



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Public Audit and Post-legislative Scrutiny Committee

**Thursday 7 March 2019**

**Session 5**



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**Thursday 7 March 2019**

**CONTENTS**

	<b>Col.</b>
<b>DECISION ON TAKING BUSINESS IN PRIVATE .....</b>	<b>1</b>
<b>CONTROL OF DOGS (SCOTLAND) ACT 2010: POST-LEGISLATIVE SCRUTINY .....</b>	<b>2</b>

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**PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE**

**7<sup>th</sup> Meeting 2019, Session 5**

**CONVENER**

\*Jenny Marra (North East Scotland) (Lab)

**DEPUTY CONVENER**

\*Liam Kerr (North East Scotland) (Con)

**COMMITTEE MEMBERS**

\*Colin Beattie (Midlothian North and Musselburgh) (SNP)

\*Bill Bowman (North East Scotland) (Con)

\*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

\*Alex Neil (Airdrie and Shotts) (SNP)

\*Anas Sarwar (Glasgow) (Lab)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Jim Ferguson (Argyll and Bute Council)

Fraser Gibson (Crown Office and Procurator Fiscal Service)

Bill Gilchrist (East Ayrshire Council)

Linda Gray (Glasgow City Council)

Alastair Lee (North Lanarkshire Council)

Anthony McGeehan (Crown Office and Procurator Fiscal Service)

John McKeag (Police Scotland)

Alan Murray (Police Scotland)

Kay Watson (Fife Council)

**CLERK TO THE COMMITTEE**

Lucy Scharbert

**LOCATION**

The David Livingstone Room (CR6)



**Scottish Parliament**  
**Public Audit and Post-legislative  
Scrutiny Committee**

*Thursday 7 March 2019*

*[The Convener opened the meeting at 09:00]*

**Decision on Taking Business in  
Private**

**The Convener (Jenny Marra):** Good morning and welcome to the seventh meeting in 2019 of the Public Audit and Post-legislative Scrutiny Committee. I ask everyone in the gallery to switch off their electronic devices or turn them to silent, so that they do not affect the committee's work.

Agenda item 1 is to decide whether to take agenda items 3 and 4 in private. Do members agree to do so?

**Members indicated agreement.**

**Control of Dogs (Scotland) Act  
2010: Post-legislative Scrutiny**

09:00

**The Convener:** Agenda item 2 is post-legislative scrutiny of the Control of Dogs (Scotland) Act 2010. I welcome our witnesses. Jim Ferguson is an amenity services officer at Argyll and Bute Council; Bill Gilchrist is team leader in environmental health at East Ayrshire Council; Linda Gray is the assistant manager in public health (south), neighbourhoods and sustainability department at Glasgow City Council; Alastair Lee is a senior environmental health officer at North Lanarkshire Council; and Kay Watson is a dog control officer with Fife Council.

We have a lot of issues to cover, so we will move straight to questions.

**Colin Beattie (Midlothian North and Musselburgh) (SNP):** In previous evidence sessions, licensing of dogs has been discussed. It was suggested that a licensing scheme should be self-funding and that it might also assist in funding the dog warden system better, for which the scheme's proceeds would have to be ring fenced. It has also been suggested that dog owners should have to pass a competency test before they could obtain a licence. What do the witnesses think about the introduction of a licensing system?

**Bill Gilchrist (East Ayrshire Council):** A licensing system would be effective if it were to be coupled with compulsory microchipping of dogs. Prior to a licence being issued, the applicant would be required to demonstrate that the dog had been microchipped, and to provide to the local authority a copy of the number and details of the database on which the information is stored. That would be a valuable exercise.

**Jim Ferguson (Argyll and Bute Council):** We have discussed that in Argyll and Bute Council: we feel the same. Microchipping regulations could be a prelude to a form of licensing that would allow us to trace dog ownership and accountability. We support that approach.

**Colin Beattie:** Is that the opinion of the rest of the panellists?

**Alastair Lee (North Lanarkshire Council):** Yes.

**Kay Watson (Fife Council):** We definitely strongly agree that licensing is a good way to police, to prove ownership, and to trace dogs when they have been moved on.

**Colin Beattie:** How would councils manage that? The implication of a dog licensing system is that there would be a process in which the person

would have to be determined to be fit and proper to hold the licence.

**Bill Gilchrist:** In a practical sense, that would present quite a few difficulties. The number of dog licence applications that a local authority would receive would put a heavy burden on its resources for administration, and for ensuring that training to make people fit and proper for dog ownership was adequate and was done by a recognised body that was, in the opinion of the local authority, competent to deliver that training.

**Colin Beattie:** How many dogs do you estimate there are in your area? I know that it can only be a guesstimate.

**Bill Gilchrist:** In East Ayrshire, we did a rough count based on information that we had received through community surveys and that kind of thing. East Ayrshire is a semi-rural area. We have two fairly large urban areas—Kilmarnock and Cumnock—but otherwise it is pretty much rural. Even so, we estimate that we have 40,000 to 50,000 dogs.

**Colin Beattie:** Wow!

**Alastair Lee:** North Lanarkshire Council has estimated that probably one in three households in the area has a dog, which would equate to about 50,000 dogs.

**Jim Ferguson:** When I moved to Argyll and Bute 15 years ago, the amount of dog ownership caught my eye. Given its terrain and coastline, it is an ideal place for a dog. I have never seen so many dog owners: there is a huge number. Most of them are responsible, but with some we get problems.

**Colin Beattie:** There are clearly logistical problems around introducing a dog licensing system, although the vast majority of licences would, I presume, auto-renew, as other licences do through councils. Is it correct to say that only when renewal of a licence was challenged by the police, the council or whoever, it would start to chew up resources?

**Linda Gray (Glasgow City Council):** That would depend. If part of the reason for licensing were to ensure that people were competent to own or be in charge of a dog, that would have to be considered at the outset in each licence application. That would have an impact on the local authority's resources.

**Colin Beattie:** Given the number of dogs that we are talking about, would licensing not raise a substantial amount of revenue, which would allow proper administration of the scheme?

**Linda Gray:** We would hope so, but we need to consider the practical implications: we would need to ensure that we were prepared and had

adequate resources to carry out a test, if you like, of whether a person is deemed to be suitable for having a dog. That burden would be front loaded. We would hope that it would balance out over time, but initially it could be problematic.

**Colin Beattie:** There is consensus among the panellists that a dog licensing system is a good idea. How would you handle it? How would you administer it? You have told me about the problems. What is the solution?

**Jim Ferguson:** If we were to go down the route of dog licensing, there would be a lot of work to be done, and it would have to be self-financing because it would use a lot of resources. I do not think that anybody in the room has the answer and knows how we would make it work, but it is a useful idea that could be made workable.

**Linda Gray:** We could do preparatory work before the licensing regime was put in place, including training of existing staff. However, if we were to rely on licences to generate the resources to carry out that work, it would be difficult to be up and running as soon as the licensing regime was to be in place. We would need to consider whether there was potential to set aside funding to get that kick-started.

**Colin Beattie:** You would need council resources in advance in order to start the scheme, which would enable you to take in money to make it self-funding.

**Linda Gray:** Yes—otherwise, it would be difficult to make the scheme meaningful, because we would not have the resources to do the checks. Licensing would be to ensure responsible dog ownership: if people were able to get a licence simply by paying a fee with no checks being made, the scheme would not be meaningful. We had such a scheme a long time ago and it did not really make a difference, so it was scrapped. We need to have that second element in place from the outset.

**Colin Beattie:** From discussions in previous meetings, it is in my mind that the suggestion was that it would be an annual licence. Is that ambitious?

**Bill Gilchrist:** Yes. Given the number of dogs that local authorities have in their areas, annual renewal of licences would be a massive administrative burden for councils, and a resource burden for the enforcement authorities that would have to challenge unlicensed dogs.

We have a large number of responsible dog owners in the community who lift their dog poop, look after their animals, make sure that they are regularly vet checked and do everything that they are required to do in law. The problem for local authorities is the irresponsible dog owners who get

a dog from their friend round the corner, keep it for six months, move it on and do nothing in terms of animal welfare or responsible dog ownership. The problem that local authorities would face would not be responsible dog owners, who would license their dogs, have them microchipped and so on, but the irresponsible dog owners who get a dog because they fancy it, and then six months later get fed up with it and throw it out the door.

**Colin Beattie:** I presume that each council would have its own database of dogs in its area. What would happen when a person moves to another area? Would that information have to feed into a national database, or could there be a transfer process?

**Jim Ferguson:** I was involved in the 2010 act eight and a half years ago. It is amazing how the years fly by. We had plans back then for a national database on dog control notices, but the technicalities and expense put that idea to bed and it never happened. For most things, producing a national database is a challenge. A national database for licences would be useful, but it might fall by the wayside, like the one that I mentioned.

**The Convener:** We found your written evidence to be extremely useful, so I thank you for it. It gave us real insight, after we had heard from people who had experienced dog attacks on their animals and children. On the back of Colin Beattie's question, am I correct in saying that all the councils that are represented here are in favour of a dog licensing scheme or some sort of scheme to administer dog control? I see that the witnesses are all nodding.

**Anas Sarwar (Glasgow) (Lab):** I support a licensing scheme in principle, but I am concerned about the figures. If there are 40,000 or 50,000 dogs in each of only two local authorities, it sounds as though we are talking about between half a million and 1 million dogs across Scotland. Is it realistic to have a full compulsory licensing scheme? Is there not a risk that the most irresponsible dog owners are the very people who will dog a compulsory scheme?

**Kay Watson:** I agree. I think that there would be quite a high risk that, as has been said, responsible dog owners would be the first to sign up for the scheme and apply for a licence, while the irresponsible dog owners, whom we want to focus on, will just ignore it. It would be up to us to identify the irresponsible dog owners and to take action to enforce the dog licence scheme. However, we would need to have the powers to do that. Again, that would require a huge resource, because of the manual labour in trying to identify those dog owners.

**Anas Sarwar:** At the moment, resources go into identifying an irresponsible dog owner when an

incident has taken place. Is there a risk that if the focus turns to policing the system rather than the bad dogs, you end up targeting owners of dogs that, although they are not in the compulsory scheme, are not the most dangerous ones? You would therefore be spreading the resource even more thinly. I think that Colin Beattie asked that question and there was not really an answer—that is not a criticism, because it is difficult question. However, it sounds as though a huge scale of investment would be needed to pre-load the system before it would become self-sustaining. What is your guesstimate of how much would be required to put a system in place?

**Bill Gilchrist:** East Ayrshire Council has not considered that, and I very much doubt that other local authorities have done it.

**Anas Sarwar:** Are we talking about millions of pounds?

**Bill Gilchrist:** I simply could not put a figure on it. As has been said and corroborated, responsible dog owners will sign up for a scheme. Existing legislation—the Control of Dogs Order 1992—requires that dogs wear a disc with the name and address of the owner on it. That could be implemented as part of an amended scheme in which, when a licence is issued, a dog is also issued with an identifiable tag that highlights to anyone, just from looking at it, that it is already registered and licensed. That might defuse the situation slightly, in that local authorities could more readily target dogs that do not display tags. There are ways around the problem. If a dog is licensed, it will have a tag: responsible owners' dogs will be wearing them. We would then be able to target dogs that were not displaying the appropriate disc.

**Anas Sarwar:** Is there an argument for saying that we recognise that the responsible dog owners are the ones who are likely to sign up for the scheme, but that having a scheme and building up a resource through it can provide money with which to police the bad dog owners better? Is that a reasonable argument?

**Bill Gilchrist:** Yes.

**Jim Ferguson:** Yes.

**Linda Gray:** I think so, but I also think that there are insufficient resources across the country to deal with problematic dogs, so it would be difficult to put licensing on top of that without providing additional resources.

09:15

**Liam Kerr (North East Scotland) (Con):** Good morning. Linda Gray's point is really interesting. We have had a lot of evidence that the lack of funding and resources precludes your enforcing

what you are supposed to enforce at the moment, let alone a further licensing scheme. What are the current funding challenges that you face? What would extra funding allow you to do that you are not able to do at the moment?

**Linda Gray:** From my perspective, dog control is a very specialist role. I do not think that it is one that could just be picked up by any enforcement officer. The legislation says that the person who performs the role must be

“skilled in the control of dogs”

and able to pass on the right kind of advice and information to others. Not everyone would have those skills, at the outset. Even with the resources that we have, I would prefer that there be a dedicated role for the work, rather than it being tagged on to, say, environmental health work in the public health realm. If more funding was available, we could have a dedicated resource. I have spoken to colleagues in other authorities where that happens: there is quite a difference in their level of activity in the work.

**Jim Ferguson:** It is a topical subject in Argyll and Bute Council, where the demands remain as they have been since the introduction of the Control of Dogs (Scotland) Act 2010 on 26 February 2011. “Amenity services officer” is a generic name for the officers who deal with dog control, pest control and environmental enforcement. The nine of us have been relatively unscathed for the past number of years, but the council has just set its budget and our number is to reduce from nine to four. I am not entirely sure who the four will be or how that will work. So, on funding challenges, the dark cloud has come over us, but we will just have to get on with it.

**Liam Kerr:** You mentioned a national database, and I think that you said that there would be a funding challenge around that. If the work were to be resourced in a different way that would mean that more resources were available, would a national database become a possibility?

**Jim Ferguson:** Yes. A national database was strongly supported and it still appears on the front page of the 2010 act, but it has not yet come to fruition—I believe that that has been because of technical and funding reasons. However, we have got by with what we have. We would certainly support any move to introduce a national database, which would be good for licensing, too. It would be good to have a national database for the 32 local authorities. The idea has not gone away.

**Liam Kerr:** No one else wants to come in on that point, so I have a question for Kay Watson. In its submission, Fife Council takes a slightly different line. It says that it has “made full use of” the powers in the 2010 act and has issued

numerous dog control notices and warning letters. However, Fife Council faces the same funding challenges and funding decisions that other councils face. How has that balance been struck? Why has there been a different outcome in Fife?

**Kay Watson:** I think that Fife Council started off with six dog control officers. Over the years, that number has gradually been whittled down as a result of budget cuts, but we still have two full-time dedicated dog control officers.

All that we deal with is dog complaints, which allows us to fully investigate every complaint that comes in and gives us the time to monitor and to patrol areas for dangerous and out-of-control dogs.

I do not know how Fife Council has the funding. As I said, we have been subjected to cuts, but we still have resources to enforce the current legislation.

**Liam Kerr:** I accept the points about licensing and the national database. Is it fair to draw the conclusion that the operation of the 2010 act, at least at your level, comes down to resourcing, and that if resources and finance were available, the outcomes that we saw a couple of weeks ago could have been different?

**Bill Gilchrist:** Yes.

**Linda Gray:** Yes.

**Alastair Lee:** Yes.

**The Convener:** I want to ask the panel about local authority interaction with Police Scotland. I know that the police are in the public gallery waiting to give evidence as part of the next panel, but it is in everyone’s interest—that of the local authorities, the police and the public—that the committee gets this work right, so we need to hear what is happening.

In the written submissions, there were quite a few references to dog attack cases being pinged back and forth between councils and the police. There seems to be a perception—it is mentioned in the Glasgow City Council submission, I think—that there is a reluctance to prosecute under the Dangerous Dogs Act 1991, and that cases get referred back to councils to issue a dog control notice.

Is there a problem with where responsibility lies for dog control? Do the councils and police properly understand where responsibility lies? It is interesting that the issue has come up in the written evidence, because it is also what we heard from the public. We held three public meetings—in Dalkeith, Airdrie and Dundee—and we kept hearing that the public is not sure who, ultimately, is responsible.



**Bill Gilchrist:** Police Scotland, the National Dog Warden Association (Scotland), the Society of Chief Officers of Environmental Health in Scotland and the Crown Office and Procurator Fiscal Service developed a clear protocol that outlines where responsibility lies for taking action under the Dangerous Dogs Act 1991 or the Control of Dogs (Scotland) Act 2010. The protocol states clearly which body is responsible for taking action in certain circumstances.

In East Ayrshire, we have found that beat cops—for want of a better expression—are less aware of the existence and content of the protocol. When there has been debate over which authority is responsible, we have provided local police officers with copies of it.

Further, if we serve a dog control notice, we always send copies of the notice to national police headquarters in Pitt Street in Glasgow, the local divisional command and the local police office for the area in which the incident took place.

We have a good working relationship with Police Scotland and the local fiscal service, who are only too happy to discuss our concerns and to provide us with the information that we need.

**The Convener:** That is good to hear.

I will put Linda Gray on the spot—she probably guessed that I would do that. Glasgow City Council's submission says:

"There are an increasing number of referrals to local authorities from Police/Procurator Fiscal for dogs that have caused serious injury ... where the case has ... failed ... This is often inappropriate as the control of dogs legislation was designed to be proactive, i.e. ... to prevent an attack".

Can you explain a wee bit about what is going on in Glasgow?

**Linda Gray:** Yes. Although the protocol exists, I suggest that it should be reissued or revisited. Although it is quite clear about the roles and responsibilities, my experience in Glasgow is that it is not being followed with regard to who picks up an investigation. The procurator fiscal has referred directly to us a number of cases that, for some reason, have not been successful in court, so the PF has looked to us—the local authority—to issue a dog control notice.

After speaking directly to some of the procurator fiscals who dealt with those cases, I saw that it was evident that they did not understand the role of the dog control notice and what was involved in carrying out an assessment of the dog. They thought that it was just a matter of writing out a notice and handing it to the person in question, and that was the end of it. What came across loud and clear to me was a lack of understanding of the overall process.

In one case that has been passed to us, the dog's injuries were so bad that they cost the owner thousands of pounds. The case came to us because the police said, "Pass it to the local authority." It would definitely help everyone who deals with the legislation if there were more clarity or a reinforcement of the protocol that was originally agreed. It is an issue not just for the police but for everyone who deals with the legislation.

**The Convener:** Did you say that there was a lack of understanding among the fiscals?

**Linda Gray:** Yes.

**The Convener:** There is a principle that good law is clear law, and from the work that we have done so far, it has become clear to me that this is a mess. I believe that the 1991 act itself was called a dog's breakfast, but when we add the 2010 act, which was passed by this Parliament and was very well meaning, the legislative landscape becomes quite complicated and clearly difficult to understand. Is that what I am hearing from you?

**Linda Gray:** I think so. Sometimes there is even confusion about which is the appropriate route to go down and which piece of legislation it would be better to use. For example, it was always our understanding that, if a dog seriously injured a person, that would normally be taken up by the police rather than handled through a dog control notice. However, some of those cases are being passed to the local authority. I appreciate that a dog control notice might well be the outcome of a case that goes to court, but it is almost as if people see that as the preferred route to avoid such cases going to court. That is certainly our impression and experience in Glasgow, although I am not saying that it is necessarily the same across the board.

**The Convener:** Does Linda Gray's testimony reflect what happens in other places? We got a slightly different picture from Bill Gilchrist, but what about the other three councils? Is the situation similar to that in Glasgow?

**Jim Ferguson:** In Argyll and Bute, we have a good relationship with Police Scotland. It has a dangerous dogs standard operating procedure, but I have found that a lot of police officers have not seen it. The document, which sets out the roles and responsibilities of local authorities and Police Scotland, contains the following paragraph:

"If there is an insufficiency of evidence or the Procurator Fiscal takes no proceedings, the"

local authority dog warden

"will be updated promptly and asked to consider under the terms of the Control of Dogs (Scotland) Act 2010."

That is pretty much what happens most of the time—and as I have said, we have a good relationship with Police Scotland—but it does not always happen, because a lot of police officers have not seen that document.

There are also inconsistencies across Scotland. I am on the National Dog Warden Association focus group, and we have long thought that there should be some sort of Scottish vocational qualification—say, at level 2—for authorised officers to ensure that we have consistency across the board, because some officers have been trained better than others. The problem is partly to do with the variation in the ability of authorised officers and partly to do with police officers not being up to date on what to do with dogs.

**The Convener:** Thank you very much.

**Kay Watson:** In some ways, I would disagree with what has been said. In Fife, we have a great relationship with the police. If a person's dog bites someone quite severely and the police are going to charge that person under the 1991 act, they will make us aware of that so that we can issue a dog control notice in the meantime, depending on what happens with the courts. From the day an incident happens, the dog is covered by a control notice to ensure that it is muzzled or put on a lead—in other words, that whatever has to be done is done to prevent any further incidents from happening while the court is waiting to make its decision. As a council, we feel that that works quite well because it also makes us aware of cases—if there was an attack on a person and not on a dog—that might otherwise not have been brought to our attention. Therefore, I feel quite positive about how we work with the police in Fife. As a general rule, the police try to make us aware of most cases.

09:30

**Alastair Lee:** The national protocol stipulates who should carry out the initial investigation. As Bill Gilchrist has already said, it lays down in fairly good detail who should carry that out. Once that investigation has been completed, if the police carried it out and cannot proceed any further, they are still able to pass the case over to the local authority for it to pursue under the Control of Dogs (Scotland) Act 2010.

We have a suspicion that sometimes the local bobbies are not particularly aware of the protocol. Bill Gilchrist has already alluded to that. They like to refer incidents of attacks to the local authority without having completed the investigation route. They refer the incident to the local authority without providing sufficient evidence and information for it to pursue the case and take action under the 2010 act. Basically, we get a phone call from a local police officer who has

information about a dog attack but no information about the person or dog that was attacked. All that we get is information about the person who owns the dog and a request for us to go out and investigate. That is insufficient evidence and information for us to proceed, which makes things very difficult. Things have improved slightly in the past six to 12 months, but that still occurs.

**The Convener:** Thank you very much. That is really useful.

**Alex Neil (Airdrie and Shotts) (SNP):** I have a final point on the protocol. It would be helpful if a copy of the protocol could be circulated to us, if that is possible.

**The Convener:** That would be very helpful.

**Alex Neil:** Two themes came out of our evidence session with the victims of dog attacks. One theme was about who does what between the local authority and the police. That is very confusing to the public, to whom it looks as if it is pass-the-buck time in too many cases. It is clear that that needs to be sorted out. I think that we all agree on that and that the panellists are hinting at it.

The second theme was that often offenders—people who have been served with a dog control notice—move out of the local authority area in which the notice was served, but the local authority does not always know that they have moved and the information is not carried to the next authority. Basically, that renders the dog control notice useless. It is clear that the absence of a national database makes matters even worse. If there was a national database and people with a dog control notice were compelled to notify when they moved, that might solve the problem.

How should we tackle the issue of people moving out of the area without notifying either the local authority that they are leaving or the one that they are going to? The new authority may have no idea that the person has been served with a dog control notice and, if there was another offence, it would not know that there was a history of offending. How can that be tackled?

**Kay Watson:** I think that a national database is the only way forward. As things stand, if someone makes us aware that they are moving outwith Fife to another region, we would contact the dog warden in that area to make them aware that the person is moving there. However, if the person does not tell us, we will have no idea where they are, so we are completely unable to follow up the matter. If there is another offence involving the dog, the whole process has to start again at the beginning with a first offence.

**Alex Neil:** So there is a major flaw in the legislation.

**Kay Watson:** Yes.

**Alex Neil:** Obviously, that needs to be addressed. I presume that your view is that the Scottish Government should set up a national database in co-operation with Police Scotland, the Convention of Scottish Local Authorities and the local authorities. Is that correct?

**Kay Watson:** I agree with that. Definitely.

**Alex Neil:** To the best of your knowledge, when was the last time that the lack of a national database was raised with the Scottish Government? Is anybody nagging the Scottish Government to do what it is supposed to do under the legislation?

**Jim Ferguson:** I would say no.

**Alex Neil:** We will change that. Without a national database, there are a lot of aspects that will simply fall by the wayside. Is that right?

**Jim Ferguson:** Yes. When we asked eight and a half years ago whether there would be additional funding and resources, we were told that there were no such plans, and that was that. That issue, alongside the question of a national database, has not been revisited since.

**Alex Neil:** That is clearly something that we must raise with the Government, because it has a role to play.

**Bill Gilchrist:** On having a national database, there are other avenues of information available to local authorities. It might be of benefit if those could be accessed for the purposes of the legislation. I am thinking particularly of the electoral roll and council tax registers. When a member of the public moves to another local authority, they will put their name on the electoral roll, which is now updated monthly. They may also have liability for council tax. There may be a correlation between such information and a name in a national dog control database, which may be a pointer for the local authority into whose area someone has moved to take action and may allow the initial issuing local authority to pass on information. Having that interplay between those sources of information may be of some assistance.

**Alex Neil:** Presumably, the thing that does not change is the microchip number—that is the link.

**Jim Ferguson:** That is right. The problem is that we have a number of pet identification databases, and someone who microchips their dog is not required to put the ID number into a particular database. That is where a national database, in which all dogs are registered, would come in. From a practical point of view, our investigations reveal that even finding out which

database the person has added their dog's microchip ID to is a problem.

**Alex Neil:** The—

**The Convener:** Are you moving on to a different topic?

**Alex Neil:** Slightly, but the issue is still relevant to the national database.

**The Convener:** Okay. I ask that you finish your questions on the national database. I will bring in Willie Coffey and then come back to you.

**Alex Neil:** Okay. On the distinction between the owner and the person who is in charge of the dog at the time of the offence, the law really goes for the owner. However, sometimes it is unclear who is responsible. A responsible owner might get somebody to walk their dog who deliberately stirs up things with the animal, or it might be the owner's fault.

It seems to me the legislation might also need to be strengthened to make both the owner and whoever is in charge of the dog at the time of any offence liable for prosecution. Would that be appropriate?

**Bill Gilchrist:** I think that that would be valuable. As has been highlighted in some of the written submissions, there are professional dog walkers who might be walking five or six animals at a time. They must have some measure of responsibility for the dogs' behaviour when they are under their control—or rather not under their control. You make a valid point.

**Willie Coffey (Kilmarnock and Irvine Valley) (SNP):** The purpose of the 2010 act is to identify out-of-control dogs at an early stage and to provide measures to change their behaviour before they become dangerous. Has the legislation been successful in that regard?

**Jim Ferguson:** That is one of the strongest parts of the legislation. We see ourselves as people who prevent injury to children and adults. When the 2010 act was introduced, it definitely had a place. At the time, the police forces had many cases that they could not prosecute under the 1991 act, and they did not have a lot of options open to them. The 2010 act was ideal, because it flagged up to us those situations in which irresponsible dog ownership had the potential to cause harm and we could step in to coach, train, or otherwise support the dog owner. Some dog owners who do not cope very well with their dog are glad to see us.

The 2010 act has certainly been excellent for prevention. If we have to serve a dog control notice, so be it. Even when we serve a notice, we will still be there to monitor it and to help the dog owner as much as we can. The 2010 act is a very

useful piece of legislation that just needs tidying up it.

**Linda Gray:** From Glasgow's perspective, requests for us to get involved usually come after there has been an incident. Perhaps that is because of a lack of resource and therefore a lack of dog wardens being out and about. I know that some local authorities monitor areas and have dog wardens actively out and about who can pick up on the behaviour of dogs that they see. However, our approach is very much to react to requests, and the majority of those follow on from some kind of incident.

A small number of people have raised concerns with us about a dog's behaviour when there has not been a bite or anything. They felt that a dog had aggressive mannerisms when they were around it and they expressed concern, perhaps because there were children in the area. However, those cases are in the minority. Usually, the cases that we investigate follow an incident.

As I say, Glasgow is sometimes a wee bit of an anomaly, so the situation is perhaps different in other areas.

**Jim Ferguson:** We certainly encourage Police Scotland to inform us of any incident, even if it is minor and does not fall under the 1991 act. We will investigate those, because that little thing could become a big thing. It could be the start of something, so we have to deal with it to ensure that nothing comes of it.

**Bill Gilchrist:** That is a fair comment. We get reports from the police and the public about incidents where a dog has been aggressive or challenging towards another dog or person, placing people in a state of fear or alarm. We would want to step in at that point and, as has been said, try to change the dog's behaviour and provide training and advice to the owners. It is in everybody's best interest to get the local authority involved through the legislation at an early stage rather than as a result of an incident. However, I concur with Linda Gray that, in the vast majority of cases, we get involved as a result of an incident being reported to us.

**Alastair Lee:** I agree. The 2010 act has been effective, but by its nature it is a reactive piece of legislation. We get involved after an incident has occurred. It might not be a major incident—it might be a minor incident that allows us to step in to mitigate the situation and prevent a possible future major incident and attack. However, the legislation is by its nature reactive.

**Kay Watson:** I completely agree. We are almost completely a reactive service. We can only respond to complaints that come in from members of the public, unless we see dogs that are not

being kept under control while we are out and about.

I also agree that the legislation has been successful in that we can get involved at the stage when a dog has chased another dog. Getting involved at that stage might prevent that dog from going on to kill another dog. From that perspective, the legislation has been a success. We can get involved early doors and try to prevent something more serious from happening.

**Willie Coffey:** As you have said, the 2010 act is a useful tool in dealing with incidents after they have occurred, but what about potential measures to intervene before attacks occur? We had a look at other jurisdictions to see whether there is any evidence on measures that they deploy to try to prevent dog attacks before they occur, but we have not been particularly successful in finding that evidence, apart from an example from Calgary in Canada. The actions that have been taken there on licensing and providing training for dogs and owners seem to have been successful in reducing the number of dog bites over a period of years. What experience can you share with us or what suggestions can you offer about intervention before dog attacks occur?

**Bill Gilchrist:** In East Ayrshire, we work closely with the Dogs Trust and we have had a number of initiatives over the past three years or so to offer free microchipping of dogs to members of the community. The officers in my team have attended those sessions to provide advice on the existence of the dog control legislation and to highlight to dog owners its scope and how we expect them to control their dogs and ensure that they behave well. We work closely with other organisations to highlight the existence of the legislation. To be honest, that is about as much as we have done at the moment.

**Willie Coffey:** Have you had any success in reducing the number of reported attacks?

**Bill Gilchrist:** As I said in my submission, we have not really been able to establish a long-term trend in the reports to us. The people who report incidents to us are aware of the legislation. In a few instances—but only a few—they became aware of the legislation after speaking to my officers at a microchipping event. Greater publicity about the existence of the 2010 act may be of some use.

09:45

**Jim Ferguson:** We try our best to look at any unfortunate incidents that happen to see what we or other people can learn from them. We had an incident last summer at an ale festival near Inveraray when a chap took his dog on to the stage. There was loud music and people were

dancing, and the dog disfigured a five-year-old girl. The police did not take any action, which was odd. The girl's irate parent came to the council to see what we were going to do but we had not been informed.

Once we were informed, we revamped our events pack for all events in Argyll and Bute, and it now covers the control of dogs and responsible behaviour by dog owners. That might lead to people leaving dogs in cars, so we have covered that as well. When you have people with dogs in crowded places, the dogs can get a bit scared. There are lessons for everybody to learn from such situations. It was an unfortunate incident for the five-year-old girl and we have certainly revamped our events paperwork because of it.

**Willie Coffey:** Does anyone else have views about how we can intervene earlier, even before an attack might take place?

**Linda Gray:** We are looking at working with our parks department on having a wee roadshow on responsible ownership, similar to what Bill Gilchrist has described, in which we might look at microchipping and make people aware of their responsibilities under the legislation. I am not sure that every dog owner is fully aware of their role and responsibilities.

Rather than having to tackle people after an incident, promoting the legislation as well as offering support and guidance might help in some cases. You will always get irresponsible dog owners who are not interested, but if we could reach more of the people who are simply unaware of their responsibilities, that might help to reduce the number of incidents.

**Alastair Lee:** North Lanarkshire does roadshow events at public parks throughout the area, similar to Bill Gilchrist's microchipping events. We used to do free microchipping events. That has slightly fallen by the wayside, basically because the Dogs Trust has started to do free microchipping. In addition to local authorities, the Dogs Trust probably has a part to play. The Dogs Trust probably has quite a big input in relation to dealing with the owners and educating them.

If people have a problem with their dog, they do not tend to come to the local authority. They tend to go to a pet behaviourist if they can find one or to the People's Dispensary for Sick Animals or another animal charity. Perhaps those charities could have an input into this process.

**Kay Watson:** We have also done things such as free microchipping. We do school visits to try to educate children on how to behave around dogs, what they should do if dogs approach them and so on, and we are involved in other events.

For example, the Scottish Society for the Prevention of Cruelty to Animals is having an event in Fife this month. We will attend and put up a stall for education and we are doing free microchipping at the event as well, in a bid to try to speak to as many dog owners as possible.

The downside of that is that the people who tend to go to these events are normally already responsible dog owners. I am open to any suggestions about targeting the group of irresponsible dog owners who are the biggest issue but, as of yet, we have not found anything that is successful.

**The Convener:** I am really concerned about the incident involving the five-year-old girl on a stage that Jim Ferguson described. You said that she had been disfigured. Is that permanently?

**Jim Ferguson:** Yes—permanently.

**The Convener:** I am concerned about the police reaction. If a human being had permanently disfigured a five-year-old girl, there is no doubt that there would be a charge of assault, at least. What was the police's reasoning for not bringing any action?

**Jim Ferguson:** Two weeks after the incident, our call centre received a phone call from the upset parent. We searched and searched, but we could not find the case. We thought that we surely must have been notified of something. The police call centre in Govan had pointed the lady in our direction. We realised that we could not find anything, and we had to say that we did not have the case on file.

I met the police inspector and asked whether he knew anything about the case. He asked his officers to investigate whether there were any cases from the event. A young police officer had been involved in the incident and had driven the child 25 miles to the hospital, but no action had been taken under the 1991 act.

**The Convener:** What was the inspector's reason for no action having been taken?

**Jim Ferguson:** He apologised and met the child's mother. Clearly, there was a failing by the police and it highlights that there are inconsistencies, as there are among authorised officers in local authorities.

We needed to start working on the case. We spoke to the organiser of the event, which is quite a large company, and it helped us. We also spoke to the stewards, who had been aware of the incident and had asked the chap to leave the event. The chap had left in a car, and one of the stewards had remembered the car's registration number.

**The Convener:** This is the dog owner.

**Jim Ferguson:** Yes—the dog owner. Coincidentally, the car’s registration number was traced to Kay Watson’s area, and we passed over the case to her. It is baffling, but there was still no charge under the 1991 act. We said that such an incident cannot happen again. People should not be attacked by dogs at ale festivals or music events in the summertime—that should not happen.

**The Convener:** Do you agree that if the assault had been carried out by a man or a woman, charges would definitely have been brought?

**Jim Ferguson:** Absolutely. That brings me back to the Police Scotland document. The roles and responsibilities are outlined in black and white. It is a good, balanced document that does not pass the buck to local authorities, but it is not that well known in Police Scotland.

**The Convener:** The story that you have told is extremely upsetting and worrying. There is a huge issue of child safety. A couple of weeks ago, we heard evidence from doctors that dogs will go for children because of their height and size.

**Jim Ferguson:** I am trying to visualise the dance floor with people who had been drinking. The height of the child and the height of the dog were very similar. I have thought about the role of the stewards at the event and about what they were thinking. There are a lot of questions to be answered, but we have taken robust action, particularly in relation to event management.

**The Convener:** I have a wider issue that I want to pursue, but I will allow specific questions about the story that we have just heard.

**Anas Sarwar:** I could tell that Jim Ferguson was emotional when he told that story, so I thank him for sharing it with us to help the committee’s work. I want to ask about the responsibility for dealing with the individual getting passed on and about the failure of the police, but we can take that up with the next panel. Should the law look at the responsibilities of the organisers of such events, in relation to safety and liability? The idea that a dog and a five-year-old were on a dance floor with loud music sounds ridiculous in itself.

**Jim Ferguson:** Yes—it does. Our licensing standards officer is an ex-Police Scotland superintendent, and he oversees the licensing of such events. Given his background, we were able to create a new robust procedure to ensure that no such incident happens again.

We passed on the details of the child’s mother to the organisers, who contacted her and apologised. I do not know whether anything else came from that. At first—for the first week or two—the organisers did not co-operate. They were in denial.

**Anas Sarwar:** In allowing the event to take place, did the organisers break the law at any point?

**Jim Ferguson:** No. The opinion of the organisers was that it was nothing to do with them—it was not their dog. They said that it was a chap who came on to the stage with his dog and they could not stop that; they had no jurisdiction over dogs and children, and who did what at these events. I totally disagree with that. They have no choice now. We decided that if that was a grey area, we should close that loophole, and that is what we did.

**Anas Sarwar:** Is that now closed across all local authorities?

**Jim Ferguson:** It will not be, no.

**Anas Sarwar:** I think that we need to address that as well.

**The Convener:** I agree.

**Bill Bowman (North East Scotland) (Con):** I will ask about a couple of areas. We have discussed the first one, the proposed Scottish dog control database, in detail. We have been told in evidence that not having a database is “a big miss”. What Jim Ferguson said was interesting. He mentioned technicalities, which—so far, anyway—we have not heard of in evidence as a reason for not having such a database. I take it that your local authorities would all support the concept of a database—I note that the witnesses are all nodding. I will leave that issue there and move on to a different topic.

We have heard that not all local authorities have appointed officers who have an understanding of dog behaviour and dog control issues to enforce the 2010 act. In some instances, dog control duties have been added to the remits of environmental health officers, community wardens and pest control officers. What steps have you taken in your local authorities to ensure that the people who have been appointed have the skills and knowledge to carry out these duties?

**Jim Ferguson:** The National Dog Warden Association holds two training seminars a year; one in May and one in October. Practically every local authority pays a membership fee to the association, and that money goes towards training. Last year, the Crown Office and Procurator Fiscal Service came along, because we could see a need for that. A lot of dog wardens say, “Och, what’s the point? The fiscal service doesn’t bother. It’s not interested in dogs,” but the fiscal service is quite clear that that is not the case. A lot of the submissions that it gets from local authorities are of very poor quality, and it would have some difficulty in getting them through a sheriff court. The fiscal service did a training day

at the seminar on evidence and what is needed to get something through court. That relates to the inconsistency that we are talking about, and the skills and abilities of authorised officers in local authorities, when people who were doing one role are now doing another involving dogs but have not had the training.

**Bill Bowman:** Are you saying that your people have all had training?

**Jim Ferguson:** My people have all had training from the National Dog Warden Association, which also provided my training. I have worked with people who have been dog control officers for 30 years or so—what I would call the traditional dog control officers. There are very few of them left. There was a time when that was a specialist area and that is all that the person did—I think that Kay Watson is still in that sort of realm—but it is quite rare now. We would do pest control, environmental enforcement and fly tipping and litter fines, but we would also be the dog control officers. There is a lot to learn, which is why we need some sort of SVQ to get uniformity and standardisation across Scotland.

**Bill Bowman:** Your authority appoints people who have the skills and training.

**Jim Ferguson:** I believe that we have people who have the appropriate skills and training, but I do not believe that that is consistent across the country.

**Bill Bowman:** We will maybe hear from the other panel members, then.

**Linda Gray:** Glasgow City Council does not compare very favourably in terms of the number of officers who carry out that function. As I said earlier, this is quite a specialist role, because the person must have the experience and skills that are necessary to deal with dogs. Elaine Henley was, I think, one of the experts who were involved at the outset of the bill, and we looked at getting her to do some training with staff, but some issues were raised about whether the existing staff who carried out enforcement functions had the experience that would lend itself to providing the appropriate training and so on. Because of a number of concerns that were raised, we now have an interim measure in place, and a member of staff who carries out that role in another local authority is seconded to help us while we come up with a more permanent solution to providing the training and experience that are necessary for carrying out the function.

I read some of the comments that were made at the committee's previous meeting, at which Glasgow City Council was highlighted as not issuing the same volume of dog control notices as some of the other authorities—notably Fife Council. Given the size of the authorities, the scale

of the discrepancy was probably puzzling, but, since the introduction of the interim measure, we have turned around the volume of investigations that are carried out and the volume of dog control notices that are issued. We are, though, looking to find a more permanent solution.

10:00

**Bill Gilchrist:** In East Ayrshire, the investigation process and the issuing of dog control notices are carried out by environmental health officers in my team who have the necessary skills in investigation techniques, evidence gathering and statement taking. They have also had training from Elaine Henley. It was a two-day course: day 1 was a classroom-based session on the legislation and on animal characteristics and behaviours, and the second day consisted of practical training that involved interacting with dogs that had different behavioural characteristics and that could show signs of aggression. They were taught how to recognise those signs and deal with them.

We also have two pest control officer/dog wardens who have had training in handling aggressive dogs and have the necessary equipment to do so.

**The Convener:** Not everyone has to answer. If you feel that the general position of your council has already been covered, please do not feel—

**Bill Bowman:** I would like to hear all the councils confirm that their staff have the necessary skills and training.

**The Convener:** I just mean that the witnesses do not need to go into a lot of detail if they do not want to.

**Kay Watson:** In Fife Council, we are exceptionally lucky, because we have two full-time dedicated dog wardens. We went into the role because, coming from dog backgrounds, it is an area that we were interested in, and we have carried on our training within the role. The council is exceptionally lucky to have dedicated officers, and I believe that that shows in a lot of our figures.

**Alastair Lee:** North Lanarkshire Council is similarly well placed. We have three full-time-equivalent dog wardens, who all came from an animal welfare background. They came from animal welfare charities, where they dealt with dangerous dogs and dogs with behavioural problems, so they have no problems at all in dealing with any of the dogs that they come across.

**Bill Bowman:** I take it that what is happening in Glasgow is work in progress.

**Linda Gray:** That is very much the case. Elaine Henley did a lot of training with all the local

authorities when the 2010 act was first introduced, but, as is the way in local authorities, the turnover of staff means that some of the people who originally had training are no longer carrying out the function.

**Jim Ferguson:** I have met Elaine Henley, who is from the Association of Pet Behaviour Counsellors. We had her in to train some of our wardens. Ours is a multidisciplinary service. There are nine of us—soon there will four of us—and we have multiple roles to perform. We are as trained as we can be. On the pest control side of things, the training is very robust and there is continuous personal development. Staff must renew their licences.

We needed something that was a bit more robust when it came to handling dogs. North Lanarkshire Council and Fife Council seem to have good arrangements, but that is not the case across the board. I think that we are good at what we do, but we have had to get there ourselves.

**Alex Neil:** Can I ask a supplementary question?

**The Convener:** Very briefly.

**Alex Neil:** It is for Alastair Lee. In the seven years for which the legislation has been going, North Lanarkshire Council has issued a total of 11—

**Alastair Lee:** No, that is not right.

**Alex Neil:** According to the statistics that we have—

**Alastair Lee:** I am afraid that your statistics are out of date. We have issued 28 dog control notices—

**Alex Neil:** The statistics that we have go up to 2017-18. Even Orkney Islands Council issued more dog control notices than North Lanarkshire Council over that seven year-year period. Glasgow City Council issued a total of three DCNs over the same seven-year period, and the figures are not available for the past two years. It is good that you have three dog wardens, but even a figure of 18 notices is not very high. I presume that those notices were issued in recent times.

**Alastair Lee:** The figure is 28, but I would not consider the number of dog control notices issued as a good marker. The dog wardens get involved in investigations and will give verbal advice and written warnings, which will not be caught by the figures.

**Alex Neil:** So, how do we judge success?

**Alastair Lee:** By the number of dog attacks that do not happen.

**Alex Neil:** Nobody records that, because nobody knows it. There must be a better measure than that.

**Alastair Lee:** That is the problem.

**The Convener:** The problem is that the number of dog attacks in Scotland is rising.

**Alex Neil:** Aye, and if we look at accident and emergency admissions, even in Lanarkshire—

**The Convener:** There were 5,000 attacks across Scotland.

**Alex Neil:** Exactly. That indicates a big problem out there. If dog control notices are not a good measure of success, we need a better measure of success. It cannot be the number of dog attacks that do not happen—we cannot measure that.

**Alastair Lee:** No, that is the problem.

**Alex Neil:** So what should the measure of success be?

**Alastair Lee:** I am not in a position to say.

**Linda Gray:** I can give you more up-to-date figures for Glasgow. We have issued nine dog control notices in the past 14 months. That is partly due to the interim measure that we put in place of getting a suitably experienced person. We have investigated 100 reports to us, all of which were at various stages. Some cases were referred by the police and the procurator fiscal; others were referred by members of the public. In the past 14 months, we have investigated 100 cases, resulting in nine dog control notices.

Perhaps because people now realise that we are taking forward the legislation, we are getting an increasing number of reports or requests to look into issues. I agree that the number of dog control notices is only one measure in the legislation. A dog control notice sometimes relies on there being sufficient information to allow it to be put in place, but that information is not always there when the matter is investigated. Therefore, the number of dog control notices does not necessarily give a full picture of what work is carried out.

**Alex Neil:** I think that there is an issue about how we measure success.

**The Convener:** That is right—we need to look at that.

**Linda Gray:** It is very difficult. A decrease in the number of reports would perhaps be a measure, but, given that there is not enough awareness in the public and even within the agencies that are involved in dealing with the legislation, I am not sure that a decrease in the number of reports would necessarily reflect an improvement in the situation. The more that people are aware of the



legislation, the more they will report, so there might be a rise in the number of incidents that are reported but not necessarily in the number of incidents that take place over a period.

**The Convener:** Yes. We just heard a story from Jim Ferguson about a situation in which there was no police report or prosecution in a really serious case.

At the three public meetings on the issue that we had across the country, a strong theme that came back was that people had reported to the council attacks on their children or dog on dog attacks and they thought that a dog control notice had been issued but they were not sure because the council had told them that data protection rules do not allow council officers to tell the person whose dog or child has been attacked what controls have been put in place. For example, in Dundee, a couple's dog was seriously attacked by another dog—its ear was hanging off—but the dog that had attacked it lived round the corner, so they kept seeing it. It was off the leash and was not muzzled—it was roaming free. The couple had no way of knowing what restrictions had been put on the dog and what the owner had been asked to do. Is that a reasonable situation for the public to be in?

**Bill Gilchrist:** It is certainly not the case in East Ayrshire. We always provide the complainant with a list of the conditions that are attached to a dog control notice. The issue arises when you identify the recipient of the notice to the complainant—we would not do that. However, we would say that, in relation to an attack on their dog on such and such a day at such and such a time, a dog control notice had been imposed, and we would set out the conditions. A data protection issue would arise only if we identified the recipient of the notice. We would either redact the notice or simply provide the list of conditions that were attached to the notice that was issued in relation to the attack.

**The Convener:** I want to unpick that a bit, because we have heard from the public that dog wardens have told people who have been attacked that they cannot tell them anything about the conditions of the dog control notice because of data protection. Are you saying that that is a wide reading of data protection and that councils can inform people who have suffered a dog attack of the restrictions of a dog control notice?

**Bill Gilchrist:** Yes. That is precisely what I am saying.

**Jim Ferguson:** We would adopt that stance as well, with the General Data Protection Regulation. We had a situation on an island—

**The Convener:** Sorry—you would adopt which stance? That you cannot say anything or that you can share information?

**Jim Ferguson:** We cannot say anything. We cannot pass that information to the complainant.

**The Convener:** You cannot pass any information to a complainant.

**Jim Ferguson:** We cannot, for data protection reasons.

**The Convener:** How come Bill Gilchrist is not affected by those data protection reasons?

**Bill Gilchrist:** We act under the data protection regulations. As we interpret them, they allow us to provide information provided that we do not identify an individual within it. We say that we have served a dog control notice, but we do not say on whom we have served it. We simply say, "We've served a dog control notice, and these are the conditions that we've applied." We do that in the form of a letter rather than by issuing a redacted copy of the notice.

**The Convener:** Okay, but you do not put the dog owner's name on it.

**Bill Gilchrist:** Yes. We do not say that we have served the notice on Jimmy Smith of such and such an address.

**The Convener:** However, if the person whose dog attacked someone lives round the corner, they are going to know who it is.

**Bill Gilchrist:** They might.

**The Convener:** The law does not allow you to identify them, which is fair enough, but the person will get the list of restrictions, so they can monitor what goes on.

**Bill Gilchrist:** Yes. That provides valuable information to the council in the case of another incident, but it also provides a reasonable measure of assurance to the person who was the victim of the attack. In terms of natural justice, I do not think that that is unreasonable.

**The Convener:** To be honest, that is what I would have assumed would be the sensible outcome. Are we hearing that other local authorities are taking a broad reading of the data protection rules and not issuing any information at all?

**Bill Gilchrist:** I think that it depends on how the data protection regulations are interpreted by the legal services section or freedom of information officer.

**The Convener:** Gosh—so we have a mixed picture across the country.

**Bill Gilchrist:** Potentially, yes.

**The Convener:** Do any of the rest of the panel want to shed some light on that?

**Linda Gray:** We would share with the person the fact that we were investigating the incident about which they had passed on information. We would go through the potential outcomes of that, which would include a dog control notice, and explain to them the things that would be considered in the notice. However, we would not say that we had issued a notice to a particular person. We could say to them, "We're investigating your complaint and we'll take whatever action is appropriate, given what the investigation brings out."

I agree that it is not a very satisfactory outcome for someone who has been subject to an attack or whose dog has been attacked. It is not ideal, but I feel that we are very limited in the information that we can share.

**The Convener:** Okay, so we have different interpretations by different legal services departments in councils regarding information sharing. That is something that we need to clear up.

I have another question on dog control notices. We took evidence from a woman whose daughter suffered severe disfigurement from a dog attack. It was back in 2010, in the early days of the legislation, but her understanding was that the dog was under a dog control notice. What do you do about really irresponsible owners, to whom you have issued dog control notices but who blatantly ignore them?

**Kay Watson:** We are finding that a big problem. When a dog control notice is breached, there are two separate issues. The first is that we cannot change a dog control notice without the owner's permission. If, for example, there is not enough evidence to put a breach case to the procurator fiscal but we have enough evidence to believe that the person is failing to adhere to their dog control notice, I cannot change the notice and say, "Your dog will now have to be muzzled because I don't believe you're keeping it under proper control" without the person's permission. It is ridiculous that I have to obtain the dog owner's permission to change the dog control notice. The only other option that is available to me is to remove the dog control notice and issue a new one. If I do that, I need to have enough evidence to show that I am issuing it correctly, in case the person appeals. If an option was available to me to change the dog control notice, I could put in place further measures there and then.

The second issue is that, when we send a case to the procurator fiscal's office, it can take between nine months and a year for it to be heard—and we are finding that, more often than not, our cases are just not being heard; they are being dropped.

**The Convener:** Dropped by the Crown?

**Kay Watson:** Yes. A date will usually be set for the case but, whether or not the person turns up or pleads not guilty, it will not be carried any further forward.

**The Convener:** Is that for prosecutions under the Dangerous Dogs Act 1991?

**Kay Watson:** No, those are prosecutions under the Control of Dogs (Scotland) Act 2010.

**The Convener:** Okay. Are there any further quick points on that?

10:15

**Linda Gray:** We have issued a limited number of dog control notices, which we monitor regularly. How we monitor them varies across the board depending on the detail of the notice, the incident that led to it and other circumstances. To date, the people who have been issued a notice have complied with it. As I said, we have issued only nine notices, which means that we were able to give them more dedicated attention, so I am not really sure whether that is a measure of what it will be like when the number increases.

**Liam Kerr:** We have had evidence to suggest that the legislation would be improved if there was an offence of obstruction. What would that cover? What would it allow local authorities or, indeed, the courts to do?

**Linda Gray:** We called for that in our submission because we have had a couple of instances in which we have investigated a matter but could not issue a dog control notice. In one case, the person had, I think, been living with their parent. When we went to issue the notice, the owner of the dog and the dog were no longer present. We were told that the person had moved away, and those present would not give us any details. We have no power to force people to provide such information. On one occasion, we tried working with our police colleagues to encourage the sharing of information.

We found ourselves in a position whereby a notice had been issued but we were unable to deliver it because the person had moved and we could not trace them, and there was no comeback for the person who refused to give us information. I have a background in enforcement, and I know that other legislation quite often includes a charge of obstruction. That allows you to remind people that, should they fail to provide the required information, there will be repercussions. As it stands, there is nothing like that in the 2010 act.

**Liam Kerr:** That is very useful. Thank you.

East Ayrshire Council's submission says that it is interested in a fixed-penalty notice regime. Will you tell us a bit about that?

**Bill Gilchrist:** My team deals with the statutory nuisance provisions in the Environmental Protection Act 1990, and we can serve fixed-penalty notices in the event that an abatement notice is breached. We have found that to be a highly effective tool in securing compliance with a notice. We find that, when a financial penalty is involved, it is far more effective than submitting a report to the procurator fiscal. Generally speaking, our experience is that such a report would be taken but that the court system faces a huge burden at the moment.

**Liam Kerr:** If there is a breach of a dog control notice, you would have the power to serve a £100 fixed-penalty notice—is that what you are suggesting?

**Bill Gilchrist:** I think that a fixed-penalty notice should be an option but not the only option available to us. Depending on the circumstances of the breach of the dog control notice, the option should be available for a local authority to refer the matter to the fiscal, particularly if there is an injury to a person or an animal. However, if we are talking about a minor breach of a notice—for example, failing to have the dog muzzled on a particular occasion or a lack of secure fencing around the garden, so that the dog can escape—a fixed-penalty notice would provide a much more effective remedy than a referral to the fiscal, which may not go anywhere.

**Liam Kerr:** That is very useful. Thank you.

**The Convener:** Thank you very much indeed for your evidence this morning. It has been a long session, and I appreciate your openness and honesty about the situation in your local authorities.

I suspend the meeting to allow a changeover of witnesses.

10:18

*Meeting suspended.*

10:23

*On resuming—*

**The Convener:** I welcome to the meeting our second panel of witnesses for the post-legislative scrutiny of the Control of Dogs (Scotland) Act 2010: Alan Murray, chief superintendent, and John McKeag, sergeant, local policing and development support, Police Scotland; and Anthony McGeehan, head of policy and engagement, and Fraser Gibson, procurator fiscal, south Strathclyde, Dumfries and Galloway, Crown Office and Procurator Fiscal Service.

I believe that Mr Neil will kick off the questioning for this panel. Are you ready, Mr Neil?

**Alex Neil:** Yes, convener. I want to start with the point that was raised in the latter part of the previous evidence session about the number of cases that are dropped by the procurator fiscal service before they get to court. How many cases are dropped, and why does it take nine months for any action to be taken on cases that are reported to the service?

**Anthony McGeehan (Crown Office and Procurator Fiscal Service):** In answering that question, I think it important that we understand the framework within which prosecutorial decision making takes place. In Scots law, when a prosecutor receives a case, they must consider three essential elements: first, whether the report discloses a crime known to the law of Scotland; secondly, whether there is sufficient evidence in relation to each of the essential elements of the offence; and finally, whether it is in the public interest to initiate a prosecution or take alternative prosecutorial action.

One of the key points of that three-step test is that, with regard to sufficiency, there is a requirement in Scotland for corroboration and evidence from at least two sources of each of the essential elements of an offence. That framework applies to all reports received by the COPFS and relevant offences reported under the 1991 and 2010 acts. On that understanding, I can, if it would be of benefit, describe some relevant statistics and what they might tell us with regard to some of the evidence that the committee has heard not just today but in previous evidence sessions.

**Alex Neil:** It depends on how detailed the description is, but there are two things that we need to get to the bottom of. First, I hear what you say about the criteria that need to be met, but can you tell us how many cases are dropped before they are prosecuted? Secondly, why does it take nine months or more before a decision is made?

**Anthony McGeehan:** Perhaps I misheard the evidence that was given this morning, but I did not hear that it took nine months before a decision was made.

**Alex Neil:** That was what one of the witnesses said.

**Anthony McGeehan:** I think that what the witness was describing was her understanding that it took nine months for cases to be dropped after the proceedings had been initiated. My understanding of the evidence to the committee is that that is not supported by the available statistics on the number of persons prosecuted versus the number convicted.

**Alex Neil:** I realise that they might not be readily available, but it would be useful to get the figures for, say, the past three or four years for the number of allegations that were reported to the

procurator fiscal. We know from figures that I have that, under the 1991 act, roughly two thirds of the cases that were prosecuted ended in a conviction. I think that that is a reasonable rate, and indeed, the rate is higher under the 2010 act; however, I would point out that no cases were prosecuted under the 2010 act in its first two years, and that in each of the years after that, the number of cases prosecuted was four, four, 11, seven, 10 and 10. To be fair, a very high percentage of those—indeed, almost 90 per cent—ended in a conviction, but the numbers for the whole of Scotland are very low.

**Anthony McGeehan:** Those are the statistics that I was referring to with regard to the evidence that the committee heard in the latter portion of the previous evidence session. What was described was a series of cases initiated by the procurator fiscal that took approximately nine months to reach a conclusion and which, prior to a conclusion being reached and for reasons unknown to the witness, were brought to an end. The statistics that you have highlighted are not consistent with that evidence; instead, they are consistent with the fact that, in prosecutions initiated by the COPFS in relation to a contravention of section 5 of the 2010 act, there is a high conviction rate.

One area of interest for the committee might be in relation to what happens not to accused persons but to charges reported to the COPFS and the prosecutorial decision making in that respect. The committee must understand that the data in relation to the prosecution and conviction of persons is different from the available data on the number of charges reported to the COPFS. Individual accused persons might be reported to the COPFS for multiple charges. For example, there is an instance of an accused person reported for 10 separate charges of contravening section 5, or the terms of a dog control notice; however, although there might have been 10 charges, there would be only one prosecution and one conviction.

I have with me and can provide to the committee statistics that point to the challenges that the police and the COPFS face in proving charges under the 1991 and 2010 acts.

**Alex Neil:** That is good. We should get those circulated to committee members, because it matters what happens at each stage of the process and how long it takes. We took evidence from a previous panel—people who were victims of dog attacks—that was critical of the police and local authorities and of what did or did not happen with regard to prosecution. It is clear that we need to address that issue, so it would be extremely helpful if we could get that information.

10:30

I am struck by the low numbers. Medical professionals gave us evidence about the number of people who turn up at A and E as a result of dog attacks in Scotland, and the total figure per year is estimated to be of the order of 5,000. If people are turning up at A and E, it must be serious and some of those cases are very serious indeed. Given that, according to the evidence from medics, 5,000 people turn up at A and E each year in Scotland as a result of dog attacks, it worries us that, in 2017-18—the most recent year for which figures are available—we ended up with 10 prosecutions and 10 convictions under the 2010 act, and 105 prosecutions and 82 convictions under the 1991 act. Something is surely going wrong somewhere, if we compare the 5,000 figure with those figures.

**Anthony McGeehan:** It might be useful if I clarify your area of interest. Are you interested in the discrepancy between the number of incidents reported by medics and the number of reports made to the police and by the police to the COPFS?

**Alex Neil:** I am interested in reconciling the fact that 5,000 people turn up at A and E as a result of dog attacks, yet, in the past year, the combined figure for prosecutions under the two acts was only 115, which led to 92 convictions.

I am not blaming anybody. One contributing factor is that medics are not obliged to report such cases to the police unless they think that it is very serious, although we were advised that that is not defined. One reason for the discrepancy is that not all incidents are reported by medics, because they do not do that without patients' permission and patients do not always want to report the incident.

I want to find out from the police and the prosecution service why there is such a massive discrepancy between the number of people who are injured as a result of dog attacks and the relatively low number of prosecutions and convictions.

**Anthony McGeehan:** Certainly. I will break that down into two sections and take the second section, which is about what happens to a case and the challenges that the Crown Office faces when a case is reported to the COPFS. The committee might want to hear from police colleagues about the first section, which is about when an incident occurs in the community, whether that incident is reported to Police Scotland and the challenges that Police Scotland faces.

**Alan Murray (Police Scotland):** I back that up. We rely on people reporting such incidents to us and it looks to me as though there is underreporting. I would be interested to know the

circumstances of the incidents, such as whether it was the family dog that bit someone.

Since 2010, we have received a total of 8,234 reports under the five elements of our dog legislation, not all of which are reports of dog attacks or dogs being dangerously out of control, so that is clearly nowhere near the number of people who present to accident and emergency. Among those dog bite incidents, I am sure that a lot would not necessarily fulfil the criteria for a criminal case. However, I still suspect that there is an element of underreporting.

**Alex Neil:** We understand that a rule is being applied by prosecutors—it is not in the legislation—that, if the dog has only bitten somebody once, there will not be a prosecution unless the injury is very serious. Apparently, that is in some guidelines somewhere.

**Fraser Gibson (Crown Office and Procurator Fiscal Service):** No. I am happy to talk about that, if that would assist the committee.

In reading the material for the meeting, we came across reference to what some organisations have described as a “one free bite rule”. There is no such rule in law or in our guidance. In any prosecution under the 1991 act, we have to comply with the statutory enactment, which states what is required to constitute the offence, and we have to prove that by corroborated evidence.

In the 1991 act, there is the statutory requirement that

“a dog shall be regarded as dangerously out of control on any occasion on which there are grounds for reasonable apprehension that it will injure any person or assistance dog, whether or not it actually does so”.

That phrase has been interpreted by the Scottish courts, and the decisions of the Scottish courts are binding on us. In essence, before we can successfully prosecute a case under the 1991 act, it is required to prove that there was “reasonable apprehension” that the dog would bite someone. We have to prove that an element of foreseeability is brought in through those decisions. If, for example, there was one very short incident and there was no history relating to the dog, that would not, in Scots law, satisfy the requirements of the section.

That is where there are a number of the challenges in relation to 1991 act offences for the police, and for us. There are challenges in the understanding of that, because it is complex—it is not straightforward.

**The Convener:** I am sorry, Mr Gibson, but which section of which piece of legislation would not be satisfied?

**Fraser Gibson:** Section 3 of the Dangerous Dogs Act 1991, as interpreted by the Scottish

courts. We have to look at the Scottish courts’ decisions on the matter, which are binding on us. We would be happy to share some of them with the committee.

**Alex Neil:** That would be very helpful.

**Fraser Gibson:** I think that I saw reference to that in some of the submissions from other parties.

**Alex Neil:** So are you basically saying that cases have already been to court and the judiciary has decided that there has to be proof that the dog would be likely to bite again?

**Fraser Gibson:** There has to be a “reasonable apprehension” that the dog would injure a person. It is a person; the assistance dog provision was brought in by statutory amendment in 2014—it is not a dog provision. Previous actions in relation to dogs may therefore be of limited relevance in proving the matter.

**Alex Neil:** I am not a lawyer. I have never assaulted anybody in my life, but if I hammered somebody—if, for example, I assaulted Anas Sarwar—

**Anas Sarwar:** You sometimes try.

**Alex Neil:** —and the case went to court, I could get off because I am not likely to assault anyone ever again.

**Fraser Gibson:** There is not necessarily any direct equivalence between common-law offences as we understand them relating to people and offences relating to dogs. For example, an assault, as we understand it, is governed by the common law. All dog offences are created and governed by statute, and they depend on what the statute says.

There is another difference.

**Alex Neil:** I am sorry to interrupt. Are you saying that, even if there was a serious bite and that was the first time that the dog was recorded as having bitten somebody, the case still might not be taken to court because the judiciary would be likely to say that it cannot be proven that the dog is likely to do that again?

**Fraser Gibson:** If we are talking about a very serious bite, that would depend, as every case does, on the facts and circumstances of the case. The severity of the bite in and of itself would not be sufficient to satisfy the requirements of the 1991 act.

**Alex Neil:** So if a dog mauled a child, the judiciary would be likely to let the dog off the hook.

**Fraser Gibson:** It is a question of what—

**Alex Neil:** You would not even take the case to the court because it would be likely to make that decision.

**Anthony McGeehan:** It is not about whether the judiciary is likely to make that decision; it is about whether there is sufficiency in law with reference to the relevant statute.

**The Convener:** So the law is not strong enough to protect children.

**Alex Neil:** It sounds as if the law is an ass.

**The Convener:** Is that right?

**Anthony McGeehan:** No. The law is what it is. It is—

**The Convener:** Yes. From your and our point of view.

**Anthony McGeehan:** The issue is whether the law reflects or addresses the particular need or risk that has been identified, but the law is what it is.

**The Convener:** I understand that.

**Alex Neil:** Just to be absolutely clear, if a dog had bitten a child for the first time and mauled and disfigured the child, and you thought that you could not persuade the judge or the sheriff that the dog would be likely to bite again, you might not take the case to court. How bad does the case need to be for the justice system, including prosecutors and judges? What about justice for the child and their family?

**Anthony McGeehan:** Again, the question of justice for the child and their family is perhaps not one to ask us, as prosecutors. As prosecutors, we look to the law. The issue is whether the legislature thinks that the law captures appropriately the situation that you have described. Our reference point is the relevant statutory offence that might be applicable to the circumstances of an individual case. We look, first, at whether the facts and circumstances of the case meet the circumstances of the offence, as set out by the relevant statute, and, secondly, at whether there is sufficient evidence for each element of the offence. With reference to Scots law, “sufficient evidence” means evidence from more than one source in relation to each of the essential elements.

**Alex Neil:** Absolutely. However, all the criteria need to be satisfied. I think that Mr Gibson said that one of the criteria is the ability to persuade a judge that it is likely or possible that a dog will bite again.

**Fraser Gibson:** It is not a question of whether a dog is likely to bite again. If we are talking about a bite, it is whether there was reasonable apprehension that the dog would injure any person. We generally need to look backwards to see whether there is evidence of a dog’s prior behaviour that might have given rise to concern. In unique circumstances, such as a long incident, we

would look at whether its length and the way in which the dog and the owner behaved during the incident could have given rise to that apprehension. Generally, we need to look backwards, not forwards, to try to establish, at the time that the offence occurred, whether there was a reasonable apprehension of injury. That is what the case law, which is binding, says.

**Alex Neil:** Clearly, there needs to be a change in the law, because that sounds absurd.

**The Convener:** It is absurd. It is my strong view, having listened to all the evidence, that the law is a lot harder on human beings, who have a conscience and free will, than it is on animals, which can be completely out of control.

**Anas Sarwar:** I will follow on from Alex Neil’s point. Jim Ferguson gave the example of the five-year-old who was mauled on a stage. It sounds as though the argument in that case was that, given that the dog will never again be on a music stage with a five-year-old and will therefore never again attack a child, no action should be taken against the individual who owned the dog. That sounds absurd.

**Fraser Gibson:** It is not about whether we want to take action in a particular case; it is about whether there is sufficient evidence in law for us to prosecute the person. In order to prosecute in that example, we would have had to establish that there was “reasonable apprehension” that there would be injury to a person.

**The Convener:** If we are going to talk about that specific case, we should refer the question to Police Scotland. One of my main concerns about the story that Jim Ferguson told us is—if I heard him correctly—that the police did not bring charges. Why was that?

**Alan Murray:** I am not aware of the case.

**The Convener:** I do not think that it can be an isolated incident, given the statistics on prosecutions.

**Alan Murray:** I will not refer to the particular case, because I do not know the circumstances. However, as my colleagues from the COPFS have said, a dog having bitten someone—even if the incident is severe—does not mean that the owner or the person who is in charge of the dog is liable to a competent charge under the 1991 act, because there needs to be the reasonable apprehension of injury that was mentioned.

My understanding is that, in simple terms, if the person who was in charge of the dog had a pretty fair idea that the dog was out of control and could bite someone, or if there were circumstances that could give rise to that fear, that could result in a competent charge. However, if the bite came out of the blue and the person who was in charge of

the dog did not know that it was going to happen, that would not necessarily result in a competent charge. I know about a case that involved a dog biting two children in a play park, in which it was held on appeal that the owner had no reasonable apprehension.

**Anas Sarwar:** Surely, if a dog is on stage with a five-year-old at a crowded concert with loud music and dancing, there is reasonable apprehension that something bad might happen.

**Alan Murray:** As I said, I cannot speak about the circumstances—

**Anas Sarwar:** Can you answer in general terms?

**Alan Murray:** I acknowledge that that does not seem to be an appropriate venue for a dog. Whether that amounts to—

**Anas Sarwar:** Would you consider the possibility that something bad might happen in those circumstances to be a “reasonable apprehension”?

**Alan Murray:** I say again that I need to know the full circumstances and so my answer is, “Not necessarily.” Dogs are often in noisy and busy environments such as parks. As I said, I find it difficult to comment on that particular case. The police and the COPFS always have to take into account context and circumstances.

10:45

**The Convener:** Glasgow City Council’s written submission says:

“There appears to be a lack of desire to take prosecution cases under The Dangerous Dogs legislation but instead”

to refer them to local authorities. Is that the situation with Police Scotland?

**Alan Murray:** No, that is not my understanding of the situation. If an incident has been reported in which a crime has been committed under the 1991 act and we think that there is sufficient evidence to present the case to the procurator fiscal for consideration, we make charges under it.

**The Convener:** We have also heard evidence that the police and procurators fiscal are making an increasing number of referrals back to local authorities for dogs that have caused serious injury. Is that because of what the Crown Office and Procurator Fiscal Service has just described about evidence? I see that John McKeag is nodding his head.

**John McKeag (Police Scotland):** Yes, and, to an extent, that will be because of the threshold to prove reasonable apprehension. I point to the Scottish crime recording standard. It is overseen by the Scottish crime recording board, which is

chaired by the Scottish Government’s justice analytical services division. The standard describes how all statutory offences should be recorded. The document is on the Scottish Government’s website. When referring to section 3—“Keeping dogs under proper control”—of the 1991 act, it provides the scenario in which

“A dog ... tied up on a short lead outside a shop bites a person walking past”.

On that, the document goes on to say:

“This is not a Police matter as the dog was not dangerously out of control at the time. Consideration should be given to reporting the matter to the Local Authority”.

In addition, the note that is attached to the example says that

“Police should investigate in the first instance if a person is bitten by a dog.”

That is in order to establish whether, under the full circumstances as the police know them to be, a crime has taken place.

**The Convener:** I will put to you Jim Ferguson’s story. If the five-year-old had been disfigured by my having assaulted her, would there have been an immediate charge made against me?

**John McKeag:** That relates to what our colleague said about an offence of common-law assault not requiring the reasonable apprehension that is in the 1991 act.

**The Convener:** So, I would be charged immediately for that crime against that child.

**John McKeag:** You would be charged immediately. There is a disconnect between what happens between humans in common law and those—

**The Convener:** Dogs get a second chance.

**John McKeag:** I would not necessarily put it like that. The law provides what the circumstances are when it can be proved that an offence has been committed.

**Liam Kerr:** Jim Ferguson told us about Police Scotland’s dangerous dogs operating procedure, which shows what matters fall within Police Scotland’s remit. He suggested that elements of Police Scotland are not aware of, or are not enforcing, the procedure. Do you accept that the procedure exists? If so, is it clear? Do you accept that not all parts of the force know about it?

**Alan Murray:** The answer is yes, the procedure that you describe, in which we should report things to the local authorities, exists. One of the council representatives said that not all beat cops are aware of it. We have investigated the matter, and I accept that there is inconsistency across the country. The commitment—“commitment” is not the right word—of councils that have dog wardens

and have invested in them is mirrored by the police in providing far better information sharing. I accept that there will be police officers who will not be aware that, when there is not enough evidence to make a charge under the 1991 act, they should refer the matter to the local authority for consideration of a dog control notice.

It is fair to say that there is inconsistent knowledge across the country, which is reflected in the investigations that we have carried out prior to coming out here today.

**Liam Kerr:** Thank you for your candour. On whom does the onus lie to remedy that situation in Police Scotland?

**Alan Murray:** We are reviewing our procedures on matters that are relevant to dogs. When that review has been completed, it will be incumbent on the force to ensure that the information is disseminated and reinforced. Certainly, following the committee's meetings, my recommendation would be that we need to ensure that, across the country, cops who are called to deal with dog attacks have sufficient knowledge.

Clearly, there are a lot of dog reports, but they are not something that police officers deal with every day. Statistically, it is unlikely that, in the course of a year, a particular beat cop will deal with such an incident. That might contribute to the level of awareness. However, there is definitely a gap in the knowledge, which we need to address.

**Willie Coffey:** I have a supplementary question for the Crown Office and Procurator Fiscal Service. Could you clarify the issue about reasonable apprehension? Forgive me for asking again. Did you say that, even if it is established that an attack has taken place and someone has been bitten, priority is given to reasonable apprehension not having been demonstrated, over the fact that an attack has taken place?

**Fraser Gibson:** It is not a question of priority: it is a question of what the law requires us to prove. The law requires us to prove by corroborated evidence that there was a reasonable apprehension of injury. A bite would not be enough, in and of itself, except perhaps in special circumstances.

**Willie Coffey:** My goodness.

**Colin Beattie:** We have heard evidence that there is not a great deal of joined-upness among councils, police and so on on the issue. Where a case has been pursued under the 1991 act but no action has been taken, is there a process for referring the matter to a local authority for action under the 2010 act?

**Alan Murray:** Yes. According to the protocol that was referred to, if we are investigating a case under the 1991 act and there is not sufficient

evidence to report it to the procurator fiscal, we should refer the case to the local authority for consideration of action under the 2010 act.

**Colin Beattie:** You say that that should happen, but does it? There seems to be no evidence that it does.

**Alan Murray:** It is difficult to tell how often it happens and how often it does not happen. Again, there is no database.

**Colin Beattie:** But there must be a process.

**Alan Murray:** There is a process.

**John McKeag:** There is a process, but that, again, is potentially about the relationship between the local authority and the police. Investment in that respect was discussed earlier. Our protocol and guidance is that, if we have been dealing with a dog that has been out of control, we should inform the local authority of that. Although we could continue our investigation in terms of a criminal offence, the dog control notice is a civil order. We work best when we work in collaboration: sharing of information is important in that regard.

The previous panel talked about the dog control notice register, which has not been implemented nationally. It could be a great form of evidence. If we are building a case under the 1991 act, we could use that register to demonstrate proof that a dog has been the subject of a dog control notice or that warning letters have been issued.

**Colin Beattie:** What you are describing seems to be a bit ad hoc. You say that, in effect, things depend on relationships.

**Alan Murray:** I am not sure whether I would describe it as "ad hoc", but I think that there is a disconnect. That is partly down to the fact that there is no single point of information, or database, that would enable information to be cross-checked among local authorities and between the police and local authorities so that people could see what action had been taken and what reports had been made previously. That disconnect probably happens around the information sharing that John McKeag is talking about. What happens to information even when we supply it? There is no national database that holds it.

With regard to the 1991 act, if it can be proved that a dog has previously been subject to an investigation because it has been dangerously out of control, that would certainly give rise to the understanding that there could be reasonable apprehension that it would happen again.

**Colin Beattie:** Sufficient evidence has been put forward to say that a national database would be desirable and would make a difference, but that should not stop cases being referred to the local



authority when there has been a failure to prosecute under the Dangerous Dogs Act 1991.

**John McKeag:** The local authority dog warden should be made aware not just of failure to prosecute a case, but of when there is information about an out-of-control dog in the community. The police can then investigate to establish whether criminal offences have taken place.

**Colin Beattie:** Without input from the police, would the dog warden be aware that a case had been dropped?

**Anthony McGeehan:** I noted during the earlier evidence session that the committee does not appear to have a copy of the relevant protocol. The issue is covered in the protocol, so I ask the committee to view some of the evidence that it has heard from individual local authorities through the lens of the protocol, and what it provides for in relation to the interaction between the 1991 act offence and the 2010 act offence.

The second paragraph on page 5 of the protocol says:

“This is an important point to note as while the policy presentation of the 2010 Act has often been in the context of the DCN regime being about trying to prevent attacks from taking place, the law itself does not restrict imposition of a DCN to only where attacks have not taken place. Given the discussion about ... the 1991 Act”

and the challenges that prosecutors and the police face in relation to the act, which is fully discussed in the protocol—that discussion has been mirrored this morning—

“it can be the case that imposition of a DCN may be appropriate for cases originally considered under the 1991 Act but where a lack of evidence exists to support a prosecution.”

The system that is operated by the COPFS is that, when a prosecutor cannot take forward a case as a result of the evidential test that must be met under the 1991 act not being met, they ask the police to refer the matter to the relevant local authority. That process was described by witnesses earlier this morning.

Some witnesses described what we understand to be a complementary approach in which, if an offence cannot be progressed under the 1991 act, there is an opportunity for the local authority to consider taking action through issuing a dog control notice, because of the different evidential tests that must be met for DCNs. As my police colleague said, a DCN might be a reference point, should the dog misbehave in the future and an opportunity is available again to consider whether prosecution under the 1991 act is possible.

**Colin Beattie:** There is a process for automatically referring such a case to the local authority. Is that process working?

**Fraser Gibson:** We ask the police to refer every case that we cannot take up under the 1991 act to the local authority. That is in our guidance.

**Colin Beattie:** Okay—you ask the police to refer such cases. Do the police do so?

**Alan Murray:** We should and, on some occasions, we do. There have been failings and the statistics tend to suggest that we do not refer on all occasions. Perhaps there should be a tighter process.

**Colin Beattie:** My impression is that processes and protocols are in place, but are not really being adhered to.

**Bill Bowman:** If a dog attacks a postal worker or a police officer while they are carrying out their duties, as opposed to there being a random attack on a member of the public, can the dog be dealt with in a different way?

**Anthony McGeehan:** No. The same law applies.

**Bill Bowman:** You might have better evidence, but that is all.

**Anthony McGeehan:** We might have better evidence, but there might be different evidential challenges. Due to the requirement for corroboration under the law in Scotland, we need evidence from at least two sources for each essential element of the offence and, considering the circumstances in which a postal worker might be bitten by a dog, there would be challenges in identifying at least two sources.

**Bill Bowman:** So, there is no particular protection for the police in carrying out their duties.

**Alan Murray:** No.

**The Convener:** I think that all the witnesses heard the evidence from the earlier panel. We heard that there is a lack of understanding among prosecutors of the law on the issue. What is the Crown Office’s response to that?

11:00

**Anthony McGeehan:** We reject that evidence. There is specific guidance for prosecutors on each of the relevant offences, and the offences are marked by specialist prosecutors. I note the source of that evidence, which was given in connection with the interaction between the COPFS and local authorities in relation to consideration of DCNs. What was described was an increasing number of referrals to a local authority in circumstances where prosecutions fail but, again, I would challenge that language and understanding. I would challenge the view that the referral of a case to a local authority where a prosecution is not possible is not appropriate and

is not evidence of good practice on the part of the COPFS and good knowledge on the part of prosecutors as to options that may be available and should be considered in circumstances where a prosecution cannot take place.

**The Convener:** Another piece of evidence that we have received is that local authorities often receive

“requests from Procurators Fiscal for DCNs to be served on dogs whose owners await prosecution under the Dangerous Dogs Act.”

It goes on:

“There is suspicion that this may be to avoid the costs incurred with seizing and kennelling dangerous dogs until ... an owner’s case reaches court.”

Is that correct?

**Fraser Gibson:** Absolutely not. I notice that the allegation is a “suspicion” rather than one based on evidence. The protocol makes it clear that, where we cannot take action, we will refer cases to the council. As my colleague said, those comments do not seem to take cognisance of that section in the protocol, which makes it clear that such referrals will happen. When we do not have a sufficiency of evidence, we will ask the police—they do so in my general experience—to refer the case on to the relevant local council to consider whether a dog warden can take action in respect of the incident. There may be a misunderstanding of the stage in the process at which that happens, because of course our case stays live until we close it. We will have taken a decision about sufficiency but, as part of recording the steps that we take in the case, we do not close it until we have had that communication with the police and the police have communicated it—

**The Convener:** Are you saying that your judgment on whether to seize and kennel a dog or refer it back to the council for a dog control notice is based on the sufficiency of evidence? Should the test not be public safety? For instance, if a dog has bitten a child and a prosecution is pending under the 1991 act, you may refer it back to the council for a dog control notice, but you will have no sense that the notice will be adhered to. Is it not more in the public interest and in the interest of public safety that you seize and kennel the dog?

**Fraser Gibson:** Again, it comes back to the sufficiency of evidence. By that point, the police will have made a decision about whether to seize the dog, and the dog will either be kennelled—

**The Convener:** So that is the police’s decision.

**Fraser Gibson:** Generally, they will be the first people dealing with the incident.

**The Convener:** But the evidence says that requests are received from the procurator fiscal for DCNs to be served on dogs.

**Fraser Gibson:** To clarify, is that the evidence of local authorities?

**The Convener:** Yes.

**Fraser Gibson:** We will have made a decision about whether there is a sufficiency of evidence to prosecute the owner or the person in control of the dog and, if there is not, because we can do nothing more at that point without a sufficiency of evidence, we will refer the matter on to the local authority to consider whether it can take steps using its powers under the 2010 act. As a responsible public authority, that is obviously a proper thing for us to do.

**The Convener:** But that scenario is different from the one that I have just put to you. You are talking about considering whether there is a sufficiency of evidence—so you might not prosecute—but the evidence that I referred to is about the situation while an owner is awaiting prosecution. I am concerned that you are telling me that you make a decision on a legal point—the sufficiency of evidence—when there is a public safety issue. Basically, you decide whether to leave the dog in the community with no guarantees that it will behave rather than seizing and kennelling it after it has bitten a child.

**Anthony McGeehan:** That is not our evidence.

**The Convener:** No, that is local authority evidence.

**Anthony McGeehan:** That is not the situation. I return to my opening remarks in connection with the legal framework within which a prosecutor must operate. There has to be a sufficiency of evidence before a prosecutor can take prosecutorial action. If we refer a case to a local authority for consideration of a DCN it is because there is insufficient evidence to allow the prosecutor to take action.

**The Convener:** You are saying that seizing and kennelling is a prosecutorial action.

**Anthony McGeehan:** No. Seizing and kennelling takes place before the case is reported to COPFS. The case is reported to COPFS, with the dog potentially having been seized and kennelled. The decision for COPFS at that stage is whether there is sufficient evidence for us to take prosecutorial action. If there is insufficient evidence, we cannot take action or move on to the public interest test, and for us to take prosecutorial action would be unlawful. In those circumstances, we refer the matter to the local authority, because there is an opportunity, as set out in the protocol, for a local authority to take action in connection

with a DCN and to try to address the public safety issues that you have highlighted.

**The Convener:** I think that my point still stands. You could still have a situation in which a dog severely bites a child and, because you do not have sufficient evidence, instead of being seized and kennelled, the dog is left in the community and is just given a DCN.

**Anthony McGeehan:** That comes back to what a prosecutor can lawfully do.

**The Convener:** I understand that.

**Willie Coffey:** Does sufficiency of evidence mean people witnessing an incident, or can any injuries contribute to the sufficiency of evidence test?

**Anthony McGeehan:** Under the 1991 act, there is a requirement for evidence of injury in connection with an aggravated offence. I would encourage the committee to look at both the offence in the 1991 act, and the interpretive section, which is section 10. That is what prosecutors are referring to. We require to prove injury in terms of an aggravated offence under the 1991 act. However, I think that you are perhaps asking whether injury would form part of the case in relation to reasonable apprehension, and the answer to that is no.

**Willie Coffey:** Goodness. Right. Thank you.

**The Convener:** Do members have any further points for the panel?

**Alex Neil:** Just a quick one. We have heard contradictory evidence on the application of data protection legislation. We have previously heard evidence on that, but this morning we heard that in one local authority, East Ayrshire, dog control notices are issued without the recipient being identified to the complainant. I think that it was Glasgow that said that, because of data protection issues, it does not go even as far as that. There seems to be real variation in the interpretation of data protection legislation. From the COPFS point of view, who is right? Can you or can you not issue the complainant with the detail of the content and conditions of the control notice?

**Anthony McGeehan:** It is not for the COPFS, as criminal prosecutors, to offer a view on the operation of a civil regime by a local authority or on its compliance with data protection obligations.

**Liam Kerr:** You heard me ask about fixed-penalty notices, which have been brought up by at least one of the councils. Does Police Scotland have any views on fixed-penalty notices for breach of a DCN? More specifically, would that be more efficient for a minor breach and, if so, what constitutes a minor breach?

**Alan Murray:** It may be more efficient. A range of disposals for any offence or crime can be helpful, as long as it does not complicate things. What would constitute a minor breach depends on the terms. In many respects, the things that go on dog control notices are to stop the dog presenting a danger, so I suppose that you could argue that if any of those conditions was not fulfilled, and a danger presented, it would represent a breach.

Again, the circumstances, context and result of whatever action it was would guide what the disposal should be. However, a fixed penalty may well be an option for breaches.

**Liam Kerr:** In principle, it would add to your toolkit.

**Alan Murray:** In principle, yes.

**Liam Kerr:** My final question is for anyone on the panel. I asked earlier about an offence of obstruction. Do any of you take a view on whether that would be a useful addition to the toolkit?

**Alan Murray:** I think that it would be. If a notice is issued and the person who the notice applies to does not comply with the notice or the spirit of the notice, there has to be some kind of sanction or mechanism for making sure that they do. Again, in principle, I think that I would support such an offence.

**The Convener:** As there are no further questions from members, I thank the witnesses very much for their evidence.

11:10

*Meeting continued in private until 11:29.*



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

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