JUSTICE 1 COMMITTEE

Wednesday 3 May 2006

Session 2

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JUSTICE 1 COMMITTEE
13th Meeting 2006, Session 2

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Stewart Stevenson (Banff and Buchan) (SNP)

COMMITTEE MEMBERS

*Marlyn Glen (North East Scotland) (Lab)
*Mr Bruce McFee (West of Scotland) (SNP)
*Margaret Mitchell (Central Scotland) (Con)
*Mrs Mary Mulligan (Linlithgow) (Lab)
*Mike Pringle (Edinburgh South) (LD)

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)
Bill Aitken (Glasgow) (Con)
Karen Gillon (Clydesdale) (Lab)
Mr Jim Wallace (Orkney) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

John Campbell (Society of Messengers-at-Arms and Sheriff Officers)
Sheriff Principal John McInnes (Summary Justice Review Committee)
Assistant Chief Constable Kevin Smith (Association of Chief Police Officers in Scotland)
Chief Constable David Strang (Association of Chief Police Officers in Scotland)

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERKS

Euan Donald
Douglas Wands

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 4

Scottish Parliament

Justice 1 Committee

Wednesday 3 May 2006

[THE CONVENER *opened the meeting at 09:55*]

Item in Private

The Convener (Pauline McNeill): Good morning and welcome to the 13th meeting of the Justice 1 Committee in 2006. I welcome Des McCaffrey, who is the committee's adviser on the Criminal Proceedings etc (Reform) (Scotland) Bill, and Frazer McCallum, who is from the Scottish Parliament information centre. I see that we also have Graham Ross from SPICe; he is not mentioned in my notes, but he is welcome.

All members are present. I ask everyone to do the usual and switch off devices that will interrupt the sound recording of the meeting.

I invite members to consider whether to take in private item 3, which is consideration of evidence that we have received on the Criminal Proceedings etc (Reform) (Scotland) Bill. Is that agreed?

Members *indicated agreement*.

Criminal Proceedings etc (Reform) (Scotland) Bill: Stage 1

09:56

The Convener: Item 2 is stage 1 consideration of the Criminal Proceedings etc (Reform) (Scotland) Bill. I am delighted to welcome to the Justice 1 Committee Sheriff Principal John McInnes, who, as members will know, is the former chairman of the summary justice review committee. We have a number of questions for him and probably have about an hour in total to question him on the bill and the report that he prepared for the Executive.

Sheriff Principal McInnes, in your view, what details in the bill serve to speed up the summary justice system? I ask you that, because most of those who have submitted evidence to us—particularly those who are involved in the criminal justice system—say that they want legislative reform to speed up summary justice. Will you point to the provisions in the bill that achieve that?

Sheriff Principal John McInnes (Summary Justice Review Committee): Most of the bill's provisions will not achieve that. It will be achieved through a combination of primary legislation, secondary legislation and, more important, changes in practice.

The biggest single delay in summary justice occurs between the point at which somebody is charged with an offence—or, at least, the point at which an offence is first detected—and their first appearance in court. We need to shorten the time considerably so that the accused appears in court within two to four weeks maximum of the date on which they were charged with the offence.

The bill has something to say about that, particularly in relation to liberation on undertaking, which is in section 6. The idea is that, eventually, most people who are charged with an offence will be released on an undertaking to appear in court if they are not to be detained in custody. The measure will have to be implemented in phases. In New South Wales, the police are fitted up with the ability to take DNA samples, fingerprints and photographs at the scene of an offence and also to issue a written undertaking on a form that says that the person will appear at such-and-such a court at 9:30 am a week on Tuesday, for example. That is the sort of practice that the bill facilitates, but it does not detail how the framework will work.

The Convener: You might know that we had Executive officials along last week.

Sheriff Principal McInnes: I did not know that.

The Convener: We tried to tease out some of the detail on that with them. They told the

committee that a lot of modelling is currently being done to bring about some of the detailed changes. Are you involved in any of those discussions?

Sheriff Principal McInnes: I am not, but I am aware of some of that work. I have mentioned in my written submission the project that is going on in West Lothian. Everybody there, including the sheriff and the defence solicitors, has become involved in that project to work out how they can get cases into and through the court as quickly as possible. They are heading along the right lines, but they need some help. I cannot speak for them because I have not spoken to them recently, but they need the legal aid arrangements to be changed.

10:00

At the moment, people obtain criminal legal aid only if they plead not guilty. That puts a premium on pleading not guilty. Solicitors receive no more than a relatively small sum of money unless their clients plead not guilty, so that is an incentive—if you like—to solicitors. I am not for a minute suggesting that they abuse the system, but they are not very well remunerated if they advise a client to plead guilty immediately. The Scottish Legal Aid Board has been working on the issue; I do not know whether the Legal Profession and Legal Aid (Scotland) Bill, on which the Justice 2 Committee took evidence yesterday, will address the matter.

An accused has an incentive to plead not guilty: doing so means that he or she can receive proper legal advice. If he or she pleads not guilty, the whole structure swings into operation as if a trial is to take place. When a case first calls in court and a plea of not guilty is made, the court fixes a trial date and an earlier intermediate diet date, which may be many months ahead. That immediately slows the system.

I will describe what needs to happen instead—the Scottish Legal Aid Board has done a lot of work on this, but I do not know its current position. Solicitors need reasonable remuneration. On the basis of the information that they receive when a case first goes to court, they should be in a position to give realistic advice about whether their client should plead guilty. To achieve that, the copy of the charges needs to be accompanied by a copy of the summary of the Crown evidence, which will need to give the defence sufficient detail to enable the defence solicitor to challenge his or her client's account.

I will give an extreme example of a case some years ago that nearly went to trial; I think that the accused pleaded guilty on the day of the trial. The facts were that the accused had been found on the roof of a warehouse at about 2 or 3 in the morning. An attempt had been made to lever a skylight off the top of the warehouse. When cautioned and charged by the police, the accused said something like, "Ah was looking for ma dug." It was pretty obvious to anybody that that was said tongue-in-cheek, yet the case had gone right through the system and a lot of money had been spent before the solicitor found, in taking statements from Crown witnesses, that his client had no case at all. That anecdote was for the sake of illustration.

Very few cases in which legal aid is granted on the basis that the case will go to trial reach the stage of evidence. In some courts, 50 per cent of the accused plead guilty on the day of the trial. That means that a lot of resources go into cases that could have been resolved earlier. However, most of that is not dealt with directly in the bill. The bill facilitates changes, but it does not tackle them directly.

The Convener: That is one subject that the committee is scrutinising; we are trying to identify whether the bill goes into detail on that. It is difficult for us to judge whether the bill will achieve a more efficient or speedier system without that detail.

I will reverse a bit to pick up on one or two of your comments. You are not the first person to draw the legal aid arrangements to our attention. Given the importance of those arrangements, should they be dealt with in this bill, rather than in the Legal Profession and Legal Aid (Scotland) Bill?

Sheriff Principal McInnes: I have not examined the Legal Profession and Legal Aid (Scotland) Bill, so I do not know what is in it. However, I know that the Scottish Legal Aid Board will need a change at least in regulations, if not in primary legislation, to enable proper remuneration to be given for the purpose of deciding whether the accused should plead guilty. That is not an easy quick fix. The reason for the premium on a plea of not guilty is that it puts the solicitor in the position of asking himself and his client whether a full investigation of the case is justified and whether the case is likely to have a defence—if so, an application for legal aid should be made.

If that stage were removed, legal aid might end up being given to a whole lot of people who have been charged with speeding and who would plead guilty anyway, without going anywhere near a solicitor. Lots of people who were charged with minor offences and who wrote in to plead guilty would suddenly start to receive legal aid. Resources would flow out in that direction instead.

The balance is one that requires to be carefully struck. I know that the Scottish Legal Aid Board believes that it can be struck, but for those of us who are not doing that sort of work day and daily, it is not obvious how it should best be done.

The Convener: You went on to say that a summary of the evidence should be made available at a much earlier stage in the proceedings. Will you clarify for us the stage at which that disclosure should be made?

Sheriff Principal McInnes: Ideally, when a copy of the complaint is served on the accused, it should be accompanied by a summary of the evidence. Nowadays, in the more serious petition cases that may go before a jury, a summary of evidence normally accompanies the petition. When the court is addressing the question of bail, it is helpful for it to know roughly the nature of the Crown evidence.

I return to the example—albeit that it may have been a ridiculous one—of the person on the warehouse roof. The solicitor would have found it very useful to have had a summary of the evidence. As another example, let us say that someone has been charged with breaking and entering: they have broken the window of an off-licence and stolen some whisky. Instead of saying that they were arrested inside the shop, piling one case of whisky on top of another, the person will probably tell their solicitor that they were walking by the off-licence and saw somebody run out of the shop with the goods. People tend to shut their minds to the truth. Trying to get to the nub of the case at the earliest possible opportunity is what will speed up the justice system.

The Convener: Is the Crown equipped to make that change?

Sheriff Principal McInnes: If the will is there, it will happen. When the Crown sees that things are beginning to work, change will happen quite quickly.

The Convener: Do you accept that your proposal for a summary of the evidence to be provided when the complaint is served puts quite an onus on the Crown to change the system, at least in that regard?

Sheriff Principal McInnes: The problem actually starts with the police. The question is whether they will be able to provide an accurate summary of the evidence. That said, the police do that at the moment in their standard police reports. The main issue is whether information from those reports can be cut and pasted. Is it possible to take something out of a police report without necessarily disclosing various confidential elements of the report? Technically, I think that that can be done.

The Convener: Before we move on to explore the issue of intermediate diets, I have one further question. In terms of speeding up the system and making it more efficient, are there any significant changes that are missing from the bill?

Sheriff Principal McInnes: Perhaps not significant changes. Yesterday, as I was working on some papers in advance of today's session, I jotted down a number of thoughts. One of them may be relevant in this context. The summary justice review committee report made a number of recommendations that related to issues of evidence and which are not in the bill. Another measure that is not in the bill is the creation of a summary criminal appeal court. This is not the occasion to go into detail on that proposal; it may be the subject of future legislative change.

There is one provision that ought to be in the bill—it may appear to be a matter of detail, but it is significant nonetheless. Section 137(2) of the Criminal Procedure (Scotland) Act 1995 provides:

> "Where the prosecutor and the accused make joint application to the court (orally or in writing) for postponement of a diet which has been fixed, the court shall discharge the diet and fix a later diet in lieu unless the court considers that it should not do so because there has been unnecessary delay on the part of one or more of the parties."

That provision allows the prosecution and defence to come wandering into court with a joint application to adjourn the case. The court does not have the right to say, "Why do you want the case to be adjourned?" It is entitled only to address the question whether there has been "unnecessary delay". We can look at the papers and say, "How long has this case taken so far?" but that is about it. There may no good reason for an adjournment to be granted.

As part of a culture change in which the courts are given responsibility for managing court business, section 137(2) of the 1995 act should be repealed, or at least radically altered. The court should be in charge of the business, not the prosecution and the defence, who might have a golf match, for all the judge knows. That might sound glib, but the serious point is that judges cannot insist on being told why an adjournment is sought; they are required to grant the adjournment. That is wrong.

Mr Bruce McFee (West of Scotland) (SNP): In your report, you noted that the success of intermediate diets varies widely in different parts of the country. Why is that? Is legislation or a change in practice needed to address the problem?

Sheriff Principal McInnes: Legislative changes that will have a bearing on intermediate diets are proposed in the bill. For example, provision is made for the intimation of special defences in advance of the intermediate diet rather than in advance or at the start of the trial.

Intermediate diets in local courts are largely culture driven. Aberdeen sheriff and district courts were very good at them two or three years ago. Glasgow sheriff court is not good at intermediate

diets, usually because it puts down far too many at a sitting. I have not sat as a sheriff recently in Glasgow, but the sheriff arrives to find the courtroom full of people and must try to get rid of 90 cases in an hour and a half. Often, there is not enough time to deal with those cases. The purpose of an intermediate diet ought to be to find out whether everyone is ready and what evidence is agreed.

One change to the bill is needed in relation to intermediate diets. In the bill as drafted, the court will not be able to find out what will be an issue at the trial—at least, the defence will be resistant to the court finding that out. For example, the only issue might be whether the accused can be identified as the driver of a car that was involved in an accident, in which case there is no need for a lot of evidence about other aspects of the offence, and Crown witnesses can be restricted to the two police officers who can say that they saw the guy at the wheel of the car a short time before the accident or other incident that gave rise to the charge. In such circumstances, why should all the witnesses come to the court on the off-chance that they might be needed to give evidence? If the court could use the intermediate diet to narrow down the issues and ascertain the specific issue, the trial process would take much less time. A summary criminal court will often deal with no more than two or three trials in a day, whereas in Holland trials take about 20 minutes because the court operates a dossier system and knows exactly what is at issue.

Mr McFee: Other members might return to that point, which is interesting.

You said that far too many intermediate diets are fixed for one sitting at Glasgow sheriff court. Are there other reasons why intermediate diets are not working in some courts?

Sheriff Principal McInnes: The system can be made to work better. When I was a sheriff in Perth, we fixed the start of intermediate diets at 12 noon. We would deal with 30 to 45 cases in one sitting. During the two hours before noon, a procurator fiscal would be in the building discussing the cases with solicitors—they knew that they had two hours to sort out their cases. The trouble was that the solicitors all used to turn up at 11.45 am; they should have turned up at 10 am, but that is what people do. An appointments system would have dealt with that problem. The key objective was to enable the Crown and the defence to talk to each other about what the case was about, what was in dispute and whether a plea could be adjusted. The approach gave them time to sort everything out before the court sat.

If we want to speed up the process, we will need to create such opportunities for dialogue. Dialogue can certainly help, for example with decisions on whether a person should be prosecuted. One key aspect of the Hamilton and Airdrie youth court pilots, of which Mrs Mitchell might be aware, is that the police, fiscals and social workers get in touch with one another before a youth is prosecuted and discuss whether he should be dealt with in that way. If we can divert matters at that stage, we will save the prosecution system a huge amount of resources.

As for intermediate diets, the difficulty lies in finding a fiscal who is familiar with the case. If such diets are to work, we need to ensure that fiscals read the papers and that they have the time for a heart-to-heart with the defence solicitor before the case starts.

10:15

Mr McFee: It sounds as if some heads need to be knocked together.

Sheriff Principal McInnes: Indeed.

Mr McFee: But does that require legislation?

Sheriff Principal McInnes: A lot of it requires not so much legislation as a lot of co-operation by the various agencies.

Mr McFee: Can you point to any other examples where such co-operation exists? I believe that you mentioned Perth in that respect.

Sheriff Principal McInnes: There are many examples of good practice around. However, if we can get people to plead guilty earlier, we will be able to clear the decks. Because far fewer cases will come to trial, the courts will have more time.

Many courts—except, I should say, some smaller rural courts—usually schedule 10, 12 or even 14 summary trials in a day. That is far too many. If the court can get through only two or three of them in a day, the prosecution and the defence will have to haggle over pleas to cut the number of cases that will have to be adjourned. However, getting a case adjourned might suit a defence solicitor who is determined to do his best for his clients, because if it happens again and again, they might be able to make a complaint under the European convention on human rights that the case has not been dealt with in reasonable time. If, on the second or third adjournment, the prosecutor is still snowed under by too many trials, some will simply chuck in their hands and accept either a not guilty plea or some other plea that they should not accept. That extreme example does not happen everywhere all the time—it just happens in some places some of the time—but it needs to be addressed. The system is too clogged up.

Stewart Stevenson (Banff and Buchan) (SNP): According to the statistics, an arrest

warrant is issued in 8 per cent of summary cases because the accused fails to turn up. As a result, the bill—and indeed your committee—has recommended that trial in absence be extended. However, under section 14, that can be done only if

"it is in the interests of justice".

Under what circumstances would "the interests of justice" not be served by proceeding with a trial in absence? I imagine—and I suspect that you would agree with me—that those interests would not be served if the accused had no legal representation.

Sheriff Principal McInnes: Actually, I do not agree with you. After all, there are people who, although they have been given every opportunity to turn up, have simply decided not to do so. Worst of all are cases in which there are three accused, one of whom does not show up each time the case is called. Although such actions seemed to have been planned, that is impossible to prove. If the accused does not turn up, but the case is straightforward and all the other witnesses are present, the question becomes whether the Crown can prove the charge, which will not be tested in the same way that it might be under cross-examination. However, I do not think that that is a problem if a person has been told that they must turn up on a certain day and that if they do not do so, the trial may proceed in their absence and they will be put at a disadvantage. If, for example, a person was taken into hospital as an emergency case and the court mistakenly thought that they had wilfully failed to turn up, one would need to be able to put things back on the rails, but that is a separate issue.

I have a problem to some extent with section 14. There is a provision that the court "shall" appoint another solicitor if that is in the interests of justice. I think that the court needs to be given more discretion and that the bill should say that the court "may" appoint another solicitor. It seems to me that if a solicitor withdraws from acting because his client has not turned up and he or she cannot receive instructions, appointing another solicitor is asking for trouble because that solicitor will probably not have seen the accused before, will not have any papers, will not be able to get any instructions and will not know what the defence is. He or she will therefore refuse to act. A mandatory requirement on the court to appoint another solicitor in the interests of justice—the bill is currently framed in that way; I will find the subsection in a second—is a bit too prescriptive.

Stewart Stevenson: Does the logic of what you have said suggest that it is perfectly possible for a just case to be progressed and a just conclusion to be reached entirely in the absence of the accused and of any legal representation of the accused? Is that your position?

Sheriff Principal McInnes: If the accused has no defence, which sometimes happens, there will certainly be no injustice. If the accused has a defence and an opportunity to present that defence, and has been told of that opportunity but has not availed himself of it, he will put himself at a disadvantage. Say a lady stole something from Marks and Spencer. There could be a difficulty with identification, but a witness could say, "I walked out, I stopped her at the door and she was taken to the back office." That evidence would be just as good in the absence of the accused. The only issue would probably be how much was stolen or whether the person was the accused. If the accused was not prepared to come along and say that he or she was not the person, what would be unfair about that approach?

Stewart Stevenson: Will you, by the explanation of principles or by example, if that is the best way of doing so, suggest circumstances in which it would not be in the interests of justice to proceed with a case in the absence of the accused? I ask you to leave aside the example to which you referred in which somebody is suddenly taken to hospital and there is therefore a just reason for their absence. If no just reason for the absence of the accused emerges, are there cases in which it would not be in the interests of justice to proceed in the absence of the accused and legal representation?

Sheriff Principal McInnes: Yes. Information about the accused might suggest that they not only ought to be present, but ought to be represented. There may be information that the person has mental health problems or is not very intelligent and is vulnerable in some way. The Crown will normally have such information. Information may be evident from the nature of the charge that the field of law that is involved is contentious. The side of the fence that the case may come down on may not be apparent until late in the trial, and it may be better to have a legal argument. There may be issues relating to ECHR compliance that mean that one would in no way proceed in the absence of the accused.

Stewart Stevenson: There does not appear to be any provision in the bill that requires a court to explain why it is proceeding with a case in the absence of the accused and to justify its decision in that regard. If a case is to proceed in the absence of the accused, should such a requirement be placed on the court?

Sheriff Principal McInnes: The court could be required to minute its reasons for deciding to proceed in the absence of the accused.

Stewart Stevenson: Should it be required to do that?

Sheriff Principal McInnes: I am not terribly keen on courts having to minute the reasons for

everything that they do, because that takes a lot of time. When sitting as a sheriff, on some days I have dealt with 160 criminal cases at first calling, with pleas of guilty and not guilty. In such a situation, a sheriff does not have time to start framing reasons and ensuring that somebody has written them down or typed them into a computer.

Stewart Stevenson: At our meeting on 19 April, the Executive stated that it expected the trial in absence procedure to be used "very sparingly". If a minute from the court were required in those circumstances, that would help to ensure that the Executive's statement turns out to be true in practice and not just in theory.

Sheriff Principal McInnes: There is a culture among people who appear in court. If the courts had the ability to hold trials in the absence of the accused, it would become known among those people that their cases would go ahead even if they did not turn up, which would make them more likely to turn up. The measure would put pressure on people to turn up if they wanted to argue their case. That is part of the pressure to get people to behave in a way that is conducive to an efficient summary justice system.

Mike Pringle (Edinburgh South) (LD): I want to explore the same issue. When I sat as a justice of the peace, I was told many times that one accused person in a case had turned up but the other had not. The next time that the case was called, the other accused did not turn up. Perhaps I am a little more cynical than Sheriff Principal McInnes is, because I think that they agreed that in advance.

Part of the point of the provision is to secure an advantage for witnesses. In many cases, witnesses are reluctant to turn up in court in the first place. If we get the witnesses to come to court on the first occasion when the trial is to go ahead, they may be asked to be at court at half past 9 for a trial that will start at 10 o'clock. However, the trial might not start until half past 11 or 12 or even some time in the afternoon. They could sit around wasting the whole day. If, for example, one accused person in a case does not turn up, the witnesses will probably be notified of that before lunch, but they will already have taken the day off work to go to court. That has an effect on witnesses. Do you find that, at the second or third attempt to hear the case, they wonder what the point is, which leads to the problem that, when the accused persons finally turn up, the witnesses do not?

Sheriff Principal McInnes: That is exactly right. I agree entirely that that happens. People often have to give up a day's work or make childminding arrangements to go to court. If that happens two or three times, they get brassed off and can become reluctant to give statements to the police. That possibility is not good for the justice system in the broadest sense, but it happens. I would like the level of business in courts to reduce to a point at which it can be managed efficiently. People should, on average, not have to wait for more than an hour after they come to court. That should be set as a target and the system should be tested and measured. The target should apply not only to witnesses but to the accused.

Many solicitors hang around courts all day long doing very little in the hope that the witnesses might turn up and that the case will be heard that day. They are wasting their time, too. For exactly the same reasons, police officers turn up and hang about the courts. Any chief constable or senior police officer will say endlessly that that has a major impact on the police—they think that it is a waste of time.

The Convener: As you probably know, the legal profession is not keen on the provision. When we considered the Bonomy reforms, we amended a similar provision substantially. If we proceed with the provision, how will the courts satisfy themselves that a citation has been served successfully on the accused? The use of the provision hinges on the point that the accused knew that they were due in court but chose not to be there. Is it important for the court to be satisfied that a citation was served successfully?

10:30

Sheriff Principal McInnes: Yes. The situation will improve if e-mail addresses and mobile phone numbers are used to prompt the accused to turn up at court. The idea is that if that information is available, they will be sent an e-mail and a text message the day before the court hearing to remind them that they are due at court. That is what is happening in the West Lothian project. The situation can be improved in various ways.

It is also necessary to have a section in the bill that enables the harm to be undone, if harm there be, when the accused states that they have not received the citation and it appears to the court that that is true, or at least likely to be true. I have suggested in my written evidence that there should be some changes in the way in which procedural errors are handled. We should proceed more along the lines of the English Magistrates' Courts Act 1980.

The Convener: We will come on to that.

Sheriff Principal McInnes: If we are satisfied that a trial proceeded in the absence of the accused when the person had a good reason for not turning up and did not wilfully refuse to turn up, we ought to be able to fix a new trial date and rehear the trial. That would happen rarely; it certainly seems to happen rarely in England.

The Convener: You mentioned witnesses. It is everybody's experience that witnesses are not necessarily treated all that well. In many courts, there is no separate waiting room for them. In a case in my constituency, a witness hung around all morning and nobody seemed to know that she was there and ready to give evidence. Work needs to be done on matters as basic as the provision of a place for witnesses to wait when they arrive at court and the presence of someone to look after them and explain the procedures. Do you agree that that is important?

Sheriff Principal McInnes: It is important. The facilities for witnesses are not as good as they might be in some courts, but they are not as bad as some people make them out to be. Quite a lot of courts have quite pleasant witness rooms, although most of them do not provide—as they ought to—interesting magazines. Witness rooms ought to be at least as good as a doctor's waiting room, but they tend to be rather bare spaces. However, there are witness rooms and there are usually separate rooms for prosecution and defence witnesses. A problem is that witnesses encounter people in the corridors whom they do not wish to see. There can be problems in some courts—not in every case—with people who hang about in the corridors and intimidate witnesses. I have seen that happen, but it is difficult to know how to handle the issue.

Part of the problem is that there are far too many people milling about in the court building, especially first thing in the morning and, in particular, first thing on a Monday morning. If jury trials are starting on a Monday, a lot of jurors are milling about as well as witnesses and accused. People's families are also there because most custody cases take place on Monday. I have seen courts in England and Australia where far fewer people are in the building because business is organised differently. We could achieve that, but we have some distance to go.

Stewart Stevenson: I will raise a brief point about procedural irregularities. Your submission states that you want to widen the discretion of the court to correct procedural errors, but the Faculty of Advocates think that the current proposals are too wide. The bill allows the court to correct its own errors on periods, time limits and procedural requirements. Is that proper?

Sheriff Principal McInnes: Yes.

Stewart Stevenson: Who should be responsible for the oversight of the court's use of that power to correct its own errors?

Sheriff Principal McInnes: The court currently has the power to correct typographical or recording errors. Although the power is not used very often, it is used. If we are dealing with thousands of cases in a year, as sheriffs do, the chance of making no technical errors in a decade is quite low. Although sheriffs strive their hardest not to make any, I confess that they make the odd one. Usually those errors are not material. Sheriffs do not lock people up in prison for 10 years when the maximum sentence is a £500 fine.

The errors that I am talking about are quite small. If I decide to adjourn a case to get a background report for one day more than the number of days that I am allowed, it seems ridiculous to go all the way to the High Court of Justiciary in Edinburgh and to grant someone legal aid to argue a point that would immediately be conceded. [*Interruption.*] That is not my mobile phone. It is highly desirable that I should be able to change the date to a day earlier. What tends to happen is that sheriffs put off a case until a Tuesday, because there is a Monday holiday, without realising that it should be heard on the preceding Friday, because the period will expire over the weekend. That is the kind of error that we put right.

Stewart Stevenson: In that example, are you making a distinction between an error whose consequences have not yet come into operation and one whose consequences have? In other words, are you saying that if the time in which something should have happened has been exceeded, you should not be able to correct that error, but that you should be able to reset a timetable before the time has passed? Is that the boundary that you are delineating?

Sheriff Principal McInnes: I am not sure that I would draw it in quite that place. I have never done this, but let us suppose that I sentenced someone to 250 hours of community service on summary complaint when the maximum sentence is 240 hours. I think that I should be able to reduce the sentence to 240 hours, rather than make the High Court go to the trouble of doing that.

Stewart Stevenson: If the person concerned has already done 250 hours of community service, what should the consequences for the court be?

Sheriff Principal McInnes: The error would probably become apparent on the day when the sentence was imposed. I would not look at the papers again, but I have seen technical errors that other people have made. I would have liked to be able to say that a sheriff made a mistake that should be put right, because it is in the interests of the accused that it should be.

Mr McFee: Could the power to alter a sentence also be used if you made another error and sentenced someone to 50 hours of community service when you meant to sentence them to 150 hours?

Sheriff Principal McInnes: If I have announced that someone should do 50 hours of community service, 50 it must stay.

Mr McFee: So you could not use the power to top up a sentence.

Sheriff Principal McInnes: At the moment, if I said that someone should serve 150 hours and the clerk of court erroneously recorded the sentence as 50 hours, that recording error could be corrected.

Mr McFee: I am suggesting that you might have changed your mind.

Sheriff Principal McInnes: I would not for a minute suggest that that is an error. What a sheriff does in court, right or wrong, is their decision. However, the decision may be technically wrong. Most, if not all, of the errors that I am talking about will be corrected in favour of the accused.

Mr McFee: That is the point that I am getting at. Could an error be corrected only when it is in the accused's favour? What would happen if a correction was to the accused's detriment?

Sheriff Principal McInnes: They would certainly have to have a hearing. I cannot think of any errors that might be corrected that would be to the detriment of the accused. It might be possible to argue that the error gave rise to an invalid sentence and that the conviction and sentence should therefore be quashed. In that case, the accused would be taking advantage of the fact that the sheriff had made an error. It would not be a situation in which he deserved to get off. What he deserved was that the error should be corrected. I cannot think of any errors that a court is likely to make that would operate to the disadvantage of the accused.

Marlyn Glen (North East Scotland) (Lab): I move on to part 3 of the bill, which deals with penalties. Your report recommended an increase in the maximum financial penalty that is available to summary sheriff courts to £20,000. Will the proposal in the bill to increase the maximum to £10,000 equip summary sheriff courts with sufficient powers to deal with their predicted future case load?

Sheriff Principal McInnes: In most instances, the difference between £10,000 and £20,000 would not have a major impact on the cases that the court could deal with. However, there is quite a large area of offending behaviour by companies or other corporate entities that is not very well dealt with by the courts at the moment. Any member of the committee who has experience of local authorities will know that environmental health or planning departments, for example, often encounter major failures to comply with environmental or planning regulations or other things that the local authority is interested in. Offences such as polluting rivers fall into the same bracket. Most of the offenders tend to be companies or businesses. If there were a maximum £20,000 fine, the court could deal realistically with a lot of the people who commit that kind of offence.

With a £10,000 maximum, if the view were taken that £10,000 was too low a penalty for what had happened, the Crown would have to prosecute on indictment, which is a big, expensive process, so it would be quite likely not to do it. There are also other fields of regulatory law, such as those concerning animal cruelty, where there is serious non-compliance by some people—not huge numbers—but those cases tend not to be dealt with as well as they should be, either by the prosecution service or by the courts. That is a personal view. People might not quite get away with it, but I feel that they are not dealt with as severely as they might be. That does not seem to be true in cases concerning health and safety, which seem to be rather better handled than the kind of environmental cases that I am talking about. It would be quite useful if the sheriff court had the power to impose a fine of up to £20,000. It would rarely be used, but it would enable some of those cases to be dealt with more satisfactorily. Where there is a corporate accused, there is nobody in the dock; the dock is empty. There is nobody there for the jury to identify with, so it becomes slightly artificial. I am in favour of the £20,000 fine.

Marlyn Glen: Should the bill be amended?

Sheriff Principal McInnes: That is for you to decide.

Marlyn Glen: Thank you. That is helpful.

Margaret Mitchell (Central Scotland) (Con): The bill caps fiscal compensation orders at £5,000, but your committee did not prescribe a limit. Do you think that a cap at £5,000 will limit the effectiveness and scope of those orders?

Sheriff Principal McInnes: The average plate-glass window costs more than £1,000, so fiscal compensation orders certainly have to go to £5,000. Some plate-glass windows are not broken maliciously but are broken as a result of rowdiness that leads to the window being smashed.

My view is that it would be better if the compensation were unlimited, because we are talking about alternatives to prosecution. If a lot of damage has been caused and the person who has caused it is going to have to pay for it, it could be better for them to pay for it in a fiscal compensation order arrangement, rather than the person who has suffered the damage having to go to court, sue the person for causing the damage and get a court order for payment. If somebody has suffered a lot of damage from criminal behaviour, and if an arrangement can be devised whereby the fiscal says, "I am prepared not to prosecute if you compensate these people for the

loss that they have sustained," it would be better if they paid that money. If there were an enforcement agency, that would save the person who has suffered having to do their own enforcement, which would be the situation if they got a civil order to pay. There could be advantages to not capping the compensation, but if you are going to cap it I would advise you not to cap it lower than £5,000.

Margaret Mitchell: Would capping it at £5,000 mean that a tranche of potential compensation offers would be missed?

Sheriff Principal McInnes: I really do not know the answer to that question.

Margaret Mitchell: Is there a link in the bill to suggest that, if even more damage were done—say £10,000 or £50,000-worth—the level of compensation should show that the offence was being taken more seriously?

10:45

Sheriff Principal McInnes: Again, we can consider an environmental offence. Suppose you pollute my river—the river in which my angling association has fishing rights. The cost of restocking a river may be high and an accidental discharge of some chemical or other can poison a whole river system. The quickest, cheapest and most effective thing to do would be to say, "Do you accept that you have done this and are you prepared to pay compensation?" If the answer is yes, then—no matter the level of compensation—why go through the prosecution system? Why make a person go through a civil claim procedure in order to sort things out? I cannot tell you how many such cases might arise in a year because I do not know.

Margaret Mitchell: Your example makes the point well that we should not prescribe a limit.

The bill includes a provision for discounts to fixed penalties. What is your view on that?

Sheriff Principal McInnes: I do not see anything wrong with a discount for early payment, if that is what the discount is for. However, I also do not see any reason why you should not—as we suggest in our report—add another 50 per cent if people do not pay within the set period.

The disadvantage of discounting—and I am sure that some committee members will be all too aware of this—is that poor people are not in a good position to make full payment of a fixed penalty unless they can borrow the money from somewhere. If someone is on benefits, how do they take advantage of the discount? That is the weakness of the argument for discounts.

However, if someone is given a reasonable time in which to pay in full, but does not pay, 50 per cent should be added. That may sound harsh, but that is what happens with the congestion charge in London and with a number of other fixed penalties. Actually, the figure in London may not be 50 per cent, but the amount certainly escalates if the person does not pay within a pretty short time.

Margaret Mitchell: You have touched on the enforcement of fines—an area that has huge potential for improvement so that we can improve summary justice. In your submission, you make a number of points and recommendations. You almost seem to feel that the bill has missed an opportunity to introduce consistency and flexibility and to minimise the involvement of the police in court. To get it on the record, will you elaborate on what you think has to be done that has not been included in the bill?

Sheriff Principal McInnes: Most of the points that I wanted to make are in the written evidence that I submitted. However, I was looking at some statistics last night and I realised that I had erroneously said that there were about 300,000 fixed penalties in Scotland. In fact, the figure is about 400,000, according to statistics just released by the Scottish Executive.

I think that you should start by saying that fines and fixed penalties are debts due to the state. At a guess—although I should have brought the statistics with me and will have to check the figure—there are probably about 100,000 fines imposed in Scotland in a year by the courts. Now, if there are 400,000 fixed penalties and 100,000 fines, only 20 per cent of the debts are fines. If you are considering the system as a whole, you should have a dedicated agency whose job it is to recover those debts due to the state. It does not matter whether they were imposed by the courts or by the police as fixed penalties, they are all in the same category of debts needing enforcement.

Enforcement should be done professionally and effectively. It is not good enough to have an agency that can shovel things back to the courts when it has not succeeded. If you had that, you would never get the agency to accept responsibility for its performance. You need to have an agency whose performance can be measured year on year.

Margaret Mitchell: Did you consider using sheriff officers for the enforcement of fiscal fines?

Sheriff Principal McInnes: I personally did not. The analogue that attracted me—partly because I went there—is what happens in Australia with the State Debt Recovery Office. It does not have offices all over the place; it does not even have an office where a member of the public can turn up and pay a fine. Fines have to be paid electronically, by post, or through a bank or a post office. It has a call centre and one office in

Sydney. New South Wales has a similar population to that of Scotland. People can ring up the call centre and find out how their various fines and fixed-penalty notices are getting on and what, when and how they have to pay, and ask for more time to pay. That cuts down on overheads. If the courts, local authorities or various other people are acting as agents, they will all incur overheads in order to process relatively small sums in not very large numbers.

I accept that it is better to make it easier for people to pay, and that there might have to be exceptions. In Dalmellington, there is a wonderful centre in the old factory that used to make knickers for Marks and Spencer. The police, dentists, the local authority and just about everyone else all have offices under the same roof. Someone who has a fine to pay should certainly be able to pay it there rather than have to traipse into Ayr with their three children, especially if they are on benefits. It should be made easy to pay a fine, but you have to identify who is responsible for delivering the collection of debts service.

Margaret Mitchell: Just before we leave that point, you mentioned a free-standing public sector agency. Is there any advantage in making that organisation rather than sheriff officers responsible for fine enforcement?

Sheriff Principal McInnes: There should be an agency that could employ sheriff officers if that is the way forward. Sheriff officers have very good local knowledge of who is where, and they can tap on doors. However, as I understand the bill, the intention is that fines enforcement officers will be appointed and that in effect the agency will be the Scottish Courts Service or a division of it.

Margaret Mitchell: Would there be any difference in the charging regime?

Sheriff Principal McInnes: The charging regime?

Margaret Mitchell: Yes. Sheriff officers take a percentage to collect the debt. Would that be any different with a public sector organisation? I notice that the service in New South Wales that you cited operates at a small profit. I am thinking of the roll-on effect. If a debt is not collected within seven days, the debtor has to pay substantially more and that rolls on. Are there any issues around that?

Sheriff Principal McInnes: I think that the debt-collecting process ought not to be a burden on the taxpayer or the Scottish Executive. It should be set up in such a way that it covers its costs year on year. People who decline to pay their fines or fixed penalties should be charged for the privilege of having enforcement procedures taken against them. The addition of many extra £10, £15 or £20 levies on them for not paying up in the first place would meet the agency's costs.

Sheriff officers' overheads are relatively high. They are going to be tapping on doors at times of the day and night when they think that people will be at home. I will come back to that point in a minute.

You would be hiking up the overheads if you used sheriff officers. If I was in the committee's shoes, I would need to be persuaded that that was not happening. The service can be delivered more cheaply and just as effectively.

Mr McFee: Who should pay the cost of enforcement? You say that it should be those who do not pay their fines rather than the state or the taxpayer. I also hear what you say about sheriff officers and I wonder whether that could be got around by having agreed fees for particular tasks. Is there a danger that by setting up fines enforcement officers, we would be reinventing the wheel?

Sheriff Principal McInnes: You would be recreating the problem in a different form. I would not go down that route at all. There should not be too many people out on the street and tapping on doors, whether they are sheriff officers or fines enforcement officers. The time to collect fines is just before the kick-off of a major football match that is being shown on telly, although it is not possible to get all the collectors out at the same time. A European cup final is a very good time to find people at home or in the local pub.

Mrs Mary Mulligan (Linlithgow) (Lab): Many of the recommendations that your committee made on alternatives to prosecution have been taken up by the Executive. How did your committee decide in favour of opting out of such alternatives—I am thinking of fines, in particular—rather than opting in? Did members of your committee have any concerns about what effect that might have?

Sheriff Principal McInnes: Yes. One or two members of the committee thought that people should have to opt in to whatever alternative was offered to them, but many offenders do not opt in and end up getting prosecuted, when they usually plead guilty. In other words, two separate processes are involved. I am afraid that the main reason for that is indolence. People are sometimes not good at responding, no matter how clearly their options are expressed.

We are talking about a culture change, which I think can be made. If it becomes known that if someone does not reply, they will be treated as if they have accepted whatever they have been offered, word will get around. People will say, "Jimmy got one of those letters last week. Have you not read yours? You have to do something." I am strongly of the view that people should have to opt out of whatever they are offered, because the cost and effort that are involved in dealing with the

indolence that greets approaches about opting in are disproportionate.

Mrs Mulligan: Is there not a risk that while the culture is being changed, we might bump up the amount of work that is needed to bring about compliance, which could cause problems?

Sheriff Principal McInnes: Any change from one system to another tends to generate more work because people have to deal with the existing system and the new system at the same time.

I think that the transition will work. I am more optimistic than a few members of the summary justice review committee were. They thought that we should tailor everything to the needs of offenders and rig the system so that they could never be at a disadvantage. The section in the bill that I have criticised that allows courts to correct errors could be amended to enable an application to be made to get the deemed acceptance of an offer recalled, but the offender would have to opt to be prosecuted, which might put them off. That is the alternative.

We should not bend over backwards in an effort to be sensitive towards such souls. They will have the option of accepting the offer or of being prosecuted. That needs to be spelled out pretty clearly when they are sent the piece of paper, and that is the intention.

Mrs Mulligan: At the moment, is it not the case with a fairly minor offence that if someone accepts such an offer, it will not form part of their on-going history? It has been suggested that someone might not know to opt out, with the result that the offence will become part of their history. Is there not a concern that that lack of awareness flies in the face of natural justice?

Sheriff Principal McInnes: Part of the proposal is that an offender should be told that it will be possible to refer to their offence if they are prosecuted in connection with some other matter in the succeeding two years. There is a good reason why the ability to refer to previous offences is important.

Let us say that a procurator fiscal will be able to offer the alternative to prosecution of a fiscal fine for shoplifting. The police, the fiscals and the courts ought to know that the lady with whom they are dealing is being prosecuted having had three offers in the previous 18 months. That would indicate to the sheriff that the lady has a problem with shoplifting and the question would be what they were going to do about that problem. They might think of putting her on probation to see whether some social work involvement would help to tackle the problems that underlie her shoplifting, which might involve drugs. If the sheriff does not know that the lady has had an offer, they might not pick up the fact that she might be on drugs and have a real problem. Having the ability to know what has happened, off the record, has its advantages. An offer is not a previous conviction that that lady would have to admit to if she was filling in an application form for a job, for example.

11:00

Mrs Mulligan: Your committee recommended the introduction of a system of formal police warnings, but that has not been included in the bill. What did you think would be the advantages of such a system?

Sheriff Principal McInnes: There have been informal police warnings in Scotland for a long time. In England, there are systems of formal cautions that are recorded, although I cannot remember the details. There was a debate in the summary justice review committee on whether somebody would have to admit to an offence before they were warned. The view was that, because it was not necessary to admit to an offence for which a fiscal fine was offered, an admission should not be essential for a warning.

The idea is to use warnings for relatively minor offending to avoid having to make a report to the fiscal and the fiscal probably having to no pro the case because it was not sufficient to justify a prosecution. It would be better for some offenders to be warned and for a record of the fact that they have been warned to be kept so that, if they continue to offend, we could say that the time had passed when we should be warning them because they are getting into trouble regularly.

At the moment, the police keep their own records, but they tend to be very local—sometimes they belong to a police station and sometimes to a force—and the other police in Scotland do not have access to them. In west-central Scotland, people who live on the outskirts of Glasgow can be warned in several different parts of Strathclyde and there might be no record that the police can access to find out that an offender has been at it before.

Mrs Mulligan: I suspect that we will come back to that.

The bill provides for the establishment of justice of the peace courts, but there has been a decline in the workload of the district courts, which they will replace. Is there still sufficient business to justify the establishment of JP courts?

Sheriff Principal McInnes: In some places, it is doubtful that there is. However, that is not the case in a place such as Glasgow, where an enormous amount of work goes into the district court and some of it is dealt with by stipendiary magistrates. In Orkney and Shetland, there are no

district courts. There are some rural areas in which, if there is more diversion to fiscal fines and other alternatives to prosecution, the level of business can drop.

District court business has dropped because the fiscals, who have the discretion to prosecute in the sheriff court or the district court, have not had sufficient confidence about the penalties that they think many district courts will impose and they have elected to prosecute people in the sheriff court instead of the local district court. Some of that lack of confidence is misplaced but, whether or not one agrees with the fiscals, that is their view. They need to have confidence in the district courts and, at the moment, they do not have enough confidence.

A reconstructed district court ought to be able to build up that confidence. My view is that, if the district court is to work, its jurisdiction must be increased to the current level of the sheriff court—that is to say, a maximum sentence of six months imprisonment and a maximum fine in ordinary circumstances of £5,000.

Although the JPs who manage the local justices are all in favour of such an approach, quite a lot of justices are not so keen—they do not want to imprison someone whose mother they might meet in the corner shop the following week. One or two justices have said to me, "I have never sentenced anyone to imprisonment and I never will." However, justices must learn that that is what they are there to do. In one local authority area that has three district courts—I will not mention it by name—a rota has been organised so that justices never sit in their home area but sit in one of the other two courts, because they do not want to deal with people from their community, whom they might have to see daily. A culture shift is needed in that regard.

Without question, the jurisdiction of district courts should be increased by repealing the section—it might be section 59—of the Road Traffic Offenders Act 1988 that prevents justices from disqualifying people from driving other than on a totting-up basis. Justices should be able to disqualify people outright, which would mean that district courts could inherit most road traffic offences. I understand that such provision is not included in the bill because there is a view that it is not within the competence of the Scottish Parliament to make such a change.

Mrs Mulligan: Your point about locality is interesting. Justices whom we met on visits told us that their being local people is an advantage of the system, but I understand what you say about the quandary in which they find themselves.

On the reduction in business in district courts, might sheriff principals prefer to make greater use of stipendiary magistrates?

Sheriff Principal McInnes: Such magistrates have to be appointed and there has to be a budget for that, so the matter is not within the discretion of a sheriff principal. Stipendiary magistrates will continue to be necessary in Glasgow, because lay justices will not be able to cope with the flood of business in that jurisdiction. As matters stand, if we did away with stipendiary magistrates many road traffic offences would have to be heard in the sheriff court, which would not be able to cope.

A move towards using stipendiary magistrates should be approached by operating pilots on the New York community court model. I do not know whether committee members met the American who was over here from—I think—the Center for Court Innovation. He talked about the Red Hook community justice centre and the Midtown community court, where the approach is to give a judge a patch of New York in which to sort out crime. Judge Calabrese, who runs the Red Hook court, is a colourful and loquacious character. People are sentenced within hours of the offence being detected and a person who is sentenced to do community service is taken from the courtroom to the basement, to start work immediately. That is how things should happen.

In the English system, a circuit judge with a similar remit has been appointed in north Liverpool. He must work out what the community is concerned about, not just in relation to individual offenders and cases, and he must address those concerns and get involved—as people say. Such an approach must happen in a geographical jurisdiction; a roving stipendiary magistrate cannot do the job, although the system might work in heavily populated areas such as Lanarkshire, the Falkirk and Grangemouth area or Paisley. A pilot project could be established in which a stipendiary magistrate was given a much more specific remit to sort out problems.

Mrs Mulligan: Members of the committee who were JPs might want to come back to you on that.

You mentioned an attitude whereby some JPs decide what they are going to do before they even hear a case. Obviously, training will be important to ensure that there is confidence in the new JP courts. Would you like to say anything about that?

Sheriff Principal McInnes: The difficulties with a lay justice court are first, selecting enough of the right people; secondly, getting them trained; and thirdly, getting them to sit often enough. As somebody who has been on the sheriff court bench for 30 years, I would hate to sit only five or 10 times a year because I would lose touch. Until my recent retirement, I was a sheriff principal for six years, during which time I did not sit in criminal courts and I began to lose my confidence because I did not keep up to date and I was not sitting every day.

Sheriffs must sit fairly frequently to build up experience and they must talk to one other fairly frequently to compare their sentencing practices. At the moment, there are wide divergences in some district courts between what one justice and another will do in a typical case. Depending on who is sitting on the bench, the sentence is a bit of a lottery. In part, that is why I would prefer there to be more than one justice on the bench to even out the chances of an extreme level of sentencing. You will have to get quite a commitment out of the justices to sit regularly.

I noticed another point last night. It is proposed that members of local authorities should have the signing powers of justices. I have no objection to that in principle, but you might have to think about training them too. If a member of a local authority has no training in that area, they will not know what they are being confronted with and asked to sign, what questions they should ask and what the format of the document should be once they have dealt with it.

Local authority members are to be empowered to take declarations, but if the average layman who has just become a member of a local authority is told, "Somebody outside wants you to take a declaration", the response will be, "Eh?" What would committee members say if they were asked out of the blue to do that? What should a declaration look like? I do not have that kind of thing in my head, but I could look it up or I could concoct one that would look plausible without reference. There is a format for doing such things, so local authority members should be trained.

Margaret Mitchell: Do you have any reservations about the proposal for a fixed-term contract for stipendiary magistrates?

Sheriff Principal McInnes: I am sure that that one has been round the ECHR circuit more times than I know about. Provided that the contract is for a renewable five-year term and that it cannot be cancelled at the whim of some other party, I do not see anything wrong with it.

Margaret Mitchell: It has been suggested that people of a certain calibre would not go for such positions if there were a prospect of their not being reappointed, because they would be better making their career in whichever area of law they were already in.

Sheriff Principal McInnes: It might suit some people to do a five-year stint. For example, a woman with young children might want to do the job on a part-time basis for five years, after which time her children would be older and she could seek a full-time job.

Margaret Mitchell: You do not think that there is a problem with ECHR compliance.

Sheriff Principal McInnes: I am not in a position to advise you on that—I would want to take advice. It is a touch-and-go area.

Margaret Mitchell: Have you considered the role of honorary sheriffs in lay justice?

Sheriff Principal McInnes: Considered it in what context?

Margaret Mitchell: My understanding is that honorary sheriffs are not trained in the law, but that they still sit in courts. Were they considered?

Sheriff Principal McInnes: Most of those who sit in courts are local solicitors.

Margaret Mitchell: But not all of them.

Sheriff Principal McInnes: No. When I was in Cupar, one of the honorary sheriffs who sat regularly was a lady who had been the chairman of the children's panel. There was not much that she needed to be taught about the law; she was extremely switched on and still is.

Margaret Mitchell: So they are in a category apart.

Sheriff Principal McInnes: Basically they have the powers of a sheriff, but for much of the time they sign documents. The sheriff clerk can give them guidance if it is needed, or they can ring up a sheriff and say, "I am confronted with this", although they do not usually do that. A solicitor would not normally have to do that; an honorary sheriff might.

By and large, such people deal with custody cases when a sheriff is away. Sheriff Smith sits in Stranraer and Kirkcudbright and cannot normally sit in both courts on the same day, so a local honorary sheriff—usually a local solicitor—deals with the custody cases in the court in which he is not sitting.

11:15

Margaret Mitchell: Your report did not refer to such people.

Sheriff Principal McInnes: No.

Mike Pringle: I was formerly elected as a councillor, so I agree that training is needed before any document can be signed—documents vary hugely. I agree entirely that a deficiency in the bill is that councillors will not have been trained. We will have to consider that seriously.

The bill says that a person who has been appointed a justice of the peace will be offered a five-year contract. We have received evidence that one local authority area has 12 justices sitting on the bench and a total of 21 justices. It was said that most of the justices who are not sitting are not fit to sit. How should the bill address that problem

to ensure that only people who are competent to sit in court do so?

The bill refers to three days' training, which would be inadequate. In areas such as Edinburgh—I do not know about Margaret Mitchell's area—substantial training is given before someone can sit on the bench. How will that conflict be solved?

Sheriff Principal McInnes: With difficulty. You are right to say that there are two categories of justice of the peace: those who sit on the bench and those who have just a signing role. As far as I can tell, the bill does not make that distinction. From the day on which the bill comes into force, all those people will be able to sit on the bench, provided that they have done the training.

Mike Pringle: They will also be offered a five-year contract.

Sheriff Principal McInnes: They will be offered a five-year contract. That situation would worry me if I were in your seat.

Three days' training is not enough. Continuing training and an initial training session—possibly on a national basis—are needed. The training arrangements are not straightforward. The Judicial Studies Committee, which runs training for judges, would be happy to have a supervisory role. However, it does not have the resources to train justices, so a separate justices training function would need to exist somewhere and be funded somehow. The Judicial Studies Committee might agree the standards and what the training should include. However, as far as I know, that has not been fully gone into.

The Convener: That ends our questioning. On the committee's behalf, I thank you for your evidence, your report and your written evidence. You have given us much information, which we will consider carefully. Thank you for being so thorough.

Sheriff Principal McInnes: I thank you all for being so courteous. To my astonishment, I have enjoyed the experience. This is the first time in a long time that I have been subjected to questioning by anybody; it has invariably been me who has done the questioning. When faced by a whole lot of people who have been briefed, I thought that I would be in for a rough ride, but I have thoroughly enjoyed the experience.

The Convener: I am glad that you had a good experience. If nothing else, we will tell the Executive that it ought to have better-quality magazines in witness waiting rooms.

I welcome to the committee Chief Constable David Strang and Assistant Chief Constable Kevin Smith from the Association of Chief Police Officers in Scotland, and Ewen MacLellan and Steven Graham from the criminal justice office of Strathclyde police. We will go straight to questions.

Margaret Mitchell: Good morning. Could the witnesses outline how breach of bail impacts on the police's work? Will the bill help with that problem?

Chief Constable David Strang (Association of Chief Police Officers in Scotland): First, I thank the committee for inviting ACPOS and the police service to give evidence.

I welcome the changes proposed in the bill, because the level of public confidence in the criminal justice system is a major issue. We need not only to get things right, but to ensure that the public sees that we are doing so. After all, they need to be confident that the system is working fairly and effectively on their behalf.

As far as bail is concerned, the confidence of communities, in particular, can be undermined when someone who has been arrested and detained is released to commit further offences. At the moment, people do not have the confidence in the system that they should have because they believe that some are being granted bail when they should not be or that others are being detained when they should be granted bail.

The bill's provisions will help to restore public confidence by strengthening the supervision and enforcement of bail conditions. Indeed, the proposal to allow the police to place additional conditions on release and other such measures will send out a much stronger message that people allowed out on bail while awaiting their appearance in court should not commit offences or interfere with witnesses and, indeed, must attend any court proceedings.

Margaret Mitchell: Aside from the issue of public confidence, does a breach of bail conditions also mean more work for the police, because, for example, a warrant has to be issued?

Assistant Chief Constable Kevin Smith (Association of Chief Police Officers in Scotland): I echo Mr Strang's comments about public confidence, but I should point out that police officer confidence in the current bail system has also been undermined. After all, our people are important stakeholders in the criminal justice system.

Throughout the process of summary justice reform, people have constantly mentioned the churn of cases. However, one source of frustration for our officers that is not mentioned very often is the vicious circle associated with the churn of warrants. People fail to appear at court, are arrested on warrant, reappear to be bailed and then fail to appear again. In criminal justice,

people focus too much on the initial police report, and we must acknowledge that a range of other factors, including the issuing of warrants—which is important—add to bureaucracy, give police officers more work, put them under more pressure and undermine public confidence in the system.

Margaret Mitchell: So you feel that, overall, the bill's provisions will help and that you have no other suggestions to make.

Assistant Chief Constable Smith: The bill represents a major step forward by addressing the matter explicitly. However, like anything, the proof of the pudding is in the eating and in how the various parts of the system—and, indeed, accused persons—comply with and adhere to the provisions.

Margaret Mitchell: I welcome the comment in your submission that public safety should be a separate ground for refusal of bail. What factors should the court take into account in assessing whether there is a public safety issue?

Assistant Chief Constable Smith: The court could consider an offender's background in offending and undertake some form of community impact assessment on the implications of granting bail. The test set out in the bill, which appears to take public safety into account, is probably too high, because it almost suggests that there need to be more victims before the public safety element kicks in.

We are all quite comfortable with concepts such as public safety and fear of crime. I return to the issue of confidence. In part, the notion of public safety comes down to whether people feel safe. If people see an offender who they consider to be a regular or serious offender being released on bail simply because the court decides that the offender does not meet the test on the likelihood of reoffending, which is set very high, they will raise public safety concerns. We are talking about public safety in the widest sense; we are not just talking about the concerns of those who have been the victim of an assault. People need to know that, where appropriate, an offender will be refused bail if their release is likely to impact on the community.

Margaret Mitchell: As no other panel member wants to comment, I presume that everyone is happy to leave it at that.

The Convener: The panel will be familiar with the themes of the McInnes report, one of which is the need to speed up summary justice. I think that I am right in saying that that is the view of most of those who have given evidence to the committee. The issue for us now is the detail in relation to how we can achieve that end. We have heard evidence about the 28-day target within which the police have to submit their initial report of a case to the Procurator Fiscal Service. Are the police meeting that target at the moment?

Chief Constable Strang: Yes, in part. We have begun to move incrementally towards speeding up our reporting to the fiscal, using the 28 days as a target. Of course, the percentage of cases that are reported on target varies among forces, which might achieve the target in 50, 60 or 80 per cent of cases.

There is a downside to the use of a blunt target such as the 28-day target. In reality, it is much more important that the police report quickly on certain cases. In general, the convener is absolutely right to say that effective justice is speedy justice. We want to see a reduction in the length of time between the offence being committed and disposal, but that applies right the way through the system, from the police report, the fiscal's decision and court proceedings to the final disposal.

The police are trying to identify the cases that need to get to court most quickly. Obviously, in some custody cases, the report is done on the same day. Across all force areas, we are improving the speed of reporting. There is much better liaison between local forces and the area procurator fiscal, and we are reducing the amount of time that we are taking. As I said, some forces are meeting the target, whereas others are not.

The Convener: Given what you said about the blunt nature of the target, what mechanisms would ensure that we achieve the objective of speed within the system?

Chief Constable Strang: There are a number of measures in the bill in that regard, including the notion of liberation on an undertaking. Frankly, part of the problem is that the police ought not to have to report to the fiscal many of the cases that require to be reported at the moment. Change is needed to reflect the broadening of the role that the police now undertake. The traditional view of the police is that our job is to patrol and prevent offences and, if a crime is committed, to investigate, detect and report it to the fiscal. That is seen as the end of the police bit of the job; it is then up to the fiscal to make the decision on prosecution.

The world is changing. There are now much more sophisticated roles for the police and, indeed, the procurator fiscal to play. The police are no longer concerned only about the decision to prosecute; part of our decision making nowadays involves consideration of the most appropriate disposal. For example, we deal with the very minor offences that take place on the street: we give someone a ticking off and tell them not to do it again, and off they go—nothing more happens. Nowadays, we can also issue fixed-penalty

notices and, in so doing, the police can be said to be making a disposal decision.

We need to reduce the number of cases that the fiscal marks "no proceedings". If we manage to do that, we will reduce hugely the time that is wasted on reporting such cases. A couple of forces have introduced an adult warning system, in agreement with the area procurator fiscal. If the likely outcome is that the fiscal will simply issue a warning letter or mark the case "no proceedings", a warning will be issued. Why should such decisions not be made earlier in the process? That is an example of how we can take out some of the cases on which time is wasted. If we deal only with cases that need to be proceeded with, it will be easier to speed up the process.

11:30

The Convener: To what category of cases are you referring? You seem to be suggesting that some cases will not be reported or that the police will make a judgment that certain cases will result only in a warning or a fiscal fine. How will the police determine those cases?

Chief Constable Strang: The Antisocial Behaviour etc (Scotland) Act 2004 already allows the police to issue fixed-penalty notices, generally for minor offences. However, there is no blanket rule, because obviously we take the circumstances of the offender into account. Normally, notices relate to first and minor offences. The Lord Advocate agreed to a schedule of offences that allows the police to issue either a warning or, as a pilot in Tayside, a fixed-penalty notice.

The Convener: I would like to summarise what you have said. Are you saying that a category of cases will be virtually taken out of the system by the police, which will reduce the number of cases that you have to report to the fiscal and improve your efficiency in dealing with the cases that you report?

Chief Constable Strang: The McInnes report indicated that there were too many minor cases in the system that ought to be dealt with in another way. We are not saying simply that if someone commits an offence, they should go to court to be punished; our approach is much more sophisticated than that.

The Convener: It is not unreasonable for the committee to want to know what category of cases you intend take out of the system. I understand why you want to do that, but how will it be done? Will the police make a judgment?

Chief Constable Strang: No. There is a list of minor offences, and only first-time offences would be affected.

Assistant Chief Constable Smith: We are already taking on the good practice that is in place in some forces and trying to develop a national framework. We are trying to strike a balance. On the one hand, we do not want postcode justice and how people are prosecuted to depend on where they are in the country. Equally, as I am sure members appreciate, we want local communities, police forces and command units to have the flexibility to deal with local issues. It is about setting a framework that is agreed with the Crown Office and Procurator Fiscal Service and which takes into account the local context. We must be careful to ensure that the approach is not seen as a soft option for dealing with antisocial behaviour. Many of the issues that are regarded as being at the low end of the tariff are the very issues that the Executive, the Parliament and police forces are trying to tackle through the antisocial behaviour agenda. Some work is developing in that area.

The Convener: When will the committee be able to see information about that work? One of the problems that I encountered last week when talking to officials is that a lot of work is on-going. I understand why that is the case, but it will be difficult for us as politicians and legislators to judge whether you have properly categorised the cases and to understand which cases you will take out of the system. Do you see what I am driving at? It seems that we are taking a lot on trust and leaving you to get on with it. At what stage will we get to see the on-going work to which you refer?

Chief Constable Strang: I understand your frustration, but many things that do not require legislative change can be done to improve the system. That is what we are trying to do through local criminal justice boards, the national board and our joint work with the Crown Office.

The Convener: The police will get more powers under the bill. That is the reason why I am pressing you on the issue. I can speak only for myself, but if you want me to agree to the provisions in the bill, I will need to know what the effect of giving you the powers will be. It is not unreasonable for me to say that I want to see the on-going work, so that I can satisfy myself that we are giving you the correct powers for the correct reasons and so that I can tell the people whom I represent in which category of cases they will deal with a police officer as opposed to a fiscal.

Chief Constable Strang: I understand that. I can provide two examples to the committee. One is the fixed-penalty system for the list of offences that is produced under the Antisocial Behaviour etc (Scotland) Act 2004. Another example is the adult warning system that we have in Dumfries and Galloway. I can provide information on the framework for that and the type of offences that

are involved. Decisions are based on the merits of each case. Particular factors might mean that a case ought to be prosecuted. We consider the circumstances of each case and offender.

The Convener: That information would be helpful.

Mr McFee: On that point, the offer to give us information is not unreasonable, but will you say whether, in your area and in the appropriate circumstances, a warning can be given for a breach of the peace, common assault, drunk and disorderly behaviour, theft or shoplifting? Are those the type of offences that we are talking about? I presume that warnings are not given for murder.

Chief Constable Strang: Absolutely not. The system is used for minor offences for which it is felt that a warning is appropriate.

Mr McFee: Assault might not be regarded as minor by the person who is assaulted.

Chief Constable Strang: Absolutely. That is why we take into account the impact on the person who has been offended against. My argument is that if the system of adult cautions works and people do not reoffend, we will have achieved our goal. Of course, if people reoffend, they do not receive a second adult warning. The issue is about the most appropriate response to behaviour.

Marlyn Glen: It would be useful for the committee to have more details of the pilot on fixed penalties in Tayside that you mentioned. I know that Tayside police are pleased with the way in which the pilot is running but, as yet, the system has not been rolled out throughout Scotland. I also know that local police think that, as well as the roll-out throughout Scotland, that way of working should be extended. However, I do not want the scheme to run away with itself without being monitored. It would be useful for the committee to have information on the pilot.

Chief Constable Strang: We can provide the evaluation report on the pilot. One of our concerns was about widening the use of police powers—we did not want more people to be dealt with under the system than would have been dealt with informally, but that has not been the case. I am happy to provide the details.

Marlyn Glen: Do you know when that evaluation took place?

Chief Constable Strang: I do not have the details, but I will let the committee have the report.

The Convener: I have one final question on speeding up the system. Sheriff Principal McInnes talked about the need for the available evidence to be ready when a complaint is served, so that the accused can decide whether or not to plead guilty. Is that realistic for the police?

Assistant Chief Constable Smith: I have a few points on improving the speed of the process. On the 28-day target for reporting cases, it is important to highlight that, because of the focus on summary justice in the past year or 18 months, ACPOS has set up a business area for that and has made month-on-month improvements in relation to the target. The situation is perhaps not as bleak as it once was.

Another issue is that of winning hearts and minds. Hitherto, there has been a view in the police, which was probably not wrong, that there was no point in rushing to get reports in if cases simply got stuck in the next part of the system. Through the work on the summary justice system, rather than a blunt target, we now have a joined-up target that takes into account what we, the Procurator Fiscal Service and the courts do. The target is for the beginning-to-end process. Through that, forces and individual officers are starting to buy into the changes.

Another key issue is the one that the convener has just raised—that of the need for disclosure at an early stage to encourage early pleas and to allow people to discern what evidence needs to be led. However, that cannot happen too early in the process, because we would grind to a halt. The issue must be properly thought through and disclosure must be properly scheduled. We need equity in the timescales that we, the Procurator Fiscal Service and the courts have for each part of the business. We are involved in many work streams on that issue and we have made our points clearly. The danger is that if we go for a target or timescale that is too ambitious, all that we will do is create more churn. We really need to make sure that sufficient time is made available.

We are saying to our criminal justice partners that our responsibilities go much wider than criminal justice. We have 24/7 responsibility for communities. We are out on patrol, attending incidents and dealing with emergencies. Criminal justice, which is everything to our other partners, is but one part of what we do. We cannot shoehorn all our efforts into meeting unrealistic targets.

The Convener: I appreciate that. At what stage in the process is it realistic to expect the evidence against the accused to be available so that you can bring some of the decisions further forward in the system?

Assistant Chief Constable Smith: The period that we are considering as the most practical and pragmatic is the lead-up to the intermediate diet. During that period, we will have provided the Crown Office and Procurator Fiscal Service with the appropriate statements and evidence and anything else that it requires that allows it to make disclosures to the defence. That will mean that when the intermediate diet goes ahead, people

are prepared and the intermediate diet becomes a meaningful part of the process. That is absolutely crucial to progress and to reducing the churn that we currently face.

Mr McFee: I want to move on to the subject of undertakings. What is the current police practice in relation to liberating an accused person on an undertaking? Has practice changed during the past few years?

Assistant Chief Constable Smith: I will take as an example the case of a drink-driver. If detaining someone in custody is not in line with the Lord Advocate's guidelines, our next step is to release them on an undertaking. Therefore, if someone is arrested on a Saturday evening for drink-driving, they will be released from custody on an undertaking once they are sober. They will receive written instructions from the officer in charge of a police station to appear in court on a particular date. In my force area, the person would appear in court the following Thursday. If possible, the court will deal with the case there and then; if necessary the process will allow the court to impose special bail conditions.

That is how the system works in practice. In recent years, there has been a move in some force areas to get offences such as knife crime and crimes involving other weapons into the system more quickly. If the Lord Advocate's guidelines on detaining someone in custody to appear on the next lawful day cannot be met, the next best option is to get the person into court within the week, rather than 28 days—or more—later.

There have been recent moves towards dealing with more offences in that way to speed up the system and to get what advantages we can by seeking bail conditions. In the case of gang-related crime and people carrying knives, for example, the bail condition could be that the accused would have to stay away from particular locations where gang fighting might take place.

Mr McFee: I will come back to that in a wee second.

Just to be clear, the undertaking is an undertaking to appear at court, which would normally be the custody court. Is that right?

Assistant Chief Constable Smith: No. It is an undertaking court.

Mr McFee: You mentioned problems with gang fights. Are you saying that, at the moment, you have the power to prevent someone who is on an undertaking—for want of a better expression—from entering a public park or wherever the gang fights take place?

Assistant Chief Constable Smith: We do not have that power at the moment. The court has such a power and we can apply for special bail conditions that people must do things, or not do things, depending on the circumstances of the crime and how practical the bail condition is.

Mr McFee: I wanted you to clarify that because I understood that the police do not have such a power at the moment, although the court has. Of course, the bill could give the police that new power.

I note the comments on page 3 of your submission that

"It is unclear in the Bill or accompanying notes, how, in practice, any 'additional conditions'"

may be

"imposed by the arresting officers, or the officer in charge of a police office".

Preventing someone from going to a public park is perhaps a good example of such a condition, but I am not sure whether we have defined the rank at which officers can impose a condition; you might want to touch on that point. It might not be clear how conditions will be recorded or how anyone else is supposed to know about them. Could you elaborate on that?

11:45

Assistant Chief Constable Smith: There are several concerns about the power. The current process is that an arresting officer applies for special bail conditions in a report that goes through at least one form of supervision in the police. The report then goes to a procurator fiscal, who applies his or her legal mind to the case, after which it is presented to a sheriff and is the subject of debate between the prosecution and the defence. The sheriff makes the ultimate decision as to whether special bail conditions should be applied. Those are powerful measures.

Our caution in relation to the bill is that, rather than having that system of significant checks and balances, we seem to be moving towards asking our youngest and sometimes least-experienced officers to apply the process. The Lord Advocate must provide stringent guidance and we must ensure that policy and practice are in place and that we train, guide and advise officers.

Another concern is how other people will know about the process. An officer might charge someone for an offence in a public park for which it is reasonably expected that they should impose a special bail condition. However, the current system does not allow that to happen overnight. How would that officer put an accurate record of a special bail condition on the criminal records system to ensure that, if the person breached the condition, they were dealt with? The great danger is that the process becomes bureaucratic. If it did not work, that aspect of the bail provisions would be undermined.

Mr McFee: I understand the problem; I am trying to find out what the solution is. For example, what would be a reasonable rank in the police force at which an officer can impose such special conditions? I presume that that will not be done by a rookie cop with six months' experience.

Assistant Chief Constable Smith: We suggest that ratification or review of a decision should take place at the rank of inspector.

Mr McFee: I presume that that would necessitate taking an individual back to the police station and detaining him or her.

Assistant Chief Constable Smith: The key point is that the bill tries to give us flexibility by allowing us to operate from the street and giving us another tool in the toolbox. However, I want members to be clear that we still expect officers' baseline stance to be to control a situation, to ensure that we obtain DNA, fingerprints and photographs and to interview the suspect. In most cases, we will still expect people to be taken into custody.

The bill offers opportunities, particularly in the rural environment, where it may be difficult to take someone back to a police station because of the distances that are involved. We view the provision positively, but we highlight the fact that several issues that are attached to it need to be thought through. We would tend to use the provision as the exception rather than the rule.

Chief Constable Strang: The significance of the provision is that it fills the gap between the offender being dealt with by a police officer and their first appearance at court. At the moment, no conditions can be imposed if somebody is at liberty, whereas the bill will provide the ability to impose conditions that might protect a witness and prevent the offender from going to a location.

Mr McFee: I presume that if you thought that a witness was in danger, you would not release someone on an undertaking.

Chief Constable Strang: As Kevin Smith said, the bill deals with the gap that arises when someone does not fall into the custody category and the police are trying to get them into court more quickly. At the moment, the person involved could be at liberty for about a week before they go to court, as that is the only place where special conditions can be applied.

Mr McFee: Could the public safety test provide another way of filling that gap?

Chief Constable Strang: Not absolutely. In lots of cases, releasing someone on an undertaking is perfectly legitimate. However, the imposition of conditions can assist them in not reoffending, by keeping them away from places such as shopping centres if they have been shoplifting.

Assistant Chief Constable Smith: I want to raise another matter so that you are aware of some of the limitations that would apply. It would be a significant challenge to give an officer on the street the information about the court scheduling system that would allow him or her to advise the offender that they had to appear at a certain time on a certain day. Such challenges are obstacles to be got round rather than total bars to progress, but there are a number of key practical operational issues that we need to overcome.

Mr McFee: I appreciate that.

If there are no other questions on the subject, I want to move on to citations.

The Convener: Staying on the same subject, how would a police officer know on which date the accused had to appear in court?

Assistant Chief Constable Smith: We have raised that issue. If the proposal goes through, there would a difficulty in accessing the systems of the Scottish Court Service. The solution to that would be shared information technology systems. In the future, officers on the street will have personal digital assistants that will allow them to have access to court systems' data while they are mobile. There are futuristic aspects to the solution.

The Convener: It is quite a long way off.

Assistant Chief Constable Smith: I do not think that the success of the proposal depends entirely on the availability of such systems, but the Court Service would have to be able to advise us of particular time slots that could be used. In the sheriffdom of Glasgow and Strathkelvin, for example, it would be difficult to manage the court scheduling system across what are four very busy territorial police divisions so that an officer could know at any given time whether a particular slot was available. That is just another practical difficulty that must be got round.

The Convener: The provision on undertakings is designed to shortcut the process of getting the accused to court.

Assistant Chief Constable Smith: I think that the release of the accused on undertaking will be a bit less problematic because it will be the subject of a great deal of thought, organisation and joint planning. Bail and undertakings are slightly sporadic in nature. The practice on undertakings would be planned. Along with the Crown Office and the Court Service, we would adopt an incremental approach. We would consider the types of cases for which we wanted to use that provision and the courts' capacity to deal with them. The capacity exists because, ultimately, the accused must appear in court anyway. It is just a question of bringing the process forward in a managed way and ensuring that we do not front load the system.

Mr McFee: I want to move on to citations. For some time, it has been suggested that the amount of work that the citation of witnesses involves for the police and civilians who are employed by the police—who I think are mostly former police officers—takes up a lot of time. How could that be changed? I am talking about the citation of witnesses and accused persons in criminal cases. I understand that in many circumstances sheriff officers handle defence witnesses. Has any consideration been given to the use of sheriff officers to cite witnesses for the Crown? I believe that sheriff officers are legally entitled to do that, even though it seems to have been the practice not to permit that.

Assistant Chief Constable Smith: I am conscious that I may be speaking for the Crown, but my understanding is that its primary focus has been on postal citation, with which it has had some success. Once a postal citation has failed, the task of citation falls to us. We employ people specifically for that purpose. In my view, it is an area of work in which there is some duplication. The Crown employs people to process the citations, which are then passed on to us. Although we do not quite repeat the process, there is an element of overlap.

Postal citations have been successful and, in one part of Glasgow, the use of e-mail citations by police officers is being piloted, which is sparking some interest throughout the country. That may be another joint venture that will allow the police and the Crown Office and Procurator Fiscal Service to make efficiencies. Given that there is duplication in the current system, the delivery of citations is ripe for being taken away from the police and the Crown and being undertaken by another agency.

Mr McFee: Is anything blocking that? You seem to be saying that, in the police's view, there is no block to using another agency. Is the Crown Office blocking that? Has current practice simply built up over the years?

Assistant Chief Constable Smith: I would not say that the Crown is blocking it. There has been a view that it is an area of work that could sit elsewhere and I am not sure why it has not been progressed. The area of work is ripe for being taken on by another agency. The reality is that, although we employ support officers, who are civilian staff, to undertake the work, there are often short-notice citations, countermands, re-cites and urgent citations, and the sheer volume of work means that the citation server cannot get the work done and operational officers get drawn into the process. That is just a fact of life. Some of the work could be taken on by another agency.

Mr McFee: Postal citation works with those who accept the citation. I am not quite sure how to prove that an e-mail citation has been delivered, but such a system would work for those who are more amenable to it. Presumably if the police have to make arrests, they are arresting those who are less amenable. Do you have any idea of the costs? Are they identified separately?

Assistant Chief Constable Smith: I do not have that information with me, but we could certainly provide indicative costs.

Mr McFee: That would be useful.

Marlyn Glen: Part 3 of the bill is about penalties. Scottish Executive officials have stated that fiscal fines offer a proportionate and prompt response to particular types of low-level offending and that prosecutors will use the higher level responsibly. However, concern has been expressed that imposing fines up to the maximum level of £500 without sufficient knowledge of the background to the case or the circumstances of the offender, including his or her ability to pay, will inevitably lead to higher levels of default. Will the police be able to provide sufficient timely information to allow fiscals to make informed decisions on fine levels?

Chief Constable Strang: You make a good point that the police or the procurator fiscal might need more information to make an informed decision about what is an appropriate disposal. We expect that our reports to the fiscal in cases in which an increased fine or fiscal compensation order is being considered will have to contain more evidence of someone's income and ability to pay. That is a natural consequence of asking the fiscals to make those higher-level decisions.

We think that that is a price worth paying, because if a case can be dealt with appropriately by a fiscal fine, that will save it from having to go to court. At the moment, where a fiscal feels that a fine is the appropriate disposal, he will put a case into court, because there is no alternative. The advantage of expanding fiscals' discretion is that if they feel that a certain level of fine is appropriate, they will be able to deal with the case by imposing the fine. It is entirely up to the offender whether to accept the fine; if they wish to challenge it or are unwilling to pay it, they can opt to have their case heard in court.

Marlyn Glen: In your submission you expressed concern about the operation of a time bar for conditional offers of fixed penalties. Will you elaborate on those concerns?

Chief Constable Strang: Our concerns relate to cases in which an accused tries to thwart the system by responding only in part or by not responding to an offer. We welcome the provision that an accused cannot use their not responding, delaying responding or responding only partly to an offer as a means of avoiding prosecution, because of the implementation of the time bar.

Marlyn Glen: You are talking about an accused deliberately making use of the time bar.

Chief Constable Strang: Yes.

Mrs Mulligan: Good afternoon. I want to ask you about the establishment of JP courts, which you seem to support in your submission, and the fact that they will now be part of the Scottish Court Service, rather than being run by local authorities. You raise an issue about the timescale for the changes that will be introduced. Will you say a bit more about that?

Assistant Chief Constable Smith: Most people acknowledge that the greatest difficulties are in Glasgow but, according to the proposed timescale, the reforms in Glasgow would take place in about 2014. However, if there is a big problem, it should be tackled sooner. I accept that it might be necessary to move forward incrementally, but if the proposed new system will bring about the biggest gains in Glasgow, we should act sooner.

12:00

Mrs Mulligan: What gains do you expect will be made?

Assistant Chief Constable Smith: I am sure that someone from the Crown Office could give you more details, but it takes significantly longer to get someone into the district court in Glasgow to be prosecuted. The thrust of the bill is about speeding up the system, which is what the committee, ACPOS and other partners want to do. There are significant delays in Glasgow. We listened to part of Sheriff Principal McInnes's evidence and he acknowledged the huge number of cases that Glasgow district court hears. Why should we wait until 2014 to reform a system that is crying out for earlier intervention?

Mrs Mulligan: Should just Glasgow be dealt with sooner, given the workload of its district court, or should there be a shorter timescale for reform everywhere?

Assistant Chief Constable Smith: Both things should happen. Glasgow should be moved up the timetable. If the situation can be resolved in Glasgow, it can be resolved everywhere else. Perhaps my answer is straying into another agency's area of work, but the situation has a huge impact on us and 2014 seems to be too long a timescale. We hope that consideration will be given to the particular issues that Glasgow district court must deal with given the volume of cases that it hears.

Mike Pringle: Sheriff Principal McInnes said that a huge range of motoring offences could be heard by JP courts. Would such an approach be appropriate? On a more general note, do JP courts still have a role? How often should JP courts sit? Who should sit and what training do they need?

Chief Constable Strang: I declare an interest, because I was a member of the majority on the McInnes committee whose view on the matter was not accepted by the Executive.

The way forward is to ensure that JPs are properly trained and equipped to do the job. We heard about the frequency of sitting, which is important. It is unreasonable to expect someone who sits fewer than 10 times a year to be able to deal effectively with the business that comes before them. If JP courts are to be retained, which is clearly the intention, the people who sit on the bench need to be properly equipped, trained, advised and assessed.

If JP courts are retained, albeit in a unified system, there should be no problem in their dealing with an increased workload of road traffic offences. As members know from our evidence and the proposals, it is expected that there will be less minor business—although I accept that cases need to go to court and might not be minor matters for the individuals involved. The thrust of the proposals is the recognition that too much minor business goes to court and that it is inappropriate that there should be delays of 18 months or so in dealing with matters that should be dealt with much more quickly. Therefore the suggestion that JP courts should deal with road traffic offences is positive.

Mr McFee: I will take you back a little bit to fines enforcement officers and their functions, because I want to tease out the reasons for your support for their introduction. You say that:

"The provisions of this section will clearly be of immense benefit to the Scottish Police Service given the often overwhelming number of Means Enquiry Warrants that forces have to deal with",

and that it will allow

"the police to focus on warrants for those accused yet to appear in court."

Is your enthusiasm for the provisions based on the fact that it will take a heck of a lot of the work away from you and will allow you to get on with other things, or is it based on a detailed consideration of what a fines enforcement officer will do? In other words, are we reinventing the wheel? Is not there a method for dealing with the problem already, by using sheriff officers? The matter impacts on when the bill's provisions can become operational, particularly in Glasgow.

Chief Constable Strang: I can understand your charge that our response is motivated purely by self-interest, but it is wider than that. Fines enforcement has fallen into disrepute. I refer you to my earlier comments about bail. It is widely known that people get away without paying their

fines or with paying a bit of a fine, which is then recorded as having been completely paid and is not pursued, so the system is in need of overhaul.

Mr McFee: I am sorry to interrupt you, but I think that you misunderstood me. I accept that the system is in disrepute and that there is a major problem, but I am asking about the proposal in the bill. Is your enthusiasm for that proposal based on a detailed understanding of how it would work compared with alternatives?

Chief Constable Strang: Yes, because the power for fines enforcement officers to deduct fines from income and the provisions on seizing vehicles, for example, give greater powers to fines enforcement officers and mean that it is much more likely that fines will be collected and that the system will work more properly than it does at the moment.

Mr McFee: However, with the exception of the power to seize a vehicle, sheriff officers have those powers just now, mostly in relation to civil cases, do they not? Are we in danger of reinventing the wheel by creating a new post of fines enforcement officer and giving fines enforcement officers essentially the same powers and almost the same operating practices as sheriff officers?

Chief Constable Strang: Fines enforcement officers will exist solely for fines enforcement. There is a provision in the bill that will allow them to try to separate those who have difficulty paying from those who choose not to pay. There is an element of supporting people who are having difficulty to manage the competing demands on their finances and a harder edge for those who choose not to pay and for whom enforcement needs to be part of the approach. There is a bit of both sides.

Mr McFee: Okay. I just wanted to tease that out a bit.

The Convener: As we know—because we had a briefing from Strathclyde police, in which we examined the issue of warrants—the fact remains that if the police were not involved in pursuing means inquiry warrants, they could focus their attention much more effectively on warrants for non-appearance in court. That would be of major advantage.

Assistant Chief Constable Smith: We agree. Our thinking is that there should be a focus on apprehension warrants, particularly because of the risk and danger that the offender poses of committing serious and violent crime or creating havoc within communities with minor offending.

The Convener: I want to wind up, but Margaret Mitchell has a question, which I can take if it is brief.

Margaret Mitchell: Sheriff officers would maintain that they have expertise, have IT systems in place and already assess means. All of that is already in place, so why would we want to go to the extra expense of creating fines enforcement officers when sheriff officers already exist and using them would arguably be a better use of resources? That is the main point that we want you to address.

Chief Constable Strang: The system is not working. That is part of the message.

Margaret Mitchell: Can I interrupt you? Is it not the case that sheriff officers are not given the job to do at present? The system is not working just now, but the sheriff officers have not been given the role. Therefore, they are untested and unproven, but they have all the credentials that I mentioned.

Assistant Chief Constable Smith: My view is that it for the Scottish Court Service to make the business case for the proposed fines enforcement officers and everything else that the SCS wants to put in place match up against what you propose. Probably none of us is able to answer the question of why sheriff officers are used or not used.

Margaret Mitchell: It would have efficiency and resource implications, which must be of interest to you.

The Convener: As Kevin Smith has said, the witnesses have a view on the matter, but they are not experts on it.

There are many questions that I would have wanted to ask about liberation on undertaking, but we do not have time. I was particularly interested in the submission from Scottish Women's Aid, which asks a number of pertinent questions about technical legal issues, such as the impact of a decision by the police, what would happen if the fiscal reversed a decision and whether there is an appeal against a police decision. There might be other supplementary questions that committee members did not get round to asking. If we gave the witnesses a list of those questions, would you be able to reply? The issues on which we most need your opinion are liberation on undertaking and fixed penalties, because those are the functions that you will be undertaking under the bill.

Chief Constable Strang: We would be happy to respond to any questions that you have. Although the bill sets out what will happen in principle, the detail will have to be worked up in protocols with the Crown Office. However, we will answer any questions that you have.

The Convener: I thank you very much for your written submission and the evidence that you have given this morning. They have been helpful to us in scrutinising the bill.

I suspend the meeting for 10 minutes for a comfort break. We will reconvene at 12.20 pm.

12:11

Meeting suspended.

12:23

On resuming—

The Convener: I welcome our third panel, which is John Campbell, the president of the Society of Messengers-at-Arms and Sheriff Officers. I thank him for his submission. We move straight to questions from the committee.

Mr McFee: You probably heard some of the questions that we put to the previous panel. I will give you the easy ones first. What is the current role of sheriff officers and messengers-at-arms in relation to the citation of witnesses?

John Campbell (Society of Messengers-at-Arms and Sheriff Officers): At present and historically, we are engaged in the citing of criminal witnesses for the defence. In effect, the defendant in the action consults his solicitor, who prepares the defence and instructs the sheriff officer to serve upon the witnesses the prescribed schedule of citation.

Mr McFee: I read your submission. Will you put on the record how you would like that role to develop in relation to criminal cases, and in particular, when citing witnesses for the Crown? Are there sufficient sheriff officers to undertake such a role without impacting on your civil duties?

John Campbell: I confirm that our society agrees with the general principle that certain duties, such as the citation of witnesses and the recovery of fines, could and should be removed from the police force to allow them to concentrate on what we would call core police duties.

At present we have something like 200 commissioned sheriff officers operating in Scotland. In truth, that number has unfortunately reduced in recent times as a result of the introduction of certain legislation and practices, which have diluted the quantity of work available to our profession.

Mr McFee: Some of my colleagues want to ask about the enforcement of fines, but I put it to you that one of the biggest reservations is that, to be blunt, you guys have a reputation for charging an arm and a leg for pursuing civil diligence cases. If I owed £100 and the job of collecting it was given to you, how much would be added to my bill on account of your simply knocking on my front door?

John Campbell: There are many erroneous perceptions of my profession and how its members behave. We are trying to overcome those. The Scottish Executive has agreed with us that we need to change our image in the near future as a consequence of the Bankruptcy and Diligence etc (Scotland) Bill that is currently being considered in Parliament.

The fees charged by sheriff officers are prescribed annually by act of sederunt. The Society of Messengers-at-Arms and Sheriff Officers presents an annual case for an increase in the prescribed fees, based primarily on inflation. The Lord President invariably ratifies the fees, which are then granted.

Returning to your example of the £100 fine, the current prescribed fee for serving a schedule of charge for payment is £25.75.

Mr McFee: That obviously depends on whether I were to pay you.

John Campbell: Yes. A schedule of charge for payment is official notification to the defendant that the fine will be enforced by means of civil diligence recovery and serves to point out the possible diligences—enforcement action—that could be taken following the expiry of the 14 days of charge. Effectively, we warn the defendant of the actions that could be taken.

Mr McFee: As I said, I am sure that others will want to take that up later.

How many warrants for the Crown are served in a year?

John Campbell: We have tried for a number of years to obtain that information from the Crown Office, the police and the court service, but to no avail.

Mr McFee: You do not know. How much does it cost to serve a warrant? You are probably aware that I asked that question of the previous panel of witnesses.

John Campbell: We are happy to engage in some research to focus on the numbers and thereafter to determine, if necessary, a separate bespoke fee for the citation of criminal witnesses. We have wanted to do that for some years, but unfortunately, the figures have not been passed to us so we cannot undertake the research.

Margaret Mitchell: I will take you back a step. In your submission, you argue that sheriff officers are best placed to enforce fines. For the record, will you say why that is?

John Campbell: We have a minimum educational requirement before we can even submit ourselves to study to become an officer of court. Currently, it is five highers and eight education certificates. We train for a minimum of three years. Before we do that, we must undergo two years' training with a sheriff officer in the field.

In effect, it takes five years to pass the examination, and only after passing the examination can an officer petition the sheriff principal for a commission to practise. The examination is very difficult to pass. We also have a great many years of experience. As you can imagine, our procedures have evolved through centuries.

12:30

Margaret Mitchell: Is that it? From your submission, there seemed to be quite a little bit more.

John Campbell: Oh yes, there is.

Margaret Mitchell: There are certain reservations. Would you be able to decide on the proper means of collection? You may be going directly for payment within seven days and no questions asked, but how can you determine whether a person has the means to pay or whether your action is the most appropriate?

John Campbell: We have great experience in determining the most appropriate method of proceeding further—if indeed any further steps should be taken—following the serving of the charge for payment. The charge for payment is physically delivered by the sheriff officer to the defendant's residence. At that point, the officer is asking questions with a view to making that very determination and reporting back to the creditor or the creditor's agent on what appears to be the most appropriate method of proceeding—

Margaret Mitchell: I will interrupt you there. What if the person is not in?

John Campbell: If the person is not in we will be able to view the property, any vehicles that may be in the driveway, and any evidence of any such assets. We can discreetly interview neighbours to determine whether a person is employed.

Margaret Mitchell: There are other things that fine enforcement officers may be asked to do in relation to flexibility in methods of payment.

John Campbell: We have all such things in place already. At present, firms of sheriff officers represent the vast majority of Scotland's local authorities in the recovery of council taxes and non-domestic rates. As you can imagine, it requires fairly sophisticated computer systems and operations, and all the variety of methods of payment, to recover those great many millions of pounds.

Margaret Mitchell: Will you elaborate on the working of the internal performance monitoring that your submission says is in place?

John Campbell: Do you mean the internal monitoring of officers or—

Margaret Mitchell: That is what I took it to mean although it could be ambiguous. It could refer to local authorities' internal performance monitoring in relation to collection rates, but I took it to mean the performance monitoring of your sheriff officers, to ensure that a certain standard was maintained.

John Campbell: The Society of Messengers-at-Arms and Sheriff Officers has its own code of practice, which it requires all officers to abide by. Beyond that, individual employers—who are invariably sheriff officers themselves—insist on certain standards among their employees. Firms that provide services to local authorities and other such organisations are required by contract to meet certain standards.

Margaret Mitchell: What if the code of practice was broken?

John Campbell: A complaint would be lodged with the society and investigated. If necessary, a hearing would take place and some form of penalty imposed.

Margaret Mitchell: That would depend on the complaint being reported.

John Campbell: Yes, but all these matters are currently being considered within the Bankruptcy and Diligence etc (Scotland) Bill, which proposes the creation of the Scottish civil diligence commission, which, we are pleased to say, will take on the responsibility of receiving and dealing with complaints.

Margaret Mitchell: I have another question before I go on to the self-financing aspect that you say could be achieved. If a case is passed to you as a sheriff officer, how many days does the person have to pay?

John Campbell: The first document to be served is generally the schedule of charge for payment, which provides a 14-day period for payment or for an arrangement for payment to be made.

Margaret Mitchell: Is it always 14 days?

John Campbell: It is.

Margaret Mitchell: It would never be within seven days?

John Campbell: No. It is always 14 days.

Margaret Mitchell: And what about a follow up?

John Campbell: In the absence of payment or an offer of payment at the expiry of the 14-day period, a variety of actions could be undertaken. An earnings arrestment could be lodged with an employer or a non-essential moveable article could be attached, with a view—following various other procedures—

Margaret Mitchell: I would like to stop you there. After the 14-day period expires, are you looking to do something else?

John Campbell: Yes.

Margaret Mitchell: Is the 14-day period broken up? Might people get a communication that tells them to pay within seven days and, if that does not happen, a follow-up letter that tells them to pay in the next seven days?

John Campbell: The charge for payment clearly confirms that the defendant has 14 days in which to pay the debt or to make proposals regarding payment of the debt that are acceptable to the creditor.

Margaret Mitchell: I am not clear about that issue. There may be instances in which people have been told to pay up in seven days and, if they fail to do so, have been given another seven days. Another expense has then been whacked on. That is the next issue.

John Campbell: I know nothing of that practice.

Mr McFee: Margaret Mitchell may be referring to the seven-day notice that is issued by local authorities, after which 10 per cent is added by the authority concerned before the matter is passed to sheriff officers.

Margaret Mitchell: Perhaps that is it.

If, as you say, the system is to be largely self-financing or cost neutral to the state, will recovery costs be added to the original fine? I think that you have suggested that that will be the case.

John Campbell: They will be added to the debt and paid by the defendant.

Margaret Mitchell: How will that work? Is there a danger that the recovery element could become larger than the original debt?

John Campbell: The current law in Scotland prescribes the order in which the debt should be settled in such a situation. First, the diligence expenses—the expenses of the sheriff officer who serves the various documents—must be paid. Thereafter, any interest that has accrued on the debt must be paid. Next, court expenses are to be settled. Lastly, the original debt should be paid. If in the 14-day period a defendant makes acceptable proposals for payment to the creditor, those payments will be allocated in the first instance to the expenses incurred and lastly to the fine.

Margaret Mitchell: I have a question about service. What guarantee do you have that someone has received the notification? They may be on holiday or have a second property.

John Campbell: The law prescribes certain modes of service of legal documents in Scotland that is undertaken by a sheriff officer. All documents are served in the context of those rules. If a defendant is on an annual two-week holiday during the summer, after discreet inquiry and being satisfied that the defendant is resident at the address, the officer can lawfully deposit the document in the dwelling-house, via the letter box. That is followed up by an additional copy, which is sent by first-class ordinary postal service.

Margaret Mitchell: What happens in the case of a second residence?

John Campbell: A second residence is not a residence, so the document would not be deposited there, but at the main residence.

Margaret Mitchell: So inquiries would be made to find out what the main residence was.

John Campbell: Yes.

Margaret Mitchell: That is interesting.

The Convener: I refer you to the reply that you gave to Margaret Mitchell about the process when a fine or debt is involved. You are suggesting that a £50 debt may end up costing the debtor a great deal more. Do you agree that that may be the reason why the Executive is not keen to employ sheriff officers?

John Campbell: I am not entirely sure. It is ironic, because the individuals in the Scottish Executive who are presently considering the Bankruptcy and Diligence etc (Scotland) Bill have come to the clear conclusion that sheriff officers pay a key role in Scotland's legal system. They have acknowledged the dilution of our work and are fearful that, if things continue in the same way, certain areas in Scotland may not be provided with a sheriff officer service. They have agreed that all steps should be taken to increase our workload. There may be a breakdown of communication somewhere in the Scottish Executive.

The Convener: I listened as a layperson to your description of all the different processes that are involved, which are presumably costing someone money. Is it fair to say that, if a person is fined £100 but fails to pay and we employ sheriff officers to recover the debt, that process, which you have described, could be costly?

John Campbell: Yes. However, under the model that we have in mind—I have provided your clerk Allan Campbell with a flow chart of that, which we hope will be readily understood—rather than a fine enforcement officer, there would be a fine enforcement administrator. In the first instance, the administrator would request payment of the fine and, if that failed, they would arrange for a field visit with a view to determining whether the case in question should be passed to the sheriff officer. If the likelihood of recovery at the outset is good, and if the offender can pay, I, for

one, do not see why we should be concerned about the offender covering the expenses as well, if he is wilfully withholding payment of a fine.

The Convener: That is your view. I am open-minded about the matter. We have heard from Sheriff Principal McInnes, who has strong views on the process. You have supporters out there, but I am concerned about adding substantial costs to what is after all a fine. That is not really what I want to achieve. If you are confirming that considerable costs attach to the collection of a low-level fine, I can understand why the Executive has reached the view that it has.

John Campbell: I am not confirming that at all.

The Convener: You said that my assumption that considerable costs would be attached to the collection of a £50 or £100 fine was correct.

John Campbell: Yes, but if the selection process works properly at the outset, vulnerable individuals or people who are in genuine need and who cannot afford to pay the fine should not have their cases passed to the sheriff officer. Our suggestion is that only those who clearly can pay but who are withholding payment should have their cases passed on for recovery by means of civil diligence. Another point is that Scotland probably already has the most debtor-protective laws in the world, because of the sort of concerns that you obviously hold.

The Convener: Okay. What costs would be involved in the process of recovering a debt such as a fine?

John Campbell: That depends on the method that is used. For example, in an earnings arrestment, the first step is to serve a schedule of charge for payment. If the fine was £100, the fee for that would be £25.75. Following a failure to pay after the expiry of a 14-day period, an earnings arrestment process would be started with the employer. The fee for that verges on £27 or £28.

The Convener: I would be grateful if you submitted details on that to the committee, because we would like to see that.

John Campbell: As I said, we can provide the committee with a copy of the table of prescribed fees.

The Convener: We have the prescribed fees, because we are often the committee that agrees them.

Mr McFee: So it is our fault.

The Convener: However, it would be useful to have some examples of how, in the process that you describe, the fees clock up.

Mike Pringle: I want to pursue that point to its conclusion. Mr Campbell said that the initial charge was £25 or so and that, after a 14-day period has expired, an arrestment is then placed on the person's wages, which carries a charge of £28. Would the charge be £25 plus £28?

John Campbell: Yes.

Mike Pringle: I understand that, if, after having arrested the person's wages, you fail to get the money for one reason or another—perhaps the person realises that he will get done and hands in his resignation and disappears—the next step in the process is that the person could appear in court. Could the person have to pay court costs, too? If, after having carried out the processes that carry fees of £25 and £27-odd, you do not get the money, what happens next? Is the person likely to have to make further payments?

John Campbell: Other diligences or enforcement actions can be taken, such as the attachment of non-essential moveable articles.

Mike Pringle: Is there a charge for that?

John Campbell: Yes.

Mike Pringle: So a person could build up a charge.

John Campbell: Yes. However, in the situation that you describe, if the debt was unrecovered through the earnings arrestment prior to the resignation, the fees that relate to that arrestment would be abortive fees.

Mike Pringle: You mean that you would not get them.

John Campbell: Correct, because the diligence was unsuccessful.

Mike Pringle: So the charges could effectively go up to about £50, come back down to £25 and then go back up again later. One or two examples like that would be very useful.

On the very first page of your submission, you state:

"Most disappointingly our proposals appear to have been disregarded during the pre-Bill consultation process."

Could you expand on that?

12:45

John Campbell: The issues of the citing of witnesses for the prosecution and the recovery of fines have been under consideration in our society for several years now. We have regularly attempted to engage in dialogue. We have repeatedly written to the Crown Office, the police forces and others. Unfortunately, our submissions and requests to meet and discuss matters appear to have been ignored.

Mr McFee: It probably is not for this witness, but I will try to put this point in the form of a question. You will be aware of the proposal under the bill to

discount fines by up to 50 per cent. Effectively, if somebody can and does pay, they will pay £50 of a £100 fine. If they cannot, they will end up paying £100. Is that a form of taxation on those who cannot afford to pay as well?

The Convener: This is why—

Mr McFee: That is a difficult one for the witness before us, but perhaps the committee should discuss that point.

The Convener: I take the point. There is no fixed view about fine enforcement; we are just listening at the moment. It would be helpful, Mr Campbell, if you could set out for us some examples of, for instance, collecting a £100 fine as a debt. What are the processes? Where could the situation end up? What could it end up costing the person?

John Campbell: The flow chart that I am leaving with the committee illustrates the various avenues that are open to a creditor. If I were to go down the attachment and exceptional attachment route and set out the fees besides each action, I am sure that, by the end of it, you would be fairly horrified to see how the costs add up. The system works, however, and there are a great many individuals who intentionally withhold payment.

A good parallel for the committee to consider might be the current situation regarding certain councils engaging in the recovery of parking fines, including South Lanarkshire Council. I know that that authority has found the recovery of those fines, using diligence, to be cost neutral.

The Convener: You outlined to the committee the fact that the fee for the citation of a witness is £25.75.

John Campbell: That is the fee for the service of a charge for payment.

The Convener: Yes. Is there an outwith-hours charge, or is that it?

John Campbell: There is. The fee after 5 pm on a weekday, not including Friday, is one third of the prescribed fee in addition. After 5 pm on a Friday evening, and on a Saturday, it is 75 per cent of the prescribed fee.

The Convener: Added on.

John Campbell: Yes. As I said earlier, those are the present prescribed fees. We have been anxious to consider the numbers, complete some research and possibly come up with an alternative table of fees for prosecution witness citations.

The Convener: We have noted that you have said that. That is helpful.

Mr McFee: Presumably, as your members are all private companies, it will be a matter for them whether or not they wish to engage in this type of work, as it was for the collection of the poll tax, for example, which some companies opted not to do for a number of reasons, including the small size of the debts involved. It would be a matter for the Parliament to set the fees should the work that we are discussing be pursued, if that is the route that is followed.

John Campbell: Yes.

Mr McFee: And it would be a matter for your members to decide whether or not to take up such work.

John Campbell: Correct.

Mr McFee: So the fees would not simply be imposed by your members.

John Campbell: Correct.

The Convener: There is the small matter of the public sector budget that would be required to use the fee system to cite witnesses, but we will just have to weigh that consideration up against the current costs and the effectiveness of the system.

Mr McFee: That is why I asked about the cost for serving a warrant; the question was not answered.

The Convener: That brings us to the end of our questions. Thank you very much for your concise evidence and for the flow chart that you have submitted to us. We will have a chance to look at it in some detail. Any examples that you can give us on the subject that we were just discussing would be highly appreciated.

John Campbell: I will send those to you.

The Convener: Thank you. That ends this evidence-taking session. We will briefly go into private session to draw out some of the main issues for our report on the bill.

12:50

Meeting continued in private until 13:09.

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