



OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 23 October 2018

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot or by contacting Public Information on 0131 348 5000

Tuesday 23 October 2018

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
POLICE AND FIRE REFORM (SCOTLAND) ACT 2012 (POST-LEGISLATIVE SCRUTINY)	2
PRE-BUDGET SCRUTINY 2019-20	32
OFFENSIVE WEAPONS BILL	52
CRIME (OVERSEAS PRODUCTION ORDERS) BILL	56
EUROPEAN UNION (WITHDRAWAL) ACT 2018	58
Law Enforcement and Security (Amendment) (EU Exit) Regulations 2018	58
JUSTICE SUB-COMMITTEE ON POLICING (REPORT BACK)	60

JUSTICE COMMITTEE

26th Meeting 2018, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*John Finnie (Highlands and Islands) (Green)

*Jenny Gilruth (Mid Fife and Glenrothes) (SNP)

*Daniel Johnson (Edinburgh Southern) (Lab)

*Liam Kerr (North East Scotland) (Con)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Liam McArthur (Orkney Islands) (LD)

*Shona Robison (Dundee City East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Stuart Aitken (Fire and Rescue Services Association)

David Harvie (Crown Office and Procurator Fiscal Service)

Derek Jackson (Unison Scotland)

Philip Lamont (Scottish Government)

Chief Superintendent Ivor Marshall (Association of Scottish Police Superintendents)

Chris McGlone (Fire Brigades Union)

Calum Steele (Scottish Police Federation)

Rt Hon James Wolffe QC (Lord Advocate)

Humza Yousaf (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament Justice Committee

Tuesday 23 October 2018

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Margaret Mitchell): Welcome to the 26th meeting in 2018 of the Justice Committee. We have received no apologies.

Agenda item 1 is a decision on taking business in private. Does the committee agree to take in private agenda item 8, which is consideration of our approach to a forthcoming Scottish statutory instrument?

Members *indicated agreement.*

Police and Fire Reform (Scotland) Act 2012 (Post- legislative Scrutiny)

10:00

The Convener: Agenda item 2 is an evidence-taking session on post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012. This morning, we will focus on the views of the unions and staff associations representing the police and fire services. I refer members to paper 1, which is a note by the clerk, and paper 2, which is a private paper.

I welcome to the meeting Chief Superintendent Ivor Marshall, president, Association of Scottish Police Superintendents; Chris McGlone, executive council member, Fire Brigades Union; Stuart Aitken, Fire and Rescue Services Association; Calum Steele, general secretary, Scottish Police Federation; and Derek Jackson, branch secretary, Scottish Fire and Rescue Service branch, Unison Scotland.

I thank everyone for their written submissions, which are always helpful to the committee before the witnesses appear to give evidence. I also know that some of you had train problems, and I thank you for negotiating them and managing to get here on time.

We will go straight to questions from members, starting with Rona Mackay.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Did you think that the Scottish Government's initial case for reform of both services was sound, or did you have any concerns about it at the time? If so, do those concerns persist?

Calum Steele (Scottish Police Federation): We need to look at the realities of the public sector landscape when the case for reform was being developed. We had the onset of austerity, at least from a Scottish perspective, but the effect of diminishing budgets had started to be felt a number of years before.

It was probably unfortunate that austerity and what it meant for public sector finances were not front and centre in the arguments for reform. Much was made of the argument that it would improve services and so on, but if that had been the case, reform would have happened many years earlier than it did. From a policing perspective, the former Cabinet Secretary for Justice Kenny MacAskill is on record as saying—more times than he would care to remember, I suspect—that if it had not been for austerity, he would not have pursued the creation of a single police service. That is an

important context when it comes to the police and, indeed, the Scottish Fire and Rescue Service.

As for whether reform has delivered a better and more effective police service, I think that it has to some extent, compared with what we would have been facing had we not done it. However, is policing better now than it was a number of years ago, certainly before the creation of the single service? I think that if you look at it, absent the reality of finance, you will find that it is, by any measure, much better in some areas but not in others.

Rona Mackay: Might that be due to the changing nature of policing?

Calum Steele: No, I do not believe so. Policing is a profession that changes dynamically on a daily basis, and the service has always been adept at dealing with that. There has certainly been a change in the demand on the police service—I do not think that anyone will pretend otherwise. Some of the challenges that prevail today are undoubtedly a consequence of our business case, which did not take due cognisance of the realities that we were facing. I am sure that my Unison colleagues have argued at a previous session or will argue at a session following this one that the outline business case was seriously flawed in terms of the financial savings that were contained within it.

Those savings were also drawn up against the background of what you might call a routine policing environment—whatever routine might mean—and took no cognisance of the demands that would be placed on the police service by the terrorist threat, which did not exist to the same extent as it does now. It certainly did not take into consideration what the service uncovered when it looked under the bonnet of the former police forces and the state of much of what they had left for others to deal with.

Derek Jackson (Unison Scotland): Speaking on behalf of support staff this morning, I have to say now that we are into year 6 of the new service that we have faced some hard and trying conditions. A lot of change has been thrown at staff but, through the sheer dedication and loyalty of those staff, the services have come through better. There was a strategic intent behind, for example, the closure of many buildings, but people now have to travel for a considerable amount of time to get to their workplaces, and the work-life balance side of things has changed a bit as a result.

In general, there have been benefits, compared with the approach that was taken when we had the eight forces. Certainly as far as Unison is concerned, one benefit is the recognition that we are now getting in the service. We now sit on a lot

of forums and boards and at a lot of tables and meetings.

Over the past five years, we have gone through significant change, mainly with regard to terms and conditions, which were agreed in 2015. We went through a job evaluation process, which was to the detriment of a considerable amount of people, and we have had people leaving the service because they cannot afford to work for it. As a result, we have lost a lot of corporate knowledge and expertise over the past five or six years; there are specific jobs that we are struggling to fill from outside, but we have introduced a marketplace supplement to encourage people from the private sector to come in. However, although there are some negatives, we as a union recognise that we have a lot more involvement on forums and boards, at tables and in meetings.

At the moment, the service is conducting a staff survey that closes on Sunday, and it will be interesting to see the outcome. We have been trying our best to encourage members to take part in it, because if the service does not know that it is not working, how can it fix things? A lot of people are just sitting back, thinking, "It's the same old same old." After what has happened over the past five years, trust has been lost on the support staff side, but I hope that the morale of the staff will come through in this survey, which concludes on the 28th.

Rona Mackay: It is encouraging to hear that you have more of a voice at board meetings and so on.

Chief Superintendent Ivor Marshall (Association of Scottish Police Superintendents): On your question whether we thought the initial case for reform was sound, it is important to remember the context at the time, because it is easy to look back with rose-tinted spectacles and forget some of what was going on. There were significant operational drivers for change such as the need to build capability and capacity across policing, and the evidence that we have seen over the past five and a half years suggests that the move has been successful in creating the ability to respond to major and changing threats to national security and to counterterrorism and other strategic issues.

There were definitely financial drivers at the time; indeed, Mr Steele has already referred to the austerity measures that were starting to affect the public sector in Scotland. That felt like a significant driver of the actual change process. As for the financial business case, I personally think that it has not stood up to the test of time, because the projected savings have not been realised. The service has had to operate with a structural deficit in its budget for the past five or six years, with the

transformation budget that was intended to make the changes used to patch the shortfall. Certain constraints that arose from the fixed costs of having 17,234 officers made it extremely difficult to achieve some savings; concerns in that respect have persisted, but thankfully it looks as though the service is starting to address the issue to ensure that we are operating on a sustainable budget footing. However, we still need investment in order to move from integration to transformation—that is an on-going piece of work.

There were and continue to be concerns about the scale, complexity and scope of the change and the pace at which it was conducted initially. The timescale from the introduction of the bill to its going live was very short, given the scale of a change that we are still living with the consequences of five or six years later.

Those are my key points. There was definitely a focus on the structural and procedural elements, as I think has been recognised and conceded, but for a business that is about people—in other words, people delivering services to the citizens of Scotland—there was not really a focus on officers and staff. Thankfully, the service has now recognised and started to address the issue. The readiness for change in the hearts and minds of the officers and staff was probably overlooked in the first three to four years.

Stuart Aitken (Fire and Rescue Services Association): Broadly, the move to a single fire service was welcomed, but the benefits that could have come from it—more resources, standardisation of practices and so on—have not emerged. We are still talking about harmonisation and transformation—those issues have not been sorted in the fire service.

As for the retained service, it has unique and real problems with recruitment and retention, but those issues go way back before the move to a single fire service. Indeed, there were parliamentary reviews on the matter as far back as 2003. We hoped that the issue would be fixed with the single fire service, but because of the financial restraints, I do not think that that will be possible. In fact, it has been shown that it is not possible. We still suffer from a lack of training and equipment, and those things have just not materialised. As for the whole picture, I think that it can be done, but it has not been done so far.

Chris McGlone (Fire Brigades Union): From the fire service point of view, the Christie commission sounded the initial alarm and set the context for the organisations. They agreed with the contents of the Christie commission report and the issues that it raised, but what the commission said—which was, “You have to innovate, collaborate and transform or you will not survive in your current form”—set the hares running. It set

the pace of the initial reform and the movement to the consultation on where the Scottish Fire and Rescue Service went.

Certainly, the initial case was fairly sound, and it was supported initially by the Fire Brigades Union. As for whether we think now that it was the best option, it appeared to us to be the best one at the time. Now that we are five or six years down the line, would we look at things differently? Possibly. Would we consider a three-service structure instead of a single-service structure? Possibly, given the massive size of our country—its 50,000-odd square miles—and the amount of diversity from the central belt to remote rural areas. Am I convinced that the single service completely serves those diverse communities? Possibly not at the moment, but it is looking at those aspects where it might not be doing so, one of which is clearly the retained duty service.

As for your second question, I would probably refer to the three main policy intentions for the Scottish Fire and Rescue Service that are set out in the legislation. We have provided a significant amount of evidence in our submission, and I am quite sure that the panel members will be interested in exploring that during the session.

10:15

Rona Mackay: Would the issues that you have just raised not have been there had the legacy forces remained and the single force not come into being? Would you not be facing some of the same problems?

Chris McGlone: The creation of a single service has clearly thrown up its own unique set of problems and issues. I do not really think that we had a choice; indeed, Calum Steele has painted the context of the fiscal and financial background at the time and the difficulties that the whole country was facing with financing our public services and public sector. Some of the antecedent services would have been in real trouble by now and, in fact, were in the process of being bailed out by others. If I am being absolutely honest, I do not think some of those original brigades would have existed in their previous format. The one thing that the creation of the single service did was to enable us to pool resources and probably to protect ourselves against things being lost as a result of the fiscal background of austerity at that time.

Stuart Aitken: Again, speaking from the front line, I would say that some of the issues have been addressed, but a lot of the main issues have not. That puts pressure on our members. It is hard to explain briefly, but we are talking about people who already have a lot of commitments in their own personal lives and their own main jobs. It is

fine to broaden someone's role if it is their main occupation, but if people do this for only two hours a week, they cannot be competent if their role keeps getting broader and broader as a result of transformation. There have been benefits—the ability to pool resources from other areas and the sharing of specialist resources are very good—but the continual broadening of the role is just not sustainable.

Rona Mackay: Are you talking about training?

Stuart Aitken: Yes. Initially, you had training in breathing apparatus and road traffic accident equipment, but the role has been broadened to include water rescue, line rescue and soon medical rescue. It keeps going like that, and it is just not sustainable in a retained service where people have only two hours a week for training. We welcome new roles, but we think that certain roles have to be withdrawn or put into one area, or perhaps the roles should be split at the station. You cannot expect people to be competent in every role; it is just not possible, and anyone who says that it does not understand.

Chief Superintendent Marshall: With regard to the people side of things, the change process and internal communications, I think that, if we still had the eight forces, things might still be quite people-centric. However, we have to set the parochialism of that approach against the risk and threats that we face now and which have changed over the last five or six years and the ability of the service to stand up and deal with them. I think that we would be sitting here dealing with different consequences of a different nature, but it is hard to speculate on some of that.

Yes, lessons need to be learned, and it is important that we look back, but for me, the important thing is that we are now one service and that we move forward. Now that we have put the structural and technical elements in place, we need to secure the right sustainable budget and focus on engaging and empowering all the people who work for Police Scotland to the fullness of their capability. Instead of asking, "What if we had had something else?", we can improve things, and we can deliver all that was intended under the reform process. I think that, if we had stayed as we were, we would have been dealing with a whole series of different questions about a lack of capability, capacity, sustainability and ability to respond to significant threats in the United Kingdom.

Derek Jackson: I would echo what the rest have said about whether we are in a better place. I think so, but at the same time there are still lessons that have to be and which should have been learned. As Calum Steele has said about the business case and the financial side of things, it was fine for a bog-standard service, but now that

we are into year 6 of the new services, we can see how things have developed and diversified, with the need for specialist skills to deal with terrorism and so on, with different work locations and with money being spent on new facilities. Had it not been for the dedication and loyalty of support staff, we would have been a far worse place than what we are dealing with. These people just want to be valued by the organisation, because they feel loyal to the service and are proud to be a part of it. Overall, things are in a better place, but we still have lessons to learn and a long way to go yet.

Calum Steele: A short answer to your question whether the problems would still have been there is yes, and they would arguably have been compounded.

Daniel Johnson (Edinburgh Southern) (Lab): I want to ask Stuart Aitken for a brief clarification. You are saying that the expansion of the role of firefighters could mean that they are overstretched. Expansion is fundamental to the transformation programme and the consultation that the fire service has set out. Are you saying that firefighters would be overstretched by the addition of anti-terrorism and first responder roles, or, if we are looking at additional competencies beyond those, would they be overstretched by them? I would be interested if Chris McGlone would reflect on that, as well.

Stuart Aitken: I would say that just adding those two alone is overstressing. We are in favour of expansion—do not get me wrong—especially emergency medical response. That should be rolled out as soon as possible, as it is only going to benefit the community. If that is held back any longer, it is the community that will suffer.

It has long been known that the problem with the retained service is that people have very limited time. They are committed to a full-time job elsewhere and they have family life. Think about it: we are asked to do the same role as a whole-time firefighter. When we turn up at an incident, we do the same thing. We have two hours a week to do all the training to keep our skills up. The information technology systems in the station are not up to the job of dealing with the amount of paperwork that we have to do now—what we call tick-box exercises. We have 12 bodies and two computers. If someone takes five to 10 minutes to input—well, you can work it out for yourself. It is an hour to two hours just to input your paperwork. We are getting people coming in outwith their working hours and doing that off their own back. That is not sustainable.

Chris McGlone: I will expand briefly. We have made a compelling argument and provided a lot of evidence for job role expansion over the next few years and beyond, so it is certainly not something that we are opposed to—exactly the opposite. But

there are concerns about the organisation's capacity to take on these additional roles.

I have consistently made the case—we have previously submitted evidence on this to this committee—that we just do not believe that there is enough additional standing capacity in a firefighter's role and in the retained duty system to take on all these additional specialist roles that require specialist qualifications, skills and training.

To put it into context, there are roughly only 300 hours in a whole-time firefighter's year to train for core competence in the role. It takes approximately 222 hours to train for that core competence in the basic role of a firefighter and approximately another 80 hours to train for and maintain competence in another specialist skill. There clearly is a difficulty with taking on these additional skills in the whole-time service, and the difficulty is exacerbated in the retained service, for the reasons that Stuart Aitken has highlighted.

Liam McArthur (Orkney Islands) (LD): This is more for Mr Jackson, and I do not know whether it is a question or just a request for clarification. I appreciate that you have stepped in at short notice due to a colleague's illness. However, the responses that you gave to Rona Mackay's questions did not quite chime with what Unison Scotland suggested in its written submission. It stated that

"police staffs have borne the brunt of a process of centralisation, budget cuts",

and what it sees as "politically driven targets" that have

"significantly compromised the ability of Police Scotland and the Scottish Police Authority to develop a modern and sustainable police service."

Some of those may be legacy issues that we are working through, but it is important for the committee to get that on the record as it was set out to us in the written submission. Do you have any observations on that? I appreciate that it would have been your colleague who drafted that, rather than you.

Derek Jackson: It was a contact at Unison Scotland. Unison police staff Scotland had its say as well, and both written submissions were submitted to the committee some time back. Personally, I am commenting purely on the SFRS, not on the police side of things

Jenny Gilruth (Mid Fife and Glenrothes) (SNP): Calum Steele, I would like to pick up on a point that you raised in your written submission. You say:

"It is our strong view ... that policing and its associated structures have never been subject to the intense ... media ... scrutiny that they are now."

You also say:

"political opportunity has been considered ahead of allowing the structures that exist to discharge their responsibilities."

I would welcome other panel members' views on that point. Calum, will you expand upon the impact that that has had on staff morale?

Calum Steele: Police officers, by their nature, tend to be fairly resilient individuals. Listening to the realities of expanding roles in the Scottish Fire and Rescue Service, it strikes me that police officers undertake activities that extend to being carers, psychologists, psychiatrists, parking wardens, dog wardens, counsellors, social workers, nurses, doctors—Superman and Wonder Woman. We tend to be fairly robust, but the reality is that when the new service was created it became something that policing in Scotland had not been before. It became a totem of Government policy and it became a totem of targeted criticism against Government because of the environment that was prevailing in Scotland at that time.

The service was not provided the time or the space to be able to reflect on the realities of working in the territorial land mass of Scotland rather than within the artificial boundaries that existed before the single service. Many of the difficulties in the early days of Police Scotland were reported salaciously as failures or crises. They were the kind of things that happened periodically—I am not going to say "routinely"—in the former forces, but because the reports were confined to local press and largely to local radio stations, they did not get anything like the salacious headlines we have seen since then. Those issues certainly never got the attention in Parliament that difficulties faced by the single police service did. That was the reality of the media perspective, both print and broadcast.

The continual effect of that reporting was a sense of frustration among officers that it was not reflective of the reality of the service that they were delivering. Police officers were metaphorically busting their balls every single day to deliver the police service that Scotland's communities were used to. I have heard journalists say that it is not their job to write "Postman delivers letters" stories. Doing their job is exactly what they are meant to do, which of course was true until His Royal Highness was flying helicopters in the rescue service in Wales, and "Postman delivers letters" seemed to be an appropriate headline at that point in time.

In terms of the continual downward impact on officers delivering services, such reporting did not impact on officers' day-to-day activities, but when they encountered members of the public, they would say, "My experience with you has been first class. My local experience has been first class. But, my God, is policing not in a terrible state?" It

created a pernicious effect among the opinions of many that the service was failing. The reality was that it was functioning—although it could have been functioning better; let us not pretend that it did not have its challenges—but that reporting set a public narrative that did not reflect the reality. Officers and staff found that more difficult to deal with than anything else.

Jenny Gilruth: I would be interested in any of the other panel members' thoughts on that point.

10:30

Chris McGlone: The police and fire services sit on both sides of that justice coin and we attract very different types of attention. Broadly, our experience is that the media attention that we get in the Scottish Fire and Rescue Service is positive and supportive. The perception that we get on our side of the justice coin is exactly the opposite of what the police side gets: they come in for a lot of criticism and a lot of stick. That must create difficulties within the organisation with regards to staff morale. Both our organisations are trying to cope with the big structural changes that have taken place over the past five years, and it is difficult to do that even without getting outside criticism for trying to do your job.

Chief Superintendent Marshall: As a service, we have always been scrutinised—quite rightly—through lots of channels. The media has always been a part of that, and they are the lens through which a lot of the public garner their views. There is a real issue about reality versus perception across all of that.

Over the past five to six years, undoubtedly the level of reporting on certain aspects has been of exponential interest in terms of selling newspapers or getting website hits, whatever it happens to be, and there is a risk that that has provided a skewed sense of what the situation looks like.

I concur with Mr Steele's view that the real experience of citizens' engagement with officers and members of staff delivering a service has been generally positive. That trust and confidence has always been there. The reaction as we have experienced it first hand or through surveys of customer satisfaction has shown us that the service is doing a really good job.

A lot of the stories and salacious headlines were not reflective of what the reality was. Admittedly, there were some tensions in the new organisation, regarding certain big personalities and a perhaps immature police authority that still had to establish itself. All of that fed into a news cycle that has persisted for some considerable time.

I am hopeful now that we have moved on to a more stable footing and there might be more fair

and equitable reporting, particularly if we focus on the tangible day-to-day delivery of what policing services look like, because there are some fantastic stories that happen day in, day out. If there was a focus on that more than on the political wrangling around some aspects, the public would get a fair reflection of what the situation is really like.

Jenny Gilruth: On that point, Ivor Marshall, I note that in your submission you highlight

"National access to specialist resources"

and

"stopping duplication of support services eight times over."

Knowledge is now shared nationally in a way that it was not before. Obviously, Police Scotland has solved every murder since 2013, which is a good news story, so reform has had its benefits. I would be interested to hear the panel's views on the opportunities and benefits that reform has led to, which might challenge the negative culture that has grown in the media.

Chief Superintendent Marshall: There is a list of benefits that have happened as a consequence of reform, some of which you have alluded to. They also include the service's approach to domestic violence, its capability around firearms and public order, its capability to deal with fraud and cybercrime, its ability to move resources around the country, its ability to respond to major events and civil emergencies—the list goes on and on.

The problem is that—Calum Steele alluded to this—good news does not sell newspapers or get hits on websites. Perhaps the issue is that all of us around this table should be advocating much more about the good news that happens in policing. The service certainly can step up to that. We have a role in that, as do the members around the table. There is definitely something about creating an honest, fair narrative about what policing delivers for the people of Scotland. I am not speaking for Calum Steele, but I think that that is the point that he raised in his written submission.

The Convener: We have inadvertently moved on to an issue that we are going to cover with John Finnie. Before we do, Liam has a supplementary.

Liam McArthur: We heard from Calum Steele that the justice secretary at the time had claimed that reform was about improving policing, which he has now said was not the case. It is generally accepted that a lot of the concerns and complaints were raised by staff and officers, and they were not about reform making the police service worse, but about the way in which policing was delivered.

If you centralise policing, is it not a corollary that issues that previously would have been aired at a local or regional level through the media and locally elected representatives now have to be raised at a national level? Given the nature of the concerns that were raised, the only challenge function was at a national level. Was that not inevitable as a result of creating a single structure?

Chief Superintendent Marshall: I will let Mr Steele respond, seeing as you referred to him. However, as part of that on-going conversation, I say again that at first there was a lack of maturity about where scrutiny happened. Everything became a national issue, with the somewhat immature police authority being set up, the mechanics of how that operated and how it discharged its functions.

Likewise, at local scrutiny board level, it took some time for things to mature, but in my experience the relationships with local area commanders and divisional commanders have been consistently positive, because a lot of them are the same people who were there in the legacy forces.

Those things happened quite quickly. Conversations were still happening in local news stories, and lots of parts of the country remained generally positive about local engagement, but I think that that was trumped by some of the national debates that were happening. In terms of scrutiny and conversation and how that plays out, perhaps there is a difference between what happens in local newspapers and what is reported nationally.

In terms of that question of information flow and the ability to air issues, certainly the nationalisation of the service made it more difficult for local voices—either internal voices or voices from regions of the country—to be heard at the national level. I remember that in Professor Nick Fyfe's submissions to the committee he alluded to the fact that sometimes the voice of localism was lost in the national agenda.

That is an unintended consequence, perhaps, of centralisation. I spoke about there having been a focus on structural and technical things perhaps at the expense of relationships and the human interface that we had under eight forces. Again, I would say that thankfully it seems that we and other services have recognised that, and we have made moves to repair a lot of the damage that was done.

The Convener: We have five witnesses and we want to make sure that you all get a decent hearing today in a limited time. Could you be as succinct as possible with your answers? Could

members be as succinct as possible with their supplementaries and questions?

Calum Steele: To respond to the question, I do not think that it was inevitable. In some ways I am taken back in time to an evidence session that we had—probably in this very room—about four or five years ago, when representatives from the Convention of Scottish Local Authorities and others were talking about the local scrutiny arrangements that were going to be put in place.

It is worth reminding ourselves that the previous scrutiny arrangements were not in legislation. The arrangements for police boards developed organically across local authorities. They ended up largely mirroring each other, but there was no central legislation to determine how local scrutiny arrangements should take place. I certainly expected—naively, as it turned out—and it appeared to have been Parliament's intention that there was no requirement to legislate for local scrutiny, and that local authorities had demonstrated in the early 1970s that they were capable of putting their own house in order and putting things in place.

The reality was that when the new single service was created, to a large degree many of the former local authorities that had involvement in scrutiny effectively gave up. Much of the pathway projects that were developed in the run-up to the creation of the single service were abandoned or allowed to wither on the vine. Local scrutiny became something of an inconvenience to routine council business and what was once a dedicated committee of a local authority—or local authorities working together, in the case of joint police boards or unitary authorities—became 20 minutes at the end of some other meeting.

No, I do not believe that what Liam McArthur described was inevitable. I also do not believe that it is the responsibility of the police service to fix the problem. As I said in my written submission, there is probably something to be done between the Scottish Police Authority and local authorities on improving—even now—the relationship that is needed to ensure that local scrutiny exists, but it is definitely not something for the police service. We had no role for it in the early 1970s. We should have no responsibility for it now, because you can understand the whole host of difficulties and headlines that would be created if we were to direct local communities as to how they should be scrutinising.

The Convener: We have moved on to your area of questioning a bit, Liam, so do you want to continue with that?

Liam McArthur: Both Mr Marshall and Mr Steele have touched on issues of concern about a loss of localism at the time of centralisation. I

would be interested in your views about the extent to which communities can hold policing to account. I take your point, Mr Steele, about where that responsibility ought to lie, but it would seem from what you were suggesting that the issue is in the gift of local authorities to resolve. If that is the case, how might they go about doing that? If not, are we in the territory of directing local authorities to act in particular ways? Certainly, the concern has been raised that local authorities' access—not necessarily to the area commander but to those in the SPA and higher up in Police Scotland where budget decisions are taken—is not as good as it might be. Therefore, what they are dealing with is the consequences of decisions that are taken somewhere else within Police Scotland or somewhere else within the SPA. How can that be rectified?

Chief Superintendent Marshall: The extent to which local communities can hold police to account has taken some time to mature. There are good relationships between local elected members and local area commanders, chief inspectors, superintendents, chief superintendents and divisional commanders. As far as influencing what local policing services look like, obviously the local scrutiny boards have, subject to Calum Steele's earlier comments, started to mature. The development of local outcome improvement plans and locality plans puts that in writing in some ways.

My frustration around some of that—I say this as a former commander of a division—is that sometimes you do not have the autonomy to be able to commit to joint working and collaborations, as per Christie principles, because of the centralisation of budgets in the service, which has been driven by the cuts. Budgets get sucked into the centre. There is also a frustration on the part of local commanders that at times the desire to deliver those gold standard specialist national resources in services inevitably has a drain on local services.

There are frustrations around that and the ability to influence communities. Absolutely, I think that the local police managers are cognisant of local views and do their best to deliver initiatives, plans and day-to-day services that respond to local needs. The frustrations would be that they do not necessarily have the full autonomy and full commitment of resources that are needed to be able to work on a partnership basis.

Liam McArthur: Does that mean that the scrutiny structure that was set up by legislation, as Calum Steele said, is overseeing a smaller area of responsibility because of the way in which decisions are now taken within a centralised force? Again, I would be interested on the fire and rescue side of things as well, in terms of area

discretion for local chiefs. Would that be a fair characterisation?

Chief Superintendent Marshall: It is a fundamental consequence that at times you are balancing making strategic decisions about national issues, which might be on capability around firearms as a consequence of national threats and so on, and putting in enough resources to deal with the day-to-day routine policing matters. It is always a balancing act. At times over the last piece, it has certainly felt like there has been more of a focus on setting up national structures and making sure that they are robust, which has perhaps been at the cost of local resources. Inevitably, if you have to take officers away to do a historical sex abuse case, that will create vacancies on the operational uniform front line.

10:45

Calum Steele: I am mindful of the fact that you have asked your question in two parts, and the second part is obviously about how we improve the situation. Regardless of the desire as to what should have taken place, I am not naive enough to think that it did place. Therefore, the question as to how we fix it is a pertinent one. To me, it comes down to how we make sure that local authorities and locally elected members are seen to have skin in the game. Given the change to the funding arrangements, which means that half the money does not come from local authorities anymore, there is no longer direct influence over finance.

Of course, financial decisions have a direct impact on policing that is delivered in local communities. That distils down to the number of officers and staff who are available and the type and number of buildings that they work from. The speech given by the chair of the Scottish Police Federation at our conference last year, which I suspect will be front and centre in any Liberal Democrat library, contained some suggestions as to what could be done to improve the situation.

Although I believe that the general principle of the Scottish Police Authority is fundamentally sound, I believe that it could be improved to the point at which COSLA, as the umbrella body for local authorities, was able to identify people for appointment to the Scottish Police Authority. That would enhance the Scottish Police Authority and it would absolutely bring direct buy-in from local authorities. They would recognise that they do have skin in the game, because they would be there at the very centre of the governance body, with the ability to influence financial decisions that impact on communities the length and breadth of Scotland.

Chris McGlone: Speaking as somebody who has obviously worked for a long time in the service and as the head of Fire Brigades Union, I think that both the Fire (Scotland) Act 2005 and the structure of the organisation are conducive to good local, devolved decision making and relationships with the local community. Things like the Community Empowerment (Scotland) Act 2015 hand a significant degree of autonomy to those local communities to engage with their local fire and rescue service. There is a clear pathway up to the local senior officer who, for all intents and purposes, is the accountable officer in that local area. I cannot say whether the decisions and the decision-making autonomy that that local senior officer has are fully supported by devolved budgets in the fire and rescue service, but I am sure that the chief officer could answer that for you.

John Finnie (Highlands and Islands) (Green): I want to ask Mr Marshall and Mr Steele about a possible misunderstanding that the Police and Fire Reform (Scotland) Act 2012 introduced centralised services that did not exist previously.

Before Police Scotland existed, there were centralised services. The police officers will be aware that we had the Scottish Crime and Drug Enforcement Agency, for example, which meant that there was training, recruitment and some specialist services that had no local input. Is there not more scrutiny of such resource now? In any case, the former police boards had no one with a sufficient level of clearance who could scrutinise issues such as counterterrorism and that is no longer the case. There is now better scrutiny of such important elements and significant resource. Am I right?

Calum Steele: I am taking my steer from the convener on short answers: yes.

Chief Superintendent Marshall: There is absolutely better scrutiny and better line of sight. We also have the opportunity to bid for that type of resource and other specialist resources to be deployed around the whole of Scotland as opposed to being deployed in a more parochial way as they were previously.

Shona Robison (Dundee City East) (SNP): A lot of the questions that I was going to ask have already been answered, but I will focus on the next phase of delivering a coherent and consistent approach. We have talked about the improvements that have been made in specialist services, and about some of the improvements that have been made in scrutiny, delivery of services and structure. Where is the next phase of improving that consistency?

One area that springs to mind is IT infrastructure. What is next for maturing

organisations in terms of improving IT infrastructure and delivering consistency? Where are there still gaps?

Calum Steele: We have to return to first principles. It is all very well talking about national and specialist services, but to a large extent they have been delivered to the detriment of local services or services that would traditionally have been considered to be local policing activities.

That is not to take away from the reality that we need to invest exponentially in our IT infrastructure. We need to invest considerable sums of money in our estate. The reality is that local policing and response policing have suffered. Yes, the type of policing has changed, but policing has always changed. Whereas once upon a time police officers would deal with volume by dealing with call after call after call, we are now dealing with complexity, which takes time in a way that police officers largely did not have to face in the not-too-distant past.

If we are to continue to take people away from their roles in what is probably the most specialist area of policing because they deal with all manner of complexities every day, and put them in siloed roles where they have a very clear, defined area of responsibility, whether it be the investigation of serious and organised crime, historical sex abuse, or fraud, it is important to support those services. Undoubtedly the service is much more adept at that than it ever was in the past, but its price has been local policing. The price of that has been human. Police officers in all areas of the service are working ridiculously long hours. We have stripped out ranks and supervision, which introduces its own risks. Those will turn out to be realised in years to come when lack of supervision will show what lack of supervision has always shown: eventually you get to critical mass and you end up being criticised for it.

There needs to be a return to first principles. Stop talking about the big picture and just look at the practicalities of the here and now.

Shona Robison: Where does the balance lie between making sure that local policing is delivered consistently across Scotland and the ability to be responsive locally? Where does that balance lie so that quality is consistent wherever you are delivering policing across Scotland but there is still the ability for local decision making?

Calum Steele: In truth, you are never going to get consistency in an absolute sense, in much the same way as you do not get access to a heart surgeon if you live in Barra. The reality is that policing will be tailored to the resources that are available to deliver it and the needs of the community.

This is what I think is important. When something big happens, the consistency of the service is pretty much guaranteed because large numbers of officers are flown in, ferried in or driven in, they deal with the issue, and then they go away. That ignores the importance of community relationships and the fact that police officers have to continue to deliver services after those individuals have gone. It also ignores the fact that, if the police resources had been there in the first place, they might have had more of an impact and prevented the big thing happening in the first place.

To some extent, that comes back to the priorities that Parliament sets. If Parliament thinks that it is important that we concentrate on historical child sex abuse and terrorism to the detriment of local policing, Parliament can make that clear by how much money it gives those priorities. The police service does not have the funding to pay for all the police officers that it currently has, and that goes right back to Parliament. If you do not want to fund the police officers that you have in your communities, do not give us the budget for it. It is very simple.

Chief Superintendent Marshall: I agree with Calum Steele about revisiting first principles. What does demand look like now and, projecting forward, what will be the real demand, the perceived demand, and the failure demand that the service will have to cope with? What sustainable operating model can deliver that? How do we know that the right resources are in the right place and that they are equipped to deal with that demand?

Shona Robison mentioned IT. That is an enabler that can help people to do their jobs more effectively and more productively, but it is not the panacea. It is not the answer to all the demands that we face.

In terms of the next steps that we need to take, I have talked about valuing our people a bit more and demonstrating that through proper investment in professional development conversations, in training and development, and in empowerment. That will feed into how the organisational culture is developed through the style of leadership that is necessary to create a learning organisation.

The consequence of that is the answer to Shona Robison's second question about balancing consistency with quality. You rely on the people who are there dealing with it at that time. They can provide the consistent approach, which is the framework within which the service operates, but tailored to the local context.

Chris McGlone: The next phase is very risky. We are trying to consolidate what we have now and what we have inherited from the previous

services, and we are also trying to meet the aspirations of the Government and the service with regards to expansion and transformation.

We have continually made the case for doing that through some kind of national standards. That is one of the areas where we have gone backwards in the fire and rescue service. We lost response and attendance times so we have no way of measuring them, for example. We lost section 19 of the Fire Services Act 1947, which dealt with establishment levels of the organisation, and meant that changes to establishment had to go back to the Scottish secretary for permission. We lost the joint council for design and development, which ensured consistency in standards, equipment and appliances, which obviously then fed into delivery. We moved from ranks to roles and lost layers of management within the structure of the organisation, which I do not think has been particularly helpful.

There has to be a proper method of audit and assessment against meaningful performance indicators. The service makes broad and sweeping statements such as, "We always have the right resources in the right place at the right time". I have no idea how we can make that statement if we have no meaningful way of measuring it. If we had response standards and response times, we would be able to do that.

The evidence shows that it is not true all the time. In the recent evidence in Aberdeen, for example, the service clearly did not have the right resources in the right place at the right time more than 300 times within a 10-month period.

The Convener: Do Mr Aitken or Mr Jackson, who have not commented on the next phase, have any comments?

Stuart Aitken: I echo what has been said and add that there really needs to be a coherent and credible plan going forward to address the retained service and recruitment and retention. That must be at the forefront of any plan. It is a valuable resource, with highly motivated people and people who really care about their community, but they are just overworked and underfunded.

Derek Jackson: I would say much the same. Services are overstretched because the strategic side of things means that workplaces have been closed and people have had to move. Within the past few years, certain directorates and departments have been restructured just to try to make sure that the service is focused and going forward.

I would like unions to be more involved in restructuring, to get an insight into what is happening and even to give our opinion on things.

Recruitment and retention of staff is also key. There are specific key jobs that we always struggle to fill. A lot of people were in the job and have stayed in it on a lower salary simply because they value the role that they play. They are proud to be part of the service and we would like our staff to be valued. If the service has core values, we would like to stick to them and honour them. That would encourage staff to keep going and stay in the service.

John Finnie: Mr McGlone, your submission talks about the fire service board having insufficient operational knowledge to do the necessary scrutiny. You suggest that “independent, objective advice” should be provided. Scrutiny is clearly important, but was it not ever thus? Do you see an enhanced role for the inspectorate in providing that independence?

Chris McGlone: The inspectorate has been extremely helpful and some of its reporting in the first five years has been very useful. We have had positive, useful and productive dialogue with the inspectorate when it has been carrying out inspections, especially local area inspections.

The inspectorate is also a good critical friend to the organisation, although it might not look like that sometimes. It was recently in the city of Glasgow, for example, and it highlighted the fact that, despite a lot of good work, there still are some issues with the age and availability of appliances, with appliances being off the runs and with some of the personal protective equipment and so on.

11:00

The service needs that critical inspectorate role, and it is quite clear that that role has been performed, by and large and certainly in my 30 years, by an ex-chief officer. That individual brings a vast wealth of knowledge and experience within the operational environment, and that informs the product that ultimately comes out of the inspectorate.

The board could also do with similar input from an operational head. As an example, Jimmy Campbell, one of the previous ex-chiefs at Lothian and Borders, left the board fairly recently and was not replaced by somebody with equivalent knowledge. We think that the board in its scrutiny role, especially within the operational environment—which, let us face it, is the most important environment for the fire and rescue service, I think—is weaker as a result of not having an operational head on the board.

The Scottish Government is supportive of some kind of employee representation on public boards but that is lacking on the fire and rescue board at the moment. There are examples where the chief

is obviously speaking on operational matters. Fairly recently, there was a discussion about the service’s ability to respond to a Grenfell-type incident, for example, and the chief referred to “operational discretion”. I do not think there is anybody sitting on that board that would have any idea or clue about what “operational discretion” means in relation to dealing with an incident in a dynamic, risky, hazardous environment.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I will pick up on the previous line of questioning and on something that Derek Jackson has mentioned a couple of times. You spoke about individual firefighters and police officers and other members of staff being able to impact positively on decisions at a strategic level. Does that happen? How does it happen and at what level? What can be done to improve it further, perhaps picking up from Chris McGlone’s comment?

Derek Jackson: We did have a strategic involvement in the executive board, but there is a lot more to that than just being part of it. Although you are getting your say, is it being listened to and acted upon? That is the difference. Recently, we have been through a soft facilities management thing that means that 95 jobs will be lost to the service. From day one we condemned that and said that it was against the public sector policy on privatisation. Those are 95 jobs that we will never ever get back in the service. We were able to go and we still go to the board meetings, but that is an indication of what happens. We are involved, but is our opinion being taken on board? That decision was made strategically, before we even went along to a meeting. We have had a seat at the table. We even have seats on the Newbridge training project board and the new west area asset resource centre—or west area ARC—project. We get seats and we get a say, but the biggest thing for us is whether our say is listened to and acted upon.

Fulton MacGregor: What could be done to demonstrate that your views and concerns are heard and are acted on? How could that be fed back to you?

Derek Jackson: Last year, from day 1 of the soft FM project, regional organisers of the trade unions Unison and Unite wrote to the board on behalf of the support staff, saying that we were dead against the project, but the board approved it and that was pretty much that.

We wrote another joint letter to the then minister for fire services, Annabelle Ewing, requesting a meeting, but it was the same again. The question of the 95 roles is more prominent now that more contracts are coming back in-house as opposed to going out, because it has been proved that contracting out did not work well in the first place.

We were highlighting that. Going to Annabelle Ewing was the same again, though. We never got an opportunity to sit down and explain and put our point across. It was a case of, "The board has approved it, that is the decision that has been made." We do get a chance to speak, but many times the decision has already been made and that is it.

Fulton MacGregor: Does anybody else want to come in on that?

Stuart Aitken: Yes, I would like to follow up on that, along the same lines. Our views are often canvassed. I have lost count of the many times over the years that people have come out, recognised that there is a problem with recruitment and retention and that we need to look at that. They go away. Two or three years later we get another visit at the station. We have problems. They go away and nothing is ever done. We get no feedback on the visits either. It leaves you feeling isolated. It leaves the members feeling as though their opinions are not valued. As I say, for 20 years that has been the case. The problem has been recognised but no credible plan or alternative has ever been proposed or put forward or trialled.

Chris McGlone: We have a pretty good, strong voice within the organisation that is recognised by the service and is reflected in the actions and the decisions that are made. We have various forums within which we can raise concerns and have input. We have an employee advisory group that we can go to for dispute resolution, for example. We do have a working together framework that is based upon our own good industrial relations protocols within our own terms and conditions. I think our voice, certainly from the FBU's point of view, is well heard. I am certainly in regular contact, as is my Scottish regional secretary, with the chief officer, the deputy chief officer and officers within the organisation as well.

The only thing that I would say, is that I encourage the service to invite us along to the sub-committees of the board a wee bit more often. There are four or five sub-committees that sit and deal with more of the board work than is dealt with on the table at public meetings, and we have not attended those sub-committees too often over the last few years.

Chief Superintendent Marshall: I will try to be brief. There is a body of evidence from the Scottish Institute for Policing Research under Nick Fyfe, and from our own internal staff surveys that tends to indicate that, over the lifespan of Police Scotland of the last five years or so, internal communications have perhaps not been what they should have been—certainly not a two-way process. Quite often there was a lot of what and how being pushed out, but no engagement in

terms of why certain decisions were taken and certainly not in terms of any strategic decisions.

Again, I would say that that is down to leadership. It is down to the style of leadership and the organisational culture. Perhaps there was a degree of fear and compliance in people doing what they were told as opposed to offering a view. I would like to think that things have changed somewhat around that. Again, with maturity, I think that the new members of the Scottish Police Authority are much more open to conversation and being engaged in the force executive. Certainly, the members that I speak to regularly are very open to that. The key challenge is about making that possible throughout the organisation.

We all have a responsibility to engender that culture of ensuring that everyone's voice is listened to and that innovation is valued throughout the organisation. Not all the brains are at the top of the organisation: there are some really good ideas at all levels and they need to be embraced. The things that people say in staff surveys or through representatives like me or Mr Steele need to be transferred and listened to and there must be tangible cognisance of that and perhaps even, at times, a decision to change strategic direction. Feeding that back would encourage people to say, "Do you know what, my voice has some kind of impact and I will be listened to, not simply patted on the head; my view is of value." There is still something to do to create that learning organisation culture. I know, from the Association of Scottish Police Superintendents and from other staff associations, that we do have forums to speak in and we certainly take that as far as we possibly can.

The Convener: John Finnie can come in very briefly, because we are running behind.

John Finnie: I will be very brief. Mr Aitken, I sense your frustrations, but I wonder whether you are selling yourself a bit short with regard to one thing. I represent the Highlands and Islands, and your representations in respect of training in the Highland areas have been responded to with significant investment in facilities in the Northern and Western Isles. Would you recognise that and take some credit for that?

Stuart Aitken: First, our organisation submitted in evidence that we are not really recognised. We have asked for one post similar to the FBU's, so that we can have someone full time. Any communications that come out—for example, the last email that came out on harmonisation and standardisation—are always a joint statement from the fire service and the FBU. We are never mentioned in those statements. Tristan Ashby, who has been part of the negotiations, did not even get that update. It is as though we do not exist. The email that came out this week—

John Finnie: They exist, Mr Aitken.

Stuart Aitken: Pardon?

John Finnie: The excellent training facilities in Orkney and the Western Isles exist.

Stuart Aitken: I cannot comment on them because I am not part of them. What I can say is that we have 50 per cent of the training staff that we should have for the stations in our local area. There should be four training staff; there are two. One is temporary. There is no plan to sort that for at least six months.

John Finnie: Forgive me, I thought you were here to speak on behalf of the whole organisation.

Stuart Aitken: No.

John Finnie: I will leave it there then. Thank you.

The Convener: Okay, that has been cleared up. Before we leave this subject, I will ask about the formal complaints process. You have said that views are not listened to, and Unison's submission in particular focused on that. Is the complaints process working well, in the panel's view?

Calum Steele: I do not want to have to ask questions of the convener, but complaints is a very wide subject area.

The Convener: I mean the more formal complaints, because it is unclear whether formal complaints are being brushed aside or just views that express concern. It is really from the Unison submission. I am sorry—you have been brought in at the last minute and here we are asking more questions about it. The submission says:

"It is our view that challenges and criticism of the service has been stifled and there are limited pathways to pursue complaints and concerns about the operation of the service for police staff."

Is that just a form of wording? Have you really expressed what the issue is, Mr Jackson?

Derek Jackson: As I said, I am from the SFRS. The Unison representative who should have been here is from Police Scotland; she might have been able to—

The Convener: I understand that. We will get clarification on the matter from the person who wrote it.

Daniel Johnson: Some of what I wanted to ask about has been covered by Shona Robison.

I will begin by asking a question of Calum Steele. What is your understanding of what the phrase "capacity creation" means, and do you think that it is a useful phrase?

Calum Steele: Politeness prevents me from telling you exactly what I think it means. It is

probably the smoke that accompanies the mirror that then feeds the spin about how Police Scotland has a tremendous amount of ability to do an awful lot more with a damned sight fewer people. As I said a few moments ago, the service does not have the budget now to pay for the officers that it currently has. Any talk about "capacity creation" is a ruse: it means "cuts".

Daniel Johnson: I led with that question because I think that "Policing 2026" is an incredibly important bit of work, but one of my concerns is that it has focused on where you might be able to reduce numbers—in particular, in elements at local level. Given what both you and Ivor Marshall have been saying, is there a need to refocus effort in strategic work on the balance between local divisions and what you both described as gold-plated national units and resources?

Calum Steele: I would not say that there is a need to refocus; rather, that has to be done in conjunction with what is currently taking place. The reality is that any talk about capacity has to acknowledge that we are currently delivering a service that struggles to meet all the demands that are placed on it. It can be argued that any increase in capacity would provide the ability to respond to more of that demand.

11:15

Large numbers of officers—in fact, people throughout the service—do not get breaks during their working day, or during their working week. They largely suffer tremendous disruption to their rest periods and they work hours far beyond the normal maximum working week, and that situation is getting worse. I am sure that Ivor Marshall will talk about that from his members' perspective: further up the rank structure, overtime tends not to be paid, which has to be recognised.

I will steal a part of the question in order to respond to what was asked previously about engagement. The way to engage the workforce is to provide them with time to be consulted and to be engaged. However, from the moment they come in until the moment they leave they are run ragged—they cannot catch their breath or come in for a pee, never mind to have a sandwich or a cup of tea or coffee. We must look at the complexity of the problems that demand creates. I do not think that that should be done instead of national priorities, which continue to be important, but as well as them.

Daniel Johnson: Is there sufficient focus on that in the "Policing 2026" plan?

Calum Steele: My view on the plan in that document is that it is like many such strategic documents: it is so wide and woolly that you could

take it in any direction that you wanted—which I would say, if I am being honest, tends to be the purpose of such documents. I am not sure that enough attention is paid to policing and police response. There are a load of aspirational beliefs and philosophies about other services stepping up and delivering their end of the bargain, but I do not see any evidence that that will happen.

I mentioned a few moments ago that the reason why police are being psychologists; counsellors and social workers is that other services are stepping away. The police exist, for a wide variety of reasons, as the service for every other service. It is about time that people started to recognise that and to put the money in to make sure that we are able to deliver that. If we are not there to pick up the pieces when, for example, social workers are not able to pick up the pieces, you are just left with pieces.

Daniel Johnson: I will not repeat those questions, but will ask Ivor Marshall whether it is correct to say that we have very different levels of policing in different local divisions, and that those levels are in some ways a legacy of policing patterns before the Police Service of Scotland existed. To what extent does that hangover feed in in terms of availability of sufficient resource at local level?

Chief Superintendent Marshall: It is fair to say that the staffing profile in the territorial divisions varies, which is based largely on what was there previously, and is driven by the resources and the demands that existed.

It is not necessarily a question of balancing that out; we must look at the bigger picture. As Daniel Johnson alluded to, the matter is not as binary as “specialist versus local”. We need to take a step back and ask where real demand and perceived demand are, and where we fail to meet demand right across the organisation. We need to understand what that looks like in terms of the type and number of resources that it would take to meet that demand, so that we strike the balance between national specialist resources and a robust, capable and competent front-line service delivery—which, as Calum Steele has suggested, is overstressed at this point. We need to ask that fundamental question and design a sustainable operating model that has the appropriate resources being put into it.

We might also add to that a look at distribution in local policing to see whether there is disparity in the ability of local divisions to respond to demand. The situation has to be multilayered: there is local policing, but aspects of regional, national and even international policing impact on local communities. We have to look at it as a three-dimensional map and understand that.

Daniel Johnson: The phrase the ASPS has used with me in direct communication is that there is a need for a “demand-led review”. Would you repeat that here, and what would a demand-led review look like?

Chief Superintendent Marshall: As I said, point zero is to go back and ask what demand is. Demand has changed and will continue to change; we need to project that forward. I think that the service has certainly listened about that, and there is a project on it under the 2026 workstreams that Daniel Johnson referred to.

My reservation goes back to a point that was raised earlier, which was that the professional services-led approach, as opposed to the policing-led approach, can get wrapped up in a lot of project management language. We need to understand demand, and there is a lot of professional judgment around that. We have a lot of data and we need to make informed decisions about it, rather than waiting three or four years for a fancy project with lots of detailed analysis. The service has listened to that and, as far as I understand it, is expediting that approach of understanding demand and making informed decisions.

Daniel Johnson: On that point in terms of “fancy projects”—

The Convener: Mr McGlone wants to get in. Is the question on the same point?

Daniel Johnson: Yes—it relates directly to what has just been said. When something needs to be done, a specialist unit or project is created at the centre. To what extent could things be done or led by local divisions instead of specialist resources being created at the centre? Do such ideas need to be explored?

Chief Superintendent Marshall: There are mechanisms for strategic, tactical and operational decision making for boards that enable decisions to be taken across those three levels about which part of the organisation might have primacy or take the lead. The interconnectedness of elements of a particular issue might be such that all elements across specialist and local resources will have parts to play. There is always a balance to be struck. It is not a binary question about whether it should be local officers or specialists who deal with things. The two are conjoined. The important thing is whether we have the balance right; that is what needs to be looked at.

Chris McGlone: I will make a very quick point on capacity creation. It is an argument that frustrates and annoys me continually. We have challenged the suggestion because a weak argument is used: that the service could expand into other areas and do other things because it has lots of spare time. We certainly do not have

lots of spare time, and the suggestion that we do is based on the single argument that there has been a significant reduction in fires over the last 10, 20, 30, 40 years. Nobody is challenging that; everybody knows what that percentage drop in fires has been.

The argument should be that the Scottish Fire and Rescue Service is expanding to take on additional roles such as emergency medical response, out-of-hospital cardiac arrest response, and formal arrangements for responding in a multi-agency environment to a terrorism incident, because it is the right organisation to do them and firefighters are the right professionals—obviously, given the right pay, terms and conditions, training, PPE and so on. We welcome the Government's recent additional investment in the budget to help and support us in moving into those areas.

The Convener: This question is for Calum Steele. In terms of specialist support, has the right balance been struck for more equal access?

Calum Steele: That is probably one of the most difficult questions, because the amount of resource that is required depends on the incident that is being dealt with. Specialisms are multidisciplinary, and include firearms, public order and major investigation teams. Is the balance right? All I can say is that those departments—not absolutely but largely—have been staffed to the gold standard. Would you want to diminish that? The answer is probably no. If the cost of maintaining that gold standard is to have a copper—no pun intended—standard elsewhere, perhaps there is a need for some rebalancing, but the consequence will be that we will not do as well as we currently do in some areas.

Liam Kerr (North East Scotland) (Con): I will go back to the 2012 act. The act's policy intention was to strengthen the connection between the services and communities, to involve many more local councillors and to have better integration with community planning partnerships. Has centralisation helped or hindered that intention?

Chris McGlone: In my experience in the Scottish Fire and Rescue Service, centralisation has certainly helped. As I said earlier, there is a good line of communication between communities and partner agencies within local senior officers' areas. Local senior officers are held to account and are scrutinised by their local scrutiny boards—everything that they do is open to scrutiny by members of the public in the communities. I think that that element of the 2012 act has worked.

The partner agencies are probably best placed to judge whether engagement by the Scottish Fire and Rescue Service has improved or has been positive. There is definitely room for expansion; I have touched on some of those areas. We are

talking about expansion of the role and moving into other areas of community safety and health—dealing with out-of-hospital cardiac arrests, emergency medical responses, marauding terrorist firearms attacks and so on. The local set-up and arrangements will assist in that, because in the areas that might require such services there are good communication links and there is evidence of good collaboration between blue-light services and some of the wider health and social care services.

Liam Kerr: I am going to come back in a minute to ask about whether the 2012 act could be improved with specific reference to the local fire and rescue plans being agreed, so I will just put that out there now for you to think about, while I take the police answer to my first question.

Chief Superintendent Marshall: The simple answer is that how what is written in the 2102 act was implemented in the first two or three years hindered it fundamentally. There was a focus on structural and technical elements of building the service. Centralisation of budgets and the lack of empowerment for decision making within territorial divisions meant that there was perhaps some withdrawal from partnership working around community planning. That tide has turned, and the service recognises that. There is a project, again under "Policing 2026", about local approaches to policing: there has been recognition that we need to regain some of that.

The one caveat to that would be that a lot of the personalities and individuals within local divisions have remained constant; working relationships remained but were sometimes under the radar of what happened centrally. There is lots of good work going on that was perhaps not recognised or valued as much as it should have been within the first three years.

Calum Steele: The answer to the question will always be subjective and depends very much on how people interpret "connection". I know that the service would advocate that it has, principally because of advances in technology, enabled communities to connect with it in a wide variety of innovative ways that used not to exist. However, if you are talking about connection on the human level, I think that many communities, depending on the part of policing or how they are exposed to policing, would say no.

The simple reality is that the police were, in terms of physical presence, withdrawing—I use "withdrawing" carefully—from many communities a long time before the creation of the Police Service of Scotland. The Police Service of Scotland provided no hiding place for that and removed any illusion of connecting with the community through community assets in the way that had previously prevailed. Removal of police stations, largely as a

consequence of finances, is the obvious example of that.

I am sure that advocacy groups for, say, victims of domestic violence, people who are involved in some of the large ongoing inquiries into historical sex abuse or child abuse in various institutions and those who represent such communities would say that there has been improvement as a consequence of the single service. However, if we are talking about communities as we traditionally know them—clusters of people living together in geographic areas—I suspect that many would say that there has not.

Liam Kerr: I will stick with the 2012 act. It set out specific ways in which local policing plans and local fire and rescue plans were to be agreed. Do you have a view on whether the legislation could be improved to ensure that local input is as effective as possible? I will take Mr McGlone first, please.

Chris McGlone: I will give a quick diplomatic answer. I would be happy to have a chat with the deputy assistant chief officer and local senior officers to get feedback on that before I answer, because I do not think I could give you a decent and informed answer at the moment. I am quite happy to get back to you on that, if that is okay.

Chief Superintendent Marshall: I do not think there needs to be a change to the 2012 act. The solution is about interpretation of what is in it. It is also about the relevant people with the right abilities and empowerment to make decisions at locality and divisional levels getting together, agreeing their plans, putting the resources into them and empowering staff to go out and deliver the service. There is more than enough professional ability within the framework to deliver that.

Calum Steele: I largely agree with Ivor Marshall that the principles in the legislation remain sound; this is an argument from a number of years ago being rehashed. The service in the first years of its creation gave the plan to the local areas to agree on them. We have refined our approach since then, although we still have not got it entirely right.

Shona Robison: My question about changes to the legislation has been answered.

The Convener: In that case, I thank the witnesses very much for attending. If there is anything from Unison that we have not been able to cover regarding policing, we will follow that up in writing. I thank you all for a very worthwhile session.

11:31

Meeting suspended.

11:38

On resuming—

Pre-budget Scrutiny 2019-20

The Convener: Agenda item 3 is an evidence session as part of our pre-budget scrutiny ahead of the publication of the Scottish Government's budget for 2019-20 later this year. I welcome Humza Yousaf, the Cabinet Secretary for Justice, and James Wolffe QC, the Lord Advocate, who are accompanied by their officials. I refer members to paper 3, which is a private paper.

I understand that both the cabinet secretary and the Lord Advocate wish to make brief opening statements. We will start with the cabinet secretary.

The Cabinet Secretary for Justice (Humza Yousaf): Thank you, convener. I will be brief. I thank the committee for inviting me here today to give evidence as part of its pre-budget scrutiny. The budget will seek to maintain the Scottish Government's strong record of public service delivery to ensure stability, security and quality of services right across Scotland. The principles that govern our justice system, including the rule of law, public safety and the protection of rights, are essential to ensuring and maintaining sustainable economic growth and wellbeing.

The justice system contributes significantly to our economy, employing tens of thousands of staff directly and indirectly in critical roles across all parts of Scotland, protecting and maintaining key infrastructure, ensuring safety at high-profile national and international events and challenging those who undermine legitimate businesses. The portfolio contributes to longer-term prevention and equality through, for example, our whole-systems approach to youth crime, violence reduction and tackling adverse childhood experiences.

As has been the case for the past decade, we are once again delivering the budget in very challenging circumstances. We continue to deal with the impacts of the UK Government's austerity agenda and the uncertainty caused by Brexit. Regrettably, we are now having to plan for a no-deal Brexit. No-deal planning is already absorbing significant resource within justice agencies. Maintaining the rule of law in the event of a no-deal Brexit will have a significant financial and operational impact on justice agencies, further damaging our economy and public services. That includes, for example, removing police officers from community duties in the event that they are called on to provide mutual aid to other UK police forces and the cost of funding additional police officers should that be required.

In spite of that challenging financial context, justice agencies have performed well over the past decade. Recorded crime is down 42 per cent. That is down to the policy choices that this Government has made but, undoubtedly, also to the commitment of all those working in the justice sector. The delivery of substantial and challenging public service reform and rationalisation including police and fire reform has provided substantial and recurring reductions in revenue expenditure that are built into the Scottish Government's baseline budget while maintaining and improving services. Police and fire reform are on track to exceed the delivery of anticipated net savings of over £1.1 billion and £328 million respectively by 2027.

Last year, the UK Government finally acknowledged the inequity of forcing our police and fire services to pay VAT—a position that no other territorial police or fire service in the UK has faced. The Scottish Government has ensured that communities will benefit in full from Police Scotland and the Scottish Fire and Rescue Service being able to reclaim £35 million of VAT from March 2018. The Justice Sub-Committee on Policing heard in pre-budget scrutiny evidence from the Scottish Police Authority and Police Scotland about the potential for its digital, data and information and communication technology proposals to transform policing. I reiterate my calls for the UK Government to fully reimburse the £175 million that has already been paid in police and fire VAT over the previous five years. That would go a significant way in helping us to fund that digital, data and ICT transformation.

Within the wider justice portfolio budget, we are directing resources in line with the priorities and outcomes that are set out in our document "Justice in Scotland: Vision and Priorities", which was developed and agreed jointly by key justice agencies and published last year. That includes increasing funding for services to support the victims of crime and also preventative services to help to divert people away from crime and to reduce reoffending. Third sector organisations play a vital role in helping us to deliver those services.

Finally—

The Convener: Cabinet secretary, I would appreciate it if you could be brief.

Humza Yousaf: Finally, we want to use our budget to recognise the significant contribution that is made by those who work in our justice sector. For example, the two-and-a-half-year pay deal that was recently agreed for police officers will put significant cash into their pockets, giving them and their families certainty. I am sure the committee will join me in recognising the very significant contribution of those who work in our

justice sector to making Scotland a safer place to live, work and invest in.

I am happy to have this opportunity to assist the committee with its pre-budget scrutiny.

The Lord Advocate (Rt Hon James Wolffe QC): Thank you for the invitation to appear today. During a period of significant change, the Crown Office and Procurator Fiscal Service has continued to fulfil its public responsibilities to prosecute crime and to investigate sudden, unexpected and suspicious deaths and to do so rigorously, fairly and effectively. That is a tribute to the professionalism, commitment and skill of the service and its staff.

In line with the comments that the Crown Agent and I made to the committee last December, this year's budget has allowed the service to maintain staffing levels and to implement the public sector pay policy for Scotland. The pay award was higher than in previous years and was implemented at an earlier point in the year, to the benefit of staff. The Crown Agent will be able to update the committee, if it wishes, about the position in relation to the various staffing issues that the committee has raised with us on previous occasions.

The service has also made significant progress in delivering non-staff savings. It has reduced its estate costs while continuing to serve local courts and local communities across Scotland. It has now begun full implementation of the project to use tablets and digital case management in court. That project has taken some time, but the time has been well spent with a view to getting the system right.

When I previously appeared before you in December 2017, I referred to the service's changing case load and I advised the committee that I had tasked the Crown Agent with scoping the implications of a strategic shift of resources to deal with serious sexual and other complex cases. That work formed the basis for the additional resource that the Scottish Government has made available to the service in the current budget year, which I wrote to advise the committee about in August. I am pleased to report that the service has very recently been awarded an additional £1.1 million for the development of three new digital facilities.

11:45

Those increased resources are the start of what I anticipate will be a long-term initiative by the service to respond to the challenges that are presented by a changing case load while meeting reasonable public expectations and continuing with the important work of system-wide reform. Both I and the Crown Agent will be happy to elaborate on the service's plans during this

evidence session or indeed in the future if that would be of assistance to the committee.

The Convener: Thank you. We are going to start with a general question for the Lord Advocate and the same sort of general question for the cabinet secretary about additional in-year funding.

John Finnie: Good morning, panel. I have a question for the Lord Advocate. Will you outline the work that the Crown Office and Procurator Fiscal Service did to analyse the changing profile of its work and how that fed into the additional in-year funding?

The Lord Advocate: The starting point was a demonstrable change in the nature and complexity of the cases that are reported to the service. We are seeing a secular decline in the absolute number of cases but a change in the profile, most markedly in the context of sexual offending. When I previously appeared before the committee, I reported an increase of some 50 per cent in the number of reports of High Court level sexual crime being reported to the service within a year, which is an astonishing increase in that particular area of criminality. That is welcome as it reflects the confidence of complainers to come forward and cases being investigated and prosecuted, but the service needs to respond to that change, and it has been doing so.

At the same time, we are seeing a body of large, complex cases that are in different parts of the service's case load but are illustrated by significant and complex serious organised crime cases, which present particular demands. We are also seeing a change in the profile of cases in local courts, with an increasing complexity, as I mentioned. There, too, we are seeing an increase in the number of relatively serious sexual offences, with a 19 per cent increase in sheriff and jury court sexual offences in the same period as the one that I mentioned.

I tasked the Crown Agent with looking across the piece at the implications of those changes for the work of the service. Historically, as I understand it, the service has looked at the core need for prosecutors in courts up and down the country. In a sense, it goes without saying that we need prosecutors to be present in every court where a case is being prosecuted around the country. I tasked the Crown Agent with looking at, as it were, the preparation side of matters and what the service needs if it is to deal with that changing profile in a way that meets reasonable public expectations, recognising that evidence to the Justice Committee and the inspectorate and other evidence presents us with a picture of what the public reasonably demands of the service.

The Crown Agent did the work to look at the resources that are required to meet those various

challenges, and that formed the foundation for the analysis that underpins the additional funding.

John Finnie: The Scottish Government announced £3.6 million. Do you anticipate getting that maximum amount of funding in the coming financial year?

The Lord Advocate: I do not think that it would be right for me to anticipate what are on-going budget negotiations, as the committee will appreciate. I can say that the in-year funding reflected the analysis of the service's resourcing needs as I have described them. On future budget, if the funding of the service does not reflect that analysis, that will present me with the need to make choices about what I do going forward.

John Finnie: I accept that the analysis is robust, but will you continue with that process?

The Lord Advocate: The service always has to react and respond to changes in the nature of the case load and the volume of cases. This significant piece of work looked afresh at the service's needs in response to the change in case load, but I am sure that the service will keep an eye on changes as we go forward.

John Finnie: Thank you.

Shona Robison: For clarification, given that the additional funding is primarily for staffing, is there an assumption that it will be baselined in the budget for future years?

The Lord Advocate: You are absolutely right to say that the particular needs of the service relate to staff. The core work of prosecution is undertaken by people. The non-staff costs have come down significantly over the past period, and it is in staffing that the additional resource is needed. Plainly, if future budgets did not support the same level of staff, the service would have to respond to that and choices would have to be made in the light of particular budget allocations as to what the consequences would be for the service's work.

Rona Mackay: Will the need for recruitment and training delay the impact of the substantial extra funding that you have had, or had you anticipated that that is how it would be spent?

The Lord Advocate: The recruitment process inevitably takes time and there is then a period of training and a period in which staff who have been recruited to the service build up their expertise in what is in many ways a specialist professional activity—namely, prosecution in the public interest. There will undoubtedly be time before the additional resource translates into staff in the service. The Crown Agent can probably give more detail on the recruitment process.

The planned improvement in, for example, bringing down the time to indictment, which is one of the responses to reasonable public expectations, will also take time to implement. It is dependent on staff being recruited and trained and working to get those plans implemented, but the plans are in place. The project is in hand and the service is pressing forward with that with some determination.

Liam McArthur: Lord Advocate, you talked about the management of case load and the aspiration to bring down the time to indictment. You will be aware of the evidence that we received from the Scottish Courts and Tribunals Service shortly before the recess. While welcoming the additional funding, it pointed up the potential difficulty that the change in the Crown Office and Procurator Fiscal Service's ability to manage its workload could have consequential impacts on, for example, the Scottish Courts and Tribunals Service. I would be interested to know whether you recognise that as a challenge. Will you outline the discussions that have taken place with the likes of the SCTS about how that might be done in a way that does not just shift the problems of resources and the strains to another part of the system?

The Lord Advocate: It is correct to say that this is a whole-system issue. What happens in one part of the justice system has a direct impact on other parts. What happens in relation to policing feeds through to prosecutors and what prosecutors do feeds through to courts. That was reflected in the package that the cabinet secretary made available—£0.8 million of the in-year funding that I have received from the Scottish Government was a transfer from the cabinet secretary specifically for work in relation to sexual offences. That was associated with additional funding that he made available to the Scottish Courts and Tribunals Service at the same time as a package.

That reflects the joined-up working that is now, as I perceive it, routine across the justice system. I have regular meetings with the senior judiciary, and the Crown Agent has regular interaction with the Scottish Courts and Tribunals Service and indeed other justice agencies, and those interactions are partly about seeking to make sure that the different parts of the system are, as far as they can be, reasonably aligned.

Liam McArthur: I presume you were surprised that the committee heard the evidence that it heard in the session that I mentioned. As I said, although the funding was welcomed, there was a specific concern that, whatever had been transferred—I assume that the witnesses were aware of that—it was not necessarily obvious that that was sufficient to meet an additional pressure

on workload through the Scottish Courts and Tribunals Service.

The Lord Advocate: If I look at it from the perspective of the head of the system of investigation and prosecution, I of course recognise that, when we are dealing with justice, we have to be mindful of the whole system and changes in the case load. How additional funding for one part impacts on others may depend on analysis, but the change in case load that we see is undoubtedly something that all parts of the system are having to respond to.

The Convener: We have a follow-up question from Daniel Johnson before we move on to questions to the cabinet secretary on the additional in-year funding.

Daniel Johnson: My question follows on from Liam McArthur's line of questioning. If we look at the procurator fiscal's budget in real terms, despite the £3.6 million additional funding the funding level will still be below that of 2015-16. To what extent will the £3.6 million fund additional resource and to what extent will it replace resource or capacity that has been lost in the past two or three years?

The Lord Advocate: One needs to be alive to the fact that, over that period, the service has been very effective in two respects: responding to the changes within the system and prioritising staff numbers relative to non-staff costs. The proportion of the budget that is spent on non-staff costs has gone down significantly. At the same time, there has been a reduction in the number of senior staff and again a prioritisation in terms of the numbers of staff at the front line, if one can call it that.

This funding responds to the particular set of challenges that I described a moment ago, and if the service's recruitment plans reach fruition, it will result in the service having, as I understand it, a higher staff level than it has ever had before. I suspect that the Crown Agent will be able to give chapter and verse on that, if that would be helpful.

David Harvie (Crown Office and Procurator Fiscal Service): For clarification, for the in-year funding of £3.6 million, the full-year equivalent is £5.8 million.

In so far as staffing numbers are concerned, I will be brief. The additional permanent staffing that we would be able to bring in with this funding would take us to the highest number of staff that we have ever had, and also the highest number of prosecutors that we have ever had. The historic high for prosecutors is 558, and if we are in a position to follow this through we will have more than 600.

The Lord Advocate: This is not just about numbers. It is about the resource level that is needed to respond to the complexity and nature of

the case load, and to seek to meet reasonable public expectations on the prosecution of crime and the investigation of deaths. Plainly, from my perspective as head of the system of prosecution in Scotland, it is very welcome.

12:00

David Harvie: That high was in 2009-10, when the actual cash budget was £118 million. In terms of the non-staff savings that we have made in the interim, even within that budget we would be in a position to have higher numbers than we have had before in contrast with that £118 million.

Daniel Johnson: That is a very useful baseline. Obviously, staff retention is a critical element. In our previous evidence session, we heard something that was perhaps slightly surprising. We might well expect prosecutors to be tempted away by more tempting job offers, but it was surprising to hear that so many of them are being tempted into the Scottish Government. Is there an issue arising from the comparison of pay scales between the Crown Office and other parts of the public sector?

The Lord Advocate: The starting point is that, since the 1990s, the service has fixed its own pay and grades; the current levels within the service reflect choices that have been made over a period of time. Generally speaking, the retention rate of staff within the service is good. It is true that we have seen a loss of staff to the Scottish Government, particularly in the recent period; we have also seen a loss of staff to the shrieval bench where the pay comparison is very different from the service.

Liam Kerr: Extra funding is going into one side of the equation. Cabinet secretary, are you comfortable that the resourcing of the other parts of the justice system will be sufficient to ensure that any improvements that are made at that side will flow through the whole system?

Humza Yousaf: That is a really good question. Fundamentally, we have to work collaboratively to do our best, along with justice analytical services and many others, to forecast the impact that one decision on funding, policy or guidance will have on another part of the justice system.

The short answer to your question is yes. I am confident, partly for the reasons that the Lord Advocate has already articulated very well. We do not necessarily think that some of that funding will substantially increase the overall number of cases, but it is about, for example, speeding up the process around the high volume of sexual offences that we have seen over the past few years and getting fatal accident inquiries ready to come to court more quickly. It is partly about

speeding up as opposed to volume. Therefore, we have some confidence.

Our dialogue with the justice board is hugely important. As members know, the justice board—and its sub-group—brings together colleagues across the criminal justice system on an operational level, a policy level and, importantly, an analytical level. The group reviews current trends and potential future trends, and it is important that we take that into account.

I am confident, but clearly it is a matter of on-going discussion.

Liam Kerr: You may have touched on this to an extent in what you said at the end, but what analysis has been done? What robust scenario planning has been done to analyse what impact an increase in funding at a given point will have at the end point and, therefore, whether that is the funding that is required?

Humza Yousaf: Our justice analytical services, and the team, are hugely impressive. When I took over the role of Cabinet Secretary for Justice and met the team, it was clear that the amount of work that it does—and the statistical information that it has to hand to enable it to do it—makes it a key member of the justice board.

Regular statistics are available, and the member will be aware of some of them. For example, we have Police Scotland's quarterly management information on particular crime types; the Crown Office's data on prosecution levels; SCTS's quarterly data on criminal court volumes, which has been mentioned; and criminal justice social work statistics. I also get weekly prison population figures.

All that statistical evidence, the expertise of the justice analytical services and the expertise around the table of the justice board feed into policy decisions, funding decisions, and the guidance changes that we tend to make, particularly when we think that there might be a substantive impact.

The Convener: If you could share some of that analysis with the Justice Committee, that would be very useful.

Humza Yousaf: What particular analysis, convener?

The Convener: The analysis that you have just referred to on the court service and various other organisations within the justice service.

Humza Yousaf: Okay.

The Convener: That would be very helpful.

We have a particular interest in the funding of third sector organisations. After questions on that,

we will move back to the Lord Advocate and questions on staffing.

Shona Robison: As you are aware, we have taken evidence from third sector organisations on their various priorities and analysis of the funding position. As the newly appointed cabinet secretary, what do you think the areas of priority should be in the funding of the third sector in areas of civil and criminal justice? As a follow-up, it would be useful to have a breakdown of the funding of third sector organisations within the justice sector. I do not expect you to produce that today, but it would be good to have that follow-up.

Where should the priorities be? Is there an opportunity—we explored this with the third sector organisations—to have a more strategic approach to funding those organisations? Rather than them competing for the same funding pot to do the same work, could things be done more strategically to avoid duplication where possible? How could that be achieved?

Humza Yousaf: That was a host of good questions. I hope that I have been able to demonstrate, within the first 100-plus days in my role, where some of my priorities lie and where I think that community justice is absolutely essential. For example, strengthening support for victims and the families of victims of homicide in particular, for the most vulnerable victims and for community justice is essential to help us with that agenda.

A different side of the same coin is the rehabilitation of offenders and never forgetting our duty to do that. A number of community justice organisations are again vital to our making progress in that area.

Effective early intervention is related to both those agendas. We have talked a lot about the ACEs agenda. A couple of months ago, I saw a great example of early effective intervention from a young age in West Lothian Council, where the community justice organisation is working closely with the local authority and is making a big impact on levels of youth crime.

I could go on and on, but those are some of the key themes and key priorities for me.

Community Justice Scotland has a huge role to play as an overarching body to prevent some of that duplication. I have been hugely impressed in this portfolio by the willingness of partners to work together closely and collaboratively. That can be seen particularly well, for example, in tackling issues and providing support around sexual offences and rape with organisations such as Scottish Women's Aid and Rape Crisis Scotland. Community Justice Scotland certainly has a role to play in that. Any ministerial role is always useful in helping to bring the right people around the table,

so I hope that the victims taskforce that I announced just a couple of weeks ago will be able to play a role in that as well.

You asked about the breakdown of funding. I cannot do that off the top of my head, but I am sure that we can provide that to the committee in writing.

The Convener: Is your question on this subject, Daniel?

Daniel Johnson: I hope so. I will let others judge.

The Convener: If you are not sure, perhaps you can leave it.

Daniel Johnson: The question is about the role of Community Justice Scotland. My understanding is that we are moving to a commissioning model for the procurement of services from the third sector. There is some concern that that has slightly neoliberal connotations, if you will forgive me for saying so. What efforts are you making to ensure that that is not the case, and that it is about partnership working as opposed to a bidding process?

Humza Yousaf: I have been heartened by what I have seen from the organisations thus far, but I also picked up some of that concern that undoubtedly you have picked up through your evidence sessions and in conversation.

All that I can say is that I am more than happy, and more than willing, to make sure that we get the ethos right as well as the mechanisms and the processes. I have heard those concerns as much as you have and I am keen to continue to work with community justice organisations to ensure that the new arrangements that we have in place do not impact them in a negative way. If we have one source of funding, there is that competitive element to it; that is understandable. However, I want to continue with the collaborative approach, which I have been impressed with thus far

I understand the point that has been raised—it has been raised with us as well as with you—but we are willing to work with organisations to make sure that there is not a negative impact.

Daniel Johnson: A number of organisations raised the point about multiyear funding. Will that be addressed as well?

Humza Yousaf: Yes. A number of organisations are in receipt of multiyear funding from us, such as Victim Support Scotland, Migrant Help and the trafficking awareness-raising project alliance, which works with victims of human trafficking. I can completely understand and see the sense in which multiyear funding is helpful to organisations. Clearly, the more that we can do that the better, but as you know we operate in a one-year budget

process. We are doing multiyear funding in some elements and I am very open minded to doing it in others, where it is possible and appropriate.

Rona Mackay: On the funding breakdown, does the information that you hold extend to organisations that are funded indirectly by the Scottish Government, in particular by money going to local authorities? That is the front line of where decisions are made on where the funding goes. Do you have that information on what local authorities are funding?

Humza Yousaf: We do not hold the information centrally, but I would be more than happy to work with Community Justice Scotland, as the new national body for community justice, to see what information it holds and how it can be collated. Local authorities are well placed when it comes to spending the money to get the maximum impact locally in their communities. We are happy to work to see where there are information gaps and how they can be plugged.

Rona Mackay: That would be useful. Thank you.

Liam McArthur: Daniel Johnson has covered some of my points on the concerns that we have heard about the lack of reliability or predictability of funding. You have given a couple of illustrations of something beyond an annual allocation of funding being provided. Why, if that can be provided in those areas, can it not be provided in other areas? Such an approach seems to have been taken in the health portfolio.

One of the concerns that people have raised with us is around how they can plan for the longer-term delivery of a service that is integral to achieving a range of the objectives that you and the Lord Advocate have set if, on an annual basis, they are sending out redundancy notices two or three months before budgets are signed off. Can we have a clearer commitment that you will look again at the extent to which greater certainty can be provided over a two or three-year, or ideally longer, period for budget allocations?

12:15

Humza Yousaf: I am more than happy to take that away. I am acutely aware that that point was raised with members of the Justice Committee, so it would be wise for us to reflect on that. Some of that is in our gift; some of it, of course, may need further collaboration with local authorities, through community justice social work, and conversations with local authorities on pots of funding. The point is well articulated and I am more than happy to reflect further on it.

Liam McArthur: Another concern that has been raised alongside that is around initiatives that are

taken forward by the Scottish Government. Those initiatives might have the support of many third sector organisations, but there is not necessarily an early engagement with those same organisations about the budgetary impacts that a change in legislation and the roll-out of such policy changes might have. Again, that would be very much within the cabinet secretary's gift. Certainly one would expect the Government to take a lead role but to be informed about the way in which any decisions that it takes will impact on the third sector, rather than simply taking the decision. The initiative may have support, but it could leave a number of third sector organisations in the uncomfortable position either of having to deliver on that and make changes to whatever else they need to deliver, or of simply spreading the jam far more thinly than would be ideal.

Humza Yousaf: I have always thought that the most sensible approach is by co-design, and we try to do that as much as we possibly can. We try to understand from those at the coal face—organisations that are working with the victims of crime, or those who have perpetrated crime and anybody in between—what the needs of those individuals are. How do we rehabilitate the offender or how do we provide that victim support? You tell us. Rape Crisis Scotland and Victim Support Scotland are great examples of organisations that have helped to develop my early thinking, within my first 100-plus days, around where our funding priority should be for the future.

If we can co-design with those organisations where our funding priorities should be, I hope that we will avoid the situation that Liam McArthur articulates well. I take the point fully that we still have a way to go to get there.

Liam McArthur: Finally, those who work in family mediation—I declare an interest, as my wife is involved with Relationship Scotland Orkney—raised with us the concern that there are very few shows in town when it comes to funding pots. There is the Scottish Government, Big Lottery funding, and a degree of local government funding. Does either an awareness of, or a greater diversity in, funding pots need to be stimulated in order to cover the breadth of demand that exists for this sort of funding? If a service falls out of favour with the Scottish Government and it has had an allocation of funding from the Big Lottery, inevitably the service has to come to an end; there is a cliff edge with that service, upon which many very vulnerable people may be reliant.

Humza Yousaf: That is a really good point. Again, I will reflect on how we do that. A couple of organisations have written to me, in my relatively new role, when they have had funding challenges. I look at their projects—of course, there is a

process to go through—but I immediately think that there would be a number of other funders that would be interested in organisations that are providing X, Y or Z service. We need to make that link. Most members around the table probably know, as I do, of local funders fairs. Funders are brought in, and organisations often turn up and say, “I did not realise that X, Y or Z funder could provide funding for my project.”

From a justice perspective, perhaps we can reflect on our community justice partners and the funders that are out there more widely, and see whether we can help to make that connection. Your central point is one that I would not disagree with: the more diversity that there is in funding pots, the better it is for everybody.

The Convener: Relationship Scotland gave us the stark message that for big funding, it is either the lottery or the Scottish Government.

Fulton MacGregor: Following on from the points that were raised by Rona Mackay and Liam McArthur, cabinet secretary, do you have any plans to implement guidance for local authorities around specific agencies? The local authority in the area that I represent is running some innovative work on justice, but there have been recent decreases in the local Women’s Aid budget, which has not gone down well and is against the Government policy objectives. Are there any plans around such issues?

Humza Yousaf: Across ministerial portfolios, there can often be a tension between the local authority and Government with regard to how money should be spent on local and national priorities. When I was minister for transport, that tension would often involve the active travel agenda and how our national vision was perhaps not being realised by all local authorities. In some respects, we have to accept that that tension will exist if we want to give local authorities the autonomy to do as they think best. In my previous portfolio, I helped to address that issue by ensuring that the relationship with COSLA and with local authorities was a good one. I think that that is probably the best way to do it.

In the few local authorities that I have managed to visit in this portfolio thus far, there are some excellent examples of good practice. I mentioned West Lothian Council earlier with regard to effective early intervention. We can share some of that and maybe even think about forums where that could be done. That process should not be about singling out one local authority and saying, “You are not doing what we expect to be done nationally”. Instead, it is about saying, “Here is some good practice from one local authority. How about replicating that if it is suitable for your local authority?” However, I accept that the tension that

I described will almost inevitably always exist in some way, shape or form.

Daniel Johnson: I do not know about you, cabinet secretary, but I am a big Joe Biden fan, and he once said:

“Don’t tell me what you value—show me your budget and I’ll tell you what you value.”

From that perspective, what does the fact that the community justice services budget is £35 million and the Scottish Prison Service budget is £361 million say about the perceived value of non-custodial sentences and community justice orders and provisions? Do you expect that to change in the future, reflecting many of the things that you have said publicly, which I would broadly agree with, about the need for there to be an emphasis on non-custodial options for sentences?

Humza Yousaf: I absolutely agree with the latter part of the question. I would expect that balance to shift to some degree. I am certainly very supportive of the approach that Mr Johnson mentions and I will be looking to bring forward a presumption against short sentences of 12 months or less. Party positions on timescales might be slightly different but, generally, there is an understanding that short custodial sentences are not as effective for rehabilitation in comparison with community sentences. There will inevitably be a shift on that.

That being said, there are calls from Daniel Johnson’s party—in fact, from almost every party that is represented around the table—for people who commit the most heinous and serious crimes to be locked up in jails and to serve long sentences. Those serving sentences for the most heinous of crimes—those on life sentences—are serving longer than previously. You have to have such people in jails. That is a fact of life. However, I sometimes see some misreporting of the Scottish Government’s vision. I will give you one example. A newspaper had a recent splash on its front page around replacing Barlinnie and talked of a super jail. The Government is not establishing super jails—we do not do super jails. If we were to replace Barlinnie, we would be looking at having a prison with around the same capacity.

The issue is not about having to lock more people up. Yes, some people will have to go to jail, and public safety is absolutely and utterly paramount, but I agree with Daniel Johnson’s general sentiment that we should rehabilitate more people and that community sentences are more effective in doing so. In light of that, I would expect that shift to take place, and the presumption against short sentences—PASS—is a demonstration of that.

Daniel Johnson: I agree that we are never going to do away with the need for prison,

especially for the most heinous of crimes and not least because there is a need to guarantee public safety, which is something that, sometimes, only prison can do. However, in order for community justice orders and provisions to be effective they also need to be robust and they need to be trusted. Therefore, that needs a level of investment. However, if you delve into that £35 million figure, you see that only £12 million is spent on those provisions.

Do you agree that, in order to have that trust, there needs to be robust and consistent investment, which touches on some of the points that Liam McArthur raised about the consistency of programmes and rigour and robustness in relation to them, which ultimately costs money?

Humza Yousaf: Yes, I agree with that. It is fair to say, though—this will not surprise anybody—that the difference between the cost of keeping somebody in prison versus the cost of an effective community sentence is stark. I am sure that people understand that. Therefore, it is not right to just compare the figure for community sentences with the figure for prisons, although I understand the reason why Mr Johnson makes the comparison and I do not disagree with the general point that he is trying to make.

Some of the issue also goes back to the nature of cases. The Lord Advocate will undoubtedly keep me right on this but I think that, the last time that I spoke to the Lord President, around 80 per cent of High Court cases concerned sexual offences and rape. That is the nature of the cases that the court is dealing with and, undoubtedly, there might be a need for those people to be in prison. That does not take away the hope of rehabilitation but, in the interests of public safety, that prison might be the right place for them. The nature of the crimes and the offences play a part in all of this but, again, I do not think there is too much disagreement between myself and Daniel Johnson on this matter. I hope to see a shift away from spending on prisons and towards spending on rehabilitation efforts that we know work well.

Daniel Johnson: On that public trust point, it is critically important not only that we have these options but that they are understood by the general public and that people know what the content of the orders is and what happens as a result of them. Therefore, do you think that there needs to be some investment in public awareness of what community justice means?

Humza Yousaf: Yes. That is a really good point. The perception of a vast majority of people is that a community sentence means that someone has got off with it, and that it is not a harsh enough sentence. People who hold that perception do not have an understanding of the ethos behind the sentence, which involves the

potential to rehabilitate the offender and, hopefully, having fewer victims of crime.

We should reflect on the point that you make about whether we need to look at how we work on the public narrative. Some of that is Government's responsibility, I am sure, and we will look at that and reflect on it. However, some of it is the responsibility of all of us around this table. It is important that all of us use the data, the facts that we have and the justice analytics, that we stick to those facts and that we talk about what works in terms of rehabilitation, and that we do not dismiss community sentences as a soft-touch option.

The Convener: I have some questions for the Lord Advocate on the issue of the disparity in pay. The FDA union has produced some very good information on that. It has a table that shows that a legal trainee in the Crown Office and Procurator Fiscal Service is paid 27 per cent less than a legal trainee in the Scottish Government. That has a knock-on effect. I believe that, some years ago, there was an agreement with the then Solicitor General and, I think, the deputy chief executive of the COPFS that there would be an equivalent grading to the Government's payments for qualified solicitors. However, the knock-on effect sees, for example, a procurator fiscal depute being paid £39,780 and the equivalent in the Scottish Government being paid £46,889. At various points, that disparity can be 15 per cent, 27 per cent or 50 per cent, always in the wrong direction. Can you address that?

The Lord Advocate: Yes. It goes back to the point that I made in response to Daniel Johnson. The starting point is the autonomy that the service has had in relation to pay and grading since the 1990s. The position that we are in reflects decisions that were made by the service and no doubt also by Scottish Government over a long period of time. I will come back to deal specifically with that in a moment.

12:30

The Crown Agent will no doubt be able to give more specifics on this, but it is true to say that the service continues to attract large numbers of applicants for legal and administrative jobs. I suspect that that is because being a public prosecutor is an immensely rewarding professional experience, and I would like to think that it is an exciting time for people to be working in the service. There is a lot happening in the justice system. The service is full of immensely skilled and dedicated people. Part of the context for that is that, if one broadens out the comparisons, the average salaries for solicitors in private practice, according to the Law Society of Scotland—

The Convener: I will just stop you there, Lord Advocate. I accept that people in those jobs are dedicated, but we heard that morale was down and that people were leaving the service. If that disparity continues, it is not sustainable that the service will retain the level of skill that it requires to function properly.

The Lord Advocate: I was going to deal directly with that in a minute, but I can do that now.

I think that the figures show that the service has lost 59 members of staff to other Government departments since January 2014, and it is correct to say that the rate of departure has increased over the past 18 months. In addition, as I mentioned earlier, there is a loss of staff to the bench, which is perhaps a reflection of the skill that you have identified. There is, no doubt, a range of reasons for that, and there have always been staff who have moved on from the service for a variety of reasons. However, the pay differential is an issue. Undoubtedly, the service would like to reduce that differential but that, of course, has resource implications. One does have to look at the issue in the context of the service continuing to attract applicants, and of the rate of turnover being at an historical low at the moment. That is not to say that I view with any equanimity the loss of skilled staff from the service.

The Convener: It was certainly a concern that the FDA and other unions were at pains to point out to the committee.

Liam Kerr: On that point, Lord Advocate, you would presumably concede that that pay differential makes entry into the profession and, indeed, transfer into the profession somewhat unattractive, particularly for younger lawyers?

The Lord Advocate: It strikes me that there are two separate questions, looking at the information that I have. One is that the service continues to attract a high number of applicants for entry into the profession of prosecutor, and that might reflect the fact that, if one looks at the Law Society's figures for the profession as a whole, the median average salary for a solicitor is £35,000 in private practice. That is the broader context. The other issue is that the job of being a prosecutor is an immensely attractive and rewarding one. Those issues apply at the level of entry.

It is true to say that, for a variety of reasons, staff from the prosecution service have always moved on. We have seen an increase in the number of staff who are going to other parts of the public service, and I would not dispute for a moment that part of the context for that is the pay differential that has been identified.

Liam Kerr: Is any analysis done of why people are moving?

The Lord Advocate: The Crown Agent will be able to give the detail but, as I understand it, people are asked why they move on.

David Harvie: There are exit interviews. Just to provide some context, the Lord Advocate mentioned that 59 members of staff have gone to other Government departments since 2014. Eleven of them are lawyers, so the vast majority are non-lawyers. During that same period, we lost 14 to the bench—they became summary sheriffs, sheriffs and so on. Those are the markets in which we are competing for our more experienced staff.

Liam Kerr: Yes, but my question was: do you analyse the reasons why people move? Is it possible to provide the committee with data to say the pay differential was the reason why people transferred?

David Harvie: Whether it is statistically significant, I can certainly indicate that pay is mentioned in a significant proportion of those departure interviews.

The Convener: Any further information that you could give on the reasons why you think people are leaving the service would be helpful to the committee.

David Harvie: Of course, no problem.

The Convener: We have just one final question for the cabinet secretary. What conversations have you had with Police Scotland about its call for what it considered an absolutely crucial amount of funding, £298 million, for its IT project?

Humza Yousaf: Police Scotland—the chief constable and a couple of his colleagues—presented the outline business case to me. From my perspective, I understand in principle the issues—I do not think that I have to go over the issues around i6 and the legacy issues and so on. The caveat to all of that is that we give money to Police Scotland—through, for example, the reform budget—to upgrade ICT. The project that you mention is a huge, substantial change that has quite a hefty price tag. In principle, of course, I support the proposal and I understand the reasons for it but, clearly, the issue will be subject to budget negotiations and so on.

To answer your question directly, yes, the chief constable and his colleagues have presented that case directly to me.

The Convener: Are you considering it?

Humza Yousaf: That is an issue for my colleague, the Cabinet Secretary for Finance and the Constitution, as part of budget discussions that he and I will undoubtedly have. However, the issue is very much subject to affordability. That £298 million figure is not a small number.

The Convener: I think that the chief constable suggested that even to stand still would cost a considerable amount of money—£19 million was mentioned.

Humza Yousaf: Doing nothing is not an option, and that is why I mentioned the money that we have allocated through the reform budget for ICT interventions. However, with regard to the full bhuna of the digital data and ICT transformation that has been talked about, in principle I am supportive of the proposals but, clearly, the proposal is subject to affordability.

The Convener: Thank you all very much. That concludes our line of questioning. We will suspend for a minute to allow the Lord Advocate and the Crown Agent to leave. It was remiss of me not to introduce the Crown Agent at the very beginning. The cabinet secretary will remain with us for our next agenda item.

12:38

Meeting suspended.

12:39

On resuming—

Offensive Weapons Bill

The Convener: The next agenda item is consideration of a legislative consent motion relating to the Offensive Weapons Bill, which is currently before the UK Government. The bill touches on devolved matters and the Scottish Government recommends that this Parliament gives our consent to the UK Parliament in relation to the relevant provisions in the bill. I refer members to paper 4, which is a note by the clerk, and I invite the cabinet secretary to make a very brief opening statement.

Humza Yousaf: I got the emphasis there, convener.

The Offensive Weapons Bill was introduced into the House of Commons by the UK Government in June this year. It contains a wide number of provisions that apply across the UK, with many provisions extending to Scotland. Some of those provisions, such as the new offence banning the sale of corrosive products to under 18s, fall in reserved areas but many are devolved. The following provisions are in devolved areas: the new offence of possession of a corrosive substance in a public place; new controls over the sale of knives and other bladed articles when bought remotely; and the banning outright of the possession of certain dangerous knives and other offensive weapons. A number of further technical and minor provisions also fall into devolved competences.

As the Scottish Government's legislative consent memorandum explains, the area of law is a complex mix of reserved and devolved. I could give you examples of that but, given your need for brevity, I will not do so. One option would have been to legislate for the devolved areas through a bill in the Scottish Parliament, but it is preferable to have a UK-wide framework on the issues. The desire to have consistent laws operating across the UK is sensible in this case. The Scottish and UK Governments agree that it makes policy sense to ensure that, as far as possible, the restrictions operate consistently across the United Kingdom.

I can advise that the Scottish and UK Governments have worked constructively together on devolved areas contained in the bill, in particular in relation to a new restriction on the sale of knives and other bladed articles. I have concerns about what we see as a delay in the process from the UK Government as the bill goes through the House of Commons and about some of the reported reasons for the delay. However, we will continue to work collaboratively with the UK Government. I am happy to answer any questions.

Rona Mackay: On that last point, you mentioned that the bill has been delayed again in Westminster. Do you know anything surrounding the details of that and will it affect our LCM?

Humza Yousaf: Largely, I only know what has been reported. We have been working collaboratively with the UK Government. I caveat what I am about to say with those remarks but, frankly, if what has been reported is true, it is a disgrace. If the reason why the legislation has been postponed is that it might make life difficult for the UK Government because Tory and other rebels on the Brexit issue might look to cause a defeat for the UK Government, that is an utter disgrace.

We have a particular interest in Scotland in the legislation. Every single member round the table will remember the tragic case of Bailey Gwynne, and the legislation looks to put further enforcement in place to prevent that kind of situation from happening again. When knives are purchased online, they will no longer be able to be delivered to somebody's house or residence—people will have to collect them and show identification. That is a further check on who is picking up the weapon. Frankly, the fact that the legislation could be delayed because of party politics does not do justice to the memory of Bailey Gwynne.

The Convener: Thank you, cabinet secretary. You have outlined exactly why it is so important that we get on with this now, which is helpful.

Shona Robison: I was hugely concerned to hear about the potential delay. Will you expand on the potential impact of that? Will you make representations to the UK Government about that delay and ask what it is going to do about it? Could you keep the committee informed about the progress of those discussions? Given that it covers important things such as acid attacks, about which there is huge public concern, and online knife sales, any delay would be extremely unforgiveable. Will you expand on what communications you will have on the issue?

12:45

Humza Yousaf: I will write to the UK Government. I hope that the reasons that have been reported in the press are not the actual reasons and that there are other good reasons, but it is the second time that a delay has occurred, so it is extremely worrying.

I understand that there are legislative pressures with Brexit—everybody understands that—but the day job cannot be ignored and this is not just any piece of legislation. It is a hugely important piece of legislation, and not just for Scotland. Shona Robison is absolutely right that, given the increases that we have seen in the use of

corrosive substances, particularly in the London metropolitan area, the legislation is important for the entire United Kingdom.

Daniel Johnson: Restricting access to, and therefore the sale of, offensive weapons is hugely important. However, the proposed legislation will increase the categories of items around which we ask retail workers to enforce the law and therefore to act as agents of the law. We know that enforcing age restrictions can be a source of abuse and violence. As the cabinet secretary may know, I am drafting a member's bill on the issue. Is there a need to reflect on what we ask retail workers to do? What are your thoughts on the protection that retail workers need and the elements of the law that we ask them to uphold in the round?

Humza Yousaf: I will reflect on that. Daniel Johnson and I have not had an in-depth discussion about the member's bill that he is taking forward but, if he would find it helpful to do that, I am happy to commit to it. I still need some persuading on that, but I am happy to enter into a discussion. I am open-minded on the member's bill. It is a good point that is probably lost in much of the discussion on the offensive weapons legislation that is being brought forward, so it is important to put it on the record.

Liam McArthur: I share the cabinet secretary's concern about the delays in taking forward the legislation at Westminster. You have talked about the consensual approach to date. If this is the second delay that has taken place, I am slightly surprised that you are talking about writing to your equivalent to seek clarification on the reason for the delay rather than an urgent phone call to establish that and to impress on your counterpart the reason why the legislation needs to be taken forward now. Nobody wants the bill to be taken forward at UK level and defeated for whatever reason. We all appreciate that the management of taking legislation through Parliament can be a precarious business, but it seems beyond understanding that the bill would fall into that category. Therefore, I am slightly surprised that that conversation has not already happened between you and your counterpart.

Humza Yousaf: I know from my various ministerial roles that it can sometimes be quicker to send a letter by email than to wait for diaries to match up. I would be available for a phone call today with the relevant UK Government minister to discuss the issue and I will reflect on what he says.

Liam McArthur: What conversations have there been at official level, even as a precursor?

Humza Yousaf: I will bring in my officials to talk about their conversations with UK Government officials.

I do not doubt that there are legitimate issues that need to be discussed. For example, I know that there are points of contention and discussions around high-calibre rifles, which are a reserved matter. I do not doubt that there are issues that need to be worked through but, if the legislation is continually being delayed for the reasons that have been reported, that is extremely worrying.

I am happy to bring in Philip Lamont to give more detail on the official discussions that have taken place.

Philip Lamont (Scottish Government): I can confirm that we did not have advance notice of the delay. We found out in live time, in that the bill was due to go through its third reading last Monday but that did not happen on the day, and the same happened yesterday. We did not get advance notice that the UK Government had made that decision.

Liam McArthur: What efforts have you made at official level to establish the rationale for the delay? At the moment, we are relying on reports.

Philip Lamont: We can certainly ask, at official level and ministerial level. The information that we have received is that the delay is due to parliamentary scheduling, without any further detail.

Liam McArthur: That would be helpful.

The Convener: You have impressed on us the need to move on with the matter, so any way that we can get the information that we need in the best, most efficient and fastest manner possible would be in the interests of all concerned.

As there are no further questions, do members agree that we give our consent and to delegate to me the task of working with the clerks to produce and publish a short factual report?

Members indicated agreement.

The Convener: I suspend the meeting for about 30 seconds to allow the officials to change over.

12:49

Meeting suspended.

12:50

On resuming—

Crime (Overseas Production Orders) Bill

The Convener: Agenda item 5 is consideration of a legislative consent memorandum relating to the Crime (Overseas Production Orders) Bill, which is currently before the UK Parliament. The bill touches on devolved matters, and the Scottish Government recommends that this Parliament gives the UK Parliament its consent to the relevant provisions in the bill. I refer members to paper 5, which is a note from the clerk, and invite the cabinet secretary to make a brief opening statement.

Humza Yousaf: Thank you for the opportunity to speak in support of the LCM for the Crime (Overseas Production Orders) Bill, which was introduced in the House of Lords on 27 June.

The purpose of the bill is to enable law enforcement officials and prosecutors to apply for a court order that would enable them to obtain electronic data directly from persons who are based or operating overseas for the purposes of investigating and prosecuting serious crimes. At present, if data that may constitute evidence is located outside the UK, UK courts can generally only access it through current mutual legal assistance agreements. That process requires a domestic order and the engagement of domestic law enforcement from the territory in which the data is held. It can, therefore, be a slow and very cumbersome process, taking on average 10 months to complete.

The bill seeks to create a more efficient process for obtaining data from overseas, meaning that evidence can be recovered more quickly—the default position is within seven days, beginning with the day on which the order is served—and supporting swifter investigations and prosecutions. The new process will sit alongside the current mutual legal assistance arrangements.

The main elements of the bill are as follows. The bill allows a judge to make, vary or revoke an overseas production order; defines data, such as medical records, that is exempt from such orders; and sets out what a person must do if they are served with an order. An LCM is required as the bill provides a means for devolved law enforcement officials to seek electronic data evidence in relation to a wide range of serious offences, many of which are not reserved. The bill also confers new functions on the Lord Advocate, who is to serve orders that are made in Scotland, thereby altering the executive competence of Scottish ministers.

I ask the committee to support the draft LCM. My officials and I are more than happy to take any questions that members might have.

The Convener: Thank you, cabinet secretary. John Finnie has a question.

John Finnie: The cabinet secretary has covered the point that I was going to raise. Thank you.

The Convener: That is fine. Members have no further questions. Do members agree that we give our consent? Do members also agree to delegate to me the task of working with the clerks on the publication of a short factual report?

Members indicated agreement.

European Union (Withdrawal) Act 2018

Law Enforcement and Security (Amendment) (EU Exit) Regulations 2018

12:53

The Convener: The clock is ticking, so we will continue. Agenda item 6 is consideration of a proposal by the Scottish Government to consent to the UK Government legislating, using the powers under the European Union (Withdrawal) Act 2018, in relation to a UK statutory instrument—the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2018. I refer members to paper 6, which is a note by the clerk. Do members have any questions?

John Finnie: Thank you, convener. I will be brief. Our paper contains a number of stock phrases, such as:

“Given the UK is the Member State”,

“the UK Government are leading on negotiations”,

“need to be considered on a UK wide basis”,

and

“The Scottish Government shares the UK Government’s aim”.

I have no difficulty with any of that.

However, we then come to the following sentence:

“If any legislation is considered necessary to plug gaps, it will most likely need to be progressed on a UK wide basis.”

There is an undertaking that the Justice Committee would be kept informed of that, but it would be helpful to clarify the term “likely” and what capability or opportunity exists for the Scottish criminal justice system to address the issue on its own. That would cover the situation that we discussed earlier, as child pornography and other pressing matters are very important. Could we clarify the position, please?

The Convener: Would you be content for us to seek and receive further information, but to go ahead and recommend consent today?

John Finnie: I am very happy with that. It would be helpful to understand the position. Thank you.

The Convener: Thank you for making that important point.

Is the committee content to recommend that the Scottish Parliament gives its consent to the UK Government passing the regulations?

Members indicated agreement.

The Convener: The clerks will produce a short report. Is the committee happy to delegate authority to me to publish the report, just as we deal with Scottish statutory instruments?

Members *indicated agreement.*

Justice Sub-Committee on Policing (Report Back)

12:55

The Convener: Agenda item 7 is feedback from the meeting of the Justice Sub-Committee on Policing on 4 October 2018. Following the verbal report back, there will be an opportunity for brief comments or questions. I refer members to paper 7, which is a note by the clerk and invite John Finnie to provide feedback.

John Finnie: Thank you, convener. As you say, the Justice Sub-Committee on Policing met on 4 October, when we took pre-budget evidence on Police Scotland's digital data and information and communication technology strategy, ahead of the Scottish Government's publication of its draft budget. We heard from senior officials from Police Scotland and the Scottish Police Authority.

We heard that lessons had been learned from the failed i6 project and that measures had been taken to avoid problems being repeated. Primarily, there will be an incremental approach to implementation, with technology selected that has been tested and used elsewhere, rather than the whole-scale innovation that was associated with i6. We also heard about the issue's importance. As we heard earlier today, the ICT strategy will require £298 million in funding from the Scottish Government, and a standstill budget will have implications.

We were also told that the capital budget for Police Scotland is insufficient to meet its needs, and considered the impact on policing of the reduction in police support staff and the proposal to reduce police officer numbers by 300 from 2019-20.

The sub-committee will next meet on 25 October. I am happy to take any questions, convener.

The Convener: As members have no questions, I simply note that it was a useful meeting. It emphasised the effectiveness of the pre-budget scrutiny process—it was a welcome introduction.

That concludes the public part of today's meeting. Our next meeting will be on 30 October 2018, when we will continue with our post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012.

12:57

Meeting continued in private until 13:17.

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

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

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba