OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 22 November 2016

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 22 November 2016

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JUSTICE COMMITTEE
10th Meeting 2016, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*Mairi Evans (Angus North and Mearns) (SNP)
Mary Fee (West Scotland) (Lab)
*John Finnie (Highlands and Islands) (Green)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Ben Macpherson (Edinburgh Northern and Leith) (SNP)
*Liam McArthur (Orkney Islands) (LD)
*Oliver Mundell (Dumfriesshire) (Con)
Douglas Ross (Highlands and Islands) (Con)
*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Claire Baker (Mid Scotland and Fife) (Lab) (Committee Substitute)
Tim Barraclough (Scottish Courts and Tribunals Service)
Annabelle Ewing (Minister for Community Safety)
Assistant Chief Constable Bernard Higgins (Police Scotland)
John Little JP (Sheriffdom of North Strathclyde)
Chief Superintendent Garry McEwan (Police Scotland)
Sam McEwan JP (Sheriffdom of North Strathclyde)
Eric McQueen (Scottish Courts and Tribunals Service)
Linda Pollock (Scottish Government)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 22 November 2016

[The Convener opened the meeting at 10:00]

Interests

The Convener (Margaret Mitchell): Good morning and welcome to the 10th meeting of the Justice Committee in session 5. We have received apologies from Douglas Ross and Mary Fee. I welcome to the committee Claire Baker, who is the Labour Party's substitute. Do you have any interests to declare that are relevant to the committee, Claire?

Claire Baker (Mid Scotland and Fife) (Lab): No. I do not have any interests to declare.

Decisions on Taking Business in Private

10:00

The Convener: Agenda item 1 is a decision on taking business in private. Do members agree to take in private item 8, which is consideration of a draft report on a Policing and Crime Bill legislative consent memorandum, and item 9, under which the committee will consider its work programme?

Members *indicated agreement.*

Subordinate Legislation

Home Detention Curfew Licence (Amendment) (Scotland) Order 2016 [Draft]

10:00

The Convener: Under agenda item 2, the committee will further consider the draft Home Detention Curfew Licence (Amendment) (Scotland) Order 2016, which is an affirmative Scottish statutory instrument.

I welcome the Minister for Community Safety and Legal Affairs, Annabelle Ewing, who will speak to the SSI. With the minister are Linda Pollock, who is deputy director of the community justice division of the Scottish Government; Quentin Fisher, who is also from the community justice division; and Craig McGuffie, who is from the Scottish Government's directorate for legal services. I welcome them, too.

I thank the minister and her officials for providing the statistics that the committee requested last week and remind members that officials are permitted to give evidence under agenda item 2, but they may not participate in the formal debate on the order under agenda item 3.

I refer members to paper 1.

Does the minister want to make an opening statement?

The Minister for Community Safety and Legal Affairs (Annabelle Ewing): Good morning. In the circumstances, I simply refer to the opening statement that I made last week.

The Convener: Okay. Do members have any questions? We have additional information and time to look at the SSI.

Oliver Mundell (Dumfriesshire) (Con): I, too, thank the minister for providing additional information.

I recognise that a relatively small number of people are affected, but I still have concerns that the broader principle sends out the wrong signal to both offenders and the wider public. At a time when we are looking to enhance community sentencing, there is a danger that breaching such sentences is not seen to have consequences, and that undermines the process. Can you give any further reassurance on that, minister?

Annabelle Ewing: On the wider policy objectives, as I mentioned last week we are looking to remove exclusions from the possible granting of a home detention curfew—that granting is by no means automatic—to certain categories. We discussed that in detail last week. I refer to those who have, in effect, committed a

new offence while out of prison and before the end of their sentence and those who have breached licence conditions, including HDC conditions, while out of prison.

We can see the potential scope from the figures that have been provided to the committee. The figures have been updated to 21 November 2016 to help the committee's deliberations. We can see that the numbers involved are not substantial. It must also be pointed out that the possible individuals who could be brought within scope would be eligible for consideration, but that does not mean that they would be granted an HDC. It is important to put that on the record.

On the wider objectives, we seek to encourage rehabilitation, reintegration into communities, the building of family relationships again, and reintegration by facilitating individuals' productive contributions to society while they are on an HDC with the ultimate objective, of course, of reducing reoffending. That is the key principle to note. I am sure that we all wish to see a reduction in reoffending.

Finally—I stressed this point quite considerably last week—the risk assessment that is carried out is robust and puts public safety at its very heart to ensure that, if HDC is granted, the decision takes into account public safety as a primary consideration, looking at such issues as possible reoffending and the likelihood of reintegration into society.

Oliver Mundell: I wonder whether the Scottish Prison Service, in making those decisions, might face pressure to go ahead and release people back into the community to help manage the prison population, rather than looking as rigorously as the minister suggests at the needs of the offender and the concerns that communities might have.

Annabelle Ewing: I do not accept that. With regard to longer-term prisoners, the assessments are carried out not simply by the SPS but by the Parole Board for Scotland. Would officials like to comment further on that suggestion that the SPS would factor in prisoner number management in its risk assessment?

Linda Pollock (Scottish Government): As the minister said, for longer-term prison sentences, the Parole Board would agree the halfway point. It is also worth noting that criminal justice social work do part of the risk assessment in the community. The SPS takes its job very seriously and does risk assessments very thoroughly; the prison population is not a factor that would come into that, but the risk profile of the offender—whether there is a risk to the public and a risk of reoffending—is a factor. Criminal justice social work looks at the risk of the person returning to the community, in particular the house and the home that they would be returning to. The risk assessment that is undertaken is very thorough.

Oliver Mundell: Finally, I ask again about ministerial oversight. Mr McGuffie provided answers to the committee last week, but I am concerned at the suggestion that Scottish ministers would have a role and might be involved at an administrative level. Can the position be further clarified this week?

Annabelle Ewing: The point that was made was that the Scottish Prison Service acts as the executive agency, with delegated authority. A framework agreement is in place between the Scottish Government and the SPS, which is on the SPS website; it gives a broadbrush explanation of how the direction of policy is to be implemented. With any authority that is delegated, control can ultimately be taken back; as a matter of practice, that is not the case. Again, I ask officials to clarify further details.

Linda Pollock: What the minister says is correct. Delegated authority is given to the chief executive of the SPS; that is published in the framework agreement, which members can find online. It states all the areas in which the SPS has delegated authority. In instances such as those that we are discussing, as we have just gone through, the SPS people look at the risk assessment; they work with the offenders daily, and it is right and proper that they make the recommendation and the decision.

Oliver Mundell: Do you envisage any scenario in which the cabinet secretary or a minister would be involved in an individual decision?

Linda Pollock: The power has been delegated to the chief executive of the Prison Service. The chief executive is accountable to ministers, who are accountable to the Parliament, but the day-to-day management and operation of the prisons is done through the Prison Service.

Oliver Mundell: To be absolutely clear for the record, the position that was set out last week—that ministers would be involved at an administrative level—is incorrect.

Linda Pollock: This is just restating what was said last week.

Oliver Mundell: Okay.

Rona Mackay (Strathkelvin and Bearsden) (SNP): I thank the minister for bringing the statistics to the committee. I was heartened to see that only 6 per cent of recalls from HDCs are due to reoffending. Does the minister agree that that proves the validity of the system, and that the system works?

Annabelle Ewing: Yes. The latest reoffending statistics for this year thus far show that we are at a 17-year low in reoffending; that indeed shows that policies concerning, inter alia, HDC make a difference and facilitate rehabilitation and reduced reoffending. I am sure that we all wish to see a reduction in reoffending; electronic monitoring in the form of HDC allows us to do that.

The Convener: I must say that I have some reservations, minister. Six per cent is a percentage but we are talking about individuals who have committed crime and are out on licence, who have a home detention curfew and have breached licence conditions but who are seen to be again given another chance. Where does it leave victims and all the people who have seen the original sentence being imposed only for automatic early release to kick in when, despite the condition being breached, or even another crime being committed, the offender is still at liberty?

My position is that the original statutory exemptions were there for good purpose. They provide a very strong deterrent and reinforce the seriousness of breaching the conditions. If we had wanted to look at this—and we want to encourage community disposals where they are appropriate—that should have happened as part of a wider debate on community justice. For that reason, I am not too happy about the proposal.

Does anyone else have any comments?

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Minister, I note from memory that reoffending by released prisoners, which I believe is calculated as another offence being committed within two years of a prisoner's release, is of the order of about half or thereabouts. Do you have that figure to hand? In that context, a figure of 6 per cent—albeit that it covers a different timeframe than the two years—stands very good comparison with the population released from prison as a whole. Furthermore, I think that the reoffending rates for those who receive community sentences are also substantially ahead, so one could almost argue that if only every other way in which we dispose of prisoners were as successful as this one, we would be very happy indeed. Is that correct?

Annabelle Ewing: I agree that the stats on HDC show that there is a relatively low level of reoffending. That is to be welcomed and it is indicative of the fact that HDC is an important tool that is open to community justice partners to facilitate reintegration into the community and—I return to this point—reduce reoffending.

I will pick up on an issue that the convener raised. I think that I made this point at last week's meeting. The working group included Scottish Women's Aid, which was an active participant in the deliberations and signed up to the final report, which included inter alia the recommendation that those hitherto excluded categories of individuals should now be included in the possible grant of HDC. I state again that HDC is by no means automatic; it is subject to a robust risk assessment on the grounds that I have explained.

The Convener: John Finnie has a question.

John Finnie (Highlands and Islands) (Green): The point has been covered.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): Supplementary to what the minister has said, a concern was raised about the scope and breadth of the examination of the issue. My understanding is that the working group comprised the Scottish Prison Service, the police, independent researchers, social work practitioners and a representative of Scottish Women's Aid. It encompassed 16 months of work and international evidence was also looked at. To me, that seems like a robust and extremely thorough examination of the issue prior to the working group making a proposal.

Annabelle Ewing: I think that I made the point last week that there had been substantial engagement. The final report was informed not only by the statistics that were made available to the working group, but by international evidence, other academic research, the engagement that Ben Macpherson spoke about—at both national and local level—and the expertise and knowledge that the individuals concerned brought to their 16-month deliberation.

For the sake of completeness, in addition to the members that Ben Macpherson mentioned, in the working group's lifetime its membership included a representative from the Judicial Institute for Scotland, the head of the parole unit, and representatives from the violence reduction unit and the national offender management unit. Also included were the Police Scotland specialist crime division and the centre for youth and criminal justice. There was, therefore, available to the working group a panel of experts in their field and front-line practitioners. That illustrates Ben Macpherson's point that this was an extensive look at the issue.

10:15

Liam McArthur (Orkney Islands) (LD): I want to follow up Stewart Stevenson's comments. I suspect that what we are doing here is managing risk and 6 per cent does not necessarily seem to be the threshold of success. I am sure that everybody who is involved would look to bring that figure down if they could. Nevertheless, if we were to demand a figure approximating 0 per cent, we would be asking for a guarantee that would be

unrealistic in most of the other endeavours that we embark on.

I suppose that, as a Government, you will be looking at how the proposal operates in practice and if the 6 per cent figure were to be nudged upwards with a change in the process over time, I presume that you would look at why that was happening and potentially make alterations accordingly. Is that a fair assessment?

Annabelle Ewing: I think so, yes. The member makes a fair point. We cannot guarantee 0 per cent even though we would like to. In every human endeavour, it is always difficult to guarantee a 100 per cent success rate. However, the figures show that the risk is being managed well in relative terms.

Officials look at the statistics regularly. Last week, Mr Finnie raised an important point that was also raised by the working group. How can we better support individuals who are in those circumstances to facilitate compliance? There will be a demonstration pilot project on the current plans for that very issue early next year. That is an important element of how we are seeking to improve the rates further as the member would like.

Fulton MacGregor (Coatbridge and Chryston) (SNP): As an ex criminal justice social worker, it would be remiss of me not to challenge some of the perceptions about HDC being an easy option for offenders. It is a robust system and a crucial part of the process of moving offenders from prison back into the community, as the minister has said.

Members might like to know that research clearly indicates that, when prisoners come straight out of prison into the community, reoffending rates are much higher. That is a comment for the record, convener.

The Convener: There are no further comments or questions for the minister. Minister, do you want to make a closing statement?

Annabelle Ewing: No, thank you.

The Convener: In that case, we move to the next item, which is formal consideration of motion S5M-02127.

Motion moved,

That the Justice Committee recommends that the Home Detention Curfew Licence (Amendment) (Scotland) Order 2016 [draft] be approved.—[*Annabelle Ewing*].

The Convener: Do any members wish to speak?

Stewart Stevenson: I remind members that the 1991 white paper on criminal justice that the Tories introduced contained the memorable quote that prison is

"an expensive way to make bad people worse."

We should support anything that gets people out of prison and keeps them out.

The Convener: Thank you for that contribution. By way of riposte, I repeat that, given the report that we have seen, it is regrettable that the proposal, which has been brought to Parliament under the affirmative procedure, has not been the subject of a parliamentary debate on the wider issue of community justice.

John Finnie: I am conscious that there has been no attempt to curtail any debate. We have heard a range of views here, so it is not the case that there has been no debate. The Scottish Green Party strongly welcomes the proposal; as the minister says, it is an option and it is about reintegration.

I would be concerned if unintended offence were to be taken by the wide range of participants who are behind the report. I suspect that a small minority of people might see the proposal as controversial. However, when an organisation such as Scottish Women's Aid, which has victims' interests at the forefront of all its deliberations, shares a collective view on the proposal with front-line practitioners, for me that makes a compelling case, and I will certainly lend my support to the proposal.

The Convener: I invite the minister to wind up.

Annabelle Ewing: I agree entirely with Mr Finnie's comments. It is important to put on the record that individuals from various spheres have put an awful lot of their time into this; that includes those from important victims organisations such as Scottish Women's Aid, and I think that their opinions should be listened to.

The Convener: Thank you, minister. The question is, that motion S5M-02127, in the name of Annabelle Ewing, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baker, Claire (Mid Scotland and Fife) (Lab)
Evans, Mairi (Angus North and Mearns) (SNP)
Finnie, John (Highlands and Islands) (Green)
MacGregor, Fulton (Coatbridge and Chryston) (SNP)
Mackay, Rona (Strathkelvin and Bearsden) (SNP)
Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

Against

Mitchell, Margaret (Central Scotland) (Con)
Mundell, Oliver (Dumfriesshire) (Con)

The Convener: The result of the division is: For 8, Against 2, Abstentions 0.

Motion agreed to,

That the Justice Committee recommends that the Home Detention Curfew Licence (Amendment) (Scotland) Order 2016 [draft] be approved.

The Convener: As there was a division on the motion, are members content for me, as convener, to clear our final report, or would they prefer to see the report before it is cleared?

Stewart Stevenson: We are content with your proposal, convener.

The Convener: Thank you.

I suspend the meeting for a change of witnesses.

10:21

Meeting suspended.

10:22

On resuming—

Air Weapons Licensing (Exemptions) (Scotland) Regulations 2016 [Draft]

The Convener: The next item on the agenda is consideration of a draft affirmative Scottish statutory instrument: the Air Weapons Licensing (Exemptions) (Scotland) Regulations 2016. I welcome again the Minister for Community Safety and Legal Affairs, Annabelle Ewing, who is accompanied by Scottish Government officials Keith Main, safer communities division; and Carla McCloy-Stevens, director of legal services.

I refer members to paper 2, which is a note from the clerk. Minister, do you want to make an opening statement?

Annabelle Ewing: Yes, thank you. The new licensing regime for air weapons in Scotland is set out in part 1 of the Air Weapons and Licensing (Scotland) Act 2015, and implementation of the act is well under way. From 31 December this year, it will be an offence for anyone to have or use an air weapon without an air weapon certificate or permit, unless they are otherwise exempt. Schedule 1 to the 2015 act sets out various exemptions, which reflect similar exemptions in the licensing regime for more powerful firearms and shotguns. That ensures consistency between the two licensing regimes, which is helpful to the police, who are the licensing authority, and to the shooting community.

The purpose of the draft regulations that are before the committee today is to add two further exemptions to schedule 1 to the 2015 act. The additions are being made at the request of the Ministry of Defence and replicate exemptions from the firearms licensing regime under sections 16A and 16B of the Firearms (Amendment) Act 1988. The first exemption covers the possession and use of air weapons by civilians while on service premises and under the supervision of military personnel. The exemption would allow a person to shoot air weapons without holding an air weapons certificate at a properly supervised shooting gallery that is set up as part of an open day, for example, or at a family or community event on service premises. It might interest the committee to know that open days and other events take place at barracks and other military bases throughout the year. Such events are generally focused on recruitment, but they can also be aimed at military families or the wider community, helping to maintain important links with the local area.

The second exemption covers the possession and use of air weapons on Ministry of Defence Police premises by people who are undergoing firearms training and assessment under the supervision of Ministry of Defence Police personnel. Both the exemptions relate to Ministry of Defence matters that are considered to be reserved. The Scottish Government believes that it is appropriate to add the exemptions.

It should be noted that schedule 1 explicitly exempts other reserved matters from the regulation of part 1 of the 2015 act, including the possession and use of air weapons by members of Her Majesty's armed forces and the Ministry of Defence Police in the course of their duties. The regulations that are before the committee today will help to make clear who is and who is not subject to the new air weapons licensing regime. They reflect equivalent exemptions from the wider firearms licensing regime and are consistent with the other air weapons licensing exemptions that are set out in schedule 1 to the 2015 act.

Finally, given that shooting in such circumstances may be undertaken only under the strict supervision of military personnel, it is not considered that the inclusion of these exemptions should involve any adverse impact on public safety.

The Convener: Thank you, minister. Do members have any questions?

Stewart Stevenson: I will make an obvious comment. In my constituency, members of the Ministry of Defence Police guard the St Fergus gas terminal, which is part of the critical national infrastructure. I think that it is appropriate for those police to have the powers that will be conferred by this piece of subordinate legislation, if it is passed by Parliament.

Liam McArthur: I note the reservations that were expressed by my colleagues and me about the original legislation. However, I think that the exemptions that are being put forward by this statutory instrument are sensible and are ones that we would support.

The Convener: Noted. As there are no further questions, we move to item 5, which is the formal debate. I ask the minister to move the motion.

Motion moved,

That the Justice Committee recommends that the Air Weapons Licensing (Exemptions) (Scotland) Regulations 2016 [draft] be approved.—[*Annabelle Ewing*]

Motion agreed to.

The Convener: Does the committee agree to delegate authority to me to approve the final report?

Members *indicated agreement.*

The Convener: I thank the minister and her officials for their attendance.

10:27

Meeting suspended.

10:27

On resuming—

Justices of the Peace (Training and Appraisal) (Scotland) Order 2016 (SSI 2016/329)

The Convener: Item 6 is consideration of five negative SSIs. Do members have any comments on SSI 2016/329? If not, do we agree to make no recommendation on it?

Members *indicated agreement.*

The Convener: Once I have gone through the list, we will see whether we have no recommendations to make on any of the instruments, or whether there are any issues with any of them. I will take them one at a time—I think that that is the easiest way to do it.

Court Fees (Miscellaneous Amendments) (Scotland) Order 2016 (SSI 2016/332)

The Convener: Members will be aware that the Law Society of Scotland has made a submission about this instrument. Do members have any questions or comments?

Liam McArthur: As you note, the Law Society has been in touch with us about this instrument, which is similar to one that we considered last week and raises many of the same concerns about the impact on access to justice. In its papers, the Government confirms that the consultation that it ran on the matter showed an overwhelming resistance to the increasing court fees. I know that we are operating to a reasonably tight deadline because, I think, the instrument comes into effect on 28 November.

The Law Society raises some interesting points, including about whether increases in eligibility thresholds will bear comparison with inflation over time. I think that, in its submission, it says that if it were forced to offer an opinion between option 1, which is a flat-rate increase, and option 2, which is a targeted increase, it would prefer option 2. That is hardly surprising, but if there is any time available to find out how the Government proposes to amend the fees and eligibility criteria thresholds over time in line with inflation, that would be helpful.

10:30

The Convener: On that specific point, my understanding is that the committee has until 5 December to report to Parliament on all these instruments. As a result, the committee could consider the instrument again at next week's meeting if, as Liam McArthur suggests, we want to get further evidence on these points.

Liam McArthur: As I said in relation to the SSI the last time round, I can understand the resistance to an increase in fees at any stage, and it might simply be that any increases that we are talking about will be modest. However, the concerns that have been raised about the impact of the order on access to justice seem to be more serious, and if there were time available to satisfy ourselves that we would be approving something that was as targeted as it could be against the backdrop of the Government's stated intention to try to recover court costs more effectively, that would be my preference.

Stewart Stevenson: We certainly had quite a full discussion on this issue last week. On Liam McArthur's point that it might be reasonable to ask the Government about its longer-term intentions with regard to progressing the agenda on full recovery of court costs, which I point out was introduced by the Labour-Liberal Administration before 2007 and is clearly a long-term plan, I think that it would be perfectly proper to ask the Government how it will continue with a policy that was introduced by the Liberal-Labour Administration. However, in view of the very full discussion that we had last week, I do not think that we should seek to delay this instrument.

The Convener: Just for clarification, I should say to Liam McArthur, who obviously was not here last week, that it would be stretching a point to call

the discussion that we had a full one. Given the reservations that I expressed about access to justice considerations with the court fees—albeit that the increase is very minor—I certainly welcome Mr McArthur's suggestion that we find out a little more information.

Oliver Mundell: I fully agree with Liam McArthur. Given that we have until 5 December, I do not think that we would be delaying things if we took a look at this issue. I think that it is perfectly reasonable to raise some of these questions, particularly with regard to longer-term plans; indeed, I feel that we only just got started on that issue the last time round. Given the Law Society's strong representations, we should take the time to consider the matter fully.

John Finnie: I set great store by the information that we get from the Law Society—it is always very compelling—but I have to say that, in this case, it has offered up an extremely poor comparator. The legislation that was enacted by the UK Government that saw fees introduced that raised the level from zero to £1,200 obviously had the significant effect that we are talking about. I would not put in the same category a change from £78 to £100 for what is likely to be the bulk of claims.

The specifics of this instrument are separate from the Government's overall plans. I think that Liam McArthur makes a very valid point, and I am very happy to try to understand it. However, I am always looking for access to justice and protection of the vulnerable issues, and when I see that there is no change to the Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2015, that there is no effect on the fees that we agreed in earlier legislation with regard to the sheriff appeal court or the sheriff personal injury court or that—and, in fairness, the Law Society submission refers to this—those in receipt of legal aid will not incur any court fees, I think that, on top of what in some instances are very modest increases, there seems to be the same level of protection that I referred to last week. I am comfortable about making a decision on the instrument today, although we should by all means try to understand the longer-term objectives.

Rona Mackay: I have to agree with my colleagues John Finnie and Stewart Stevenson that there is nothing terribly radical in the detail of the proposed court fees. I also agree on the wider issue of looking to see what the Government's proposal is in the longer term. This is the third time that we have discussed the matter and I do not see any merit in delaying the legislation, given what we would achieve in the short time between now and 4 December. We should move ahead with it.

Ben Macpherson: Likewise, I see no need to delay. Although I appreciate the collective determination in the room to have a long-term analysis in tandem, John Finnie made the point that although the Law Society paper makes reservations, it explicitly states:

> "The legal aid scheme in Scotland also ensures that people eligible for the scheme do not have to pay their court fees. Also, if unsuccessful, people who are legally aided do not need to pay the court fees of their opponent."

That point should be recognised.

The Convener: A compelling point in the Law Society's submission is about the dramatic fall in the number of people presenting to employment tribunals, which seems to suggest that there is a barrier to their doing so. The barrier is the increase in court fees, potentially.

We have a proposal that the discussion is continued to next week to allow us to seek a further response from the Government in order to properly tease out the issue. Last week, I raised the issue that the previous Justice Committee made a very strong statement that it did not believe that court fees should be used to pay for the reforms. Substantial reforms have still not been implemented and further reforms are in the pipeline. There are quite a few issues surrounding the matter. Are members content to continue the matter so that we can seek further evidence? I see that members are not content.

Liam McArthur: I will try and break the logjam that I appear to have created. I understand from discussions with the clerks that the SSI will come into effect on 28 November in any event, so if we were to seek further information, that would simply delay the process of parliamentary approval.

I hear what John Finnie and other colleagues have said about the increases in fees. There is still a question about why the Law Society submitted its paper to the committee so late in the day, but if there is an opportunity to explore the issues that it has highlighted in more detail, I do not see the downside of doing that, particularly in light of it not appearing to be the case that it would delay the implementation of the SSI.

The Convener: I want to be clear about what you are suggesting. Are you suggesting that we make no recommendation today on the instrument—along with possibly some other instruments—but seek another response from the Scottish Government to flesh out some of the issues raised? Are you suggesting that we put the instrument to one side until we get further information from the Government?

Liam McArthur: My preference would be to set aside the instrument, but the committee's overwhelming view appears to be that we press ahead with it. We need to get information from the

Government about the general context of cost recovery—and there pretty much seems to be unanimity about doing that. As I said, my preference would be to use the time that we have available—that is, until 5 December—to tease out the issues.

The Convener: I am sympathetic to that. I am very conscious that, when John Finnie and I sat on the previous Justice Committee, we as a committee looked at the broad theme of access to justice. There is no question but that the instrument potentially—it might not necessarily be the case when we get down to it—raises enough issues for me to think that Liam McArthur's proposal is a reasonable way forward.

John Finnie: I am a wee bit concerned about your continual reference to access to justice and the suggestion that, were your position on the issue not to be supported, somehow that would mean that the individuals who took that position were not supportive of access to justice. Everything that I said in relation to my qualification of the issue today and last week was about access to justice. Access to justice is to ensure that people receive protections. I have outlined the protections behind the instrument. It would be very disappointing if there were a misrepresentation of what was said in the previous committee's report.

The Convener: It is really about potential access to justice concerns—they may or may not be realised, which is essentially why we would be looking for more information.

John Finnie: The issue that has been alluded to is employment tribunals. If you had been outspoken—as I was—in opposing fees for employment tribunals, that would strengthen your position, convener, but I do not recall that being the case. You have cited that as a comparator. That was a UK reserved issue, which is now coming to Scotland. I do not recall outpourings from you or your party about access to justice in that context. We have seen the dramatic effect that the introduction of fees for employment tribunals has had.

I have outlined the protections that are there to ensure that access to justice will continue. I am keen that we make a decision on the order today.

The Convener: I assure you that my comments are based on the written submission that we received from the Law Society and the quite startling hard figures on the drop in the number of people who are presenting as a result of the court fees—

John Finnie: Tribunal fees.

The Convener: I am sorry—employment tribunal fees.

John Finnie: I repeat that that is a matter that is reserved to the UK.

The Convener: Whichever it is, there has been a drop, the evidence for which has been presented. It is on that basis that I made my comments.

Liam, are you proposing that we postpone our decision, or are you content that we make no recommendation on the order at this stage?

Liam McArthur: I am content for us to seek the wider information—

The Convener: But you are content that we make no recommendation in the meantime.

Stewart Stevenson: I want to clarify matters so that we understand the second decision, which it is clear that all of us will support.

Liam McArthur was in favour of us asking the Government for the bigger picture on the issue—where it intends to go on the recovery of costs—rather than taking a narrow focus on the order that is before us, and I supported that. I am not excluding us obtaining information on the order under consideration, but I think that Liam McArthur was asking about the bigger-picture stuff so that, the next time such an instrument comes before us, we can refer back to what the Government said. That is what I think that we are opting for.

Liam McArthur: I think that that is entirely accurate. I would particularly like to find out what the approach is going to be to eligibility thresholds and whether they will increase with inflation over time. The Law Society raised some sensible concerns about the situation south of the border. There is a risk of overcomplicating the set-up by subdividing thresholds and so on. It would be helpful to get a clearer sense of where the Government plans to go in that respect.

The Convener: That is helpful. I believe that we have reached a consensus that we should make no recommendation on the order but take a look at court fees in the wider context at our next meeting. Are members content to proceed in that manner?

Members *indicated agreement.*

Fulton MacGregor: Sorry for my ignorance—I am only 10 meetings into my time on the Justice Committee. What does that mean? What have we agreed? Will the instrument go ahead?

The Convener: It will go ahead, but we will get more information on the wider issue.

Fulton MacGregor: Thank you.

Upper Tribunal for Scotland (Rules of Procedure) Amendment Regulations 2016 (SSI 2016/333)

The Convener: Do members have any questions or comments on the next statutory instrument? There being none, is the committee content to make no recommendation on the regulations?

Members *indicated agreement.*

Tenant Information Packs (Assured Tenancies) (Scotland) Amendment Order 2016 (SSI 2016/334)

The Convener: Do members have any questions or comments on the fourth negative instrument for us to consider? There being none, is the committee content to make no recommendation on the order?

Members *indicated agreement.*

First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016 (SSI 2016/339)

The Convener: Do members have any questions or comments on the fifth negative instrument? As members have none, does the committee agree to make no recommendation on the regulations and, indeed, on all five negative instruments?

Members *indicated agreement.*

The Convener: I suspend the meeting briefly to allow the first panel of witnesses in our Crown Office and Procurator Fiscal Service inquiry to take their seats.

10:44

Meeting suspended.

10:46

On resuming—

Crown Office and Procurator Fiscal Service

The Convener: Item 7 is evidence for the Crown Office and Procurator Fiscal Service inquiry. This is our fourth week of evidence taking on the inquiry.

I welcome our two witnesses: Sam McEwan, justice of the peace, and John Little, justice of the peace, both of the sheriffdom of north Strathclyde. I thank Mr McEwan for providing a submission and Mr Little for agreeing to appear at short notice. The witness Mr Little is replacing was due to speak on behalf of the Scottish Justices Association. I make it clear that we understand that Mr Little will give evidence today in a personal capacity, as a serving JP. Is that correct?

John Little JP (Sheriffdom of North Strathclyde): That is correct.

The Convener: Some of our questions might refer to matters in the SJA's submission. I hope that both justices will be able to comment on that.

I refer members to paper 4, which is by the clerk, and paper 5, which is a private paper. I invite questions from members.

John Finnie: Good morning, panel. Thank you for your submissions and for attending today. There is a suggestion that the COPFS lacks resources, which has an impact on your courts. Will you comment on how that materialises, please?

Sam McEwan JP (Sheriffdom of North Strathclyde): Certainly. First, thank you, convener, for asking us to come along.

We consider the issue to be extremely important. It was interesting to hear the previous debate on access to justice. My submission goes to the heart of that. I hope that I made it clear in my paper that, for me and the vast majority of my colleagues, fiscals are the gateway to the justice system.

The lack of fiscals has coincided with an increase in the number of direct measures, such as fixed penalties and fiscal fines, that really have more to do with number crunching than with justice, or perhaps even more important—if it can be more important—with the ability of judges at a JP level or any level to arrive at an appropriate sentence for some of the people we see.

I do not think that anyone would deny that there is a shortage of fiscals. Some courts, such as Greenock, no longer have a dedicated fiscal. There are two marking teams—one in Stirling and

one in Paisley—and I believe that they mark cases for the vast majority of the country, if not all of it. There might be one in the north of Scotland—I cannot be entirely sure.

Cases are therefore delayed. That leads to an unholy scramble about the court when there are custody cases—we do not have a fiscal and the justice is hanging around for three hours. More important, the person who has been lifted by the police on warrant the night before has spent the night in the cells and is brought to the court sometimes at 2 or 3 in the afternoon, once we have managed to get a fiscal to come down from Paisley and we have managed to find a courtroom. I remind the committee that it is highly likely that the individual who has been kept overnight has not been found guilty of anything.

Should I continue?

John Finnie: I do not want to break your flow.

Sam McEwan: I will continue, then. I mentioned the drop in the number of fiscals coinciding with fixed penalties. In the JP court, we see lots of people; some are unsavoury, but an awful lot more are victims of life—they are addled with addiction and have not had the best of luck.

Such people appear in front of us at what we call a fine enforcement court. We see people who are on minimum benefits, who are struggling with addiction and who present for the first time in court with fines that stretch back many years in some cases. I can give the committee examples of people coming in front of me who have £875 in fixed-penalty fines, and John Little has an example of someone who has well over £1,000 in fines.

We see people who have unpaid fines of well over £1,000. They have never been in court and they have no money. Someone can be given a fixed penalty of £100 but, if they are suffering from the curse of addiction, it is highly unlikely that they will remember—in fact, let us be frank: they will not remember—to pay it. I say without being disrespectful to those folk that they will not see £60 or £100 in the same place for very long, if ever. With the fixed-penalty scheme, there is no chance to intervene and try to apportion the fine.

Sentencing should be appropriate, and what is appropriate might be giving someone six months to see how they behave, but only if they contact Alcoholics Anonymous. We cannot send people there, but we can strongly recommend that they go there. In Inverclyde, we have an agreement with the local AA, which helps to monitor the situation so that, when an individual comes back to court, we know whether they have tried to address their addiction. We could make sensible and appropriate decisions rather than dishing out fines willy-nilly, as happens today.

John Finnie: I am sorry to have broken your flow earlier. You have covered a lot of issues and I am sure that colleagues will pick up on the alternatives to prosecution.

I will pick up on the reference in your submission to

"planned erosion in support to the JP Court".

Will you comment on that?

Sam McEwan: The McInnes report failed to effectively do away with the justice of the peace role and replace it with what was called "deputy sheriffs"—that sounds a wee bit like something out of "High Noon". That failed because the people in the justice department of the time and McInnes himself failed to realise that, in those days, justices of the peace tended to be appointed by a tap on the shoulder, usually from a political party. That is how I became a justice of the peace. My late father was a justice and a local councillor, and that is how the post came to me. I had served on the children's panel for a while when the tap on the shoulder came, and I was interested, so I did the job.

McInnes and his officials forgot that, once someone has political contacts, they tend to use them. The then Minister for Justice—I do not remember who it was—was being assaulted by people in the tearoom who were saying that they had just appointed as a justice of the peace Mary or Joe Bloggs, who was a good solid citizen, but their opportunity to be a volunteer in their community had suddenly been taken from them.

It is important that everyone knows that, as justices of the peace, we are volunteers. We do not take salaries; some of us do not take expenses. We do the role because we believe in the concept of local justice and lay justice. We do not pretend that we are sheriffs or High Court judges, but we deal very well with issues that affect our local citizens. As I mentioned, we try to handle them appropriately.

I remember counselling my colleagues at the time of the McInnes report—John Little will verify this—that, although we could celebrate the victory, civil servants would always come back and try to get their way. In my view, that has happened over the years.

On fewer cases coming to court, I note that my first case as a young justice of the peace was an assault case. I do not know whether any member knows old Greenock, where we had the Palladium ballroom. It was for ladies and gentlemen who had perhaps missed out on the finishing school experience. Three young ladies decided that it would be a really good idea to assault a young man with their stiletto heels. Members can imagine what happened. That assault case was interesting.

We used to get serious assault cases regularly. I laugh when people talk about maybe giving some domestic cases to the JP court. We used to have them, as well—we did all sorts of things. The court would run from Monday to Friday. John Little and I used to share the court—we had two days on and two days off, and there were trials just about all the time. People started at 10 o'clock and finished at 5 o'clock. We do not see that nowadays. The numbers of cases have dropped because cases have been handled by direct measures.

John Finnie: On the erosion in support and the importance that is placed on local justice, your submission talks about there not being a local fiscal. Will you explain the impact of that?

Sam McEwan: A fiscal used to be based in each court. Local justice, as the name suggests, is based on dealing with issues that have a local aspect. I will give a very recent example, if members do not mind.

Inverclyde is going through a time of change, as many communities are. Shipbuilding has gone, as has engineering, apart from Ferguson's shipyard, and the electronics industry is all but away. Things are hard, as they are in many communities throughout the country, but councils are working hard to revitalise communities. The housing stock is being greatly improved—I used to sit on the board of River Clyde Homes—and a lot of public money is being spent on providing housing for people.

Vandalism and antisocial behaviour became issues. Vandalism in Greenock is not really at the top of the list of a High Court judge or an appeal judge, and nor should it be, but as people who live in and judge people in the community, we understand exactly what it means to the people who live there. A local fiscal would also know that. When a case came in front of a local fiscal, whoever they were, they would look at it and think, "Oh, hold on a minute. That's an issue for that area and the vast majority of law-abiding people who live there. Their lives are being blighted by this."

A fiscal fine would not deal with that. The matter would be passed to the court, the justice of the peace would hear evidence and, if there was a guilty verdict, there would be an appropriate sentence. That meant that the victims of the vandalism or the antisocial behaviour saw that the matter had been taken seriously and addressed appropriately. It also meant—sometimes this could make a justice of the peace unpopular—that the fines and compensation packages that were handed out were in line with the individual's means.

As a result, a sensible balance was—I hope—struck between taking care of our law-abiding citizens and making our less law-abiding citizens aware that what they were doing was not acceptable, that something needed to be done and that they would feel a bit of pain in their pocket if they did not cease and desist from their antisocial behaviour.

A local fiscal is vital to that. If someone sits in Paisley but has big piles of cases for Aberdeen, Inverclyde and Perth, they are just going to, well—[*Interruption*.]

11:00

The Convener: You are probably moving on to another issue on which members might want to question both witnesses later.

Sam McEwan: Was that okay, Mr Finnie?

John Finnie: That was helpful. I will conclude there.

The Convener: Mr Stevenson has a supplementary. Is it a short one?

Stewart Stevenson: It is on a narrow point, convener, and I am sure that it will be helpful. Sam McEwan referred to fixed penalties and I want to be clear about whether the problem that was described is that they are being imposed on people who have no means to pay. Fixed penalties come not from the Crown Office and Procurator Fiscal Service but from the Parliament's legislation. Is it being suggested that one of the tests that must be applied before a fixed penalty is offered to an offender is whether they have the means to pay?

There is probably a general view that public order, particularly on Friday and Saturday nights, is better served by the police not having to spend hours taking people back to the station when it is perfectly clear that a fixed penalty would do. Are we talking about a narrow point that relates to people who cannot reasonably be expected to pay? Should we as legislators, instead of the Procurator Fiscal Service, look at that?

Sam McEwan: I heard about legislation and whether the responsibility is with us or Westminster at the weekend—we had our annual conference then, as the convener is aware—when the sheriff principal and the Lord Advocate mentioned that. I will leave the political niceties to you guys, whom we pay to decide such matters.

The notion that justice is served by fixed penalties is seriously flawed. As for whether there are enough police on the streets, I have to say that Greenock is not a cesspit of violence at the weekend, so it is nonsense to say that law-abiding people are best served with fiscal fines or fixed penalties. [*Interruption*.] I am sorry, but I was always brought up to—[*Interruption*.]

The Convener: Just continue, Mr McEwan.

Sam McEwan: Mr Stevenson, I was brought up not to make faces when other people are speaking.

Stewart Stevenson: I was merely conveying to the convener—

Sam McEwan: You are doing it again.

Let me give you a real example. I recently came across a chap who had never been to court but who had £875-worth of fixed penalties, £475 of which had been given to him over a half-hour period. The man is an alcoholic and one of life's victims. He was enjoying—or at least he thought that he was enjoying—drinking in the street when a police car passed. I should say that this is not a criticism of the police; I see a lot of police, because I am up at half three in the morning to listen to requests for search warrants from them. I live there and I know exactly what is happening.

The man got a £100 fixed penalty for drinking in the street. Fifteen minutes later, the same police car came back, and the man got another £100 penalty. He did not care—he was an alcoholic. Fifteen minutes later, the police came back, and the same gentleman had more than topped up the alcohol that was already in his system. This time, when the police constables got out of the car, the man decided that he was going to give them the benefit of his experience and was abusive to them. That was a breach of the peace, which meant a £275 penalty. If you think that giving £475 of fixed-penalty fines to an alcoholic over a half-hour period is a good use of people's time, I find that disappointing.

On another matter that I think is important—

The Convener: Let me stop you there, because you have answered Mr Stevenson's narrow point and answered it well. I will move on.

Stewart Stevenson: Convener—

The Convener: Mr Stevenson, you will have ample opportunity to come back in.

Stewart Stevenson: It is simply—

The Convener: I have ruled that you will have ample opportunity to come back in later and continue with this. A supplementary should be direct and short.

Stewart Stevenson: Convener—

The Convener: You will have the opportunity, Mr Stevenson. I am moving on to Liam McArthur.

Stewart Stevenson: On a point of order, convener. My personal integrity may have been called into question. I just want to make it clear that, if my facial expression has been misinterpreted as being hostile to the witness, it is important for me to say now that that was neither my intention nor my belief.

The Convener: Mr Stevenson, we do not have points of order in committees. I should have stopped you before you said any more. However, you have said what you have said and I am sure that we have all noted it.

Sam McEwan: Convener, if it will help—

The Convener: It will not help, Mr McEwan, thank you. We have dealt with the point.

Liam McArthur: I return to the point about centralised marking that I think Mr McEwan was referring to with regard to the lack of a fiscal in Inverclyde. The issue has been raised by a number of witnesses over the past few weeks. In his written evidence, Mr McEwan points to concern about the decrease in local knowledge when individual incidents are dealt with.

I ask both witnesses whether they can offer the committee a way of securing the benefits of centralised marking—in terms of the administration and, possibly more important, the specialism that is brought to certain cases—while retaining the local knowledge that, it seems apparent, has been diminished and perhaps undervalued. Is there a way of striking the right balance between what we have now and what we lost in the move to the more centralised system?

The Convener: I call Mr Little, who has not had an opportunity to speak so far. I would be grateful if members' questions and the responses could be a little more succinct because we have a lot to cover.

John Little: The fundamental problem with central marking is that it is central marking. We all understand the constraints that every area of business and public service is under. There seems to be little recognition of local issues, whether here or in the west. One sheriff said to me, "Don't you believe that I am not aware of what the issues are. I have piles of letters from the community telling me that they are unhappy with sentencing."

I have an actual instance from three years ago involving a young man. I was told, "He's in custody, but he's at the hospital; we don't know what the problem is." To cut a long story short, at 2 o'clock that afternoon, that young gentleman appeared before me shackled between two G4S officers, with two police officers facing him in case he kicked off. He had been causing all kinds of commotion in the cell. The court-appointed agent stood up and said, "Your Honour, somebody is going to have to do something about this." I said that I could not agree more. That young man had 10 fiscal fines and two police fines and had never seen the inside of a court building. It was abundantly obvious that there were mental health

issues. The one thing that a justice of the peace is not supposed to hear is something that involves mental health issues; that is the only thing that our guide book allows us to refer immediately from our court to a higher court—that is, the sheriff court.

We discovered that the young man had mental health issues, and his mother had been trying to deal with the problems. Under the old regime, regardless of the offence committed, he would have appeared before me, an agent would have stood up and outlined the background, sentence would have been immediately deferred for three weeks for a social background report, and he would have been in the system. Here we had a young man with a huge sum in fines who had never seen the inside of a court building.

Madam chairman, I do not know whether you were present when I raised the issue with the Lord Advocate—on Sunday, I think. A week past Monday, a pile of paperwork was put on my desk in chambers, and I was asked to reduce an individual's fines. The fines, which went back to 2008, came to £1,800. As far as Greenock JP court was concerned, all the fines from December 2010 had to be remitted because none of the paperwork had transferred from the old district court system to the justice of the peace system. I duly remitted everything prior to 2015—£1,800 was involved.

Mr McEwan has outlined the type of people who are involved. It has become an easy marking issue: we do not have the resources to put them into court, so they are given £400 fines. When I have a person who appears before me on whatever matter, if I find guilt or they plead guilty, I must offer a 30 per cent discount. People are being handed £400 fines. I was never very good at maths, so correct me if I am wrong, but that is the equivalent of me handing down a £700 fine, which then goes down to £400 with a 30 per cent discount.

The Convener: Mr Little, are you relating this to Mr McArthur's question about central marking?

John Little: Yes. It is about central marking. All of that stuff is because, with cases below a certain level, the resources are not there to bring them to court. Police fines are a different issue, because they are given in the street. Somebody sits in an office looking at cases at a certain level and deeming that they do not have the resources to put those cases into court, so those cases are being removed. The convener or perhaps Mr Stevenson said that a decision had to be made about whether that is appropriate. I do not think that that is happening.

Liam McArthur: Just to be clear, from what you are saying and from Mr McEwan's written evidence, the preference would be to return to a localised marking system, potentially with specialist input in certain cases when necessary. Is that correct?

John Little: Absolutely.

Sam McEwan: Yes—definitely.

Mairi Evans (Angus North and Mearns) (SNP): My first question has been covered by Stewart Stevenson. However, I also want to ask about victims and witnesses. That issue is not touched on much in the written evidence. What is the experience of witnesses and victims in the JP courts? Do they get the support and information that they need when they attend?

Sam McEwan: I think that it is improving. The answer is that they get what they need to a degree, but we can always do better. We always have to be aware that anyone who comes to give evidence is in a pressured situation. That applies to the police, as well. I see young, inexperienced policemen coming in to give evidence looking extraordinarily nervous. The recent changes that allow people to give evidence behind screens and via technology are a real step forward. In fairness, that is one of the many steps forward that the Scottish Government has made in recent years. It is very outward looking. I guess that, to a degree, that is about the ancillary or knock-on aspects of the justice system, and the Scottish Government has been very good at dealing with them. We have things such as the Scottish Recovery Consortium and the notion of building smaller prisons to keep family units close by. There is a tad more humanity being shown than perhaps was shown in the past. We can always do better, but we take great cognisance of that issue.

I will make one point about local justice. Let us take a simple case for the benefit of the discussion. If someone is a gardener and takes great care of their garden and then someone else comes along and rips out their plants, that is important to them. That is the sort of thing that we see. We have to be mindful that, to some people, it might just be some plants, but, to that particular man or woman, it is their garden, their hobby and their home. We have to bear that in mind and take cognisance of it when we are dealing with people. That does not mean that we get the birch out, but it means that, as I said, we give an appropriate sentence so that the individual concerned can see that we care about their quality of life and, equally, the individual who caused the damage understands that we are saying, "Listen—cut it out. You're going to be punished. Don't be back here."

There is a balance, and I think that we are getting better at it. We spend a lot of time training on communication and control of the court. We want to ensure that, if a witness is being put under

pressure—I hesitate to use the word "harassed"—by the defence, we take a view on that. If someone is asked the same question three times, we are quick to say, "I got the answer the first time, and he emphasised it the second time. I really do not need to hear it three times." The experienced justices among us are good at doing that.

11:15

Mairi Evans: We have heard evidence from other witnesses, including people who have dealt with the victim information and advice service, who have had a very mixed experience, so I am glad to hear of a bit more positivity on that front in terms of the justice of the peace service.

Sam McEwan: I think that there is still a way to go. We have to understand the pressure that people can be under. They might think, for example, "If I give evidence here, my windows might get put in." We have to be very mindful of the pressure that people can feel, and I think that we are. Again, the situation is helped if everybody in the local area understands the issues and the different areas where someone's windows might get put in if they give evidence. We can do better, but we are trying hard.

The Convener: Rona Mackay is next, to be followed by Fulton MacGregor. Again, I ask that members keep their questions short and that witnesses answer as succinctly as possible.

Rona Mackay: My question is for Mr McEwan. You are clearly not a fan of fixed penalties. Can you expand a bit on what your alternative would be? I am struggling to understand how anything else would not impact adversely on an already overworked system. Would you support having a threshold for the number of fixed penalties that an individual could get? For example, something different could happen if they got to five.

Sam McEwan: I am not sure if I can keep going, convener, but I will do my best.

To take the last part of Ms Mackay's question first, I am not sure about the level. As I said, if someone does not have any money, fining them £100 is not going to do any good because they will not pay it; they do not have the money to pay it, and they do not have the lifestyle that would motivate them to pay it, perhaps because they are too busy trying to get their fix for that day. All that a fixed penalty does is encourage them to go out and steal more money. Fixed penalties encourage criminality in a lot of cases.

The Convener: I suppose that what Rona Mackay is asking is whether, in your view, there is ever a place for a fixed penalty. Is it your position that, because people cannot pay them, fixed penalties are being used inappropriately?

Sam McEwan: There can be a place for them, but careful judgment is needed. I made a point in my report about people using mobile phones while driving. If anybody thinks that fixed penalties have solved that problem, they are living on Mars, quite frankly. The problem has not been solved, as we can watch the practice from any street corner. However, there are occasions when a fixed penalty might well have a salutary effect for people in the local community whom one might identify as not being regulars at court.

Rona Mackay asked what the alternative to fixed penalties would be. We used to have a perfectly good alternative. When people came in front of us in court and pled guilty or were found guilty, we would put a fine in place that was commensurate with their means and impose something called the alternative. I will keep this very simple, but the alternative to a £100 fine would be seven days in prison. People throw their hands up and say, "Well, we cannae sent people to prison for seven days", and that is absolutely correct—to be frank, we did not do that. Instead, the person would say, "I want to pay this fine up at £5 a week", and we would say, "Okay, that's acceptable to the court, and I'm going to put the alternative on." The individual knew what the alternative meant: if they missed one payment of £5, the police would go to their door and they would go to prison. However, they never went to prison, because we were not looking for £100 all at the one time; we were looking for a fiver. Their family and friends would chip in, the fiver would be paid and the fine repayment would move on. That was a very suitable alternative.

The Convener: Is there not capacity to do that now, or would the legislation need to—

Sam McEwan: A fixed-penalty approach takes no cognisance of the means of the person who gets the penalty—you can give them a £5 penalty or a £10 penalty, but that takes no cognisance of their ability to pay.

Rona Mackay: I still cannot see how the proposal would do anything other than simply add to the workload of people in the court system, such as JPs and others at a higher level. The approach was perfectly appropriate at one time, but I think that we need to move on from that. I understand what you are saying about the deficiencies of the fixed-penalty system, but I am not sure that there is a viable alternative that would lessen the workload on the courts.

Sam McEwan: I will try to help with regard to the efficiency aspect of your question.

Under the old system, there was a one-stop shop. Now what happens is that fixed penalties

are dished out, they are not paid, the penalty mounts up and people monitor that and chase people up. The Government has created a fine enforcement agency, which is staffed by people who all take salaries, receive benefits, work in buildings and represent a cost in the way that people in any organisation do. Of course, the people who are being chased up are people who have chaotic lifestyles, and—

The Convener: Sorry for interrupting you, Mr McEwan, but does that point back to the issue of central marking? Is it not the fact that the disposal should not have been a fixed penalty in the first place, and that it might have been better if local alternatives or other referrals had been used? With regard to what Rona Mackay said, is there any alternative that would mean that the courts would not be clogged up?

Sam McEwan: It goes back to central marking, as you say. Rona Mackay also asked about efficiency, however. I realise that my answer is eating into the time that we have today, but I ask you to bear with me because this issue is extremely important to the wellbeing of the people whom you guys represent and who are my fellow citizens.

The fine enforcement agency cannot get the money, because the money is not there. At that point, the matter is referred to us, in court. We get a request to do one of three things: we can remit all the fines completely; we can give the fine enforcement agency permission to access an individual's benefits, so that it can deduct the fine from their benefits; or we can bring the individual to court. You might think that the second option is the best way forward. However, as part of our training, people from the Benefits Agency have repeatedly made it clear that they know the full financial position of the individuals—their housing costs, whether there are children involved, how much money they have to feed themselves, what other debts they have and so on—and that we can remit as many applications to the Benefits Agency as we like for the fine enforcement agency to access individuals' benefits but we will be told, "Fill your boots. You are about seventh on the list and we are never going to get to you."

The fine enforcement agency does not work. There is an inefficiency in the system that we have today that was not there under the old system. I remind everyone that the old system involved a justice who was not paid—who was a volunteer—dealing with an issue on behalf of his or her local community. Does that help?

Rona Mackay: Yes, thank you.

Fulton MacGregor: Rona Mackay has asked the question that I was going to ask, but I will ask a follow-up question. Do you believe that every offence—or more or less every offence, because you said that there was a case for direct measures—should come to court? Do you think that not bringing every case to court would have an impact on the number of people who would develop criminal records? Could direct measures avoid that being the case?

John Little: I will tell you my view on fixed penalties. Senior people in the organisation tried to tell us that, effectively, nobody should have more than three or four fixed penalties before the time comes for them to appear in court. Obviously, however, that is not happening, because people want to take the easy option.

The Convener: So people have more than three or four?

John Little: Oh, yes. I just gave you an example of someone with more than 10.

The Convener: I understand that.

John Little: I take Mr MacGregor's point about trying to avoid giving people criminal records where there really is no great need to do that. It is about trying to get restorative justice, with the person being put on a programme. That approach is being used at the moment—in a lot of our court cases, people end up with what is called a community payback order. Of course, we are finding in our area that social work departments and the local authority—they are the ones that control such orders—are having great problems, with that approach. I understand that they have employed a few more people.

Rather than just handing out fines, should it not be a matter of the fiscal service directly referring people, particularly after they have had two or three fixed penalties, so that they are on a programme that gets them out of the bed in the morning, shows them how to work and helps them to organise their finances? That would be a step forward. Instead of issuing a large number of fixed penalties, the fiscal service would say, "Look, we need to do something with this, but we can't afford the cost of bringing it into the court system". The approach would then to be to divert sentencing away from fines, so that people get practical help on how to organise their life. As Sam McEwan said, a lot of the people we deal with have chaotic lifestyles.

Some people sitting around the table may have committed a traffic offence, for example. If we do that, we get a fixed penalty, we pay the fine and the matter is resolved. The issue arises when people cannot pay a fine. Rather than just saying, willy-nilly, that it is easy to impose a fine, we need to get something in place so that, after they have been given two or three fixed penalties, offenders are put into a programme that tries to help them deal with their life. It is easy for me to sit here and

say that; we all understand that getting it to work in the real world is a totally different matter.

Sam McEwan: When we see someone—perhaps a young person—in front of us, we are mindful, as trained and experienced justices of the peace, of the damage that we could be doing if we do not dispose of the matter correctly. The vast majority of the people we see have very long criminal records. We need to try to find a way of getting them out of the system and into restorative justice, as Mr Little said.

Fulton MacGregor: That is what I was trying to clarify. You have alleviated my concerns because, at one point, I thought that you were saying that almost everybody should come to court. From what I have heard, I do not believe that you are saying that.

Restorative options are available and they are used. Perhaps local knowledge comes into it. To be on a community payback order necessarily involves having been convicted of an offence, so a person with an order would have a criminal record.

I am happy to leave it there, convener.

The Convener: We have spent a lot of time talking about fiscal fines, fixed penalties and so on. There are, in the Scottish Justices Association's written evidence, very important issues that I hope we can cover.

Oliver Mundell: You will be pleased, convener, because I was hoping to move away from fixed penalties to look at other issues.

My first question is about readiness for trial, which has come up in previous evidence and is touched on briefly in some written submissions. The general sense seems to be that cases that are simply not ready to come before the courts are coming before the courts. Have you experienced that?

Sam McEwan: Neither John Little nor I speaks on behalf of the SJA. We have been given the opportunity to be here. For reasons that I will not go into at the moment, the SJA decided to withdraw its representative.

The Convener: We made it clear at the beginning that we understand that you are here in a personal capacity. However, we had hoped that you would be able to speak to issues that are raised in the SJA's written submission.

Sam McEwan: I would be happy to do that. None of what I am about to say is a criticism of procurators fiscal. I have been doing my work for 25 years, during which time the people in the Procurator Fiscal Service have been hard working and dedicated: they are pushing water uphill because there are so few of them. One can go into court and it can be a wee bit disorganised, but that is because of the work that each fiscal has to take on. They also have to get themselves from Paisley to Greenock or to Kilmarnock or wherever. They have to get organised—they have to talk to defence solicitors, to hear pleas and changes of pleas and so on. Cases can be and are being delayed, but fiscals are under huge pressure because there are not enough of them, which delays the process more because they ask for continuations. It is then for the justice to decide whether to grant that continuation. I contend that that is also a problem for the fiscals.

Does that answer your question?

11:30

Oliver Mundell: Yes. Has the situation got considerably worse?

Sam McEwan: Absolutely.

Oliver Mundell: Given your 25 years of experience, can you identify when the situation changed?

Sam McEwan: It changed when the district courts moved to being under the Scottish Court Service. I would highlight that as a turning point. It is important that we are all professional, but there has been a real effort to overprofessionalise the task but with less resources. You really do see fiscals under stress and having a bad time.

Oliver Mundell: Elsewhere in your evidence, you talk about a

"Lack of experience resulting in delays around whether to accept pleas."

That is something that we have also heard from other witnesses. Is that definitely the case?

Sam McEwan: Absolutely. I contend that that has come about because, it is fair to say, the best thing that the Procurator Fiscal Service can offer a young person who is coming out of university with a law degree, by way of a career, is a three-month contract, so such people will not hang around for too long because that might not be the most attractive option.

Starting off as a justice of the peace is like everything else—you are not very good at it. You might tick all the boxes, but experience counts for a lot. It is the same for a PF. New people come in on three-month contracts, so there is churn and no continuity of employment. That sort of thing plays a part.

Oliver Mundell: Other witnesses have suggested that there is almost a fear of making the wrong decision and that people cannot get in touch with their superior to get them to clear a decision in time. They either cannot contact the person or do not feel that they are able to do so for various reasons. Is there truth in that?

Sam McEwan: It is very true; I have seen it. Inexperienced fiscals are being given decisions to make that they have no training or experience in making, so they do the right thing, frankly: it would be wrong for the fiscal to make a decision that they are not capable of making. They try to get a hold of someone who has more experience, but there are just not enough of them around. I have seen it happening.

Oliver Mundell: Finally, the SJA mentioned that a number of cases end up being time barred because they are not seen on time. I understand there are different levels to that, but do you think that that is happening across the board or is it mainly at the JP end of things?

Sam McEwan: I do not know what the actual figures are, but I have had—as has Mr Little, I am sure—cases that are time barred and just have to fall, and cases that have had to be continued but that go outwith the time bar because all the information that was needed to prosecute the person is not there.

It would be a brave fiscal who time barred a case in the sheriff court, because sheriffs have a lot more weight than we do, but it is going on. I am not saying that we see hundreds of such cases but it does go on and cases fall because they are time barred because the fiscals do not have the resources to handle them within the time limit.

John Little: You find it particularly in cited courts, in which the term "not called" will come up with some regularity. As you will appreciate, it depends on whether we use the word "serious": fiscals want to prosecute cases of using a mobile phone while driving, for example, but they do not get down the chain fast enough and you can see fiscals working out dates to find out whether the case will go outwith the six months and end up being time barred.

The Convener: The SJA submission highlighted the lack of administrative support for fiscals. It might have been Sam McEwan who suggested that, as a result, even when people send something in, it is not mentioned when the fiscal presents the case. Have I got that right?

Sam McEwan: I do not recognise that from my submission.

The Convener: The SJA certainly said that a lack of administrative support is adding to churn. The assumption is that the procurator fiscal depute could sometimes

"indicate a readiness for trial that was based on expectation rather than fact."

Sam McEwan: I understand the point now. I believe that the SJA is talking about something that we all experience—it is almost business as usual. There is a responsibility on the fiscal to give what we call disclosure to the defence. In other words, the prosecution service must give all the evidence and all the contacts for the evidence to the defence in order to allow the defence to reconnoitre the witnesses against their client. Delays are caused because disclosure of evidence has not happened—closed-circuit television footage seems to be a favourite in that regard. Now that I think about it, that would support the case for back-up staff for the fiscals.

The Convener: There is only one area that we have not covered. You mentioned that you have dealt with domestic abuse cases that were almost breaches of the peace. We have heard from other witnesses that cases sometimes go to trial when there is an insufficiency of evidence. Is that an issue in the justice of the peace court?

John Little: We used to deal with such cases but at a point in time the decision was taken that all domestic abuse cases would go to the sheriff. At the weekend, we heard that there is talk of bringing back the lesser end of such offences to our court. We have not seen much of that—in recent years, sheriffs have been dealing with such cases.

The Convener: Mr McEwan, do you have anything to add?

Sam McEwan: No—I think that John Little has covered the issue. I do not tend to see many such cases.

The Convener: If there are no further questions, it just remains for me to thank both witnesses very much. It has been hugely valuable to have your contribution, as sitting justices who see what goes on in the justice of the peace court on a daily basis.

Sam McEwan: Could I make one final statement? I promise not to keep you back.

The Convener: Certainly.

Sam McEwan: My attendance here has caused—I hesitate to say "concern"—a lot of interest among the hierarchy, including the sheriff principal. Indeed, on Sunday, the Lord Advocate himself mentioned the fact that I was coming here. In his conversation with me about the issues that we have discussed today on fixed penalties and so forth, he mentioned a figure, which he told me was very low. As you all know, the Lord Advocate is an extremely capable man. I said, "James, I don't recognise the figure—it is way, way low." He said that he was sure that it was not, but I insisted that it was low. He mentioned that, to date, about 9,000 fixed-penalty cases had ended up in court. When he mentioned that from the dais as he was speaking to an audience, there was absolute uproar. He was accompanied by Justin Farrell from the Procurator Fiscal Service. Justin was

asked where the Lord Advocate had got the figures from. The figures that are being bandied around by sheriffs principal and the Lord Advocate, which have been given to them by their officials, date from 2006-07. The Lord Advocate and others have been put in the position in which they are trying to argue a case with statistics that are 10 years old. It is very important that people get out of their silos, stop being defensive and try to offer a justice system that works for everyone.

The Convener: Your concerns about fixed penalties have been well noted and well covered. I thank both of you very much for appearing before us.

11:40

Meeting suspended.

11:44

On resuming—

The Convener: I welcome to the committee our second panel of witnesses: Assistant Chief Constable Bernard Higgins, responsible for operations and justice, and Chief Superintendent Garry McEwan, divisional commander in the criminal justice services division, are both from Police Scotland. Eric McQueen, chief executive, and Tim Barraclough, chief development and innovation officer, are from the Scottish Courts and Tribunals Service. First, I thank you for your written evidence. Such submissions are always very much appreciated by the committee.

As we have only limited time, I would appreciate it if questioners and respondents could be as concise as possible. We will start with Claire Baker.

Claire Baker: My questions are for Police Scotland in particular. During our inquiry, a number of witnesses have talked about the treatment of domestic abuse cases, with claims that the police make arrests in too many instances and that cases are going to court with insufficient evidence. The Procurator Fiscal Service has refuted the second point, but with regard to the role played by Police Scotland, it has been said that 50 per cent of cases end up in court, and that has been used to justify the argument that in some cases police involvement is inappropriate.

Last week, Marsha Scott of Scottish Women's Aid said:

"It's a big mistake to assume that because someone was lifted and not prosecuted that there wasn't a very good argument in terms of safety for lifting that guy for a short period of time."

Can the officers here today comment on the role of Police Scotland in this respect and the approach that is being taken to domestic abuse and give us some more explanation of the 50 per cent figure that has recently been bandied about?

Assistant Chief Constable Bernard Higgins (Police Scotland): I am happy to take that question, but first I want to say that for many years now Police Scotland has, with a number of partners, been committed to tackling domestic abuse and supporting the most vulnerable in our communities. Yes, we have taken a very robust approach to dealing with domestic abuse offenders over the years, but that approach has been taken in conjunction with the Lord Advocate's guidelines on the matter.

There is a clear distinction to be made between the role of the police and the role of Crown prosecutors on the question of insufficient evidence. We might have sufficient evidence to arrest but, for various reasons, the Crown Office might decide not to prosecute. That does not necessarily mean that people are getting arrested for no good reason—far from it.

With the convener's indulgence, I will give you some figures that might put things into context. In 2015-16, the police dealt with 58,000 domestic incidents, of which 51 per cent—or 29,000—were recorded as criminal. With regard to the 29,000 individuals who were arrested, 34,000 charges were subsequently libelled. Of course, one person might have had multiple charges. At the last reckoning, the conviction rate was 80 per cent, which, by any stretch, is pretty high. I suggest that the fact that we dealt criminally with about 51 per cent of 58,000 domestic incidents shows that the police are making an absolutely appropriate and proportionate response when they are called out.

It is simply not the case that we arrest someone every time that we are called to a domestic incident. The officers go to each incident and, first of all, make a professional assessment of whether a criminal act has happened. We are called to lots of domestic incidents in which there is no criminality; if there is criminality, the police will investigate the incident as they would any other crime and, if there is sufficient evidence, they will make an arrest. The prosecutorial decision then rests with the procurator fiscal.

Claire Baker: That was very helpful. Is it Police Scotland's experience that domestic abuse is still a hugely unreported crime? Have issues arisen as a result of the cultural shift that has been necessary in Police Scotland, and perhaps other bodies and authorities that deal with domestic abuse crimes, in recognising the severity of the crime and the importance that the Scottish Parliament and the country itself put on it?

Assistant Chief Constable Higgins: I agree with you. I cannot recall off the top of my head, but I remember that, on one occasion, the statistic

given was that a person would be a victim of domestic abuse somewhere between 15 and 20 times before they reported it to the police. I might be incorrect with that, but I recall that when I first read that, a number of years ago, it struck me as being a very high figure for the number of times that someone was a repeat victim of some form of domestic abuse before they reached a point at which they could no longer take it and they involved the police.

Many years ago, the police services recognised that and, working with the Lord Advocate's advocacy services for victims, we refocused our approach to domestic abuse to make it a victim-centred one. Part of that approach is to remove the offender from putting that individual at greater risk of harm. As well as wrapping a care package around the victim, part of the strategy was to remove the offender from that environment.

Claire Baker: Thank you for that clear statement. I have been concerned about the way in which some of the debate on the issue has been conducted in recent weeks, arising from the committee's inquiry. I am pleased to hear the strong support from Police Scotland on that issue.

Rona Mackay: Before I ask my main question, I would like to clarify, following on from Claire Baker's point, whether it is accurate to say that Police Scotland operates a zero tolerance approach to domestic abuse.

Assistant Chief Constable Higgins: At this moment in time, if there is sufficient evidence to enable us to arrest, then we will arrest. That is the protocol agreed between ourselves, the Crown Office and the Lord Advocate.

Rona Mackay: Thank you.

My question is on a separate issue. Is Police Scotland satisfied that the Crown Office has sufficient resources and the skill required to prosecute successfully the complex crimes that we see today, such as cybercrime, corporate fraud and human trafficking? Have those crimes been dealt with adequately and do you foresee any problems with the on-going increase in such crime?

Assistant Chief Constable Higgins: That is a really valid question, ma'am. It is not just about the Crown Office: it is in the nature of the criminal justice environment that we all have to adapt to the changing nature of crime. Within Police Scotland we have a cybercrime unit, we have bespoke units that deal with domestic abuse and sexual crime, and the terrorist threat is very high on our agenda.

My understanding is that, like other partners, the Crown Office has reorganised to reflect that. We now have specialist prosecutors who will look at homicide, cybercrime and sexual abuse cases. For many years, we have had specialist football prosecutors. From my perspective, the Crown does appear to be reacting to the changing environment and restructuring to meet that demand.

Rona Mackay: Thank you. That is encouraging to hear.

John Finnie: Mr Higgins, thank you for your evidence. Police Scotland has been rightly praised for its approach to domestic violence. One aspect of that, in particular, is the investigation of historical cases. Can you explain the relationship between an individual being arrested, the requirement for them to appear at court and the inquiries that Police Scotland would undertake to understand whether there has been a pattern of such behaviour with previous partners or in other relationships?

Assistant Chief Constable Higgins: Thank you, Mr Finnie. Yes, I will explain. Sadly, it is not an uncommon scenario that you have painted. We have a number of individuals who will identify and pick on vulnerable and weak people, and they will sometimes do it over decades. There might not be only a single victim: sometimes there could be several. That is why Police Scotland has set up its domestic abuse task force, which supports the divisional domestic abuse units that we have.

Our task force takes on what we might call the high-end offenders, who show a repeated behaviour whereby they go out and target individuals over many years. When we arrest that particular individual, there will be a retrospective inquiry during which we will identify potential previous partners and speak to them to see whether they have also been victims. That is very time consuming. It is a very sensitive and difficult inquiry, but very much worth while.

John Finnie: I wanted to try to understand the relationship between that arrest—say that an individual is arrested for the first time—and the inquiry. Given what my colleague Claire Baker said about the anticipated level of underreporting that there is, what would trigger that historical abuse inquiry, and would that be in conjunction with COPFS?

Assistant Chief Constable Higgins: We would put out a guidance note to the Crown Office, to say that we believed that there was potential for the initial case to spread. It can be about very basic things. If it is a fresh relationship that has gone on for only six months, or if the victim discloses during the disclosure interview that they think that previous partners were subjected to similar behaviour, that can trigger an inquiry. If there is a 20-year marriage, the historical inquiry might cover the length of the marriage. The

catalyst for us to take the next step really depends on the circumstances.

John Finnie: That is helpful. Thank you.

Liam McArthur: We have heard about the seriousness with which such cases are rightly taken, partly because of the acknowledged underreporting—Assistant Chief Constable Higgins talked about the number of incidents that there can be before a complaint is made and about the historical dimension.

I am struggling to reconcile your evidence with the evidence that we heard from the Scottish Police Federation a week ago. The SPF did not dispute that the strategy of zero tolerance is accepted, but I think that it was suggested that there is, in effect, zero discretion for police officers to exercise their judgment in particular circumstances. Can you help me to reconcile the perspective that we had from the SPF, I presume on behalf of its members, which echoed what we heard from the bar associations, with the perspective that you have set out this morning?

Assistant Chief Constable Higgins: I will try to do so, but it is not for me to speak on behalf of the Scottish Police Federation; I can only reiterate Police Scotland's position.

We should bear it in mind that 49 per cent of the domestic incidents that we deal with are non-criminal and are resolved at the time. For the 51 per cent that are criminal, the same evidence threshold must be met before we can arrest an individual. When an individual is taken away from the scene they are taken to a custody office, where an independent officer, who is normally of sergeant rank, assesses the evidence to satisfy himself or herself that there is sufficient evidence before they accept the individual into custody. Before we decide whether to keep the person in custody, there is again an assessment of the evidence.

I can only reiterate that the 80 per cent conviction rate suggests to me that cases that are reported to Crown are strongly evidenced. I had a look at cases that are not proceeded on, which was interesting. Again, it is not for me to speak on behalf of Crown, but I can say that Crown might decide not to proceed not because of a lack of evidence but because of a range of other factors. Currently, about 2.5 per cent of cases that are reported to Crown are not proceeded on, which again suggests to me that in the cases that we report there is more than sufficient evidence.

Liam McArthur: Given what you are saying, and given what we heard from Calum Steele last week—and from the bar associations—have you endeavoured to have further conversations with the SPF about what appear to be quite different perceptions about how the current system is working?

Assistant Chief Constable Higgins: We speak regularly not just to the federation but to all staff associations; we speak to Unison and the Association of Scottish Police Superintendents. If they flag up any concerns to us, we speak about them and go and have a look.

If any member of the federation wants to draw our attention to particular cases that they thought did not meet the threshold or were dealt with inappropriately, I will be more than happy to look at them. Up to now, no such case has been flagged up to me, so I cannot really comment.

The Convener: Perhaps I can probe that. Calum Steele told us last week that, when there is a report of a couple being involved in a row and the police attend,

"there is a very strong likelihood that one of them will leave in handcuffs."—[*Official Report*, *Justice Committee*, 15 November 2016; col 36.]

We also heard from defence agents that which one leaves in handcuffs can come down to who reported the incident. Do you recognise that?

Assistant Chief Constable Higgins: With respect to Calum Steele and the bar associations, I think that it is oversimplistic to say that every time our officers go to a house they are predisposed to say, "Right. Someone's leaving here in handcuffs." I do not see that in the figures, which I have given—as I said, in 49 per cent of cases the police officers leave the locus and the two people stay behind.

If there is criminality, we have a duty to investigate that and, if the threshold is met, the person will be arrested. It is not unusual for both individuals to be arrested if there is evidence of criminality on both sides. Chief Superintendent McEwan's staff will then take an informed decision about whether to keep both individuals in custody.

12:00

For example, if we lock up a husband and wife who have children, there are caring responsibilities to take into account. The balanced and proportionate decision may well be to release one of the parents to appear at court the following day, or on a day to be determined, to allow them to undertake their caring responsibilities.

I highlight that example to show that we are discussing a very complex area. It is not as simple as police officers turning up, walking down the garden path and then walking back up half an hour later with somebody in handcuffs. It is more complex than that.

The Convener: I will develop that point a bit further. From your written submission, it appears that communication is a recurring theme for Police Scotland, and there is perhaps a lack of sufficient communication between rank-and-file officers and senior members of the police force. I was struck by the difference between the submission from the Scottish Police Federation and your submission, which did not move us forward quite as much. Is there an issue with communication between the police officers who regularly attend such incidents and the hierarchy?

Assistant Chief Constable Higgins: To go right back to the initial incident, in addition to the custody sergeant's review, the shift inspector will review the incident before going off duty. The following day, at the morning management meeting, the area commander will review the incident. If there are any issues, the divisional commander will review it. There are a lot of checks and balances all the way through the process for any domestic incident.

With regard to contact, we have regular formal and informal meetings with the staff association, so there is an opportunity to exchange views in a frank and forthright manner. That happens quite frequently.

We will never agree on every aspect—there is no question about that. The role of the staff association is to represent the views of its members, which is absolutely correct, and the role of the executive is to look at the best interests of Police Scotland and the communities of Scotland and to ensure that we are delivering the most effective and efficient police service that we can. Sometimes there is a rub between both aims, but—to answer your question—there are clear lines of communication that are open at both ends between us and the staff association.

With regard to checks and balances, every domestic incident—off the top of my head—is reviewed about three or four times.

The Convener: To widen the discussion about communication, I will bring in Mr McQueen to speak about communication in the Scottish Courts and Tribunals Service and the operation of daily business in the courts.

Eric McQueen (Scottish Courts and Tribunals Service): I am sorry. In what respect?

The Convener: Are you happy that things are working effectively? Your submission notes that there is strategic working at a high level, but numerous people have told us that they have to phone a premium-rate number and are kept on the line for a considerable amount of time.

Eric McQueen: Yes, I think that that is—

The Convener: All that impinges on the working of courts. If we are to get any answers on the issues, I believe that it is you, Mr McQueen, who can give us some.

Eric McQueen: The question about communication through the premium-rate number is best directed to the Crown Office; it is not within the remit of the Scottish Courts and Tribunals Service. There was an issue with bar associations trying to make contact with fiscals, which involves the Crown Office and Procurator Fiscal Service rather than the Scottish Courts and Tribunals Service.

The Convener: Perhaps you could comment a little more on the joint operating system and strategic working at a high level.

Eric McQueen: Yes. The Scottish Courts and Tribunals Service tries to operate at a range of levels to ensure communication among all the justice organisations. We sit as a key member of the justice board—along with Police Scotland, the Crown Office, the Scottish Government, the Scottish Legal Aid Board, the Scottish Prison Service and others in justice—to do forward planning on emerging issues. We consider how we will deal in the future with different types of business—for example, an increase in sexual offending or cybercrime—and we use that as part of our planning mechanism. We use it in our discussions on spending decisions in order to work out where the pressures are in the system and how we can collectively best use resources to address what we see as being the future vision of justice.

We extend that, which is important, throughout all the criminal justice boards. We now have six criminal justice boards—one for each sheriffdom; we have brought the number down from 11—that bring together the main justice organisations. Within the sheriffdom, we plan day by day and week by week the organisation of business, the efficiency of the court programme and any adjustments that need to be made at local level.

As far as we are concerned, that works coherently across the whole organisation from what might be classed as high-level strategic plans down to the operational issues day to day, and the programmes of the courts. That strong relationship, particularly at local level—the roles that are played by the sheriff principal, the local procurator fiscal and the local bar association to discuss business jointly at their court level—makes the courts operate effectively.

The Convener: We heard from some witnesses that defence agents are not on the criminal justice boards. Is that the case in some or all sheriffdoms?

Eric McQueen: The defence agents are not on the local criminal justice boards, but they take part in discussions within the local court.

The Convener: Should they be on the boards, given that they have day-to-day knowledge?

Eric McQueen: That is a decision for the sheriffs principal who chair the criminal justice boards. The preference at this stage is not to have defence agents on them. There are occasions when defence agents are invited along and specific discussions take place. The routine members of boards are, essentially, the authorities that are tasked by the Government with disposing of court business.

The Convener: There are local boards and there is the high-level justice board that you have just talked about. Are defence agents represented on either?

Eric McQueen: They are not, but we have regular discussions, in particular with the Law Society of Scotland, which we met just a few days ago to talk about our shared thoughts on future planning for justice.

The Convener: Would it be better if defence agents were on the criminal justice boards? Is there any reason why they should not be on the boards?

Eric McQueen: The idea of criminal justice boards is that they include organisations that have the authority and responsibility for delivery of parts of business. That is not to say that we do not involve defence agents; there is some excellent work being done on evidence and procedure—to which we can maybe come back—that we have been leading. We are trying to develop a new way for criminal justice in the future; both the Law Society and the Faculty of Advocates are full members of that group and have made valuable contributions. When the timing is right for the organisations, there is no doubt that we come together to share thinking.

Oliver Mundell: I will start by asking Assistant Chief Constable Higgins about something that has been picked up on but not focused on—the amount of time police witnesses spend in court. Is that a problem that you are aware of, when cases have not gone ahead or police witnesses have not been needed?

Assistant Chief Constable Higgins: We have tried to reduce the number of police witnesses, and we have worked closely with the Crown Office on that. I have been in the police for 28 years. Throughout that time there has been a recurring debate about how many witnesses need to be cited, and how often.

In recent years, fantastic work has been done to reduce the number of police witnesses. That is partly because we have police officers working with the Crown Office at various locations on identifying what level of witness is required. With regard to officer availability, we have the witness scheduler that we now share with the Crown Office. In September this year I put out guidance to officers that essentially says that they do not have to include everybody on witness lists, and gave examples of persons who might be involved in a case but would not necessarily be relevant witnesses. I did that in order to reduce the number of people who appear on witness sheets.

Oliver Mundell: Is there still a large number of cases that look like they will go ahead but at the last minute do not because of absence of information? Despite your having done your best to reduce the number of police witnesses who are scheduled, are officers still spending large numbers of days in courts in which they are not called to give evidence?

Assistant Chief Constable Higgins: It is almost inevitable that trials will fail to start for a variety of reasons; often there is a legal debate or a witness has not turned up. I do not have figures to hand. Perhaps my colleague Chief Superintendent McEwan has something to add.

Chief Superintendent Garry McEwan (Police Scotland): I can add a wee bit more. The witness scheduler that Assistant Chief Constable Higgins talked about is a web-based application that has made a huge difference to the number of police officers who are required. In most parts of the country, there is now a one or two-hour standby, so officers can do paperwork back in the office or be out on patrol, and the expectation is that they can make it to court within that two-hour period. That is easily achievable in most areas, bar some because of their geographies.

In recent months, we have noticed some savings as a consequence of the witness scheduler—for example, the reduction in police officer overtime has been significant. It is a first-class example of collaboration between the Scottish Courts and Tribunals Service, the Crown Office and Procurator Fiscal Service and the police to make the system more efficient.

Oliver Mundell: Can you provide any statistics or numbers on that? They would be of interest.

Assistant Chief Constable Higgins: Yes, certainly. We will take that as an action point and we will formally write to the committee.

Oliver Mundell: My second question is for Eric McQueen, and is on case management and programming. All the witnesses to whom we have spoken so far seem to recognise that things are not working perfectly. I know that it is difficult to schedule proceedings in court because things change and all the rest of it, but there is a sense

that fiscals do not have sufficient resources to manage the case burden properly and fully, which is having a knock-on effect on scheduling in the courts. Do you accept that?

Eric McQueen: I will say a few things to give a bit of context, which I hope the committee will find helpful. I might also come back to talk about witness attendance, Which Oliver Mundell asked Police Scotland about.

We recognise—and certainly, the previous session's Justice Committee recognised—that the world has changed in terms of the types of crime that are coming into the courts system. There has been a significant increase in domestic abuse cases in courts because the policy is more consistent across Scotland, and there have been significant increases in cases involving sexual offending, child abuse and historic child abuse. The types of cases are very different from what they were five or six years ago, which brings complexities. Many more cases now go to trial because, inevitably, there is less likely to be a guilty plea at an early stage. Also, because of the complexity of the cases, they take longer to run. Therefore, the programming issues become complex.

We still work in a system that the Lord President has described as being from the Victorian age; for example, we have a very antiquated way of bringing forward cases. Last year, in the region of 52,500 cases were set down for trial and were probably called for trial on their first calling, but only 9,000 trials proceeded. That meant that in the region of 460,000 witnesses across Scotland, including police witnesses, were cited to court, although probably fewer than 100,000 witnesses gave evidence. The system is designed and operates to make a significant number of efficiencies; the difficulty is partly that all the organisations are trying as best they can to work within those efficiencies, which are constraints.

On how business is progressed to court, when cases first call and there will be a trial diet in 16 weeks, we normally allocate eight to 10 cases to that trial diet, fairly safe in the knowledge that, before then, four or five will have dropped out either because there has been a change in evidence or a guilty plea has been made. Therefore, on the actual trial diet day, we will have four or five cases down for trial, and it is likely that one of those will not be called or will be deserted for various reasons to do with evidence, and that one will be adjourned because essential Crown or defence witnesses do not appear. Therefore, it is likely that only one or two cases will proceed to trial. Inevitably, that will have a significant impact on police and civilian witnesses who have been cited to court over a long period of time, relatively few of whom will give evidence. That is the context in which we work and some of the challenges that we are trying to solve.

12:15

Work that we have been doing to address that includes work on what a reformed justice system would look like. We have published two reports on that and are now working collaboratively with the justice board on a very different model for how we will manage business in the future. In such a model, substantially fewer people would come to court, there would be substantially fewer procedural hearings—by "substantially fewer", I mean more than 100,000 and potentially 150,000 fewer—and trials would be set only when we know that a trial is required.

I believe that in previous evidence-taking meetings there has been discussion about earlier pre-recording of evidence and setting trials at the very earliest stage. Our view is this: that a trial should not be set until it is known that it is the only way of resolving the issue; that evidence that can be agreed is agreed; and that only essential witnesses should be cited to court. We genuinely believe that such an approach could free up something in the region of 300,000 witnesses who are, in our view, cited unnecessarily because they are not actually required to give evidence.

Oliver Mundell: Do you accept that the situation has, in a sense, got worse with the perceived lack of resources in the Crown Office and Procurator Fiscal Service?

Eric McQueen: I do not think that the situation has got worse at all. The situation has been a feature of the justice system for many years; indeed, it was something that the McInnes summary justice reforms tried to address. There have been marginal improvements in some areas in different years, but we are saying now that we need a fundamentally different way to process business.

In terms of resources—

The Convener: If I can just interrupt you, Mr McQueen, are you saying that, ideally, the eight cases that you referred to should not be set for trial until they are all ready to go? The evidence that we have heard is that they are being presented because if they are not presented, they will be time barred. The delays in the courts are making fiscals proceed with cases that we know are not ready and need to be prepared.

Eric McQueen: I am not quite sure about some of the evidence that you heard this morning about the time bar. There are no time bars on trials—

The Convener: They will fall if they are not heard within the appropriate time.

Eric McQueen: That is not the case in the JP and sheriff courts. The only cases to which time bars would apply once they had reached trial stage would be custody cases.

The Convener: Do you recognise that targets are not being met—

Eric McQueen: I do not accept that at all.

The Convener: —and that that is why a large number of cases are being brought that have absolutely no prospect of being heard? We heard that from the FDA and other unions. Would you dispute that?

Eric McQueen: That is not something that I recognise at all. There are no time bars on cases—a case would not be dropped at trial stage in the sheriff or JP courts as a result of a time bar.

Oliver Mundell: I thought that for speeding or driving offences there are statutory, or recognised, limits and that if a case had not reached court within a set amount of time—

Eric McQueen: Yes—but this is about pre-service by the police at the initial stage.

Oliver Mundell: I do not know that it is—

Eric McQueen: Once the case actually comes to court and reaches trial stage—

Oliver Mundell: But not if the trial does not go ahead. I think that the point that was made was that a number of trials are ready to go ahead but do not actually start on time because there is not a slot in which they can be scheduled. That is where cases are being time barred.

Eric McQueen: I have tried to describe to you what happens on a day-to-day basis at a typical trial court. It is not that cases are being put out because they are time barred—

Oliver Mundell: What happens if a case has no scheduled slot to start before it exceeds its time limit?

Eric McQueen: The case would just be adjourned until the next trial date—

The Convener: Probably what we are referring to, Mr McEwan—if I may interrupt—is the 140-day rule for the length of time for which a person can be held in custody before their case comes to court.

Eric McQueen: That applies in solemn cases, which are not what the JPs were discussing this morning.

The Convener: That is where we were hearing that various rules have to be applied if there is a build-up, to ensure that things are met.

Eric McQueen: Can we come back to that in a second? The time bar is a slightly separate issue—

Oliver Mundell: Am I correct, though, in saying that part of a trial must take place within a set time period or else it will not proceed?

Eric McQueen: That is correct with regard to custody trials.

Oliver Mundell: But not in terms of, say, some motoring offences.

Eric McQueen: There is a difference between the process for summary crime and the process for solemn crime. In solemn crime, time bars will apply, but in the vast majority of cases, they will be extended. We can come back and discuss that.

In summary criminal business, if a case cannot be completed when it comes to trial, it will simply be adjourned to a further trial date. A summary case would not fall at a trial stage because of time bars.

Oliver Mundell: We heard from at least one witness that the closure of sheriff courts and the reduction in the number of courts was leading to longer times before the start of trials and putting additional burdens on the sheriff courts that remain. Do you recognise that?

Eric McQueen: Not in any way, shape or fashion. Court closures were a sensitive and emotive issue. I fully understand that. Equally, when they went through, few people said that court closures were fundamentally not the right approach; it was very much about not closing courts in people's own areas. There was a general view that some closures might be sensible and that is the direction in which we went.

It is really helpful to keep the matter in perspective. We closed 10 sheriff courts, which means that 10 other sheriff courts took business in from the courts that closed. There was no impact whatever on the remaining 29 sheriff courts. Therefore, 75 per cent of the courts experienced no impact from court closures. Every one of the 10 sheriff courts that took business in has improved performance since the court closure: fewer trials are outstanding in those courts; we have shorter periods to trial; we are fully meeting the 16-week waiting period between first call and trying; and we are fully meeting the period for domestic abuse cases.

As far as we are concerned, the resources have been put in. The staff and judiciary from the courts that were closed transferred to the other courts and we knew that we had capacity in them to deal with the business. I can understand why court closures become a convenient coathanger but they have had no impact whatever on the system

and, in 75 per cent of the courts, could have had no effect because those courts were not affected.

Liam McArthur: We find ourselves receiving evidence that is directly at odds with what we heard from the bar associations and the Scottish Police Federation about the impact of court closures.

I have a follow-up to Oliver Mundell's question. You touched on this, Mr McQueen, but in your written evidence you say:

"As far as possible, evidence should be agreed in advance, and trials scheduled only when it is clear they will take place and evidence will be led."

We have heard that from a few witnesses now. How close are we to achieving that and what are the obstacles to making the functioning of our courts more efficient in that respect?

Eric McQueen: It is fair to say that we are getting closer. There are legislative constraints on the matter, so there would need to be a fundamental change to legislation to allow it to happen. At the moment, through the work that Tim Barraclough is doing—he might want to add to what I say—we are trying to design a model for how a system might operate in the future. We are working closely with the legal profession on that.

How can we move away from a model that relies on everyone physically appearing in court, evidence largely being given in court alone and all judicial decisions being made within the court environment? How can we move towards a case management-type system that is not about individuals coming to court, but is about the evidence being available and shared at a very early stage and about case management processes kicking in to ensure that evidence is agreed and that a trial proceeds and witnesses are cited only if the case needs to be resolved by a trial?

We have worked through a model and have made it publicly available in our last two reports. We are finalising the current stage of it. If the justice board agrees it, it will need to go to the Government, which will take a view on whether it wants to consult on legislation to make the change.

Liam McArthur: That takes us back to the point on which the convener quizzed you in relation to the justice board. Defence agents have raised concerns about how the model might work in practice. Do the discussions at the justice board take place in full consultation with defence agents?

Eric McQueen: This might be a good time for Tim Barraclough to come in, because the legal profession plays a full role in both those groups.

Tim Barraclough (Scottish Courts and Tribunals Service): We have a workstream under the evidence and procedure review and we published a report in February 2016 that set out a high-level model of what a new, digitally enabled, case management-led summary justice system would look like. We needed to put flesh on the bones of that model, so we put together a working group that includes two nominees from the Law Society of Scotland's criminal law committee who have been fully involved in a discussion on taking the summary justice system forward step by step. The aims are to reduce the number of hearings in court and the number of witnesses who are cited to attend court, and to use digital technology to enable far more interaction between the parties before a trial diet is set.

All the evidence suggests—this is something that both the defence agents and the group have suggested—that the more dialogue there is between the Crown and the defence prior to setting a trial date, the more likely you are to get an early resolution of cases. The cases that do proceed to trial do so on the basis of a much more narrowed-down set of issues, which means that you can narrow down the number of witnesses that you require to speak to those issues.

The model is very much a prototype that has been developed in partnership with all the justice agencies and the Law Society of Scotland. We are still working on it; it is not yet finalised. We will finish it and, if it looks like something that could be delivered, we will put it to the Scottish Government for its consideration. It would require legislation and also some investment in technology to enable the early disclosure and sharing of evidence, and a case management system that allowed that early dialogue between Crown and defence in order to get to those early resolutions that we are looking for.

Liam McArthur: I will quickly ask Assistant Chief Constable Higgins about the completely different issue of the evidence that we got from Mr McEwan and Mr Little on the use of fixed penalties and the way in which they are being applied. There was an example of four fixed penalties being presented in the space of half an hour to an individual who clearly had alcohol problems. There was no way that he was ever going to pay for them. That evidence bears a response from Police Scotland—perhaps not now but certainly once you have had a chance to read it.

Eric McQueen: Could I comment on fixed penalties? The JPs recognised things that have been issues. Certainly, in the introduction a couple of years ago, there were a number of cases like that and we worked very closely with both the Crown and Police Scotland to reduce those

numbers. We have been doing that and it is something that we keep track of.

I also wanted to add that the recovery levels on direct measures are very high. The fines enforcement is effective and it is delivering. For both police and Crown direct measures, the recovery rate is over 80 per cent, which is a good figure by any measure. The recovery rate for fines imposed by the JP or the sheriff court is closer to 100 per cent. Our recovery rates are high. We work very closely with the Department for Work and Pensions and Her Majesty's Revenue and Customs and we make regular benefit deductions. At the moment, something in the region of 200,000 benefit deductions have been imposed.

Fines recovery is difficult and challenging, for some of the reasons that the JPs outlined, but it is a role that we take very seriously. We do apply quite strenuously—

Liam McArthur: We would be interested to see the figures, but even if you are talking about a 20 per cent failure to recover then presumably those will fall into the categories that the JPs were outlining to us, and the capacity not just to make benefit reductions but to apply a repayment mechanism that is proportionate to individuals is, again—

Eric McQueen: Absolutely. The wider point is whether bringing some cases into the criminal justice system is the best way of dealing with them. For people who genuinely have drug addictions and behavioural and social-type problems, is the criminal justice system always the right answer or should there be some diversions that take them away from criminal justice and more directly into rehabilitation and support-type services? I think that there is a relevant and a right discussion about how we best use the criminal justice system and whether it is right in every case, for every individual.

The Convener: That certainly led on to the marking of cases and I was in no doubt that it was a very live issue at the Scottish Justices Association meeting I attended on Sunday.

Rona Mackay: We have heard, during previous evidence sessions, that some complainers and witnesses are actually frightened to go to court—the fear may simply be of going for a cup of tea and meeting the accused—so they fail to turn up. Is that something that you recognise? If so, can you suggest any way to improve the situation? Is the physical layout of the court building causing the problems?

12:30

Eric McQueen: Yes, I have no doubt that we recognise that situation. In the past couple of years, we have made significant improvements in the way that we deal with witnesses. Some of the JPs talked about that this morning. We certainly have not cracked it and are not complacent; there is more that can be done.

We have carried out work with Victim Support Scotland to review the whole of the mapping of the journeys of victims and witnesses as they move between different organisations and how to put in the best standards of support. We have tried to agree and publish new standards of services to support and communicate with witnesses.

There is simply no getting away from the fact that the day when witnesses come into a court building is a very intimidating process for many, despite the information and support they may have been given. The design of our court buildings is not great; the vast majority hark back to the Victorian age. They are historic buildings and there are limitations on how we can improve them. We try hard to make sure that there are segregated defence and crown witness areas in all places. We have excellent support from the witness service, which is provided by Victim Support Scotland. That organisation plays a superb role across all the courts to support witnesses who are vulnerable and have concerns; they are put at their ease and in the best place to give the best possible evidence in court. There is no doubt that it is a difficult and challenging experience; there are limitations on the best things that we can achieve.

Part of the discussion is whether to just accept that or whether to try to do something different. The work that Tim Barraclough outlined about his evidence and procedure review aims to do two things: to reduce the vast number of witnesses who need to come to court at all—which is a step in the right direction—and also to test and explore the areas where witnesses' evidence can be given at a much earlier stage much closer to the time of the event that happened and prerecorded to be used in evidence. Within our work, we are trying to use technology in a different way to capture evidence at an earlier stage and prevent witnesses coming to court other than in cases where it is absolutely essential. In the High Court, we aim to apply that as widely as possible from early next year, in particular with children. How do we avoid children having to come into court at all to give evidence? We believe that within existing legislation, with practice notes from the Lord Justice Clerk, we can move to a world that will quickly start to see children taken out of the court environment, certainly in the more serious courts and the High Court. We would aim to expand that. We recognise that there are big issues and we are trying to do the best practical things that we can within the constraints; part of the drive is how to stop witnesses being there in the first place.

Rona Mackay: Thank you, that is helpful.

The Convener: Some of your answer probably relates to measures that may be in the justice digital strategy. The committee has heard criticism about a lack of progress with the strategy and concerns about the effect of sharing a secure email and the security of the wi-fi system. Could you give us timescales for the strategy's progress?

Eric McQueen: Part of the challenge is that the strategy covers about 15 different areas across different organisations that have responsibility. To give one answer about the timescale is difficult.

The Convener: Can you give some kind of encouragement?

Eric McQueen: One task that the Scottish Courts and Tribunals Service was given was to roll out new case management for civil business in Scotland; that was done last Monday and we have made a fundamental change in the case management system that is now available.

We now have usable, accessible and secure wireless across all courts in Scotland—there are no issues with it. We are working with the Law Society and the Faculty of Advocates to bring on board all their members electronically, so that in a short time—I hope a few weeks—all defence agents will have access to wi-fi in courts; that is a step in the right direction.

The Convener: So that is by—

Eric McQueen: That is now in place in the courts; there is simply the matter of getting the right registration process in place for defence agents to access it.

The area that I think is of most interest is what is loosely classed as the "digital evidence vault". We see that as a key area that will solve a number of problems that are currently around. The convener mentioned that the criminal justice secure email service is causing frustration; another issue that causes frustration relates to video evidence in different formats and how such evidence can be shared across organisations. The idea of the digital evidence vault is to try to get through some of those problems by having a central store or repository that holds the evidence associated with a case, which can then be securely accessed by organisations or defence agents, from different points.

You will realise that that is quite a complex development. We have kicked off a prototype, which is about building a store for video evidence and considering how we can get video evidence, which comes in hundreds of formats, into a common format and store it in one area, which we can make accessible to different justice organisations. Over time, we think that that will be the key part of the evidence vault. It will support the work that Tim Barraclough talked about, on how evidence can be shared across organisations and defence agents. We are making progress, but this is big, clunky stuff that takes time.

The Convener: I am conscious of the time and that Fulton MacGregor has been waiting for a considerable time to ask a question.

Fulton MacGregor: I appreciate that the conversation has moved on, but I want to take us back to Claire Baker's question. It will come as no surprise that I agree with her line of questioning and the response from ACC Higgins. The committee has heard evidence that the police and the procurators fiscal are prioritising domestic abuse cases—it is right to do that; no-one could disagree with that—and that that is happening to the detriment of other cases. I want to give ACC Higgins the chance to confirm, for the record, that that is not the case. I think that I know what answer he will give.

Assistant Chief Constable Higgins: Thank you, sir. I confirm that that is not the case. Police officers are demand driven. We do not get to choose what calls are made to us, and we must respond to all calls. If a domestic abuse call comes in, it will get priority, and if a shoplifting call comes in as well, it will be answered, too. Prosecutorial priorities are a matter for Crown Office, as I said. I assure the committee that we try to serve all the demand that comes in.

Let me reassure Mr McArthur about the fixed-penalty issue. We will have a look at that. About six months ago, in conjunction with Crown, we introduced recorded police warnings. About 11,000 such warnings have been given so far—that is 11,000 cases that have not been submitted or fixed-penalty notices that have not been issued. Rather than cautioning and charging someone or giving them a fixed-penalty notice, we have dealt with them by way of a recorded police warning. If a person receives two recorded police warnings in a set time for the same offence, they are cautioned and charged. The approach will reduce the number of fixed-penalty notices that are issued, and I hope that it is another proportionate response to fairly low-level crime.

Fulton MacGregor: Thank you for that. I have a quick question for Eric McQueen, which follows on from what Rona Mackay said. As part of our inquiry, we have spoken to victims of domestic abuse and heard harrowing tales about not just the abuse that they experienced but their subsequent experience of the court system. Is there anything that we could do to improve the process for victims of domestic abuse as they come in and out of court? I think that you touched on the issue.

Eric McQueen: I think that there are two things that I can say. In the short term, it is about continuing the good things that we are doing, because we are already trying to improve court facilities. Far more television links are available for people who want to give evidence in that way, and we are improving people's experience in court where we can. For example, people have commented on the flimsy screens that used to get pulled out; such screens have largely been replaced across our courts, so that when people want to give evidence from behind a screen they can do so in a safer and more comfortable environment.

Interestingly, the vast majority of vulnerable witnesses who come forward prefer to give evidence in court. We had thought that, with the changes through the vulnerable witnesses legislation, there would be a big increase in people preferring to give evidence by videolink. However, it very much seems that people want to give their evidence in court, and our aim is to support them as best we can and ensure that they have a safe and comfortable environment in which to give their best evidence and that, if they choose to use screens to block them from the accused, those things are in place.

We are trying, within the limitations that we have, to provide the best possible service. All of our staff, including our front-line staff, have gone through extensive training on how to support not just vulnerable witnesses but all witnesses who come into the court environment. As for the medium and long term, I come back to what we were talking about earlier with regard to shifting a significant number of witnesses from having to give evidence in court in the first place. That has to be our goal and focus while, at the same time, we build on what we are doing to improve things for victims and witnesses and to ensure as much as possible that the experience is less traumatic and stressful.

The Convener: Stewart Stevenson has a final, very short and specific question that should elicit an equally short response.

Stewart Stevenson: Paragraph 4.37 of the guidance on parliamentary committees says:

> "A member may be present at a committee, count towards the quorum and participate fully by means of video conference."

Are we heading towards that same interaction with video technology right across all aspects of the court system? If not, when is that going to happen?

Eric McQueen: I would like to think that we are getting there, but the honest answer is that it is probably still early days. Under the current legislation, there are limitations on what can be done by videoconferencing. At the moment, no custody hearings can be done by VC, and the same is true for trials, with people other than vulnerable witnesses required to appear physically in court. We are now moving towards doing a range of procedural hearings more routinely through VC; about a third of our courts are using it to transact procedural business, and we are looking to extend that to other courts next year.

When the provisions come in—which, I hope, will be next May—custody cases will be allowed to be taken through VC, and we are working with Police Scotland and the Crown Office on how we implement that. The answer to the question of where we truly want to go with videoconferencing brings us back to the work that Tim Barraclough talked about earlier, which is genuinely about capturing evidence at the very earliest stage electronically and significantly reducing the number of victims and witnesses in court.

The Convener: That concludes our questions. I thank the witnesses very much for their attendance.

We now move into private session. The next meeting of the committee will be on 29 November, when we will continue to take evidence for our Crown Office and Procurator Fiscal Service inquiry.

12:42

Meeting continued in private until 13:02.

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