



OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 29 November 2016

Session 5



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JUSTICE COMMITTEE

11th 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:

Annabelle Ewing (Minister for Community Safety and Legal Affairs)

Denise Swanson (Scottish Government)

Ian Thomson (RSPB Scotland and Scottish Environment LINK)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 29 November 2016

[The Convener opened the meeting at 11:01]

Decision on Taking Business in Private

The Convener (Margaret Mitchell): Good morning and welcome to the 11th meeting of the Justice Committee in session 5.

Agenda item 1 is to decide whether to take in private agenda item 7, which is consideration of the committee's approach to its scrutiny of the Limitation (Childhood Abuse) (Scotland) Bill at stage 1. Do members agree to take item 7 in private?

Members indicated agreement.

Crown Office and Procurator Fiscal Service (Witness Expenses)

11:01

The Convener: Item 2 is on the agenda because it is a formal requirement for committees to approve claims for witness expenses. Is the committee content to delegate responsibility to me for arranging for the Scottish Parliamentary Corporate Body to pay, under rule 12.4.3 of standing orders, any expenses of witnesses in the inquiry?

Members indicated agreement.

Subordinate Legislation

Arbitration (Scotland) Act 2010 (Transitional Provisions) Order 2016 [Draft]

11:02

The Convener: We come to item 3, on subordinate legislation. I welcome the Minister for Community Safety and Legal Affairs, Annabelle Ewing, who will speak to the draft Arbitration (Scotland) Act 2010 (Transitional Provisions) Order 2016, which is an affirmative Scottish statutory instrument. I also welcome the officials accompanying her: Denise Swanson is from the Scottish Government's civil law and legal system division, and Alastair Smith is from the Scottish Government's directorate for legal services.

I remind members that officials are permitted to give evidence under agenda item 3, but they may not participate in the formal debate on the order under agenda item 4. I refer members to paper 1 and ask the minister to make an opening statement.

The Minister for Community Safety and Legal Affairs (Annabelle Ewing): Good morning. The purpose of the draft order is to remove the ability of parties under an arbitration agreement that was made prior to 7 June 2010—that is, prior to the commencement of section 36 of the Arbitration (Scotland) Act 2010—to contract out of using the new arbitration law that is provided for by that act.

The 2010 act provided Scotland with a modern and innovative arbitration regime, and clarified and consolidated the general Scots law of arbitration into a single statute. The purpose was also to provide a statutory default framework for arbitrations to operate in the absence of agreement to the contrary to ensure a fair and impartial process. The intention was that anyone in Scotland or those who sought to do business in Scotland should be able to access the principles and rules that govern the law of arbitration in Scotland.

Section 36(3) of the act made transitional provision to the effect that the legislation would not apply to an arbitration that arose under an arbitration agreement that was made before the commencement of section 36 if the arbitrating parties agreed not to use it. Essentially, the provision gave arbitrating parties the ability to use the pre-existing arbitration law over the new law that was provided for in the 2010 act if they wished to do so.

The 2010 act also provides that the Scottish ministers may by order remove that opt-out ability

after a suitable period that falls at least five years after the commencement of section 36. As the act is now over five years old, the Scottish Government proposes in the SSI to remove the ability of parties to contract out of using the new arbitration law from 1 January 2017. That means that it will not be possible for parties to agree that the act will not apply to an arbitration that was commenced after that date. However, the order will not affect arbitrations under such agreements when the arbitration commenced before the order's coming into effect, which will happen on 1 January 2017.

The Scottish ministers consulted on the draft order and have considered the responses thereto. Responses were received from, among others, the Faculty of Advocates, the Law Society of Scotland, the Scottish Arbitration Centre and the Royal Institution of Chartered Surveyors, and the replies were supportive of the order.

I am happy to take questions.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): My question is almost rhetorical. We have received a letter from the chief executive of the Scottish Arbitration Centre that notes that Edinburgh will host the International Council for Commercial Arbitration congress in 2020. I hope that the minister will agree that that is an important signal of the important role that arbitration plays in Scots law and of how we are at the forefront of making use of it as a way of resolving disputes.

Annabelle Ewing: Yes, I absolutely agree. It is a great coup for the Scottish Arbitration Centre to have won the competition to host what is a huge international conference. The conferences are held on a two-yearly basis, and the next but one will take place in Edinburgh.

The previous two ICCA congresses, which were held in Singapore and Miami, each attracted more than 1,000 professional arbitrators to their respective host locations, so the hosting of the 2020 congress represents an excellent opportunity for Edinburgh, as well as the Scottish Arbitration Centre, to make their mark.

Douglas Ross (Highlands and Islands) (Con): Could the measure have been taken sooner? You said that the opt-out could be removed five years after the 2010 act was passed, and we are now in 2016. If the measure could have been taken sooner, why did that not happen?

Annabelle Ewing: Under the 2010 act, it could not be done any sooner than five years after the passing of the act. We are only shortly past the five-year mark. As with all other legislation, it is a case of fitting it in with parliamentary timetables and so forth.

Douglas Ross: That is the only reason why there has been a delay.

Annabelle Ewing: We have only just passed the five-year mark. Given what is involved in preparing legislation, I do not think that there has been a particular delay. Do officials have any other comments?

Denise Swanson (Scottish Government): No.

The Convener: There are no more questions. All the submissions certainly seem supportive of what is proposed.

Do you have any closing remarks, minister?

Annabelle Ewing: No.

The Convener: Agenda item 4 is formal consideration of motion S5M-02509.

Motion moved,

That the Justice Committee recommends that the Arbitration (Scotland) Act 2010 (Transitional Provisions) Order 2016 [draft] be approved.—[*Annabelle Ewing*]

Motion agreed to.

The Convener: That concludes consideration of the order. The committee's report will note and confirm the outcome of the debate. Are members content to delegate the authority to me, as convener, to clear the final draft?

Members indicated agreement.

The Convener: I suspend the meeting briefly, to allow the minister to leave.

11:08

Meeting suspended.

11:08

On resuming—

Title Conditions (Scotland) Act 2003 (Conservation Bodies) Amendment Order 2016 (SSI 2016/371)

The Convener: Agenda item 5 is consideration of a negative instrument—SSI 2016/371. I refer members to paper 2. Do members have any comments?

Stewart Stevenson: I am entirely content that we do not do anything to impede the progress of the order, but I would like to put on the record an enduring concern that I have about the drafting of instruments of this character.

The order simply adds two entities to a list that is in one of the schedules to the primary legislation. That is something that happens quite regularly, across a wide range of legislation. It leads to a situation whereby there is nowhere that

the general public can actually go and look at the resulting consolidated list. I know of cases where similar amendments are into double figures. I encourage the Government and its drafters, when they are amending lists in future, to consider using the secondary legislation—as, in general, they will be able to do—not simply to amend the list but to replace it with a new, complete list, so that the legislation thereafter reflects all the cumulative changes that may have been made to lists. I make a general point, on which I am not asking that we take any action. I merely take the opportunity of putting it on the record.

The Convener: I am grateful for those comments. The updates can be accessed online but, as the member rightly points out, the sites can be a little bit slow or there are problems with that.

Stewart Stevenson: Could I come back on a tiny wee point? Updates are available online, but in a complete form only via Westlaw, which is a subscription service. The legislation.gov.uk service that the general public can access for free does not deal with secondary legislation updates in a way that enables people to see this. Lawyers can see a resulting update, because they subscribe; the general public cannot. In this case it is of no material effect, I hasten to add.

The Convener: Perhaps we can flag that up to the Delegated Powers and Law Reform Committee to take into account. Are there any other comments? If not, are members content to agree that we do not wish to make any recommendations in relation to the instrument?

Members *indicated agreement.*

The Convener: Thank you. I suspend the meeting to allow the first witness to take his seat.

11:11

Meeting suspended.

11:12

On resuming—

Crown Office and Procurator Fiscal Service

The Convener: Item 6 is a further evidence session in the Crown Office and Procurator Fiscal Service inquiry. This is our fifth week of evidence taking on the inquiry, and I welcome to the committee Ian Thomson, head of investigations at RSPB Scotland, who is also representing Scottish Environment LINK. I refer members to papers 3 and 4.

Mr Thomson, I understand that you drafted the recent submission for the RSPB, which members have before them. I also understand that you are happy to speak to the submission from Scottish Environment LINK. Is that the case?

Ian Thomson (RSPB Scotland and Scottish Environment LINK): Yes, I am.

The Convener: We are very grateful to you for that. Do members have questions?

John Finnie (Highlands and Islands) (Green): Good morning, Mr Thomson. Thank you for your submissions.

I am particularly interested in the number of reports that you submit that result in prosecutions, and the comments about a dearth of feedback from COPFS about why cases do not go ahead and the lost learning opportunities associated with that. Can you perhaps give some examples of that, please?

Ian Thomson: Yes, absolutely. Wildlife crime is perhaps unique, in that it does not affect humans. By and large, a human will not report a bird missing and there is no human victim, so it is very unlikely that there will be any witnesses to crimes. That makes the investigation of wildlife crime inherently difficult.

For example, if we are following up the poisoning of a golden eagle, although we may know who owns the land, who works on the land and who may be potential suspects, it is very difficult to find a level of evidence that will stand up in court and support a prosecution against a particular individual for killing that bird. For the vast majority of wildlife crimes in our countryside, it will always be very difficult to achieve a prosecution.

In our experience, where prosecutions go ahead—I am talking about a fairly small percentage here, maybe 10 to 15 per cent depending on how we classify individual cases—the vast majority are successful. The accused is invariably found guilty on at least one charge,

although it may not be the main charge for which we were hoping to get a prosecution, because that becomes too difficult to prove in court.

11:15

One of the key things is that every case is subtly different, and there are learning opportunities on things from the evidential standards that the Crown is considering through to the way an investigation was carried out. Our feeling has been that, for many years, an opportunity has been missed to have full debriefs on some of the cases, not just so that the police and statutory agencies can learn from them, but so that non-governmental organisations such as the RSPB, which does a lot of the fieldwork to detect the offences, get an opportunity to learn, too.

That has been a long-term frustration for us. Back in 2008, the Government's report "Natural Justice: A joint thematic inspection of the arrangements in Scotland for preventing, investigating and prosecuting wildlife crime" recommended that debriefs be held but, as far as we are aware, there has not been a single one for a wildlife case since then.

John Finnie: Will you speculate on the reasons for the difference between the number of reports that are submitted and the number that move to a formal prosecution?

Ian Thomson: A fairly significant proportion of crimes that are the subject of reports to the procurator fiscal end up being prosecuted. The difficulty is that, as an NGO, we are not always party to that information, so we are not sure what level of detail will go forward in police reports to the fiscal. Obviously, they have to make an assessment based on whether there is evidence that will stand up in court.

Part of the problem is a lack of communication. We have the partnership for action against wildlife crime, but on occasion it is fairly disjointed and the flow of information tends to be largely one way.

John Finnie: Are requests for additional information ever directed to you from the Crown?

Ian Thomson: Yes. That is often the case. Requests usually come via the police, though. They tend to be second-hand requests.

John Finnie: Will you characterise your relationship with the police as regards wildlife crime?

Ian Thomson: Our relationship with the police is very good. Having dealt with eight different forces, we have very good relationships with both full-time and part-time wildlife crime officers on the ground. In certain areas, a senior officer has been

assigned the responsibility for dealing with wildlife crime, and the relationship is very good.

We deal with police officers who are allocated varying amounts of time and resource to deal with wildlife crime, and inevitably they have a vast range of experience and expertise, but there are certainly many officers who are exceedingly keen and interested in pursuing wildlife crime investigations. On the whole, our relationship is positive.

John Finnie: I will make this my final question because my colleagues will have questions, too. There is a lot of publicity about raptor persecution. There are understandable concerns about the low level of prosecution in relation to that, and there are concerns that the public are not co-operating with the authorities on it. Will you comment on the role that the Crown Office and Procurator Fiscal Service plays in that regard?

Ian Thomson: Raptor persecution is perhaps one of the most difficult wildlife crimes to investigate because, when the police ask for information or conduct interviews, they largely face a wall of silence. The issue is that while many wildlife crimes involve travelling criminals—people who come into an area to undertake hare coursing, egg collecting, pearl mussel theft or something like that—raptor persecution is, by and large, carried out by local people, potentially as part of their employment, and there is a culture that people who are involved in the industry are afraid to put their head above the parapet or they will be completely ostracised. That makes it difficult to get even the tiniest bits of witness evidence that will facilitate a prosecution, so we are dependent on forensic evidence that is found on the ground, and that is easy for the perpetrator to conceal.

For example, shot birds tend to disappear. If I shot a buzzard, I would not leave it lying around for a member of the public to find. It is a difficult community to penetrate, which makes it challenging for the police and the Crown Office to undertake any sort of prosecution. If any charges are laid, they are often not for the primary offence of killing the bird, but for the possession of an illegal pesticide or something like that. That means that the Crown is restricted in what it can say or imply in court to link the two incidents.

Mairi Evans (Angus North and Mearns) (SNP): I have a dual interest in the subject. I have a constituency interest because I represent Angus North and Mearns, and I am also the species champion for the hen harrier, which has also suffered from persecution.

I want to tease out some more information from you. John Finnie asked you about your relationship with the police and I want to find out a

bit more about your relationship with the Crown Office and Procurator Fiscal Service and how that operates. Does it have adequate resources to deal with wildlife crime? Is it allocating enough resources to wildlife crime?

Ian Thomson: Back in the later 2000s, the prosecution of wildlife crime was undertaken on a part-time basis by wildlife specialist fiscals who were dealing with wildlife crime as well as all their other work. That perhaps meant that they did not have the opportunity to acquire the expertise that somebody who is working in the field full time would be able to acquire. Although we managed to establish good relationships with individual fiscals, we might have spoken to them only once every three or four years on those rare occasions when a wildlife crime arose.

In 2011, the Crown Office decided to set up a full-time wildlife and environmental crime unit, which was a welcome step. It appointed two or three full-time wildlife specialist prosecutors. That step really professionalised the prosecution of wildlife crime in Scotland. It allowed the prosecutors to gain expertise in dealing with a variety of individual wildlife crime cases. In our opinion, the prosecution of such cases then became much more professional.

I remember attending a court case in the late 2000s at which the part-time fiscal said that—I am paraphrasing a little—everyone knows that if you want to shoot a buzzard, you should use a shotgun and not a rifle. A full-time specialist fiscal would realise that buzzards are protected and cannot be shot by any means. Having that full-time professionalism is exceedingly welcome.

We fully understand the Crown Office's independence in making decisions on cases, but one of our biggest issues has been understanding the rationale for some of those decisions. Also, as I said earlier, we have never had the opportunity to have a debrief in which we sit round a table with all the investigating partners—the police, the Scottish Society for the Prevention of Cruelty to Animals, the Crown Office and Scottish Government rural payments officials—to look at how a case went and learn how things might be done better. That is a missed opportunity for the whole enforcement community to learn from some of those cases and to get a clear understanding from the Crown Office about the level of evidence.

Full-time fiscals have been in post for several years, but there is a turnover of wildlife crime police officers. A debrief meeting would also be a valuable opportunity for them to learn.

Mairi Evans: Your evidence talks about communications between the police, the COPFS and other partner agencies. Could you tell the committee a bit more about that?

Ian Thomson: Certainly. The “Natural Justice” report that the Scottish Government published in 2008 made 24 recommendations, one of which was that charges and plea resolutions should be discussed with specialist agencies. Most of the LINK members are not specialist reporting agencies—certainly, the RSPB is not. We do not report directly to the fiscal; all the crimes that we assist in investigating go via the police. I am not for one second questioning the independence of the police or the Crown Office in making decisions but, if we were able to have some input, police reports might be better informed and the Crown Office might see a bigger picture when it comes to prosecuting the crimes. We feel that that recommendation has been largely ignored.

Liam McArthur (Orkney Islands) (LD): Like Mairi Evans, I have a vested interest as a species champion, but I do not think that wildlife crime is among the many threats that the Scottish primrose faces.

I am intrigued by the issue with the 2008 report. I can understand why the Crown Office would be keen to avoid a situation in which the rulings of the courts are pored over and called into question. From your discussions with the police and the Crown Office, have you got a sense as to why the discussions that the 2008 report recommended do not take place? Is it a sin of omission or a deliberate policy decision not to implement that recommendation?

Ian Thomson: That is a difficult question to answer. I am certainly not aware of any policy decision.

Liam McArthur: Have you made submissions to ministers in recent times as each passing year has seen no development in the dialogue that was pointed to? Have you directed that question at ministers and asked for confirmation that they stand by the recommendation or asked for assistance in making the case to the Crown Office and other agencies that they should engage in the way that the 2008 report recommended?

Ian Thomson: One of the key ways in which we tried to highlight our concerns—by “we”, I mean the wider Scottish Environment LINK community—about the 2008 report's recommendations not being fully implemented was to set up a wildlife crime task force. One of its first assignments was to do an analysis of wildlife crime, consider how the recommendations from the 2008 report had or had not been implemented and publish a couple of papers, entitled “Natural Injustice: Paper 1: A review of the enforcement of wildlife protection legislation in Scotland” and “Natural Injustice: Paper 2: Eliminating wildlife crime in Scotland”, which were presented to the Scottish Government early in 2015.

To be frank, we were exceedingly disappointed at the reaction of the Lord Advocate who, within a couple of days of the publication of the reports, sent LINK an exceedingly strongly worded letter that disparaged the reports' findings. Following an exchange of communication, there was a complete refusal to engage with LINK members to discuss our concerns.

Liam McArthur: On what basis was that?

The Convener: Before you answer that, Mr Thomson, could you tell us the date of that exchange? Are we talking about the previous Lord Advocate?

Ian Thomson: Yes. That was in February or March 2015 and there was communication that lasted over the following two or three months.

Liam McArthur: What was the basis for that stropy letter?

Ian Thomson: The Lord Advocate disputed the methodology of the report. He mentioned the formation of the wildlife and environmental crime unit, which had improved things. We welcomed that in our reports and said that it had improved things. He said that he read our press release "with concern and disappointment" and that he regarded our reports

"as defective in"

their

"methodology, as well as inaccurate and misleading in"

their

"conclusions and recommendations".

He was also disappointed that the Crown Office had not seen an advance copy of the report for comment. He suggested that our methodology was flawed. The methodology behind the reports was based on the experiences of LINK members who had worked with statutory agencies, particularly the police but also the Crown Office, in trying to get wildlife criminals prosecuted. LINK's analysis suggested that, as well as the recommendations of the 2008 reports not being fully realised, there was a concern that we were being sidelined, perhaps because some aspects of wildlife crime were too political. By "political" I do not mean party political—it goes back to the difficulty of local people committing crimes as part of their employment. Our perception is that using an organisation such as RSPB Scotland that, as well as being a conservation body, campaigns for the laws protecting our birds to be strengthened might be regarded as leading to some sort of conflict. That is our perception, although it is not something that we have been told.

11:30

Liam McArthur: Did the Lord Advocate not reach the conclusion that a way of addressing shortcomings in the methodology and the concerns that he outlined in his letter might be to adhere to the recommendation in the 2008 report on improving on-going dialogue?

Ian Thomson: We asked to meet the Lord Advocate to discuss our concerns, but he steadfastly refused to meet us.

Liam McArthur: Have you made an approach to the current Lord Advocate?

Ian Thomson: No, we have not. We are reviewing the recommendations on the basis that, 18 months down the line, things have moved on a little. We hope to recognise where improvement has taken place. We met Police Scotland about three months after our reports were published and had a very frank and open discussion. Both of us found that a positive step forward.

Stewart Stevenson: I have a fairly narrow point. The issue of the legal framework has come up. I will take a personal risk and broach the question as to whether further extension of strict liability might be of some assistance.

Ian Thomson: Do you mean in terms of amending current legislation?

Stewart Stevenson: I make the point that some of the previous discussion has centred on making it a legal duty for landowners—for the sake of argument—to prevent certain things from happening, regardless of whether they are actively involved. I recognise the legal and practical difficulties as well as the debate around that. Do you have a view on that previous debate, in light of what has happened since?

The Convener: Is that with a view to taking it out of the court system, Mr Stevenson, remembering that we are focusing on the Crown and Procurator Fiscal Service Inquiry?

Stewart Stevenson: As we talked about law, I am merely interested in exploring whether it would help the Crown Office and Procurator Fiscal Service in its prosecution of wildlife crime.

The Convener: In that case the question is relevant.

Ian Thomson: The RSPB and other LINK members warmly welcomed the provisions of the Wildlife and Natural Environment (Scotland) Act 2011, including vicarious liability for landowners. One of the defences to that charge is for a landowner to demonstrate due diligence. As things stand, we have had only two convictions under the vicarious liability legislation and there are perhaps two or three other cases currently going through the court system. It is too early in the life of the act

to get a clear understanding of whether it will have a positive impact on the reduction of wildlife crime.

However, as you may be aware—I do not apologise for bringing this up—the RSPB feels that, despite the fact that we have some of the best legislation in Europe, improvements can still be made. We strongly support a petition that is before the Parliament to look at the licensing of game bird shooting estates, which we feel would transfer the onus on to landowners to manage their businesses legally and sustainably. We do not feel that that pressure is on them as things stand.

Douglas Ross: I start, as others have, by informing the committee that I am a species champion—my species is the capercaillie. When I have visited the RSPB reserve at Abernethy and suchlike, much of the concern is about disruption of the habitat of the capercaillie. Is enough being done to educate people not about criminal activity but about dangerous activity that they might take part in, such as lighting fires, not putting out fires correctly or letting dogs go loose? Letting your dog run loose is not a crime, but if that dog kills a capercaillie, for example, it is a crime. Are you and other environmental charities successful enough at getting that message across? Have you seen a difference in the past few years in the public's reaction to those increased messages?

Ian Thomson: To be blunt, I do not think that we will ever get to the stage where enough is done. We in the RSPB, other NGOs and statutory agencies can always do more. While these offences or problems persist, in many cases—certainly in some cases, with some offences—they are based on ignorance. That is no defence in law—people have to make more of an effort to engage—but part of our problem is that the public are perhaps increasingly disengaged from the countryside and wildlife, and from the way in which the countryside works, whether it is agriculture and forestry operations, or conservation and so on. There is certainly a need for more education. People have so many things to occupy their time these days, particularly younger folk, who are obviously our future. It would be fantastic if we did not need to have these conversations in 20, 30 or 40 years' time.

That said, some of our legislation has been in place for nearly 70 years, since the introduction of the Protection of Birds Act 1954, and even people who know what they are doing are still deliberately committing crimes, for example raptor persecution and egg collecting. What is needed in some spheres is a cultural change in attitude towards protected species. That presents a bigger challenge for us and for wildlife than occasional crimes that might be done in ignorance by members of the public.

Douglas Ross: You have mentioned the wildlife and environmental crime unit, which was established in 2011. What is its current status? Does it still have three full-time members? Could or should that be increased? You are still coming to this committee raising concerns about the level of prosecutions; therefore, despite what you say in your submission—that the unit is a great project to work with—it does not seem to be the answer to all your problems.

Ian Thomson: I would not necessarily suggest that the level of prosecution was a failing on the part of the Crown Office, because it has to analyse the available evidence and we absolutely appreciate that, in some cases, there is just not the level of evidence to allow a prosecution, because of the inherent problems associated with wildlife crime.

I am not sure what the case load of the wildlife and environmental crime unit is. I do not want to speak for the unit, but I suspect that, like many others, it would like more resource. That might free up time to enable it to do the debriefs that we are looking for. That is certainly something that we would wish to see. As far as I am aware, the staffing levels are as you suggest. There are seldom opportunities for us to sit down and have a conversation that is about the bigger picture rather than simply revolving around casework.

Douglas Ross: In your earlier answers, you mentioned wildlife crime officers. How has the situation changed since Police Scotland was formed? In Moray, our local policing plans still mention wildlife crime. However, is there a risk that that aspect of policing is diminished as resources are tightened even further and wildlife crime officers are used more and more for routine police visits rather than being dedicated to the field in which many of them enjoy working?

Ian Thomson: To be perfectly honest, there has not been a fundamental change from the eight divisions that we used to have to the single force, which is subdivided into 14 divisions. We were always concerned—and we remain so—that some of the areas with the biggest demand and the highest number of significant wildlife crime problems are inadequately resourced with full-time police officers. I am thinking, for example, of the Highlands and Tayside, both of which have one full-time wildlife crime officer each and a complement of part-time officers. To be frank, both of those areas are huge, and there are significant problems.

Obviously, RSPB Scotland is particularly concerned about raptor persecution, and those two areas—along with Grampian—have significant problems in that regard. There is one full-time wildlife crime officer in each of those areas, but they are supported by part-time officers who deal

with wildlife crime largely as edge-of-desk stuff over and above their normal policing duties. There can never be too many wildlife crime officers, but in policing terms wildlife crime is quite rightly further down the list of priorities in comparison with more serious crime. Nevertheless, from our perspective, wildlife crime could do with more resource, given that it threatens Scotland's international reputation in Europe and beyond.

Douglas Ross: I have one final question. You mentioned protected species earlier. I can understand that the public becomes very involved and emotive when birds of prey and such like are killed. I do not want to incur the wrath of people who really like seagulls, but I hear other views locally concerning those birds, which are a protected species. How much of your work involves illegal activity relating to seagulls? From a council point of view, I am aware of the problems that seagulls cause locally, and a lot of people do not understand why they are a protected species or the potential criminality involved in dealing with gulls. Should that designation remain indefinitely?

Ian Thomson: We receive reports of people allegedly killing gulls illegally, but we get many more people asking for advice because they perceive that they have a problem with gulls. We are more than happy to provide advice on trying to deter gulls from nesting as opposed to killing them.

In fact, although gulls are a relatively common bird, some of them are not doing particularly well in terms of conservation status. We are keen for steps to be taken to avoid gulls coming into conflict with people by excluding gulls from certain areas, keeping our streets a bit tidier and so on, rather than having to deal directly with gull-related crime.

When Scottish Natural Heritage issues the general licences annually that allow authorised people to control certain species using specific methods—for example, local authorities are permitted to control gulls if they are causing a threat to public health and safety—we, along with many other bodies, contribute to the consultations. That is our way of contributing to the discussion and trying to maintain the protection of gulls while reducing conflict.

The Convener: I have let the conversation go on—the links are fairly tenuous, although there are prosecution issues involved. I ask other members to focus more directly on the COPFS itself.

11:45

Rona Mackay (Strathkelvin and Bearsden) (SNP): I am trying to get an idea of timescales. How long have you been head of investigations at the RSPB?

Ian Thomson: It is coming up for five years.

Rona Mackay: During that time, has there been a steady rise in wildlife crime?

Ian Thomson: It is difficult to say what is happening with wildlife crime because, as I think I said at the start, these are crimes where there are no witnesses. My focus is on bird of prey persecution, and we have no idea from one year to the next what proportion of offences we are detecting. We do not know whether we are finding 5, 50 or 95 per cent of birds that have been illegally killed, which makes it difficult to compare trends from one year to another. It is much better to focus on the populations and the ranges of the species. For example, birds such as golden eagles, red kites, hen harriers and peregrines are still absent from areas where they should be doing okay or thriving, which indicates to us that we still have a significant problem in those areas.

Rona Mackay: Was the report in 2008 the first report of its kind that the Scottish Government published?

Ian Thomson: Do you mean the “Natural Justice” report?

Rona Mackay: Yes.

Ian Thomson: As far as I am aware, it was the first.

Rona Mackay: Did you say that you are working on a review of that or are updating it?

Ian Thomson: The Government produced the “Natural Justice” report in 2008, which was instigated following the poisoning of a golden eagle in the Scottish Borders. There was a debate in the Parliament and the then environment minister set up a review by Her Majesty's inspectorate of constabulary in Scotland and Her Majesty's inspectorate of prosecution in Scotland, which then produced the report. Scottish Environment LINK, which is entirely made up of nature conservation NGOs, then did its own review of how things had progressed and produced the “Natural Injustice” report back in 2015. It is Scottish Environment LINK that is carrying out a review of how things have moved on. The LINK report in 2015 focused on the period from 2008 to 2013. We are now trying to look at 2013 to 2016 to see how things have changed—for the better, we hope.

Rona Mackay: How confident are you that the new one will be more successful or more well-regarded than you say the 2008 one was?

Ian Thomson: Sorry, but it was the 2008 to 2013 report that the Lord Advocate was not comfortable with.

Rona Mackay: Yes—that is what I mean.

Ian Thomson: We did not particularly produce that report to have it highly regarded by the Lord Advocate; we produced it to carry out an assessment that we could present to ministers so that they could make their own assessment of the situation. I hope that people took a pragmatic look at that report and perhaps identified some of the concerns in it. I hope that they will also look at any review that we publish in the same way. Obviously, we are happy to speak to ministers and give our advice and opinion, but the review will be based on evidence, not just opinion. There is evidence to support the conclusions that we come to.

Rona Mackay: Thank you.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I will stay on the same track as other members and stick to my local area. My constituency is home to the largest colony in Scotland of great crested newts, in Gartcosh nature reserve. I know that that is not strictly speaking your area of expertise—

Ian Thomson: Not really.

Fulton MacGregor: My question will keep in line with the convener's point about focusing on the prosecution service. Are you aware of any cases involving the great crested newt that have been taken up by the Crown Office?

Ian Thomson: To be honest, I am not. We have a representative of Froglife on the LINK wildlife crime task force. From recollection, I do not think that he has raised any cases that have gone as far as the Crown Office. I am aware of the colony that you mention, because he has brought that up at meetings.

Mary Fee (West Scotland) (Lab): In our previous evidence sessions, we heard concerns about central marking and whether local knowledge and information about the individuals involved and the services available can potentially be lost. What is your opinion on the central marking of wildlife crime cases? Is there enough understanding and knowledge of the impact of the crime?

I will ask both my questions at the same time. If a lot of evidence is gathered in the lead-up to a case being marked, and the case does not go ahead, is the information shared with the agencies and services involved to help build a picture, so that future crimes can be prosecuted?

Ian Thomson: To answer the first question, there is the specialist unit for wildlife crime, but I am not sure that that would be called central marking. The three wildlife specialist fiscals have districts that they cover: the north, the east and south, and the west, I think. There is thus a degree of local knowledge although I understand that, if

one of the fiscals has a particularly heavy case load, there may be some overlap.

The key is that there is a specialist full-time wildlife unit, which is gaining knowledge with every case. I see that as a positive thing. I would not necessarily call it central marking. It is a lot better than when there were part-time local specialists scattered around the various offices in Scotland.

Could you repeat your second question?

Mary Fee: If a lot of evidence is gathered in preparing a case but the case is not prosecuted, is that evidence and the knowledge that was gained during the investigation shared across all agencies and those involved in wildlife crime?

Ian Thomson: In essence, no. If a case involves birds, the RSPB might be an expert witness or provide an expert report to the Crown Office or the police to assist in the consideration of the case. That will be based either on the evidence in the case or on scientific evidence that illustrates wider issues. The Crown Office will make its decision based on that evidence and any other evidence that the police have. There is no discussion or sharing of knowledge about how the Crown came to make its decision.

We are not for one second questioning the independence of the Crown Office in making those decisions. However, it would be useful if the people on the ground who monitor a lot of the species that are affected and who quite often come across wildlife crime incidents had an understanding of the standards of evidence that the Crown Office needs to consider; its thoughts at the end of the process when a decision has been made not to prosecute a case; the fact that some charges will be libelled and others will not; and potentially even the narration given to the case when it is heard in court. Other NGOs and ourselves are not sufficiently involved in that process.

The Convener: You mentioned earlier that a debriefing with you would help.

Ian Thomson: Absolutely.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): My question is also about evidence. One of the themes from our inquiry so far has been whether there can be more expedient and efficient collection of evidence, particularly from vulnerable or expert witnesses.

Does expert witness input into wildlife crime prosecution happen and, if so, is there any room for efficiency, perhaps through greater use of video technology so that such evidence could be taken in advance or by live television link?

Ian Thomson: As someone who has been a witness in a number of cases, the process can be

fairly tortuous and involve numerous court appearances. A case involving a not guilty plea can potentially involve seven, eight, nine, 10 or 12 hearings before the decision to go to trial is made. That process could be streamlined.

In order to gain knowledge, the RSPB tries to attend every court appearance when an individual is up on a charge. We want to try to learn from the case: we want to hear the comments of the fiscal, the defence agent and the sheriff. Driving to Oban sheriff court without any guidance on the subject of a hearing that is then over within two minutes is inefficient. It is also inefficient for the fiscal, the accused who has to turn up in court and the defence team. Some form of streamlining would be very helpful.

At the end of 2015, the Scottish Government review group on wildlife crime penalties, which was chaired by Professor Poustie, published its report. One of the recommendations was that impact statements—statements on the impact of the crime on wildlife—should be used in court to assist the court's consideration of a case. That would be a very positive move. Wildlife crime can be repetitive—people kill buzzards fairly regularly because buzzards are a common bird of prey. There may not be a need for the same expert witness to turn up and say the same thing time after time. If there were an agreed evidence line that could be used in many of those cases, that would provide some streamlining.

Ben Macpherson: Do you have any indication of the approximate cost of using an expert witness?

Ian Thomson: For us or for the Crown Office?

Ben Macpherson: For both.

Ian Thomson: We do it as part of our role. Our members want the RSPB to prioritise the protection of birds of prey. When we act as an expert witness, we do so on behalf of our members and we do not charge. I do not know the position for other expert witnesses.

The Convener: I will ask a final question. You mentioned productions. Are you aware of delays in trials because a necessary production has not been received, either because it was not collected from the police or was not passed on? That issue has come up in earlier evidence.

Ian Thomson: That has not happened in my experience, and I have been involved in cases with literally thousands of productions.

The Convener: That concludes our questions. Thank you very much for your very detailed and comprehensive responses to the committee.

On 6 December, the committee will visit Edinburgh sheriff court on a fact-finding visit. Our

next formal meeting will therefore be on 13 December, when we will take evidence on the draft budget and continue to take evidence on the Crown Office and Procurator Fiscal Service.

11:58

Meeting continued in private until 12:09.

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

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