

JUSTICE 1 COMMITTEE AND JUSTICE 2 COMMITTEE (JOINT MEETING)

Wednesday 16 May 2001
(Morning)

Session 1

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JUSTICE 1 COMMITTEE 16th Meeting 2001, Session 1

CONVENER

*Alasdair Morgan (Galloway and Upper Nithsdale) (SNP)

DEPUTY CONVENER

*Gordon Jackson (Glasgow Govan) (Lab)

COMMITTEE MEMBERS

*Phil Gallie (South of Scotland) (Con)
Maureen Macmillan (Highlands and Islands) (Lab)
*Paul Martin (Glasgow Springburn) (Lab)
*Michael Matheson (Central Scotland) (SNP)
Nora Radcliffe (Gordon) (LD)

*attended

JUSTICE 2 COMMITTEE 13th Meeting 2001, Session 1

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Mrs Lyndsay McIntosh (Central Scotland) (Con)

COMMITTEE MEMBERS

Scott Barrie (Dunfermline West) (Lab)
*Christine Grahame (South of Scotland) (SNP)
Ms Margo MacDonald (Lothians) (SNP)
*Mrs Mary Mulligan (Linlithgow) (Lab)
Tavish Scott (Shetland) (LD)

THE FOLLOWING ALSO ATTENDED:

Mike Watson (Glasgow Cathcart) (Lab)

WITNESSES

Dr Alastair Brown (Crown Office and Procurator Fiscal Service)
Neil Davidson (Solicitor General for Scotland)
Jim Gallagher (Scottish Executive Justice Department)
Phyllis Hands (District Courts Association)
Andrew Lorrain-Smith (District Courts Association)
Gerard MacMillan (Glasgow Bar Association)
Andrew Pollock (Glasgow Bar Association)
Sandy Rosie (Crown Office and Procurator Fiscal Service)
Vincent Smith (Glasgow Bar Association)
Mr Jim Wallace (Deputy First Minister and Minister for Justice)

CLERK TO THE COMMITTEE

Lynn Tullis

SENIOR ASSISTANT CLERK

Alison Taylor

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

The Chamber

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERK

Claire Menzies

ASSISTANT CLERK

Fiona Groves

ACTING ASSISTANT CLERK

Graeme Elliott

Scottish Parliament

Justice 1 Committee and Justice 2 Committee (Joint Meeting)

Wednesday 16 May 2001

(Morning)

[THE CONVENER opened the meeting at 10:45]

Items in Private

The Convener (Alasdair Morgan): Both committees are quorate. Item 1 is to decide whether to take item 3 in private. Do members agree to take that item in private?

Members indicated agreement.

The Convener: Do members also agree that we should consider the draft report further at our meeting on 22 May in private?

Members indicated agreement.

Budget Process 2002-03

The Convener: Our first witnesses are Gerard MacMillan, president of the Glasgow Bar Association, and Vincent Price, vice-president of the Glasgow Bar Association. Is that correct? I am sorry—I should have said Vincent Smith. Perhaps the witnesses can introduce themselves. That would save me from further embarrassment.

Gerard MacMillan (Glasgow Bar Association): You have my name right, convener.

Vincent Smith (Glasgow Bar Association): I am Vincent Smith, the vice-president of the Glasgow Bar Association.

Andrew Pollock (Glasgow Bar Association): I am Andrew Pollock and am also with the Glasgow Bar Association.

The Convener: I must be watching too many horror movies. Do the witnesses wish to make brief opening statements?

Gerard MacMillan: We considered that and we prefer to deal with questions.

The Convener: I am looking round the committee to see whether anyone wishes to raise a burning issue.

Phil Gallie (South of Scotland) (Con): I shall be a volunteer rather than a pressed man.

Do you believe that the current restrictions in civil legal aid in particular cause problems for the legal system in relation to solicitors? Is the allocation of cash for legal aid adequate within the budget system?

Andrew Pollock: The Glasgow Bar Association considers that the legal aid system, particularly the civil legal aid system, is at the stage of meltdown. I may be dramatising the position too much, but that is our opinion. The difficulty is that inadequate priority is given to the role of lawyers and their remuneration, which means that many of the best and most capable lawyers are lost to the civil legal aid system.

The overall cost of civil legal aid is small. Until the rate of remuneration for lawyers is increased from £42.20 an hour—it has not been increased in nine years—there will be fewer capable and experienced lawyers undertaking civil legal aid. That devalues the entire civil legal aid system and results in a two-tier system, as is happening already in Glasgow. For example, barely half a dozen firms of lawyers will take on the complex civil legal aid cases. The civil legal aid systems and the legal aid system as a whole are inadequately resourced.

I read the budgetary projections for justice

expenditure with considerable dismay. There is an increase across the board of about 22 per cent in the overall budget, but it seems to be assumed that lawyers and the legal aid system can still get by with a £2 million increase on £133 million in the next three years. We do not see where there will be any room for an increase in lawyers' remuneration with that sort of budgetary constraint. We have not had an increase for nine years and, on the current figures, we will not get an increase for another three years. The legal aid system will just wilt away. Very junior solicitors will do the most difficult and most sensitive jobs. We think that the system is completely under-resourced.

Phil Gallie: I have some sympathy with that. If a quick multiplier by eight is done, we see that a solicitor who was in court all day on a case could claim about £320 a day for his efforts. Sole trader consultants for Scottish Enterprise pick up £300 to £500 quite readily for a day's consultancy. Would you break down that £42.20 into a rough proportion of office costs and rates, taking into account the overheads that most solicitors have?

Andrew Pollock: I appreciate the question. I am absolutely delighted that you have made the point that the £42.20 does not go into the lawyer's pocket. It is not profit—it is the business's overheads. Certainly, the Law Society has projected that, on a cost-of-time basis, an hourly rate would be more akin to £93 or £94, if not more.

As a solicitor in private practice, if I am doing legal aid work, the bottom line is that I have a business to run and a bank manager to keep happy. If fees are not high enough, secretaries will be made redundant and the business will ultimately collapse. Unfortunately, we have to work backwards. I have to work out how many hours I have to do to generate the fees to keep the business alive.

I am not expecting anyone to be sympathetic towards lawyers, because that does not usually happen. However, the situation is almost akin to the junior doctor scenario. The number of hours that we have to work to keep our heads above water is absolutely ferocious. It is difficult to say what the profit component of the £42.20 an hour is because we have to work 10 to 11 hours in a day.

Phil Gallie: You have made the point.

I have a final question about the overall budget and the fixed-fee system. Recently, solicitors walked out on criminal justice activities because they felt that the fixed-fee system could not cope. Do you feel that the legal aid budget has to be considered again and that some revisions should be made to the fixed-fee system?

Andrew Pollock: My colleague should deal with that, as it is about criminal matters.

Vincent Smith: The fixed-fee system should be looked at again on the basis that there are no provisions for a fixed-fee increase. The system is there to stay. Until we can take into account all the other factors that are brought to your and our attention with a view to an annual increment, the fixed-fee scenario is, in my opinion and for my own business, unsustainable.

As Andrew Pollock pointed out, fixed fees do not change. Income depends on how many cases are generated in a year. As the committee will see elsewhere, the plan is to divert cases away from the courts, which will mean a reduction in the number of cases. Nevertheless, annually, staff will seek pay rises and rents, and telephone accounts, for example, will increase. With that in mind, we have to look at the fixed-fee system again.

The Convener: Real-terms expenditure in legal aid will fall over the next three to four years by about 4 or 5 per cent. The Executive would say to us that this budget is demand-led—the Scottish Legal Aid Board just spends whatever it has to spend—and so we should not worry about the overall total. Have you received any explanation of why the figure for the legal aid budget, which you claim is already far too low, is going to get even lower over the next three or four years?

Andrew Pollock: It is backward logic to say that the budget is demand-led. The figure is only demand-led because the basic rate has been set. If the basic hourly rate was increased, the projections would have to increase. The budget increase across the board is somewhere in the region of 18 to 22 per cent over three years, depending on what figures are used. In contrast, the increase in the legal aid budget is 1.5 per cent over three years, which, as you said, is a decrease in real terms.

We could project the budget forward for the next 100 years at an hourly rate of £42.20, but it is up to the Parliament to ensure that the system is changed. Things cannot continue as they are—we are being presented with a two-tier system that will fail to meet the Executive's objectives. The Executive laid down the objectives to ensure that an efficient and effective service was provided and that there would be an improvement in access to justice throughout Scotland. We can talk about add-ons such as law centres and increased accessibility, but the basic provision of legal services to individuals is through solicitors in private practice. That system is excellent, with 1,200 different practices covering the length and breadth of Scotland; it cannot be matched and must be the basic model.

We must ensure that that system is working properly. Ten years ago, there may have been 1,200 firms in Scotland, all of which were providing legal aid. Now only a fraction of that number of

firms provide legal aid, and that number will reduce continually as fewer firms offer legal aid. When that happens, the system will be failing to meet the Executive's objectives, as it will no longer offer access to justice and it will no longer be an effective service. The most junior and inexperienced solicitors will be asked to undertake the most difficult jobs. For example, in family law, which covers bitter disputes involving children, it is essential that solicitors really know what they are doing. Such cases should not be undertaken by a junior solicitor who is not properly trained, qualified or experienced in handling difficult issues concerning children. However, the experienced solicitors who would be best able to take on such cases are no longer undertaking civil legal aid work.

Christine Grahame (South of Scotland) (SNP): I am glad that Phil Gallie asked the questions about pay, because they always strike a note of self-interest. It is appalling that the profession has not received an increase in legal aid rates for nine years and will not receive one for another three years. What you say is quite right. As a former legal aid lawyer who operated in family law, I know that that situation means that junior solicitors are given cases that they do not have the maturity or experience to handle. That is not their fault; the rates make such cases not worth while for senior solicitors.

I, too, am concerned about the freezing of legal aid funding. Not only are solicitors' fees being frozen, but the budget contains no percentage increase for advocates' fees or outlays. Is there any evidence—albeit anecdotal—to show that the Scottish Legal Aid Board is tightening up on applications for expenditure outlays because of costs? I am thinking of specialist reports, for example. That would have an impact on the fairness of the system in processing a case.

Andrew Pollock: I am glad that you have mentioned that issue. In the consideration of the increase in the cost per case in the civil legal aid system—a matter that has been drawn to people's attention by the Scottish Legal Aid Board—inadequate account has been taken of the increase in outlays.

Much of the increase in the cost per case over the past 10 years has not been due to solicitors' fees, as there is a limit to how much those could have increased; it has been because a lot of the outlays did not exist 10 years ago. For example, we now have to pay the sheriff clerk's office for every stage of every case that we undertake. To get a case into court, we have to pay £46 or £85 just to get the ball rolling. Ten years ago, that expenditure did not exist. When we have to get a medical report, before we even ask our consultant to examine the client, the hospital will charge an

administration fee of £40 for our client's records. That charge was not levied 10 years ago. If the cost per case is broken down, in civil and criminal legal aid, it will be found that the outlays have escalated constantly. That, however, is not the case for the solicitors' fees element.

11:00

Christine Grahame: I thank you for that information, but is there anecdotal evidence that, because of constrictions on the budget, solicitors are having to go through more hoops to get the board to spend on outlays? As you and I know, it is not possible to instruct a report without having the resources and the authority to do so. With tight budgets and increasing outlays, how can those budgets be kept to?

Andrew Pollock: That is extremely difficult. I give the real-life example of a medical negligence case involving a child who was catastrophically injured at birth and has cerebral palsy. In order to prove the case, we need to obtain expert reports from independent obstetricians. The Legal Aid Board has a policy that a solicitor cannot go outwith Scotland to get a report from an independent expert. That is because English consultants cost a lot more. Our hands are tied immediately, because we are limited to the number of obstetricians from whom we can obtain a report. The Legal Aid Board usually allows us to instruct only one expert. We turn up for a hearing to find that the health service that is fighting the case has access to at least two experts. With our one expert, we cannot provide as effective a service as we would have wished.

Mrs Lyndsay McIntosh (Central Scotland) (Con): What effects might the public defender system have on your business?

Gerard MacMillan: From the figures that we have seen, I do not think that we are overly concerned with the impact of the public defender's office. The experiment has some time to run. As far as we understand the figures, we can hold our heads up. Andrew Pollock mentioned meltdown. When I last gave evidence to the committee, Women's Aid had just told members that the organisation was on its knees. We are very much in the same category.

My firm is one of the few that deals with referral business and complex civil matters. Of about half a dozen firms in Glasgow, only about 20 solicitors are prepared to deal with the difficult and complex matters that arise for civil legal aid litigants. My firm is coming to the stage at which it will have to withdraw from that work. We cannot sustain the work because of costs, not only of solicitors—albeit that those are most important—but of the outlays in opening and running a file. It is those

costs that have made the work unsustainable.

We are aware that the two justice committees are concerned with access to justice. My heart sank when Christine Grahame referred to the small increase in the justice budget over the three years. I hope that those are only the projections and that, as a result of what we and others have said, the figures can be reassessed.

We cannot see there being access to justice over the next three or four years, partly because, as I said, a lot of us will not be there. Moreover, as I told the committee when I appeared as a witness before—I do not want to sound like a cracked record—students will not be attracted to the work. I have been a university lecturer for many years. When I talked to a substantial number of students at a prize-giving last Friday, they said that they had no intention of coming into legal aid practice. The word is out; students are well aware that they can receive much higher remuneration elsewhere. If they are not there to be trained—or, worse still, if we are not there to train them—there will be no access to justice in three or four years' time.

Andrew Pollock: The question on the important issue of fixed fees proves what we have been saying all along. We cannot consider civil or criminal legal aid in isolation; they must be considered together. What has become clear over the past few years is the extent to which criminal legal aid was subsidising civil legal aid work. Many practices would do the work, in which there was little or no profit, because the criminal legal aid work would pay for it. That does not happen anymore.

Vincent Smith: On Mrs McIntosh's question about the public defender, there is no problem as long as there is a level playing field, as Gerry MacMillan pointed out. For example, we could not compete if all persons who appeared on summary complaint were referred to a public defender's office that might be opened in Glasgow. However, as far as costs are concerned, there is no doubt that we provide a better service than the public defender's office could.

Michael Matheson (Central Scotland) (SNP): I do not know whether you have had a chance to consider the six targets that the Crown Office and Procurator Fiscal Service set itself, five of which it failed to meet. I am aware that, as practising solicitors, your members will have a close relationship with the COPFS. Does the service's problem with resources impact on your daily work?

Vincent Smith: I offer the example of the Tuesday after the first holiday weekend in May. Because there was no court on the Monday, all the persons who had been in custody from midnight on Friday went through the court on Tuesday afternoon. The court was due to start at 2

pm; however, it did not start until after 3 pm and rose again at 3.35 pm with the sheriff indicating to the public that the system could not cope with the 88 persons in custody. The court eventually completed its business at 10.45 pm that night, after which those who had been detained in custody had to be transferred to wherever. Such a situation impacts on defence solicitors; colleagues had to stay there for the duration and the majority of them were not remunerated at all. Only the duty solicitor would have received any remuneration. We are still awaiting the reasons why that situation happened on that day, but there must be some reason why the system cannot cope with what was not a fantastic number of persons. After all, we have seen more than 90 and 100 going through the court in the past.

The Convener: I do not really want to get into details of the court administration. We have got the point.

Vincent Smith: The point is that the Crown Office's lack of resources caused the great delays in court on that day.

Pauline McNeill (Glasgow Kelvin) (Lab): I want to ask about lack of resources and court delays. I had the pleasure of visiting Glasgow sheriff court at the invitation of the Glasgow Bar Association; I found the visit most enlightening. You raised with the group that you invited the issue of intermediate diets in summary trials, which were introduced to make the court run more smoothly. I am sure that that happens most of the time, but I was told that the non-availability of statements was making the system run less smoothly than it should. Is that an on-going problem?

Gerard MacMillan: That is one of the problems, but to be honest, in the great scheme of things it is not something that we lie awake at night worrying about. There are many greater problems to deal with. Our great worry, as Vincent Smith made clear, is that there are so many component parts of the system—intermediate diet courts, deferred sentence courts and trial courts—that it is sometimes a miracle that it comes together. If it does not, which frequently happens, the only person who is penalised and not remunerated for that day in court is the defence solicitor. One cannot run a business on that basis. I hope that I have not developed the point away from where Pauline McNeill wanted to go. The non-provision of statements is an annoyance, but it is not the main problem by any stretch of the imagination.

Pauline McNeill: Does it happen at all?

Gerard MacMillan: Yes, of course.

Pauline McNeill: What effect does that have on the ability of a defence lawyer to argue their client's case? Is it a disadvantage?

Gerard MacMillan: Without getting overly technical, the object of the exercise at an intermediate diet court is to advise the court of how prepared one is. Of course, without Crown statements one is at a considerable disadvantage, because one cannot take one's client's instructions and cannot properly prepare the defence. As a result, one might require to ask for another intermediate diet. That intermediate diet is built into the fixed fee, which means that one comes back to court on another day and is, in effect, unpaid, which is not the lawyer's fault. That day is included in the fixed fee. That is another example of lawyers picking up the tab for inefficiencies in the system.

The Convener: We must move on.

Pauline McNeill: I want to ask a question on another subject, convener.

The Convener: We are tight for time, Pauline.

Pauline McNeill: My question is on the resources that are available to procurators fiscal. We have been asking questions during the budget process, and we put questions to the Procurators Fiscal Society, which said that procurators fiscal are under-resourced and that there is not the liaison that ought to exist between duty fiscals and the police. Do you have an opinion on that?

Vincent Smith: I cannot comment on the relationship between the fiscals and the police, because that is outwith our knowledge.

Pauline McNeill: Do you have any experience of the availability of procurators fiscal in your work.

Vincent Smith: Do you mean to discuss cases?

Pauline McNeill: Yes. If you need to speak to a fiscal, what is your impression?

Vincent Smith: It is extremely difficult to do.

Gerard MacMillan: I do not want to criticise a system that is under pressure, because in a sense the procurators fiscal are merely feeling the obverse side of the coin that we feel. I am sure that they all work hard, but in contacting the fiscals' office in Glasgow, sometimes one would be as well pushing one's letters down a stank or telephoning somebody else, because there is no response, which holds up cases. There are too few fiscals. If one wants to discuss a case, the appointment might be a week or so ahead. Given the delays and the difficulties in getting statements for the intermediate diet court, by the time one has those statements and has a meeting, the trial is upon one, which defeats the purpose of the meeting.

Mrs Mary Mulligan (Linlithgow) (Lab): I have a general question. Correct me if I am wrong, but you represent the Glasgow Bar Association. Are the difficulties—which you say arise because of

the number of people who are taking up legal aid business—the same throughout Scotland, or are they specific to Glasgow?

Andrew Pollock: Are you talking about civil or criminal legal aid?

Mrs Mulligan: Both.

Andrew Pollock: Certainly on the civil side, it is not just a Glasgow problem; it is a problem throughout Scotland. If anything, it is worse in rural areas. Rural practitioners are under the same financial pressures, but it might be worse for them, because there is no economy of scale to the extent that one might have in the city.

I also act as a reporter for the Scottish Legal Aid Board, so I look at things from the other side of the fence, too. I am aware that an ever-diminishing number of firms outwith Glasgow are prepared to do civil legal aid work as well.

The Convener: I thank the representatives from the Glasgow Bar Association.

We have three more sets of evidence to take. We will hear from the District Courts Association, the Minister for Justice and the Solicitor General for Scotland. The Minister for Justice must leave by 12:15. Let us keep our questions as tight as possible.

I welcome the representatives of the District Courts Association. Andrew Lorrain-Smith is its chairman and Phyllis Hands is its honorary secretary. Would you like to make some opening remarks?

11:15

Andrew Lorrain-Smith (District Courts Association): We believe that the district courts provide good value for money in the provision of local justice. About 1,000 justices of the peace take their turn on the bench to deal with offences that have been committed, or not, in their community. That involves a great deal of skill and dedication. If we add the knowledge, experience and professionalism of the district courts clerks, who act as legal assessors, we have a valuable resource. The volume of work has shrunk in the past few years. Clearly, the district courts could deal with a heavier work load and perhaps a wider remit.

Justices of the peace are lay people and they need to be trained. Changes in the law and the adoption of the European convention on human rights have heightened the importance of, for example, procedure. At the same time, the central advisory committee has been considering recommendations that are aimed at addressing the diversity of training and administration in different areas. The District Courts Association has been working hard on that and has produced

a competence-based training proposal. We think that it builds on the teamwork that exists between local clerks and their justices. At the same time, it provides a uniformity of training material and curriculum.

When we gave evidence to the Justice and Home Affairs Committee a year ago, on the Bail, Judicial Appointments etc (Scotland) Bill, a review of the district courts was announced. To date, we have not seen a consultation paper. We have been working on the basis of the status quo.

To implement our training proposals is beyond the means of the District Courts Association, because that would require the employment of a central training co-ordinator to produce training materials and to liaise with the trainers. If we have been invited to give evidence on the costs of judicial training, that would be our top priority.

Mrs McIntosh: In other evidence sessions, we have heard about the considerable pressures on the Procurator Fiscal Service, which is for the courts at the lower end—that is, the district courts. Can you tell us about the impact of those pressures on the district courts?

Andrew Lorrain-Smith: Phyllis Hands, the secretary of the District Courts Association, might be better able to answer that question. We feel that the pressures have had quite an effect. Our work load has dropped, and not only because of fiscal fines. On many occasions, the Procurator Fiscal Service does not have time to deal with cases. Phyllis Hands is better able to answer that question.

Phyllis Hands (District Courts Association): Budgetary constraints mean that procurators fiscal cannot mark papers for the district court unless they have a good reason for not using any of the diversion schemes, including fiscal fines. Before budget constraints were introduced, fiscals who chose not to mark cases for court had to explain why those cases were not being marked for court and why a diversion was being used. Now, the system works the opposite way round.

The system can have the opposite effect to that which was intended. If a fiscal fine rather than a warning letter has been offered, the case can be harder to prove in court. We are getting a few extra trials out of the system, but that is about all.

Mrs McIntosh: I will continue on that theme. I spoke to the regional procurator fiscal on Monday. He thinks that the issue has nothing to do with fiscal fines and that the same amount of work has been sent to the district courts. I know that, traditionally, Phyllis Hands's court branch was the third busiest. I understand that it is now the second busiest. Do you agree with or contest that?

Phyllis Hands: Our three courts in North

Lanarkshire are probably the second largest after those in Glasgow. Two courtrooms that are available at Motherwell were built eight years ago because of the volume of work. Both courts used to work all day until 3 o'clock or 4 o'clock in the afternoon. Now, one court is shut every day, apart from Wednesday, when we have a means court and a trials court. A court is available for business that is not being generated.

Mrs McIntosh: I will comment on the experience of the PFs who are going to district courts. My recollection is that we used to have a fair number of experienced PFs, but latterly, comparatively young people were joining the service. Does that have an effect on the turnover of cases? Would you prefer the number of available PFs to be increased, which would therefore mean that PFs were more qualified and experienced?

Phyllis Hands: We get the younger fiscals. We also have trainee defence solicitors, because the district courts are reckoned to be a good place for them to cut their teeth.

Mrs McIntosh: The kindergarten.

Phyllis Hands: The fiscals do not seem to receive sufficient training before they start. They seem to be watching the court one day and left to get on with the job themselves the next day. That is what happens in our area.

Mrs McIntosh: That is the same as my recollection.

Phyllis Hands: Cases take longer, because the fiscals take longer to study their papers and will not have had a chance to study the papers unless they have been committed enough to take them home to read before they come to court in the morning.

Another problem is that advocates depute often arrive from Edinburgh at 09.50 am for a case that starts at 10 am, for example. That means that the court's starting is delayed. If a case must be put off because the court does not have enough time, the knock-on effect can be traumatic for witnesses.

Andrew Lorrain-Smith: A point was made about the work load of district courts decreasing. I sit as a justice of the peace in Midlothian and I deal with less than half as many cases as I did 20 years ago. Many more cases are continued, and I have formed the impression that the PF has not had time to prepare for cases. He opens the folder for a case and finds that although he cannot proceed with it, the case must come to court or be time-barred. The proportion of cases that are continued without pleas being sought has increased dramatically.

Christine Grahame: I have only a couple of questions—I am trying to pick you up correctly. Phyllis Hands said that previously, if a case was to be brought to court and was diverted to, for example, a fiscal fine, a reason had to be shown for that diversion. That has changed and the norm—if I may use that expression—is to divert or to explain why the case should be brought to court. Who explains that to whom?

Phyllis Hands: That was hearsay from me. When we complain constantly about not receiving enough work, deputes who appear in court tell us that. I presume that they are told that they must explain that to the regional fiscal, to their superior officers or to the policy unit in the Crown Office.

Christine Grahame: For how long have you been involved in district courts?

Phyllis Hands: Twenty-one years.

Christine Grahame: I value your evidence. Why is the practice that you described happening?

Phyllis Hands: It is happening because of pressures of business and pressures on the fiscal service. I think—it is hard to say—that the service does not have the same calibre of staff as it used to have.

Christine Grahame: Just go ahead. You should not worry. We are here to find out the truth. We have heard evidence and received figures that show that the staff are young and that there is a high staff turnover. Many of us are aware of that, so you are not alone in saying that the staff are not of the same calibre. Is it therefore your position that not enough fiscals of a higher calibre are available?

Phyllis Hands: The fiscals are not given sufficient time to train before they are put into court. I do not think that that is the situation only in the district courts. The fiscals are also being shoved into sheriff courts because of pressures of business there. The higher the level—up to regional fiscals and their deputes—the less the fiscals tend to go to court. Instead, they sit in the office doing management and trying to control the budget. If the PFS employs solicitors to be fiscals, perhaps the more senior fiscals should be in court, and perhaps managers should manage the office and the budget.

Christine Grahame: What is the system's impact on the delivery of justice?

Phyllis Hands: It slows the delivery of justice. For example, we deal with road traffic cases—although obviously they concern only such matters as speeding or going through red lights. The police may offer the offender a fixed penalty. The case may then go to the Procurator Fiscal Service, which may offer another fixed penalty. The time limit runs from the date of the offence.

To be honest, I sometimes tell my friends not to bother paying such penalties, because the case will be time-barred because it will not reach court in time. When the case reaches the fiscals, it lies for a month until somebody considers it and makes an offer. The offender has a month to pay that penalty, and then the case returns to the fiscal to lie for another month before it gets anywhere near a court.

Christine Grahame: In your long experience, is that a change from the previous situation? Has slippage occurred, or is the change fairly dramatic? When did it all start to fall apart?

Phyllis Hands: The system probably started falling apart just before local authorities were reorganised, about six or seven years ago.

Christine Grahame: Is the decline continuing? May I use words such as “decline”? You need not accept the words that I use.

Phyllis Hands: The level of service that we receive from the procurator fiscal's office is declining.

The Convener: May I clarify that for the record? Are you saying that an increasing number of cases is not reaching court, not because another disposal is thought to be more appropriate, but because insufficient resources are available to prosecute those cases within the time limits?

Phyllis Hands: That is right only to an extent. Some cases are being diverted and followed through—the fiscal fines are being paid. However, some statutory limits mean that by the time the fiscal deputes examine the work load on their desks, the cases have been time-barred, or the delay is so long that the case cannot be brought to court.

Phil Gallie: Mr Lorrain-Smith referred to training. Will he explain the funding system for that training? What effect did the European convention on human rights judgment that the services of many experienced justices of the peace had to be dispensed with because they were councillors have on training and training budgets?

Andrew Lorrain-Smith: The present system is rather different in different commission areas, because the obligation is on local authorities to manage the district courts and to ensure that justices who appear on the court rota are adequately trained. The removal of councillor-justices had no direct effect on that, but it is beginning to have an effect now, because the appointment of new justices has caught up and we have a wave of new justices who require training.

At the moment, there are three levels of training. The first is for local commission areas and is carried out by the district court clerk or depute, with his or her own court rota. Secondly,

commission areas—such as Midlothian, East Lothian, West Lothian and Edinburgh—will link together to have a two-day residential training weekend. Over and above that, the District Courts Association runs training seminar weekends. Last month, we held a one-day training seminar for newly appointed justices, and we also run an annual training weekend for experienced justices. We catch about 10 per cent of justices at those training weekends.

11:30

Phyllis Hands: The cost of those training weekends must be met by the local authorities, which is why we can get to only about 10 per cent of justices nationally. Each local authority must decide how much it wants to spend on the training of justices and how best to spend that money. It might be that only two or three justices are sent for training from each area. If a council has only eight justices on its rota, two or three justices will represent quite a large proportion, but it is a very small proportion for those areas that have a larger rota.

Phil Gallie: You have just made a point that I wanted to illustrate. We are talking about budgets today. The district courts budget does not, as far as I can see, come into the Scottish budget. What I was trying to find out was whether any special allocation had been made by central Government to the local authorities for that purpose, given the fact that it has imposed additional costs on the district courts system.

Andrew Lorrain-Smith: No. Phil Gallie mentioned the ECHR. There are considerable training requirements for complying with the procedural aspects of the ECHR. I understand that, south of the border, our English colleagues are funded by the Lord Chancellor's Department to the tune of £10 million. There are many more magistrates south of the border than there are justices north of the border. Nevertheless, the burden of bringing justices up to date with that new legislation fell on an existing budget, or rather on 30 different existing local authority budgets. The attitude to justice training is different in different areas.

The Convener: I think that we shall stop at that point, as we must talk to the organ grinder next. I thank the District Courts Association for giving evidence.

I welcome the Minister for Justice. Are you happy to go straight to questions?

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): I did have a short statement, but I am quite happy to go straight to answering questions.

Phil Gallie: I would like to start with a quick question about legal aid. We have heard that the Scottish Legal Aid Board will meet the demand for legal aid, whatever the level of that demand. However, the evidence that we have heard shows that solicitors who provide the services under legal aid have not had any increases in their fees for some eight or nine years. Surely that is wrong, given the fact that their overheads have been going up. Surely it would be reasonable for you, as the responsible minister, to seek a higher budget estimation to cover for future increases in those stipends.

Mr Wallace: That question raises a number of points, and I shall deal with them separately. First, there is the question of legal aid being a matter of demand. That is absolutely right. If there are applications to the Scottish Legal Aid Board that meet the criteria, and legal aid is granted, ministers are obliged to find the money to fund that. Let me make it clear that that is not cash-limited or capped. If the statutory criteria for granting legal aid are met, ministers are obliged to find the money. If the amount that is needed for legal aid exceeds the provision that has been made, that money will clearly have to be found from other parts of the justice portfolio, or even from outside it.

The experience of recent years indicates that we have not exceeded the amount that has been put in the estimate. Just think about that for a moment; if we were continually to put much more into the legal aid line of the budget, and that money was not used, that would give us an opportunity for end-year flexibility. However, it would also mean that we would have locked up funds that could have been otherwise deployed, in a planned way, to the police or to the Scottish Prison Service, rather than making an in-year increase. I am sure that the police and the Scottish Prison Service could find some way of using that money, but that is not the same as spending it in a planned way. Those judgments must be made, and I believe that we have hit on the right judgment in the budget.

Phil Gallie also asked about civil legal aid fees. It is factually correct that they were last increased in May 1995. It is also important to point out that civil legal aid has increased in real terms by 25 per cent between 1995 and 2000. I have some figures on that, which I can make available to the committee. Those figures show that, in 1987-88, the average civil case cost for civil legal aid was £728. By 1999-2000, that cost had risen to £1,918. In real terms, that represents £1,186 in 1987-88 figures. If you go back to the year of the last increase, 1995, you will—

Phil Gallie: I think, minister, that we accept the history of legal aid costs, but we are looking to the future. The fact is that we have a straight line, as

far as legal aid provisions are concerned, up to 2003-04. The fact is that you are adding work to the solicitors' burden by including such things as tribunals in future. Once again, I return to the point that surely, somewhere along the line, you must plan for an increase in solicitors' fees. Although I accept what you say about releasing money, budgets are about being honest and about ensuring that there is money to match the means. Some level of increase must be apparent over the next two or three years.

Mr Wallace: You are absolutely right that there are issues such as tribunals. As you are aware, in the Parliament, we have debated the extension of advice by way of representation to employment tribunals. The Convention Rights (Compliance) (Scotland) Bill will give an indication of which tribunals will be added to that. Also, the Adults with Incapacity (Scotland) Act 2000 will make a claim on the budget. We have not disregarded those matters and have assessed the likely impact on legal aid. The budget that we have put in place will cover those eventualities. Over recent years, planned expenditure has been greater than outturn. Provision in the current financial year is some £3 million above the outturn for the previous financial year.

We are confident that some of the additional costs can be afforded, but I make it perfectly clear that we are obliged to meet any demand that arises. People are concerned that we will somehow cap expenditure, but that is not correct.

The Convener: What assumptions underpin the figures for the next three years? There is a small increase of less than inflation for next year. For the following two years, the budget is static in cash terms and actually goes down in real terms. Is the assumption that fees will not go up, that extraneous costs will not go up, that demand will fall, or a combination of those?

Mr Wallace: There are a number of factors. I have written to the conveners of the Justice 1 and Justice 2 Committees—and indeed I answered a parliamentary question on this yesterday—with regard to the fact that I have increased the grant in aid to SLAB to allow some investments that it has proposed to make. That increase, together with using money from the modernising government fund, can lead to savings. The proposals are spend-to-save proposals.

That is one relevant factor. I am not ruling out the possibility of a fee increase. The Law Society of Scotland has put proposals to us. We will have to consider the possibility of a fee increase, but that has to be considered in the context of the fact that, although there has been no increase in civil legal aid fees since May 1995, the cost of average civil legal aid has increased in real terms by 25 per cent between 1995 and 2000. If we increased

fees, every 1 per cent increase would cost an additional £1 million. As the committees well know, if that £1 million is added to the legal aid budget, it has to come off some other budget. I think that I am right in saying that standing orders put some obligation on the committees to come up with proposals. I look forward with interest to the committees' report and proposals as to where, if they wish the legal aid budget to be increased, they hope that we will make savings.

Phil Gallie: I have a final question, which is a change of tack, on the Procurator Fiscal Service. There is, without a doubt—

The Convener: No, I will not—

Phil Gallie: Perhaps others want to pursue that matter, so I will be fair and back off.

Mr Wallace: The Procurator Fiscal Service is a matter for the Lord Advocate.

Christine Grahame: Are you saying that it is right that, for 12 years, the profession that has been delivering the front-line service and on which cases depend should not have any increase in budget?

Mr Wallace: I did not say that at all.

Christine Grahame: That is what you are doing. Your response to the budget questions says that there will be no increase in solicitors' fees and you have told us that there has not been any increase since 1995.

Mr Wallace: That is not 12 years ago for a start. I also indicated that there has been an increase in the money that is paid to solicitors. There has not been an increase in fee levels since 1995, but there has been an increase in the amount of money that is paid to solicitors through civil legal aid.

Christine Grahame: Let us be clear about this. You are talking about the civil legal aid bill that includes all the outlays. That is not money that goes to the firm of solicitors. The actual remuneration that solicitors get has been frozen since 1995 and will continue to be frozen in your plans until 2004. We have had evidence—I am not surprised by it—that that freeze is having an impact on the quality of solicitors who are delivering the service and that a number of firms are no longer prepared to subsidise civil legal aid.

I put it to you that the profession is at risk and is subsidising the system. Let us keep the costs out of the picture. We are not talking about the cost of the civil legal aid bill. We know that that has gone up because outlays have gone up for advocates, reports and court dues, for example. We are talking about the remuneration to the profession that has to deliver the quality service.

11:45

Mr Wallace: I would need to be persuaded that all the increase in average case costs is entirely due to extraneous matters and does not in any way find its way back into the revenue of solicitors firms. It is also important to point out that roughly 70 per cent of legal aid expenditure goes on solicitors' fees, so any increase has implications for the budget as a whole.

I did not say that we are ruling out an increase. The Law Society has put proposals to us and we want to engage in dialogue with it. There is a tripartite arrangement involving the Law Society, the Executive and SLAB for discussion of such matters. We will engage in those discussions in all good faith.

Christine Grahame claims that solicitors firms are no longer dealing in legal aid.

Christine Grahame: That is the evidence that we have had.

Mr Wallace: I am aware that some of the larger firms are no longer dealing in legal aid. I look forward to seeing the detail of the evidence in the Justice 1 Committee's report on its legal aid inquiry. I have heard anecdotally that firms are no longer dealing with legal aid. It would be useful to get some hard facts and evidence on that and perhaps the committee has managed to gather that. That would be useful because, of course, it would be a relevant factor for the budget if firms were no longer dealing with legal aid.

Christine Grahame: Of course, the Justice 2 Committee does not get to do that now. You know my position on there being two committees.

Mr Wallace: I am sure that you can trust your colleagues on the Justice 1 Committee.

Christine Grahame: It is not that—it is just that we do not have the same information at our fingertips any more.

I have a final question. How much did you consult SLAB before you arrived at the budget figures? How many meetings did you have and what was SLAB's position on the funding and administration costs that you have proposed?

Mr Wallace: Although I cannot tell you in detail how many meetings took place, I have already indicated that the grant in aid to SLAB had been increased. That was done as a response to a submission from SLAB for additional resources to allow it to modernise its infrastructure and systems to deal with a significant increase in its work load and to improve the speed and accuracy of its decision making. SLAB put proposals to us and previously applied for funding under the modernising government initiative to help to advance an electronic delivery of legal aid. We

have listened to that. There have been discussions. The answer that I gave yesterday to Maureen Macmillan sets out our response to SLAB's requests.

Perhaps Mr Gallagher could advise how many detailed discussions we have had with SLAB.

Jim Gallagher (Scottish Executive Justice Department): I could not tell the committees how many meetings there have been, because I have not participated in them. However, I know that the justice department is in pretty much constant touch with SLAB, not merely in relation to formulating the plans that are in the annual expenditure report, but in relation to the week-to-week management of the budget. The discussions with SLAB are full and comprehensive.

Christine Grahame: Can we be satisfied that the figures that were arrived at for legal aid administration costs, which are frozen from 2000 to 2004, and the costs for the legal aid fund, which will be frozen from 2001 to 2004, were arrived at with the agreement of SLAB?

Jim Gallagher: As Mr Wallace said, there have been quite recent discussions with SLAB on the administration costs. Yesterday, we announced changes in SLAB's administration costs, which are no longer frozen but are on what I might describe as a gently rising line, with further investment from the modernising government fund outwith the justice vote to enable e-government transactions between SLAB and solicitors, which should reduce administration and fund costs.

Christine Grahame: What about the fund itself?

Jim Gallagher: The responsibility for making predictions on the fund rests ultimately with the justice department rather than SLAB.

Christine Grahame: What is SLAB's position with regard to the figures that you have given? Is it content?

Jim Gallagher: I have not asked SLAB, so I would not like to say one way or another.

Mr Wallace: The point must be reiterated that, if the figures are exceeded, we will have to fund the excess—there is no if and but about that. Over recent years, the estimates have not been exceeded.

It does not make sense to tie up money in one line of the budget, which may then be released at the end of the year, if some of that money can be used from the outset for the police or prisons, for example. If we increased this line of the budget, the money would have to come from elsewhere in the budget. An obvious outcome might be that the police would not have those resources available to them at the start of the year for planning purposes.

Should the number of applications or the

complexity of the cases be such that, once the criteria for the granting of legal aid have been met, the total sum exceeds what is in this budget line, we would be obliged to make up the difference. I emphasise the fact that people will not be denied legal aid because of this budget line. The money would have to come from elsewhere, but in recent years there has not been a problem—in fact, the opposite has proved to be the case.

Christine Grahame: The concerns that I have heard—for example, in the evidence that we received this morning—are that, in a reparation action, the pursuer will be allowed perhaps only one report by the board although the defender, which may be a health trust or board, will be able to commission two or three expert reports. Limitations are being put on pursuers' cases, based on financial considerations.

Mr Wallace: As you well know, properly and legally ministers cannot intervene in individual cases. That must be a matter for the board.

Christine Grahame: Would you be concerned if that was the case?

Mr Wallace: I would want to be provided with full details of the situation.

Phil Gallie: Let us return to the funding of the police and fire service. I recognise that central Government funding addresses such aspects as training and back-up facilities. What allowance have you made for training facilities for the police over the next two years? There will be many retirements in that time, so to maintain the police numbers that you aim for you will have to put in place a fairly significant recruitment and training programme.

Mr Wallace: Almost 12 months ago, we announced an increase in police spending of £8.9 million, which allowed the chief constables to start recruiting. Of that money, £1 million was allocated to the Scottish Police College at Tulliallan, in recognition of the fact that recruitment cannot begin at above-average rates unless provision for that is made.

The performance indicators for the Scottish Police College are set out in table 1.15 of the budget document. The planned expenditure for the college for 2000-01 was around £10.2 million; for the current year, the figure is around £12.2 million—an increase of almost £2 million; for the next financial year, the figure has increased to almost £12.8 million; and for 2003-04, that expenditure will return to £11.7 million, which is still considerably higher than the figure for 2000-01. The reason for the fall in expenditure in 2003-04 is that we hope that capital works at the college, such as the house block and the gymnasium, will be completed by that year.

Phil Gallie is right to make the point about training. If we want to recruit, as we have done successfully, it is important that provision is made for training. We have identified that issue and additional funding is being allocated to the police training college at Tulliallan.

Phil Gallie: I ask for the same arrangements to be made for the fire service.

Local authority support contributions are increasing. However, as a result of the retirement levels to which I referred, burdens with respect to pension pay-outs are accumulating, principally because they are part of the revenue allocations. What consideration has the minister given to those areas of expenditure?

Mr Wallace: Do you mean in respect of the police or the fire service, or both?

Phil Gallie: The principle applies to both, but I am asking about the police, as an example.

Mr Wallace: The money that local government receives for the police service is also increasing. Retirements pose some difficulty, as they cannot be predicted exactly, but we are conscious of the fact that they must be taken into account. The increase in spending on the police that is channelled through local government over the period of the spending review is significant. We are trying to predict retirements as accurately as we can, and we are discussing the matter with chief constables.

We believe that not only can we increase police numbers to record levels—as we have done already—but we can sustain them at those levels. It is a matter for chief constables to decide how they deploy the money that is allocated to them, but, from talking to them, I know that they recognise the importance of recruitment. We believe that the appropriate funding is being allocated to sustain the record levels that we have reached.

Phil Gallie: Do you feel that you are also covering for problems that are caused by early exits from the police by individuals who do not complete their training? Is there a retention problem and does that affect budgetary considerations?

Mr Wallace: I am not aware that there is any such problem, although the occasional person may not complete their training for some reason or another. I have received reports from different parts of the country and, over the past 12 months, I have visited police forces that are addressing the issue of recruitment in Glasgow, Aberdeen and Dumfries. I also know that the number of recent applications in Lothian and the Borders has been very encouraging. I do not perceive any difficulty in recruiting for the police.

Phil Gallie: I am concerned about the retention of police officers. Is it too early to comment on that?

Mr Wallace: It is too early to say, as the numbers are still coming through. I am not saying that one or two people will not drop out—I am sure that the completion rate is not 100 per cent—but the signs are encouraging. Perhaps Mr Gallie has additional information on the subject.

Jim Gallagher: At the Scottish Police College, of which I am chairman of the board of governors, our experience of recent recruit intakes has been good and there has been a very low drop-out rate. The quality of our recruits has been extremely good.

Pauline McNeill: I have two questions, the first of which is on the topic of young offenders. The budget document refers to placing children who are sentenced to detention by courts under section 205 of the Criminal Procedure (Scotland) Act 1995 in secure accommodation rather than in penal establishments. I am pleased that that provision is included in the document. Can you give any more detail of your plans to provide secure accommodation for young offenders?

Mr Wallace: I cannot give much more detail than is contained on page 28 of the big orange budget document. The service is demand-led and provision is made under the Criminal Procedure (Scotland) Act 1995 for children to be detained in secure care establishments. The budget line is continuous at £3 million, which allows the young people to continue their education while they are held in secure accommodation and provides them opportunities to address their offending behaviour. We think that it is important that there are opportunities for education while they are detained, and we want to ensure that no child who is sentenced to detention is placed in prison. Concerns have been raised in the past that that might happen.

We want to ensure that young people in secure accommodation have an opportunity to leave the system with the prospect of living adult life as mature and responsible citizens. I am sure that that does not happen in every case, but that is our objective and a regime that emphasises educational opportunities is in operation.

Jim Gallagher: The relatively small number of children involved is managed directly by the department, usually through assignment to secure schools such as list D schools. I will be happy to supply more information on cost and the number of cases, if that is of interest to the committee.

12:00

The Convener: It certainly is.

I am interested in particular in how to deal with young offenders. Everyone would accept that that is an issue on the justice agenda.

Mr Wallace: I agree. It is only a relatively small part of the budget line, but it is not unimportant. The young offenders strategy deals with a range of issues, because we recognise that a disproportionate amount of crime is attributable to young men, in particular men between the ages of 16 and 24. We must address that issue and the whole social justice agenda, because sometimes patterns are set early in life, which is why we must tackle deprivation as well as criminal behaviour. I assure the convener and the committees that the Executive attaches considerable importance to such issues. They are a matter not only for the justice department; the education department has an interest in the children's hearing system.

Jim Gallagher: It would be worth while to ensure that you are considering the right numbers, convener. The reference to £3 million for children is for the small number of under-16s who are sentenced to detention. The budget for young offenders in detention is contained in the Scottish Prison Service budget, for places such as Polmont young offenders institution.

The Convener: I realise that you may not be able to give us an answer today, but can I ask you about the Scottish Prison Service? Last week, we heard from the Prison Officers Association Scotland and we examined the figures on the cost of prisoners. The association seemed to dispute your figures and suggested that they are based on actual capacity, not prisoner occupancy. I do not know whether you have had a chance to read what John Dawson said.

Mr Wallace: We base our figures on the cost per prisoner place, particularly when we set targets. I refer to the average annual cost of a prisoner place. The target for 2000-01 was £29,500 and the outturn was £28,500. To avoid a problem of definition, I stress that our figures are based on cost per prisoner place.

One reason why we referred the issues that arose out of the estates review to independent auditors was to ensure that we compare apples with apples and that time is not taken up by people throwing around figures and not comparing like with like. I hope that it will be evident that we are comparing like with like.

The Convener: Are your figures based on occupancy or capacity?

Mr Wallace: Capacity.

Jim Gallagher: It may help if I explain. For several years, the cost measure applied to the Scottish Prison Service, and to HM Prison Service in England and Wales, has been the cost per

place available for use. That is the revenue cost of each place in a year, not the capital cost. That makes good sense as a managerial measure, because we do not know the occupancy rate from week to week or month to month. The target that has been set for the Scottish Prison Service since the early 1990s is a unit cost per place available for use.

Michael Matheson: In Kilmarnock prison, are the figures calculated on the basis of capacity or cost per prisoner?

Jim Gallagher: The contract says per place available for use.

Michael Matheson: It is per place available for use.

Jim Gallagher: I think that is right. If it is wrong, I will tell you otherwise.

Mr Wallace: The other source of confusion is what the revenue cost is per place per annum and what the net annual cost is—it is called the net present value—when the capital costs over time are taken into account. Mr Gallagher will no doubt tell me if I have the terminology wrong. There can sometimes be confusion because one is compared with the other. If you compare annual revenue cost, you must ensure that it is done the same way for Kilmarnock as it is for the public sector prisons.

Jim Gallagher: It might be helpful if I explain that a little further.

The target cost that is set for the Scottish Prison Service in the public sector is the revenue cost per prisoner place. That does not include the capital cost of the buildings or capital investment to refurbish the buildings and so on. The cost that is paid in the contract to Kilmarnock prison includes remuneration for the capital cost that the operators have put into building the building—so the cash that the SPS pays to Kilmarnock prison includes an allowance for capital. The cash that is referred to in the targets for the SPS does not include an allowance for capital. That is the first reason for the lack of comparability.

The second point to which the minister referred is how one would compare those costs when making choices about investment in public or private prisons. An investment choice—in prisons, as in anything else—will be made on the net present value. That is the cost over the lifetime of the investment—which might be 25 years—of revenue and capital investment. It will all be taken back, in the usual way, to current prices. That gives a net present value. Sometimes in the discussions about prison estates, people find themselves comparing a net present value figure for investment with a day-to-day revenue figure: that is like comparing apples with pears.

Michael Matheson: What is the time frame for comparing apples with apples?

Mr Wallace: As soon as possible.

Michael Matheson: I raised this point with the minister several months ago. At question time he said that the accountants were examining it. When can we expect to have a level playing field so that we can compare the figures?

Mr Wallace: I accept that it has taken far longer than any of us anticipated, not least because the accountants want to ensure, before they put their name to anything, that the process is as thorough as it can possibly be. The best estimate I can give Michael Matheson is the summer.

Michael Matheson: I understand that the SPS was due to publish targets at the end of March or beginning of April. That was referred to in the document. What is the current situation on those targets?

Mr Wallace: I think that the targets have been published. I cannot remember exactly when, but I sent a letter to the committee. Measures and targets for 2001-02 were announced in parliamentary answer S1W-14582.

The Convener: I think that it was circulated.

Michael Matheson: Will the minister give us more detail on where he expects the increase in running costs that the figures indicate to go? There are general headings but the document does not indicate how much is going where.

Mr Wallace: That is not the target. Table 1.16 in the annual expenditure report gives the direct running costs, which include staffing, maintenance, teachers and medical and dental staff as well as other current spending, which is prisoner-related costs such as food, clothing, bedding, payments made to prisoners and materials for workshops.

As stated in the Executive's response, the target we set for 2000-01 was £29,500. The estimated outturn was £28,500. The target we have set for the current financial year, 2001-02, is £32,600, but there is an important footnote attached to that: I have asked the Prison Service to try to find £12.5 million revenue savings, which will be used for capital investment.

Michael Matheson: Where do you expect those revenue savings to come from?

Mr Wallace: Savings have been made in the year that has just finished, which amount to revenue of about £6 million. Much depends on the outcome of the current arbitration on attendance patterns, but £5 million to £10 million of potential savings were identified from the change in attendance patterns. It will depend on how matters progress.

The Convener: Before I bring in Christine Grahame, can I clear up one point on the cost per place? Is that designed places? What happens if a prison is overcrowded, which is a term that we frequently hear, and which presumably means that it is accommodating more people than it was designed for? Does that affect the cost per prisoner place?

Mr Wallace: No; the cost is the cost per place.

The Convener: Whether designed or not?

Mr Wallace: Whether designed or not, but I would want to check whether when a block is being refurbished, for example, places are taken out for the period of the refurbishment.

Jim Gallagher: On the convener's specific point, if there are two people in a cell, that is still one place.

The Convener: In other words, an overcrowded prison will cost more, because it is paying for more prisoner meals and so on. The cost per place will go up, but the number of places will not change.

Mr Wallace: The targets are the same.

Jim Gallagher: Arithmetically that is correct. If there are more prisoners than places and costs increase as a result, the expenditure per place will be higher than it otherwise would have been.

The Convener: Though the cost per prisoner might well be lower.

Mr Wallace: Yes.

The Convener: I was going to follow up on that, but I think I am getting more confused. Perhaps it will be clear when I get to read it on the replay.

Christine Grahame: I will put to the minister what John Dawson said to the committee, which you have now clarified in part.

The Prison Officers Association Scotland has evidence that the figure

"is based on the number of prisoners that a prison can hold without overcrowding"—

which is what you have said: it is based on the number of places—

"rather than on the number of prisoners that a prison actually has."

John Dawson said that the figure for Barlinnie,

"which was supplied by the Scottish Prison Service, is more than £25,000",

and that the figure on the

"actual occupancy figures, which can be proved, is £21,000 per prisoner place."—[*Official Report, Justice 1 Committee and Justice 2 Committee (Joint Meeting)*, 8 May 2001; c 52.]

Is that right?

Mr Wallace: No. That figure may be per prisoner, but not per prisoner place.

Christine Grahame: I want to move on, as time is pressing.

The Scottish Executive's paper in response to the committee's paper—J2/01/9/1—contains a chart on key performance indicators for the SPS.

Mr Wallace: I referred to that table in response to Mr Matheson's questions.

Christine Grahame: The average annual cost per prisoner place is £32,600.

Mr Wallace: That is correct.

Christine Grahame: I will put that to the side just now. The £12.5 million revenue savings are in a footnote, to which you have also referred. You said that £6 million of savings have already been made.

Mr Wallace: That was the revenue saving in the financial year that has just ended.

Christine Grahame: You project that there will be a saving from staffing of between £5 million and £10 million, which is a huge range. If it were £10 million, almost all the savings would be made from staffing.

Evidence I received in an informal meeting suggested that the new staff attendance scheme could generate savings of £5 million to £10 million per annum—I would like a more accurate figure than that—once all surplus staff have been absorbed through natural wastage. I put that to John Dawson. He stated:

"At present, we are just over 100 staff short."

The first question is: how will you make savings on staffing when, according to John Dawson, you are already 100 staff short?

John Dawson continued:

"If management get the new attendance patterns that they desire, that will save them 250 jobs".—[*Official Report, Justice 1 Committee and Justice 2 Committee (Joint Meeting)*, 8 May 2001; c 52.]

Given such comments, I have concerns about staffing levels.

Mr Wallace: It is self-evident that there is uncertainty. Much of that £5 million to £10 million range will depend on the outcome of arbitration and the timing of any changes in attendance patterns.

As I indicated, there were savings last year of around £6 million. It is important to stress that there are guarantees that there will be no compulsory redundancies. Changes in staffing attendance patterns could allow savings to be made because there would not be a need for the same level of staffing. That would lead to reduced

staffing over the working-in period. It is important to emphasise and reiterate that management has given an undertaking that there will be no compulsory redundancies.

12:15

Christine Grahame: I hear that, but I do not take comfort from it because low morale in the Prison Service is leading to high turnover—staff are leaving. To use an emotive expression, people may be driven out by what is happening rather than take redundancy packages.

Is the service short of 100 staff at the moment or is Mr Dawson wrong?

Mr Wallace: No, I think that the figure is about 100.

Jim Gallagher: That is probably correct, although it might be slightly different—I do not know the exact number. The figure relates to staff who are needed to operate the present attendance patterns. If there were a different set of attendance patterns, a different number of staff would be needed.

Pauline McNeill: I do not want to get into where you are with the discussions on attendance patterns, but if they are accepted, will you run prisons with fewer staff on duty? Will the staff work longer hours?

Jim Gallagher: No. The proposition is that staff will be on duty when they are needed to be on duty rather than at times—

Pauline McNeill: So there will be points in the prison day when there will be fewer prison officers than there are now?

Jim Gallagher: Yes. For example, in one of our large prisons, the visit staff on the early shift come on duty at 6.15 am, but the visits do not start until 9 am. An attendance pattern that aligns more properly to need will mean that staff will come on duty when they are needed.

Mr Wallace: Another example is that far more work is now done on education in prisons, yet the existing, traditional staffing attendance patterns allow for the same level of supervision in halls, which might well be relatively empty because prisoners are off doing educational work. The new attendance patterns are intended to resolve such anomalies.

Pauline McNeill: Will you reassure me on one point? I can see how the new attendance patterns might work in some instances, but if staff are to be brought in when they are needed, will you agree to split shifts or hotel-type shifts? If so, that would concern me.

Mr Wallace: That level of detail is a matter for

management in negotiation and discussion with the unions. It would not be appropriate for me to comment on such a level of detail.

Pauline McNeill: I appreciate that, but I have to put the question to you.

Mr Wallace: Many of those issues have been referred for independent arbitration. I would not want to speculate on the outcome of that arbitration. That would not be helpful.

Pauline McNeill: You are right to say that. If split shifts were introduced and the committee examined the issue, I am pretty certain that I could give examples from every industry that has hotel-type patterns to show how turnover is affected. I would like you to come back on the issue at a later date, perhaps.

Mr Wallace: That would be appropriate.

Michael Matheson: I do not entirely agree that the minister cannot have responsibility for such detail. From the evidence this morning on freedom of information, it was clear that the minister has responsibility for the SPS as it is a non-legally defined body.

Would you be in favour of that type of shift pattern? I can see staff who are on an average wage finding their wages cut because of the change in shift patterns.

Mr Wallace: An undertaking has been given that as well as there being no compulsory redundancies, there will be no cut in cash wages.

Michael Matheson: So you want to have a revenue saving based on staffing, but we have too few prison officers at the present time and there will be no reduction in their wages. How do you make the savings?

Mr Wallace: It is estimated that there will be a need for fewer staff once the new attendance patterns are implemented. Over time, staff will leave and will not be replaced. Pending that, there is an undertaking—which few private companies would give at a time of structural change—that there will be no compulsory redundancies and no cut in cash wages. Those are important guarantees, which the Prison Service has given.

The Convener: I thank the minister for his attendance.

Our final evidence is from the Solicitor General for Scotland, Neil Davidson QC. We also have with us Dr Alastair Brown and Sandy Rosie.

Pauline McNeill: Good afternoon. You might have noticed that the committee has been asking a lot of questions about the Procurator Fiscal Service. If you do not mind, I will ask a few questions on that. First, we heard evidence from the Procurators Fiscal Society, which welcomed

the 30 new fiscal officers, but felt that they would not solve the long-term problem, which is the retention of experience in the service. How do you intend to address that?

The Solicitor General for Scotland (Neil Davidson): That is a good question and a difficult one, in a sense. As has been said by other people, procurators fiscal do not grow on trees. One must acquire experience in prosecution, which one can do only by appearing in court. There is no quick way of getting a collection of experienced deposes from anywhere other than from the Procurator Fiscal Service. There is a means of training people at a high level, which is not found in other areas, but it is the development of specialist skills. The way in which one might deal with the question that Pauline McNeill puts is to ensure that there is a high level of retention of current deposes, because those are the people who are developing experience and those are the people who have experience. So far, the Procurator Fiscal Service has been able to retain a high proportion of its employees. I know that that is not a complete answer, but ensuring retention is the way forward.

Pauline McNeill: It has been suggested by some witnesses that 30 new fiscals will not be enough. I put it to you—I have put this to others—that it is perceived that liaison between the police and the Procurator Fiscal Service is breaking down, because duty fiscals are not always available. That view was supported by the Procurators Fiscal Society, which felt that fiscals were under so much pressure that when a reporting police officer had to speak directly to a duty depute fiscal, often one was not available. How can that issue be addressed?

The Solicitor General for Scotland: The suggestion, which I have heard before, is that 30 new fiscals are not enough, but one must come to one's best guess of what one can do, and set that against resources. Obviously, in an ideal world one would have hundreds of deposes, who would continually liaise with the police, but one must make a judgment. The judgment has been made that 30 new fiscals in the next two years will address substantially the pressures that are being experienced by the Procurator Fiscal Service.

I have to accept that it is virtually impossible to work out what the future will be in this territory. Unlike certain other areas of service delivery, one does not know what the future will bring in criminal prosecution. For example, we have been experiencing increasing demand for disclosure from the defence. That is a change in the way in which matters have operated in the past, which imposes new requirements and new pressures on staff. One cannot foresee that that sort of thing is going to happen. It begins to happen, and the pressure grows. At the moment, those pressures

exist, but I do not consider that we are beyond breaking point.

On the extent to which that impacts on relations with the police, obviously, if a fiscal is too busy to liaise with the police there will be in a particular case a possible lack of smooth communication. I accept that, but over the piece, a broad effort is made at each level of the police and the prosecution service to ensure that liaison takes place. If it becomes a problem, that will be communicated to us. So far, in my personal liaison meetings with senior police officers, it has not been mentioned that it is a problem. I do not know the problem of which Pauline McNeill speaks.

Pauline McNeill: The issue has been raised with me as an MSP. I will put it in stronger terms; it has been suggested—it is the committee's overall impression—that there are more and more pressures, and that we are reaching breaking point. We heard from representatives of the District Courts Association this morning, who told us that there is a problem with getting cases marked by fiscals, to the extent that if they do not find a diversion scheme for offenders, they are asked why they are going to court. That is alarming to the committee. I put it to you that there is more than just some pressure, and that there are breaking points in the system. I want to press you on this. If we do not have the correct number of new fiscals, are you willing to say that in future you will need more resources?

The Solicitor General for Scotland: Absolutely. One of the purposes of being here is to discuss where we are going. At the moment, I do not understand that we are beyond breaking point. I accept fully that there are pressures and if those pressures become impossible, it is plain that we will have to continue discussions with Scottish Executive colleagues to ensure that more resources are given for prosecutions, to ensure that the best service is maintained.

The problem is that pressures can spring up through unforeseen changes in the law. Pressures can spring up because there is a particular change, for example a change in police prosecutions that results from the police targeting particular crimes. Pressure might result because there is more serious and complex crime hitting Scotland at a particular time. Dealing with that will always be difficult. To put resources in—to have, for example, 35 deposes instead of 30—would not necessarily solve the problem. As was said earlier, the pressure is such that experienced people will be required to deal with difficult issues over time and to work out whether particular cases will go to court.

One must continually deal with complex situations in which one does not—as one might do in business—simply calculate resource

requirements based on projected growth. The system just does not work that way. Inevitably, projections will be wrong, and one might get closer to breaking point than one wishes. I know that that is not a terribly helpful answer, but it is the best that I can manage in the circumstances.

12:30

The Convener: Last week, Richard Stott, the president of the Procurators Fiscal Society, said, in answer to Gordon Jackson, that about 25 per cent more was needed in staff resources. Over the next four years, the budget will go up by 10 per cent. It does not sound as if he will be happy, does it?

The Solicitor General for Scotland: He is negotiating for his society: a posture of happiness might not immediately fit in with his particular role. I was not entirely sure what he meant by an increase of 25 per cent. I was not sure whether he wanted 25 per cent more people or 25 per cent more on the budget. I was also rather unclear about where he got the figure of 25 per cent. I have a prejudice in favour of looking at evidence, but I did not detect any evidence in Mr Stott's view.

The Convener: May I ask you where you got your figure of 10 per cent?

The Solicitor General for Scotland: I do not have the calculation here with me, but it will have been done by the internal management as an assessment of their view of future requirements. That process is done on a business-plan basis; I do not understand that Mr Stott did his calculations on that basis.

The Convener: Could further detail on the calculations be made available to the committee?

The Solicitor General for Scotland: I am sure that it could be.

It has just been drawn to my attention—this is a debating point, I am sorry to say—that Mr Stott appears to have been speaking with a “gut feeling”. I appreciate that you do not want our gut feelings. We will bring you the statistics.

The Convener: I will bring in the original culprit—Gordon Jackson—who seems to have recovered from his appointment with a dentist.

Gordon Jackson (Glasgow Govan) (Lab): Solicitor General, I am slightly concerned about your comment on the posturing of Richard Stott. You said that a “posture of happiness” would not fit in with his role in the Procurators Fiscal Society. That comment suggested that he was not being genuine and that he is taking a kind of negotiating, trade union position. Richard Stott is a very senior procurator fiscal—until last week, I thought that he was part of the management. We are therefore

entitled to assume that he is not merely posturing in some way and that he genuinely believes that that sort of money is needed. Are you saying categorically that he is wrong, that he is making it up, or that he has got his figures wrong? What is the position? It is not good enough to say that he is posturing because he is a trade union official.

The Solicitor General for Scotland: It would be unfair to suggest that Mr Stott is not acting in a bona fide manner—he is. What I am saying is that he is representing a particular point of view. That is a posture in a negotiation. I am not saying that that makes him a bad person or that he is not telling the truth; I am saying that he has adopted a particular position. If one looks at his evidence, one sees that it is not a position that is based on a clear assessment. It is, as he himself said, a “gut feeling”. One may call it a posture or a gut feeling, but whatever it is, it is not something that is precise and it is not something that has been fully costed. It is not something that he has worked through with the management team at the Crown Office and Procurator Fiscal Service.

I am not attacking Mr Stott as an individual—I agree that he is a responsible person. He is a trade union official who is acting in a bona fide manner. It is just that I disagree with the particular posture that he has adopted.

Gordon Jackson: I accept that—but you can understand the difficulty in my mind. What you said contained the idea that Mr Stott's position was only a negotiating position. It is hard for us to get to the bottom of the matter. For me, it was a culture shock to have the procurator fiscal at Dunfermline coming here as a trade union official and talking about the management. I am trying to understand what your opinion—and, I presume, management's opinion—is. Is Mr Stott merely wrong? Are his figures way off target? Is there a problem that needs a 25 per cent increase to solve it? Leaving aside the business of whether he was posturing, and considering just the facts, what is your position on what he said?

The Solicitor General for Scotland: I do not agree with Mr Stott's suggestion that there should be a 25 per cent increase. I agree with the point that was put to me earlier by Pauline McNeill—that there are pressures within the PFS and that the way to deal with those pressures is, to some extent—but only to some extent—a question of resources. We are endeavouring to strengthen current resources by, among other things, bringing 30 deputies in over a two-year period.

Mrs McIntosh: I want to ask about the experience of the fiscals that you hope to bring in and the deputies that you have just spoken about. Evidence that we have heard in committee and from outside leads us to believe that experience will not be sufficient. What kind of training do you

intend to put in place for the solicitors who are coming in? I understand that they are not only young solicitors, but that some of them are quite senior and have a lot of experience on the other side of cases.

The Solicitor General for Scotland: Having trainees is one way in which new blood comes in, but we are also bringing in people who are experienced court performers—if I may put it that way. One of the very strong elements that one can find in the Crown Office and Procurator Fiscal Service procedures is those offices' training. If one looked at training throughout the private sector, I suspect that one would generally not find there the same coherent structure of training or the same importance being attached to training as one finds in the PFS. One of the areas in which the service functions very efficiently—coming from outside the system, I have been impressed by this—is its ability to train. Many attacks are made on the fiscal service, but I do not feel that attacks on its training can be sustained. If Mrs McIntosh is interested in a particular detail of the service's training, I will certainly endeavour to obtain it for her.

Mrs McIntosh: I am particularly interested in the marking of cases by fiscals, which cannot be book-learned. I understand that that skill is learned by experience. Consequently, the job ends up being done twice, because the person who is helping with the training—taking the sit-by-Nelly approach—is doing that job instead of doing casework. That could present a difficulty.

Having attracted young people and more mature people into the service, how do you propose to retain them when the salaries that they can get on the other side of the argument—or perhaps in a different branch of the law altogether—are such that they will make comparisons with other jobs? They might come to work for the Executive and find the salary sadly lacking.

The Solicitor General for Scotland: It is correct to say that there are differences between the salaries that people can earn in the fiscal service and the salaries that they can earn outside it. People who are attracted to the fiscal service are not, from the very beginning, doing it for money. They are not saying, "I am going into this business to make the equivalent of what I would make in private practice."

People who come into the PFS have a strong sense of public service. If one examines matters from a purely economic viewpoint, that might be a little unfortunate for them, because it means that they accept that they will not maximise their lifetime earnings. However, they will gain non-monetary benefits, namely a sense of commitment and service to society, which is one of the fundamental—I would say admirable—ethics of the service.

Michael Matheson: I want to follow up on the issue that Gordon Jackson raised, on the negotiations—I think that that was the term that you used—with the Procurators Fiscal Society.

How often during those negotiations do you sit down with the Procurators Fiscal Society—the trade union side—to discuss the pressure areas and to examine ways in which they might be addressed?

The Solicitor General for Scotland: Do you mean me, personally?

Michael Matheson: I imagine that someone in senior management in the Crown Office would conduct the negotiations.

The Solicitor General for Scotland: It might be better for Mr Rosie to answer that question, as he is the senior manager who gets involved in such discussions.

Sandy Rosie (Crown Office and Procurator Fiscal Service): We have a standing set of arrangements for discussing all aspects of the department's business and, in particular, the interests of staff with the trade union side. Our mechanism is called the general purposes committee, which I chair; the committee provides a forum for discussions at any time of the year. Either management or the trade union side can initiate discussions through that process. In addition to that formal mechanism, there is a host of informal discussions and exchanges of letters on all sorts of subjects.

I noted that Richard Stott advised the committee that management is well aware of the trade union side's views on resources, pressures and all the matters that we have discussed with them.

Michael Matheson: I want to follow up on an issue that was raised by the Solicitor General in response to a question by Pauline McNeill about pressures on the system. The police may initiate a crackdown on a specific type of crime in an area, which, naturally, has an impact on the services of the local procurator fiscal office. The safer Scotland initiative is an example of such a campaign and I hope that, if it is successful, it will have an increasing impact on the Procurator Fiscal Service.

What can be done about the ways in which such initiatives are developed? It appears that there is no dialogue between the police, which may instigate the initiatives, and the Crown Office or the local procurator fiscal office. What can be done to alleviate that problem?

The Solicitor General for Scotland: As I understand it, liaison takes place before the start of a major campaign that is being advanced in a specific police area, as the police are aware of the point that you raise. If the police act, and their

campaign is successful, there will be a follow-through to the Procurator Fiscal Service.

The communication that takes place feeds through to the Procurator Fiscal Service, which prepares itself for what is hoped will be the beneficial results of the police campaign.

Michael Matheson: Let me give you an example. Central Scotland police has a safer Central campaign, which has been running for the past couple of months. How does the local procurator fiscal prepare for a potential increase in work? Does the Crown Office provide additional resources, or are other cases moved to the side?

The Solicitor General for Scotland: I understand that, rather than pushing in a lot of additional resources, people will prepare for dealing with a specific type of campaign—for example, a campaign that is drugs-related or knife-related. The speed of the court continues at the same rate, irrespective of whether more accused persons come into the system. One considers the particular areas in which evidence is likely to be required and the problems that have arisen with similar types of case in the past. One then makes one's staff aware that those are the sort of problems that will be coming their way.

It would be wrong to assume that a campaign will lead to a sudden rush into the courts, with a dramatic increase in the number of accused. The courts continue to work at their own pace, if you follow me.

You may say, "Well, if the campaigns are taking place, the court service should be speeded up in some way or sit for a longer period". That is where questions—such as whether one could increase the hours that the courts sit, or whether the courts should sit at weekends—might be addressed, but that is not my area. You might have to call back Jim Wallace to quiz him on that point.

Michael Matheson: You said that the local procurator fiscal might prepare for a campaign by considering the campaign issue, for example drugs. I am conscious that they would have to do so while still dealing with all their other work. We have been given clear evidence that procurators fiscal are under pressure as matters stand. I take on board your statement that you do not provide additional financial resources, but if you do not provide additional financial or staffing assistance, I imagine that some work will be pushed to the side and not completed, or not given the amount of time that it deserves.

12:45

The Solicitor General for Scotland: I take your point. I may have misled you to an extent.

I was looking at the question from the Crown

Office viewpoint—that is, whether the Crown Office says, "Right. We will do something for this area". At a micro level, the regional procurator fiscal will say, "This particular sheriffdom will have this particular problem, so we will put resources into this particular office". If you like, that is a regional management exercise. Resources are directed to deal with such situations.

It is quite right to say that, when one has to deal with a sudden campaign, new pressures come to bear, because new areas of work arise. Throughout most areas of prosecution, new areas of work will arise that inevitably create pressures. One is dealing with an area in which not only is the law fixed, but the procedures can change quite substantially. That can impose new pressures on the people who deal with that area. There is always a lot of pressure on the procurator fiscal.

The procurators have to work in an adversarial context—their work is about conflict. One does not work with colleagues who are inclined to assist one with putting their clients in jail. The job will always be a high-pressure job and the people who make good fiscals are those who adapt to that kind of pressure. I accept, immediately, that that does not mean that fiscals should be put under every kind of pressure—there are limits and we must be careful to ensure that the limits that fiscals are put under are not too severe.

I will illustrate that point with one reference, if I may. The problem does not affect Scotland alone. I attended a conference that was held in Edinburgh for heads of prosecution agencies, at which about 30 countries were represented. A Canadian director of public prosecutions raised the question of stress affecting prosecutors. He asked everyone present whether stress or pressure on prosecutors was a problem for anyone else, and everyone put up their hand. It is a tough game and it needs fairly tough people. However, people who are put into a tough situation can be pushed too far. We must avoid that, but pressure is a problem that exists everywhere.

Phil Gallie: You said earlier that the system was not beyond breaking point, but situations have arisen in recent weeks in which major trials have been timed out because, apparently, procurators fiscal and others have not come up with the material on which to base a case. One such case arose last week, when a 16-year-old went free. A similar case arose a few weeks earlier in Paisley and we have also had both the Chhokar and Collie cases.

Do you think that people in the community think that there is something fundamentally wrong with the system, which could well be seen as being at breaking point?

The Solicitor General for Scotland: I am absolutely convinced that the perception exists that we are under too much pressure. I would be extremely worried if people within the service were to tell me that the pressure was too great, but that has not happened thus far.

One of the cases that you referred to raises the question of delay. That is a general issue, which has become more resource-related. I refer to the case of the young man who was accused of various things and who walked free.

The court has changed its previous position on delay, as we understood it. That is very much a development of the way in which the court perceives issues of delay in Scotland, and is based on an interpretation of the European convention on human rights. That is an example of the kind of change that can occur in the processes, and that sort of thing is happening not only in Scotland, but in England and, I suspect, in other jurisdictions. Procedures become more complicated. The question of delay has certainly had a direct impact on resources.

Phil Gallie: I accept that, but the fact is that such situations, which are recognisable, are developing now and will continue in future. I would have thought that problems that we know will arise should be recognised when we are budgeting, but I have a feeling that they are not.

You have referred constantly to the fact that the system is sometimes under pressure. You have acknowledged that, but you have also accepted that there is a lack of experienced people in the system. Perhaps, in an attempt to improve the system, you could try to bring back some experienced people who have moved out in the past. That would mean an increase in your budget, but would it be worth pressing for in the interests of justice?

The Solicitor General for Scotland: Let me make it clear that I am not saying that a lack of experience in the service creates a problem in service delivery. I am saying that it is difficult to acquire people who have the appropriate level of experience.

Phil Gallie: That is the point. If you pay experienced people a little more, you will have to press for an increased budget.

The Solicitor General for Scotland: If you can point me to a number of people who will come back into the service for a particular sum of money, that would be interesting to know about.

Phil Gallie: I shall try.

Christine Grahame: I have a question about consultation. Last week, when I asked Richard Stott of the Procurators Fiscal Society

"how much discussion took place between your organisation—which, as I understand it, represents 85 per cent of prosecutors—and the Crown Office ... about staffing levels?",

he replied:

"Very little discussion about staffing levels took place ... we were not asked to have specific input to the preparation of the bid for the budget."

Is that correct? If so, is not that wrong?

The Solicitor General for Scotland: The assumption in that question is that we should have representation from the trade unions in setting the budget of the Crown Office.

Christine Grahame: I was asking about staffing levels.

The Solicitor General for Scotland: It is certainly correct that discussion about staffing levels takes place. I do not know whether that discussion has taken place with Mr Stott; I assume that what he says is correct. Mr Rosie may be better informed about whether there has been a specific discussion about that, so I shall ask him to respond.

Sandy Rosie: I am trying to recall, but I do not think that I can, specific representations from the Procurators Fiscal Society on staffing levels, as opposed to pay and conditions.

Christine Grahame: Richard Stott said that the society was

"not asked to have specific input".—[*Official Report, Justice 1 Committee and Justice 2 Committee (Joint Meeting)*, 8 May 2001; c 40.]

The Crown Office management made no approach with regard to staffing levels to an organisation that represents 85 per cent of procurators fiscal.

Sandy Rosie: I can confirm that, as I have explained to the Justice 2 Committee, the bidding process does not formally include a request for views on staffing from the union. However, I have also said that we have close general liaison with the unions and are well aware of their views about general resources for the department and the effect that they have on pressures and pay, which can impact on individual staff. In that sense, I do not think that there is any question of a lack of understanding of the Procurators Fiscal Society's position. I am quite happy to consider the point that you are making, which I read as a question about whether there should be greater formality to the invitation to seek the views of the union in that process.

Christine Grahame: My feeling is that there are bad relations between the Crown Office management and the Procurators Fiscal Society. That situation must be resolved, as you are both

on the same side. The society has not had due input. Whether you take account of the society's views is another matter, but it was not specifically asked for its views.

I am conscious of time, but I want to move on to another question. How many meetings have you had with the criminal justice joint working group and how much consultation has taken place with that group with regard to preparing the budget for the Crown Office?

Sandy Rosie: I think that you are referring to the criminal justice liaison group that the Crown Agent attends.

Christine Grahame: That is it. Sorry.

Sandy Rosie: I am not sure that I can answer your question in detail, as I do not have knowledge of that group's agenda or discussions. The group exists to allow discussion between the different justice agencies on a range of subjects, including resources and pressures. I am sorry, but I am not familiar with its discussions. Perhaps Dr Brown can assist.

Dr Alastair Brown (Crown Office and Procurator Fiscal Service): I can probably assist a little, although I cannot give specific figures. You asked about consultation with the group over the budget process. The group provides the Crown Agent with a forum within which to learn what other agencies are doing. We seek at all times to structure the way in which we go about things and to organise ourselves to ensure that we play our part in making the system as a whole efficient. The Crown Agent brings from that meeting, and others, knowledge of what other people are doing, which can be fed into our planning process. However, there is no formal consultation with the group about how much money we should get, which may have been what you were suggesting.

Christine Grahame: No. I understand that the group has a practical input, similar to that of the procurators fiscal, and relates what it is like on the ground—the problems and situations that exist—so that you can think about that when you consider funding. That may be a simplistic view. Did the liaison group ever meet to discuss the budget process with the Crown Office?

Dr Brown: I do not know. We can get back to you on that.

Christine Grahame: That is an important question. I have a couple of other quick questions.

The Convener: Very quick, please.

Christine Grahame: Phyllis Hands has 25 years' experience of district courts and her view is that procurators fiscal are appearing before those courts undertrained. The Solicitor General talked about applauding the training system, but the

evidence that we received from Phyllis Hands suggested that junior procurators fiscal are working in the district courts.

Although Phyllis Hands admitted that this was hearsay, coming from procurators fiscal, her evidence also suggested that diversions were taking place because of pressure on the system, not—here I use my own words—because that was the appropriate disposal. Are you aware of that?

Are you also aware that fines are time barred because of clogging of the system? It seems that Pauline McNeill raised that issue years ago in this committee. Are you aware of that problem, and what are you doing about it? It appears to be another problem of resourcing and the system cracking up.

The Solicitor General for Scotland: The other day, as I was considering various observations that have been made of the way in which prosecution is obtained in Scotland, it seemed to me that the notion that the system is cracking up has been advanced as an argument for the past 10 years at least. It is a perennial feature of the system that people make that complaint.

Christine Grahame: With respect, Mrs Hands believes that the decline in the delivery of prosecutions in the district courts started six years ago and has been getting worse. As she has 25 years' experience, I am inclined to put some store by what the lady says.

The Solicitor General for Scotland: I am not diminishing the point that Mrs Hands made, nor her standing; I am saying that that criticism has been made many times in the past.

You made a specific point about diversion. I have heard that point raised over and over again without being confronted with any evidence of it. The view is often stated, as if it were a fact, that if someone is put into a diversion system, the reason is based on resources.

Christine Grahame: Not always. Mrs Hands conceded that that was not always the reason. Nevertheless, she is hearing from procurators fiscal that that is what is happening in some cases to clear a desk.

The Solicitor General for Scotland: If that is happening, I would be keen to see any evidence that she has. I have heard the point being made frequently, but I have never been provided with the evidence to back it up. The contrary state of affairs tends to emerge whenever the facts of a case are investigated, and the conclusion is usually that diversion is the appropriate solution in individual cases. I know that this is a difficult issue on which to form views in the absence of evidence, and I understand why you feel disquiet about it. However, I have seen no evidence to suggest that

action is required in that specific area.

Christine Grahame: You could acquire evidence of time-barred fines.

The Solicitor General for Scotland: Yes.

Christine Grahame: That is a fact. Perhaps such evidence could be brought to the committee, for us to decide whether the argument stands up.

The Convener: We will stop there. I thank the Solicitor General and his colleagues for their attendance.

The Solicitor General for Scotland: Thank you.

The Convener: The clerks have a pretty good steer as to which items we are interested in, concerning item 3 on the agenda. I invite members to e-mail the clerks with any specific items that they feel should be included in our draft report, which we will consider at our next meeting.

Meeting closed at 13:00.

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