



OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 2 October 2018

Session 5



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JUSTICE COMMITTEE
25th Meeting 2018, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*John Finnie (Highlands and Islands) (Green)
*Jenny Gilruth (Mid Fife and Glenrothes) (SNP)
*Daniel Johnson (Edinburgh Southern) (Lab)
*Liam Kerr (North East Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Liam McArthur (Orkney Islands) (LD)
*Shona Robison (Dundee City East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Brian Carroll (Public and Commercial Services Union)
Fiona Eadie (FDA)
Tom Halpin (Sacro)
Chief Superintendent Mark Hargreaves (Police Scotland)
Chris McCully (Criminal Justice Voluntary Sector Forum)
Euan McIlvrde (Miscarriages of Justice Organisation Scotland)
Lindsey McNeill (Scottish Police Authority)
Stephen Murray (Public and Commercial Services Union)
Stuart Valentine (Relationships Scotland)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 2 October 2018

[The Convener opened the meeting at 10:00]

Police and Fire Reform (Scotland) Act 2012 (Post- legislative Scrutiny)

The Convener (Margaret Mitchell): Good morning and welcome to the Justice Committee's 25th meeting in 2018. We have received no apologies.

I invite John Finnie to declare an interest.

John Finnie (Highlands and Islands) (Green): Thank you, convener. As ever, we have a considerable amount of information before us today, one piece of which relates to a historical case. I have two interests to declare in that respect. I was involved in that case as a Scottish Police Federation official and, at one point, as an MSP for the area. I have no active involvement in the case now.

The Convener: Thank you. That is duly noted.

Agenda item 1 is post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012. This morning, we will focus on the police complaints-handling process. I refer members to paper 1, which is a note by the clerk, and paper 2, which is a private paper. I welcome Chief Superintendent Mark Hargreaves, head of professional standards with Police Scotland; and Lindsey McNeill, director of governance and assurance with the Scottish Police Authority. I thank the SPA for its written submission—it is always helpful for the committee to receive such submissions.

We will move straight to questions. I will start by asking you to outline, in the very broadest and briefest terms, how Police Scotland's complaints-handling process works, the role of the professional standards department and where the SPA fits into the process. That is just so that we have an overview to get us started.

Chief Superintendent Mark Hargreaves (Police Scotland): The role of Police Scotland in the complaints-handling process relates to complaints that are received about officers who are of or below the rank of chief superintendent—so from constable to chief superintendent. Any complaints about an officer above that rank are dealt with by the Scottish Police Authority. In my role as head of professional standards, I report to the executive assistant chief constable for

professionalism and assurance, who in turn reports to the deputy chief constable for professionalism. I have responsibility for the efficient and effective handling of complaints that are received for Police Scotland.

The Convener: I believe that you deal with complaints unless they are below a certain level, when they are dealt with internally. Is that the process?

Chief Superintendent Hargreaves: That is correct. Complaints are managed by the local policing divisions or, under certain circumstances, the professional standards department, which is a smaller unit that primarily deals with criminal or more complex complaints.

The Convener: I have one more question on that before I move on to where the SPA fits into the process. Is the process any different if the issue is a public complaint or a conduct issue—in other words, an internal police complaint?

Chief Superintendent Hargreaves: A complaint about the police by a member of the public would be recorded as such. With an internal complaint, we have to ascertain the nature of the complaint. We have separate processes if it is grievance related or is identified as a conduct matter. Complaints, conduct and grievance are three distinct and separate processes.

The Convener: Will you explain how that works and give an example of each?

Chief Superintendent Hargreaves: If a member of the public complains about the actions of a police officer, that is invariably recorded as a complaint about the police. There are numerous options for how that is investigated under our six-stage process. We have the initial notification of the complaint. We then record and initially assess it. Prior to the full investigation of a complaint, we have the opportunity to resolve it through what we call a front-line resolution, which is used only in certain circumstances.

If the complaint is non-criminal, non-complex and what we determine as non-serious—if, say, it is a matter of incivility—that might be appropriate for local resolution. That would primarily be done by our complaints assessment and resolution unit within professional standards, which deals with approximately 40 per cent of the total complaints that come in throughout the year. Those are resolved at local level if that is to the satisfaction of the member of the public, which impacts less on them, the officers and any witnesses concerned. We have found it to be an efficient and effective means of resolving what we might term as the less serious complaints.

The Convener: Will you talk me through an example of how that works?

Chief Superintendent Hargreaves: Complaints are normally recorded online. We assess the complaint and, if it is deemed suitable for front-line resolution, a member of my team contacts the member of the public and attempts to address and resolve the issue and understand what the complaint is. If an explanation or an apology is required, it is offered and confirmed in a letter. If the member of the public is satisfied at that point, the matter is concluded. If they are not satisfied, the letter informs them exactly what they need to do. They state that they are not satisfied and we instigate what we call the full six-stage process, which allows us exactly 56 days within which to conclude the complaint.

The Convener: We may touch on the timescales later. What about the other categories, such as when the matter is serious but non-criminal?

Chief Superintendent Hargreaves: If it is serious but non-criminal, it is not suitable for front-line resolution. It automatically goes into the standard complaint process whereby we allocate it to the local policing division or, in the case of a criminal or specialist investigation, if it is felt necessary, we allocate it either within the professional standards department or to one of our local, regional or national specialist departments, depending on the type of complaint that is being made. Following the investigation of that, we reach a determination, identify any organisational or individual learning and provide that notification to the complainer, ideally within the prescribed timescales.

If it is a criminal matter, it comes to us in professional standards to report to the Crown Office and Procurator Fiscal Service for its determination.

The Convener: Is there a possibility that, when a serious and non-criminal matter is referred to a local policing division, the division is actually investigating itself?

Chief Superintendent Hargreaves: We always ensure that it is taken outside the line-management structure, so that there is a degree of impartiality. Furthermore, the investigation is explained in the final letter to the complainer, so that they can understand exactly what steps have been taken to address the complaint. If the complainer remains dissatisfied with the investigation or the outcome, they have the right—as is set out in the final letter to them—to refer the matter to the Police Investigations and Review Commissioner. We have found that only 5 per cent of complainers choose to take up that method.

The Convener: We know that 46 per cent of complaints that are made are internal police complaints. Under the old system when there were

eight forces, that allowed a neighbouring force independently to look into a complaint about another force. In a written submission, Karen Harper highlights concerns about whether complaints are dealt with impartially and transparently. She considers that there is sometimes a conflict of interests when internal complaints are investigated.

Chief Superintendent Hargreaves: I have read the submission that you refer to. In any case, we always try to identify the most suitable method of allocation of a complaint to ensure independence and impartiality. To take that a step further, where there is, for example, a complaint about a member of the professional standards department, which incorporates the anti-corruption unit, that matter would be investigated outside the department. Such cases used to be investigated within professional standards, but that no longer happens, and the SPA is notified when we receive such a complaint.

The Convener: What is the SPA's role in the complaints process?

Lindsey McNeill (Scottish Police Authority): The SPA handles complaints against senior officers of the rank of assistant chief constable and above, complaints about the SPA and complaints about SPA members of staff. We follow a very similar process to the one that Mark Hargreaves has just described.

In relation to our oversight of Police Scotland complaints handling, a regular performance report comes before the recently established complaints and conduct committee. Police Scotland professionals attend to talk through the performance statistics, which allows for deep-dive questioning by committee members. We can also go into private session to discuss further details. We have oversight of the complaints-handling reviews that go to PIRC and we see the results that come back from those. That also allows us to have further questioning of Police Scotland where that is appropriate.

The SPA conducts a dip-sampling exercise across Police Scotland's national complaints-handling service. That is a desk-based exercise to analyse closed complaints in the system and their compliance against stated policies and procedures.

The Convener: I think that I read that there was a complaints and conduct committee and that it has been re-established. Is that correct?

Lindsey McNeill: Indeed, convener. One of the first acts of the new chair of the SPA in December was to re-establish the complaints and conduct committee, which is made up of some of the SPA board members. The committee now meets at least monthly, although it has actually met 12

times since January this year. It has a role and remit in determining actual complaint cases that come to the SPA, which are considered in private session.

The Convener: Why was it disbanded originally?

Lindsey McNeill: That was part of the previous chair's governance review. It was decided that that particular committee was to be disbanded and the decision making in all complaint cases was delegated to the then chief executive.

The Convener: Do you not know why that decision was taken?

Lindsey McNeill: It was a decision of the previous chair.

The Convener: Did any of the board members question that?

Lindsey McNeill: I cannot comment on that, as I was not there at the time.

The Convener: Will you perhaps write to the committee with that information? Understanding why things went wrong in the past helps us to understand whether things have been resolved.

Lindsey McNeill: Certainly, convener—we will do that after the meeting.

Liam McArthur (Orkney Islands) (LD): You will be aware that Her Majesty's chief inspector of constabulary and the Auditor General identified the need to improve the complaints-handling process. They did not go into great detail about their concerns, but I think that questions from the convener and other colleagues will touch on them. Do you see areas where improvements need to be made? If so, would we be required to go back to the act and change it to enable those improvements to happen?

Chief Superintendent Hargreaves: There is always room for improvement, so we welcome Dame Elish Angiolini's review of complaints handling, and we will certainly work with that team to improve anything in areas where we can do that. The fact that 95 per cent of people who engage in our complaints-handling process in Police Scotland choose not to pursue the matter further once we have addressed their complaint—notwithstanding their right to pursue it—gives me confidence that the process is suitable, but I accept that there is always room for improvement.

Liam McArthur: You mentioned Dame Elish Angiolini's review, which will take forward any considerations that a range of stakeholders might raise. In Police Scotland's engagement with that process, are you making recommendations to Dame Elish about how the process might be improved, notwithstanding what you have said?

Chief Superintendent Hargreaves: It would be a bit premature to comment on that, but I assure you that we will fully engage and co-operate with the review by Dame Elish Angiolini.

Lindsey McNeill: As part of the SPA's original submission to the committee, the chair said that we do not think that opening up the 2012 act would be beneficial in the long term. However, the underpinning legislation—the regulations on performance and conduct—could be looked at again.

It is on the record that we are keen to look at system-wide changes to complaints handling. We welcome Dame Elish Angiolini's review and we are actively engaged with her and her secretariat.

Liam McArthur: As you have said, the SPA has been on a bit of a journey in recent times. It had the complaints committee, which was then abandoned for a different process, but now that committee has been re-established. You have taken the view that things in the past have not worked. What would the SPA like to see to improve the system?

10:15

Lindsey McNeill: As I mentioned, we have identified improvements through changes to regulations. We are making and looking towards other improvements that we can make, such as changing the complaints-handling procedures to make them more streamlined, bringing in director-level triage of complaints and looking at categories of complaints, to take on board the PIRC's feedback. Collectively, we are working towards that.

Our new complaints-handling procedures are out for consultation with stakeholders, and we will learn lessons. Our complaints and conduct committee has also commissioned us to look back over the past five and a half years, particularly in relation to statistics, lessons learned and trend analysis. The results will be reported to that committee at its meeting in October. All that information together will be analysed and fed back to Dame Elish Angiolini's secretariat, so that we can identify things that we can do at our own hand as well as what we can feed into her review.

Liam McArthur: Has the SPA or Police Scotland taken a view on the concerns that the Scottish Chief Police Officers Staff Association has raised about the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013, which the association feels need changes? There are concerns about the way in which each stage of the process is marked with the release of notifications to the press and about whether that is prejudicial to the reputation of the individuals who are involved.

Lindsey McNeill: We are keen and robust about ensuring the confidentiality of the process for those who make complaints and those who are complained about. All such matters—especially when they concern misconduct—are sensitive employment matters. We take seriously our officers' welfare, and we take it on board that people make genuine complaints. Time, fairness and proportionality are needed to ensure that we conduct the initial inquiries effectively, so that we bottom out complaints.

Liam McArthur: The practice is to publish a news release on your website at each stage of a complaint that involves a senior police officer. I understand the need to be transparent, given concerns that have been raised about the SPA, but there is sensitivity about the information that could be released at any stage in an investigation that might have some way still to go. How is the balance struck on what is issued? Is there any sympathy for the Scottish Chief Police Officers Staff Association's proposal that no information should be released until an investigation is concluded?

Lindsey McNeill: Our original submission captured the point that confidentiality is an absolute requirement for the process. There have been circumstances in which things have not necessarily played out in that way but, when we make references and referrals, we refer only to "a senior officer", unless circumstances dictate otherwise.

Liam McArthur: You alluded to information that has been made public outwith that process. How has that come about? Has that come from leaks from the SPA or Police Scotland or from conjecture by the media?

Lindsey McNeill: I would not like to say something that I could not prove, but we have conducted internal security leak investigations, and nothing has derived from the SPA. I cannot comment on anything else.

Liam McArthur: Does Mr Hargreaves wish to say anything about the association's concerns?

Chief Superintendent Hargreaves: Complaints about executive officers are a matter for the SPA and it would not be appropriate for Police Scotland to comment on them. We deal with complaints about officers up to and including the rank of chief superintendent.

The Convener: Will the SPA revise its procedure of issuing a press release that refers to "a senior officer" when it is blatantly obvious to everyone exactly who that person is?

Lindsey McNeill: That reflects the small number of chief officers that we have. We are revising the processes for when we make conduct

referrals to the PIRC and we are taking on board all the lessons learned from the past.

The Convener: Is that a "Yes"?

Lindsey McNeill: It is.

The Convener: Did you say that the situation reflects the small number of senior officers? Is that because we have a single police force, whereas the legacy forces had more senior officers in various positions?

Lindsey McNeill: It is probably an area that does not necessarily relate to having a single police force; it just reflects the fact that we have a small number of senior officers, which is the number that the SPA is responsible for dealing with.

The Convener: Because that is how the legislation is constructed and that is what it says.

Lindsey McNeill: Yes.

Rona Mackay (Strathkelvin and Bearsden) (SNP): You referred to dip sampling by the SPA. I am struggling to understand exactly what that is. Would you care to tell us what it is?

Lindsey McNeill: Of course. Dip sampling is a process whereby the SPA complaints team—three members of staff—looks on a quarterly basis at the number of complaints that have been completed and closed by Police Scotland. The team can do a verification on the system against a sample size. It checks the types of complaints that have been received and the substance of the complaints; it looks at how the process was closed and ensures that the final decision letters that were issued to complainers comply with policies and procedures.

Rona Mackay: Has the effectiveness of that approach been evaluated?

Lindsey McNeill: The complaints and conduct committee discussed the issue with the complaints team at the committee's last meeting. There are probably lessons to be learned about how we can best conduct the process, which is part of our on-going internal improvement.

Rona Mackay: What lessons have been learned?

Lindsey McNeill: They are about our presentation of the analysis and our recording. We are taking on board lessons about that.

Rona Mackay: Is the practice robust enough?

Lindsey McNeill: It has been to date.

Rona Mackay: How long has the process been used?

Lindsey McNeill: It has been going on for four years.

Daniel Johnson (Edinburgh Southern) (Lab):

I would like to begin by looking at the numbers. According to the SPA submission, you are dealing with hundreds of cases of complaints per year and tens of cases within the SPA remit. How many officers who are ACC or above we are talking about? It seems a very high number of complaints for what is a relatively small number of people. Is that a fair reflection?

Lindsey McNeill: To put some of those numbers in context, remember that the SPA accepts complaints against the SPA and SPA members of staff as well as complaints against senior officers, and the numbers reflect all those cases. They also refer to historical cases that were brought forward as legacy from previous joint police boards. Furthermore, we are used as an escalation route when people are dissatisfied with Police Scotland, so the complaints are not necessarily about senior officers.

Daniel Johnson: How does the fact that people feel that they have to go to the SPA to complain, and the fact that only one in five cases raised with the SPA is within the SPA remit, reflect on the transparency, clarity and robustness of the complaints process overall?

Lindsey McNeill: Without going into individual complaint cases, I think that, since the inception of the SPA, we have been used as a place for people to land various complaints without them necessarily understanding what our full legislative capability and remit is, so there has been a misunderstanding. An improvement for us to make would be to help people to understand what we can and cannot accept complaints about.

Daniel Johnson: I would like to put a similar point to Mr Hargreaves. From what you said, you have three different ways of handling complaints, each of which has a number of different procedures. It strikes me that that is quite a complex system. Is there an issue with the robustness and transparency of this process just because of that complexity?

Chief Superintendent Hargreaves: The manner in which people raise issues with us, regardless of what they may be categorised as, is reasonably straightforward; it is well explained on our website. Most of our complaints come through the online system and they are recorded and assessed as such. There are inevitably complaints and the determination is of whether they are suitable for front-line resolution or require a more full and thorough investigation, depending on the needs and wants of the complainant.

If the matter is a grievance, it is an internal matter. A grievance is an issue that an officer has raised with regard to another officer or a member of staff, and it is dealt with internally rather than

through the online complaints process. If something is identified as a conduct matter, that can come about as a consequence of a complaints process or it can be identified internally as a matter that we would deal with separately.

There is a single route for complaints that members of the public wish to raise and that is the online complaints process, or they can write or telephone to complain as per the guidance on the website. There are well-established processes in place should the complainant be dissatisfied with the original complaints-handling method. If it is a criminal matter, they can go to the COPFS, or if it is non-criminal, they have the right of recourse to the PIRC.

Daniel Johnson: Could you share with the committee the documentation on the distinction between the grievance process and the professional conduct process? I do not want to bottom it out today, but I would certainly welcome that clarification.

On the robustness point, it is hugely important that the subject of a complaint is dealt with very carefully and that details about the nature and substance of the complaint are not shared with the individual until it is appropriate for that to happen. Are you confident that structures are in place to ensure that the subjects do not receive inappropriate detail?

Chief Superintendent Hargreaves: Do you mean the officers who are the subject of a complaint?

Daniel Johnson: Yes.

Chief Superintendent Hargreaves: The process that we have in place has been subject to significant review over the past couple of years. We have a process in place whereby we agree what we would call the heads of complaint. That is essentially a written agreement between the police and the complainant as to what exactly constitutes the complaints that are being made about the police. Once that process is agreed, we can undertake the complaint investigation. We will then offer the subject officer a chance to comment on the allegations that have been made.

Daniel Johnson: I would also like to ask about whistleblowing. Obviously, that is another form of complaint, but it did not feature in your description of the complaints process. I note that the chief constable has made specific points about this. Could you outline how whistleblowing fits within this and give the assurance that, if someone approached a senior officer as a whistleblower, the details would not be shared with the ranks below that point or, indeed, with any subject who may be involved either directly or indirectly in the matters raised in that whistleblowing case?

Chief Superintendent Hargreaves: Of course. As part of the restructure of the professional standards department two years ago, one of the facilities that were introduced was a national gateway assessment unit. People and officers or staff can report matters either in name or confidentially and anonymously through what we call the “Integrity matters” portal. That is an online submission facility through which they are perfectly entitled to give their details or not, as the case may be, and raise any issues or allegations.

We would have to assess whether the individual raising the matter should have whistleblower status. We would determine what the allegation is and whether the individual should be afforded the protection of a whistleblower. It is not always straightforward, but we would look at each individual circumstance. There would be that protection and that means to report things confidentially and/or anonymously through the integrity matters portal or through the whistleblowing forum, in which case it would be reported to the same place—namely our national gateway assessment unit, which takes issues away from the local area where they are raised.

Daniel Johnson: One of my concerns about all this, and indeed the previous answers, is that somebody with a complaint has to make sure that they put the right complaint into the right process and categorise it in the right way. There are three or four different channels here and you might essentially be putting the wrong block in the wrong hole in the box. If somebody does not correctly assess the right category for their complaint, how flexible is the process to redirect it?

Chief Superintendent Hargreaves: I would say that it is very flexible. A complaint that is made through out online complaints process would come to our complaints assessment resolution unit, which would determine the most appropriate means of allocation and investigation, so there is that single point of entry. Similarly, the integrity matters portal and the whistleblowing forums that we use would come under a single place, namely the national gateway assessment unit. There are two points of entry, both of which sit under the professional standards department under my direction. The consistency that you are looking for would be achieved by determining who is best placed to carry out the inquiry and what is the most appropriate means of doing that.

10:30

Daniel Johnson: Ms McNeill, how does the SPA reflect on the system? Does it feel that it is straightforward and simple to use?

Lindsey McNeill: It is slightly different from Police Scotland only because under the senior officer—

Daniel Johnson: Sorry—I am asking for your reflections on the characterisation that we have just heard from Police Scotland on the way in which it handles complaints.

Lindsey McNeill: Sorry. Yes, we support Police Scotland’s approach.

The Convener: I was not aware that the SPA investigated itself. How many complaints have there been against the SPA and what is the process for dealing with them?

Lindsey McNeill: I do not have those figures to hand today, but I will follow that up after today’s meeting. It is very much the same process. All complaints come into a dedicated team that assesses them and takes the complaints cases to the complaints and conduct committee for determination. Should any member of staff be part of a complaints case, they would not deal with it. In some circumstances, we have had our head of the legal department look at particular complaints away from the complaints team.

The Convener: I have to say that I am disappointed that you have come to the committee today to answer questions on complaints specifically but are unable to tell us how many complaints have been lodged against the SPA.

Where does the authority for that come from? Is it in the legislation? Is there secondary legislation that allows the SPA to investigate itself?

Lindsey McNeill: The 2012 act states that the SPA has to have complaints-handling procedures in place.

The Convener: For?

Lindsey McNeill: For handling all complaints. The Police, Public Order and Criminal Justice (Scotland) Act 2006 has the definition of a relevant complaint and the 2012 act talks about misconduct allegations against senior officers.

The Convener: Certainly from my point of view, there are huge transparency and accountability issues here. We sit on the Justice Sub-Committee on Policing, but I was not aware of this, and I doubt the general public are. Is this an area that the SPA is actively looking at? With some of the regulations, we have talked about a lack of clarity and transparency, and this seems to me an obvious target for that to be looked at again.

Lindsey McNeill: It is certainly something that we would actively welcome. Our chair and our interim chief officer have looked at that as part of our on-going improvement journey, and we are very much engaged with the Dame Elish Angiolini review.

The Convener: Could you provide the number of complaints against SPA, as well as the nature of those complaints and the outcomes, please?

Lindsey McNeill: Of course.

John Finnie: Good morning, panel. Ms McNeill, could you respond to the Scottish Chief Police Officers Staff Association's view that a fair interpretation of regulation 8 would be that the SPA undertakes an initial investigation prior to moving to a full investigation? It expresses that view in relation to anonymous complaints in particular. That is not an unreasonable position.

Lindsey McNeill: When we have been looking at improvements at our own hand and, equally, when we have been engaging with Dame Elish Angiolini's review, we have identified that there are issues in working with the regulations. We have received complaints through a number of routes, some of which come from named individuals and some of which come from anonymous complainers, and we are actively looking at that and feeding back to our complaints committee on how we best deal with that going forward. That is part of the work with our new complaints-handling procedures.

John Finnie: I think that I am right in saying that, historically, there was a view taken about whether an inquiry would be initiated. Just as a police officer who was told by somebody, "I have had my car stolen," would first say, "Are you sure you have not left it somewhere?" some cursory examination is surely required for fairness to apply.

Lindsey McNeill: Learning from experience, we know that there has been a lack of clarity over how far we can conduct preliminary inquiries as opposed to tipping into what might be deemed an investigation. We are looking at what we can do with the clarity and understanding of our own process, working with the PIRC and feeding into Dame Elish Angiolini's review.

John Finnie: Can I ask some questions about the PIRC? I am particularly interested in the relationship that there is, and in who has primacy, when there are contemporaneous investigations. For instance, there might be issues to do with the seizure of productions in a case. Can you explain how that works and how that dovetails with the complaints process, because clearly there are concerns for the PIRC to be involved?

Chief Superintendent Hargreaves: Are you referring to PIRC investigations?

John Finnie: Yes.

Chief Superintendent Hargreaves: The short answer is that we have to work closely together and what is required is very much case dependent. We would always seek to co-operate

with the PIRC on the provision of documentation or any other ancillary evidence that would facilitate its investigation.

John Finnie: Who has primacy in any investigation?

Chief Superintendent Hargreaves: If it is a PIRC-led investigation, it would have primacy and we would fully co-operate with it. It would depend on the investigation. If the Crown has instructed the PIRC to undertake an investigation, it would have primacy.

John Finnie: Has that always been the case?

Chief Superintendent Hargreaves: As far as I am aware, yes.

John Finnie: As someone who is in charge of the professional investigation of complaints against the police, would you express a view on whether the PIRC has a sufficiency of powers to undertake its job?

Chief Superintendent Hargreaves: I think that that would be a matter for the PIRC to comment on. I do not think that it is for me.

John Finnie: Has it been raised with you or your department?

Chief Superintendent Hargreaves: I am aware of the PIRC submission in relation to this matter. It is something that we engage in regularly to try to bring forward a process that is effective and efficient for both complaints handling and investigations.

John Finnie: Do you have a view of the relationship between Police Scotland's inquiry system and a PIRC investigation at the same time? Would you say that the process works well?

Chief Superintendent Hargreaves: Do you mean in cases where the PIRC is dealing with the same matter?

John Finnie: Yes.

Chief Superintendent Hargreaves: My personal opinion is that a single process would be preferable. I think that that would make sense. A victim-centred approach would seem to me to make sense.

John Finnie: Who should lead that process?

Chief Superintendent Hargreaves: If it is a PIRC-led investigation, it would make sense that it would take on that matter.

John Finnie: Ms McNeill, does the SPA have any view about simultaneous investigations involving PIRC and Police Scotland?

Lindsey McNeill: I regret that it is not something that I am close to myself, but we can

arrange for the SPA view to be expressed back to the committee.

Jenny Gilruth (Mid Fife and Glenrothes) (SNP): I have a follow-up question. I am interested in the process whereby somebody reports a police complaint for the first time. Would you expect there to be a certain level of investigation at a local level before it goes to the PIRC? Is there a standardised way of dealing with that? For example, is guidance provided to local forces on carrying out a level of investigation before a matter is escalated to the PIRC?

Chief Superintendent Hargreaves: Absolutely. The first point of entry into the organisation for complaints is Police Scotland. We have an established six-stage process. As I was saying earlier, the severity and nature of the complaint would determine the route that it would take, but it would certainly come into a single source and be assessed. It can be resolved at a front-line level, which would essentially mean a very expedited process but to the satisfaction of the member of the public who had cause to complain. If they are not satisfied with that, they can request a fuller investigation, which we would undertake. If they remain dissatisfied with the outcome of that investigation, they have, of course, the right of recourse to the PIRC for non-criminal matters. If they are complaining about a criminal matter, they have the right of recourse to the COPFS.

Jenny Gilruth: Lindsey McNeill, I note that you say in your evidence that the SPA complaints team is a team of three people. Is there a capacity issue if you have only three folk investigating these complaints? Do you need more?

Lindsey McNeill: I think that everybody who comes before the committee would say, "Yes, we could always do with more resources." However, we are looking at that as part of our improvement journey to assess the who, the what and the why—to assess who is best to do what and in which circumstances.

I have to be careful, because we have the different categorisation of complaints. We are not allowed to investigate misconduct, so it is preliminary inquiries, whereas if it is a relevant complaint—that is a type of complaint that has a recourse option to the PIRC—we have to conduct some inquiries. We are streamlining our working processes, but additional resources are always good.

Liam Kerr (North East Scotland) (Con): You have talked quite a lot about the importance of sticking to process and the authority for the complaints process. Where does the concept of special leave fit in with that? Assuming that there is not a specific process that I can go and look at, who has authority to instigate special leave and

against what criteria do they do so? What process applies when things have gone off piste?

Chief Superintendent Hargreaves: I am sorry, but is that special leave with regard to—

Liam Kerr: This time last year, rather than a specific process being followed in a particular situation, a concept of special leave was used. Did that just come out of nowhere or is there a process that I can look at to investigate special leave?

Lindsey McNeill: That relates to a specific case. I cannot comment on that set of circumstances, as I was not party to that and I was not in post at the time. I am not familiar with that process. You may wish to take that up with the chair when she appears before you at the end of the month.

Liam Kerr: I will ask the question in a different way, because it is not really about the specific case. We are looking at specific processes and whether they work but, from events last year, it appears that someone has authority to say, "Here are all our processes, but let's do something different that is not mandated by regulations." Is that the case and, if so, who has that authority?

Lindsey McNeill: I would have to take that back and ensure that we look at it in making our on-going improvements.

Liam Kerr: I will move on to something that came up in our papers. Some people have suggested that the fact that the complaints process is dropped when officers retire or resign is deeply unsatisfactory, both for those who have made a complaint and for those who have been accused. Does either of you take a view on whether that should change? If you think that it should, given your comments earlier, Ms McNeill, should that be done by amendment to regulations?

Chief Superintendent Hargreaves: It is important to make the distinction between complaints and conduct. If a member of the public makes a complaint about a member of the police or a police officer, that complaint will continue and conclude, even where that police officer leaves the organisation. If the complaint is about conduct that is assessed as misconduct, it would not be progressed in the event of the officer leaving, whether by resignation or retiring.

Liam Kerr: Do you have a view on whether that should change in the latter case?

Chief Superintendent Hargreaves: I can see the frustration, both for the member of the public who has had cause to complain but, equally, for the officer, who may wish the opportunity to defend himself or herself. That probably needs to be explored in further detail. I do not have a

definitive view—I can see arguments for both sides.

Lindsey McNeill: I concur with Mr Hargreaves. We work hard to stay within the parameters of what we are and are not allowed to do, and any consideration of future legislation or regulations could involve consideration of that.

Liam Kerr: That could happen, but does the SPA take a view on whether the situation is unsatisfactory and should change, as some have suggested?

Lindsey McNeill: We need to understand the broader issues. We are looking at the lessons learned in England and Wales and what has been done in the past and what is changing there. We would like to understand the wider evidence.

Liam Kerr: The PIRC has suggested that section 33A(b) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 should be extended to enable it to investigate those who have previously been employed by a policing body. Do you have a view on whether that should take place?

Lindsey McNeill: I am aware of the PIRC's submission. Again, that will be looked at as part of Dame Elish Angiolini's review. We will consider our position on that matter and where resources best lie.

Liam Kerr: Mr Hargreaves, do you have a view?

Chief Superintendent Hargreaves: I am aware of the complications that can arise as a result of what in essence is a twin-track investigation. We would welcome and consider any process or change that would result in an improved service to the subject officers and to members of the public.

10:45

The Convener: Ms McNeill, I am a bit concerned that you have referred to Dame Elish Angiolini's review several times. You are here to answer questions about your complaints processes in the SPA now. It is not about considering it in a few months; you are here to answer the questions now. We have asked several questions to which you do not appear to have the answers. Could the committee have written evidence on the procedure for the special leave process for any on-going complaints? I hope that that is noted. Do we have the wrong person in front of us today? Do you consider that someone else should have been here to answer questions about complaints handling?

Lindsey McNeill: No, convener. I am the director in charge of complaints-handling procedures. Since returning to work full time in

June, I have worked with a team and a committee, and we are currently taking on board various lessons learned. We absolutely welcome Elish Angiolini's review because, as our chair has said since she took up post in December 2017, she feels that the system is broken and she is keen to look for system-wide review.

The Convener: I hope that you are doing that now and not waiting for a review, especially in preparation for appearing before this committee. I cannot put it any more strongly than that.

John Finnie: Mr Hargreaves, there is a lot of commentary about the issue of officers retiring and avoiding proceedings. Can you confirm my understanding that, if a member of the public makes a complaint that confers criminality, nothing alters the fact that that matter will be directed by the Crown Office and Procurator Fiscal Service, regardless of whether the individual retires?

Chief Superintendent Hargreaves: That is correct. If a member of the public makes a complaint about a matter that is considered to be criminal in nature, that would be referred to the Crown Office and Procurator Fiscal Service—in particular, the criminal allegations against the police division of that service. The investigation would continue, because it is a criminal matter and it would be put before our courts if that was deemed the appropriate route to take, regardless of whether the officer has retired or resigned.

Rona Mackay: I will ask about the time taken to investigate and conclude complaints. We have had written submissions that highlight lengthy delays that go way beyond the 56-day deadline. Why is that happening, and how can the situation be improved?

Chief Superintendent Hargreaves: There are a number of reasons why a complaint may extend beyond the 56 days. For example, it depends on the number of allegations, the complexity of those allegations, the number of witnesses that are required to be seen and the volume of evidence that needs to be ingathered to ensure that a full and thorough investigation is undertaken. There is also the time taken to agree the heads of complaint, which I referred to earlier. It can often be a lengthy process to come to agreement with the person, who is usually a member of the public, about what they would like us to investigate.

All of that said, I recognise that there is room for improvement and that, on occasion, the process has taken a lot longer than I would personally like. A lot of complaints are dealt with by local policing divisions and specialist areas of the business. We continually work with those areas of the business to identify best practice to improve the process for complaints handling in ways that allow us to

expedite the matter while not compromising the quality of the investigation.

Rona Mackay: Should there be different timescales, depending on the complexity of the complaint? Surely it takes much less time to investigate a fairly straightforward complaint than it takes to investigate something much more intricate, as you have suggested.

Chief Superintendent Hargreaves: The time period of 56 days refers to what I call the standard complaints process. You are right that that can be anything from something that is deemed not suitable for front-line resolution by a member of the public to something that is automatically not suitable for that. Some complaints that are not suitable for front-line resolution can be and are completed within the 56-day timescale. Equally, other complaints that are either criminal or non-criminal—or both—need to go beyond the 56 days. The key for us, which is written into our standard operating procedure, is that we maintain contact with the person who made the complaint—it is usually a member of the public—to ensure that they understand why there is a perceived delay in the investigation and that they are confident that the matter is progressing at an appropriate pace.

Rona Mackay: You mentioned the standard operating procedure. What is the status of that document? Is it complete? Is that what you work to at the moment?

Chief Superintendent Hargreaves: It is under regular review, but it is what we work to at the moment. It is based on documentation that was initially provided by the PIRC.

Rona Mackay: Should there be statutory requirements for the length of time taken to consider complaints and should the Police, Public Order and Criminal Justice (Scotland) Act 2006 be amended to define the timescales, as the PIRC suggests? You have already said that you do not believe in amending that act, but should it be amended in respect of timescales?

Chief Superintendent Hargreaves: To be honest, I do not think that it is necessary to amend the legislation. I think that the 56-day timescale is more or less suitable. As I said, there are occasions when it takes longer than we would like. That is sometimes through necessity, but there are occasions when we could improve on that and, as I said, I am working with the local policing divisions and my team to do so.

Rona Mackay: I am sure that you appreciate how frustrating it is if people make a complaint and have to wait three months or more for any conclusion, or sometimes even for a response, to be honest.

Chief Superintendent Hargreaves: Absolutely. That is why, if a complaint process is going to extend beyond the 56-day period, I encourage my team and the local policing divisions to maintain contact, in the same way as we would in any other investigation, to ensure that the member of the public understands why something might take longer than the guideline that we use of an average of 56 days.

Rona Mackay: Ms McNeill, how are the timescales working for the SPA?

Lindsey McNeill: I reflect what Mr Hargreaves has said. We are subject to the same timescales as suggested by PIRC, and we endeavour to work towards them. The complaints that we get tend to be quite complex to unpick and to compare with the regulations and standards of professional behaviour. We have at times exceeded those timescales. We endeavour to keep our complainers up to date once a month, and we give them a report on progress when complaints go to the complaints and conduct committee for determination.

Rona Mackay: So you engage with the complainant once a month.

Lindsey McNeill: Indeed.

The Convener: Do you keep a record of cases in which the timescales are exceeded?

Lindsey McNeill: Yes.

The Convener: Could we have that, please?

Lindsey McNeill: Yes, of course.

The Convener: Thank you.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I have a short supplementary question, because the questions that I was going to ask have broadly been answered. I thank the panel for coming in. I highlight that, as you mentioned last week, convener, it is important that we always treat panellists with respect when they are in front of us.

My question is for Mark Hargreaves and follows on from Rona Mackay's questioning. What does that contact with members of the public look like in practice? We talked about contact happening once a month, but what does it look like? Is it a phone call, a discussion in person or a visit?

Chief Superintendent Hargreaves: The short answer is that it depends on what medium the member of the public prefers. Some people might prefer a phone call, some might prefer an email and some might prefer no contact until the complaint is resolved or at least until they have a response to the complaint—of course, "resolved" might be too strong a word if someone is satisfied, but I am talking about the complaint being

concluded from an initial complaints-handling perspective. We encourage contact in whatever form is appropriate or is asked for by the member of the public, which can of course be different.

Shona Robison (Dundee City East) (SNP): I thank both panellists for your responses. You have answered in an open and transparent manner.

What is the SPA's role in scrutinising the time taken to consider criminal complaints? We have heard about the standard operating procedure in response to Rona Mackay's question, but I want to probe a bit more into how the SPA ensures that Police Scotland follows the standard operating procedure. If we are not going to have that in statute, how do we ensure that it happens? What other levers can be used?

Lindsey McNeill: In relation to general complaints handling, that is part of the regular performance reporting that Police Scotland brings to the complaints and conduct committee. It reports in public on a quarterly basis, and that includes things such as timescales.

You mentioned criminal allegations. With our own complaints and in relation to Police Scotland complaints that are referred to the Crown Office, we have regular dialogue with the Crown on an operational basis to work out the status of different complaints. We recently started a four-party meeting between the SPA, Police Scotland, PIRC and the Crown. That is a professional round-table discussion to highlight issues across the system and to work out where we can improve collectively.

Shona Robison: Do you look at an analysis of the cases where the timeframes are breached? Is there a warning flag when a case is going to breach the timeframe so that you can consider how to avoid that?

Lindsey McNeill: Absolutely. The complaints and conduct committee has commissioned us to look back at what we did over the previous five years, what the timescales were and what lessons we can learn. As well as that, on an on-going basis, we look at all our complaints to consider what point they are at, how much time they have taken and how we can bring them to a close one way or another. We have recently done a substantive piece of work to reduce the backlog of complaint cases, which has been progressed at the last two committee meetings.

Shona Robison: Does that include an analysis of where the problem lies, what is taking the time and how that can be resolved?

Lindsey McNeill: Yes.

The Convener: That concludes our questions. I thank the witnesses for attending. We look forward to receiving the additional information that you

both indicated you are going to provide to the committee.

I suspend the meeting briefly to allow the witnesses to leave.

10:56

Meeting suspended.

10:59

On resuming—

Pre-budget Scrutiny 2019-20

The Convener: Agenda item 2 is an evidence session that is part of our pre-budget scrutiny ahead of publication of the Scottish Government's budget 2019-20 later this year. I invite Liam Kerr to make a declaration of interests.

Liam Kerr: I am a member of the Law Society of England and Wales and of the Law Society of Scotland, and I hold practising certificates with both.

11:00

The Convener: I refer members to paper 3, which is a note by the clerk, and paper 4, which is a private paper. We will hear from two panels on this subject. The first panel will focus on funding for the Crown Office and Procurator Fiscal Service and the Scottish Courts and Tribunals Service for the purpose of tackling sexual crime and domestic violence.

I welcome Fiona Eadie, who is the secretary of the Procurators Fiscal Society section of the FDA union, Stephen Murray from the Crown Office and Procurator Fiscal Service branch of the Public and Commercial Services Union, and Brian Carroll from the Scottish Courts and Tribunals Service branch of the PCS. I thank the witnesses for their written submissions which, as always, were very helpful to the committee. We now move to questions, starting with one from Shona Robison.

Shona Robison: I want to explore the impact of the in-year additional funding to COPFS of up to £3.6 million in this financial year. What difference will the funding make and what will it mean for the service?

Fiona Eadie (FDA): The FDA very much welcomes the additional funding. We have been here before on several occasions to argue that additional funding is required for the fiscal service in order to tackle the challenges around dealing with the increase in serious sexual offending in particular. The committee will be familiar with some of the challenges that have been explained in relation to the complexity of dealing with such case work.

One of our main requests in recent years has been for a staffing increase. The additional funding has been allocated to fund recruitment of up to 140 new members of staff; about 60 of those will be new lawyers. We hope that that will alleviate some of the pressures and stresses on our colleagues who are required to deliver the service.

We understand that that money comes with a requirement to provide an improved service for the public; we hope that it will assist in doing that. We have set out in our written submission some of our provisos or words of caution in relation to how quickly that transformation can be expected to take place, because recruitment in and of itself will not provide a solution to that issue overnight.

Stephen Murray (Public and Commercial Services Union): The PCS very much welcomes the increase in budget and the fact that the Government has listened to the concerns not only of the unions but of the COPFS's management. It is fair to say that the casework within the service is changing. There is an increase in more complex cases, which take longer to get through and longer to get to court. We welcome the increase in funding for dealing with sexual offences and domestic offences. We also note that other parts of the organisation have asked for increases in their budgets and have been given them, which is very much about giving a better service to the public.

As a union, PCS will monitor the situation to ensure that no special preference is given to anyone at the expense of others in the service, just to make sure that things are on an even keel. As the main union rep for PCS, I have had concerns about the number of staff who have been off with workplace stress in the past couple of years. The austerity measures in the past 10 years or so have put a lot of pressure on PCS members. The increase in budget is very much welcomed, not only for the service but for the staff and the unions.

Shona Robison: Quite a large number of the additional staff—60 out of the 140—will be new lawyers. I presume that the priorities for that spend will be aligned with the priorities that are set out for the service and the requirement to improve. Fiona Eadie said that there are no quick fixes and that it will take time for that recruitment to result in improved performance and a better service to the public. What timeframe is realistic, in that respect?

Fiona Eadie: Perhaps my colleagues in the senior management of the organisation would be better placed to provide you with that sort of estimate. What I will say, though—we have made some observations about this in our written submission—is that, as has been previously observed and accepted, you cannot grow fiscals overnight. As a previous Solicitor General said,

"fiscals do not grow on trees.—[Official Report, Justice and Home Affairs Committee, 27 September 2000; c 1773.]

Beyond the regular training that is required for all solicitors, it is a very specific post with specific demands, and one develops skills and expertise over time.

We have indicated that we do not support the current accreditation system that operates in the COPFS. The accreditation involves a requirement for a further two-year training period to acquire skills. We have some issues about how that system operates. In particular, we do not think that it is fair that it comes with a financial penalty; people are on a suppressed salary. However, it is a two-year process. It is probably for others to say what the expected timeframe is to make the changes, but assuming that we can recruit all the staff we need, I would expect to see more experienced legal staff dealing with cases within that period of time.

Shona Robison: I presume that, given that they will be permanent staff, that would be baselined within the budget in order to maintain that number. Is that the assumption?

Fiona Eadie: Yes, that is the assumption.

Brian Carroll (Public and Commercial Services Union): I am here representing PCS members from the Scottish Courts and Tribunals Service. We welcome the increased funding for the COPFS and there are no issues around that per se, apart from the fact that if there is to be that increase in staff, including 60 new lawyers, we anticipate that the capacity for business to be dealt with by courts will increase, which may increase the business that comes through to the SCTS, not only in relation to court business. Indeed, from current trends, business is getting more complex and is, therefore, taking more time to go through the courts. There may be a need for increased staff at the SCTS to deal with that increase in business.

Also, depending on how cases are marked, it might not be just the business going through the courts that would increase; fines enforcement might increase too, because when fiscals are marking papers, they have the opportunity to put cases on direct measures.

We may come on to electronic monitoring later in other questions, but it is worth mentioning now. In one of the written submissions it was mentioned that the Scottish Government anticipates that if electronic monitoring increases, there will be no impact or little impact on the agencies dealing with that electronic monitoring. However, in the SCTS, we deal with the imposition, the revocation and possibly the reimposition of such orders. That is very complex. Overall, if 10 orders does not look like very much, but the issue is the administrative work that goes on behind that to put those orders through the court. We are anticipating an increase in business in that respect, as well.

I suppose what I am saying is that if there is increased funding for one part of the justice sector, there should be increased funding for other parts

of the justice sector. However, in relation to what Stephen Murray said previously, we would not want to see that increased funding being to the detriment of any other funding, including revenue funding, which includes salaries.

The Convener: The point about the impact of breaches of electronic monitoring was well made in your submission. Given that you are already identifying financial constraints, have you made any representation to the Scottish Government to flag up that additional resources will be required?

Brian Carroll: I have not done so personally, and think that PCS has not made any such representation. I think that our medium of flagging it up is through the Justice Committee. It may be that the SCTS itself has had discussions through the Scottish criminal justice boards and other mediums, but PCS has not. That is why we are here today to mention it to you.

The Convener: You certainly have it on record today.

Liam Kerr: Fiona Eadie mentioned 60 new lawyers—you talked about training and how to get the people on board. The current reality is that the training operates as you have described it in your submission and I do not think that there is any realistic prospect of changing that training, nor will there be any move to change it in the near future. It would be fair to say that the COPFS is not the best-paid branch of the profession. You say in your submission that “a significant number” of staff have left the COPFS to join the Scottish Government. Even if you can recruit the full 60 new lawyers, what is going to change to improve retention, such that we do not end up recruiting the whole lot only for them to leave?

Fiona Eadie: I agree with the main thrust of your question. Can I just check what you are referring to when you say that the current reality is operating as stated and that nothing is likely to change in the near future?

Liam Kerr: I am not aware of anything changing. You may have a different view, which I would be keen to hear.

Fiona Eadie: As I said, there are the two separate stages of training for solicitors—in particular, for procurators fiscal. The first stage is just what all trainee lawyers do if they are going to work anywhere as a solicitor, then COPFS has its own system, which is called accreditation. That system is something that we hope to keep on the table for review. I am hopeful that we can continue discussions on how we might be able to improve that aspect of training for our lawyers.

However, to go back to the rest of your question, I think that you are absolutely right. We have just undertaken a recruitment exercise in the

past few weeks. It was confirmed yesterday that we are taking on about 24 new lawyers, which we welcome.

I do not have the precise figures on those who have left to go to the Scottish Government in particular. Anecdotally, I know that the number is significant. We outlined in our submission that many of those people get significantly increased salaries at the Scottish Government. We do not wish to devalue the work that colleagues in the Scottish Government undertake; there is value in the work that everybody there does, in the legal department and in the various policy branches.

11:15

Our point is this—how can it be right that lawyers who have to deal with victims and witnesses of crime, who prosecute child sexual offences and deal with some of the most serious and violent offenders in Scotland are remunerated so significantly less well than their Scottish Government counterparts? We will continue to make the case for addressing that issue.

As we outlined in our written evidence, we know that when the business case for the additional funding went to the Cabinet Secretary for Finance, Economy and Fair Work, the funding was very specifically for recruitment; it was not for enhanced salaries for existing staff. Our concern is that recruitment is only part of the solution. Retention is another key part of it, and unless we can retain our existing staff, and unless we can be the most attractive employer and be competitive in that particular market, the commitments that were made in the business case to secure the additional funding may not be deliverable.

Stephen Murray: On the admin side, PCS is very concerned about the level of staff turnover—staff who leave for Scottish Government places. It seems to be down to pay disparity, which is something that we will be looking to raise in future pay negotiations. It should also be noted that despite the extra finance, which is very welcome, the COPFS is still continuing with its estates review. As a union, we will be vigorously opposing any proposed office closures that might affect the service that we provide to the public and impact on PCS members.

Future funding for the COPFS has to meet ministerial commitments on pay, which have been given to PCS officials previously.

Brian Carroll: I echo what Stephen Murray said about the COPFS in relation to the staff within the SCTS. Staff going from other departments into the Scottish Government is not unique to the COPFS or the SCTS. Staff in the SCTS often transfer to the Scottish Government because of better pay scales. That is an argument for having a cohesive

pay policy across the whole of the Scottish Government, taking into account all the agencies in the Scottish sector, which would assist in addressing the issue that Liam Kerr raised.

In respect of that, we would like to see the Cabinet Secretary for Finance, Economy and Fair Work live up to the commitments that were made to staff about restoring the value of public sector workers' pay, especially in the justice sector, where all three organisations in the justice sector had difficulty in meeting the base requirements of the pay policy.

Liam McArthur: Do you have a sense of the proportion of the additional capacity that will be enabled through the in-year funding? You have talked about not just the complexity of cases but the higher and growing prevalence of sexual and domestic violence and abuse cases. I am sure that you will not be able to put an actual number on it, but how will the extra staff who are coming in be split to meet the demand in relation to sexual violence cases and the pressures of demand in the other areas that Stephen Murray was talking about?

Fiona Eadie: You are right—I cannot put a figure on that. Senior management from the COPFS might be able to, and I am sure that you will hear from them at some point.

However, I can give you a feel for it. This is, I think, borne out by the department's own stated commitment to tackling serious crime—and, in particular, serious sexual offending—but the information that I am getting from members suggests that there has been a lot of internal movement within the organisation, with people moving into the High Court of Justiciary function and especially into teams dealing with sexual offence matters. That is where most of the focus has been recently; however, I should point out that, when we asked this very question, we received reassurances that this sort of thing should not happen at the expense of other parts of the organisation.

Our work is split into three main functions: our work in local courts—in other words, the summary courts; our work in the sheriff and jury courts; and, finally, the serious case work and the High Court work. Our concern goes back to the point that we have made about training and development and where people are likely to be located when they are recruited. Frankly, we would be very concerned if inexperienced staff were recruited into the organisation to deal directly with serious case work such as sexual offence cases. There are reasons why, given our own internal procedures, that should not happen.

The anxiety that we are getting from members in the local court function is that they will have to

bear the burden of carrying out most of the training and development and of coaching, mentoring and developing colleagues in that part of the organisation. In the main, we would expect experienced prosecutors to move in to deal with serious cases and High Court work. I cannot really be any more specific than that; that is the picture that we have seen and those are some of the potential areas of concern that we are monitoring.

Liam McArthur: On Mr Carroll's point about the volume impact of the investment in the COPFS on other parts of the system, notably the SCTS, is the suggestion that cases are not being taken forward at the moment simply because the COPFS does not have the resources, or will the additional resource mean that the COPFS will be run more efficiently without a bulge being created elsewhere in the system? What is your impression in that respect?

Fiona Eadie: I am not suggesting that there are cases that are not being progressed that would have been taken forward, had there been additional funding or additional staff resource. We are looking at some of our internal processes to see how we can make them as efficient as possible, but we very much hope that the additional funding will provide greater capacity and resilience within the organisation.

What I would want to see—and what I think all of us in COPFS would want to see, given that our staff are hard-working, committed professionals who are trying to deliver the very best service that they can—is the provision of additional preparation time. We have been talking about that area of our work for some time now, because we know that it puts significant stress on our members when they have inadequate time to prepare cases. We hope that the additional staff will provide extra resilience and capacity and ensure that people are well prepared when they go into court.

Liam McArthur: Will that reduce the problems of churn that we heard about in our earlier inquiry? Will it speed up how quickly cases are taken forward, which might address Mr Carroll's point about volume? It is not necessarily that more cases are being dealt with—it is just that they are coming through the system quicker.

Fiona Eadie: Churn is quite a complex issue and is influenced by a lot of factors, but the more time that staff have to prepare cases, the better it is for everybody. As this is a factor that contributes to churn, I think that this approach should have a positive impact.

Brian Carroll: I can see where you are going with your question, Mr McArthur, but I would respond by saying that the SCTS works collaboratively with all justice partners, and one of

the areas that is being looked at is trends and the business that is coming through.

From a PCS administrative point of view, we want the people of Scotland to get the service that they want and deserve; after all, we are a democratic nation, and justice is part of that democracy. We need to deliver to the people of Scotland an effective, efficient service. However, notwithstanding what has been said, I still feel that there will be an increase in the amount of business coming through, not just High Court cases but possibly summary cases. We cannot forget that we have justice of the peace and sheriff courts, as well as the High Court, and I feel that all of them will be affected by the increase in staff. I accept that the focus of this money will be on high-end cases, but as I have said in my submission, I think that, as things get better, more time will be freed up to focus on other areas of the justice system.

Daniel Johnson: Both Fiona Eadie and Stephen Murray have alluded to pay disparity between the COPFS and the Scottish Government. Can you quantify that with regard to lawyers and administrative staff?

Fiona Eadie: Yes, but it might be better if, following this session, we provided the committee with that information on pay ranges.

Daniel Johnson: Can you give us a rough figure? Is it 10 per cent less? Is it half? What are you looking at?

Fiona Eadie: As we mention in our submission, colleagues who have essentially moved on a level transfer from the first lawyer tier or grade in COPFS to the Scottish Government get paid in excess of £10,000 more. It is a big difference.

Daniel Johnson: Indeed.

Stephen Murray: From speaking first hand to people in the admin grades who are leaving the service to go to Scottish Government, I know that they are leaving not because they are particularly unhappy in COPFS but because the Scottish Government offers more money across the grades. I do not have any specific figures, but I could look into that and get back to you.

Daniel Johnson: That would be helpful.

Stephen Murray: This is feedback from people who are leaving the service. Both unions are becoming concerned that we are losing a lot of good people as a result of the perception—whether it be right or wrong—that they can earn more money in another department in the Scottish Government.

Daniel Johnson: You have mentioned workplace stress. How significant a problem is it? Is workload the source of it, or are there other issues at play?

Stephen Murray: As the main PCS rep for the admin grades, I have seen an increase in the number of people going off with workplace stress. It is down to various factors including pressure of work, relations with managers and so on, but I feel that the extra funding and staffing will help alleviate that. Staff and unions alike very much welcome the decision to get more staff in to help, and such a move can be only a good thing in meeting the pressures that staff face every day.

Fiona Eadie: You are absolutely right about workplace stress. I am not seeking to put down or criticise in any way the work that is done in other parts of the public sector or by other Government lawyers, but I think that, for these particular prosecutors, a particular stress arises from the nature of the work that they are dealing with. As we have already discussed, the amount of serious sexual offending cases is increasing, and we have put in place vicarious trauma support arrangements for people who have to undertake that work over a lengthy period of time. It is also a factor that leads people to think, "If I went over to the Government, I could get paid more sitting in an office dealing with a different type of work that does not bring these additional stresses and anxieties."

11:30

Daniel Johnson: We understand—the point is well made.

John Finnie: We have already covered quite a bit of ground, but I was going to ask whether the targeting of funding has been appropriate to where people have been placed. There seems to be general consensus that a business case was built around that and that there is support for the move. However, when we did our review, we were concerned about the number of temporary staff that were in place. Are the additional posts going to offset that? Mr Murray, I hope that I noted what you said correctly, but can you expand on your comment with regard to concerns of special preference being given?

Stephen Murray: It is not that special preference is being given as such—it is more that certain areas of work are being targeted. Our written submission mentions sexual offence and domestic violence cases, which are very significant crimes—serious stuff—and should be looked at separately. My role as union rep is to ensure that any pressures do not get transferred somewhere else and that things that are put in place do not come at the expense of other areas. I do not believe that to be the case at the moment, because COPFS management has assured us that, across the board, every function that asked for the increased finance has been given it. In that

case, I hope that what you have highlighted will not be a factor.

The temporary staff issue that you have mentioned has been around for some time now, particularly in the admin grades. However, the good news is that there has been permanent recruitment, and the Crown Agent himself has given us a guarantee that he is very much interested in getting people placed permanently, as it gives them more of a stake in the organisation and means that you might get more from them.

John Finnie: We expressed concern in our report about these numbers so, just for clarity, can you tell us whether the process that you mentioned was already in place, or are the permanent staff who are being recruited to replace some of these temporary contracts part of the new additional staff—which would be 80, if we were to take away the 60 new lawyers from the 140 total new staff to be recruited? Was this happening anyway in advance of these moves?

Stephen Murray: It was happening in advance. It is something that PCS very much welcomes, and the service is on the right track in that respect. I do not think that there is any great desire to go back to the days of having great numbers of temporary staff. It is not good for anyone, whether it be the individual employee or the actual employer.

John Finnie: Indeed. Thank you.

Daniel Johnson: The question that I was going to ask was about whether the funding needs to be long term, but you have answered that.

Do you think that the increase in the volume of serious sexual offences will continue into the future or is it a short or medium-term bulge?

Fiona Eadie: I do not immediately recall the figures, but there was a report by the Inspectorate of Prosecution in Scotland last year or the year before that looked at the case load of COPFS in relation to sexual offending. It is interesting that the report categorised that work as being a trend rather than a peak or a blip. We expect that to continue, which is why the internal structural changes have been made to the organisation and a business case made to support that. I am sure that colleagues from senior management could elaborate in greater detail, but based on current information and the most recent assessment, we expect that increase to continue.

Daniel Johnson: Is that view shared by the PCS?

Stephen Murray: It is difficult to envisage what might happen in the future. The feedback that we have had from senior management is that their opinion is that the situation is a trend, as Fiona

Eadie said—there will not be peaks and troughs; steady work will come through. That is why I think that the COPFS has had to address the matter in such a fashion.

Daniel Johnson: I would like to drill down into the numbers. We are hearing loud and clear that the additional money is welcome. However, if we look at the budget for the COPFS over the past few years in real terms, we see that in 2014-15 the budget was £120 million, but it is going down to £116 million. That is £4 million less, which is a decline of just over 3 per cent. Is that a concern? To what extent are the additional resources real additional resources or just a restoration of the resource that was there back in 2014-15?

Fiona Eadie: There are a few things to note. I would take you back even further than the 2014 figures—to the 2009-10 figures. Our analysis is that had our budget kept pace with inflation, by 2017, which was the most recent time for which I could establish inflation figures, it would have been £150 million. That is a difference of more than £35 million and a real-terms cut in the COPFS budget of more than 23 per cent. In real terms, once you consider both the inflationary pressures and the fact that now a far greater percentage of our overall budget is spent on staffing, the pressure on the organisation has increased.

On restoration of staffing figures, when we were preparing our submission, we had some to-ing and fro-ing with the department about whether the budget will simply restore our staffing figure to a previous high or take it to an all-time high. I am told, and have been reassured, that it will take it to an all-time high. As I have said, in previous years the percentage of our budget that was spent on staffing was, I think, 59 per cent. It is now approaching 70 per cent—the amount of our budget that goes on staff costs is about 67 per cent.

Daniel Johnson: Will that be an all-time high in headcount or in full-time equivalent staff? It is always important to be very clear on that point of distinction.

Fiona Eadie: I am told, and I am reassured, that it is full-time equivalent.

Daniel Johnson: Okay. I would be grateful for the PCS view on those issues.

Stephen Murray: As Fiona Eadie said, on restoration of staff numbers, we have been given guarantees that there will be an all-time high. Senior management has given a very positive outlook on that.

I make the point that when we talk about “real terms” and so on, we just have not kept up for the last 10 years, and PCS as a union is very much

concerned about the wages of its members. That is something that we will be pushing on in the months ahead.

Brian Carroll: On the point about the need for real-terms increases, for SCTS the inflationary pay costs alone are £3 million to £4 million a year. PCS’s SCTS branch feels that there is a need for real-terms increases in revenue budgets to account for rising costs, including inflation, as opposed to real-terms reductions to budget. SCTS, as all the justice partners do, has long-term fixed costs and our information suggests that SCTS does not have any room for absorbing future inflationary or staff costs. I go back to the point that I made earlier, which was that from an SCTS perspective and from justice partners’ perspectives, there certainly needs to be a real-terms increase in order to pay for costs, including staff salaries.

I add quickly that although we are talking about the justice sector in terms of criminal business, SCTS also has responsibility for tribunals and the office of the public guardian in Scotland. Tribunals, as I am sure the Justice Committee will know, are ever expanding at the moment—and I mean not just the tribunals that are responsible for Scotland’s devolved responsibilities, but the reserved-issue tribunals that will come on stream in 2021.

In respect of the office of the public guardian, a recent report by the Mental Welfare Commission in September 2018 mentions an increase by 149 per cent of guardianships being registered between 2008-09 and 2017-18. The number of powers of attorney being registered has risen from 47,000 in 2012-13 to a projected 82,000 in 2017-18, which is an increase of 71 per cent. There has not been an increase in staff in the office of the public guardian, so we are covering that increase with temporary staff, but we would like funding for those staff to be converted into full-time staff funding.

The Convener: The point is well made that increases in workload because of trends and issues in society should be reflected. Before we leave staffing, have any COPFS staff been seconded to the inspectorate? We have heard that that was quite common in the past. If staff have been seconded, how many have been seconded?

Fiona Eadie: I do not know the exact numbers: it is a couple of staff. That is done by advert and application, as opposed to a tap on the shoulder and a person being told, “You’re going on secondment.” When such opportunities have arisen they have been advertised and been available for COPFS staff to apply for.

The Convener: Would the pay on secondment be the same or higher?

Fiona Eadie: That is a very good question, but one to which I do not know the answer.

The Convener: We would be delighted if you could find out and get back to us.

Liam Kerr: I have a couple of wrap-up questions. On the point that Brian Carroll just made about tribunals having increased workload, I think that I am right that the employment tribunal—these are United Kingdom wide statistics; you might have a more specific understanding of the Scottish picture—had in one year a 170 per cent increase in claims being filed. Has there been any increase in staff as a result of that significant increase?

Brian Carroll: Employment tribunals have not been devolved to the Scottish Government, as yet. We expect them to come over in 2021. It is one of the reserved tribunals that we are expecting will come over, along with immigration and one or two others.

Liam Kerr: Do we need to include them in the discussion about funding at the moment?

Brian Carroll: Of the tribunals that the Scottish Courts and Tribunals Service has responsibility for, the housing and property chamber is an example of one in which we are expecting an expansion of staff. The funding for that expansion may already have been taken care of through that chamber having been created through recent housing, rent and landlord legislation, which moves the situation from actions going through court to disputes being dealt with through tribunal.

In the last few years, SCTS has taken on the Scottish Land Court, and we are due to take on the parking adjudicators in 2019. On the reserved employment tribunals, there has been an increase because of fees for employment tribunals having been taken away. Funding will be a concern for the Scottish Courts and Tribunals Service when the other tribunals eventually come over.

Liam Kerr: I will go back to a point that Fiona Eadie made earlier about recruitment of fiscals and bringing people in, rather than having them move out. As you heard at the start, I am in private practice and have been for 17 years, but not in this area. Let us say that I wanted to go the other way. I presume that I would be looking at being on the base salary for the first two years, notwithstanding my 17 years as a qualified lawyer. Is it correct to say that I would be on that reduced salary for the accreditation scheme?

Fiona Eadie: That is correct.

11:45

The Convener: I ask the panel to comment on a submission that we received from the

Miscarriages of Justice Organisation in Scotland. It says that the

“COPFS is underresourced and requires additional staffing” different standard.

It welcomes the additional funding, but is

“deeply concerned about the lack of”

a similar proposal “for criminal legal aid”. It is talking both

“in general and more specifically in the context of the duty solicitor schemes”.

I know that there are currently nine bar associations that have not participated in that. Has that had an impact that you are aware of?

Fiona Eadie: I do not feel that I am well placed to answer questions on that, I am afraid.

The Convener: Yes. Is that the same with everyone else?

Stephen Murray: That would be a legal matter; we deal with the administration side. I do not have sufficient knowledge to comment.

The Convener: All right. I just wondered whether that disrupts business and has a knock-on effect. We can take that up with the relevant people.

Two other things are in the submission from PCS. One is that the continuing backlog in maintenance needs to be tackled. Are you talking about maintenance of the estate?

Brian Carroll: Yes, we are, but backlog maintenance of the SCTS estate alone is worth £39 million, currently. My information is that SCTS needs to spend at least £5 million a year on backlog maintenance to maintain that level alone.

The Convener: What would be the implications if that is not addressed?

Brian Carroll: The backlog maintenance will just keep going up and up, which would mean that services for the public and accommodation for staff working in the buildings would deteriorate over time.

The Convener: Could that get to the point at which it was holding up business?

Brian Carroll: That is possible.

The Convener: Okay. What about retained fines income and the shortfall of £1 million?

Brian Carroll: That is something that we picked up from board reports. I think that the shortfall is because a lot of other direct measures are being used, rather than complaints being served for people to come to court. One of the direct measures that is being used in favour of others is police warnings being issued, instead of fines being imposed for lower-level crime.

The Convener: Is it the case that that was expected and that a level of shortfall was projected because there has been a change?

Brian Carroll: I do not know that that was expected. SCTS may be able to give more information on that. I think that the expected trend was that the amount would remain constant, if not increase through more fines being collected.

I will say however, that as far as I am aware sheriff court fines are not currently retained, but are remitted to the UK Government. It is only since the courts unified that some of the income from fines, for example justice of the peace court fines and other fixed penalty fines, can be retained by the SCTS.

The Convener: I note in particular that you make the point in your submission that the

“PCS SCTS Branch are of the view that the increase in funding for COPFS is bound to have an effect on the throughput of business”

Will that cause an increase in business through an increase in fines enforcement work in the court?

Brian Carroll: That will depend on how the fiscals mark the cases. We were anticipating that an increase in staff could have an effect on the business going through the courts and on direct measures being used, which would mean an increase in fines enforcement.

The Convener: Would it be possible to give some more information on the shortfall of £1 million?

Brian Carroll: I could certainly find that out and provide it.

The Convener: That would be helpful.

There are no further questions. It remains only for me to thank the witnesses for a very good evidence session.

I suspend the meeting briefly to allow a change of witnesses and a five-minute comfort break.

11:50

Meeting suspended.

11:54

On resuming—

The Convener: Our second panel for pre-budget scrutiny will focus on funding for the third sector organisations that operate in the justice sector. I welcome Chris McCully, development co-ordinator at the criminal justice voluntary sector forum; Euan McIlvrde—I am not sure how to pronounce that—of the casework team at the Miscarriages of Justice Organisation Scotland; Stuart Valentine, chief executive at Relationships

Scotland; and Tom Halpin, chief executive of Sacro.

I thank you for your written submissions. It is tremendously helpful for the committee to look at them in advance of evidence sessions and pick out elements that we want to ask you about in more detail. We will go straight to questions.

Rona Mackay: Does the current funding of third sector organisations support the development and continuity of good services? Given the huge scale of great service that the third sector provides, are you receiving adequate support?

Chris McCully (Criminal Justice Voluntary Sector Forum): Thank you very much for the opportunity to appear before the committee. First, it is quite difficult to know what level of support is available for the third sector. The Scottish Government does not provide as standard detailed breakdowns of the budget, so it is quite difficult to know what support goes to the sector as a whole. We can generalise that the Scottish Government has provided support for bigger headline items over the past couple of years, and it has provided quite a lot of support through funding individual organisations. In 2017-18, it provided £3 million to seven organisations, and it provided funding to the national mentoring public-social partnerships, which include shine, new routes and the initiative at HMP Low Moss. The Scottish Government has provided funding to prison visitor centres, all of which are operated by the voluntary sector in partnership with the Scottish Prison Service. The Scottish Government's third sector division also supports the voluntary sector.

On whether that support is enough, we are getting into the essence of the submissions about the considerable issues for the voluntary sector. Funding cycles tend to have a considerable impact. As for local services and local forms of support, the loss of funding is an issue for voluntary sector services—particularly those for local authorities. The committee will have seen in Social Work Scotland's submission the admission that current restraints are leading to a reduction in voluntary sector service provision.

The Scottish Government provides considerable support across a number of areas in the justice system, but we are seeing considerable loss of services on the ground.

Euan McIlvrde (Miscarriages of Justice Organisation Scotland): Thank you for the opportunity to speak to the committee. The direct answer to the question is that we are inadequately funded, to the extent that our service is under serious threat. We have been encouraged to see that significant funding has been made available in the broader context of victim support, which we entirely welcome. We would like to see ourselves

as mainstream in that context. The individuals we represent are certainly victims, yet we are almost entirely excluded from the mainstream funding that is available to other organisations.

As I said, we are significantly underfunded, which is the one great issue that faces us. That is an existential threat to us, which is why I am particularly pleased to talk to the committee about such things today.

Rona Mackay: How long has your organisation been going?

Euan McIlvride: We were founded in 2001, so that is 17 years—and counting.

Rona Mackay: Have you always struggled at your funding level?

Euan McIlvride: Earlier in our life cycle, we had funding that was more appropriate to its time. As a start-up, perhaps we provided a less sophisticated and less widespread service. The demand for our services has increased, and the growth is significant. Client demand is growing at a rate of perhaps 30 per cent a year, but the funding has not grown—one could almost say that it has diminished in real terms, so we face increasing pressure just to provide the service that we have hitherto provided.

12:00

Stuart Valentine (Relationships Scotland): Across the voluntary sector and the third sector, core funding is key. My organisation gets money through the Corra Foundation's children, young people and families early intervention fund. It is hard to find many other sources of funding of the scale that is required for our network. Beyond the big funders—the Scottish Government and the Big Lottery Fund—it is difficult to see what funders are out there that can provide funding of the level that organisations such as ours need.

One issue that is live for us is that, although the Big Lottery gives the Relationships Scotland network £750,000 a year for our child contact centres, that funding will run out over the next 18 months. The Big Lottery says that it will not be able to continue to provide that level of funding, and it is unclear where else to go—there are few places to go. Going to the Scottish Government is one route, but there are not many options for funding at that level.

For the voluntary sector as a whole, core funding is an issue. Many funders want to provide smaller amounts for new and innovative projects but, across the sector, there are vital services that need to continue and will be needed for many years to come. Core funding needs to keep coming through; otherwise, the foundations that such organisations are built on will not remain.

Tom Halpin (Sacro): My experience reflects what I have heard from colleagues today. It is realistic to say that the overall funding picture is impacting the availability of money in the system. We understand that funding is contracting in different areas. The Scottish Government has consistently provided support to my organisation with core funding through grant every year. It has stuck with that, which has been welcome.

One feature that the committee might want to reflect on is inconsistency across the country. When 32 authorities make their own local decisions—some prefer in-house provision and others prefer outsourcing—funding decisions can be made that are catastrophic for services, which has the most impact locally. There is a question about how we raise up the conversation so that we discuss what do across the system with the available resources and about how we ensure that the third sector's voice is heard in those discussions.

My biggest concern is that the third sector is told about a decision way after it has been made, and organisations do not have a chance to be part of the discussion about what savings would look like and what a different type of service would look like. The response is, "We have made this decision. Sorry—that is it."

Fulton MacGregor: My question carries on nicely from Tom Halpin's point. Most of the submissions welcomed the Scottish Government's funding initiatives for community justice, but how can we better use third sector organisations alongside statutory resources?

Tom Halpin: That concerns being seen as an equal partner rather than something that is not statutory, which means being careful about what conversations you have because of unfair advantage—all that sort of thing. The public-social partnership and change fund approach clearly did not play out as intended in terms of sustained funding, but what everybody who was involved said really worked was the initial co-design stage and the coming together with a solution.

That experience does not apply just to one public-social partnership; a number of them were able to tackle gender inequality across Scotland in a short time and get up and running. In that situation, the third sector came to the table with partners and local authorities to produce effective solutions quickly. We are talking about involvement in the conversation and in co-design.

Stuart Valentine: Partnership is key. Not duplicating by having different organisations providing roughly the same thing is helpful, as are being more focused and integrating services as much as possible, to follow on from the Christie commission's recommendations.

I can speak in most detail about Relationships Scotland's work. We were formed back in 2008 from a merger of Relate Scotland and Family Mediation Scotland. We provide a range of family support services from hubs across the country that are integrated at local level. That results in cost savings, a clearer route for clients and a more efficient service overall.

Chris McCully: The voluntary sector's involvement in the process of allocating funding, deciding what resources will be targeted where and commissioning services is vital to understanding the needs of people who go through the justice system and to knowing what it is practicable to deliver. To pick up on Tom Halpin's point, a collaborative approach to service design and development is fundamental.

There is a question about the support that is available for the voluntary sector locally and nationally. To engage in processes and to develop a new service or a particular programme, we need to be able to dedicate staff time and resources. Commissioning activities involves putting considerable amounts of time into writing bids and developing services—there is a merry-go-round of services.

The funding cycle means that we have to do those things every year. For a considerable period at the start of the year, organisations ramp up and ratchet up services, and for a considerable period at the end of the year, they might be winding down services, only to be told at the last minute that their funding has been confirmed.

It is fairly standard practice for voluntary sector providers to issue redundancy notices in February every year because their funding has not been confirmed, and then they retract those notices when they get to March. That has a significant impact on people's lives—not just staff members but those who use services. For many services—particularly addiction services, for example—it would be wholly unconscionable to accept someone for a period of support and have to retract that because the organisation's funding was to cease on 1 April.

One way in which we can get the most out of the third sector is by ensuring that funding cycles work effectively and that there is not this tremendous wastage. The Scottish Government could lead from the front on that and ensure that it did not replicate the mistakes that are possible.

Euan McIlvride: I associate myself with Mr McCully's remarks about the funding cycle. In our work, every new client that we take on by definition involves a long-term commitment. The period might be from a minimum of five years to a lifelong commitment. The absence of a commitment to the funding that we require for

such a period creates exactly the problems that Mr McCully talked about.

As for the integration of our service with others, I am not trying to claim any unique status, but our service is perhaps a little different from the other services that are being examined. In so far as is possible, we dovetail with the publicly provided service, in that we seek to bring our clients to that service. By the nature of the situation, our clients distrust any agency of the state. A large part of what we do is supporting and assisting our clients simply to integrate with services that are available.

The difficulty arises when the specialist services that our clients require do not exist. I suspect that that is more an issue for healthcare provision than for justice, so I will leave it at that.

Fulton MacGregor: Thank you very much for those answers, which go some way towards explaining the national scheme and what is happening at local authority level.

To the extent that it is appropriate for your organisations, can you tell us how you can have an impact at the level of the individual? There has been a lot of talk about community payback orders being used and how, for an individual, such an order can bring in a variety of services. I know that that provision might be quite specific. For example, funding has recently been announced to deal with female offending, on which initiatives have been set up in several local authority areas. Does involvement in such work represent an opportunity for your and other third sector organisations, or do you see it as a further challenge?

Tom Halpin: That is something that has a direct impact on the work of my organisation. We have experience of that. We supervise unpaid work in the Glasgow City Council area, and we have done so in other local authority areas. Along with other third sector organisations, we provide support for other activities that relate to other aspects of community payback orders.

The benefit of the third sector being involved in community payback orders lies in the added value that it brings to the table beyond the meeting of the statutory requirement. There is huge innovation in the work of local authorities in delivering unpaid work. The involvement of the third sector in no way diminishes or replaces that, but the creativity of the third sector in not having the same statutory controls as other areas can bring other players to the table. There are examples such as involvement in ground works and improving the physical location, but there is also the third sector's ability to bring further education colleges to the table with access activities. Such creative thinking that goes beyond everyday demands adds value, and it does not

always have a pound sign in front of it—sometimes, it is a case of joining up dots.

I come back to my fundamental theme: people should not be afraid to involve this broad sector in such conversations. I once wrote a piece about power to the people. It is extremely important that no one body at the table holds all the power. A citizen who really needs help wants to be in control of themselves and their own destiny. When a third sector organisation comes to the table and hears another body say that it has the statutory authority, regardless of whether it is intended, there is a consequence for the dynamic. If we are to build the Scotland that we all want, we must all play an equal part. The involvement of the third sector in the conversation is fundamental to the design of the services that we all want to have in Scotland.

Chris McCully: I want to pick up on what Tom Halpin said about the potentially unique role that the third sector can play in working with individuals. There is an emerging body of research on the distinctive role that the voluntary sector can play in working with people in the justice system. The first thing that we find is that the relationship is not characterised by coercive control—it is not the same as the relationship that exists with a prison officer or a social worker, who might have the ability to deem a breach or to determine an additional punishment for an individual. The existence of that very different kind of relationship makes it possible to build personal relationships in a way that is not possible through other services. A piece of research by Dr Philippa Tomczak of the University of Sheffield found that the voluntary sector is particularly good at allowing people to build social capital by bringing the kind of additional resources that Tom Halpin talked about to the table to allow a more holistic view to be taken of support for individuals.

As regards whether involvement in such work presents opportunities, I think that it does. The third sector can be front and centre in that work. We have the relationships and the skills. I am sure that most of my colleagues at the table would agree that most services have to report to very high standards in demonstrating their effectiveness, and that is usually done through an outcomes focus. That proven success means that the third sector definitely has an opportunity in this area.

Tom Halpin: To complete my reflection on that point, it is an ugly truth that, with the pressure that everyone has been under in recent times, whereas previously a portion of the additional moneys that came in would have flowed to the third sector, it now appears to be the case that the first reaction is to do things in-house, by making use of the teams that exist. Regardless of whether it is

intended, the third sector is increasingly not involved in new initiatives.

12:15

Euan McIlvride: I will again speak about our experience. The service that we provide is one that can, in effect, only be provided through the third sector, simply because of the nature of the problem. Our overarching function is to seek at least to reintegrate damaged people back into society. The problem that we have is that the people we are seeking to reintegrate have a well-founded mistrust of almost everything that is society—they certainly have a mistrust of all the institutions and agencies of the state. The trust that is critical to the work that we do can be engendered only in a voluntary organisation situation, not by an agency of the state attempting to develop it. In that sense, I agree with what my colleagues have said.

Stuart Valentine: Relationships Scotland works very closely with the courts. For example, 80 per cent of the referrals to our child contact centres come directly from the courts or from solicitors. There is a key role there in how we can work with the people who come to us, many of whom are extremely vulnerable and have a range of different issues, as you might expect. Our ability to work closely with those people over an extended period is a great strength of the voluntary sector that strongly complements the work that the courts are trying to do on all the issues around child contacts.

Shona Robison: I want to build on what has been said. You have all recognised that funding is a challenge and that it is impossible to fund everything everywhere, so a different approach might need to be taken to how third sector organisations work with one another and how they interact with statutory services.

Tom Halpin mentioned an example of effective partnership that sounded very positive. It would be helpful if you could furnish us with other examples of situations in which you have proactively collaborated as third sector organisations and whether, in your future plans, you have such examples in mind for the next couple of years. It is a case not only of avoiding duplication, but also of playing to your strengths. It would be helpful if you were able to provide such examples now or as a follow-up to the meeting.

Tom Halpin: I can follow up on that—I am happy to do so—but there is a huge number of examples. I mentioned the shine service, which is a collaboration involving eight organisations. In the city of Edinburgh, we have the bright choices collaboration across four organisations, which involves six women from black and minority ethnic

communities who speak 20 languages supporting survivors of female genital mutilation.

What makes it increasingly difficult to bring collaborations together is the fact that money is contracting not just across local authorities' spend but across independent funders' resources. We have heard about future threats and the feeling that projects that receive funding from the likes of the Big Lottery Fund are at risk. Collaboration on specific interventions is one of the easier things to manage, whereas collaboration on broader things, such as resource or back-office functions, is more difficult. The Government, the third sector and others have a role to play in how we support organisations to better understand that. Collaboration goes broader than just service delivery.

Daniel Johnson: Tom Halpin brought to life quite vividly how the third sector adds value when it comes to community justice orders. The committee hears quite regularly that one of the things holding judges and sheriffs back is their lack of understanding of what is available to them. To what degree is the instability of funding holding back the use of community justice orders and limiting their effectiveness?

Tom Halpin: That is a very good question. I hear about the perceived reluctance of sentencers to engage. My experience is that if it is a credible and consistently available intervention, sentencers have no difficulty with it, but when it is not a credible or consistently available intervention, they lose faith in it.

We must always come back to what the aims of Scotland's justice strategy are. The preventative spend deals with the low-hanging fruit. Organisations like mine are under real pressure on those services. An organisation might say that a service is going in-house, but we know that it is being withdrawn. To be fair, the Government is looking seriously at such issues, but they cannot be solved by the Government on its own. Local authorities also need to be involved. There are problems with bail supervision. Remand numbers are going up again—recently, there were 400 women in Scotland's prisons—yet bail supervision is one of the areas in which we have suffered the biggest funding cuts. The strategy and the decisions around it are not joining up, and I would welcome more scrutiny of those areas.

Daniel Johnson: You make a good point, and it is timely, given that there will be a debate on remand in the chamber tomorrow.

I have a final, cheeky question. Is it the right balance that community justice services receive £35 million a year but the Scottish Prison Service receives £361 million a year? If it is not, what should that balance look like? I would be

interested to hear from any of the witnesses on that.

Tom Halpin: I do not believe that it is the right balance, but it is a balance that the Government is trapped into at the moment. It would take some really brave and decisive actions to change it. The prison population numbers in some of the Scandinavian countries show that changes can be made. People fear that we would have a crime wave and that the community would be more unsafe and so on, but we need only look at the great story on youth justice in Scotland and what has happened there. We took young adults out of the court system and youth offending reduced. That happened in Aberdeen through the whole-systems approach. It is a case of building up confidence, but the balance will not shift unless decisive changes are made.

The Convener: You mentioned remand. As Daniel Johnson said, we will have a debate on remand tomorrow. Our report looked at the resources for throughcare after people have left remand and for opportunities for meaningful activity when people are on remand. The point was made that that would need to be resourced. Do you have a view on that? Does that need to go into the legislation? There might be resources for those things, but there can be competition if they are not given directly to the voluntary sector and instead go through the local authorities. They might decide to do things in-house. How can you make your case? Local authorities will be good at some things, and you might excel at other things. How do you make the case to be able to get that funding?

Tom Halpin: The reason for the Angiolini commission was the gender-based and geographical inequality of service availability, particularly in voluntary throughcare. That was always an obligation on local authorities. Remand is really an extension of that.

When we designed the shine partnership, there was a huge discussion about whether to include remand. One group said that people on remand should be kept out and that they were too difficult. We have stuck with the approach for five years. Seventy-six per cent of women in the Scottish prison system who are eligible for the shine service voluntarily engage and come to a planned exit. We have included remand prisoners in that.

There is the idea that remand prisoners cannot be worked with; that they are difficult to work with. That is a challenge for everyone because of the uncertainty that those prisoners face, but we know that throughcare in remand can be looked at more holistically. If we focus only on throughcare, we are talking about after the event. If we focus on remand, we get ahead of the curve, but that is where the money is being cut.

The Convener: So, it is about earlier intervention. That brings me to electronic monitoring, which you mentioned. We are looking at extending the old provisions by using more electronic monitoring. When the committee visited the Wise Group, it was laid on the line to us that, if electronic monitoring is to succeed, resources must be put into it and the voluntary sector will play a huge part in that. Will members of the panel comment on that particular aspect?

Tom Halpin: I do not want to hog the session, but what I have to say is probably relevant. If we have a technical solution to controlling people without support, there will be an increase in breaches and the remand population will go up.

Liam McArthur: The convener has pointed to the electronic monitoring proposals. There is a direction of travel in extending the presumption against shorter sentences of up to 12 months. All the witnesses have described a challenging funding landscape for statutory providers that maybe puts an additional squeeze on third sector organisations, and uncertainty about the budget cycles, which compounds other issues. On your engagement with the Scottish Government on the development of policy and proposed policy changes, if you say that, unless the Scottish Government provides certainty about funding, you cannot deliver the policy intention—I think that most of us would agree that the proposals are the right way to go—to what extent is that heard and acted on?

Euan Mcllvride: We have made that very point. We have been supported by modest funding. We are grateful for that—please do not misinterpret—but we have made the point that our funding is at a level that constitutes an existential threat, as I said earlier. We have developed a model in close consultation with the Scottish Government, and we have met the targets that it has asked us to meet. However, we have made the point in quite stark terms that the approach needs to change, or we simply have to stop. We await a response to that.

Stuart Valentine: I have a general point. If there are services that the Scottish Government would like the voluntary sector to deliver across the country, there is the issue of how that will happen. We are fortunate that our core grant from the Corra Foundation goes to our national office and every one of our services across the country. That is quite rare in the voluntary sector. Many other agencies find getting funding more straightforward in some parts of the country than in others. If there are services that the Government and others would like to have delivered across the country, a different approach to funding may need to be taken. If funding is left to local authorities to decide in their particular areas, there are many strengths to that approach,

but it might result in some services being available in some areas of the country and not in others.

The Convener: Thank you for that point, which is well made.

Chris McCully: I echo all those comments about the necessity for support for the changes, whether in respect of the presumption against short-term sentences, electronic monitoring or supported bail. We regularly say the same things in consultation responses and in sessions with the Scottish Government. There have been very good opportunities for discussion with the Scottish Government at times but, given that the previous Cabinet Secretary for Justice reiterated that no new money would be made available to support things, that obviously shows that views were not taken on board.

Liam McArthur: I should probably declare an interest. My wife is a mediator with Relationships Scotland Orkney. I would not like it to be thought that I am making a bid on her behalf.

On Mr McCully's final point, the concern is that policy proposals come forward in legislation with an attached financial memorandum, but there is uncertainty about their deliverability. That should be a concern to all of us. We can sign up to the policy objectives but, if there is not funding to support the change, the consequences will be fairly severe in areas as sensitive as criminal justice inevitably is.

12:30

Chris McCully: I think so. When people tinker with a system and change a little bit of it, that can have massive impacts all the way across. The Community Justice (Scotland) Act 2016 has laudable policy aims to do with making justice locally focused and bringing a range of statutory, non-statutory and third sector partners together around the table to solve problems, but if the mechanisms for funding that and for deciding what happens in the local arrangements are not supported or funded and are not put in place, the third sector and the optional extras that make a big difference will drop off the table first, and we will end up with the statutory bare minimum being funded. The statutory sector does fantastic work—do not get me wrong; I do not want to be misrepresented—but, if we are talking about the voluntary sector's unique contribution to improving people's lives and to reducing reoffending, we need to ensure that it does not drop off.

The worry is that, with the move to the new model of community justice, and particularly with changes to funding for community justice under section 27 of the Social Work (Scotland) Act 1968, which have resulted in the removal of the distinction between core and non-core funding—

historically, non-core funding went to fund voluntary sector services—we could be sleepwalking into a situation in which we end up with massively reduced capacity in the third sector, and that could happen overnight. I am not suggesting that the changes are anywhere near as drastic as the transforming rehabilitation changes in England and Wales, but I am sure that the committee will be aware that they were a horrendous mistake and have resulted in massive loss of provision. The whole scheme has had to be brought forward and scrapped well in advance of when that was intended. If those things are changed and what is happening is not taken account of, we could end up drifting into a very dangerous situation.

John Finnie: Forgive me, but I might struggle to put this together. On previous occasions, we have talked about a role that Mr Halpin's organisation played in turning around bail supervision in a number of local authority areas. We are scrutinising public money. In the Scottish Government budget, there is, of course, a role for community justice and for local authorities. Is the committee capable of audit trailing that level of scrutiny?

The convener talked about electronic monitoring. No one wants to intrude on the ability of local authorities to make their own decisions on taking things in-house, but who scrutinises the effectiveness of that? Let us stick with that issue. If there was a commendable turnaround of figures and the service was taken in-house, who should scrutinise that, if not the committee? Can we scrutinise that?

Tom Halpin: There are a couple of issues. I think that the scrutiny role properly sits with the local council and its officials. If a significant change to a service in a local authority is being made, that should be reported to the relevant committee of that local authority. That is for good reasons that are not just to do with challenge. We must understand the services that we are delivering. Can that be done in every committee in every local authority? I think that that question answers itself. The Justice Committee scrutinises Scotland's justice strategy and how it is progressing, and it gets updates on that through Audit Scotland. It deals with that level. Do decisions that are made at the local level follow the strategy? Are those decisions what we intend to do, or do people have a local issue or wish? A decision might or might not be justified, but at least it should be scrutinised at the local level.

John Finnie: Does that suggest some sort of collective criminal justice oversight?

Tom Halpin: You have clearly got me thinking on my feet about what that looks like.

John Finnie: I am conscious that the particular example that you shared with the committee previously involved not just a single local authority but a number of local authorities working together.

Tom Halpin: Yes.

John Finnie: If three or four authorities are involved, there will be three or four reports to the committee. We want to understand that the money has been best expended. Results are often a way of showing that.

Tom Halpin: In the new community justice arrangements, we have community justice outcome improvement plans at local level. Maybe changes of that nature should be reported annually along the lines that we would expect for an improvement plan, and that should be analysed. My fear is that, as we have seen happening over the years, the plans are all gathered but there is little depth in the analysis of them to decide what the plans will be for the next year. They might be scrutinised locally, but are they looked at in aggregated form? Our hope is that Community Justice Scotland will do that.

Chris McCully: Community Justice Scotland has responsibility for gathering all the annual reports from each of the community justice partnerships, which should in theory state progress against outcomes at local level. In that sense, Community Justice Scotland will be doing a bit of work, I believe. I am not sure of the timescale for that, but it is published in Community Justice Scotland's work plan, which sets out its timescale for reporting on progress against outcomes across the country. The committee could look into that.

John Finnie: It seems a long way from here, if you like. No one wants to tread on the local authorities' territory, but clearly at some point we will have the Cabinet Secretary for Justice in to hold him to account, and we have other legislation on the way. It seems that there is a cluttered landscape, although I hate to use that phrase, because all of us here are interested in a situation where figures are turned around because of positive intervention, whoever does it.

Chris McCully: The difficulty of knowing what is going on in any one part of the justice system at any one time is considerable, but that is where Community Justice Scotland, as it continues to develop, will be able to provide a bit of clarity. Although I definitely echo Tom Halpin's point and your point about not wanting to be too micro level or to get in among local authority decisions, there is definitely a role for the Scottish Government and the Justice Committee to take an overview of the system. If we can establish the trends in funding allocation, that can go a long way to seeing whether that is the direction that we want. At the

moment, the problem is that we do not necessarily know what money is going where.

The Convener: When we set up Community Justice Scotland as an overarching body, we were concerned that it might dictate to the local partnerships. Because they are based in 32 local authorities, the flexibility is there, but the question is: where is the funding going? We possibly need a mechanism to ensure that it is spent in the best way possible. The partnerships are based in local authorities and perhaps there is a tendency to look to the local authority first to provide the service. Analysis is needed to ensure that the third sector is not excluded from the non-statutory activities, which as Tom Halpin said can make such a difference to preventing the escalation of crime and bad outcomes.

I think that Liam Kerr has a pertinent question.

Liam Kerr: Me?

The Convener: Yes.

Liam Kerr: Yes, I do—I was not sure. *[Laughter.]* This had better be good.

In the interests of complete transparency, I state that, several years ago, I was a non-executive director of Family Mediation Grampian, which, as we have heard, is now part of Relationships Scotland.

We have explored funding at some length and talked about the fact that it seems to be short term. Tom Halpin said in his written submission that it would be ideal to have a five to 10-year funding cycle. How realistic is that? Could we actually achieve that with Government funding and Big Lottery funding? Will we ever get to the ideal?

Tom Halpin: It is different for different types of services. There might be initiatives where you want to try something out, so clearly you understand what you are involved in there, but with a major change fund success such as the Wise Group led new routes service or the Sacro led shine service, it is such a significant change that you have to invest in that. In every single year, we lost really good staff in December or January, because they were young people starting a family or wanting a mortgage and there was no certainty on funding. An organisation such as mine, which has built up some reserves, can take the risk of not issuing notices, but a partner organisation would say, "I don't have reserves and I can't carry the risk, so I need to tell people that they are at risk." I would then have to negotiate within the partnership.

In that example, the Government could have invested for five years and allowed us to do that. We had to design information technology systems and integrate outcome evaluation methodologies

and risk assessments. That was never going to happen in six months or a year.

We shy away from the issue, saying that is just the budgetary system of the Scottish Government or the Scottish Parliament. Of course, at the other end, I have some very vulnerable hard-working young people starting off in their life with no certainty. That is just not acceptable. In between that, we get three-year contracts. At the moment, we constantly manage change in the workforce.

Stuart Valentine: Scottish Government funding for three years with known amounts would be an incredible step forward, certainly for our network. We were awarded three years of funding from the Corra Foundation fund that I mentioned, although we were not told what we would get in future years until about three months before the money kicked in. We were given a three-year award, but there was no certainty on what years 2 and 3 would be, and we did not find that out until the turn of the year. The Big Lottery Fund has been one of the few funders that give five years of funding, and that certainly is extremely helpful for services that have been fortunate enough to get it.

One additional point is that, for agencies that get long-term core funding and have had it year on year, there is often no cost-of-living increase. Certainly, within our network, there has been no cost-of-living increase for the past 15 years, which in effect results in a reduction in funding year on year, which of course we just have to manage. The whole issue of cost-of-living increases to funding, especially from the Scottish Government, is key for the voluntary sector.

Chris McCully: I should probably have declared earlier that we receive some money from the Scottish Government, so in that sense I am perhaps not entirely impartial.

On the question of how long term we can be, I understand the realities of yearly parliamentary budgets and the limitations of that. At the very far end of the spectrum, it is perhaps not reasonable to talk about 20 years down the line but, at the risk of sounding slightly petulant and maybe facetious, if we look at private company contracts in the justice system—for example, to provide prison services or electronic monitoring services—I do not think that we would find G4S or Serco on a one-year rolling contract that changes every year. There is obviously scope in the system for flexibility, and I would encourage that flexibility where we can find it.

The Convener: That is a good point.

Euan McIlvride: I have no idea how we would achieve 10-year funding but, for our purposes as an organisation, even an extension from two-year to three-year funding would hugely enhance our ability to make commitments of the type that we

need to make. For example, our lease is due for renewal and, on a two-year funding cycle, we have to take a year-on-year lease, which is significantly more expensive for the same property than taking it on, say, a six-year term but with a three-year break clause. Therefore, a one-year increase in the cycle would be of significant assistance to us.

I hear what my colleagues say about the worry of having to lay off staff. I recognise and sympathise with that, but we do not have that problem because virtually all our staff are volunteers. We can only afford to pay two salaries in our organisation out of a total staff of just in excess of 20, and it is a matter of great concern to me personally that the two salaried staff are working now, and have been for some time, at a figure markedly less than the living wage. That has to change for our purposes. It is not just that it is unfair; frankly, it is unsustainable. I am sorry that I keep making that point, but it really is the central point that I want to get across.

Liam Kerr: I will stick with you, Mr McIlvride, with a slightly different question on funding. In your written submission, you talk about legal aid and being underfunded in that regard. I want to give you an opportunity to develop that. What do you mean by legal aid being underfunded? As part of that, you suggest that experienced solicitors are deserting this sort of work. Do you have evidence for that, including any evidence that suggests that the issue has increased since the regulation changes in January?

12:45

Euan McIlvride: We move and shake, as it were, in the legal profession, and we have significant anecdotal evidence to that effect. I suspect that the type of written evidence that I can provide for you would not be entirely satisfactory, in that it is in the form of, for instance, postings on our Facebook page, but I speak daily to solicitors. Solicitors refer inquiries to us because they want to help the client but they are not being funded to do it. That is one of the reasons why we have found such a significant increase in our workload, particularly over the past couple of years.

The word that I hear from the solicitors whom I speak to is that they simply cannot afford to continue legal aid work. If you enter a summary cause court or Glasgow sheriff court, you will see that the legal aid work tends to be done by the more seasoned gentlemen and ladies, because younger solicitors are not moving into that branch because there is no money in it for them. Perhaps the most stark illustration of that that I have come across in the past month or so is the announcement by the Law Society of Scotland that, in order to overcome the shortage of new entrants to legal aid work, it proposes to have first-

year trainee solicitors authorised to appear in court.

When we put that against the other side of the equation, where the Crown Office and Procurator Fiscal Service is being handsomely funded to properly train more prosecutors, where does that leave the equality of arms? There is a serious problem. I cannot really back that up with anything other than anecdotal evidence, but there is so much of that and I see it washing through into our increased workload. I am in no doubt at all that the legal aid system is in crisis.

The Convener: I have a specific question about the duty solicitor scheme. The Miscarriages of Justice Organisation thinks that the duty solicitor scheme is a problem. I have asked about that previously. You might not know about this, but eight bar associations have said that they will not take part in the scheme as a result of criminal legal aid not being sufficient.

Euan McIlvride: I can understand that. I believe that, over the past 20 years, legal aid rates have had a significant real-terms reduction. As I understand it, the rates that are paid to solicitors now are certainly not economic. I am an enrolled solicitor, but I am not a practising solicitor, so I do not actually do court work. We work in conjunction with rather than in competition with solicitors. When we get our case work to a point where it is ready to be heard before a court, we liaise with the legal teams who do that. In that context, we have a great deal of contact with solicitors and counsel in the criminal field, and they are all saying the same thing: "We can't afford to do the work." As a result, were it not for us, the work would not get done. We are an entirely pro bono service. I would prefer it if we did not have any case work and if properly funded solicitors were able to take cases from point A to point Z. Regrettably, that is not how it is just now.

The Convener: As members have no more questions, I thank the panel very much for an excellent session.

I suspend the meeting to allow the witnesses to leave.

12:47

Meeting suspended.

12:49

On resuming—

European Union (Withdrawal) Act 2018

Civil Jurisdiction and Judgments (Hague Convention on Choice of Court Agreements 2005) (EU Exit) Regulations 2018

International Recovery of Maintenance (Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance 2007) (EU Exit) Regulations 2018

The Convener: Agenda item 3 is consideration of a proposal by the Scottish Government to consent to the United Kingdom Government legislating using the powers under the European Union (Withdrawal) Act 2018 in relation to two UK statutory instruments. I refer members to paper 5, which is a private paper. Do members have any comments? We have submissions from the Law Society of Scotland on both instruments and from Professor Janeen Carruthers, who seem to be content with the instruments.

Liam Kerr: My only comment is that I found the submissions to be extremely useful and persuasive.

The Convener: Is the committee content to recommend that the Scottish Parliament gives its consent to the UK Parliament to pass the two statutory instruments?

Members *indicated agreement.*

The Convener: That concludes our 25th meeting in 2018. Our next meeting will be on Tuesday 23 October, when we will continue our post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012 and pre-budget scrutiny.

Meeting closed at 12:50.

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