary basis, if the subject matter lends itself to that. For example, in more specialist areas such as economic or IT crime, I might have to recruit a financial specialist or IT expertise to help with an inspection.

Since I took up the post, I have looked at different models for staffing the inspectorate. That is why I recruited the two associate inspectors. However, it takes a bit of time for people to come in and get up to speed on how to do inspection work. If I keep turning over staff, that leads to inefficiencies. I am trying to get the right balance for a small inspectorate. We have seconded the current two inspectors for a two-year period. Once that finishes, depending on our future programme, I may look to other avenues, such as the Scottish Government, to recruit inspectors. I am aware that

HMICS has a more varied background, but it has a bigger team.

That has been the pattern, but it is not fixed in stone. As I said, I have already tried different models and we will explore other possible models.

Douglas Ross: I want to continue your discussion with Mairi Evans and Stewart Stevenson about the Lord Advocate's involvement, although my question is not so much on the issue of directing inquiries, which you have covered. Am I correct in thinking that the Lord Advocate is presented with all reports in draft form?

Michelle Macleod: No. The annual report is presented in a draft form to the Lord Advocate.

Douglas Ross: Right—sorry. If he gets your annual report and sits down and reads it and does not like something in it and he says, “Would you mind taking that out?”, are you in a difficult position? Would you change something in your draft annual report, which will then be laid before Parliament, given that the Lord Advocate's office is also your employer?

Michelle Macleod: That has never happened with the three annual reports that I have done.

Douglas Ross: No, but it is useful to tease that out.

Michelle Macleod: The annual report is a factual summary of the work that has been done and it is not particularly controversial.

Douglas Ross: Maybe that is why it is not controversial.

Michelle Macleod: Well, it is more factual.

With our substantive reports, as I say, we try to share emerging findings with the key players when we are doing those reports and, at their conclusion, they are given to the Crown Office for any comments on factual accuracy, and only on that. I give the Crown Office a period of time to read through a report and it will advise me if it thinks that there are any issues of factual accuracy. If there are, I would obviously—

Douglas Ross: Can you understand why there could be a conception—or a misconception—that there is not enough of a division between your office and the Lord Advocate's office? He appoints you, agrees to reappoint you and agrees your terms, and finally you present to him a draft report for him to then present to ministers and members of Parliament. He is allowed to comment on that report, although that may never have happened. The fact that you said that it was a fairly generic factual document suggests that it could go into greater detail and depth if there was more of a division between your office and the Lord Advocate's office.

Michelle Macleod: The more substantive reports, which follow an inspection that we have done, are the ones in which we make criticisms of the COPFS, identify risks and identify a need for a service improvement.

Douglas Ross: So the annual report that comes to MSPs and ministers contains no criticisms of the COPFS.

Michelle Macleod: It contains a summary and a link to the reports that have a more hard-hitting purpose, in the sense that they are the reports that we hope will make a difference. The annual report is a summary of the reports that we have done. Its purpose is to inform the public and MSPs of the reports and it contains links to them and the work that we have done in the year, which is the important part. It also allows me an opportunity to explain the direction in which the inspectorate is going, and it contains factual information about the role of the inspectorate.

I can speak only from my experience and say that there is no suggestion of anyone influencing or changing any of my recommendations or findings; that has never happened.

Douglas Ross: I should say that my question is not about the current office-holders. However, it is not just me who is asking this question. The Law Society of Scotland raised a similar concern in its submission to the inquiry.

My final question is on the example that you give in paragraphs 18 and 19 of your submission. You say that you were looking at an issue that politicians and people in communities have raised: prisoners with mental health problems. You thought that it would be a good idea to look into that with HMICS. At the end of all that, you identified that there were too many difficulties in identifying a cohort of prisoners. I find it disappointing that that has been pushed aside—or that, as you say, there are significant delays. How long did the process take? Why should you and your office face those difficulties while trying to improve the justice system? It was troubling to read that.

Michelle Macleod: The scoping period in which we worked with HMICS was probably about two to three months. We met substantial numbers of organisations and we looked at the issue because we were aware that it was a priority for many people in the Parliament. The justice board raised the issue with us and HMICS to see whether we could undertake some kind of inspection. I was very keen to undertake an inspection in this area, for a number of obvious reasons.

We also wanted to do it for the police, because it is a criminal justice issue. It is not just about the prosecution service and the alternatives that it can offer. It is about what happens before someone

even comes into the system and what options are available to the police.

We discovered a myriad of different pilots and innovations. In terms of the fiscals, we did a short but relatively comprehensive study of diversion schemes and we looked at possible diversions. I am going slightly off-subject here, but we found that there was not a level playing field and there was a need for a more consistent approach to having diversion schemes available throughout Scotland. The provision was patchy rather than coherent.

The difficulty was that the criminal justice system in Scotland tends to be crime centric. The information that is provided in police reports is about the type of crime. We can identify that the crime was knife crime or domestic abuse, but there is less information about the offender. The system is not offender centric. At the end of the process, we produced a strategic paper to help to inform the justice board of the gaps that we had identified. We would be happy to go back and look at whether those gaps can be rectified so that we can identify a cohort and see what works, what does not work and where the advantages are.

12:00

Douglas Ross: You say at the end of paragraph 19 that the issue of prisoners with mental health issues

“will be re-visited as part of IPS’ future work programme”,

which suggests that you have overcome some of the problems. Were there problems because you tried to do the work alongside HMICS? Why were you unable to do the joint investigation that you started off wanting to do? Will your ultimate investigation be poorer for that?

Michelle Macleod: The gaps were not within our gift. The work that we identified has now been progressed by Police Scotland, which is working with other persons in the Scottish Government and the justice board to take forward some of the issues that we identified in our strategic plan.

Information about people who have mental health issues is simply not recorded systematically, and Police Scotland’s databases were not sophisticated enough to allow us to identify persons. The justice board has been talking about the issue and is considering more offender-centric methods of recording crime. That was what we flagged up. We were very disappointed. I have a paper that I can show the committee that demonstrates all the different options that we tried in order to find a robust sample.

The criminal justice board is keen for us to go back and do this—with or without HMICS,

although obviously it makes more sense to do it with HMICS. Once those problems have been overcome, we will look at it. I can provide the committee with some background information on the different areas that we looked at. We were unable to get enough data to allow us to do something that would add value. At the end of the day, we want our findings to be evidence based. That was my problem—there was not enough information to allow us to make evidence-based findings.

The Convener: Liam McArthur, do you have a supplementary question or is it a substantive one?

Liam McArthur: It is a supplementary on this issue. I have another question, which I will be happy to come back to.

The Convener: I will bring you in after Stewart Stevenson.

Stewart Stevenson: I want briefly to nail down the issue of where you draw your staff from. I use my personal experience and a phrase that was written in my annual appraisal in 1971, which said:

“Mr Stevenson is excellent at solving problems, especially when he creates them.”

Does that exactly capture why it is right that we have people from the fiscal service as part of the inspectorate? They will best understand where the bodies lie.

Michelle Macleod: There is an element of truth in that. You sometimes need to know the questions to ask. If you do not know something, it makes it difficult to have an in-depth examination.

The Convener: It would be good if the answers were a little more brief, without curtailing anything.

Liam McArthur: I will not comment on Stewart Stevenson’s past employment appraisals.

Stewart Stevenson: There are lots more.

Liam McArthur: I am sure that there are.

Under the Criminal Proceedings etc (Reform) (Scotland) Act 2007, the inspector is appointed by the Lord Advocate. We have already touched on the extent to which the Lord Advocate can invite the inspector to look at particular issues and we have discussed the extent to which the relationship with the COPFS is close in terms of where you derive your staffing from. We have also touched on the lack of awareness. Does that not reinforce the point made by the Law Society of Scotland that we need more individuals involved in the inspectorate who are not procurators fiscal or employees of the COPFS?

Clearly, there are issues in the COPFS, and we will come on to those substantive issues, but at the moment no one—whether representatives of sheriffs, the Law Society of Scotland or victims’

groups—is seeing the inspectorate as the route through which those issues are best addressed.

Michelle Macleod: I should probably have mentioned that the position of chief inspector is advertised nationally and is open to anybody who has the relevant qualifications and skills; you do not have to be a prosecutor to apply to be the chief inspector. The process is open and transparent, involving an assessment centre and an interview panel. Following that, a recommendation is made to the Lord Advocate so—

Liam McArthur: But what about what we have heard about the issues in relation to transparency and some of the concerns around independence? I take the point that those who will know where the bodies are buried are those with direct experience, but we have heard quite a lot of evidence in recent weeks about others who have an understanding of how the COPFS works and very clear views about how it could be made to work better but who would not necessarily suffer from the same perception, or misconception, that they have a dog in the race—that they owe some allegiance to the COPFS. They would help to address the point about independence and might also raise awareness of what the inspectorate does among the wider stakeholders from whom we have been hearing weekly during our inquiry.

Michelle Macleod: As I said, it is open to anybody to apply if they have the relevant qualifications. I went through the process and was appointed, but I expect that other people were in the process who may not have come from a prosecutorial background. The process is undertaken by the Scottish Government and then, as I say, a recommendation is made.

I have alluded to some of the benefits of having been a prosecutor—you know the right questions to ask and the issues that cause difficulty and, when somebody says that High Court business is 70 per cent, you have an understanding of what that really feels like and how it can be managed.

I take the point about the level of awareness of the inspectorate's work. As I say, we are quite a small, compact inspectorate and we do not produce as many reports as some of the other inspectorates because of that. However, we engage with stakeholders relative to the subject matter. The sexual offences review is probably one of the biggest reviews that we will do for some time. We will be engaging with a number of people who have contributed to the committee's COPFS inquiry. We are very aware of some of the issues that have been raised in this inquiry from our other reports, so we have the benefit of taking into account, for example, the issue that arose through the complaints handling review about a lack of customer focus, which has been mentioned in

submissions to the committee. We will look at victim representation and disclosure of sensitive personal records and, again, we will liaise with various stakeholders who gave evidence to the committee on that.

This is a wider-ranging subject with a lot of different facets to it. I hope that our looking at it will go some way towards heightening awareness. However, I think that having the experience and the knowledge is sometimes what enables us to get under the surface of some of the issues. I am not saying that it cannot be done by other—

Liam McArthur: I understand that there is value in having the experience and a knowledge of how it works but that does not necessarily give people confidence in the challenge function around how things can be made to work better or the option to adopt an entirely different approach to deliver the objectives.

In a sense, the concern is that you understand the mechanics and how it ought to operate because of your intimate experience of it, but you do not necessarily have an investment in making it work differently and better.

The Convener: I will just point out that there is no reason why, as well as Ms Macleod answering, Ms Lewington cannot also offer her views as the assistant inspector if she wants to.

Dawn Lewington (HM Inspectorate of Prosecution in Scotland): Thank you, convener.

Michelle Macleod: If I may, I will briefly go back to the organ retention report. When we were looking at that issue, there was significant public concern about it. The overwhelming feedback from discussions with people was to put in place an almost overly bureaucratic system, because people were nervous about the issue and they felt that that was the best way to deal with it.

We went out and gained an objective overview of what happened. We spoke to pathologists and realised that, actually, there was no need to take organs, although that had not necessarily been highlighted within the fiscal service and with the appropriate bodies.

We turned that on its head, and the report advocated a streamlined system whereby organs would be retained only in exceptional cases, with a mandatory reconciliation between the service providers and the COPFS that addressed the particular problem. Rather than throwing paper and bureaucracy at it, we looked at the simplest possible approach.

My prosecution background did not really apply in coming up with that decision. I thought that it was the best way forward and the report was accepted in its entirety, despite it not being what was anticipated or envisaged in the first instance.

Another example is—

The Convener: Can I stop you there? I am conscious of the time.

Michelle Macleod: Yes—sorry.

The Convener: Is the short answer to Liam McArthur's question that you will look at widening the membership beyond the prosecution service? It certainly seems to us that some of the best evidence that we have had has been from defence solicitors, which is encouraging.

I am conscious that you have not commented yet, Ms Lewington. Would you like to add something?

Dawn Lewington: I am relatively new to the inspectorate as I have been in post for only about six months, although that is against a background of being a fiscal or a depute for some 22 years. If it assists the committee at all, I can say from my personal experience that I felt quite a difference when I moved into this role. It caused me to step back and gave me more objectivity, and that came naturally.

The inspectorate has some of the same goals as the COPFS, as we all want to improve the service for the public and for staff—some of the issues that have arisen are staff issues. However, there are different functions and there is a separation. That is certainly clear to me from my experience so far.

The Convener: Thank you. Ben Macpherson is next, to be followed by Rona Mackay.

Ben Macpherson: The points that I was looking to raise were covered in the answer to Douglas Ross about paragraphs 18 and 19, convener. I, too, will be interested to see the background documentation on that, and I look forward to reading it.

Rona Mackay: Chief inspector, have any concerns been raised with you regarding how the Crown Office and Procurator Fiscal Service handles domestic abuse cases? Do you agree that there is a culture of zero tolerance and that there is some pressure to prosecute, perhaps including in cases where there is a lack of evidence?

Michelle Macleod: We have considered domestic abuse as a possible area for inspection, but we are aware that it is already monitored by a number of parties. The Auditor General spoke about Audit Scotland's role in looking at performance and the value for money of cases proceeding through court. I did not hear all of the Lord Advocate's evidence this morning, but I know that he has a robust policy on domestic abuse and that if there is sufficient evidence, there is a presumption that there will be proceedings.

It is not for me to stray into policy areas. All that I would say in that regard is that prosecution policy is a legitimate tool to try to change behaviours. We have seen it work in the past with knife crime, drink driving and hate crime.

Assistant Chief Constable Higgins recently told the committee in evidence that 80 per cent of the cases that the police report to the fiscal result in a conviction. That high percentage suggests that the decision making is pretty spot on. Given the number of people who are monitoring domestic abuse, we felt that we could probably add less value in that regard than if we looked at the investigation and prosecution of sexual offences, where there are a number of issues that we would like to explore.

We have had the issue on our radar. We are conscious of all the discussions that have taken place and we have been listening to the evidence to the committee.

I do not know whether the Lord Advocate mentioned it today, but there is a prosecution code that prosecutors work to, and no case should be taken without sufficient evidence. That was borne out by some of the Lord Advocate's evidence, and he has indicated that he is keen to place trust and faith in prosecutors.

12:15

Rona Mackay: Are you happy with the independent review panel's position on domestic abuse and sexual crimes?

Michelle Macleod: The independent review panel is relatively new to the COPFS. As part of our discussions with the Crown Office, we look to see where it adds value and at continuous improvement. We were quite impressed by the concept of the review panel in improving the openness and transparency of decision making.

I have not sat on the review panel and I have not seen its paperwork, but we will probably see the benefit of its work when we carry out our sexual offences review and see how it works in practice.

Mary Fee: My questions follow on quite nicely from my colleague's question. Your submission mentions that you have recently embarked on a review of the investigation and prosecution of sexual crimes. The Crown Office is providing more services in specialist areas. First, do you intend to look at any of the other specialisms? Secondly, do you have any concerns that the increasing use of specialist courts and services dilutes the Crown Office's core function?

Michelle Macleod: There have probably been specialisms in sexual offences since the national sexual crimes unit was set up in 2009. It was one

of the first areas to attract specialist criteria, and all the deputies that are required to be involved in work relating to sexual offences require accreditation, special training and so on.

The committee will be aware that the Crown Office has recently restructured—yet again. We are looking at the High Court's work on sexual offences. The review will incorporate how the functional hubs are working under the new structures. We will also look at the governance arrangements that have come in with the new structure and at the new teams that deal with the offences. Therefore, we will look at the specialist role a bit more widely and how it adds value to cases at each stage of the proceedings.

I caught the end of the Crown Agent and Lord Advocate's evidence. Clearly, in certain cases, having a specialist who understands the dynamics of the different aspects of domestic abuse and sexual offending is extremely important. We will look at the NSCU as part of the review to see how it fits into the wider scheme of specialisms.

On the general Procurator Fiscal Service, I have no input into the budget allocation or its prioritisation by the COPFS. All that I can do is, when I look at a particular area, to identify where I see a training or staff need or some other measure that needs to be put in place. For example, in relation to FAIs, we came across the frustration that many nearest relatives experience because there is no continuity—there is no single person to take them through the process from the beginning to the end. We made a recommendation on that, which has been accepted, and we acknowledge the resourcing implications for the COPFS.

We make comments on the resourcing of individual areas, but I have no input into the prioritisation of the overall budget. It is more Audit Scotland's role to look at financial sustainability.

Mary Fee: What is the timescale for the review that you have recently started?

Michelle Macleod: We are about to conclude the scoping exercise, which will allow us to plan the timescales. At the moment, we are considering the sample size for the case review that we want to do. Once we have decided that, that will inform how long the review will take. I can certainly provide information on timescales to the committee once we have reached a conclusion.

The Convener: Chief inspector, why have senior managers become invisible? I am referring to the comments in your annual report.

Michelle Macleod: The annual report highlighted concerns, flagged up by COPFS staff, that came out of the consultation exercise in the shaping the future programme that the COPFS initiated. The concerns were about a lack of

visibility of managers and about resilience. The ring fencing of sheriff and jury and summary business meant that there was less flexibility and resilience when there were particular staff shortages for a particular reason. Those things were consequences of the move to the federation structure, which started in 2012, and at the end of the consultation exercise were acknowledged by the COPFS senior management as resulting from unintended consequences of the federation process.

Obviously, the Crown Office has moved to a functional model to deal with core work. As part of that, local courts have been reintroduced, again combining sheriff and jury and summary business. It is still very early days and that still has to bed in. Obviously, we keep a watching brief on all those areas of the COPFS, but I hope that that will now allow for more resilience in the sheriff courts.

On the visibility of procurators fiscal, they are aligned with the six local sheriffdoms—there is a procurator fiscal for each sheriffdom—and that has reinstated the link between the courts, the police and the local fiscals. Perhaps that was spread too thinly for the summary level, as the federation structure included large structures in the east and north-west, for example.

The criticisms, comments and feedback have been taken on board, and I hope that the new structure is seen as a way of addressing them.

I heard the Crown Agent allude to the fair futures programme and other issues that came out of the consultation, such as wellbeing issues that impact on the quality of life of staff. Those issues will be taken forward under the fair futures programme. We are keen to keep an eye on that. I have had discussions with the director of human resources on what workstreams are involved in that. Maybe in due course we will look at how that was developed, what outcomes were identified and how they were implemented. There may be scope for us to do something in due course. We are definitely watching how that progresses.

The Convener: I asked the Auditor General this question, as well. Given all that has come out of the inquiry—a lot of has come out of it—has it changed how you will approach your inspections? The approach has been very much thematic as opposed to holistic—perhaps not under your tenure, but it certainly was before. Would you change anything about how inspections are approached?

Michelle Macleod: As I said in my annual report, one of the issues is that since I took up my post things have never stopped changing. The structures have changed since 2012; they have moved on. It has sometimes been hard to make a recommendation when things have kept moving

forward. However, I have alluded to the fact that, now that we have functional teams in place for sexual offences, that gives us an opportunity to look more at that structure as well as the theme of sexual offences. I hope that we will look at the new structural regime that has been put in place as well as the thematic subject matter of sexual offences.

The Convener: What is the biggest challenge for the Crown Office and Procurator Fiscal Service?

Michelle Macleod: One reason why we decided to look at sexual offences was that we identified that, with an increasing volume of serious crime, 70 per cent of which is sexual, global crime transcending national boundaries, and everything becoming much more complex in the management of High Court cases, there was a risk of those cases being lost in times of budgetary constraint, as we said in “Thematic Report on the Management of Time Limits”. Pre-petition work has continued to increase. When we looked at the matter in that report, cases involving sexual offences were, on average, 50 per cent of the High Court workload; they are now 70 per cent of it. We picked that issue because we think that it is a significant risk area, it is high profile, and we hope that we can identify areas in which we can make improvements.

The Convener: So you will be analysing and looking behind that. That sounds like an excellent way forward. I hope that everyone will know who the inspector of prosecution is when you complete that work.

Michelle Macleod: I hope so.

The Convener: That completes our questioning. Ms Lewington, will you return to the service once you have completed your secondment?

Dawn Lewington: It is just a two-year secondment, so yes; that is my plan.

The Convener: Okay. Thank you both very much for appearing before us.

We will now have a brief suspension to let the witnesses go.

12:24

Meeting suspended.

12:25

On resuming—

Subordinate Legislation

Lyon Court and Office Fees (Variation) (Devolved Functions) Order 2016 (SSI 2016/390)

The Convener: Agenda item 4 is consideration of a negative instrument. I refer members to paper 5. Do members have any comments?

John Finnie: I think that many people find it strange that we are still talking about these things and that an individual cannot just have a coat of arms if they want. However, I want to comment on paragraph 9 of the policy note, which uses a term that I do not know that I understand and that I do not know is helpful. It says that

“A joint, informal consultation ... took place”.

I think that we want formality if we are dealing with legislation that has expenditure implications.

The Convener: I ask the clerk for his advice on this, because he has seen that before.

Peter McGrath (Clerk): I have little to add to what the member said, except to say that I have seen that wording used before in relation to consultations on instruments.

The Convener: Mr Finnie, do you want to make a recommendation that it should not be used?

John Finnie: It just seems entirely out of kilter with the subsequent paragraph, which lists a group of people and representatives who have been consulted. I do not know how informal the consultation was. Was it just someone picking up a phone? I presume that there is a list somewhere. We should just keep things formal if we are talking about legislation. That is all I wanted to say.

The Convener: Right—that is noted.

Stewart Stevenson: For information, I note that the income that the Court of the Lord Lyon receives from its efforts amounts to £60,000 a year. In other words, we are not talking about a very large amount of money. I happen to know that the application for a coat of arms costs in the order of £3,000, so we are probably talking about a very small number of people. I am not certain about that, but maybe that is why there was an informal consultation.

John Finnie: For the avoidance of doubt, my comment is about the fact that that term has been used about a piece of legislation—it is not about the actual bit of legislation. We should have formality in relation to legislation.

The Convener: That is noted, but are members content not to make any recommendations?

Members *indicated agreement.*

Justice Sub-Committee on Policing

12:28

The Convener: Under agenda item 5, we will consider a report back from the most recent meeting of the Justice Sub-Committee on Policing, on 15 December 2016, when it discussed a draft letter to the Justice Committee on financial planning for 2017-18 in relation to the police budget. I invite Mary Fee, the sub-committee convener, to report back. Following her verbal report, there will be an opportunity for brief comments or questions. If members wish the Justice Committee to consider any specific areas of work in more detail, that can be discussed under the work programme item, at this meeting or at a future meeting. I refer members to paper 6.

Mary Fee: The Justice Sub-Committee on Policing met on 15 December 2016 and agreed the content of our letter to the Justice Committee on Police Scotland and the SPA's financial planning for 2017-18.

A copy of the letter is included in today's meeting papers. As members will see from the letter, we reached conclusions in relation to the following issues: the forecast overspend of £17.5 million for 2016-17; communicating effectively with staff about financial plans; achieving efficiency savings; tackling new and emerging crimes; undertaking non-criminal work, such as assisting those with health issues; and VAT liability.

I hope that the letter speaks for itself, but I am happy to address any questions or comments. The committee has previously agreed that the letter will be included as an annex to its report to the Finance and Constitution Committee on the 2017-18 draft budget.

The Convener: Do members have any questions?

Douglas Ross: After our discussion at last week's Justice Committee meeting about having more information, I thought that the letter was very useful and that it provided a good summary.

The minute of the sub-committee meeting, which was tabled today, includes a reference to a division that took place. For those of us who were not at that meeting, can I ask whether the division was about Margaret Mitchell asking for the amendment to be included, while the other six members did not want that amendment to be included? Did the members vote against it because that was not said? Why did they vote against it?

12:30

Mary Fee: Last week's sub-committee meeting was held in private.

The Convener: Anything that happened in private—

Douglas Ross: Is the letter private?

The Convener: No. The letter is tabled and it will be on the website as an explanation of what came out of that meeting. Any discussions that took place were in private, so it would not be legitimate for Mary Fee to be questioned about them at this point.

Douglas Ross: What can we do with the minute, then?

The Convener: The minute is a matter of record and that stands. We are now looking at whether there are any issues in the letter, or areas that the sub-committee looked at, which we might want to include for discussion later in our work programme—I suspect that there are.

Stewart Stevenson: The sub-committee's work should absolutely feed into the work programme of the main committee, and the main committee should give consideration to whether it wishes to draw the sub-committee's attention to matters that it wishes the sub-committee to address. After all, it is a sub-committee of the main committee.

The Convener: I remind members that we formed the sub-committee so that the whole Justice Committee could be informed and have a view on policing issues, which are very important.

Mary Fee: The sub-committee will meet on 12 January and we will look at our work programme then. If members have any issues that they think that we should look at in our work, I will be happy to be told about them.

Douglas Ross: There is an issue that I had wanted us to look at as a whole committee. If you are not setting your work programme until 12 January, do we have to wait to see what you will look into further?

There is still some dubiety about the i6 issue in the letter about the sub-committee meeting. The cabinet secretary said that the i6 and IT savings were not included in the large savings that Police Scotland has to make, yet the Association of Scottish Police Superintendents said that there were issues with that. Can the full Justice Committee look at that, or does the sub-committee plan to look at it?

The Convener: We can consider anything that is in the letter under our work programme.

Douglas Ross: We should look at that, because—from the sub-committee's letter—it seems that there were differing opinions about

where the IT savings are allocated and about how much public money has been saved or spent.

The Convener: That is noted. Is the committee content with that approach?

John Finnie: I do not know that there is the uncertainty that Douglas Ross suggests about that issue.

It is very important that the sub-committee is seen as being inclusive and that no members of the main committee feel disenfranchised. Equally, we need to avoid duplication. However, if we are making bids for the work programme—the work programme will be on the record, whereas our discussion about it will not be on the record, unfortunately—I would be very concerned if attention was not paid to surveillance and undercover policing, either by the substantive committee or by the sub-committee. There are almost daily revelations about the impact of surveillance and of undercover policing—there were further revelations yesterday—and there is widespread public concern about that issue. People who are legitimately pursuing issues about being deceived are very frustrated.

The Convener: That is duly noted. As there are no other questions, we will move into private session. I wish everyone a merry Christmas and a relaxing festive period.

12:34

Meeting continued in private until 13:05.

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