



OFFICIAL REPORT
AITHISG OIFIGEIL

Meeting of the Parliament

Tuesday 6 June 2017

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

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

Tuesday 6 June 2017

CONTENTS

	Col.
TIME FOR REFLECTION	1
TOPICAL QUESTION TIME	3
Terrorist Attack on London (Response)	3
Freedom of Information (Compliance)	6
Police Control Room (Closure)	8
CROWN OFFICE AND PROCURATOR FISCAL SERVICE	11
<i>Motion moved—[Margaret Mitchell].</i>	
Margaret Mitchell (Central Scotland) (Con)	11
The Lord Advocate (James Wolffe)	15
Douglas Ross (Highlands and Islands) (Con)	19
Claire Baker (Mid Scotland and Fife) (Lab)	22
Ben Macpherson (Edinburgh Northern and Leith) (SNP)	26
Oliver Mundell (Dumfriesshire) (Con)	28
John Finnie (Highlands and Islands) (Green)	31
Liam McArthur (Orkney Islands) (LD)	35
Stewart Stevenson (Banffshire and Buchan Coast) (SNP)	38
Alexander Stewart (Mid Scotland and Fife) (Con)	42
Mairi Evans (Angus North and Mearns) (SNP)	44
Gordon Lindhurst (Lothian) (Con)	47
Fulton MacGregor (Coatbridge and Chryston) (SNP)	49
Mary Fee (West Scotland) (Lab)	52
Donald Cameron (Highlands and Islands) (Con)	54
The Lord Advocate	57
Rona Mackay (Strathkelvin and Bearsden) (SNP)	60
DECISION TIME	65
GREEN DEAL (CONSUMER PROTECTION)	66
<i>Motion debated—[Ivan McKee].</i>	
Ivan McKee (Glasgow Provan) (SNP)	66
Alexander Burnett (Aberdeenshire West) (Con)	69
Clare Haughey (Rutherglen) (SNP)	71
Mark Ruskell (Mid Scotland and Fife) (Green)	73
John Scott (Ayr) (Con)	74
The Minister for Local Government and Housing (Kevin Stewart)	76

Scottish Parliament

Tuesday 6 June 2017

[The Presiding Officer opened the meeting at 14:00]

Time for Reflection

The Presiding Officer (Ken Macintosh): Good afternoon. Our first item of business today is time for reflection. Our time for reflection leader is Brian Hawkins, a celebrant for the Humanist Society Scotland.

Brian Hawkins (Humanist Society Scotland): Mr Presiding Officer, ladies and gentlemen, I am sure that, following the terror attack in London, we all share the same emotional response, ranging from anger and perhaps hatred all the way through to profound sorrow and devastation. We are also perhaps a little bit confused as to our personal response to it.

We believe that the death of any human being impacts on us all, and therefore we sometimes find it difficult to come to terms with the deaths of people who, until a few days ago, were strangers. Sometimes, we must look to the death of someone close to us to find an appropriate response in those circumstances.

Last year, I lost first my mother-in-law and then my mother. My wife Wendy and I had to clear two houses. It was in the glory hole of my mother's 60-year-old attic that I discovered the old stereo system that I had played in my teens. It was a stereo system from the days when speakers were bits of furniture that had to be wired, amplifiers got hot and turntables were designed with all the precision of a renaissance astrolabe. I decided, of course—maybe as part of the grieving process—to fix it and get it to work again.

I then had a dilemma: what records, what music am I going to play? All of my music catalogue is on my phone. How am I going to choose which music to listen to in an archaic vinyl format? To be honest, I have still not solved the problem, but I knew what the first album I was going to buy would be, in memory of my hero and contemporary David Bowie: his album "Black Star".

"Black Star" is undoubtedly a work of genius, but it is also melancholy and sad because it is so obvious that Bowie knew that he was dying when he wrote and recorded it. Those of us who live without a god and who do not believe in the afterlife pass this way only once. Therefore, it is important that we decide what is important in the lives that we lead. That leaves us with a choice—

our life is full of choices. We can choose, on the one hand, to be a critic, or we can choose to grab the opportunity of our own "Black Star" moments: those moments of intimacy when we can inspire and encourage other human beings.

I know that, to some extent, I am preaching to the converted, as you all entered public life to serve the people of your community and country. However, I challenge you just a little and ask you: what have you done today to make someone else's life better?

In the heat of an election, faced by a calamity like the London attack, it is very easy to forget our humanity and not to spend that moment with another human being, encouraging them to be better, to be themselves and to stand up for what they believe in. Please be encouragers.

I leave you with a quote from the great Terry Pratchett, author and humanist, who died in 2015. He said:

"it is said that your life flashes before your eyes just before you die"—

and that is absolutely right; it does—

"It's called Life."

I was Brian Hawkins of the Humanist Society Scotland. I thank you for your time.

Topical Question Time

14:05

Terrorist Attack on London (Response)

1. Ben Macpherson (Edinburgh Northern and Leith) (SNP): To ask the Scottish Government what action is being taken in Scotland following the recent terrorist attack in London. (S5T-00583)

The Cabinet Secretary for Justice (Michael Matheson): I offer my heartfelt condolences to all those who have been affected by the dreadful incident in London on the evening of 3 June.

Following the incident in London, the First Minister chaired a meeting of the Scottish Government's resilience committee, which included Police Scotland, to consider the impact of the incident and the required response here in Scotland. The First Minister has also received a briefing from the deputy national security adviser. Scottish Government officials are engaged with United Kingdom Government officials to keep the implications for Scotland under review.

As in response to the incident in Manchester, Police Scotland increased the visibility of armed and unarmed officers on the streets in Scotland over the course of the weekend. Events taking place in Scotland over the next 14 days have also been reviewed to ensure that the right level of policing is in place to meet operational requirements and to provide public reassurance. Planning for the general election is included in that review.

However, security measures are only one part of the solution. The responsibility to tackle violent extremism is one that we all share; the most important challenge for us all is to work towards creating cohesive and resilient communities within which the terrorist message will not resonate. In times of adversity, our communities in Scotland have shown that they will stand side by side to send a shared message of tolerance and of unity.

Ben Macpherson: I thank the cabinet secretary for that answer. I am sure that, like his, all our thoughts and condolences are with the London victims, their families and their communities at this time.

Following the terror attack in Manchester on 22 May and the terror attack in London on Saturday 3 June, can the cabinet secretary confirm that the Scottish Government and Police Scotland will continue to work closely and to engage with communities across Scotland to provide reassurance and to ensure that no communities feel marginalised, isolated or vulnerable?

Michael Matheson: Yes, I can. In the wake of the terrorist attack in Manchester on 22 May and the attack in London on Saturday evening, the Scottish Government and Police Scotland have continued to engage with communities across Scotland to provide reassurance and to ensure that no communities feel marginalised, isolated or vulnerable.

Police Scotland continues to monitor hate crime incidents daily and reviews them regularly to identify any significant rise in tensions within communities. I give the member an assurance that the Scottish Government, Police Scotland and other partners will continue to work to ensure that those who might wish to peddle a message of hate or to exploit these situations are not able to do so in our communities here in Scotland.

Ben Macpherson: In the cabinet secretary's first answer, he talked about community cohesion, which is clearly extremely important in ensuring that there is one Scotland, where people live in peace. What action is the Scottish Government taking to ensure that Scotland is a welcoming place for all those who have chosen to make it their home?

Michael Matheson: As a nation, we have a long and proud history of welcoming people to our country—people of various nationalities and faiths—and, as a Government, we continue to be committed to supporting integration into our communities here in Scotland.

It is vital that, as a country, we continue to send out a very strong welcoming message—that Scotland is a place where people are welcome and are particularly welcome if they have chosen to make their home here.

Over a number of years, we have invested in a range of measures to make Scotland a welcoming place, including investing more than £100 million since 2012 in promoting equality and tackling discrimination. We published "Race Equality Framework for Scotland 2016-2030", which is about promoting race equality and tackling racism, and the new Scots refugee integration strategy—the first such strategy in Scotland—ran from 2014 to March 2017.

We have taken those measures to make Scotland a welcoming place, where hate crime has no place. The Government will continue to work with agencies to ensure that that message is taken forward.

Douglas Ross (Highlands and Islands) (Con): I add the thoughts of the Scottish Conservatives to the condolences that the cabinet secretary and Mr Macpherson expressed to those who are affected by the most recent atrocity, and I place on record our grateful thanks for the reaction of the emergency services in London and Manchester.

Earlier in this parliamentary session, there was an uplift in the number of armed officers in Scotland. Although no one wants a further increase in armed officers, what assistance and support will Police Scotland require if such an increase is required?

Michael Matheson: As I set out to the Parliament last June, following an assessment of Police Scotland's firearms capability after the terrible attacks that took place in Paris in 2015, it was identified that there should be a further uplift in firearms capability. Since I made that statement to the Parliament, Police Scotland has been undertaking an extensive training programme to increase its firearms capability, and that work is now at an advanced level.

As the member will have noticed, in the past 10 days, Police Scotland has stepped up its firearms capability to the level that was necessary when the threat level was critical. That demonstrates the capacity that Police Scotland now has, as it was able to step up its firearms capability without requiring any military support to meet the demand.

From the information that Police Scotland has provided to us, I am confident that Police Scotland thinks that its firearms capability is sufficient to meet existing need. However, as with all such things, the matter is kept under constant review. Should Police Scotland think that there is a requirement for change in future, the matter will require to be considered by not just this Parliament but the public of Scotland and stakeholders across the country.

Claire Baker (Mid Scotland and Fife) (Lab): We were all shocked by the attack at the weekend. Our thoughts are with the victims and their families. This is the third terror incident that we have experienced in three months, and it is right that the focus is on the capacity and deployment of our police officers and intelligence services.

What advice can the Scottish Government give to people who might be feeling vulnerable after witnessing the terrible events on Saturday night, who might also have taken strength from watching the concert in Manchester on Sunday evening?

Michael Matheson: An early action that Police Scotland undertook following the terrible incidents in Manchester and London was to deploy specialist officers at our transport hubs, to meet individuals who had travelled from Manchester who had witnessed the events there, or who had travelled from London after witnessing the events on Saturday night, to provide those people with advice and information and to take from them any information that might help to support the investigation. Such information is shared with the lead agency that is responsible for investigating

the incidents—in Manchester that is Greater Manchester Police, and in London it is the Metropolitan Police.

Alongside that, advice is provided on where people can get support from the national health service, through their general practitioner or specialist support, as a result of anything that they might have witnessed. Support is also there for people who have witnessed scenes on social media—I am particularly conscious of that in the context of the incident in Manchester, given the number of young people who were involved and who would have been particularly interested in the concert. Advice has been provided to our local authorities, through our education departments and schools, and to our NHS health services, to ensure that there is an avenue whereby a young person can get the advice or support that they seek. That information was disseminated as widely as possible through our schools and health service.

Freedom of Information (Compliance)

2. **Jamie Greene (West Scotland) (Con):** To ask the Scottish Government what action it takes to comply with freedom of information requests. (S5T-00578)

The Minister for Parliamentary Business (Joe FitzPatrick): Scotland has the most open and far-reaching freedom of information laws in the United Kingdom. We take our responsibility for FOI seriously, and in the large majority of cases we respond on time and in full. The Scottish Government is open and transparent about how it deals with FOI requests. All our guidance is in the public domain.

Jamie Greene: In April, the former Scottish Information Commissioner Rosemary Agnew ordered ministers to improve their performance following a number of “totally unacceptable failures” to respond to requests. She added that she was “dissatisfied” with their performance and would respond with the full force of the law. She launched a formal intervention to force improvements, and responses will be closely monitored until September. What will the Scottish Government do to raise its game while the situation is being monitored?

Joe FitzPatrick: The Scottish Government's performance over recent years is consistently better than the 61 per cent that was achieved under the last full year of the previous Administration. The volume of requests has increased steadily over the years. In 2015, the Scottish Government received 2,155 requests, which represented an increase of 173 per cent since 2007. Even so, a record 1,674 responses were issued on time in 2015, and 1,557 were

issued on time in 2016, whereas just 684 responses were issued on time in 2006.

In recent months, the number of FOI requests has spiked dramatically. We received 777 requests in the first quarter of 2017, whereas we received 524 requests in the first quarter of 2016. By April this year, we had received more requests in 2017 than were received in the whole of 2007. That said, we are committed to improving our response times, and we are working with the Scottish Information Commissioner's office to that end.

Jamie Greene: I appreciate that long list of statistics, but how telling it is that, just 48 hours before we exercise our biggest manifestation of democracy, we have to bring this matter to the Scottish Parliament to question the transparency of a Scottish National Party-led Government.

Last week, journalists from across the political spectrum—from *The Guardian*, *CommonSpace*, *The Times*, *The Courier*, the *Daily Mail*, *The Herald*, *The Telegraph*; I could go on—signed a letter to the Scottish Parliament's selection panel for the next Scottish Information Commissioner in which they outlined a number of concerns about the Scottish Government's use of legislation that undermines openness and accountability. It is clear that that practice is not sustainable in a mature democracy. Does the minister understand the need for transparency? Will the Government commit to addressing all six of the concerns that are outlined in the letter?

Joe FitzPatrick: As I said, Scotland has the most open and far-reaching freedom of information laws in the UK, but we are determined to continue to improve our performance and to make more information available.

Let us compare the amount of information that we release with the amount that is released in the rest of the UK. In the most recent full year—2016—in Scotland, information was provided either in part or completely in response to 85 per cent of valid requests, where the relevant information was held, whereas in the rest of the UK, UK Government departments provided information in response to only 63 per cent of requests. Our regime is widely recognised as being the most robust FOI regime in these islands. The Information Commissioner noted that in her special report, in which she made the point that Scotland is ahead of the international field in this area.

We are determined to continue to work to improve response times, but we release more information than anywhere else in the UK.

Mike Rumbles (North East Scotland) (LD): Does the minister accept that there is suspicion that the Scottish Government is trying to

circumvent the freedom of information legislation by failing to record meetings that it previously recorded, and that such secrecy is not conducive to good government?

Joe FitzPatrick: I think that a question is to be asked tomorrow on that topic, but I can confirm that the Scottish Government proactively publishes lots of information on ministerial engagements—it publishes information on the date, the purpose, the subject and the attendees. That did not use to happen; it was brought in by this Government.

Formal minutes are taken at meeting at which there are discussions on substantive Government business, at which policy decisions arise or at which there are significant action points. That is all in line with the ministerial code.

Police Control Room (Closure)

3. Edward Mountain (Highlands and Islands) (Con): To ask the Scottish Government what the impact will be of the planned closure of the police control room in Inverness and its move to Dundee. (S5T-00577)

The Cabinet Secretary for Justice (Michael Matheson): Decisions on the operation of individual police control rooms are the responsibility of the Scottish Police Authority. Scottish ministers are clear that any such decision must be subject to appropriate assurance, including external scrutiny, to ensure that the impact of any change is fully understood. I understand that a decision on the transfer of control room functions from Inverness to Dundee is now expected to be made on 24 August 2017.

Edward Mountain: In 2015, when the Inverness police control room was last threatened with closure, Her Majesty's chief inspector of constabulary said that diverting calls away from the control room was creating additional risk. Given the recent failings in control at Police Scotland, I am not convinced that the risks have been eradicated. How will the Scottish Government convince the people who live in the Highlands and Islands that the risks have been eradicated?

Michael Matheson: Edward Mountain highlights a particular issue that was highlighted in the assurance review that was carried out, as I directed, by Her Majesty's inspectorate of constabulary in Scotland and published in 2015. He may also be aware that an updated report was published in January this year; it highlighted significant progress and improvements that had been made by Police Scotland in its call-handling arrangements and noted that a significant number of HMICS's recommendations have been discharged as a result: 16 have been discharged,

12 have been partially discharged and only two are outstanding. The report also confirmed that the model that was proposed and is being taken forward by Police Scotland is still appropriate. HMICS continues to be part of the assurance process before any further change is undertaken. It is important to keep in mind that, although these issues were originally highlighted in the 2015 report that the member refers to, a significant amount of work has been undertaken since then and the updated report by HMICS confirms the significant improvements that have been made.

Edward Mountain: History has taught me that, in an emergency, command and control should be as close to an incident as possible. Why does the Scottish Government think that it would be sensible for incidents in Caithness and Sutherland to be dealt with, in the first instance, by a control room in Dundee? That is 240 miles away—it is hardly local. I do not think that the cabinet secretary has dealt with the other problems that were brought up in the report.

Michael Matheson: I can only presume that Edward Mountain was not aware of the content of the report that was published in January, which highlighted the very significant progress that has been made in all these areas. It was undertaken independently by HMICS to look at what is the best and most appropriate model and whether Police Scotland has addressed the issues that were highlighted in the original review report to which the member has just referred. Alongside that, the Scottish Police Authority has its external review of the changes, which reports to the Scottish Police Authority and which has to be agreed on and considered before any final decisions can be made on these issues. The very reason why Police Scotland has moved to the contact, command and control—C3—model is to provide a more comprehensive contact, command and control system than what there was previously with the eight legacy forces. I encourage Edward Mountain to consider the updated report that was published by HMICS in January, which demonstrates the very significant progress that the member seems to have chosen to ignore.

John Finnie (Highlands and Islands) (Green): The issue of local knowledge is often played up quite a bit, but I share the view that this is a backward step for communications. I take considerable reassurance from the role of the inspectorate.

The facility in Inverness remains, and we have been given assurances previously about its role in relation to criminal convictions and vehicle records. Will the cabinet secretary confirm that that is still the position?

I am aware that the cabinet secretary does not wish to intrude on operational police matters, but

does he believe, as a general principle, that when opportunities and technologies exist, public bodies, including Police Scotland, should take the opportunity to disperse jobs to areas such as Inverness and Dumfries?

Michael Matheson: On the member's latter point, I agree that, where there is the technology and the ability to do so, that should be done, as long as there is operational reassurance about the deployment of resources and responding to incidents as and when required.

As the member will be aware, in moving towards the C3 model, Police Scotland was considering establishing the national database inquiry unit in Inverness. My understanding is that it is still Police Scotland's intention that the national database inquiry unit will be largely based in Inverness. However, Police Scotland is also looking at its existing arrangements for national database inquiries at Govan to see whether a partnership arrangement should be in place. My understanding is that that will be considered by the Scottish Police Authority and that in due course it will be decided whether there will be a single national database inquiry unit or two. In either case, some of that provision will be delivered in Inverness.

Liam McArthur (Orkney Islands) (LD): Although I share many of Edward Mountain's concerns, they are just some of the reasons why the Scottish Liberal Democrats did not support the creation of a single, centralised police force, a centralisation proposed by the Conservatives in their manifesto for the 2011 election. Will the cabinet secretary confirm whether, in supporting the creation of Police Scotland, the Conservatives lodged any amendments to the legislation calling for or demanding the retention of the control room in Inverness or control rooms in other parts of the country?

Michael Matheson: I was not the Cabinet Secretary for Justice who dealt with that particular piece of legislation but, off the top of my head, I do not recall any such amendments. However, I think that the member makes a good point because, although the Conservative Party is often keen to criticise the single police force, the proposal was in the Conservatives' manifesto for the 2011 election.

Crown Office and Procurator Fiscal Service

The Presiding Officer (Ken Macintosh): The next item of business is a debate on motion S5M-05982, in the name of Margaret Mitchell, on behalf of the Justice Committee, on the committee's inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service. I call Margaret Mitchell to speak to and move the motion.

14:27

Margaret Mitchell (Central Scotland) (Con): I am pleased to open this debate on the Justice Committee's inquiry and report into the Crown Office and Procurator Fiscal Service, which is the bulwark of our criminal justice system, prosecuting hundreds of cases each day in our courts. The only other committee inquiry into the COPFS concluded in 2003. Since then, reform of the criminal law and procedure has proceeded apace. The committee therefore agreed both that an inquiry into the service was long overdue and to make it our first major inquiry, focusing on the role of the COPFS as a prosecutor. The service's other key role—investigating deaths and carrying out fatal accident inquiries—was looked at by the previous Justice Committee.

The committee took evidence over four months and made visits to Inverness, Hamilton and Edinburgh sheriff courts. It heard from prosecutors and defence agents, the judiciary, trade unions, the police, victim support services and victims themselves. The committee extends its grateful thanks to all those who contributed to the inquiry—it is conscious that, in certain instances, contributing took some courage. I thank my colleagues on the committee for their hard work during the inquiry and the clerks for painstakingly collating the evidence gathered for the report. My thanks also go to the Crown Office itself for its willingness to co-operate with the committee during the inquiry.

The report covers five main themes. In the limited time available, I will merely introduce each theme; others will focus on particular issues.

The resourcing of the COPFS is the first theme. Members heard directly from those working at the coalface: not just prosecutors and admin staff but defence agents. The picture that emerged was of a long-hours culture, with junior staff being used as court fodder and prosecutors frequently facing totally inadequate preparation time. That was reflected in above-average sickness rates and returns from staff surveys that indicated low morale. It was clearly a clearly worrying situation that was aggravated by a large number of

temporary and short-term contracts and temporary promotions, which, in turn, contributed to a reluctance to speak out.

In response to that picture, the Lord Advocate and the Crown Agent stated that staff had been consulted about the changes that were required and that the latest staff surveys indicated that the organisation may be turning the corner. Although that is encouraging, it is early days, and no amount of listening exercises can address fundamental concerns about the adequacy of resources.

The fact is that for a decade there has been a marked decline in real terms in the Crown Office and Procurator Fiscal Service's budget, while both demand and the number of complex solemn cases have been increasing. This year, the COPFS budget has declined further in real terms, and the committee heard with growing concern that the Crown Agent estimated that the service might have to shed about 30 staff to make ends meet.

Quite simply, although the committee notes the Lord Advocate's remarks that this year's financial allocation is a "sound settlement", it considers that staff resilience has been tested almost beyond endurance in recent years. It should not be tested to breaking point.

The report's second major theme is the efficiency of the prosecution system. The committee report states:

"change is necessary before the risks that are undoubtedly embedded in the prosecution system, as presently constituted, begin to crystallise."

That change must reflect inherent inefficiencies in the prosecution system, including the prevalence of churn, which is the postponement or delay of court hearings. It wastes court time and lowers overall confidence in the criminal justice system.

Statistics show that the most common cause of churn is a Crown motion to adjourn because a key witness is not present. There are various reasons for non-appearance. Although the service cannot always be held responsible if a witness fails to attend court, it could do more. First, if the national health service routinely updates individuals by text, surely the prosecution service can communicate in the same way to inform witnesses whether their appearance is required. Secondly, trial dates should not be scheduled when there is little prospect of them proceeding because the Crown is not ready. Thirdly, a rethink is required on how trial evidence is gathered and presented. There is recognition of that—the Lord President has described many of the practices in our criminal justice system as "Victorian".

Members heard that more use could be made of modern technology to capture and crystallise the evidence in advance of a trial and that that would

require cultural change in how practitioners, including defence practitioners, deal with court business. It is clear that the Lord Advocate understands that and that he is personally committed to reform.

Members welcome the on-going work of the evidence and procedure review and the justice digital strategy, both of which are intended to deliver many of the changes that are needed. Crucially, however, the committee expresses concerns about both projects seemingly being open-ended, with milestones set out in the digital strategy appearing to have been missed.

The responses from the Crown Office and Procurator Fiscal Service and the Scottish Government to the committee's conclusions in that area essentially advise the committee to watch this space, indicating promising developments to come. In response, I give notice that the committee will maintain a watching brief on the issue, which is much too important to be allowed to slip, especially given experience with nearly every other public sector technology project.

The third theme that the report covers is the effectiveness of the prosecution service. The bulk of evidence that the committee heard gives the impression that the COPFS is just about managing and is doing its best to prosecute against a backdrop of decreasing resources.

Although the committee has stressed that the public should have confidence in the COPFS, which is, on the whole, a robust, fair and rigorous public prosecutor, it nonetheless issues a stark warning: the strains are already showing.

Summary cases, including cases of antisocial behaviour, dishonesty or less serious violent crimes, which should be the prosecution service's core work, are being underprioritised. The root cause of that is that the COPFS is spreading itself too thinly, especially with the increased priority given to cases of domestic abuse and historical child abuse. Although prioritising such cases is justifiable, evidence revealed that other cases are suffering. Meanwhile, the prosecution of cases such as wildlife crime and health and safety cases indicates that there are some failings.

The evidence on the centralisation of case marking was mixed. COPFS management stated that it had increased the efficiency of the prosecution process. However, there have been adverse unintended consequences, including a loss of autonomy for local fiscals, which has resulted in the best disposal not always being deployed. The response from the COPFS was disappointing, with the Crown Agent appearing not to acknowledge that the loss of local autonomy, perceived or otherwise, can have an adverse impact.

The fourth strand focuses on victims and lay witnesses. The committee was deeply concerned by evidence that the current process leaves victims and witnesses feeling marginalised, with individuals speaking of a lack of contact with prosecutors before a trial and of errors in communication. Some stated that the experience of taking part in the trial process had left them feeling retraumatised and that, frankly, they would not come forward in future.

As a result of the evidence that it heard, the committee questioned whether the COPFS was fully meeting its legal and moral duty of care in relation to victims. While the service's formal responsibilities in relation to victims have greatly increased in recent years, its overall budget has fallen. Absolutely no criticism is made of the victim information and advice service and its staff, who are coping in extremely difficult circumstances.

Dr Lesley Thomson published her "Review Victim Care in the Justice Sector in Scotland" close to the conclusion of our inquiry, and members agree with many of her conclusions. However, the Scottish Government and the COPFS failed to respond to the committee's requests for information about which of the recommendations in the Thomson report they propose to accept, what legislative reforms may be necessary and what the timetable is for implementing the recommendations in both the Thomson review and the evidence and procedure review. I hope that those questions will be answered in the course of the debate.

The final strand that the report covers is the Inspectorate of Prosecution in Scotland, which is intended to be an independent check on the COPFS. It is evident that there is little awareness of the inspectorate's output, which is of grave concern given that it is intended to cover matters of public interest. In particular, the committee heard concerns about the inspectorate drawing so many of its staff from the COPFS. Perceptions matter, and the current arrangements contribute to the perception of the inspectorate's lack of independence. I am disappointed with the lack of acknowledgment of that issue from either the COPFS or the inspectorate.

This is a substantial report on a matter of public interest. I look forward to hearing members' speeches and the Lord Advocate's response to the challenge that the committee has set out in our report, which is to ensure that the Crown Office and Procurator Fiscal Service is robust, flexible and fit for the challenges of the 21st century.

I move,

That the Parliament notes the findings and recommendations of the Justice Committee's 9th report 2017 (Session 5), *Role and Purpose of the Crown Office and Procurator Fiscal Service* (SP Paper 123).

The Presiding Officer: We have plenty of time in hand for extended speeches, interventions and interruptions, should members choose to make or accept them.

It is a pleasure to introduce the Lord Advocate, James Wolffe, to open on behalf of the Government. There is a convention that we allow members who are giving their maiden speech to speak uninterrupted, but I hope that the Lord Advocate will understand that the convention will not apply to him as a Government minister.

14:40

The Lord Advocate (James Wolffe): It is a great privilege and pleasure to speak in the debate as head of the system of prosecution in Scotland. When I was an advocate depute prosecuting crime in the High Court, I came to appreciate that, for a lawyer, no job is more demanding or more important than the prosecution of crime in the public interest.

I am grateful to the Justice Committee's convener for her remarks and I thank her and all the members of the committee for the care that they have taken and the work that they have put into the inquiry. I also thank the members who have taken the view that this is a debate that they should attend. I add my gratitude to that which the convener expressed to all who gave evidence for the inquiry.

I thank the convener for her acknowledgement that, in general, Scotland is fundamentally well serviced by the Crown Office and Procurator Fiscal Service in its core role as public prosecutor. I believe that she and the committee were right to reach that conclusion. Day in and day out across Scotland, prosecutors who are prosecuting cases secure justice for victims of crime and vindicate the public interest in the fair trial of accused persons and the punishment of those who are convicted.

No one in Parliament will doubt the importance of that work. The effective, rigorous, fair and independent prosecution of crime in the public interest underpins our freedom and security. It also helps to keep our people and communities safe from crime.

The effectiveness of the service in fulfilling that core responsibility reflects the skill and commitment of its staff. I was pleased, but not surprised, to read and hear the consistent evidence, which reflects my experience, about the quality of Scotland's public prosecutors and the staff who support them. The service's staff are its greatest asset and I am glad to have the opportunity in Parliament to pay tribute to their dedication, professionalism and integrity.

Douglas Ross (Highlands and Islands) (Con):

The Lord Advocate will understand the discussions that the committee had about the Crown Office and Procurator Fiscal Service when we took evidence on the Scottish Government's budget. He is right to say how important the staff are to the COPFS, so is he worried that continuous cuts to his budget will result in the loss of vital COPFS staff?

The Lord Advocate: I can deal with the point immediately by saying that, although the convener referred to the anticipated shedding of 30 staff during the current financial year, it is important to put staff numbers into context. The service has sought to protect staff numbers, notwithstanding real reductions in resource over a number of years. The service will continue to seek to release resources by making non-staff savings where it can.

The anticipated loss of 30 staff should be put into context. In April 2017, the COPFS staff complement was 1,599, which compares with 1,537 in March 2012. In April this year, there were 520 full-time-equivalent legal staff, as compared with 485 in March 2012. Although the service recognises the challenges that come with the real reduction in resources over time, it has been able to make choices that protect front-line services.

I make the more general point that, like other public services, Scotland's prosecution service has to respond to a changing environment. It has to seek to meet public expectations against a background of public sector funding restraint. I recognise that the committee's report highlights some of the challenges that the service faces. I take those challenges seriously, and I know that the leadership of the service also takes them seriously. Although there can be no room for complacency, I am confident that the service will rise to those challenges. Over time, the organisation has shown a remarkable capacity to absorb and effect change, and it has the confidence to learn from experience.

I will comment on three matters that the committee raised. The first picks up on Mr Ross's question. The service values its staff. I listened to the evidence to the committee about the pressures that the staff are under. The service understands those pressures, which is precisely why it has over time sought to protect staff numbers. In response to two particular points to which the convener referred, I point out that, since the committee took evidence, the service has taken steps to reduce significantly the number of staff who are on temporary promotion and fixed-term contracts. The sickness rate has also reduced since the committee's report was published.

As the committee reports, the service has developed and is implementing its fair futures

project, which aims to promote the wellbeing of all the staff and support their working lives. Since my first day in office as Lord Advocate, I have emphasised the trust that I place in those who prosecute crime in Scotland. The service values its staff, champions their commitment and professionalism and wants them to be confident that they will have rewarding careers in serving the interests of justice in Scotland.

The second point is that the service is committed to improvement and reform, not just in its practices but across the criminal justice system. I am pleased that the committee has endorsed the need for systemic reform.

Liam McArthur (Orkney Islands) (LD): I warmly welcome the steps that have been taken to address the concerns that were raised with the committee about the number of temporary promotions and fixed-term contracts. I am by no means trying to argue the counter, but there is a flipside to that. As a result of the changes that he is—rightly—taking forward with the Crown Agent, does the Lord Advocate envisage there being issues with providing opportunities for newly qualified personnel to come into the Crown Office and benefit from the training and experience that others have benefited from?

The Lord Advocate: I am grateful to Mr McArthur for raising the point about training. Crown Office traineeships are highly sought after. They provide a high-quality experience, particularly for individuals who are interested in court work. I certainly envisage that the service will continue to take trainees.

In the context of reform, the convener spoke of churn. There are many reasons for churn in the criminal justice system. We know that the vast majority of Crown motions to adjourn cases in the summary courts arise because of the non-attendance of a critical witness. That perhaps illustrates the challenge of reforming our justice system, which requires all the necessary people to be in the same room at the same time. Inefficiencies in the system not only impose costs on the Crown and other criminal justice agencies but place demands on members of the public who attend court as witnesses or otherwise.

I am committed to working with others to change the system for the better. Reforms to solemn criminal business in the sheriff court commenced last week. Through the evidence and procedure review, the Crown Office is working with the Scottish Courts and Tribunals Service and others on the reform of summary justice as well as on the justice digital strategy. The service will continue to work internally and with others to introduce changes that might not sound exciting but which will make a practical difference, such as the police witness scheduler, which seeks to manage

effectively the demands that the system places on our police officers.

The third point on which I will touch is the service's support for victims and witnesses. As prosecutors, we cannot do our jobs unless victims and witnesses come forward and speak up. The service led the way in Scotland in acknowledging the need to support victims of crime and, as a society, we have come a long way in a short time in recognising that need. However, we must continue to improve.

The committee reports that

“the current process sometimes leaves victims and witnesses feeling marginalised.”

The evidence that the committee heard demonstrated that, in some cases, the service to victims has not met the standard that the COPFS normally achieves and which it expects of staff. The Crown Office's victim information and advice service, which provides advice and information to vulnerable victims and witnesses, has a significant workload that has substantially increased over time and increased again as a result of the Victims and Witnesses (Scotland) Act 2014.

Oliver Mundell (Dumfriesshire) (Con): Will the Lord Advocate give way?

The Lord Advocate: I will continue for the moment.

The COPFS has responded by undertaking a review of the VIA service. It has implemented most of the recommendations of that review, and the indications are that the immediate challenges that the increased referrals to VIA pose have been met to a significant degree. The COPFS will continue to build on that work and that of the committee to analyse the impact of the changes and the extent of any remaining unmet need that falls within its remit. The service is also considering how it can better obtain feedback from victims so that we can learn from their experience.

The committee's report signals that we should collectively think more broadly about the position of victims. As prosecutors, we understand that vulnerable witnesses and victims of crime—particularly children—sometimes find the experience of giving evidence traumatic and difficult. That is why we are working with others to consider whether we can and should change how we take evidence from children and other vulnerable witnesses and it is why I supported the courts' recent initiative in relation to taking evidence on commission.

The committee recognises that meeting the needs of victims goes beyond what the prosecution service on its own can or should provide. That is why the previous Solicitor General for Scotland, Lesley Thomson, undertook a review

of the provision for supporting victims of crime and why, to build on that review and the committee's recommendations, the service will consider with partners in the justice board what can be done in that regard.

Margaret Mitchell: Is there a timetable for implementing the Thomson review's recommendations and the digital strategy, to which the Lord Advocate referred?

The Lord Advocate: The convener will appreciate that the Thomson review in particular raises a wide-ranging set of questions that need to be addressed through the justice board.

The Crown Office and Procurator Fiscal Service has demonstrated a remarkable capacity to absorb and effect change. It recognises the need for change. It is planning for change and seeks to be a leader of change in the wider criminal justice system. The COPFS is a robust and flexible organisation. In addressing the challenges that are before it, the service will remain resolutely committed to its core responsibility to the people of Scotland, which is to be an effective, rigorous, fair and independent prosecutor of crime in the public interest.

I thank the committee for its work. I look forward to working with it as we seek to effect change in the justice system, and I look forward to the debate.

14:54

Douglas Ross (Highlands and Islands) (Con): I congratulate the Lord Advocate on his first speech in the chamber.

On behalf of the Scottish Conservatives and, I am sure, all members, I want to reiterate points that have been made by the Lord Advocate and the Justice Committee convener, and which were made by almost every witness who came before the committee, about the staff of the Crown Office and Procurator Fiscal Service. Everyone praised them—they praised their professionalism and their dedication.

However, we also heard of the difficulties that COPFS staff face. Many people who are accustomed to working at the front line of the system argued that lack of resources is impacting on the performance of the COPFS. The Edinburgh Bar Association said that its overall impression of the COPFS was of

"an organisation struggling manfully in difficult circumstances"

and that

"The problem that displays itself in every department is under-staffing."

We must ask, in that case, why the Scottish National Party Government, which was aware of the pressures and of the comments from witnesses at committee—because SNP members on the committee also heard those concerns—still decided to implement a real-terms cut to the COPFS budget. Paragraphs 47 and 48 of the report state that the COPFS budget for the 2017-18 financial year has a real-terms reduction of £1.5 million.

Claire Baker (Mid Scotland and Fife) (Lab): Does Douglas Ross share my disappointment at the fact that the cabinet secretary has left the debate, even though one of the key issues that was raised by the committee's report is funding of the COPFS?

Douglas Ross: I might be skating on thin ice if I complain about other members not being in the chamber, but I acknowledge Claire Baker's comments.

As Margaret Mitchell mentioned in her remarks, the Crown Agent told the committee that approximately half the reduction would be met through savings in the staff budget. The Government ignored the evidence from Fiona Eadie of the FDA, who told the committee:

"I fully expect our senior manager to give evidence to the Parliament and say that he can probably just about manage to deliver the same service again with the same money next year."

She then went on to say:

"However, if the committee wants to see the sorts of improvements that we have spoken about today and the standard of service that we all want to deliver and that the people of Scotland expect, additional resources are required."—[*Official Report, Justice Committee*, 15 November 2016; c 41.]

What we got was not a budget for the COPFS with the same money as last year, nor did we get a budget with the increase that staff who are on the front line said would be essential to deliver the standard of service that people in the COPFS want to provide and that the public should expect. Instead, we got a cut from the SNP Government. Ministers shut their eyes and covered their ears to ignore the testimonies that we received as a committee and a Parliament. That reduced budget will not deliver the changes and improvements that we all want to see in the service, and I believe that staff will rightly feel let down by the Scottish Government because of it.

Other issues that came up in our four-month inquiry included much-needed investment in our court system. I listened to what the Lord Advocate said, and we look forward to the digital strategy being implemented. It seems absolutely incredible that, in 2017, cases in Scotland are delayed because the system that the police use to view evidence is different from that which is used by

defence solicitors. The incompatibility of those systems leads to delays and inconvenience for witnesses, and results in a general perception that our court system remains not fit for purpose when it comes to technology. Clearly, that has an impact on the Crown Office and Procurator Fiscal Service.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Without rebutting the point that has just been made, I wonder whether Douglas Ross might care to consider whether there have been challenges with technology for decades, and that perhaps we should welcome those challenges being opened up to the public gaze and engaged with, albeit that we should continue to hold the Government and the COPFS to account for delivering effective change.

Douglas Ross: I fully agree with Mr Stevenson's remarks. It was encouraging that members of all parties on the Justice Committee recognised not only the opportunities but the difficulties in achieving some of the outcomes that we hope to see from digital improvement in our court system.

The committee heard from bar associations about court closures having an impact on the amount of scheduled cases that end up not being heard. Witnesses are cited and give up their time to attend court only to be told that the case is not proceeding. Again, that portrays a poor image of our system. We also heard that witnesses who are turned away after turning up for a court case might be deterred in the future from reporting crime because of the experience that they faced in respect of giving evidence in relation to an earlier crime.

Communication, or a lack of it, was highlighted by witnesses and solicitors. Defence solicitors told the committee how they have been unable to speak to prosecutors before cases because of a centralised call system that seems to work for no one. I welcomed the assurances that that is being improved, but it is worrying that the issue had to be raised at committee, having previously been highlighted regularly by defence solicitors and staff in the Crown Office. At least we are now starting to see possible improvements.

Witnesses and victims told us of their disappointment about the lack of communication that they received before, during and after court appearances. Again, the problem seems to be rooted in the fact that there are too few staff, under too much pressure.

Margaret Mitchell mentioned centralised marking and churn in our court system. From the large report, I can concentrate on only a few issues, but I know that other members will want to discuss that more fully.

The committee asked each witness about the Inspectorate of Prosecution in Scotland. The most common response that we received from witnesses—people who are inextricably involved in this area—was that they had never heard of the IPS or were unaware of its work. The inspectorate oversees the work of the COPFS, but is seen as being almost anonymous.

The Scottish Borders Rape Crisis Centre representative stated:

"I have no awareness of IPS."

The Scottish Police Federation said:

"The Scottish Police Federation is not aware of the IPS and cannot comment on its resources or effectiveness."

An individual witness to the committee said:

"I have never heard of the Inspectorate of Prosecution."

Even more worryingly, the Sheriffs Association said:

"We do not receive information about the IPS or its practices."

Although I welcome the comment by the current chief inspector of prosecution in Scotland that the IPS is aware that it needs to improve its profile, it is a poor reflection on a body that was established in 2003 that it has such a low profile in respect of the vital work that it does.

I thank Margaret Mitchell for her stewardship of the inquiry and I thank all the witnesses who gave evidence. The committee concluded that Scotland is fundamentally well served by the Crown Office and Procurator Fiscal Service, as a public prosecutor. There is more to do, though, and Conservative members will monitor the Crown Office and the Scottish Government's response to the inquiry, and whether we get the very best outcome for everyone who works in the COPFS or uses that vital service.

15:02

Claire Baker (Mid Scotland and Fife) (Lab): I thank the Justice Committee for its inquiry report and for the debate.

During the afternoon, it is important to remember the following quotation from the executive summary of the report:

"During almost five months of evidence-taking, the Justice Committee heard praise for the COPFS, its professionalism and its dedicated, hard-working staff. On the whole, the public should have confidence that it is a rigorous and fair prosecutor."

Nobody today can be in any doubt about the dedication of the staff working at the Crown Office and Procurator Fiscal Service. As a committee substitute, I attended a meeting at the Crown Office at which we received valuable evidence,

with discussions ranging from cybercrime to victim support to domestic abuse. We all saw how hard the COPFS works.

We all acknowledge and appreciate the role of the COPFS in ensuring that justice is served throughout Scotland, but we must remember the line in the report that followed, which said that

“the service remains under considerable pressure. There can be no room for complacency.”

That is why the debate, the inquiry and the report are important. By the end of the afternoon, we must be confident that the Crown Office and Procurator Fiscal Service has the support and resources that it needs. We need to hear commitments from the Lord Advocate and the Scottish Government that will give us that confidence.

According to the prosecutors’ union—the FDA—the COPFS’s funding has decreased by more than a fifth in real terms, and posts will be reduced. Court closures have taken place, more complex and historical cases have been brought forward, and the law is ever evolving and reforming, all of which have consequences.

At the start of the year, I released statistics from the Scottish Courts and Tribunals Service that highlighted the impact that those changes are having. The number of trials being adjourned due to lack of court time has increased by 66 per cent. Following the recent court closures, there has been a 2.2 per cent decrease in the number of days of court sittings in Scotland, a 59 per cent increase in jury trials, and a 30 per cent increase in summary trials called. There has also been a real-terms cut to the Crown Office and Procurator Fiscal Service. The rationalisation of courts was inevitably going to lead to more pressure on courts that are still operating. Concerns about that were raised in evidence from the Edinburgh Bar Association, the Aberdeen Bar Association and others.

I appreciate that a degree of churn is inevitable—other members have spoken about that—but the numbers of adjournments and delays are going in the wrong direction. The problem is worsening, not getting better, and the issue is for not just the court services or the Crown Office, but for the Government, as well. There must be co-ordinated action from all to address it.

I recognise the recent and planned changes in response to the committee’s report that the Crown Office has said will improve the situation. The committee’s report makes a number of recommendations that are directly related to the efficiency of the prosecution service, from the recommendations on dealing with churn to those on witnesses not attending and better case

management. Improvement in all those is needed in the interests of victims and the public purse.

As Margaret Mitchell highlighted, the increased pressure on the Crown Office has led to debate about priorities and decision making. I know that members and the Government take domestic abuse seriously. I welcome the positive work that Police Scotland and the Procurator Fiscal Service have undertaken in recent years to tackle such crime, and I look forward to working with the Cabinet Secretary for Justice as he takes his Domestic Abuse (Scotland) Bill through Parliament, but throughout the committee inquiry, I was struck by the profile that was given to domestic abuse by the committee and the media coverage of the inquiry. It has to be said that some of that was unhelpful. For example, we heard court cases being described as a “rigmarole” and a “charade” and that the police would

“hoover up everything in the hope we miss nothing.”

I appreciate that the issue is an emotive one, so I urge all politicians and people who are in senior positions in the relevant organisations to discuss it sensitively. I am not opposed to witnesses asking difficult questions to challenge how things are done, but we must ensure that evidence is robust. Anecdotal evidence was routinely used, which at times risked undermining the progress that has been made in tackling the crime of domestic abuse. The conviction rate for domestic abuse is upwards of 80 per cent, and we know that the number of people who have been convicted has increased in the past five years, so we can be confident that the work that is undertaken by our police and the Procurator Fiscal Service is changing, and that significant progress is being made in recognising domestic abuse as a crime.

However, it is clear that there are other areas that still demand our focus and attention. Only 12 per cent of reported rapes and attempted rapes make it to court in Scotland. That statistic indicates that the system is not working: some 88 per cent of reported rapes fail to make it to court. We have seen from a recent landmark case that serious questions can be raised about the Crown Office’s decisions not to proceed with some such cases. Given recent rulings, there is concern that more rape victims might take their actions to a civil court, because they feel let down by the current criminal court system. By doing so, they would give up key protections, including anonymity. Rape should always be treated as a criminal matter, and the Crown Office and the Scottish Government must make it clear that they believe that that is the case.

The committee’s report makes several recommendations that I hope the Crown Office and the Government will take seriously. I appreciate that although the Lord Advocate

viewed the budget for the year ahead as a “sound settlement”, much of the evidence that was received in the inquiry seems to indicate that that is a minority view. The committee heard that staff are expected to work under increasingly difficult financial circumstances. I appreciate the Lord Advocate’s statement this afternoon about the value that the Crown Office places on its staff, but we expect job losses to come down the line. We know from the inquiry that there are staff on short-term contracts, long-term temporary promotions and sick leave, and I share the committee’s concern that

“a lack of preparation time means that time limits in solemn trials are being ‘routinely’ exceeded”.

That must be addressed. I accept from the Crown Office’s response to the committee’s report that it recognises that that situation is unsustainable. I hope that the measures that it has suggested to address some of the issues will be implemented quickly.

I stress the committee’s view that the serious failings that victims of crime have mentioned are unacceptable. As the convener of the Justice Committee suggested in her opening remarks, those failings include

“a lack of communications, misinformation, delays and adjournments”.

Special measures that were requested were inadequate, and victims did not always feel secure outside the courtroom. It is a serious failing that those experiences have led some people to reflect that, if they had understood what they would have to experience, they would never have reported the crime in the first place, so we need action to ensure that that is not the case in the future.

I would also like greater progress in provision of measures to meet the needs of children and young people. I recognise the cabinet secretary’s commitment in that area, but I share the committee’s view that clarity about a publication date for the evidence and procedure review is important in moving the work forward in an informed and co-operative manner.

The report is wide-ranging and, although today’s debate is important, there is much in it to reflect on and to take forward in Parliament. The Crown Office and Procurator Fiscal Service has a difficult job: it performs that job well. We must be watchful that the pressures and challenges that the report has identified do not weaken the Crown Office and Procurator Fiscal Service, and that confidence in this crucial service is maintained.

The Deputy Presiding Officer (Christine Grahame): We move to the open debate and, as members are aware, we can be generous with time.

15:10

Ben Macpherson (Edinburgh Northern and Leith) (SNP): Like other members, I thank those who came to the committee to give evidence, my fellow committee members and the clerks for their assistance during the inquiry. The convener and other members have spoken about many of the substantial issues in the report. I will highlight a few issues that are of particular significance to me.

The inquiry into the Crown Office and Procurator Fiscal Service was timely and important, and it has highlighted numerous areas in which change and improvement can and should be made. At the same time, it has shown that the public can and should have confidence that the COPFS is a rigorous and fair prosecutor and that, fundamentally, we are well served by all those who are involved in our criminal justice system.

In Scotland, crime and the fear of crime have fallen. Recorded crime is at its lowest level for 42 years and the reconviction rate is at its lowest in 18 years. Nevertheless, progress is still required. We need to make our communities safer; therefore, I support the Scottish Government’s agenda for a strategic approach to justice that tackles offending and is effective in preventing crime and reducing reoffending.

A key focus of the committee’s inquiry was

“The effectiveness and efficiency of the COPFS, and how well it works with other stakeholders in the criminal justice system”

and beyond. That is an aspect of the COPFS’s work that I have seen in practice and have been involved with at a local level in the constituency that I represent.

Working to tackle pertinent issues of youth crime in north Edinburgh, the Crown Office and Procurator Fiscal Service has recently collaborated and engaged effectively and purposefully with the local community. That has included constructive engagement and partnership working with the local authority, local police and third sector organisations—predominantly those that are engaged in youth work. Proactive action by the COPFS has created a collective understanding between all parties of the shared objectives of tackling crime in the community and diverting young people from engaging in crime.

During our inquiry, the committee heard that the COPFS should embody an approach of striving

“to provide a joined up and complementary service that helps meet the ends of justice”.

In my experience, the COPFS does that meaningfully and effectively. Creating links with communities and multi-agency work are part of achieving our shared ambition of safer communities and, although there is still much work

to do, I am grateful for the difference that the COPFS has made in that regard in reducing crime in north Edinburgh.

In my direct experience as a constituency MSP and throughout the evidence that the committee took, it has been clear that the COPFS is well served by a dedicated, highly professional and hard-working staff who do an excellent job in sometimes challenging circumstances. However, some of those who gave evidence rightly and powerfully highlighted the recent challenges that the service has faced during the years following the financial crisis of 2008, including overwork, an overreliance on short-term contracts and the loss of some experienced staff. I believe that we must use the report in considering how we move forward.

Recent feedback from COPFS staff has shown that improvements are being made for those who work in the service. The most recent staff feedback, from 2016, shows evidence of improvement that reflects the significant efforts that have been made over the past two years to consult colleagues during a period of organisational change. For example, 60 per cent of staff reported that they wanted to stay with the COPFS for at least the next three years. That figure is up by 6 per cent and is 17 per cent above the civil service average. In addition, 92 per cent of those who were surveyed reported that they are interested in their work. Many other figures are available in the evidence that the committee took. What is more, it was encouraging to note that COPFS staff numbers have increased since 2012. As of 31 October 2016, the COPFS had 1,601 members of staff, which was a modest increase on a staffing complement recorded as being 1,537 on 31 March 2012. Again, more figures are available in the evidence.

There has recently been an increase in the number of deutes and senior deutes. That brings me to the subject of trainee solicitors, which Liam McArthur rightly highlighted in an intervention and I pursued when taking evidence in committee. As the Lord Advocate stated in an answer to me, “You cannot knit deutes.” It is important for the COPFS, as it moves forward, to endeavour to retain top young talent as it comes through and to follow through on a determination to recruit new people to the service.

In the early days of the recession, the COPFS undoubtedly faced a period of difficult choices on retention, but I was reassured by the statements from the Crown Agent and the Lord Advocate that they are committed to recruiting the brightest and best trainees into the service and that they will seek to ensure that there are opportunities to retain those trainees so that they become the deutes of the future.

The committee heard compelling evidence on the need for greater harnessing of digital technology. I am glad that the Lord Advocate and the Crown Agent both expressed enthusiasm for greater use of video technology, whether in the context of a live link or in the giving of prerecorded evidence. That provides the COPFS with the capacity to avoid unnecessary costs and inconvenience as part of its process of transformational change. In particular, I welcome the comments from specialist witnesses, whom we want to encourage to give evidence on the basis of their expertise and on whom changing court dates and travel costs can have a significant impact.

As I stated at the beginning of my speech, the committee’s inquiry has been important. It has shown us that the COPFS is well served by dedicated, hard-working staff; that improvements are on-going; and that, as feedback has shown, progress is being made. I have highlighted specifically how the Crown Office and Procurator Fiscal Service can work collaboratively—particularly with communities—and how that type of joined-up approach can enhance the Government’s agenda. It fits in with the ambition of all of us to have a strategic approach to justice that is more effective in tackling, preventing and reducing crime.

Just as joined-up work in the community can help us to make our communities safer, so can collaborative effort in the Parliament. I therefore welcome the generally collaborative spirit of the debate. Although, unfortunately, Douglas Ross made a few political points—call me cynical, but I appreciate that there is an election coming up in which he may have an interest—I hope that collaboration will be the tone as we go forward.

I look forward to working with fellow MSPs, the Scottish Government and the Crown Office and Procurator Fiscal Service to make greater progress on the issues that have been raised in the committee’s report and to improve our justice system for the benefit of all.

15:19

Oliver Mundell (Dumfriesshire) (Con): Although I am not involved in any elections this week as an individual, I will make a number of political points because I think that the report has highlighted questions both for the Scottish Government and for the Crown Office, and not to focus on some of the more negative aspects that the report has raised would be to do an injustice to the many witnesses who came forward.

I thank the witnesses. It has become apparent to me, through this first major report from the Justice Committee, that it would be impossible to

do this kind of work without hearing from the people who face these issues day in, day out. That is why it is with sadness that I place on record my disappointment that we did not get to hear from any of the local procurators fiscal and that even those who had recently left the service were willing to give evidence only under the condition of anonymity.

Although it might not be the case, it creates a worrying perception that some staff felt that they had been gagged and were not comfortable about speaking out because they feared that it would bring disfavoured. That seems to substantiate some of the other concerns that have been expressed about a top-down culture at the Crown Office and Procurator Fiscal Service. I recognise that we have a new Lord Advocate and a new Crown Agent and that new directives have been issued, but there is still cause for concern if staff feel that way.

John Finnie (Highlands and Islands) (Green): I accept that that was the member's perception of what he heard. However, does the member accept that, in speaking to the staff association and the trade unions, we were offered the opportunity to have some of those concerns raised directly with us?

Oliver Mundell: I fully accept John Finnie's point. It was very helpful to hear from them. However, given some of the issues—which I will address—around the loss of autonomy that some fiscals feel has occurred in recent years because of other changes, it would have been helpful if we had heard from them directly and if the public had been able to watch those evidence sessions and make their own judgments.

Some of the issues that people have in that area are around the move towards greater centralisation. The justice system has indeed been transformed, but I am struggling to see how it has been transformed for the better in some areas. We are talking about improving the service, but it is impossible to say that closing courts across the country, for example, would contribute towards that.

It is true that, for some stakeholders, increased centralisation has been well received. The creation of the national sexual crimes unit in 2009 is a case in point. Both Scottish Women's Aid and Rape Crisis Scotland feel that the new unit has led to cases being handled better as well as to more strategic and joined-up working at a policy level, with the views and interests of victims being better taken into account. However, there is also a less positive side to centralisation. It was concerning to hear that the central case marking system has eroded the autonomy of local fiscals. The loss of local decision making has led to many decisions being passed up the chain to senior management

and further away. I, for one, am a great believer in justice being done and being seen to be done locally, and there are clear disadvantages in moving away from that.

Above all, centralisation means that senior management are being overworked, which hampers their ability to make effective judgments on cases. It also means that the skills, expertise and professional judgment of the procurators fiscal are being underutilised, and that does not marry up with the Lord Advocate's confidence in his staff, which we have heard him express. It has set a very worrying precedent. As Derek Ogg QC, from the Faculty of Advocates, put it while referring to some specific types of cases:

"It is a bit like an arrow leaving a bow—once someone has made a decision somewhere, no one wants to interfere with the decision and it just rattles on down the track, sometimes ending up in court by accident, rather than design."—[*Official Report, Justice Committee*, 15 November 2016; c 48.]

It is worrying that a QC in our justice system has such significant concerns.

The move towards centralisation has created a risk-averse culture, with local fiscals feeling that they cannot challenge decisions that are made from above. As the committee said in its report, for some local fiscals,

"this even meant having to run cases against their own professional judgment."

That is a sad state of affairs. If it persists, there is the potential for public confidence in the justice system to be undermined.

It could be argued that the Crown Office and Procurator Fiscal Service's work has not been made easier by new legislation and directives from the Scottish Government. I very much welcomed the Victims and Witnesses (Scotland) Act 2014, as did a wide range of stakeholders—it is a landmark for victims' and witnesses' rights. However, we cannot deny that the reform has brought about unintended consequences, which have placed additional strain on parts of the justice system.

What is most disappointing is that those strains and pressures were predictable. Given the evidence that the committee heard, it is not clear that all the necessary resources were put in place to enable the smooth introduction of measures in the 2014 act. In particular, the victim information and advice service's resources have been overstretched and limited in the wake of new legislation. In the past seven years, the number of referrals has risen sharply, by around 45 per cent, and the Thomson review estimated that there will be an additional 4,000 referrals due to new legislation.

I am concerned that there is a perception that the VIA service will struggle to carry out its full

range of responsibilities. Victim Support Scotland said:

“The time and resources of VIA seem to be taken up with the additional administrative work that has resulted from the automatic entitlement to special measures for specific categories of witnesses. The result is that many witnesses are not being provided with the measures that they need to support and protect them from the trauma of giving evidence.”

It is clear that lessons need to be learned. New legislation can function effectively only if it is properly resourced. In the future, the Scottish Government and the Parliament must be more mindful of what new legislation will mean in practice and what additional strain it will put on service delivery by a service that has had cuts in its budget.

I urge caution against another round of wide-ranging, transformational change. The justice system is still adapting to centralisation and we are still struggling to take many key stakeholders along with us. The system is also still adjusting to the added pressures of new legislation and directives. To call for more transformational change on top of all that would be unwise.

I am afraid that, sometimes, it seems as though we hide from the challenges that we face in the present by promising change in the future. We are taught that change is constant and must always be embraced, but there is a danger that we are hiding behind the message of transformational change rather than facing up to the fact that constrained resources and some stakeholders’ negative perceptions are holding back the delivery of justice.

We must remember that change is easily promoted but not necessarily easily delivered and that transformational change does not always transform the fortunes of institutions. Although the Crown Office is good at managing and embracing change, throughout the inquiry I got the sense that change fatigue is starting to kick in. We must allow more time for the recent changes to bed in, or how will we know what has worked and where change will be required in the future? We must give more thought to how new legislation will be applied and resourced, or how will we anticipate the unintended consequences and additional workload that will be associated with it?

15:29

John Finnie (Highlands and Islands) (Green):

I join colleagues in thanking those people who contributed to our report. I am pleased that the Lord Advocate is present, as it means that I can thank him for his response.

At this morning’s meeting of the Justice Committee, we took evidence from the Crown

Office and Procurator Fiscal Service on the Domestic Abuse (Scotland) Bill. This is a law-making building, and if the Scottish Parliament decides to pass that bill, it will be sending another load of work in the direction of the Lord Advocate and his colleagues.

I took reassurance from what the Lord Advocate said about the Crown Office and Procurator Fiscal Service’s ability to “absorb and effect change”, and everything that the committee heard supported that point of view.

I want to talk about the COPFS’s workload and the approach to it. Our report mentions that 225,500 reports were sent to the COPFS last year. We know that reports are allocated for marking. The committee discussed the issue of central marking, which I will touch on. We need to consider the various options and their consequences. A report could be marked for no proceedings if it appears that no crime was committed, if there is insufficient evidence or if it would not be in the public interest to proceed. We know that the opportunity exists to challenge a decision not to proceed.

One of the more interesting discussions that the committee had was on the role and responsibilities of the COPFS and the use of the terms “victim” and “complainer”. As a former police officer, I am very familiar with the term “complainer”; as a politician, I am conscious that colleagues from across the parties rightly want to talk about the support that is provided for victims.

The discussion about those terms became a feature of our consideration. In paragraph 214 of our report, we say:

“The issue is not therefore one merely of terminology but gets to the heart of the COPFS’s relationship with victims and witnesses.”

The Scottish Criminal Bar Association told us that the COPFS is “not the complainer’s lawyer”, and that the pendulum had swung too far, to the extent that the COPFS is being seen as the victim’s lawyer. However, as our report says, the COPFS

“does not give legal advice to victims, it does not accept instructions from them, and it does not prosecute on their behalf.”

The role of the Crown is to act in the public interest. As the report notes,

“The Lord Advocate’s prosecution policy on domestic abuse was seen as one area where this was being played out in practice.”

That said, victims tell me that they did not have a lawyer in court, so there is clearly an issue there. As our report says, in paragraph 216,

“On the other hand, in any effective prosecution system, victims and witnesses must feel valued and involved.”

The report also quotes Scottish Women’s Aid:

“COPFS’ role encompasses not only its human rights obligations but also those imposed upon both them and the State by the EU Directive on the rights of victims in criminal proceedings, intended to ensure participation of victims and witnesses, and which is incorporated in Scots law ... via the Victims and Witnesses (Scotland) Act 2014”.

A complex set of relationships must be satisfied. We know that, in 2015-16, proceedings were taken against more than 116,000 people. When a case is marked for prosecution, a decision must be taken about whether to use solemn or summary procedure. There have been changes in that regard that are connected with court reform.

An accused has the opportunity—which is not always taken—to plead guilty at an early stage, and that can shape workload and proceedings. There are other things, such as pre-trial hearings, to determine the state of preparedness of both sides. In the course of our inquiry, we became aware that many well-meaning proposals were not always bearing fruit, even though they are to be commended. Of course, the trial can take place over several dates. “Choreography” was a term that the Crown Agent used in relation to all those things coming together.

I want to talk about what is required to make the system effective; the Lord Advocate touched on that. The role of the citizen is to assist the police with the prevention and the detection of crime, and to co-operate with the COPFS and defence lawyers. The citizen must also participate in the process, when required. To put it simply, that means turning up. There is nothing new in the non-appearance of accused persons and witnesses, but we must have clarity on the citation of witnesses, which has changed over the years. I sat through one trial in which there was dubiety as to whether the individuals had been cited at all.

I take a fairly light approach to crime and punishment, but salutary sentences are needed for those who fail to attend, which disrupts our entire criminal justice system and brings about churn. I took some reassurance from what the Lord Advocate said about the witness scheduler, if I noted that correctly.

I reaffirm the level of praise that we have heard from many colleagues for the service’s professionalism, dedication and hard work. We have heard it once, twice and on a number of occasions, and that praise is consistent with my personal experience of dealings as a parliamentarian. The report says:

“On the whole, the public should have confidence that it is a rigorous and fair prosecutor.”

That is a real endorsement—it is what we want in any liberal democracy.

We heard that the service remains “under considerable pressure”. The public sector remains

under considerable pressure and there is a growing workload.

The phrase “access to justice” is much used, and some colleagues have talked about the term “local justice”, which ties in with understanding communities and priorities in communities. I have heard that raised not just in relation to the COPFS, but in relation to the police. What is not a big issue in the central belt can be a significant issue in a rural community, particularly in such matters as drug use. There must be awareness of that issue, and I am sure that that will have been picked up on the back of our report.

The committee touched on alternatives to and diversions from prosecution, where appropriate. We need to have adequate alternatives that those who dispense justice or make decisions understand and have confidence in.

The report lists issues that have the potential to disrupt proceedings and which are outwith the COPFS’s control—for example, a suspect who intimidates witnesses pre-trial needs robust police intervention. On the question whether it would be appropriate for people to be liberated, I speak as someone with a presumption in favour of liberation, but we sometimes need to understand the implications.

We heard about court facilities that discourage witnesses. We have a lot of old buildings that were not designed with the wellbeing of witnesses at the forefront of people’s minds. New facilities are planned, such as the new court for Inverness, with multi-agency involvement.

Delays in key evidence from other agencies, particularly forensic reports, can hold up cases because of challenges over funding or specialisms.

Legal aid has been mentioned, and the committee welcomed the fact that there will be an independent review of legal aid that I think will address some concerns.

The question of agreeing evidence in advance was looked at, including minutes of joint agreement and uncontentious evidence, but we found out that what one person thinks is uncontentious, another thinks is contentious—there has to be clarity on that question.

Case management is very important, and the report talks about a pilot project that was run under the authority of the Lord Justice General to streamline solemn procedure. The committee was advised that that approach led to more cases either being settled or proceeding to trial earlier; if there are opportunities for that, that is what we would like to see.

I presume that the Presiding Officer will tell me to stop at the appropriate time. I want to touch

briefly on domestic abuse, sexual crimes and child abuse. We have seen the very best of the COPFS in those areas. Specialisms have developed and there has been co-operation with the police over those matters and in some of the historic cases. That has been extremely positive.

My dealings with the service have invariably involved contact about things that have gone wrong, from the point of the view of constituents. The outcomes were not always what constituents might have wanted, but the matters have always been dealt with very professionally and the engagement has always been positive. Plea bargaining is another issue that sometimes arises when we deal with constituents. However, the report states that a degree of churn is an unavoidable fact of life—that is the reality of the situation.

Ben Macpherson referred to training for fiscals. The committee heard from two fiscals who had left the service and who could not speak highly enough of the level of training that they had received, which is very reassuring to hear. We also heard about the justice board and the collaborative working that takes place there. We see a role for the Scottish Courts and Tribunals Service in issues around support for witnesses.

A lot of good information came out of the inquiry. I, for one, always want to be positive about things and we heard that the COPFS is a professional and dedicated organisation. I will finish on that point.

The Deputy Presiding Officer: I note that we have spare time for the debate, but politicians have no difficulty in filling up such time. The challenge is now Mr McArthur's, as I call him to speak. He will be followed by Stewart Stevenson, who we know can talk for Scotland—that is not an insult.

15:40

Liam McArthur (Orkney Islands) (LD): I am not sure how much of your generosity is left, Presiding Officer, but I will try not to abuse it. I start with an apology to you, MSP colleagues and the Lord Advocate, whom I congratulate on his debut speech, because I need to catch a flight back to Orkney this evening and so will not be able to stay until the end of the debate.

On a positive note, I join others in thanking all those who assisted the Justice Committee in the completion of our inquiry into the Crown Office and Procurator Fiscal Service. The inquiry took the best part of a year, involved a vast amount of written and oral evidence, and covered the ground pretty thoroughly. Everyone we heard from helped to contribute, but I am particularly grateful to the victims who shared with us their experience of the

justice system. Their testimony, along with other evidence that was presented to us, suggested that although improvements have been and are being made in the support that is provided for victims and witnesses, gaps still remain. For example, provision of support for children and vulnerable witnesses is not yet as consistent as we would like it to be, and communication and updates on cases can be patchy, absent and, as we heard, even incorrect at times. That area will require on-going attention, not least through the digital justice strategy, which I will return to later.

Since our report was published, some stakeholders have expressed surprise to me that the committee was not more critical in its findings. However, I think that we identified fairly areas in which improvement is needed—many colleagues have rightly touched on that—and in which the performance of the court system and wider justice system still fall short of meeting the needs of victims, witnesses and others. At the same time, the committee was right to acknowledge the steps that have been, and are being, taken to address some of the concerns that were raised with us. That is an example of how the work of a parliamentary committee and its ability to shine light on an issue can facilitate and, at times, accelerate action being taken.

For that, the Lord Advocate and the Crown Agent, who I know is in the chamber, deserve credit. They will certainly have their work cut out over the coming years to deliver greater efficiency and effectiveness. However, they have already shown a willingness to respond. On staffing, for example, we heard, frankly, horror stories at the outset of our inquiry about endless temporary promotions and fixed-term contracts, which was apparently a revolving door through which skilled and capable staff were being lost to the service; and about morale and sickness levels that should have had alarm bells ringing. To his credit, when the Crown Agent was confronted with that evidence, he did not seek to duck the criticism of what was, by any measure, a flawed and short-termist approach.

In the COPFS's response to the committee's report, we have seen confirmation of a move towards permanent contracts for existing and new recruits. I warmly welcome that change of heart, given the challenges that lie ahead, not least those around tightening budgets and ensuring that staff are valued and looked after appropriately, which will be all the more important. Similarly, the concerns that many of us had about the centralised marking of cases appear to have registered, at least in part, because there is still work to be done. Local expertise and insight, whether about the individuals or circumstances involved in particular cases, or the alternatives to custody that are locally available, need to be fully

factored in if justice is to be properly and consistently served across the country. A more regionalised approach to marking cases now appears to have been adopted. I hope that the Lord Advocate and his colleagues will keep that under review over the coming months and years.

The final example of where I think that we have seen movement over recent months relates to domestic abuse. Differing views were expressed about the impact of the joint protocol. Although we all agree that a zero-tolerance approach to domestic abuse is essential, there were concerns—we heard them again at today's committee meeting—that that might have led to, in effect, zero discretion being available to attending police officers.

The Crown Agent, in his response to our report, restates—quite properly—the service's determination to ensure that domestic abuse is “prosecuted robustly”, but confirms that a revised fourth protocol, which was launched in March, underscores that police should charge and report only where there is sufficient evidence. I hope that that helps to address the concerns that we heard without giving any succour to those who carry out such heinous crimes.

Before concluding with some observations about churn, which a number of colleagues have referred to, I will make a couple of more general comments. In the Government's response to our report, the cabinet secretary refers to plummeting crime levels and rates of reoffending. However, as I said in a debate last week, we do not know what the true levels are of, for example, cybercrime. It may well be that we are seeing a displacement effect, with many crimes simply moving online.

On reoffending rates, the Scottish Liberal Democrats strongly support greater use of community payback orders and other robust community-based measures. Those are often less costly and more effective than prison sentences. I urge the cabinet secretary, who I hope is watching the debate from a distant part of the building, to stop prevaricating and to act now to introduce a presumption against prison sentences of less than a year—in line with the evidence, in line with the independent experts and in line with the results of the Government's consultation on the issue.

As a brief aside, I urge the Crown Office to look more seriously at wildlife crime. Post-prosecution briefings with third-party stakeholders, which were recommended in the Government's 2008 report “Natural justice: A joint thematic inspection of the arrangements in Scotland for preventing, investigating and prosecuting wildlife crime”, are not being fulfilled. The recently dropped prosecution on a raptor poisoning on the Newlands estate bears that out. That is simply not good enough.

I turn to churn. The issue remains a serious problem for the service and the operation of justice in this country. The reasons for it are many and varied, and the solution is neither simple nor straightforward. However, much rests on delivery of the Government's digital justice strategy, which appears to have been somewhat delayed. Given the problems that we have seen recently in a variety of projects from farm payments to police information technology systems, an argument can be made for a cautious approach. Perhaps that should be to underpromise and to overdeliver.

The evidence and procedure review lies at the heart of creating a summary criminal justice system fit for the 21st century. With effective digital case management—involving all relevant agencies—we should be able to ensure that cases focus on the areas of dispute, although I take John Finnie's point about whether that can be achieved in all instances, and the citation of witnesses on that basis.

However that is delivered, we must move away from a process that, at present, affords the wastage of too much time, money and emotional energy and adversely impacts on the experience of victims, witnesses, the accused and, of course, taxpayers.

There are real strengths in our prosecuting service. Time and again, the committee heard that the quality of staff employed across the service is second to none. However, the challenges that lie ahead cannot—and should not—be underestimated. We have seen welcome changes but much more is needed, and the committee has a role in keeping feet to the fire. I am grateful to the convener for confirming as much in her opening remarks, and I very much look forward to working with her and committee colleagues in ensuring that we do just that.

15:48

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): In many ways, our prosecution service works similarly to how prosecution has operated for centuries, but society, and the crimes committed by some in it, have changed.

In my spare time, I am studying the life of John McFeat, who was found guilty of housebreaking and the theft of a coat and a bottle of whisky on the night of 22 to 23 August 1830. The court papers show that the 17-year-old young man had left home after falling out with his father, a chair maker at 36 Leith Walk, after he had refused to give him money for clothes.

McFeat had stayed in lodgings with some other young people for about a week. The precognitions—17 of them—show a young man obviously at a loose end and perhaps egged on by

his peers. He broke into the house of his father's neighbour to obtain drink and stole a coat opportunistically. He and his friends appear to have been larking about on Calton hill and then retired to their lodgings to consume the whisky.

His trial, on 11 November 1830, saw 41 jurors summoned. His guilt was quickly determined—perhaps more rapidly than justice today might demand—and he was transported to New South Wales for seven years. He never returned to Scotland, so that was one Scottish crime wave dealt with.

The story could be reflected in similar activities carried out by similarly bored young people today, and the response—involving police, fiscal, prosecutor, court, witnesses and the method of prosecution—has changed surprisingly little, but today there is scrutiny of a different order, and properly so. The focus is more on reform of the criminal, not merely on punishment, and on supporting all those who are affected by the crime. For the COPFS, there are complexities that were not present in the 1830s, and the arrangements for the accused to have access to legal advice are also much wider. As far as I can see, Mr McFeat had no such advice.

How are we doing? The number of crimes has fallen to the lowest level in 40 years, and our prosecutors make a substantial contribution to that, as do police, societal change, prisons and many other things. At a time of change, staff in the system feel under pressure. Cases are becoming more complex, there is closer attention to process in order to deliver efficiency, which inevitably removes what might be thought of as slack time. Such changes are not always welcome.

Let me address the subject of change. Oliver Mundell argued at some length against change, so I point him to what is now known as the Hawthorne effect. Over an extended period, changes were made in one part of a Western Electric Company factory in Cicero, Illinois, while the other part remained unchanged. After every change, productivity rose and absenteeism dropped. At the end of the trials, the factory was returned to its previous state while the researchers considered their findings—and productivity rose again. It was concluded that the process of change, rather than the nature of the change itself, was the source of benefit to the employee and the company. The Hawthorne effect is now also described as the observer effect and derives simply from taking an interest in people. Well-managed change is good.

The convener referred to court delays. Unhelpfully, perhaps, she failed to develop all the sources of such delays—in particular, that defence counsel can also come to court unable to proceed.

Like the prosecution, its difficulty can lie with reluctant witnesses.

Some parts of the system are startlingly efficient. As a member of a predecessor Justice Committee, I visited Glasgow sheriff court on a Monday. We saw an astonishing 50-plus cases moved on in the course of an hour. Was that efficient? Very. Was it effective? Rather less obviously. There seemed to be no novice offenders and engaging the whole panoply of the sheriff court seemed overkill.

The reform of which we heard during the inquiry was, among other things, focused on making better use of court time, which I welcome. In turn, that should create more space for preparation by all involved. I welcome in particular a planned reduction in the use of temporary staff.

In his book “The Mythical Man-Month”, Professor Fred P Brooks posed the question: how do you make a project later? The answer is: add staff. The reason for that is that there is a cost to existing staff of integrating new staff into the team, providing them with knowledge of the local operation and methods and pushing them forward to be fully productive team members. It is not simply that external training is required; the existing team members carry a burden. A reduction in staff churn takes two burdens off the system. There is less time wasted on integration and a larger proportion of the time that staff spend in the service is productive. A further benefit that can be derived comes from staff seeing a task through to its completion. Time taken picking up and putting down items of work is wasted time.

The convener is correct when she points to frustration in delivering improved computer support across the public sector. There was the London Ambulance Service failure under the Tories in the early 1990s and the Scottish Qualifications Authority computer failures under the Labour and Liberal Democrat Administration in the 2000s, and members on the SNP benches have had our failures too. However, the private sector can and does find it difficult to make computer changes too.

Douglas Ross raised court closures as a source of difficulty, but the system appears to be more efficient since the closures. There have been higher throughputs without a corresponding increase in the resource being required to achieve them.

Douglas Ross: Will the member take an intervention?

Stewart Stevenson: In one moment.

Although we heard from some deutes that they felt constrained by the existence of a central unit for marking, others pointed out that it was not a

new process and that they did not feel constrained.

Douglas Ross: The member said that I said X, Y and Z about court closures. Will he accept that I was quoting evidence from the bar associations, which highlighted the impact that they see on courts around the north-east of Scotland and the central belt, and that they believe that court closures are having a direct impact on the service that we are providing in Scotland?

Stewart Stevenson: That is a useful clarification and I accept what the member says, but we also heard balancing views.

Rear-admiral Grace Hopper of the US Navy, who retired aged 80 as the oldest-ever regular member of the navy, said that we should act first and apologise later. She means that we should assume that we have the power, and accept that we will be held to account for how we use it, until we are told that we do not.

Mr Ross also rightly spoke of witnesses' frustrations about delays. I welcome the programme of reform, one of whose outcomes must be to serve the interests of all those who contribute to the delivery of justice. In the early 1980s, I served as a juror in Linlithgow sheriff court in a two-day trial of two accused, each facing seven charges. It was a relatively simple case compared to child abuse, domestic abuse and financial crime—I genuinely wonder how we can help juries make decisions that they will feel more comfortable about in those more complex cases.

We took no evidence from jurors, because what goes on behind the jury room door is secret. For the solemn cases—the most serious—jurors are an important part of the system. In 1830 George Sutherland, a painter and glazier, John McDonald, an innkeeper, and Joseph Astley, a chemist, were jurors in John McFeat's trial. A similar diversity prevails today.

We saw that support for witnesses today far exceeds that given even 20 years ago. Without witnesses, there can be no trial. Also, where victims could once have been almost invisible, we now have support for them.

The inquiry has been of value in throwing light on a vital part of our criminal justice system and in enabling us on the Justice Committee to hold all responsible for making the system work in future. My understanding—and, I suspect, others'—has been extended and my preparation for my committee role enhanced.

I thank all involved in delivering justice in Scotland. While the optimist in me hopes for an end to the need for any criminal justice system, the realist in me knows that we shall continue to depend on it for time immemorial.

Liam McArthur made a plea for no sentences of under a year. In 1830, no sentences were longer than a year, because if someone was guilty of something worthy of incarceration for longer than a year, they were either taken out and hung or sent to Australia.

I welcome the report and hope that it is a useful contribution to the debate.

The Deputy Presiding Officer: I was listening, Mr Stevenson, but I do not know whether you were advocating such a change in penal policy.

15:58

Alexander Stewart (Mid Scotland and Fife) (Con): It is a pleasure to be able to take part today and I am grateful for the opportunity to speak in the debate. Although not a member of the Justice Committee, I am a substitute member, and as such I have had the pleasure of sitting with the committee on a number of occasions. After months of evidence taking, I was delighted to see the final committee report when it was published in April 2017.

I have listened to many valid points from speakers from many facets of the legal profession, and it has become clear that, although the Crown Office and Procurator Fiscal Service is essentially an excellent, rigorous and fair system, it is becoming strained and cracks are beginning to show.

Although I agree with the inquiry report that, on the whole, the public should have confidence in the COPFS being a rigorous and fair prosecutor, I have serious concerns about the direction in which the service is going and about the future. As we heard from the convener in her opening speech, the review was long overdue.

Much evidence on low morale has been received from the coalface. Short-term contracts are too much in evidence and staff resilience is at breaking point, which is not a good position for any service to find itself in. My colleague Douglas Ross, who opened for the Conservatives, talked about the professionalism of the staff and about supporting victims being a key issue as we move forward. Victims must have confidence in the system. It must be acknowledged that the SNP Government decided to cut the budget for the service. If standards are to improve, extra resources and training are required to ensure that we can all benefit.

Previous evidence to the committee led it to focus the inquiry on a number of valid concerns, which were the centralisation of the service; its efficiency and effectiveness; the role of the inspectorate; and the treatment of victims, witnesses and the accused. Serious concerns

were raised about the resources of the COPFS. Although it is difficult to benchmark the COPFS against any other body, because we have only one prosecution service, it can be directly compared with other bodies. Concerns have already been raised about Police Scotland and the proposed changes to transport policing. Although the centralisation of the COPFS has been welcomed by some, it has produced considerable financial and operational strains, and many consider that the process has gone too far. I ally myself with some of those comments.

The committee found that staff are overworked, that funding has declined and that the demands on the service continue to grow. The service is just about managing. Its communications have been classified as poor, it is underprioritising standard summary cases and it seems to be ill equipped to deal with specialist prosecutions. We must recognise all those facts because, if we are to see improvements, those issues must be challenged and progress must be made on tackling them.

The last major report on the COPFS, which was back in 2003, raised concerns about underfunding. For the year 2017-18, the COPFS budget has been cut in real terms. Indeed, the Crown Agent said that £750,000 of efficiency savings would have to be met out of the staff budget, which equates to about 30 jobs. That talent and experience, once lost, may never be replaced. To deliver the real-terms saving that is expected to be required over the next five years, the forecast is that closer to 200 people might have to lose their role in the organisation.

The Lord Advocate asked the committee to consider the need for wider transformational change and stated that resources are not the only way to solve a problem. That may be the case, but there is an overreliance on the delivery of digital solutions. We cannot rely on digital solutions to deliver an effective service. That might be taking it too far.

It is a difficult situation. It is clear that the service is already struggling and can ill afford to suffer further financial restrictions. The committee has accepted that delays in the system and inefficiencies cannot be solved by the COPFS alone and that others must play their part: the Government and the judiciary have a role; and the whole system must look at it. Audit Scotland has estimated that the adjournment and delay of cases costs around £10 million.

The debate shows that there is a consensus on the professionalism in the system and on how the system has worked and is working, but serious thought needs to be given to how this process can be managed. Victims have to feel secure and be confident in the system. The judiciary have to feel that they have the rights and responsibilities to

manage effectively. We as parliamentarians have a role, if there is to be scrutiny and governance of the process. It is vital that we all play our part and that we make the picture complete. We must put all our efforts into managing the process for the people of Scotland, who deserve an efficient and effective service.

There are real concerns about centralisation and decision making. The issues with poor job satisfaction and staff morale must be thought about, managed and understood. A more risk-averse culture is growing and local offices are having to run cases against their professional judgment. That cannot be allowed to continue. The service must become effective and efficient and must be reorganised.

We understand that, but it is vital that we protect the service from further cuts in resources, funding, headcount and infrastructure to ensure that we get the best that we can and that we can move forward with confidence in the service.

I commend the committee for its work so far and the report.

16:05

Mairi Evans (Angus North and Mearns) (SNP): It is a real pleasure to speak in the debate about the report on the Crown Office and Procurator Fiscal Service, which is the culmination of five months of work by the Justice Committee. Being new to the committee, I found it an absolutely fascinating piece of work that gave a real insight into the workings of the criminal justice system in Scotland.

I add my thanks to those expressed by other members to everyone who provided written and oral evidence to the committee, as well as to the clerks for the absolute power of work that they put in. I also give recognition to members in the chamber who did not sit on the Justice Committee but have taken part in the debate and had to plough through the report and all the evidence, which is by no means an easy task.

One thing was clear in the evidence that we heard: the Crown Office and Procurator Fiscal Service is regarded as a hard-working, professional, rigorous and fair prosecutor of crimes in Scotland. However, although overall the impression was that it does a good job within its resources, there were also areas that could still be developed, particularly in relation to the service that it provides for victims. That is what I will focus on.

Central to the COPFS strategy for victims and witnesses has been the creation of the victim information and advice service, on which other members have touched. Since it was piloted in

2001, the service has been rolled out across Scotland and its remit has grown to serve victims in a variety of serious cases, including those that involve domestic abuse, racial aggravation, children and sexual offences. However, as its remit has grown, so have the demands on the VIA service. As Oliver Mundell mentioned, between 2006 and 2015, there was a 45 per cent increase in the number of referrals of people seeking information and advice from the service from 27,500 to 40,000.

Nonetheless, there is a disconnect between prosecution and victims. The COPFS recognises that it is not victims' lawyer, but it accepts that there is a gap between the service that it can provide and the service that it would like victims to receive from the system as a whole.

Although we recognise how far the system has evolved since its inception, the "Review of Victim Care in the Justice Sector in Scotland" by Dr Lesley Thomson QC—about which we have also heard in the debate—states:

"We should be in no doubt that the experience for many victims can be of a system which does not recognise or accommodate their needs."

The Thomson review is a vital review about which we heard much in evidence. Throughout the evidence-gathering stage, we heard from victims who had the impression that Crown Office and Procurator Fiscal Service staff were working "under extreme pressure" and that "there was a lack of personal attention".

The most powerful evidence that we heard was from victims of domestic abuse. The victim to whom I spoke personally and from whom members of my group heard told us directly of the harrowing experience that she had been through, from the crimes that were committed against her through to the prosecution of those crimes. She told us of how her experience of the justice system had retraumatised her and left her questioning whether it had been worth going through it all. One of the worst things was when she told us that she would rather have taken another beating than go through the process again. If that is the experience of the people who are going through our justice system, more has to be done.

Communication between the prosecution service and victims and witnesses was raised as a key issue. The Thomson review states:

"There is a strong desire amongst victims for a single source of support and information, eliminating or reducing the need to approach numerous agencies at different stages."

The evidence that we heard bore that out. Victims often have to approach multiple agencies for assistance, and the amount of information that is provided by the agencies concerned, such as the

Crown Office and VIA, can be overwhelming, particularly at the outset of a case.

Victims have access to the "Victims' Code for Scotland", the working together for victims and witnesses protocol and the access to information protocol. Although those are packed with information, members can imagine how confusing all of that is, and how difficult it is for a victim who is trying to deal with the trauma of what they have been through to take in and process all of that information.

At the conclusion of a case, victims are approached by multiple agencies, sometimes being contacted by three separate organisations on the same day, each essentially providing the same information, albeit for different purposes. Those organisations can include VIA, Police Scotland and various support agencies. That approach can confuse, inconvenience and, again, overwhelm a victim, who has to relive the incident however many times in one day.

The Thomson review examined approaches in different countries and territories that we might look to learn from. For example, New York has the witness aid services unit, which combines four services under one roof. It supports victims by liaising with the criminal justice system, the notification department, which keeps the victim up to date on the progress of a case, the social services department and a counselling service. Another example is the victim information counter at The Hague, where there is co-operation between the public prosecution service, victim support services, the police and the criminal injuries compensation fund. Both of those systems have a single point of entry that enables victims to seek information and assistance on the issues that they might face. From the evidence that we received, it became clear that we need such a one-stop-shop approach to give victims that one direct contact for the information and advice that they need.

Many important elements were raised during our inquiry—far too many for us to go into in detail today—but before I close I want to speak about an area that I feel is vitally important: wildlife crime. I was glad to hear Liam McArthur talk about that earlier. Prosecution rates for reported wildlife crime are extremely low, at around 10 to 15 per cent of reported cases. I know that some cases of wildlife crime can be hard to prosecute because of the lack of evidence, but I note that, in its evidence to the committee, Scottish Environment LINK expressed frustration that it was still awaiting the implementation of recommendations such as that in the "Natural Justice" report of 2008, which said that, following the completion of any significant case involving environmental wildlife crime, there should be a full debrief involving the police, the

Crown Office and other relevant bodies, including third sector organisations such as the RSPB. I hope that that view will be taken on board today and that we will get a response to it.

We have recently seen some high-profile instances of wildlife crime going unprosecuted, most notably the shooting of a hen harrier on the Cabrach estate in Moray, a case that was dropped after prolonged investigation, and the setting of an illegal pole tap in the Angus glens. Those cases have ignited huge public interest.

I am the species champion for the hen harrier, a species that has been in severe decline in Scotland. The crimes that I am talking about are serious, and I welcome the outcome of the review into satellite-tagged eagles that was commissioned by the Scottish Government and published last week, because we need to be doing more to protect our wildlife and to ensure that those who commit crimes against wildlife do not escape the punishment that they deserve.

The current system is complicated and can be overwhelming for victims and witnesses alike. There is a need to simplify and co-ordinate the provision of information relating to individuals' cases and to create a one-stop shop for those affected.

There are working models that we can learn from, such as the ones in New York and the Netherlands that I mentioned. We owe it to victims and witnesses to give them a system that recognises and accommodates their needs, wherever they are in Scotland.

16:13

Gordon Lindhurst (Lothian) (Con): I refer members to my entry in the register of members' interests, as I am a self-employed advocate and a member of the Faculty of Advocates. In that capacity, prior to being elected as an MSP, I prosecuted and defended cases in the High Court and the sheriff court. It goes without saying that, in doing that, I had contact with and worked with the Crown Office and Procurator Fiscal Service. The recommendations of the Justice Committee's report are of particular interest to me, and I appreciate the stresses and strains that the people who do such excellent work in the prosecution services are subject to.

Now, as an MSP, I have the opportunity to see things from a slightly different angle. Since becoming an MSP, I have had contact from constituents about their experiences of the court system, some of which seem to be reflected well in the report's recommendations, which detail improvements that need to be made.

It is vital that the public have every confidence in the justice system. They need to know that, if they ever need to report a matter, they will be treated appropriately and professionally. That is, of course, not to cloud the role that the Crown Office and Procurator Fiscal Service plays.

As was said in evidence by the Faculty of Advocates,

"The prosecutor is not there to represent the victim to get the case limping into court under any circumstances."—*[Official Report, Justice Committee, 15 November 2016; c 45.]*

The committee recognised that that can often lead to difficult decisions that victims find painful but, as the committee found in its report, that is necessary to protect the independence and integrity of the prosecution service. Nevertheless, it is important for the Crown Office and Procurator Fiscal Service to treat properly and appropriately all—victims and witnesses—who are involved in cases that are presented to it, and for those people to receive the information that they need, however the COPFS decides to treat the case that it is presented with.

That applies especially to young people. The Victims and Witnesses (Scotland) Act 2014 was meant to ensure the implementation of such an approach by establishing the victims code and supporting the victim information and advice service, which others have mentioned. As we know, some elements of the act are still being brought into force, and it may be some time before its full usefulness can be demonstrated.

An issue that I have come across as an MSP is that vulnerable victims of crime who should have been referred to the VIA service have apparently not been, which has left them without any knowledge of the progress of their case, perhaps until it is too late for them to make any meaningful input. That resonates with the evidence given to the committee that there have been serious failings involving the service, including a lack of communication and what might, in a general sense, be called misinformation. Such experiences can damage public trust. For the sake of victims, who should not be left regretting having reported a crime in the first place, it is vital that the principles and rights that are set out in the 2014 act are met and adhered to.

My colleague Oliver Mundell eloquently outlined his real concerns about a wide number of matters, which I will not repeat. Others have raised the internal stresses in the Crown Office and Procurator Fiscal Service, which must be addressed. We have heard that, at the same time as the rights and services that victims and witnesses can expect from the justice system have been stepped up, the service's budget has been cut by £4 million to £109.5 million in this financial year. If we add the fact that other demands on the

service are changing, including the profile of crimes, the pace and degree of legal reform and technological changes, it is clear that the service's staff are under significant pressure.

The committee report tells us that communications and relationship building with victims and witnesses do not always work as they ought to. The Edinburgh Bar Association summed up the situation when it described the COPFS as

“struggling manfully in difficult circumstances”

and when it referred to understaffing as a consequence of the cuts. Scottish Conservative research from earlier this year shows a rise in sick days for Crown Office staff of something like 20 per cent over the past six years. That is a worrying trend that may reflect pressures that staff have to deal with. It is difficult to see how further job losses can be sustainable if the current level of service delivery is to be maintained, and we know that service delivery needs to be improved in some areas.

The Crown Office and Procurator Fiscal Service faces a challenging time ahead. I pointed to victim and witness communication, but pressures also impact on decision making and on relationships between criminal justice stakeholders. I hope that the Government will take into account the concerns that have been expressed through the report and in the debate and that it realises the impact that further cuts in funding could have on a service that is already struggling in some areas.

16:20

Fulton MacGregor (Coatbridge and Chryston) (SNP): I welcome the opportunity to take part in this debate on the Justice Committee's inquiry. As others have said, the inquiry was large and ambitious, and it involved commitment from all the committee members. In light of the time commitment that all the committee members have given, I decided to return from paternity leave half a day early to be involved in the debate.

I apologise to the committee's convener for not being in the chamber for her opening remarks. That was absolutely no reflection on her leadership of the committee, which she led well throughout the inquiry.

Like almost everybody who has spoken, I thank all those who gave evidence. I found the evidence sessions and the site visits interesting and informative. I also thank everyone who gave their time to provide the information that we required in coming to the conclusions that are set out in the report.

It is clear that the continued austerity from Westminster has had a massive effect on the Scottish Government's budget and spending

decisions and that any Government-funded organisation will have been impacted by those decisions.

Douglas Ross: Will the member give way?

Fulton MacGregor: Please let me continue.

I welcome Alexander Stewart's comments and passion. He spoke about protecting the service. I hope that, if his party gets the result on Thursday that is widely predicted, he will speak to his colleagues in London about doing that under the austerity agenda.

I totally agree that the prosecution service is a vital public service, and I am pleased that the Cabinet Secretary for Finance and the Constitution has protected its budget in cash terms. It is also important to note that, as others have said, the Lord Advocate has described the budget as

“a settlement that enables me in the forthcoming financial year to fulfil my public responsibilities.”—[*Official Report, Justice Committee*, 20 December 2016; c 5.]

As some members know, I was a social worker before I was elected. The latter four years of that work were in the criminal justice sector. I prepared reports for court and supervised community payback orders. If I may be so bold as to suggest it, maybe I played a small part, in a small corner of Lanarkshire, in helping to reduce the reoffending that other members have talked about and the recorded crime levels in Scotland.

On a serious note, given the vast amount that the inquiry covered, I will talk about specific interests for me given my previous employment. One such area is addressing domestic violence. The Government has committed to introducing new legislation to tackle domestic violence head on. I know that most people across the chamber and across the parties agree with that and are pleased with the steps that have been taken. The committee heard differing pieces of evidence. Some witnesses suggested that such cases were being pursued as a priority without considering the public interest. However, I was pleased to hear the evidence from Rachael Weir, for example, that no case would be prosecuted unless there was evidence to do so, which was really reassuring for the committee. The Lord Advocate backed that up and informed the committee that the conviction rate in domestic abuse cases is about 80 per cent, which suggests that prosecutions are on steady ground.

Perhaps the most important issue—I wholeheartedly agree with Claire Baker, who spoke eloquently about this—is that we need to take on such behaviour, which has blighted our society and been hidden through silence for so long. I am pleased that the committee recognised that in its conclusions. In private sessions, we heard evidence from victims about their experience of

criminal proceedings—Mairi Evans, for example, spoke about that evidence—which was powerful for all of us. I hope that the Lord Advocate will reflect on the information that came from those sessions about what witnesses and victims of domestic violence think about their experience of courts and criminal proceedings.

Another area that I was interested to hear more about through the inquiry was the advancement of aspects of the digital strategy, which will be an important tool for the courts. It will, or should, reduce the time and resources that are required at various stages if, for instance, an individual who is on remand or serving a sentence in custody can appear by videolink rather than being transported to court and held in a holding area before appearing briefly in court and being transported back to prison. Technology could also assist witnesses in a variety of situations, including cases of domestic abuse, as I mentioned a couple of minutes ago. Some of the witnesses who we spoke to would have benefited from a videolink if that had been in place.

I would like to mention the part of the report that is on vulnerable children and young people giving evidence in court. There is no doubt in my mind that that experience can have a long-term negative effect on a child. I was pleased to hear from the Cabinet Secretary for Justice that there is compelling evidence on keeping children away from courtrooms and that developing a new way of capturing evidence from children and vulnerable people is a priority for the Government. I look forward to that being introduced in due course.

There is an issue with bail and remand—evidence was given that decisions are often made without full evidence being available. For example, Families Outside stated that sufficient consideration was often not given to children, who do not necessarily differentiate between remand and custody. For those children, their parent is just in jail and they have to deal with all the stigma and consequences that come with that. Perhaps the Lord Advocate and the COPFS can look at that, too.

The committee heard about the centralisation of, for example, case marking. As I mentioned, I am a former worker in the field, and I feel as if we might have lost something in that area. The ability to pick up the phone and talk to someone about local resources, such as diversion schemes that might be appropriate in certain situations, is important. Some witnesses said as much to the committee, but I wonder whether that was anecdotal, as we also heard evidence that suggested that centralisation has led to a more efficient system. I was interested in centralisation during the inquiry, but it might be too early to reach a conclusion, and I welcome the committee's recommendation that

asks the COPFS to continue to monitor the situation as appropriate. I am sure that the Lord Advocate will take that forward.

Like other members, I thank all those who work in our justice system, from the police to the prosecutors, sheriffs and judges. It goes without saying that they must keep up the good work of ensuring that everyone in Scotland can continue to be proud of our independent justice system. I thank all members of the committee, the convener and the clerks for helping to ensure a thorough inquiry.

16:28

Mary Fee (West Scotland) (Lab): As a member of the Justice Committee, I thank everybody who contributed to this important inquiry, including the witnesses who came to the committee, those who provided written evidence or gave private testimony and those we met on committee visits. Their valuable input has helped to shape the report that we are debating. I also thank the clerking team that supports the committee, as the support and help that it gave us cannot be overestimated.

In its first major inquiry in this parliamentary session, the committee delved into an area of our criminal justice system that has long been overdue for a parliamentary assessment. The inquiry report "Role and Purpose of the Crown Office and Procurator Fiscal Service" should serve as a guide to the Cabinet Secretary for Justice, the Scottish Government, the Crown Agent and the Crown Office and Procurator Fiscal Service. The committee has made detailed recommendations with the sincere wish that we can provide a criminal justice service that meets the needs of victims and witnesses while balancing the rights of the accused and that we can deliver a criminal justice system that works for Scotland.

A recurring theme in the report is the disconnect between the experiences and expectations of, and the realities for, people at the strategic level of the COPFS and those of people who are on the front line. Members on all sides of the chamber have reflected that theme and have picked up on issues such as staffing and resourcing pressures and the experiences of vulnerable witnesses. Issues around churn and witness citations have also featured in a number of speeches.

I was particularly pleased to hear the Lord Advocate acknowledge many of the concerns and recommendations that are in the report. I welcome his commitment to deliver change in the COPFS and to build not only on our recommendations but on the strong recommendations in the Thomson review.

In my closing speech, I will pick up on two key aspects of the report. The first covers staffing and resources. The COPFS has not escaped budget cuts in the past 10 years. Evidence that was provided during the inquiry shows that, while the budget has remained static, the real-terms cut of 21.5 per cent has had an impact on the delivery of the service. Despite the general trend of reported crime falling over the past 20 years, the number of cases that end in court has increased. In addition, staff and resources have been lost from the COPFS. The evidence shows that the COPFS is

“an organisation struggling manfully in difficult circumstances.”

Those are not my words but the words of the Edinburgh Bar Association. The EBA added:

“the problem that displays itself in every department is under-staffing”.

We heard from the unions that represent COPFS staff that, although targets are being met, that comes at a high cost to those who work in the COPFS. The workload is increasing while preparation time is decreasing. That is not good for staff and, above all else, it is not beneficial to the accused, the victim or the witnesses.

The evidence tells us that the effectiveness and efficiency of the Crown Office are being hampered by cuts to staffing and resources. With an increase in cases, many of which involve complex and demanding needs because of a variety of factors, it is essential that the Crown Office protects the workforce from further cuts.

In his response to the committee’s report, David Harvie, the Crown Agent, informs us that the COPFS has

“made significant progress in strengthening our staffing position”

and that sickness absence is reducing. However, he adds:

“we anticipate we will not be able to deliver all the savings required through non-staff costs”.

He also notes that any staff who leave voluntarily will not be replaced. Those contradictory statements from him raise a concern that there could be an impact in the future on the effectiveness, efficiency and image of the COPFS.

The second key area is support for victims and witnesses, and for vulnerable witnesses in particular. We heard during the evidence sessions a lot of praise for the staff of the victim information and advice service and for their willingness to go the extra mile.

As my colleague Claire Baker pointed out, the COPFS staff are dedicated professionals who deserve our support and financial backing. However, according to some of the evidence, the

COPFS has often fallen short of the duty of care that is owed to victims and witnesses. One charity that represents victims of domestic abuse commented that those it had asked said that they were traumatised by the experience of the system.

Ensuring the delivery of protections that have been offered to witnesses should be a priority for the COPFS and for the wider criminal justice system. The third sector plays a vital role in supporting victims and witnesses during and after the court process. We must continue to strengthen the collaborative approach between the COPFS, the VIA service and the third sector.

It is clear from the committee’s inquiry that the COPFS has a problem in communicating with witnesses, victims and other criminal justice stakeholders. It is also clear that many of the problems that are causing backlogs and churn, and the overall perception of an organisation that is struggling, are linked to communication issues.

The Scottish Government must ensure that everyone who is involved in the criminal justice process, whether it is Police Scotland, the COPFS, the Scottish Courts and Tribunals Service or other stakeholders, works in a more collaborative way to achieve the outcomes that are desired for victims, witnesses and COPFS staff, while balancing the rights of the accused.

I thank the COPFS staff for the hard work that they do and the dedication that they show daily, often in difficult and stressful circumstances.

16:35

Donald Cameron (Highlands and Islands) (Con): I begin by referring Parliament to my entry in the register of members’ interests as a practising member of the Faculty of Advocates.

I would like to pick up on a point that was made by Claire Baker. Despite the fact that this is a committee debate, and despite the fact that the Lord Advocate is, of course, responsible for the prosecution service, it seems to me to be a great shame that the Cabinet Secretary for Justice is not here. Although the Lord Advocate is a Cabinet member and minister, and a member of Parliament, there are political points that require to be addressed, and the Lord Advocate is, of course, politically non-aligned. We have had debates about budget, and members have also spoken about much wider criminal justice issues.

Moving on from that, I am pleased to be able to close the debate for the Scottish Conservatives and, like others, I pay tribute not only to the staff who work for the Crown Office but to those who work across Scotland’s many procurator fiscal offices. Staff who work in the service dedicate long hours to it and, unlike other public sector staff, are

not often thanked for their effort and commitment. The nature of their work is sensitive, and decisions that are taken by the COPFS can plainly have life-changing consequences for many people.

Notwithstanding all that, it is important that even bodies such as the COPFS undergo regular review to ensure that they are fit to deal with the challenges of the present and the future. As the report notes, it has been almost 15 years since the last major review of the COPFS. It is fair to say that much has changed in the legal and political landscape since then.

My professional experience of the Crown Office is limited and was some time ago now. However, one of the first instructions that a newly qualified advocate can get is a stint as the Crown junior—that is, the junior counsel for the prosecution in cases in the High Court. It was an excellent experience for me to watch and learn from practitioners of criminal law as they plied their trade, and that included acting as a junior to the Lord Advocate himself.

However, that experience also gave me an insight into the pressures that faced the service. I can well remember even 10 years ago, the Crown Agent's room in the High Court in Glasgow, in which a small number of staff were trying to administer a large number of cases. That was the case even in the wake of the Bonomy reforms, which were meant to streamline and rationalise the court side of the criminal justice process. I have an abiding sense of the Crown Office firefighting, with all the attendant pressures of time, public scrutiny and limited available staff.

That is perhaps an unfair anecdotal reflection on how things were 10 years or so ago, but it is striking that the committee report hints that similar problems still face the service today. The report identifies various issues that point to pressure, including the projected 30 job losses this year, with an estimated 200 job losses over the next five years.

The report also talks about

“a general trend towards a more centralised prosecution service”,

which is

“perceived as having led to a lowering of morale and job satisfaction in local fiscals' offices”.

As Oliver Mundell pointed out, there are pros and cons to that centralisation, but it is particularly pertinent to me as I represent the large rural area that is the Highlands and Islands. I think that we are all concerned, across the chamber, that it would be hugely detrimental if local knowledge and expertise were to suffer because of a centralised system, given the geography of Scotland and the fact that effective local

procurator fiscal offices, often serving local sheriff courts, are key to the smooth running of the system on the ground.

The report refers to the fact that the burden of cases on staff has significantly increased and that there is

“a perception that it had become close to impossible for fiscals to adequately prepare all their allocated cases within their contracted hours.”

That tallies with anecdotal evidence that I have heard in relation to advocate deposes in the High Court preparing for trial; it seems that the pre-trial period is where the real pressure lies. An advocate depute can have 10 to 12 preliminary hearing cases to prepare, and getting through all the cases can occasion approximately two weeks of preparation and two weeks of the hearings themselves. Cases can be weighty and can involve consideration of social work, education and medical records. As the Lord Advocate knows, the court expects the case to be ready for the trial to start at any stage after the preliminary hearing, so preparation has to be front loaded. If the advocate depute gets held up in a trial, the prep time disappears, which is when the real stress is felt.

The overall perception of witnesses is that the service is just about managing. That is cause for concern. There are questions about the adequacy of resources. All that should shake us into action.

Members have made many interesting observations during this afternoon's debate; I will highlight some of them. Margaret Mitchell, the convener of the Justice Committee, said that she wants to keep a watching brief on the issue. I cannot imagine that it will be another 15 years before we return to the subject.

I was struck by Ben Macpherson's remarks about the significance of local justice and the prosecution of crime in his constituency in Edinburgh. Gordon Lindhurst also spoke about people who have been victims in the system coming to him as a member of the Scottish Parliament.

Douglas Ross made constructive criticisms, which were not overtly political; there are problems that ultimately the Scottish Government must address, and the budget is plainly one of them.

Oliver Mundell, in a typically measured speech, spoke about not rushing into another bout of radical change. I take issue with Stewart Stevenson in that regard—Oliver Mundell did not argue against change per se. What he said was more subtle; he said that change for change's sake is unwarranted.

John Finnie drew on his long experience in policing and his involvement in justice issues as a

parliamentarian. He noted that the evidence that the committee heard repeatedly concentrated on staff commitment and the fact that the system is, in principle, rigorous.

Mairi Evans and Mary Fee spoke powerfully about the effect of being a victim and a witness in the system, the demands on the VIA service and the continuing disconnect between prosecutor and victim. From experience, I recall awkward conversations when I met witnesses after trials. A prosecutor must act as a sort of hybrid support worker, lawyer and guide to a victim who might be distraught after the result of a trial, be it an acquittal or a conviction.

This should not be seen as a single-party issue; rather, there should be a cross-party effort to ensure that the service is fit for present and future challenges. Overall, the report provides us with a lot of positive feedback of which we should be mindful. It also makes recommendations that need to be taken further in order to improve the service's effectiveness, so that when Parliament next reports, the COPFS gets a clean bill of health.

16:42

The Lord Advocate: I thank all the members who have contributed to today's debate. They made a variety of important points that provide, like the inquiry process and the committee's report, a great deal of material on which the leadership of the service and I will reflect as we take the service forward to the next period of its history.

I thank the members who praised the work of prosecutors who, up and down Scotland, prosecute in the public interest on my behalf.

I want to touch on one or two matters that were raised in the course of the debate, and I will try to focus on areas with which I did not deal in my opening speech. First, on centralisation, specialisation and prosecutorial judgment, I want to separate a number of different issues. The first is the question of prosecutorial judgment. From the outset, I have made clear the trust and confidence that I have in those who prosecute crime in Scotland. That is not to say that they can exercise some sort of free-floating discretion—they have a responsibility to apply the law, and to apply my prosecution policy to the cases that come before them. That is part of making sure that we treat similar cases alike: I rely on individual prosecutors to use their judgment and professional expertise in applying the law and to apply prosecution policy to individual cases that come before them. I have made clear in the past and make clear again my confidence in their professional skill and judgment.

It is not just me who says that. Through the prosecution policy review that is being undertaken, and the efforts that are being made to change the approval levels within the service, the service is taking concrete steps to return decision making to front-line prosecutors. I should make it clear that I do not, when I speak to prosecutors, detect any loss of morale. In my experience, prosecutors have an enormous sense of professional pride in the work that they do and in the service of which they form part.

Ben Macpherson referred to the civil service survey from last year. It was heartening to see a number of favourable figures in that. In response to the statement,

"I have the skills I need to do my job effectively,"

92 per cent of people gave a positive response, which represented a 4 per cent increase from the previous year. In response to the statement,

"I have the tools I need to do my job effectively,"

70 per cent of people gave a positive response, which represented a 9 per cent increase from the previous year. In response to the statement,

"I have an acceptable workload,"

56 per cent of people gave a positive response, which represented a 15 per cent increase from the previous year. In response to the statement,

"I achieve a good balance between my work life and my private life,"

67 per cent of people gave a positive response, which represented an 11 per cent increase from the previous year. Without for a moment being complacent or failing to recognise the challenges to which the committee has alluded, I am confident in the skills and expertise of the staff of the Procurator Fiscal Service.

There is a separate point about centralisation and specialisation. Because the COPFS is a national service, it can establish specialist units so that we can respond effectively and consistently to particular categories of criminality. The creation of specialist units of the Crown Office in areas including sexual crime has been welcomed in the committee's report and in today's debate. Perhaps I should include among the specialist units the national initial case marking centres.

Mary Fee: A specific concern that was raised about central marking was the loss of local knowledge from that process. Does the Lord Advocate accept that that is a legitimate concern? If he does, how will it be overcome?

The Lord Advocate: That concern has been expressed. The national case marking system is able to accommodate local knowledge; it is organised so that staff deal with particular sheriffdoms and can therefore develop expertise in

the particular circumstances of local areas. There is nothing to prevent the police from referencing particular issues in particular areas in the reports that they file.

I do not accept that marking of cases in a national centre means that prosecutors cannot take into account local circumstances. Indeed, it ensures that we can bring to bear information about particular circumstances in a consistent way. During one of the committee's meetings, Liam McArthur—who is not here—made a point about consistent variability. Approaching marking of cases on a national basis allows us to achieve consistency. I understand the concerns that have been expressed, and I have no doubt that the service will wish to keep under review the arrangements that we make. I make no apology for approaching the work of the service on a national basis, to ensure that we apply like standards to criminality across the country.

I am grateful for the contributions to the debate on the subject of domestic abuse. I make no apologies for the rigorous approach that I take, which is outlined in the joint protocol between the COPFS and Police Scotland. The protocol is a necessary corrective to historic attitudes to that form of criminality. As has been mentioned in the debate, a new edition was launched in March, which provides new guidance on a number of matters. It emphasises—if emphasis is needed—that the police should charge and report an accused only where there is sufficient evidence, and it provides new guidance on the use of undertakings as an alternative to custody, in appropriate cases. It reinforces—I make no apology for reinforcing it—the strong presumption in favour of prosecution and the firm and rigorous approach that prosecutors are expected to take. I do not accept that the focused and particularly rigorous approach that we take to that form of criminality has affected in an adverse way how the service handles all forms of criminality. The service is committed to being an effective, rigorous, fair and independent prosecutor for all forms of criminality, and will continue to be so.

Reference has been made to the particular challenges for victims. No one knows better than prosecutors the challenges that victims of crime may face when dealing with the criminal justice system and that, unless victims are willing and enabled to speak up in the criminal justice system, we cannot do our job of prosecuting crime effectively, rigorously, fairly and independently. That is why, without for a moment retrenching on the independent responsibility of the prosecutor, we seek to support victims through the criminal justice process.

I would like to have said a great deal more about churn. The evidence that we have heard

and the contributions in the debate make the case for systemic reform. I am committed to working with others in order to secure that reform.

The budget has been mentioned, and I make the point that I—not the Cabinet Secretary for Justice—am responsible for the Crown Office and Procurator Fiscal Service. I deal directly with the Cabinet Secretary for Finance and the Constitution in relation to the service's budget, and I account to Parliament as head of the system of prosecution in Scotland, which is a function that I must exercise independently of any other person. We are in the course of the next budget round, so it would not be appropriate for me to get into that matter. The service will focus on preserving its core function and core responsibilities.

The IPS was touched on, and I make it clear that I value the contribution of the inspector and her resolute independence.

I will close where I started: with the staff of the service—the prosecutors who deal with individuals at stressful points in their lives and who take difficult and significant decisions for those involved. They do so fairly, rigorously, independently and without regard to any public controversy that might ensue. They carry out their work in the public eye and what they do is literally tested and judged every time they step into court. I have confidence in them.

I thank the committee for all the work that it has done and for the confidence that it has expressed in those who prosecute for me, because they deserve the support of the public whom they serve.

The Deputy Presiding Officer (Linda Fabiani): Thank you, Lord Advocate. I call Rona Mackay to close the debate on behalf of the Justice Committee.

16:55

Rona Mackay (Strathkelvin and Bearsden) (SNP): As the deputy convener of the Justice Committee, I am pleased to close this debate on the committee's report on the role and purpose of the Crown Office and Procurator Fiscal Service. I thank the convener and my colleagues on the committee—particularly Fulton MacGregor, who broke his paternity leave to make a speech in the chamber today, which shows dedication to duty. I also thank the clerks for their excellent work. Their support was invaluable throughout the inquiry.

Ben Macpherson referred to working collaboratively, and we have had a generally collaborative debate. I hope that we have got to the core of the inquiry, where all viewpoints must be considered. Nevertheless, I thought that the

convener's opening statement painted a gloomy picture. I will explain why I think that.

The committee's work in carrying out the inquiry would not have been possible without the co-operation of the Crown Office and Procurator Fiscal Service. Accordingly, I thank the Lord Advocate and the Crown Agent, David Harvie, for their assistance, openness and complete willingness to help us to conduct the inquiry. I am sure that I speak for my colleagues when I say that we were impressed with all the participants' total co-operation, whether it was during evidence sessions or during committee court visits and trips to various locations. I particularly thank all those who gave evidence, which was not easy for some witnesses.

I am sure that I speak for fellow new members of the Justice Committee when I say that the inquiry, which was a major undertaking, was the best initiation into understanding the framework of our legal system that I could have asked for. It helped me enormously as I undertook a steep learning curve.

As we have heard during the debate, there are highs and lows in the report. It is so wide ranging that I do not have time to go through it in great detail. However, I hope to cover the essence of the stand-out parts as I address members' speeches in the debate.

Mairi Evans spoke about the victim information and advice service and how its remit has increased vastly since it was set up in 2001. She also spoke of Dr Lesley Thomson's review of victim care in the justice sector and endorsed the provision of a single point of contact for victims, which I passionately believe in, too. She said that we owe it to victims to recognise and accommodate their needs, then made a passionate plea for an improvement in wildlife crime conviction rates.

Douglas Ross talked about the need for the digital strategy to be progressed and about court closures. He, too, took a gloomy view. We could bandy statistics all day, but the evidence that we have is that 75 per cent of sheriff courts experienced no impact from court closures. In fact, in a lot of the cases their input fell and the target for dealing with domestic abuse cases was met in full. As Stewart Stevenson said, it is about balancing views on the issue, although I know who I believe about it.

Oliver Mundell: Does the member accept that it is about not just efficiency and how many cases make it through the court but how local people feel, including victims and witnesses who, in some cases, are now being asked to travel long distances for their day in court?

Rona Mackay: I accept what the member says about people having to travel, but there are downsides to everything and there is no evidence so far that that is of great detriment.

Claire Baker spoke of court closures, too, but she welcomed the positive work that is being done on domestic abuse and urged that we deal with the issue sensitively. She also said that rape cases should always be dealt with in the criminal court, which I whole-heartedly agree with.

Ben Macpherson spoke of how the fear of crime has fallen but progress is still required. He also spoke about the need to work collaboratively at a local level and cited examples from his community in north Edinburgh, where the COPFS has been proactive in combating crime, which is encouraging.

Oliver Mundell wanted to hear more from local procurators fiscal and wants them to speak out publicly. He praised the national sexual crimes unit, and I agree with him about that. He did not, however, praise the centralised case marking system and urged caution on more transformative change.

John Finnie talked about central marking options and the role of the COPFS. He cited Scottish Women's Aid as saying that the participation of victims and witnesses is a human rights issue, which I agree with. He praised the professionalism and dedication of the staff, welcomed the independent review of legal aid and praised the work that is being done on sex abuse and sex crimes.

On the issue of victims and witnesses, the Victims and Witnesses (Scotland) Act 2014 enshrines certain rights. Those include the right to early information, through the publication of the "Victims' Code for Scotland"; the right to review a decision not to prosecute; and eligibility for special measures such as the giving of evidence from behind a screen, to shield a witness from the accused, and the giving of evidence via videolink.

During our evidence session with the Cabinet Secretary for Justice, the committee heard a compelling case for further action to be taken to allow child witnesses to give prerecorded evidence well in advance of the trial, as happens in many other European countries. Like Fulton MacGregor, I was pleased to hear the Lord Advocate agree with the proposal today. I would welcome that development, as it would undoubtedly reduce the trauma that is experienced by children who are expected to give evidence in a formal court environment.

Liam McArthur wanted more support for victims, children and vulnerable witnesses, so I am sure that he would agree with what I have just said. He asked that regionalised marking be kept under

review and spoke about how cybercrime might be skewing the crime statistics slightly due to an element of displacement.

Stewart Stevenson gave an entertaining speech, as usual. He spoke about the 1830 trial of John McFeat, who was transported to New South Wales for theft. The member compared the prosecution system back then to how things are done today. He said that crime is at its lowest level in 40 years, and he praised the prosecutors for their part in that. He also said that well-managed change is a force for good.

Alexander Stewart presented possibly the gloomiest outlook of all in today's debate. I did not hear him say one positive thing about the committee's report—I do not know whether that was deliberate or just an oversight. He said that centralisation had gone too far, but he also asked for more Government control. Given what he was saying, I began to wonder whether he believes in the independence of the judiciary. That was quite interesting.

Gordon Lindhurst spoke about the "Victims' Code for Scotland", how vulnerable witnesses miss out on support and the lack of communication.

Fulton MacGregor talked about the Westminster-imposed cuts, which have had a massive effect on the budget here, and talked about his professional experience of working in the area of domestic violence. He also spoke about the importance of digital enhancement and mentioned children giving evidence.

Mary Fee talked about the disconnect between prosecutor and victim. She also raised staffing and resource concerns, noting that support for vulnerable witnesses often falls short, as the committee heard. The issue has been taken on board and will certainly be addressed. In addition, she wanted more collaboration among all the stakeholders in the third sector.

I hope that I have not missed anyone out.

Returning to the justice digital strategy, modernisation would go a long way towards dealing with other problems that have been highlighted, such as churn, which results in delays. The committee will keep a close eye on the strategy's progress to ensure that the measures in it are delivered as quickly as possible.

I think that I am running out of time, Presiding Officer.

The Presiding Officer (Ken Macintosh): Yes.

Rona Mackay: There is a clear will on the part of all the stakeholders who were involved in our inquiry to modernise the Scottish justice system and to create a framework that is suited to the

ever-changing needs of the 21st century. It may be a large mountain to climb but, given the dedication and professionalism of everyone to whom we spoke, I am reassured that we will reach the summit and keep the Scottish justice system's worldwide reputation as a beacon of fairness and a model to aspire to.

Decision Time

17:04

The Presiding Officer (Ken Macintosh): There is one question to be put as a result of today's business. The question is, that motion S5M-05982, in the name of Margaret Mitchell, on behalf of the Justice Committee, on its inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service, be agreed to.

Motion agreed to,

That the Parliament notes the findings and recommendations of the Justice Committee's 9th report 2017 (Session 5), *Role and Purpose of the Crown Office and Procurator Fiscal Service* (SP Paper 123).

Green Deal (Consumer Protection)

The Deputy Presiding Officer (Christine Grahame): The next item of business is a members' business debate on motion S5M-05081, in the name of Ivan McKee, on "UK Green Deal, Supporting Aggrieved Householders". The debate will be concluded without any question being put.

Motion debated,

That the Parliament acknowledges that the UK Government's Green Deal scheme was intended to help households reduce their energy bills; understands that the public engaged with this initiative, confident that, in using contractors from the UK Department of Energy and Climate Change's approved list of installers, they would be guaranteed good quality work; believes that much of the work was substandard and of no economic or environmental benefit to consumers; further believes that industry-backed guarantees have proven to be worth very little; notes the view that the UK Government needs to strengthen its consumer protection processes, and further notes calls for it to compensate the affected householders in Glasgow Provan and other parts of north east Glasgow, Rutherglen and across Scotland.

17:07

Ivan McKee (Glasgow Provan) (SNP): A key role of elected members of this Parliament is to pursue issues that have significantly impacted on our constituents, to gain redress for injustices caused and to work to prevent a repeat of those issues. The green deal is one such issue.

The United Kingdom Government's green deal scheme is a tale of good intentions gone badly wrong. An initiative by the UK Department of Energy and Climate Change aimed to make millions of homes and businesses across the UK more energy efficient by installing new green technology with little or no up-front cost to householders. New financing frameworks were created to enable improvements to the energy efficiency of households and non-domestic properties, either through a charge on future energy bills or by allowing the householder to claim back up-front costs that they had paid out, through a cashback voucher that was paid by the Energy Saving Trust on satisfactory completion of the work.

The green deal should have saved householders money and it should have saved the environment in terms of energy use and emissions. It should have been a win-win, but something went very badly wrong.

Concerns over the green deal scheme emerged from apparently individual and disparate instances of constituency casework coming into my office and the offices of Anne McLaughlin MP and MSPs around the country, including Clare Haughey MSP

in Rutherglen. Individual householders began approaching us seeking help regarding external wall insulation and solar panels that they had had fitted to their properties. Quickly, a trend emerged and it became clear that the issue reached beyond our constituencies and across Scotland. We do not yet know the full extent of green deal mis-selling and I hope that this debate will encourage others to come forward.

Through the nature of the cases, which involved shoddy workmanship and mis-selling of inappropriate products, we quickly discerned a pattern and became aware that people had fallen victim to unscrupulous companies that saw a financial bonanza facilitated by the lack of oversight of the green deal. Often the companies were owned by individuals with a history of mis-selling, who left a trail of liquidated businesses in their wake.

The scheme was ineptly regulated from the outset. Official green deal assessors—the individuals approved to advise householders on the work that they needed to have done—were required to undergo only a two-day course before they were let loose on households. That lack of oversight attracted unscrupulous salesmen who were authorised to advise householders to sign contracts worth tens of thousands of pounds.

Green deal contractors had to be authorised and were listed on the Department of Energy and Climate Change website. The approval of contractors for this type of energy efficiency work was the responsibility of the UK Government. Although the Scottish Government was charged with the roll-out of the green deal in Scotland, it had no opportunity to influence who was approved, and it seems that the UK Government was not too fussy about who got on the list.

The problem is encapsulated by the unfortunate experience of an elderly constituent of mine. Mary, who is from Barmulloch in Glasgow, spent her life savings on the green deal to provide a legacy for her family: as she saw it, a better, greener environment and an investment in her grandchildren's future. She had been doorstepped by unscrupulous green deal providers, who she trusted because they had been approved by the UK Government. However, their fast-buck approach and failure to comply with proper procedures meant that Mary found out that her home improvements were not of a sufficient standard to attract a building warrant—a requirement of the council that should have been a formality if work had been done properly.

Many had been assured that building warrants were not needed, or that they had been applied for. In many cases, they had not, and my team has been working with Glasgow City Council to find a solution. In worst-case scenarios, some home

owners have had to have work completely redone at great cost to themselves.

Mary's home is now in limbo. It is uninsurable, unsellable and, for all she knows, unsafe. Every month her energy bills incur a surcharge for so-called home improvements that have not been done to standard. As we can imagine, she cannot sleep at night. Many of Mary's neighbours and others like them find themselves in similar situations. The different and unusual means of financing the scheme, and the requirement for involvement from a chain of third-party organisations, each of which needs to be satisfied that things are in order before it signs off on the deal, has led to unimaginable complexities. None of that helps Mary and others who are in her position.

I have worked with the local MP, Anne McLaughlin, my colleague Rutherglen MSP Clare Haughey and Margaret Ferrier MP, and we have taken steps to help where we can. We have raised awareness of the issues and encouraged householders to come forward by hosting several public meetings, as well as upwards of 50 one-to-one discussions with affected individuals, to understand their individual circumstances and provide support.

We have been in correspondence with the Scottish Government's Minister for Local Government and Housing, initially to alert his office to the issues. Together, and with some small measure of success, we have managed to ensure that some constituents who signed up to financial deals have been recompensed. However, it has become obvious that that has happened only because of the good will of some of the financiers. Many of the so-called guarantors associated with the scheme have bluntly refused to acknowledge people's concerns and have curtly dismissed the mis-selling of services by saying, "Buyer beware".

We have met Glasgow City Council to try to sort out what work will need to be done to enable properties to fulfil the requirements for building warrants. There is a need to look at the building standards system that is administered and enforced by Scottish local authorities, to ensure that it truly protects the public interest by monitoring and improving building regulations and stock. At the moment, the system is variable, which leads to confusion in the building industry and public.

I am calling for better guidance on how local authorities work with trade bodies and the public to ensure that the decision-making process is transparent, inclusive and fair to those who have been most affected by the regulations—the individual home owners.

We have also secured tonight's debate in Parliament, to further raise awareness of the issues as we work to secure some resolution. I welcome many of my affected constituents, who have come to the Parliament's public gallery to hear the debate.

I am proud to work with other members of the Parliament on this matter, and I thank the many members across the parties who signed my motion. It is one of the best examples of Parliament working together. However, we believe that the source of the problem—the UK Government—must be held responsible first and foremost for fully compensating householders for the inspection and remedial work they need to have undertaken to get their homes back to standard. It needs to strengthen the processes that it uses to authorise contractors on this and any future programmes, including provisions to guard against so-called phoenix companies—new contractors with the same owners as green deal companies that have gone bust—re-emerging and targeting the same individuals who they conned previously.

The green deal mis-selling scandal has severely affected many of my constituents and others across Scotland. It is a state of affairs that should not have happened if those responsible had done their jobs. Although I and my parliamentary colleagues have had some limited success so far, there is much work to be done to gain recompense for those affected and to ensure that such a state of affairs can never happen again.

The Deputy Presiding Officer: I appreciate why those who are in the public gallery wish to applaud, but I ask you to desist as we do not permit it in the public area.

17:14

Alexander Burnett (Aberdeenshire West) (Con): I point members towards my entry in the register of members' interests, especially in relation to the renewables and construction sectors.

I congratulate Ivan McKee on bringing this members' business debate to the chamber. It is a great opportunity to speak about the green deal.

The deal was set up with the best intentions at its heart. It aimed to help consumers to save money and increase energy efficiency throughout their homes—something that we should all continue to aspire to. Strict processes were in place for regulating the green deal, but I am aware of complaints about some operators, particularly Home Energy and Lifestyle Management, who were charged with malpractice and have since gone into administration. It is right that the secretary of state took the necessary action to

protect future consumers of companies that trade at a level that is not deemed appropriate. It was welcome that, in November 2015, HELM was swiftly sanctioned for breaches of the green deal code of practice.

Clare Haughey (Rutherglen) (SNP): I am reassured to hear that the UK Government is going to do something for consumers who in future use the green deal to invest in improvements to their houses. Can the member enlighten us as to what the UK Government will do for my constituents, and the constituents to whom Mr McKee referred, who have already suffered under the green deal?

Alexander Burnett: I will cover those points in my next paragraph.

It is important to note that the framework that was established by DECC was sufficient to bring about action on HELM. It is also right that the green deal ombudsman remains active and intervenes where malpractice has occurred. The ombudsman has significant powers to investigate complaints and can require energy companies to remove charges or provide a service. Furthermore, on the issue that Clare Haughey asked about, the ombudsman can award compensation of up to £25,000. Even if a green deal provider has gone into liquidation, consumers who entered into green deal plans will continue to be covered by the green deal framework, which means that the plan repayments can continue undisrupted.

If there are problems with the green deal finance contract, the Financial Ombudsman Service also has a role to play. Similarly, if a service has been misdescribed, trading standards can get involved, and specific energy companies can be reported to Ofgem, the Office of Gas and Electricity Markets. It is right that the law provides protection to consumers on areas such as faulty goods, poor service, problems with builders and rogue traders. Where malpractice has occurred, I urge that all available avenues are used to protect consumers to the highest level.

Although the motion is on a specific case, it raises the much wider problem of how we tackle energy efficiency. As members will be aware, heat accounts for 50 per cent of all energy consumption in Scotland, so we simply cannot meet our climate change targets without facing the problem directly, which is why the Scottish Conservatives remain committed to energy efficiency measures. Given that 57 per cent of Scottish dwellings are in energy performance band D or worse, it is right that we should aspire for all homes to reach band C or better by the end of the next decade.

I would like spending on energy efficiency to reach 10 per cent of the capital budget by the end

of this parliamentary term, which would be a cumulative figure of £1 billion, in contrast to the £500 million that the Scottish Government has pledged. That would help with more than just Scotland's climate change targets. Nearly a third of all Scottish households live in fuel poverty. That means that 748,000 households pay more than 10 per cent of their income merely to keep themselves warm, which is unsustainable. There is a huge amount of work to be done to cut emissions while helping to keep bills down, and I urge that we grasp that opportunity urgently. Thank you.

The Deputy Presiding Officer: I let you continue, Mr Burnett, but I have been reading the motion, which is on a very specific point about the green deal and mis-selling. Just bear that in mind for another occasion. The Presiding Officers' approach is a little more liberal during members' business debates, but be careful next time.

17:18

Clare Haughey (Rutherglen) (SNP): I, too, thank Ivan McKee for lodging the motion. I welcome the constituents who are in the public gallery, and I know that many are watching us at home.

The problems with the UK Government's green deal scheme were not confined to one area of the country nor, as we have heard, were they confined to home improvements, cladding, boilers and insulation. In my constituency of Rutherglen, solar panels were widely sold to householders in Blantyre. People were told that they would not pay any more for their electricity, that they could save money and that they were helping the environment. So far, 60 individuals have attended a series of public meetings that I have organised in conjunction with the local citizens advice bureau. Attendance at those meetings quickly expanded to include disillusioned solar panel customers from Hamilton and other areas. Time after time, we have heard stories of high-pressure sales techniques and salespeople insisting on documents being signed at tea-time doorstep calls. There was a 14-day cooling off period, which is absolutely right, but we have heard about work commencing on day 15.

Feed-in tariffs—the money that householders were owed for generating electricity—were signed over to a third party with little if any explanation to the purchasers. Solar panels were fitted to roofs in Blantyre, which is not exactly the Costa del Sol, and householders will have to repay the cost of the panels for the next 25 years through their electricity bills. I have seen one contract that specifically states that the feed-in tariffs pay for the panels. However, many people have not only

signed over their feed-in tariff, but are paying for their panels again through a finance deal.

Solar panels were also fitted to houses where the electricity meter was not compatible with the installed system. In fact, the meters were charging the householders not only for the energy that they used but for the energy that they produced. That has resulted in huge energy bills and huge debts for people—adding to the fuel poverty that Mr Burnett mentioned—when the people involved expected to reduce their bills, not double them.

Worryingly, the debt for the solar panels rests with the property, not the individual householder. That has led to householders being unable to sell their properties. Few companies will mortgage or remortgage those properties, and I have been told of house sales falling through because lawyers advised buyers not to continue with a purchase. One of my constituents recently lost several thousands of pounds when one buyer withdrew their offer to buy her house after she had put down a deposit on another property.

Solar panel deals were mis-sold to customers who were told that the deals were guaranteed by the Scottish Government. That was untrue. Solar panels were a green deal product promoted by the UK Government. That is the type of misinformation used by HELM, which has, unfortunately, been in administration since April 2016. I say “unfortunately” because customers have been left without resolution while the Financial Ombudsman Service determines where liability lies.

Following our meetings in Blantyre, Margaret Ferrier—the former MP for Rutherglen and Hamilton West—and I have been working to get fair compensation for the issues that many customers in our constituencies experienced. In doing so, we have worked closely with the offices of Ivan McKee MSP and Anne McLaughlin, the former MP for Glasgow North East, and we are grateful for their support and co-operation. However, I suspect that the situation in Blantyre and the east end of Glasgow is just the tip of the iceberg, as tens of thousands of such deals were sold across Scotland and the UK before the scheme was halted. The more that we learn about the issue, the more we come to realise that potentially hundreds, if not thousands, of people are affected.

I met Angela Constance, the Cabinet Secretary for Communities, Social Security and Equalities, in February and I thank her and her officials for undertaking to continue pressing the UK Government department responsible for a resolution to the issue, which continues to leave so many Scottish customers out of pocket. The situation is causing real financial hardship to many customers who fell foul of HELM's practices and other companies' abuses of the green deal. We

should do everything that we can to help them get the resolution that they deserve.

17:23

Mark Ruskell (Mid Scotland and Fife) (Green): I thank Ivan McKee for introducing the debate.

They say that there are few things more stressful in life than moving house but, having spoken with a number of constituents who have had a bad experience with the green deal, it seems to me that a botched house renovation can take the stress up to an entirely new level and, in some cases, make it impossible for people to sell their houses.

Through the green deal, solar panels and wall insulation have been incorrectly sold to consumers as being Government backed, with many consumers signing up through doorstep sales. The UK Government does not back the costs of equipment failure, so people have been repaying loans for equipment that does not work with no recourse to the Government for support. Many home owners have been unable to pay for remedial works, particularly those associated with inappropriate cavity wall insulation. As we have already heard, many householders who are affected by the matter have been unable to get building warrants as a result, which has put them in incredible difficulties when it comes to selling their houses.

I remember attending a major consultation event with energy efficiency organisations and DECC officials in London, 18 months before the green deal was launched. At that meeting, concerns were raised about not only the bureaucracy and the financial attractiveness of the emerging programme, but its quality, especially as it was conducted on a piecemeal, house-by-house, market-led approach.

The green deal was always a highly complex policy with a burgeoning architecture of organisations delivering assessment, training, installation and accreditation to support it. However, out of the 300,259 green deal assessments that were carried out, only 1,815 plans successfully went ahead. That is far short of the millions of homes that the Government claimed the scheme would help when it was first launched.

The interest rate on the loan to householders was also much higher than typical loans available on the high street, and was wholly unattractive for householders. Therefore, it was not much of a deal and it turned out to be hardly green at all. In April 2016, the National Audit Office reported that the scheme had not achieved value for money—it cost taxpayers £240 million—and was not

generating any additional energy savings, either, which is hardly surprising, given the success rate. All of these concerns were raised at the Westminster meeting that I attended in 2011, but there was a failure to address those concerns at that point or during the roll-out of the scheme in 2013.

We need to learn the lessons of the green deal. I believe that the answer lies in more area-based approaches to energy efficiency that can deliver at scale and also deliver better quality. For example, Germany's EnEV programme, which began in 2002, has been hugely successful. Under the scheme, householders could get a loan of up to €50,000 from a public bank to replace a home's heating and domestic hot water systems. The interest on the loan was much lower than that of the green deal. The programme had a clear goal to refurbish the entire housing stock and public buildings in Germany by 2030. So far, 1 million old homes have been retrofitted, which compares well with the 1,815 homes that have been assisted by the green deal. Further, those retrofits were carried out to a high standard—they were a deep retrofit, rather than just something that tackled the low-hanging fruit of upgrading boilers and wall insulation.

It is clear that what works are programmes with a clear focus on an ambitious target that is driven by the public sector and which deliver quality at scale on an area-by-area basis. Alongside legislation to deliver better common repairs and a focus on energy efficiency standards in the rented sector, we have the opportunity to learn from the mistakes of the past and deliver warmer, more affordable homes across Scotland.

17:27

John Scott (Ayr) (Con): I thank Ivan McKee for bringing this important issue to the chamber this evening, and I congratulate him on securing a debate on his motion.

Commentators often say that we face three challenges when devising energy policy—a trilemma, if you will. First, we need to minimise carbon emissions so that we can stop the worst effects of climate change for future generations. Secondly, we need to ensure security of supply, so that we can keep the lights on not just in five years, but in 10 or 20 years. Thirdly, we need to protect consumers by keeping energy bills as low as possible and by ensuring that they receive a good standard of service.

Striking the right balance between those strands is one of the great challenges for those who formulate policy, and it is exactly what the green deal set out to achieve when it was launched in 2013—a noble aim, for which we all still strive.

However, for a variety of reasons the policy was not delivering value for money and was discontinued, which was a difficult but necessary decision. The vast majority of companies that were implementing the green deal provided a high standard of service, and a strict code of practice has remained in place to safeguard consumers.

However, there were instances of companies not meeting the high standards that were demanded. The case of Home Energy & Lifestyle Management was a particularly high-profile example of misleading information being provided, so it was right that HELM was swiftly fined by the Secretary of State for Business, Energy and Industrial Strategy. I condemn any company that sought to mis-sell policies or to mislead consumers, particularly through cold calling, which the UK Government has strongly clamped down on.

I am aware that, in some cases, consumers continue to feel let down or aggrieved by the service that has been provided, which is why the green deal ombudsman continues to operate, investigate and intervene on complaints. It can require companies to waive charges and provide up to £25,000 in compensation. I also know that Ofgem, the Financial Ombudsman Service and trading standards services have been, and continue to be, involved in aspects of green deal cases.

We have a strong history of consumer protection in this country, whether it involves guarding against shoddy service and poor quality goods, encouraging competition so that consumers can choose the best deals available or improving product safety. I want to continue to see a framework that is fair and which works for all consumers, which is why consumer protection guidance and standards should be kept under constant review and any gaps plugged.

In a world of rapid and sometimes bewildering technological advancement, which provides new opportunities but also unforeseen challenges, it is especially important that regulations keep up. Although the green deal has ended, our commitment to energy efficiency and to driving down costs and emissions remains.

My colleague Alexander Burnett highlighted that fuel poverty remains stubbornly high, and set out some important proposals to improve energy efficiency. Getting that right would be a win for consumers, the economy and the environment. Driving down demand would also ensure that less energy has to be generated in the first place. To do so means, in part, encouraging use of more energy-efficient appliances—in particular, white goods. It also means changing consumer behaviour, which is why I welcome the roll-out of smart meters across the country and the UK

Government's commitment to ensure that one is offered to every home and small business by 2020.

Nobody should ever get a raw deal when they are trying to improve their home and save money. We should, while continuing to support innovative solutions to our energy needs, be resolute in holding to account those who mislead or provide a poor service.

The Deputy Presiding Officer: Thank you, Mr Scott. You squeaked that into being wholly relevant with some of your variations on the theme. I am drawing your attention to the fact that it is a very tightly drawn motion.

17:31

The Minister for Local Government and Housing (Kevin Stewart): I thank Ivan McKee, Clare Haughey, Anne McLaughlin and others for highlighting the mis-selling of the green deal. I am grateful to Ivan McKee for raising this troubling matter, which has seen many of our constituents being badly let down by what has turned out to be seriously inadequate consumer protection and safeguards in the UK Government's green deal scheme.

I am very troubled by the apparent inability of the UK Government to show leadership and to take swift and effective action on the issue. The scheme was designed to implement thousands of measures across Great Britain to reduce energy bills and improve energy efficiency, but it has left too many people with increased bills or installations that, in some cases, are so defective that they cannot get a building warrant, which means, as we have heard from other speakers, that they might not be able to sell their properties. Those problems have been highlighted to the UK Government on numerous occasions.

The problems are not just anecdotal. We have heard from across the chamber how individuals have suffered, and a National Audit Office report in April 2016 was highly critical of the performance of the scheme, which achieved only a fraction of the number of energy efficiency installations that had been predicted by the UK Government.

In response to a combination of poor take-up and concerns about industry standards, the UK Government announced in July 2015 that it would no longer fund the scheme administrator, the Green Deal Finance Company, which effectively closed the scheme. Although that move has prevented further mishaps from occurring, there is still much to be done to help those who, in good faith, signed up to the scheme but who now find themselves in difficulties. It is all fair and well for Mr Burnett to say that the secretary of state has put everything in place to protect consumers in the

future, but what about the people such as those in the gallery? What about people like the lady from Barmulloch whom Mr McKee spoke about? What action are they going to get from the UK Government to put right a failure that rests fully with the UK Government and its defective scheme?

I assure Parliament that the Scottish Government will continue to do whatever we can to help to obtain a satisfactory resolution for the people concerned. Despite not having responsibility for the UK green deal, the Scottish Government has made every effort to advise and assist people—often vulnerable individuals—who have been affected by the poor practices of some who have been involved in the scheme.

Over the past few years, the Scottish Government has made a number of requests for the UK Government to strengthen its consumer protection processes. We have written to both the current and the previous secretary of state with responsibility for energy efficiency to express how the green deal framework has failed to deliver any meaningful redress to those who have been impacted, and we have urged that the matter be prioritised and resolved.

We have also called on bodies that have an active interest in the issue, including the Green Deal Finance Company and the Financial Ombudsman Service, to put in place proper redress systems, and we have convened a UK-wide enforcement group to highlight the issues that Scottish consumers face.

When it became apparent that building warrants could not be obtained and that our own cashback scheme vouchers could not be redeemed by people who had been unfortunate enough to have their external wall insulation measures poorly installed by UK Government-approved contractors, we quickly instructed the Energy Saving Trust to make contact with all the individuals concerned to provide guidance and support. I am aware that the EST has managed to resolve the situation for some people, and is continuing to provide on-going support to others. I urge all members who find that they have constituents in that situation to tell them to contact the Energy Saving Trust if they have yet to do so, so that they, too, can be helped through the complex and distressing situation.

Although we will continue to help and support people who are in need—I know that there are many members in the chamber, including Mr McKee and Ms Haughey, who are providing direct support to their constituents—the truth is that we need the UK Government to act and to resolve the situation, and to ensure that it never happens again. My officials have been told that the UK Government's Department for Business, Energy and Industrial Strategy, the green deal and the

Financial Ombudsman Service along with the Green Deal Finance Company have been working to achieve just that. I sincerely hope that that is the case and that there will be satisfactory outcomes for those concerned. However, the current UK Government's track record in the area is not great, so it is right that we collectively push it to take action.

I therefore have no hesitation whatsoever in supporting Mr McKee's motion, which calls on the UK Government

“to strengthen its consumer protection processes”

and to ensure that it adequately compensates all affected households across Scotland. The UK Government, no matter who that is after this Thursday, owes that to Mary from Barmulloch and the many others who have suffered because of the defective scheme.

Meeting closed at 17:37.

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

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

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba