



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 5 January 2016

Session 4

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JUSTICE COMMITTEE
1st Meeting 2016, Session 4

CONVENER

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

DEPUTY CONVENER

*Elaine Murray (Dumfriesshire) (Lab)

COMMITTEE MEMBERS

*Christian Allard (North East Scotland) (SNP)

*Roderick Campbell (North East Fife) (SNP)

*John Finnie (Highlands and Islands) (Ind)

*Margaret McDougall (West Scotland) (Lab)

*Alison McInnes (North East Scotland) (LD)

*Margaret Mitchell (Central Scotland) (Con)

*Gil Paterson (Clydebank and Milngavie) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Michael Matheson (Cabinet Secretary for Justice)

Don McGillivray (Scottish Government)

John Nicholson (Scottish Government)

Paul Wheelhouse (Minister for Community Safety and Legal Affairs)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Justice Committee

Tuesday 5 January 2016

[The Deputy Convener opened the meeting at 10:01]

Decision on Taking Business in Private

The Deputy Convener (Elaine Murray): I welcome everybody to the first meeting of the Justice Committee in 2016 and wish everybody a happy new year. I remind people to switch off their mobile phones and other electronic devices. Christine Grahame has sent her apologies—unfortunately, she is unwell today.

Agenda item 1 is a decision on whether to take in private agenda item 8, on the work programme, which requires a bit of additional consideration. Do members agree to take that item in private?

Members *indicated agreement.*

Subordinate Legislation

Public Appointments and Public Bodies etc (Scotland) Act 2003 (Treatment of Community Justice Scotland as Specified Authority) Order 2016 [Draft]

10:02

The Deputy Convener: The next item of business is consideration of an affirmative instrument. I welcome to the meeting Paul Wheelhouse, the Minister for Community Safety and Legal Affairs, and Scottish Government officials Ingrid Roberts, who is from the community justice division, and Carolyn O'Malley, who is from the directorate for legal services. I remind members that the officials can take part in this item but not in the formal debate that will follow.

Minister, do you wish to make an opening statement?

The Minister for Community Safety and Legal Affairs (Paul Wheelhouse): Yes. Happy new year, deputy convener and members of the committee. I am glad to first foot the committee today.

I thank the committee for inviting me to speak to the draft order, which has been laid to ensure that appointments to community justice Scotland will be regulated by the Commissioner for Ethical Standards in Public Life in Scotland. As I stated when I wrote to the committee on 16 November, I believe that it is important that the new body should be a regulated body, and the Community Justice (Scotland) Bill makes provision for that.

As is set out in the accompanying documents to the Community Justice (Scotland) Bill, it is my intention that the new body will be established in autumn 2016 and take up its full powers in April 2017—subject, of course, to the will of Parliament. In order to have the chair in place six months prior to the body taking on its full functions, and in line with the Audit Scotland recommendations on establishing and merging public bodies, I wish to appoint a chair as soon as possible after the bill receives royal assent, in the event that it is passed by Parliament. The chair will then be in place to assist in the appointment process for the chief executive and board members prior to the body taking on its full functions in April 2017.

I believe that it is important that the appointment of the first chair and board, which will have responsibility for setting the agenda for our new lead body for community justice, is fully transparent and subject to the high quality of external scrutiny that the commissioner can provide.

The addition of community justice Scotland to the relevant schedule to the Public Appointments and Public Bodies etc (Scotland) Act 2003 follows recent precedent when new public bodies are set up. The commissioner will not be able to officially regulate the appointments until the new body has been added to the list of regulated bodies under the 2003 act by the Community Justice (Scotland) Bill. That will happen when the relevant provision of the bill comes into force. However, the draft order will enable a representative from the commissioner's office to provide assistance during the early stages of recruitment until an order under section 3(3) of the 2003 act is in force and the new body can be fully regulated.

The Deputy Convener: Thank you, minister. We move to questions from members.

The only thing that really stood out is that we are dealing with an order for a body that has not yet been established. You have, however, explained the reasons why we need to do that at this point.

Paul Wheelhouse: I am aware of a couple of precedents. Historic Environment Scotland and Revenue Scotland followed a similar procedure to establish a shadow board before legislation was passed.

The Deputy Convener: Thank you.

We move on to the formal debate on the motion to recommend approval of the instrument. I invite the minister to move motion S4M-14967.

Motion moved,

That the Justice Committee recommends that the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Treatment of Community Justice Scotland as Specified Authority) Order 2016 [draft] be approved.—[*Paul Wheelhouse.*]

Motion agreed to.

The Deputy Convener: I suspect that is the first such motion to be agreed in 2016.

Paul Wheelhouse: Thank you very much.

The Deputy Convener: Thank you, minister.

10:06

Meeting suspended.

10:08

On resuming—

Draft Budget Scrutiny 2016-17

The Deputy Convener: We now move on to an evidence session on the Scottish Government's draft budget 2016-17. We previously agreed to focus our scrutiny of the budget on three areas of spend: policing, the Scottish Fire and Rescue Service, and the Crown Office and Procurator Fiscal Service. Before the budget document was published, we issued a call for views and took evidence on the financial planning that was being undertaken in those areas to inform today's session.

I welcome to the meeting, and wish a happy new year to, Michael Matheson, the Cabinet Secretary for Justice, and Scottish Government officials Neil Rennick, director of the justice directorate, Don McGillivray, deputy director of the safer communities directorate, and John Nicholson, from the safer communities directorate.

Cabinet secretary, do you wish to make an opening statement?

The Cabinet Secretary for Justice (Michael Matheson): Only to wish the committee a very happy new year.

The Deputy Convener: Thank you.

To structure the discussion, I propose that we split it into three areas—first policing, then the Fire and Rescue Service, and then the Crown Office and Procurator Fiscal Service.

I invite members' questions on the police budget.

Gil Paterson (Clydebank and Milngavie) (SNP): Happy new year, cabinet secretary.

The draft budget for 2016-17 seeks to maintain, in real terms, the current level of resource funding for the Scottish Police Authority. How much additional funding does that actually involve?

Michael Matheson: You are correct in saying that. The increase in funding for Police Scotland in the 2016-17 budget that that approach will provide is just over £17 million of additional resource.

Gil Paterson: Does the additional funding for the SPA indicate a departure from the previous need to find efficiency savings? Will the service still be charged with trying to maintain services and look at how it can save, or is it off the hook?

Michael Matheson: It is fair to say that Police Scotland and the SPA have already achieved significant recurring savings over the last two and a half years, but there is a requirement to make

further savings and efficiencies. The increase in funding is not a departure from our recognition of the need to make sure that the SPA and Police Scotland continue to seek and achieve those savings effectively, but it provides them with a level of resourcing that I believe will assist them to take forward the important work that they undertake in a range of areas. For example, it will assist them to meet some of the additional challenges that they face around counterterrorism.

The requirement for Police Scotland and the SPA to continue to identify efficiencies and savings remains, and we will continue to work with them to ensure that that is progressed.

Gil Paterson: Is there an expectation that there will still be efficiency savings? We have heard that the pips are beginning to squeak, as they say, but is there an expectation from the Government that those savings can be achieved?

Michael Matheson: You have heard in evidence already that there is still scope for efficiencies to be found. There is no doubt that, when you bring together eight different forces, there will be significant areas of overlap in where efficiencies can be gained, and I do not believe that they have all been realised yet. There are still areas where bureaucracy could be alleviated and where further gains can be made and maintained.

Part of the purpose behind the Deputy First Minister agreeing to further provision in relation to the reform budget, which is being provided in this budget, is to assist Police Scotland in taking forward some of the investment that is necessary to support it and the SPA in achieving some of those efficiencies.

I am of the view that of course efficiencies can still be achieved. We need to support and assist Police Scotland and the SPA in doing that, whether through information and communication technology or in areas around procurement, where they have already achieved significant efficiencies but where further gains could be achieved, for example through working in collaboration with other public sector organisations in relation to how they purchase particular things and achieve procurement arrangements.

Those are areas where there is still significant scope for efficiencies to be made, and there is a clear desire on the part of the SPA and Police Scotland to make sure that they continue to focus and bear down on those matters to maximise the savings that can be achieved and to ensure that they are achieved.

Gil Paterson: It is strange that our budgets are under pressure, yet there is this difficulty with VAT. As we are constrained by time, maybe you could answer in relation to both services. What has the Scottish Government been doing to resolve the

situation whereby VAT is paid by fire and police services in Scotland, but not by those south of the border?

Michael Matheson: I have made it very clear to the committee before that it is entirely unacceptable that Police Scotland and the Scottish Fire and Rescue Service are the only two services in the United Kingdom—in policing or in fire and rescue services—that have to pay VAT. I know that the committee has expressed concerns about that in the past. We have continued to make representations to the UK Government on the matter, but we have been unable to make any further progress on it yet.

10:15

VAT costs Police Scotland something in the region of £25 million a year and the Scottish Fire and Rescue Service around £10 million a year. Of course, some would argue that we were warned about that before the reforms took place, and I do not deny that some people gave those warnings. If neither of the organisations qualifies for VAT exemption because we have moved to national services, I do not understand why the National Crime Agency, which is a UK agency, gets VAT exemption, or why academy schools in England were allowed VAT exemption, even though they are centrally funded. The Police Service of Northern Ireland and the Northern Ireland Fire and Rescue Service get VAT exemption, yet they are nationally funded organisations.

If there is political will for VAT exemption to happen, it is very clear that it can happen. It is entirely unacceptable that in Scotland we continue to spend in the region of £35 million a year on VAT to Her Majesty's Treasury, when it could change that at the stroke of a pen. That money could be better invested in public services here in Scotland, including in the Fire and Rescue Service.

Gil Paterson: Can the Scottish Government do anything to put the heat on the matter and move it further up the agenda? It seems that we only hear about the issue in discussions such as this—we do not hear much about it at any other time.

Michael Matheson: We have raised the issue with the UK Government consistently, at every opportunity that we have. I will give you an example. We are having to replace the radio systems that are used by our emergency services, including the police, the fire service and the ambulance service. Over the course of its lifetime, that contract, which we are negotiating and working on with the Home Office, will probably cost us in excess of £400 million. The reality is that we are the only part of the UK sitting around the table that will have to pay VAT on that contract. Every other part of the UK that is joining

in on that programme will not pay VAT on it. We are taking every opportunity to highlight the iniquity of the situation in which we find ourselves: two of our key public services—emergency services—have to pay VAT in a way that no other similar service in another part of the UK has to do. When it comes to working on a pan-UK basis on new investments, we are the only body at the negotiating table that has to pick up the attached VAT costs.

The Deputy Convener: The Finance Committee flagged up that problem when the legislation went through, so it was known about. At that stage, Northern Ireland had been exempted by the VAT legislation that went through. Obviously, the UK Government has exempted a number of organisations since then. Has it given you any indication why it has taken a rather intransigent position on Police Scotland and the Scottish Fire and Rescue Service, when it has been prepared to change the rules for others?

Michael Matheson: To a large extent, no. You are correct to say that it has chosen to give other bodies—such as London Legacy, which is a national organisation—VAT exemptions.

Sadly, the decision appears to be politically motivated. That is entirely unacceptable and we will continue to make representations to the UK Government on the matter at every opportunity. To date we have not made any further progress with the UK Government, despite our repeated calls to it to address the matter. It has said that, because the services are nationally funded bodies, they no longer qualify for VAT exemption, but there has been no explanation beyond that.

John Finnie (Highlands and Islands) (Ind): Good morning, cabinet secretary. I declare an interest as a recipient of a police pension, since police pensions feature in the budget.

I am trying to understand the relationship between two statements that the Cabinet Secretary for Finance, Constitution and Economy made on 16 December. One of them is:

“I am pleased to confirm today that we will provide real-terms protection to the front-line policing resource budget next year and, if we are re-elected in May, for every year of the next Parliament, which is a boost of £100 million over that period.”

The second statement is:

“I am announcing further support today. Instead of removing the reform budget as Parliament intended, in order to consolidate the reforms and to support the work of the police, I am committing a further £55 million next year to the important task of community safety.”—[*Official Report*, 16 December 2015; c 39.]

Will you talk about the relationship between those two statements? In particular, if your

Government is re-elected, will an additional £20 million be injected straight away in May?

Michael Matheson: Do you mean in May 2016?

John Finnie: Yes.

Michael Matheson: The real-terms increase is £17 million.

John Finnie: What is the relationship between the statement about

“a boost of £100 million”

in the event that you are re-elected and the announcement of

“committing a further £55 million next year to the important task of community safety”?—[*Official Report*, 16 December 2015; c 39.]

Michael Matheson: The real-terms increase in the resource budget over the five-year period is projected to accumulate to just over £100 million.

John Finnie: What does that mean for 2016-17?

Michael Matheson: That is the £17 million to which I referred in my response to Gil Paterson.

John Finnie: Is that part of the £55 million?

Michael Matheson: No. There are two separate things: the police central Government budget, which is the £55 million to which you referred and is the continuation of the reform budget, and the real-terms increase in Police Scotland’s resource budget. If we give real-terms protection, the real-terms increase in the resource budget for Police Scotland over the five-year period will be just over £100 million. In the 2016-17 budget, that will amount to just over £17 million. The £55 million of central Government reform budget is separate from and in addition to that.

John Finnie: What additional sum will be provided in the event of your party being re-elected in May? I am not campaigning for you, but are you saying that the police can look forward to a windfall of—what is five into £100 million—£20 million extra?

Michael Matheson: There is £17 million of additional money in 2016-17, and the way in which real-terms protection operates means that the figure will start to increase in further years of the five-year period. Over that period, that will accumulate to around £100 million of additional resource.

John Finnie: So the statement on the £100 million does not need the qualifier “if we are re-elected”, because it is there anyway.

Michael Matheson: This is a one-year budget, which provides £17 million. As the Deputy First Minister set out, we are committed to maintaining

that in future budgets. A change of Government could result in a change of budget approach.

John Finnie: So the figure is £17 million, then.

Michael Matheson: It is £17 million because this is a one-year budget. We have made a commitment that, if we are re-elected, the figures will accumulate to more than £100 million over the five years.

John Finnie: We will deal with the Scottish Fire and Rescue Service separately, but I understand that it will be able to retain capital receipts from property disposals. Is that the case for the police?

Michael Matheson: Yes.

John Finnie: What will the police be able to use that money for?

Michael Matheson: It will be for them to decide whether they want to invest it in capital projects or other projects that they are undertaking.

John Finnie: Could they use it for revenue purposes?

Michael Matheson: No—it would be capital. It is not possible to put capital into revenue.

John Finnie: I was just checking that.

Is there contingency to deal with the ICT project, which is a major capital project, and with i6?

Michael Matheson: Contingency to deal with what?

John Finnie: Any difficulties that may arise with the projects.

Michael Matheson: Do you mean in the way of an overspend or a change in the costs?

John Finnie: I mean contractual difficulties.

Michael Matheson: The police have a contractual agreement in place to undertake i6 with the company that is responsible for developing the project. If any additional cost was associated with that, it would be a matter for Police Scotland and the SPA to work out within their budgets. They have not highlighted anything in relation to the contract that they have in place. However, if they wanted to use some of the capital receipts that they receive during the year to undertake other work on ICT infrastructure capital investment, they could do that if they thought that it was necessary.

John Finnie: Would that include use for i6?

Michael Matheson: Technically, yes, if that was necessary, but I am not aware of any indication that it needs additional investment at this stage.

Roderick Campbell (North East Fife) (SNP): Happy new year to you, cabinet secretary. I will build on a couple of the themes that Gil Paterson

and John Finnie talked about in relation to the budget. Since we took evidence on the budget on 1 December, Audit Scotland has produced “The 2014/15 audit of the Scottish Police Authority”. Paragraph 20 of that report refers to the fact that

“the SPA forecasted an overspend of £25.3 million against its 2015/16 revenue budget.”

The report comments on the First Minister’s statement about a real-terms increase in the police revenue budget, and it suggests that,

“If a one per cent real terms budget increase is assumed for every year from 2016/17 to 2020/21, we estimate that there could still be a cumulative funding gap of over £80 million by 2018/19 unless additional savings are made”.

I understand that the report was prepared before the Deputy First Minister made his budget statement. Will you comment on that paragraph and ways in which it might not tell the full story?

Michael Matheson: You are correct that the Audit Scotland report was published prior to our draft budget being published.

Don McGillivray (Scottish Government): The report was prepared prior to that.

Michael Matheson: I am sorry—it was prepared prior to that.

Audit Scotland made a number of assumptions in the report that—obviously—did not take account of some measures that we published in the draft budget. For example, Audit Scotland’s projected budget figure assumed that no reform funding would be allocated to the SPA in any year. In fact, there is the reform budget that I referred to—the additional £55 million that has been allocated as part of the draft budget.

The Audit Scotland net expenditure figure was based on a starting assumption of an overspend of £22.3 million at the end of the current financial year. In fact, we understand that the end-of-year overspend will be significantly lower than that as a result of the recovery plan that the SPA and Police Scotland have put in place.

The Audit Scotland budget gap figures are based in part on the assumption that no further efficiency savings will be achieved in future years. In fact, some of the current year’s savings have been delayed until next year. As I mentioned, the reform budget is also intended to assist Police Scotland in achieving some of the changes that it needs to make to achieve further savings.

Audit Scotland’s projections were compiled in advance of the Scottish Government’s draft budget, which was published before the Christmas recess. As the First Minister has outlined, we have given the commitment, if re-elected, to maintain a real-terms increase in Police Scotland’s budget in future years.

Roderick Campbell: I will move on to the annual report for 2014-15 of Her Majesty's inspectorate of constabulary in Scotland, which was also published after we conducted our budget session on 1 December. It touches on the absence of a financial strategy on the part of the SPA. Mr Penman's report states:

"While the current commitment to maintaining an additional 1,000 officers is welcomed and has strengthened policing across Scotland, it can only remain effective and efficient whilst these officers continue to perform operational policing roles. In the absence of a long term vision of policing, a wider workforce strategy and a clear financial strategy, there is a real risk that financial savings will continue to focus primarily on reducing police staff."

Will you comment on that paragraph and in particular on the absence of a financial strategy on the part of the SPA?

10:30

Michael Matheson: I will rewind to the start. The outline business case for police reform was developed and published in 2011. It was very detailed—it was arguably one of the most detailed for a major area of public sector reform—and it set out a range of options for progressing policing reform. Any further financial strategy or financial business case had to be taken forward by Police Scotland and the SPA, once established. If I recall correctly, the committee received evidence from the former chief constable, Stephen House, that that work could be taken forward only once the organisations had been established.

The early work that was undertaken by Police Scotland and the SPA concerned their corporate strategy, which set out the areas that they would address over the three-year period, including the financial aspect, personnel and a range of other areas. They have taken that work forward over the past couple of years and are now in a position where, since we have published our draft budget, they can set out their financial strategy for the forthcoming financial year and how that will plan into the future.

As a Government, we have indicated our intentions over the next five years, which will give Police Scotland and the SPA greater certainty when planning their financial strategy. The other important piece of work that they are undertaking is on planning for future demands on the service. They will report on that by the summer of next year.

A combination of the draft budget that we have set out—it allows the bodies to plan for the forthcoming year and, potentially, for the next five years—and the piece of work that the SPA is undertaking on the future demands on the service and the nature of those demands will assist the SPA and Police Scotland in looking at what

resources they need. That means not just financial resources but personnel resources and the way in which those resources are employed to meet the demand.

Roderick Campbell: All those factors, together with the review of police governance that you set up in September, might mean that there is a need to review exactly where the police budget is going not necessarily next year but for the years of the next session of Parliament. Will you take that wider view on board?

Michael Matheson: The police governance review that I asked the new chair of the SPA to undertake will be completed by spring next year, alongside the work that the SPA will complete in the summer of next year on demands that the service will face over the next five to 10-year period. Those pieces of work will allow it to indicate clearly what it believes may be the financial and wider demands that will be placed on the service.

We will have to see what the outcome of those pieces of work is, but we have sought to provide as much assurance as we can—from this budget and for future budgets—about what the police budget will look like in future years. That gives the SPA and Police Scotland greater certainty in planning for those matters.

Margaret Mitchell (Central Scotland) (Con): I will continue that line of questioning. On 18 December, Audit Scotland was very critical of the SPA's accounts. It forecast the deficit that you have talked about in part, in referring to a recovery plan and other measures, and it expressed concern about incomplete records and poor financial management. Are you satisfied that that has been resolved in the SPA?

Michael Matheson: In addition to the points that I made to Rod Campbell about the differences between what is in the draft budget and the assumptions that Audit Scotland used, the SPA has assured me that it is taking action to ensure greater accuracy in its accountancy work. You may be aware that the SPA intends to appoint an interim chief financial officer to support that work over the coming months and to address the deficiencies that have been highlighted, which will ensure greater accuracy. The SPA is committed to addressing those issues and is taking action to do so.

Margaret Mitchell: Another criticism was about the lack of a long-term financial strategy, which was first called for in 2013. You stated that it was unrealistic to have a long-term strategy then, when so much had not been decided. We are now in 2016. You mentioned a recovery plan and said that a review is coming next year, but how confident can we be that either Police Scotland or

the SPA will have a long-term financial strategy—a three to four-year strategy—in place?

Michael Matheson: We set out what we intend the resource budget for Police Scotland to be over the next five years to support it in undertaking such work. The fact that we have provided it with greater detail for the coming years will support it in that regard. It is already undertaking detailed work to plan for the forthcoming financial year on the back of the draft budget, which was published late not through our choice but as a result of the delay at Westminster. Setting out our intentions if we are re-elected for the next five years provides Police Scotland with more understanding of what its finances would look like over that period.

Margaret Mitchell: Is it fair to say that the long-term financial strategy is not in place for either Police Scotland or the SPA?

Michael Matheson: Police Scotland and the SPA are undertaking that work on the basis of the draft budget. They had a three-year strategy, which they took forward as part of their corporate strategy. As a result of the draft budget, they can now plan for the forthcoming financial year.

Margaret Mitchell: The fact that Audit Scotland first asked for a long-term financial strategy in 2013 and that we are now in 2016 but are still no closer to having one is something to reflect on.

Michael Matheson: We might be confusing a couple of different things. There was the outline business case. Are you referring to the financial strategy on its own or the full business case?

Margaret Mitchell: I was referring to the long-term financial strategy that Audit Scotland called for in 2013. I understand why you said that it was unrealistic to have one at that time, but we are now three years on from that and we still do not have it.

Michael Matheson: That is fine. I just wanted to make sure that we were not confusing two different things.

Margaret Mitchell: I was not confusing two different things.

One of the priorities that are listed for the justice portfolio is to

“work with national and local partners through our Building Safer Communities programme to reduce the number of victims of crime and unintentional injury. Our focus on prevention and early intervention will be targeted at addressing the underlying causes of crime and changing offending behaviour.”

One of those partners is Police Scotland. I notice that the budget for safer and stronger communities has been reduced dramatically in real terms and in cash terms. How does that fit with the priority that was listed?

Michael Matheson: Are you referring to table 8.10 in the budget?

Margaret Mitchell: I was looking at paper 3.

Michael Matheson: Does it show the level 3 funding breakdown?

Margaret Mitchell: Yes.

Michael Matheson: The drugs misuse element of that budget has been transferred to the health portfolio. I took the view that drug treatment is primarily not a criminal justice issue but a public health issue. To tackle it much more effectively and in a co-ordinated fashion, it is better if those resources are in the health portfolio, given that most of the work is undertaken by health agencies. The marked reduction that you see is a result of the transferring out of resource for drug treatment from the justice portfolio to the health portfolio, which will allow a more co-ordinated approach to be taken to drug and alcohol treatment.

Margaret Mitchell: That seems to assume that the vast majority—in fact, just about all—of the problems that are associated with ensuring safer communities are drug related, but we know that there are many reasons why communities feel under threat, such as antisocial behaviour at the lower end and threats from serious organised crime activity. Given the huge reduction in that budget, are you confident that there is sufficient resource to keep our communities safer from the wider threats that are undoubtedly out there?

Michael Matheson: The budget line is reducing because the money has been transferred out of justice and into health.

Margaret Mitchell: But that is just for drug issues.

Michael Matheson: It is for drug treatment. All the work that Police Scotland and other organisations do on enforcement, education and so on continues and will be supported. The money that we are discussing is specifically for drug treatment. That is a public health issue that is better placed in the health and wellbeing portfolio than in the justice portfolio, which is why the resource has been transferred.

Margaret Mitchell: So building safer communities is really just about preventing drug misuse, tackling the causes of drug taking and providing treatment, which are better in the health portfolio.

Michael Matheson: No. The money was ring fenced, and the justice portfolio gave it to health boards for the treatment of those who—

The Deputy Convener: I presume that, if we go down to level 4 in this year’s budget, £33.2 million

is being spent on drug treatment. The money has just gone out of the justice budget and into—

Michael Matheson: Yes. It has been transferred to the health portfolio because my view is that drug treatment is a public health matter that it is better to manage within health policy. The tackling of serious and organised crime that is associated with drugs and the drug prevention work that takes place in communities are mainstream stuff that Police Scotland undertakes, and that will continue as part of its normal day-to-day work. This money is specifically for drug treatment.

Margaret Mitchell: So there is nothing else that you are concerned about under the safer and stronger communities budget and there is no activity that might fall under it that is not sufficiently resourced. You are confident about that.

Michael Matheson: I am confident that, given that drug treatment is delivered at the local level largely by our health service and its partners, it is better suited to being dealt with as a public health issue.

The Deputy Convener: I think that Margaret Mitchell's point about the £7.1 million is to ask whether there has been any reduction to anything else that is done under that budget heading, and whether there is any transfer from any other projects.

Michael Matheson: No. This is purely—

The Deputy Convener: I understand the point that you are making, but obviously there will be £7.1 million-worth of other things being done under that budget heading. Has there been any reduction to those other things?

Michael Matheson: There is a reduction in the work on sectarianism. The four-year programme that was put in place, and for which money was provided, has come to an end, so the level of resource that has been allocated to it has been reduced.

Beyond that, the marked reduction is the result of a transfer of resources and a change of approach that, as of the next financial year, will see health and wellbeing leading on drug treatment. As I said, I see that as a public health issue.

Margaret Mitchell: The UK Government has pledged to maintain the policing budget in real terms. The cabinet secretary has talked about protecting or maintaining the budget for front-line policing. Is that the same thing?

Michael Matheson: It is the same thing in real terms.

Margaret Mitchell: So, front-line policing is the whole budget.

Michael Matheson: It is the real-terms revenue budget.

Margaret Mitchell: Is it the same thing, though? “Front-line policing” seems to focus on police on the beat. What about support staff?

Michael Matheson: The resource budget that we allocate to the SPA for the purposes of delivering Police Scotland has real-terms protection.

Margaret Mitchell: So it is all-encompassing.

Michael Matheson: Yes—for the resource budget of the SPA, which goes to Police Scotland.

Margaret Mitchell: Okay. Thank you.

10:45

The Deputy Convener: Margaret McDougall has indicated that her question has already been asked, so I will bring in Alison McInnes.

Alison McInnes (North East Scotland) (LD): The Cabinet Secretary mentioned the outline business case that underpinned the whole reform. I disagree that the business case was credible—it made a number of unsubstantiated claims and set overoptimistic savings targets, so I ask you to agree that that view is held. The reform fund was supposed to finish at the end of the year, was it not?

Michael Matheson: It was, initially. In the financial memorandum that accompanied the legislation, the fund was for a three-year period.

Alison McInnes: Given that you have had to find £55 million for reform for the forthcoming year, do you acknowledge that your Government miscalculated the level of savings that the reforms could achieve in the timescale?

Michael Matheson: No.

Alison McInnes: So why have you allocated extra funding?

Michael Matheson: We have agreed that we have gone through the major consolidation part of the reform of the police service. The Deputy First Minister has agreed that we should, in order to support the next phase of reform, provide Police Scotland with more money to allow it to continue with some areas of reform.

Police Scotland has already achieved significant savings: cumulatively, up to 2025-26, it will make almost £880 million of savings. Savings have been addressed, and Police Scotland is already making further progress towards achieving the £1.1 billion that it was intended it would achieve as a result of savings.

Alison McInnes: Some of the earlier savings have been rushed and ill thought through. We

need think only about control rooms, and the fact that we have had somewhat to put a brake on some of those reforms. Is that reflected in the £55 million?

Michael Matheson: In what sense?

Alison McInnes: I mean in the context of the view that you need to slow down reform in respect of control centres.

Michael Matheson: No. We have provided some additional resource in-year to assist Police Scotland in some of the challenges that it faces around the call-centre changes. The reform budget is not specifically for that particular aspect of the service—it is intended to give support to Police Scotland to allow it to identify, as it moves forward, the areas in which it wants to invest in order to operate more efficiently and effectively, and to identify where it can achieve savings.

Alison McInnes: How will you release that extra money? The Audit Scotland report to which other members have referred noted that greater transparency is needed with regard to how SPA and Police Scotland have used the reform funding so far. What assurance work have you done to review use of that earlier funding?

Michael Matheson: The SPA is undertaking work to ensure that the way in which reform money is used is delivering proper reform of the service. If Police Scotland identifies an area in which it wishes to undertake further reform and it needs some additional resource in-year to support that work, it can set out the case to the SPA. It is then for the SPA to consider thoroughly the details of such matters. At that point, the SPA can come to the Scottish Government to request access to the reform budget to support Police Scotland in undertaking that work.

I accept Alison McInnes's underlying point regarding whether the reform budget is always delivering the level of reform that we would like. There is an opportunity for us to ensure that we are utilising the budget as effectively as possible to deliver reform in a way that improves the service overall. There is a process in place for Police Scotland to access that money, which will help to support transformation and reform of the service.

Alison McInnes: You have said that the money is not for any specific project, and that it is for the SPA to come forward with bids. However, you must have been able to quantify that money in some way. What have you taken into account in coming up with the figure of £55 million?

Michael Matheson: We have looked at some of the areas in which the police need to make further investment—particularly capital investment—in order to improve the way in which services

operate. There is no doubt that ICT is one of the areas in which further investment would support Police Scotland by helping to reduce bureaucracy and promote greater efficiency, and by freeing up officers' time, so we want to continue to provide Police Scotland with support in that area.

As you will be aware, the call-centre review that was undertaken by HMICS also highlighted issues with the ICT systems. In looking at how to improve things, Police Scotland has the opportunity to identify areas where capital investment in ICT provision would reform and improve the way in which the service operates. One of the big areas in which there can be further improvement is ICT.

The other aspect is that in-year demands that were not anticipated can come up. They may represent an opportunity for further investment at an early stage, which could realise improvements and allow us some flexibility to meet in-year demands that occur as a result of change in practice, or of particular issues being flagged up.

Alison McInnes: Can I have your assurance that community safety and the safety of the citizens of Scotland will be at the heart of any future efficiencies and that efficiencies will not be driven too fast and too deep?

Michael Matheson: That is absolutely crucial; it is central to reform. There should not be any doubt that the Government, the SPA and Police Scotland are signed up to making sure that our primary objective is the safety and the security of citizens in Scotland.

It is clear that lessons can be learned from how changes have been made in the past. The recommendation that a gateway review should have been undertaken prior to call-centre changes being progressed is a clear and concrete example of lessons that can be learned when aspects of the service are being changed. We need to make sure that such lessons are properly learned and implemented in the future. I give you an absolute assurance that we are committed to community safety. I am personally very committed to ensuring that Police Scotland and the SPA are also completely focused on it, as well as on ensuring that where we can learn from the past, we do so.

The Deputy Convener: I will take a final question from Roderick Campbell before we move on to the fire service.

Roderick Campbell: I have a couple of questions on the reform budget. When Deputy Chief Constable Richardson gave evidence, he talked about

“the initial phase of reform”

being about

“trying to maintain core services and to consolidate. That was the phase that brought various organisations into a single operating entity. The next stage of the journey is around what might be better understood as the really transformative activity, which involves changing processes and doing things differently—being slicker and sharper”.— [Official Report, Justice Committee, 1 December 2015; c 21.]

Do you agree with that comment? Is that something that we can look forward to seeing significant savings from over the next five years?

Michael Matheson: There is absolutely no doubt that over almost three years there has been significant consolidation of the different approaches of the eight previous forces. At one point, 18 different computer systems were being used by the forces for various aspects of the service, and some of those systems did not communicate with one another because the forces had taken different approaches to issues. Obviously, that has meant that there have been significant challenges in drawing things together. A very significant level of transformation has taken place already over the initial three-year period.

Deputy Chief Constable Richardson is correct in that there is an opportunity over the next couple of years to see further transformation that leads to more improvements for the public—improvements in how Police Scotland responds to public demand and public need, and improvements in data efficiency within the services.

To give an example, various parts of our public services procure in a wide range of areas. I have no doubt that greater collaboration within the public sector—collaboration is already happening, but it can be taken further—can support greater efficiency in procurement and co-operation in how changes are made.

Roderick Campbell: Are you happy with the budgets for the Police Investigations and Review Commissioner and for HMICS, given the considerable roles that those organisations play?

Michael Matheson: PIRC is one of the elements within the police central Government budget, as well. We have, because of the changing demand that it has faced over recent times, provided this year an increase in the budget line that will support PIRC, for accommodation and for staffing levels. HMICS is broadly able to operate within the resource that it has at present; there has been no indication of any need there for an increase.

The Deputy Convener: I invite members' questions on the budget for the Fire and Rescue Service.

Christian Allard (North East Scotland) (SNP): Good morning, cabinet secretary, and happy new year.

This year has been quite challenging for our emergency services. Some committee members have spent time in flooded areas, partly with firefighters, although the police were very much present as well. I have spent a lot of time with firefighters and with people from the fire service. Regarding the budget, one would think that police officers would be delighted with the latest response from the Scottish Government, because they have some reassurance not only about this year but for five years ahead. I do not think that we have that level of reassurance for the fire service.

Although the Scottish Fire and Rescue Service said in its submission that the suggested flat-cash budget settlement for 2016-17 “could be managed” by the fire service, it added that

“a cash reduction ... would be extremely challenging”

and could cause problems in the years to come. Are you confident that funding will be adequate for 2016-17 and have you got anything lined up for the years afterwards, similar to what you have lined up for the police service?

Michael Matheson: On the latter question, we will deal with the fire service budget in the next phase of the budget round. However, in relation to this financial year—2016-17—I believe that it is a manageable budget, and that we will continue to be able to make progress on reform of the SFRS. When Alasdair Hay—the chief officer—gave evidence, he said that a flat-cash budget settlement would be manageable: that is what we have delivered for the fire service in this financial year.

Having said that, I fully recognise that public sector organisations will find the situation challenging in general, given the overall squeeze on public sector budgets. That is why we need to be vigilant in making sure that we are achieving as much efficiency as we can in regard to how we progress reform in those organisations. The Scottish Fire and Rescue Service will be no different to any other part of the public sector in having to ensure that it is operating as efficiently and as effectively as possible while delivering the best standard of service that it can to the people of Scotland.

It is fair to say that the way in which the Scottish Fire and Rescue Service has operated over the past week or so, given the significant demands in the Borders and in the north-east, has been exemplary. The service has discharged its responsibility to a tremendously high standard and has been able to operate in a way that has allowed it to flex resources. That approach would have been more challenging in the previous set-up. As it is a national service, it has been able to move resources in a way that allows greater flexibility to meet demand in particular areas.

Christian Allard: Thank you for that, cabinet secretary. In your draft budget, you talk about exploring opportunities for the fire service to make a wider contribution to public services. We heard from the Fire Brigades Union that discussions have taken place on widening the role of firefighters—in particular, in respect of medical emergencies, as is the case in some other countries. Can you expand on what you have in mind as part of that wider contribution? That would need additional funding.

11:00

Michael Matheson: The role of the fire service has been changing over a number of years in respect of the work in which it engages. For example, it has increasingly been involved in managing road traffic accidents and inland water rescues. The expansion of that role over a number of years is an example of how the service has evolved to meet the demands that are placed on it.

One area in which we are keen to see greater collaborative working is in work with the Scottish Ambulance Service. That is not about additional financial resource as such, but is about using the current resource slightly differently to respond to different things. For example, when I was the Minister for Public Health I was very keen to pursue the issue of out-of-hospital cardiac arrests. We know that the statistics on survival rates from cardiac arrest greatly improve if we can get to the patient as quickly as possible people who are properly trained and have a defibrillator. The services in Seattle in America are the gold standard internationally in that regard. Responding to cardiac arrest incidents much more quickly by getting someone there with a defibrillator can improve patient survival rates. We are, on the back of a strategy that I initiated as Minister for Public Health, running pilots and working with the local fire service in three areas to see how they can assist the Scottish Ambulance Service in responding to out-of-hospital cardiac arrests.

That is not about taking firefighters away from their normal duties; it means that if a fire appliance with a defibrillator is available and can reach more quickly than an ambulance can an individual who has had a cardiac arrest, that resource will be deployed. The pilots are looking to close gaps and maximise use of existing resources. That type of collaborative work has a benefit for the public and makes much better use of our public sector resources to meet demands and needs.

Christian Allard: I understand all that, but a question remains. You said earlier that you moved some resources to the national health service for very good reasons. The Scottish Fire and Rescue Service is aware of how the scope of what firefighters do can be enlarged, which might mean

moving resources from the national health service to the Fire and Rescue Service. I think that we could discuss an extra level of funding coming not from your portfolio, cabinet secretary, but from that of another cabinet secretary. That aspect needs to be explored.

Michael Matheson: That sounded like a pitch for money to come to justice from health. We need to see how the three pilots progress and then evaluate them to understand whether they have any marked resource implications. If so, we can explore that. However, the reality is that all the money that is allocated to different portfolios comes from the same pot. If we want the pilots to deliver better outcomes for the public, we have a collective responsibility to ensure that we work across Government portfolios to utilise the resource as effectively as possible to deliver the best possible services. I cannot remember exactly where the three pilots are.

John Nicholson (Scottish Government): There is one in the Borders.

Michael Matheson: As ever, there is one in the Borders.

John Nicholson: The others are in Aberdeenshire and Dundee.

Michael Matheson: Those are the three areas where we are trialling the out-of-hospital cardiac arrest service, which we will eventually evaluate.

Christian Allard: The pilots are very good work. However, the additional funding for them could have an impact on the number of firefighters available, particularly in rural communities that have been affected by flooding, for example. It would be reassuring and important to include that funding in future budgets.

We talked about VAT earlier. We have been told that, if the VAT was returned to the Scottish Fire and Rescue Service, it could fund 350 additional firefighters. If the VAT money is not returned, I ask you to consider how we can ensure in the next budget that we maintain the level of firefighters that we need for emergency services.

Michael Matheson: I understand the comment and the point that you are making. I am mindful of the fact that, even with the pilots, we cannot have the Scottish Fire and Rescue Service undertaking additional responsibilities that result in a negative impact on its core responsibilities. While ensuring that the service continues to deliver its core responsibilities, we are considering whether there is scope to utilise highly trained firefighters and the resources that are deployed across our communities more effectively to support greater community safety and community cohesion. Let us explore whether we can use that resource more effectively to help to deliver that. The out-of-

hospital cardiac arrest pilots are a practical example of our moving into that area. They could have a significant impact in helping to save lives and promoting community safety.

It is worth keeping in mind that the fire service now undertakes a significant level of community safety work, such as visiting properties to install smoke detectors. That is a big and detailed part of the service's prevention work and it has resulted in the reductions that we have seen in fire fatalities. The fire service no longer works on the basis of just going to fight fires; it is also about prevention and reducing the risk.

When firefighters go into an elderly person's house to do a fire assessment and to look at smoke detectors, they can also look at trip risks, for example. If an elderly person falls at home, they can injure themselves—they could fracture their hip or something like that. From my previous profession, I know that someone can be managing fine at home, but if they fracture their hip and go into hospital and then need a hip replacement, their mobility might never recover and they could end up having complications while in hospital. Sadly, that can result in a downward spiral in that person's independence. While firefighters are in somebody's house, they could identify other issues and refer those on to another agency that can pick them up. It is about trying to maximise the use of the resource and their skills as best we can to support some of those community safety measures.

Christian Allard: Thank you, cabinet secretary.

Margaret McDougall (West Scotland) (Lab): Happy new year to you, cabinet secretary.

In relation to the rationalisation of control rooms, the submission from the Fire Brigades Union argued for additional resources to ensure successful delivery of what it described as "a high risk project". It raised concerns about having fewer staff covering a wider geographic area and the loss of local knowledge. What is the Scottish Government doing to ensure that problems do not arise?

Michael Matheson: The Scottish Fire and Rescue Service has undertaken a significant level of work and planning around the move to the three-control-room model, with control rooms in Edinburgh, Johnstone and Dundee. The programme will be completed and delivered by 2017. Part of the work has already been taken forward. The control room in Dumfries transferred to Johnstone in November last year, and the control room in Edinburgh has already been upgraded and enhanced—that work was completed in November. The Maddiston control room will merge with the control room in Edinburgh on a phased basis during January. That

is due to be completed by the end of January, and the merger of the Thornton control room will then follow over the next couple of months.

The fire service has taken a range of measures to try to reduce the risk of problems arising with its control rooms. For example, it has had shadow systems running to ensure that there is resilience and that the new approach works effectively and efficiently. Progress to date has indicated that that has been managed. The work has been planned for a considerable period and is being implemented over a period to ensure that the public continue to receive the quality of service that they expect.

Margaret McDougall: One of the concerns that the union raised was that training and evaluation might be compromised as part of the rationalisation. Can you assure me today that that has been addressed?

Michael Matheson: My understanding is that all staff in the control rooms are trained for the purposes of managing the system and that that is part of the on-going work that the Scottish Fire and Rescue Service has been taking forward. I have had no direct indications from the part of the transfer that has taken place that there have been any issues with the training of staff, but part of the on-going work as the transfer takes place is the continued training of staff in operating the system.

Margaret McDougall: You think that the resources are adequate to carry out that training.

Michael Matheson: The Scottish Fire and Rescue Service has already been taking it forward. It is not something that it is about to start; it is part of the work that it is already undertaking with some of the control rooms. As I mentioned, the transfer of the Dumfries control room to Johnstone has taken place, and the Maddiston and Edinburgh work is moving forward. The service has already demonstrated that transfers can be managed effectively and efficiently and that staff are being properly trained.

It is worth bearing in mind that the volume of calls that the Scottish Fire and Rescue Service deals with is different from that of the Scottish police service. The other difference between the call centres is that the Scottish Fire and Rescue Service deals only with 999 calls and does not have an equivalent to 101 calls, whereas Police Scotland has both 101 and 999 calls. The volumes and some of the complications are therefore significantly different.

However, the Scottish Fire and Rescue Service has already been managing the service and the transfer effectively and there is no indication that problems are anticipated.

Margaret McDougall: Thank you.

The Deputy Convener: Before we move on to the Scottish Courts and Tribunals Service, can you explain why the Scottish Government assists the SPA with its VAT liability but does not assist the Scottish Fire and Rescue Service?

Michael Matheson: The Scottish Fire and Rescue Service VAT liability is met within its resource budget. It was agreed with the service previously that it would meet that cost from within its on-going resource budget, and we have made the same provision in this financial settlement.

Roderick Campbell: The number of fires that the Scottish Fire and Rescue Service attended to last year was down by 11 per cent. Do we have the right number of firefighters? The number has been reduced over the past few years. Do you have any comments on the issue in general and on whether the budget provides for enough firefighters?

Michael Matheson: The resource configuration for firefighters is a process that is taken forward between the Scottish Fire and Rescue Service and the Fire Brigades Union. I know that there are some issues, for example in the north-east. It is not so much that the Scottish Fire and Rescue Service does not have enough firefighters; it is just that it does not have enough of them in some parts of the country. Globally, it has the right numbers, but they are not necessarily all in the right places.

An interim arrangement has been in place with the FBU to allow the service to move some firefighters to other areas in order to help where there may have been some gaps in the numbers, and the service is working with the FBU on a resource allocation model that will help to ensure that it has sustainable numbers across the country.

We need to ensure that we have the right firefighters in the right places to meet the demand. A large part of the country is covered by retained firefighters, and the Scottish Fire and Rescue Service is undertaking work to revisit the approach and the way in which it utilises and provides retained cover so that it can meet demand in future years. That is a significant piece of work that is being undertaken. The chief fire officer has said on a number of occasions that he wants to ensure that the service is more suited to the types of demands that are placed on it in rural communities today.

11:15

The Deputy Convener: I ask for volunteers for questions on the Crown Office and Procurator Fiscal Service. I also indicate that, in five minutes, we will overrun this evidence-taking session, so I

ask for concise questions and answers if at all possible.

John Finnie: Cabinet secretary, we have growing confidence in the criminal justice system—the police service and the prosecution service—which has seen a great number of historical sexual abuse cases come to light. There is an increased number of solemn cases, domestic cases are being prioritised and the Crown Office and Procurator Fiscal Service has an increased role in relation to victims. We have heard from Her Majesty's chief inspector of prosecution in Scotland about the challenges that are faced, and the FDA union talks about the pressures that prosecution staff face and states:

"We do not consider it to be reasonable or achievable to continue to expect the service to deliver more with less."

We will shortly take evidence from you on more legislation, which will create more work. I am aware of the alternatives to prosecution—the fiscal fines and other direct measures—that are in place, but are the level of budget and the increased workload that is coming the service's way sustainable?

Michael Matheson: You are right to say that there is growing confidence among certain groups of victims about reporting certain crimes. That is a reflection of the significant change in the approach that our police service now takes to some of those issues. For example, if one individual reports domestic violence, the police will look for previous partners to determine whether there was domestic violence in the past, which can result in a number of victims having cases brought before the court. That has clearly created pressures on the court system because, due to the nature of such offences, early pleas are not often entered, which results in the cases going to trial.

We have recognised that situation. Therefore, in 2014-15, we provided additional resource of £1.47 million to help to support the courts, the prosecution service and the judiciary in meeting some of the additional demands that they faced in-year. In this financial year, we have provided an additional £2.4 million to support further work for the prosecution service and our courts to meet the additional demand. Therefore, over the past two years alone, we have provided almost £4 million of additional resource to help to meet some of the in-year demands that the courts experience.

Our prosecution service is like any other part of our public services in that it has to operate within the budget that is set for it. I am confident that it will be able to manage that effectively. How the service takes that forward is a matter for the Lord Advocate, as it is independent of Government. However, I am confident that it will manage within the budget that has been set for it. We will

continue to monitor such matters through the justice board to consider any changes in demand that are experienced in-year and how we get agencies to work together much more effectively to offset the challenges that they face and so that much more co-operation takes place.

Margaret Mitchell: The fact remains that there has been a fall in the real-terms and cash-terms budgetary provision for case-related work and a real-terms fall in the overall budget for the Crown Office and Procurator Fiscal Service. If the Scottish Government legislates on issues such as domestic abuse and human trafficking, which we all welcome, is it not only fair and reasonable—in fact, vital—that the people who are at the sharp end of delivering the consequences of that legislation be adequately resourced to carry out the work and ensure that the policy is a success?

Michael Matheson: As you will be aware, with any piece of legislation we publish a financial memorandum that sets out the anticipated financial implications of that legislation. For example, we have set out the financial implications of the bill that we will discuss later this morning, including the likely levels of prosecutions and cases that could end up in the courts over the course of a year. We look to provide resource to meet such needs when we introduce legislation. It would be wrong to give the impression that when we introduce legislation that makes additional provisions in our criminal justice system we do not provide additional resource to meet some of those demands.

Margaret Mitchell: Nobody is disputing that you do that, but a greater volume of complex and serious cases has materialised. Catherine Dyer said, quite reasonably, that the prosecution service is coping—but only just. The FDA is saying that it is unreasonable to expect its members to do so much more and deal with those more complex cases with less.

Michael Matheson: That is why, over the past two years, we have provided additional resource to support both the COPFS and the courts in dealing with some of those increasingly complex cases. I know that, for example, historical abuse cases involve complex, detailed matters that can require a significant level of investigation by the COPFS, which is why we have provided in-year additional resource, to meet some of the additional demands that it is facing. We have also provided additional resource to the courts, in order to deal with the additional demand that they face as a result of those cases being brought before them.

Margaret Mitchell: So despite the reports that we have seen about staff morale and people in the COPFS being under intolerable strain, et cetera, you would contend that the service is adequately resourced.

Michael Matheson: I am confident that it will be able to operate within the budget that the Lord Advocate has agreed. It will take that forward based on how it believes that can best be achieved in the service.

I am always keen to ensure that all the parts of our justice system operate collectively as best they can. I am always conscious that a change to one part of the system will impact on another. We try to ensure that we have greater planning on these matters, which is what the justice board does with its work to help collaboration on such issues.

If you were to ask any part of the public sector whether it would like more money, I have no doubt that it would say yes. I suspect that there are not many cabinet secretaries who would not want more money in their portfolio, either. As you are aware, it is the Lord Advocate rather than me who negotiates this budget with Deputy First Minister. I am confident that the COPFS will be able to manage within the budget that has been set for it. As you pointed out, it is a flat cash settlement.

Margaret Mitchell: I am quite sure that all public services would warmly welcome more money and even argue that they need it, but the point is that the COPFS has been at the cutting edge of Government priorities on domestic abuse and trafficking cases. We welcome that, but my question was about the extent to which cognisance had been taken of that and its impact on the service. However, I do not think that we are going to get much further with that line of questioning.

For the prosecution service to work efficiently, other elements of the justice system must be adequately resourced. However, there is a 7 per cent cash-terms reduction in legal aid, which will undoubtedly impact on the work of defence lawyers who are funded through the legal aid system. How will that reduction be managed so that it does not have a negative impact on the justice system?

Michael Matheson: We have sought not to take the approach that has been taken in England and Wales on restricting access to legal aid by reducing provision in, for example, civil matters. We want to maintain the level of access to legal aid provision in Scotland as much as we can. We are working to make sure that those who are eligible for legal aid get access to it. We need to make sure that the system is operating as efficiently and effectively as possible. We are already looking at how we can model the way in which some parts of our courts system are operating to make sure that they are doing so as efficiently and effectively as possible. Some of the delays and other challenges around the way in which they are operating incur significant costs, which relate to some aspects of legal aid.

In working with the legal profession and others within the justice board we will make sure that the legal aid system is operating as efficiently and effectively as possible. We are looking at how we can adjust and adapt some aspects of our justice system to make sure that they are operating as efficiently and effectively as possible, given the consequences that delays can have, such as incurring costs for areas such as legal aid provision.

Margaret Mitchell: Do you have an example of that?

Michael Matheson: It is an area of work that we are actively taking forward at present. When we have more detail we will no doubt provide it to the committee.

Margaret Mitchell: I think that the committee would warmly welcome further detail.

Alison McInnes: I want to return to the additional resources that you have provided over the past two years. I think that you referred to £1.7 million in 2014-15.

Michael Matheson: It was £1.47 million.

Alison McInnes: It rose to £4 million over the two years. Increasing resources were required in-year and delivered on a sort of ad hoc basis. Do you agree that, if resources on that scale are required again in this forthcoming year, it will be important to review the base budget? When you provide in-year resources you apply a temporary sticking plaster; it does not allow specialist professionals who can work over the period to be brought in.

Michael Matheson: It is worth keeping in mind that although we are discussing the Crown Office and Procurator Fiscal Service's budget, the additional resource was not purely for it; it was for different parts of the portfolio. Some of it went to support the Scottish Court Service in undertaking work and providing additional capacity. That came about as a result of the partnership that we have through the justice board whereby people flagged up that they were experiencing pressures as a result of another aspect of the system taking a different approach. The additional resource was to offer flexibility. Any further changes can be reflected on in the budget process for 2017-18. We will continue to be alive to circumstances where we feel that there is a need to have flexibility to provide support where we can reasonably do so.

Alison McInnes: The justice board approach is interesting and it provides a useful way to join things up. Does the board have access to a change fund?

Michael Matheson: It does not have a specific budget that it is responsible for allocating directly.

The reducing reoffending change fund has been used over several years to improve how we deal with issues with reoffending. The board is more about collaborating to look at where different aspects of the system can work more effectively. Different people, from reporters in the children's hearings system right through to the chief constable and senior officers and senior figures in the judiciary, the Crown Office and the justice directorate are all working collaboratively to try to make sure that we are as joined up as we can be. In the past, there has been a tendency for different bits of the justice system to operate in a certain way without recognising the impact that that can have on other bits of the system. The justice board's responsibility is to bring them together more effectively.

Alison McInnes: That is helpful. Thanks.

The Deputy Convener: Margaret McDougall has indicated that her question has been asked, but Roderick Campbell has another question.

Roderick Campbell: I refer to my entry in the register of members' interests—I am a member of the Faculty of Advocates. The legal aid budget is under pressure. Are people's concerns that that might lead to a reduction in the grants of criminal legal aid justified?

Michael Matheson: Do you mean for individual cases?

Roderick Campbell: Yes.

Michael Matheson: The purpose is to maintain access to legal aid as it is at present, across our legal aid provisions. We want to achieve greater efficiency in the way in which it is operating.

The Deputy Convener: Given that we will have a longish session for our next item of business, I propose that we take a five-minute break to stretch our legs.

11:30

Meeting suspended.

11:35

On resuming—

Abusive Behaviour and Sexual Harm (Scotland) Bill: Stage 1

The Deputy Convener: Item 5 is the final evidence session on the Abusive Behaviour and Sexual Harm (Scotland) Bill, for which the cabinet secretary is staying with us. I welcome Scottish Government officials Philip Lamont and Patrick Down from the criminal justice division; Ian Fleming from the safer communities division; and Catherine Scott from the directorate for legal services. The cabinet secretary has indicated that he does not wish to make an opening statement.

The bill addresses six different areas. We have received the most conflicting evidence on judicial direction and on what was formerly called revenge porn, although we are not supposed to call it that any more—it is now the new offence of

“disclosing, or threatening to disclose, an intimate photograph or film”.

I propose that we take questions on those parts of the bill first, and then move on to the other areas that the bill covers. I ask members for questions on judicial direction.

Margaret Mitchell: As the convener has indicated, witnesses have expressed concern about the introduction of statutory jury directions in sexual offence cases, particularly with regard to undermining the independence of the judiciary. Does the cabinet secretary share those concerns?

Michael Matheson: No, I do not, although I understand the comments and the evidence that the committee has received on those matters. I believe that the provisions in the bill will provide judges with sufficient flexibility in respect of when they should issue directions to the jury.

It is worth keeping in mind that there are other times when judges issue directions to juries, particularly if expert evidence has been led. I do not believe that the provisions interfere with the judiciary in a way that compromises judges' independence. The provisions provide sufficient flexibility for judges to be able to give direction as and when necessary; they also give judges a level of flexibility in deciding how such directions are put to the jury.

Margaret Mitchell: You mention expert evidence being led. That seems to be a perfect way round the issue, as someone would explain certain points. It is not always the case that a delay in reporting indicates a false claim, and the expert evidence may explain that. Some judicial direction at that point seems quite reasonable.

However, to give direction without such expert evidence being led does not seem reasonable.

Michael Matheson: Expert evidence will be taken on issues in many cases. If such evidence is taken, the judge will consider giving some direction to the jury. However, there may not always be expert evidence, and it is important that we ensure that, in cases where a specific type of evidence is led and issues are raised, provisions are in place to ensure that the judge gives direction to the jury.

It may be that some judges already give direction to juries on some aspects, although other judges may choose not to do so. My view is that we should put the matter on a statutory footing so that we are clear about when direction should be provided, while giving judges the flexibility to put that to the jury in the way that they consider to be most appropriate.

Margaret Mitchell: We have had a clear steer from the Crown Office and Procurator Fiscal Service and from Lord Carloway that the cost of providing expert evidence would be prohibitive and that there would therefore be a real possibility that such evidence would not be led and would be replaced with statutory jury direction, which no one seems happy with.

Lord Carloway mentioned something being within judicial knowledge, and there is also the possibility of having guidance or mentioning the issue simply under the model directions that are contained in the Scottish jury manual. Could such compromises, if you like, be made, or could you look at adjusting the provision to address the very real concern that exists about the judiciary's independence being compromised and a precedent being set?

Michael Matheson: The bill would not do anything that would affect the ability to take expert evidence in a case. If the Crown chose to introduce expert evidence on a particular issue—for example, evidence relating to a lack of physical force being used when a rape was committed—the bill would not prevent that from happening. Expert evidence and jury direction may sit alongside each other. The bill would in no way inhibit that or prevent it from happening. It makes no provision to prevent expert evidence from being led or to change that situation in any way.

Margaret Mitchell: You have no concerns that cost would come into it.

Michael Matheson: In what way?

Margaret Mitchell: I am talking about the cost of providing an expert witness. Expert evidence seems to be a way of getting around this. Although there has been a delay in reporting or someone has not used force, when a witness gives

evidence about such things, experience may tell us that their evidence is sound, and that seems to me to be the best way to proceed. However, it has been suggested that a barrier to using expert evidence is the cost of providing it. That concern is out there—it is being raised—and, at a time when there are problems with and concerns about budgets, it would be unwise to dismiss it and simply say that, if an expert witness is needed, they will automatically be brought in.

Michael Matheson: The bill does not change anything around the decision to bring in an expert witness on a particular issue in a case. If it is being suggested that we are introducing statutory jury directions because that is in some way less costly, I have to say that that is simply not the case. It is about ensuring that we take action in an area in which we have identified the need for action. As you will be aware, that is supported by many stakeholders—particularly those who work with victims of such crimes. There is a need to make sure that juries have a clear understanding of the issues around the evidence that may be led in the course of a trial, but jury directions are restricted to certain areas, should those issues be raised in the course of the trial. There is sufficient flexibility in the provision to ensure that, if the context does not require jury direction, the judge is not required to give jury direction.

Margaret Mitchell: You are confident that, if the provision is introduced, there will not be calls for similar provisions to address other perceived misconceptions.

Michael Matheson: In the past, the Parliament has taken a view on areas of the law in which specific measures require to be taken. Trials for sexual offences—particularly rape trials—were identified as an area in which there were concerns about preconceived ideas or views about aspects of the evidence that can be led in such trials, such as whether there was resistance or a delay in reporting, that could have an impact on the jury if they do not have a proper understanding of the circumstances. Part of the reason for making provision for jury direction is to address that issue.

As I say, it is not unique, as judges give jury directions in other areas, and those have developed over the years. Also, other jurisdictions have jury directions in the area of sexual offences to help to address the particular issues that can arise around such crimes.

11:45

Margaret Mitchell: Lord Carloway covered that point. Although he acknowledged that jury directions exist in other jurisdictions, he said that they are far from ideal. Perhaps you will reflect on that at stage 2. Is there a possibility that you will

look at some of the evidence that we have taken from academics and the judiciary?

Michael Matheson: I will look at all the evidence and consider all the views that have been given on the issue. However, we have made our position clear on jury direction. I have already considered the evidence that the committee received from Lord Carloway and in its round-table discussion on the issue. I am mindful that victims organisations are very supportive of jury directions. In drafting the bill, we considered many of the issues that have been raised and we came to the view that jury directions were an appropriate route for us to go down. That is why we introduced the measure in the bill. We will of course always look at the evidence that the committee receives and the committee's stage 1 report. However, a number of the issues that have been highlighted by witnesses who are not in favour of jury directions are ones that we considered prior to drafting the bill.

John Finnie: If the issues of delay in telling people and the absence of signs of physical resistance are widely acknowledged, as they seem to be, why do the Faculty of Advocates and the Law Society of Scotland not support the approach that you suggest?

Michael Matheson: It is not for me to answer on behalf of the Faculty of Advocates or—

John Finnie: Would you like to speculate?

Michael Matheson: It would not be fair for me to speculate on what their views are or why that is. It would be better for the Faculty of Advocates and the Law Society to explain their position to the committee, as I believe they have already done. We believe that it is appropriate to introduce the measure to try to address some of the issues that we have when such cases come before our courts. I am sure that, for many members of the committee, the issue of how those areas can play out during a trial is not new, as it has been flagged up for a considerable number of years and concerns have been expressed about the need to address it more effectively.

Margaret Mitchell made the point that the issue might be within judicial knowledge. That might be the case, although I am not aware of clear action being taken over recent years to ensure that the issues are properly addressed. I believe that that lack of innovation suggests that there is merit in the introduction of statutory provision to address what has been a long-standing concern for many organisations that work with people, particularly women, who experience such offences. We want to ensure that clearer direction is given to the jury when certain issues are raised in the course of a trial.

John Finnie: If you have seen Lord Carloway's evidence, you will know that he was very open with me and my colleague Alison McInnes about a particular case that we both have concerns about. He was also very diplomatic. He clearly did not want to say this, but I sensed that he resented political interference in the independence of the judiciary. Is that a reasonable summary of his position?

Michael Matheson: The issue is one for Parliament to consider. If we as a Parliament consider that there is merit in and justification for putting jury directions on a statutory footing in certain circumstances, I believe that that is a reasonable course of action for us to take to deal with particular issues in our justice system. Parliament regularly makes decisions on various matters that have an impact on the judiciary. I do not believe that the proposal is political interference that involves directing a judge on what they should or should not say.

The bill sets out what a judge can do in certain circumstances, if appropriate. The bill gives a judge sufficient flexibility to choose whether to issue a jury direction in a way that they believe is appropriate to the circumstances of the case before them. The bill does not specify what the judge has to say; the bill gives them flexibility to reflect on the evidence that they have heard when they are charging the jury.

John Finnie: My colleague Margaret Mitchell talked about the position of the Crown leading an expert witness. Is that not more inherently fair to the accused, because it gives their representative the opportunity to cross-examine, which clearly they will not have for the judge's directions?

Michael Matheson: As I said, the bill has no provision that would prevent the leading of expert evidence as well. The bill does not alter the position on that. It might be that where expert evidence is led, there will also be jury direction from the judge. It is important that we give sufficient flexibility to the judiciary to ensure that the direction that a judge gives to a jury reflects the circumstances that they have heard about in the evidence that has been led in a trial, and the bill makes provision for that and gives them sufficient flexibility to do it.

John Finnie: The Law Society talks about unfairness if the provision relates exclusively to sexual offence cases. I will not linger on the point, but the Law Society gives the example of corroboration applying, or not applying, to particular cases. Is the Scottish Government so concerned about using the word "victim" as frequently as it does that there is a danger that it is setting aside the hard-fought-for rights that accused people rightly have?

Michael Matheson: That is why we have tried to give a balance to the provision in limiting the circumstances in which it would apply. As you will be aware, the bill sets out when jury direction should be issued, but it also gives the judge sufficient flexibility to determine whether, depending on what they have heard during the trial, direction is necessary and what any specific direction to the jury will be. We have sought to ensure that we provide a balance to give judges sufficient flexibility and at the same time address a long-standing concern about how certain information can be presented in court and its impact on a trial.

John Finnie: Finally, has any assessment been made of whether there will be an increase in the number of appeals against conviction as a result of the introduction of the jury direction provision?

Michael Matheson: It is very difficult to assess how many appeals there might be as a result of legislative change, because appeals can occur for a variety of reasons. We cannot make realistic projections about that prior to legislation being implemented.

John Finnie: But it is not unrealistic to say that that is a factor that you could anticipate. Jury direction is an additional factor that could be the subject of an appeal.

Michael Matheson: Of course. The defence might seek to appeal as a result of the judge's direction. However, it is very difficult to quantify how many such appeals might be made.

John Finnie: Okay. Thank you.

Gil Paterson: It is fair to say, cabinet secretary, that there is some research on how juries react in rape cases but that it is indeed sparing. I think that that is because the Contempt of Court Act 1981 prohibited research being carried out with live jurors. However, Professor Vanessa Munro and Professor Louise Ellison conducted a study using mock jurors that showed that jurors expect particular reactions from rape victims. In a written submission to the committee, the professors said that the jurors

"expected a visible display of emotion"

from the victim and that

"a 'normal' response to sexual attack would be to struggle physically".

The two professors summed up their study by saying:

"Overall, while jurors in the no-education"

mock trial

"paid lip-service to the notion that 'different people will react differently' to traumatic experiences, such as rape, assumptions regarding the instinct to fight back, the

compulsion to report immediately and the inability to control one's emotions continued to influence their deliberations."

I know that that is very much in line with the concerns that have been expressed over many, many years by women's groups that jurors in rape trials are influenced by their prejudices and preconceptions about how people react. I am wondering what the bill will do to overcome those prejudices.

Michael Matheson: Part of the research that Gil Paterson referred to has highlighted some of the concerns about the preconceived ideas and views that jurors can have in relation to these particular types of offences. That is partly why we have gone down this particular route of considering having a statutory provision in particular sets of circumstances, where the judge will be required to give jury directions on those matters in order to address those issues much more effectively. The research that the member referred to raised concerns about some of the possible misconceptions or preconceptions. Jury directions would enable those to be much more effectively addressed prior to the jury making any decisions. Jury directions are a specific way in which we can address the issues that Gil Paterson has raised—issues that have been highlighted through research and by the victims organisations.

Gil Paterson: I should perhaps declare an interest. I am a former board member of Rape Crisis. Common currency within that fraternity was the notion that trials did not proceed or failed because jury members had preconceived ideas, as I have already expressed, that people should react in a particular fashion if they had been raped—particularly at the trial—and that they should notionally show those emotions in a predictable way. If that is the case, is there not a need for wider education? Is there not a need for not just the bill and jury directions being in place, but wider education—and for some money to be spent to highlight the point that people react differently?

For instance, I am in the motor trade and I know from experience that if somebody has a bump on their car and they turn up to the reception area to get their car repaired, some people—including men—can be very emotional and some people are very calm about it. People react in lots of different ways. Would the Government consider an education programme to highlight how people react in different circumstances?

Michael Matheson: I am happy to look at that point and to explore it further. It is difficult to do anything around jury aspects because of the Contempt of Court Act 1981. As the committee will be aware from my previous appearance before it in relation to Lord Bonomy's report, we are looking at carrying out jury research into some wider

aspects of how juries operate. That will largely be based on academic experience from places where this type of research has been able to take place.

In our earlier session, when I was being asked about the Crown Office and Procurator Fiscal Service and demands on the system, John Finnie raised the very issue of delayed reporting in relation to historical abuse cases. An increasing number of historical abuse cases are being reported. The fact that something may not have been reported earlier does not mean that the offence did not take place. There can be a whole range of circumstances that could lead to that delay.

It is important that we do not lose sight of what we are trying to achieve. We are not trying to create an advantage for the defence or a disadvantage for the accused, but to ensure that we take account of some of the underlying research that indicates that people can enter into such cases with some misconceptions about issues such as the timing of when the incident was reported and to ensure that, if that becomes an issue in the trial, the judge is able to issue a direction to the jury to explain that the fact that there was a delay does not mean that the offence did not take place and that the delay is not necessarily material to the jury's decision on the matter.

I am more than happy to consider what further education would look like. Given Gil Paterson's personal interest in the issue over many years, I would be more than happy to discuss it with him.

12:00

Gil Paterson: One of the questions that I posed to Lord Carloway was what the reaction would be if a juror had indicated some prejudice—it was not regarding rape. I do not want to put words into his mouth, but I think that he said that he would take action on that juror. However, it seems that quite a section of a jury would have a prejudice automatically before a trial starts. Rather than being about preferring one against the other, is the measure not about creating a level playing field and educating a jury that victims of serious sexual assault do not all react in the same fashion?

Michael Matheson: It is to ensure that the jury has an understanding. If evidence has been led on some specific areas, as is set down in the bill, it is for the judge to assess whether it is relevant that he should give some direction to the jury on the matter and then offer that direction to it. It is not unusual for judges to give some direction to juries on particular issues, but the provision relates specifically to a sexual crime and is specific about the kind of information that may be brought before the court in the course of a trial. It is about

assisting the jury to understand that information, rather than trying to give either side an advantage over the other.

Roderick Campbell: I will pull together some of the threads that have been talked about in the past three questions.

On whether expert evidence would be suitable, if I recall correctly, Professor Chalmers pointed out in his evidence that the law currently provides for expert evidence only on delayed disclosure and reporting. It does not provide for such evidence on the absence of physical resistance during the act. Clearly, expert evidence would not be a panacea without changes elsewhere in the law.

On Mr Finnie's point about the view of the Faculty of Advocates, notwithstanding the fact that I am a member of the Faculty of Advocates I hesitate to speak for it. However, Mr Meehan made the point:

"If mandatory directions are to be given on one matter, there will inevitably be requests for them to be considered across the board. The difficulty is that, in the absence of jury research, one does not really know whether the jury would find that helpful."—[*Official Report, Justice Committee*, 17 November 2015; c 22.]

Gil Paterson referred to the jury research that Professor Munro carried out. I do not think that any of that was specific to this jurisdiction. Given the fact that there is the possibility of jury research being carried out under the auspices of Lord Bonomy's review group, would it not be prudent to take account of that research, perhaps, if the bill is passed, by not having a commencement date for the provisions until the research has reported? Would the Government consider that?

Michael Matheson: I am not persuaded that that is necessary because of the level of understanding that we have on the matter at present. In addition, the jury research will take a considerable time. It is not a short piece of work. It will also take a considerable time to evaluate the outcomes from it and come to a decision on whether we want to make further changes in our justice system. I am due to appear at the committee in a few weeks on another issue that is related to other aspects of jury research.

Given the level of understanding that we have on the issue, I am of the view that there is sufficient evidence to justify moving in a restricted, limited set of circumstances towards statutory jury directions that give the judge sufficient flexibility on when they apply and how the judge puts them across to the jury.

Roderick Campbell: Thank you.

Christian Allard: We are talking about jury directions in relation to sexual offences cases, and early on we talked about precedents in other

jurisdictions. Do you or your officials know of any precedents in other jurisdictions where such jury directions have been expanded to apply in other cases?

Michael Matheson: Do you mean beyond sexual offences cases?

Christian Allard: Yes.

Michael Matheson: I am not aware off the top of my head of any jurisdiction that has started by having jury directions for sexual offences cases and then extended them into other areas, but I am more than happy to take that away and check, and we can then come back to the committee, if that would be helpful.

Christian Allard: That would be interesting. I heard both Gil Paterson and you, cabinet secretary, talking about preconceived ideas, but when I referred to the policy memorandum and looked for information, I noted that the words there are stronger. It states:

"Concern has been expressed that certain ill-founded preconceptions held by members of the public, who make up juries, about the nature of sexual violence make understanding victims' responses to such crimes more difficult."

That is a condemnation of how we are as a society and how we see things.

We have heard a lot of evidence that has suggested that the bill is perhaps not the way to do it, but we want to update things to ensure that society and juries follow such directions. It might reassure all those people who have been complaining if you could ensure that jury directions are reviewed and perhaps abolished in a certain time, such as five, 10 or 20 years, once society no longer has such misconceptions.

Michael Matheson: There are views out there from some parties that the bill is not the way to do it, but I am not necessarily persuaded that I have heard a clear example of a better way of dealing with the issue. I am also mindful of the length of time that the issue and concerns about it have been around without clear, concerted action being taken to address it effectively, and I believe that that lack of innovation merits statutory provision in the area.

On the question of reviewing the provisions in the bill, and particularly the specific provisions that we are discussing, there is a route for post-legislative scrutiny of legislation and how it is operating, and I am always open to discussions. I am conscious that the Justice Committee is a busy committee, which probably limits your opportunity to carry out post-legislative scrutiny. Another option is to commission some research at a later date, once the system has been implemented, to see how it is operating.

There are various means by which that could be operated, and I would be interested to hear the committee's views on whether it feels that that would be useful. If it is something that I feel, from the Government's perspective, we could agree to, I will be more than happy to consider that. I would be interested in hearing the committee's views on what you feel might be a useful way of establishing that at some point, once the legislation has been implemented.

Christian Allard: Thank you.

The Deputy Convener: We move on to sections 2 to 4. I invite members to ask questions on them, although maybe not quite as many as we had on section 1.

Margaret McDougall: We heard from witnesses who gave evidence that the bill's provisions on the non-consensual sharing or distribution of private, intimate images should be widened and that different kinds of communication should be included, such as text messages and letters. What are your views on that?

Michael Matheson: We have gone for a definition that is slightly wider than the narrower definition that applies in other parts of the UK. I am conscious that we are discussing an example of the issues that are emerging through the use of social media, and we need to ensure that our laws are up to date to enable us to deal effectively with such issues.

I am aware of the written evidence that the committee has received regarding the possibility of widening the definition of the offence further to include private and intimate text messages, emails, voicemails and letters. We will consider those views, but there is a balance to be struck.

If we widen the definition further, the potential for unintended consequences to emerge from the legislation also widens. I am not set against such an approach, but we need to explore the issues carefully so that we do not widen the definition to such an extent that we create a lot of unintended consequences, which would not be our objective. I am interested in hearing the committee's views on the matter, but there is a balance to be struck between widening the definition and drawing into the offence some areas that the provisions were not initially intended to address.

Margaret McDougall: I welcome the fact that you are going to look at the matter again. Victim Support Scotland and Women's Aid Scotland have argued that it should not matter what media are used, as the issue is the non-consensual sharing or the threat to share sensitive or intimate material that is designed to humiliate and control or cause distress to the victims.

Scottish Women's Aid has also pointed out that sometimes images and abusive texts are sent at the same time. The Scottish Government could say that such texts may be captured by other legislation, but Scottish Women's Aid has expressed concern that not including other forms of communication in the specific offence may create an unnecessary loophole in the law.

Will you take all that into consideration when you look at the matter again?

Michael Matheson: Yes, but just to be clear we are not looking at whether or not to widen the definition. We will consider the evidence that the committee has received and its report on the bill. If there is reasonable scope to widen the definition without producing unintended consequences on top of what we are trying to achieve, I am open to considering that.

We need to ensure that the definition in legislation is as clear as possible so that we get the maximum benefit from it and do not dilute it to the point at which it becomes unclear whether one issue or another is covered. If we widen the definition too far, that could potentially create some confusion.

As you have mentioned, there is other legislation that can be used to address some of the areas that have been highlighted in evidence to the committee. I can give Margaret McDougall and the committee an assurance that we will consider those issues. If there is reasonable action that we can take, I am more than willing to do so. I am mindful that we need to hear the committee's views on the matter before we come to a final decision on any potential widening of the definition at stages 2 or 3.

Margaret McDougall: Technology now allows certain things to be done. For example, a text could be sent, and then a screenshot could be taken of that text, so that it becomes an image. How do we define that, and should it be included in the definition in the bill?

Michael Matheson: It is worth keeping it in mind that we have set out in the bill some points regarding the nature of images and what would be included. Such an image would be slightly different from a text message.

12:15

Margaret McDougall: Yes. If we want to widen the measures to include text messages, we should take that into account.

There is also the issue of sexting—the sending of sexually explicit images or videos—which lots of young people are involved in. There is concern that, if that were included, young people might be incriminated. However, at the same time, we need

to get them to realise the implications of what they are doing and that the images that they are sending could finish up on a pornographic site because someone has crashed into somebody else's computer or whatever. What will be done to try to educate young people so that they stop messaging in that way?

Michael Matheson: As I said earlier, we must be careful about certain issues, including sexting. Is there an intention to bring a lot of teenagers into our criminal justice system as a result of something like that or would that be more appropriately addressed through wider and better education about the issues and the promotion of safety programmes about the use of technology? In November 2013, we provided guidance to local authorities and others around those issues. Further work might need to be undertaken in this area. I am keen to hear the committee's views on that matter, but I would be concerned about bringing a lot of teenagers into our criminal justice system unnecessarily when a more reasonable route could perhaps be taken to address the issue more effectively.

Of course, we not only have to educate people about not doing that; we have to educate them about what to do when it happens to them and about how to prevent it from occurring in the first place. For those reasons, the issue might be better dealt with through education than through the criminal justice system.

Margaret McDougall: There must be education about taking responsibility, as well. We must instil that in our young people.

Sometimes, these images end up on social media—Facebook and so on. It is the responsibility of those sites to take down photographs that are inappropriate. However, there is no timescale for that at the moment. Do you have any intention of including in the bill a timescale within which those sites must take down an inappropriate image that has been posted without someone's consent?

Michael Matheson: There are certain liabilities that internet service providers have. However, part of the challenge is that those ISPs might not be based in Scotland. I suspect that the vast majority of them are based outwith our jurisdiction, which means that we would not be able to take legal action against them.

The European Union could do more with regard to the way in which service providers respond to such issues. That strikes me as a much more effective way of addressing the issue than dealing with individual cases would be. It would also be appropriate to consider whether further provisions could be applied at an EU level to address some of the timeframes that are involved. There are

already some aspects of European law around issues relating to intimate images and so on, and there are implications with regard to requests for such images to be taken down. However, it would be difficult to use the legislation that we are discussing to tackle something that is completely outwith our jurisdiction.

Margaret McDougall: Are there any plans to look at the issue in the future or to raise it through the EU?

Michael Matheson: It is fair to say that there are areas that are reserved and which are outwith our competence. The EU has already provided some legal provisions on the issue, so a course of action could be taken with a provider through that route, but it would be difficult for us to do anything further in the bill, given that many of the service providers are outwith our jurisdiction.

The Deputy Convener: Are there any other areas of the bill on which members have questions?

Alison McInnes: The final area of questioning relates to sexual harm prevention orders. We had some concerns about the fact that such an order could be imposed on an individual who has not committed a criminal offence of any kind. Is there equity in that? Should there be safeguards that make it clear that if an order is about to be imposed, the person against whom it is to be made will have the right to make oral representations in advance of that happening?

Michael Matheson: Are you talking about the concern that the offence might have been committed somewhere in the UK—

Alison McInnes: No. I am talking about sexual harm prevention orders and sexual risk orders, which are the final issue in our briefing paper. Such an order can be imposed on someone who has not committed an offence.

Michael Matheson: You are talking about situations in which no offence has been committed.

Alison McInnes: Yes. People have raised concerns about the equity of imposing orders in those circumstances.

Michael Matheson: I understand the concern that has been raised in that regard. The civil burden of proof will apply in relation to those issues. No offence requires to have been committed. The principle objective of the orders is prevention. It will be for a sheriff to consider the application, based on the information that is presented to them, and to decide whether they believe that the burden of proof has been met sufficiently to justify the issuing of an order.

There is recourse available. The judiciary must make sure that the way in which they apply such orders and the way in which such proceedings are conducted in court is compliant with the European convention on human rights. Someone can choose to appeal against any such decision, so there is a right of recourse that someone can pursue once a sexual harm prevention order has been applied. The orders are primarily preventative in nature—that is the intention behind them.

Alison McInnes: The bill is currently silent on whether there is a right of representation in advance of an order being imposed. Will you reconsider that, to ensure full compliance with the ECHR?

Michael Matheson: I am not persuaded that what is proposed is not compliant with the ECHR. The sheriff would have to consider that at the time in deciding how to proceed, based on the information that was presented to them. Recourse is available.

I am always mindful of the fact that there will be ways in which we can improve the operation of the system, but I am not of the view that the imposition of such orders would not be compliant with the ECHR, as long as the process had been appropriately applied by the sheriff who considered the issue.

Alison McInnes: Can you clarify whether it will be open to the sheriff to allow oral representations if they deem that to be appropriate?

Michael Matheson: The defender can have an oral hearing in the form of a plea in mitigation on the matter, although the fact that a sexual harm prevention order can be granted in civil proceedings makes it slightly different from a sexual risk order. Therefore, it will be possible for the defender to have an oral hearing, if the sheriff considers that to be appropriate.

Alison McInnes: That is helpful—thank you.

Roderick Campbell: I have a brief point. As the cabinet secretary may know, on 17 November, we took evidence from Professor Chalmers on the drafting of proposed new section 54A(8) in the Sexual Offences (Scotland) Act 2009. Professor Chalmers suggested that, in reference to habitual residence, there might be merit in removing the words

“or who has subsequently become”.

I do not want to get too bogged down in the technicalities, but will the Government take on board the comments that Professor Chalmers made?

Michael Matheson: I am aware of the concerns that Professor Chalmers raised. The slight issue

that we have is largely a theoretical point rather than a practical issue. I am not aware of any significant difference between sexual offences law in Scotland and that in other parts of the UK. I am not aware of something that would be an offence in England but not here. However, we will consider whether there is a way in which we can, at stage 2, clarify the bill more. As I said, the point is largely theoretical rather than practical, because we have not been able to identify any difference in sexual offences legislation between the jurisdictions.

Margaret Mitchell: The statutory aggravation in section 1 will apply when a person either intends to cause or is reckless as to causing a partner or ex-partner physical or psychological harm. However, there is no requirement for proof of a previous similar act, so there is a concern that the aggravation could be labelled in practically every case involving physical or psychological harm against a partner or ex-partner. Is that the intention of section 1?

Michael Matheson: It is.

Margaret Mitchell: Okay.

The Scottish Government is considering introducing a specific offence of domestic abuse. Why was it decided not to include such an offence in the bill?

Michael Matheson: As you are aware, we have already started consulting on the specific offence of domestic abuse. The purpose behind the aggravator is to ensure that the issue is formally recorded by the court and recognised at the time of an offender being sentenced. We have taken a similar approach in other areas of the law in relation to issues such as religious and racial hatred. We believe that a specific aggravator will provide reassurance to victims that the issue will be formally taken into account by the court when the effects of the offence are being considered. The purpose is to ensure that the matter is formally recorded and recognised by the court.

The Deputy Convener: Concerns have been raised about the non-harassment orders under section 5. Somebody who has been assessed by the court as being unfit to stand trial could still be subject to a non-harassment order. Breaching that order is a criminal offence, but the person might still be unfit to stand trial. That is a bit circular, so you may not be achieving very much by that measure.

Michael Matheson: The challenge is that someone can be considered to be unfit for trial but there can be an on-going issue with harassment or stalking. The purpose of the non-harassment order is to provide a mechanism that gives clarity to the police that they can take action should the order be breached, which will therefore provide greater reassurance to the victims in such circumstances.

A person's circumstances may change before they are presented before the court again, so they could be prosecuted. The measure provides the police with clarity on enforcement should an order be in place, despite the fact that the person may not have been fit for trial previously.

The Deputy Convener: Thank you for that and for your attendance at what has been another long session.

I suspend the meeting briefly to allow the clerk to find out which of the petitioners are here for agenda item 6. Obviously, we are keen to ensure that we attend to those petitions first.

12:30

Meeting suspended.

12:31

On resuming—

Petitions

Justice for Megrahi (PE1370)

The Deputy Convener: The clerk has produced a paper to accompany item 6. We have a number of petitions to consider, some of which may not be considered again. In fact, if we get through them all, we may not consider any further petitions in the current session of Parliament.

PE1370 requests an inquiry into the conviction of Abdelbaset al-Megrahi. As the petitioners are present, we will consider that petition first and then return to the other petitions. An update from Justice for Megrahi was circulated to members on 18 December, emphasising its position in relation to the appointment of an independent prosecutor to consider the findings of the police investigation known as operation Sandwood. The clerk's paper reminds members that the Scottish Criminal Cases Review Commission announced in November that it was closing its review of Megrahi's conviction because it could not get access to his defence papers.

I seek members' views on the petition. The possible options are set out on pages 9 and 10 of paper 6.

John Finnie: Operation Sandwood has ensured that the accusations that were made by Justice for Megrahi are back on track, and I know that JFM has every confidence in—indeed, it has praised—the way in which Police Scotland has dealt with the matter.

First and foremost, given that the operation is live, the petition must be kept open. There are wider issues, and I do not think that any criticism can be laid at the door of Justice for Megrahi regarding the timing of the voluminous amount of papers that we have received today. Those papers relate to the timeframe of exchanges, not least with the Lord Advocate.

There is a significant issue of process that should be a concern for the Justice Committee regarding the administration of our criminal justice system. In this particular case, we know that there were nine criminal allegations. I know that we are going over ground that we have been over before, but it is important that we do so. It is important to note that the allegations have been made by highly respected public figures. I stress that the issue is about process, and it is to the Lord Advocate's credit that he recognised that there was a conflict as a result of the appointment of the independent Crown counsel.

Quite reasonable questions have been posed, initially in a letter of 24 August last year, and subsequently by the committee to the Lord Advocate on 5 November. Those questions remain unanswered.

I have to say that the issue of process is not, in my view, exclusive to the Megrahi case. We need to try to understand what should happen in the event of a criminal case in which the people who are charged with making important decisions are themselves the subject of accusations. As I have said, it is to the Lord Advocate's credit that he has acknowledged that.

This is about process and postholders; it is certainly not about personalities. Having accepted that operation Sandwood has put the issue firmly on track after an unfortunate start, we have the suggestion that the Crown Agent is an independent person and will play a role in the process. As we have seen from the letters—I hope that members have had the opportunity to read them—any reasonable judgment would be that that is not necessarily the case, given that the Crown Agent defended the Crown Office's position in a letter of 2012.

As I said, the timeframe is outwith the petitioners' control, but there is a broader issue that goes beyond the petition, so I suggest that we should keep it open. It is also entirely legitimate that we would want to understand the significant issue of a possible gap in our process—indeed, the public would expect that we would want to do that. I would like the clerk to write to the Lord Advocate with particular questions. I hope that we will get a response to them that will advise us what further action, if any, we need to take.

Roderick Campbell: I am quite happy to keep the petition open. Operation Sandwood is ongoing. Obviously, it is a little disappointing in some respects that the Scottish Criminal Cases Review Commission has taken the stance that it has taken, but I fully understand why it has done so. What concerns me is some recent correspondence that seems to focus far too much on one individual whose role is to co-ordinate matters for the independent Crown counsel. I am not sure that I could agree with Mr Finnie on what questions we should address to the Lord Advocate, but I would like to reserve my position on that until we see what questions it is proposed that we address to the Lord Advocate.

Alison McInnes: John Finnie has raised important process issues, and he was right to highlight that this is not about individuals, but about the process. I support what he suggested doing.

The Deputy Convener: There was a suggestion about a letter. One possibility that

would not indicate that the view was necessarily the committee's view would be to ask the Lord Advocate to respond to the recent paper from Justice for Megrahi, which, through no fault of JFM, was not delivered to members until fairly recently.

Roderick Campbell: I certainly would not have a problem with that. The committee could then consider the matter again, if it chose to do so.

The Deputy Convener: Yes. We can keep the petition open and ask for a response.

Christian Allard: I am definitely happy with the deputy convener's recommendation, particularly as the convener has particular views on things, as well. We should keep things as neutral as possible and ensure that we take cognisance of the letter that we receive. Asking for an explanation would be great.

The Deputy Convener: We will keep the petition open and ask the Lord Advocate for his response to the points that Justice for Megrahi made in its recent contribution to us.

Members indicated agreement.

The Deputy Convener: I thank the petitioners for their attendance yet again.

Fatal Accident Inquiries (PE1280)

The Deputy Convener: We kept open PE1280, on fatal accident inquiries, until the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Bill had been passed. Stage 3 of that bill concluded on 10 December and the bill, as passed, included section 6, on inquiries into deaths occurring abroad—that section is set out on page 3 of paper 6.

During an earlier evidence session, the petitioners appeared to be broadly content with the relevant provisions in the bill. As the clerk's paper also notes, an amendment was agreed to at stage 2 that allows for FAIs into deaths abroad to be carried out even where the body has not been repatriated, which was one of the committee's recommendations.

Does the committee agree that the petition can now be closed?

Members indicated agreement.

Self-inflicted and Accidental Deaths (Public Inquiries) (PE1501)

Fatalities (Investigations) (PE1567)

The Deputy Convener: PE1501 and PE1567 are on investigating unascertained deaths, suicides and fatal accidents. PE1501 requests that an inquiry be held where a death is determined to

have been self-inflicted or accidental following a suspicious-death investigation. PE1567 asks for a change in the law and procedures in investigations of unascertained deaths, suicides and fatal accidents. We are taking the petitions together because they appear to make similar requests. Both petitions come from family members of persons who died suddenly, and the families are not satisfied with how the deaths were investigated.

In late December, the clerk received communication from the petitioner on petition PE1567, which has been circulated to members. It contains a heart-rending description of the death of a young man. I have every sympathy for the mother of that young man, as—I am sure—does the whole committee.

When we considered the petitions previously we agreed to write to the Lord Advocate, and asked him for additional information regarding the safeguards that are currently in place to ensure that investigations into deaths by the police or procurators fiscal reach robust and sound conclusions. We also asked what powers families have to question the outcomes of such investigations.

The Lord Advocate's response, which is attached at annex A, to some extent reiterates information that we have already received. However, it also includes reference to the new charter for bereaved families, which sets out the different stages of an investigation process and confirms what information will be provided to bereaved families and when. Page 4 of the Lord Advocate's letter also outlines the review and complaints processes that are open to bereaved families who are disappointed with an investigation. However, that is not the more formal process that the petitioners appear to be asking for; the Lord Advocate makes it clear that he is not contemplating any major legal changes in this area.

I seek members' views on the petitions. Options are set out on page 7 of the clerk's paper.

Christian Allard: Does the rest of the committee agree that we should make a last-ditch attempt—if I can use those words—and write to the cabinet secretary asking for any reassurances that we have not heard before that could help us to resolve the matter, particularly regarding the details of police investigations and decisions by the Crown Office and Procurator Fiscal Service?

The Deputy Convener: Does the committee agree to take that approach?

Members indicated agreement.

The Deputy Convener: Okay. We will keep the petition open and write to the cabinet secretary

asking for any other reassurances that he can give us. Information on these and other petitions that are still open could form part of our legacy paper at the end of the session, if there are outstanding issues with them.

Solicitors (Complaints) (PE1479)

The Deputy Convener: PE1479 is on the legal profession and the legal-aid time bar. The petitioner is asking that the time bar for making complaints against the legal profession be removed completely.

The Scottish Legal Complaints Commission had planned to increase the time bar from one to three years, but the process has been delayed while it consults on the issue as part of a wider consultation. A copy of the SLCC's most recent correspondence with the committee is reproduced at annex E.

I seek members' views on the petition. Options are set out on pages 11 and 12 of the clerk's paper.

Roderick Campbell: I am of the view that there is no longer much merit in keeping the petition open. It seems to be slightly technical. The situation has not been resolved. I appreciate that we are back to the consultation phase with the SLCC. Things will undoubtedly change at some point, but I am not absolutely sure that keeping the petition open will serve a useful purpose.

The Deputy Convener: I take a similar view.

John Finnie: I do likewise, convener. However, I suggest that we encourage active responses to the consultation.

The Deputy Convener: Yes—although the consultation is not likely to address what the petitioner is asking for. Do we agree to close the petition?

Members indicated agreement.

Emergency and Non-emergency Services Call Centres (PE1510)

Inverness Fire Service Control Room (PE1511)

The Deputy Convener: PE1510 is on the closure of police, fire and non-emergency call centres north of Dundee. The clerk's paper discusses the petition, along with PE1511. Since the committee's previous consideration of PE1510, the Justice Sub-Committee on Policing has taken evidence from Mr Penman, Her Majesty's inspector of constabulary in Scotland, on his final report on call handling. What he had to say is set out on page 14 of the clerk's paper. I

seek members' views on PE1510. Options are set out on page 13 of the paper.

John Finnie: I am keen to keep the petition open, because the subject matter is very much live. I know that there are different interpretations of the HMICS report. I certainly took it as vindicating retention of the control rooms. The process is on-going, but I hope that a decision will be taken to retain the control rooms. It would be appropriate to keep the petition open, given on-going events.

The Deputy Convener: We also have PE1511, on closure of the fire and rescue control room in Inverness. Members will recall that the issues that are highlighted in the petition were raised during our evidence session with the Scottish Fire and Rescue Service, HM chief inspector of the Scottish Fire and Rescue Service and the Fire Brigades Union on 28 April 2015. I ask members for their views on whether we should keep one or both petitions open.

Roderick Campbell: I agree with John Finnie that we should keep PE1510 open. I am less sure about keeping PE1511 open.

Alison McInnes: We have previously sought assurances from the fire service about PE1511. Although we have had some assurances, we have heard during the budget process some concerns about the impacts of the closures. I would keep both petitions open.

Margaret McDougall: I agree with Alison McInnes—we should keep both petitions open.

Margaret Mitchell: I support that, as well.

Christian Allard: I am happy with that.

Roderick Campbell: I would not go into the ditch over it.

The Deputy Convener: Okay. We agree to keep both petitions open. Do we want to do anything further with PE1511 or should we just keep it open?

Margaret Mitchell: We should just keep it open.

The Deputy Convener: Okay. We will not take any other action. Thank you.

Subordinate Legislation

Management of Offenders etc (Scotland) Act 2005 (Commencement No 8 and Consequential Provisions) Order 2015 (SSI 2015/397)

12:46

The Deputy Convener: Our final agenda item before we go into private session is subordinate legislation. I think that we have more or less caught up with our timetable.

The order was intended to commence the remaining provisions of the Management of Offenders etc (Scotland) Act 2005 and to extend the multi-agency public protection arrangements beyond registered sex offenders and restricted patients to include certain high-risk offenders.

As members can see, the Delegated Powers and Law Reform Committee has drawn the order to Parliament's attention. Its main concern is that the order was laid under the wrong procedure—negative instead of affirmative. The Scottish Government has acknowledged that and has laid two replacement instruments. The DPLR Committee was also concerned that the Scottish Government should have formally revoked the order, but the Scottish Government considered that that was not necessary. All that is set out in some detail in the clerk's paper.

Just before the end of 2015, the Minister for Parliamentary Business wrote to the DPLR Committee, and the Justice Committee was copied into the letter, which has been forwarded to members. The letter essentially restates the Scottish Government's view that no further action on the order is necessary.

The order was put on our agenda because the advice that the convener received was that it was necessary to do that under standing orders. However, despite the continuing disagreement between the Scottish Government and the DPLR Committee, both sides agree that the order is not law and will not become law. Replacement instruments have been laid and will come to this committee in due course, at which point we will be able to consider the issues of policy rather than of procedure.

My suggestion is that we make no recommendation on the order. Do members agree?

Members indicated agreement.

Alison McInnes: It is pretty rich that we have had such a mix-up about this. It really is unfortunate and quite unacceptable.

The Deputy Convener: Yes. I do not think that we have any comments on the order, but it seems to be very remiss of the Government to submit an order under the wrong procedure.

12:48

Meeting continued in private until 13:01.

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