JUSTICE 2 COMMITTEE

Wednesday 14 November 2001
(*Morning*)

Session 1

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JUSTICE 2 COMMITTEE

31st Meeting 2001, Session 1

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Bill Aitken (Glasgow) (Con)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)
*Mrs Margaret Ewing (Moray) (SNP)
*George Lyon (Argyll and Bute) (LD)
*Mrs Mary Mulligan (Linlithgow) (Lab)
*Stewart Stevenson (Banff and Buchan) (SNP)

*attended

WITNESSES

Iain Gray (Deputy Minister for Justice)
Deputy Chief Constable Kenneth McInnes (Association of Chief Police Officers in Scotland)
Chief Superintendent Allan Shanks (Association of Scottish Police Superintendents)

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERK

Claire Menzies

ASSISTANT CLERK

Fiona Groves

LOCATION

The Chamber

Scottish Parliament

Justice 2 Committee

Wednesday 14 November 2001

(*Morning*)

[THE CONVENER *opened the meeting in private at 09:46*]

09:58

Meeting continued in public.

The Convener (Pauline McNeill): I welcome everyone to the 31st meeting of the Justice 2 committee. As usual, I remind everyone to check that their mobile phones and pagers are switched off. All members should have a copy of the revised agenda and additional papers. I have received no apologies and we have a full attendance today. Thank you for that.

There is a consultation document on liquor licensing laws, the deadline for which is 16 November. I have not been told that the Justice 1 Committee will consider the issue, but I thought that I should let members know about that document, which will be of interest. If members want to make a submission to the consultation exercise, they can do so. If they think that liquor licensing laws are a matter for the committee, we can discuss the issue when we next consider our future work programme.

Subordinate Legislation

Draft Small Claims (Scotland) Amendment Order 2001

Draft Sheriff Courts (Scotland) Act 1971 (Privative Jurisdiction and Summary Cause) Order 2001

The Convener: Our first agenda item deals with two draft orders. I refer members to the note by the clerk, J2/01/31/2, which sets out the background and procedure. I advise members that there is a small typing error in the first line of paragraph 3. The note reads “1998”, but it should read “1988”. Members should also note petition PE416, from the GMB union, which relates to the orders that we are considering. They will also note that additional papers and correspondence about the orders have been circulated. In addition, some late e-mails have arrived this morning. I also draw members’ attention to parliamentary questions about the orders lodged by Brian Fitzpatrick, copies of which have also been circulated.

I am not required to declare an interest, but I shall do so. I declare, for the record, that I am a member of the GMB union.

The debate can last up to 90 minutes, although I do not think that that is likely. I shall call members to speak after the Deputy Minister for Justice has spoken. The committee will then decide whether it wants to recommend the orders, whether it wants further information or whether it does not want to recommend the orders.

I welcome the Deputy Minister for Justice, Iain Gray. Please speak to and move motions S1M-2424 and S1M-2425.

The Deputy Minister for Justice (Iain Gray): I will speak about the two orders together, as they are very much a package. The purpose of the orders is to increase the different financial limits, known as the jurisdiction limits, which apply to two of the three forms of civil court procedure in use in sheriff courts in Scotland. The increases are intended to improve local access to justice.

The draft Sheriff Courts (Scotland) Act 1971 (Privative Jurisdiction and Summary Cause) Order 2001 will increase both the privative jurisdiction of the sheriff court—the financial limit up to which proceedings must be brought in the sheriff court—and the summary cause limit from £1,500 to £5,000. That will give litigants access to summary cause procedure for cases up to the new limit of £5,000.

The draft Small Claims (Scotland) Amendment Order 2001 will increase the small claims limit

from £750 to £1,500 and will exclude personal injury actions from the small claims procedure. That will benefit those who want to raise claims up to the new limit using that low-cost procedure, which is designed for litigants to use themselves. The removal of personal injury actions will further assist litigants by allowing access to appropriate procedures for those specific cases. In addition, the order will increase the present expenses limit for small claims in line with the increase in the value of the claims to which the procedure will apply.

With the committee's forbearance, I shall provide some details of the effect that the increases will have on the business and procedures of the sheriff court.

Ordinary cause procedure, which is a more formal procedure, would be available to litigants who wish to pursue claims for payment of money exceeding £5,000, and also for cases such as family actions, including actions of divorce and actions relating to parental rights and responsibilities, and for actions of interdict. Summary cause procedure, which is less formal and more closely timetabled, would be available to litigants who wish to pursue claims for sums exceeding £1,500 and up to £5,000, and also for certain non-monetary claims such as actions for recovery of possession of heritable property. Small claims procedure, which is informal, cheap and litigant-friendly, would be available to litigants who wish to pursue monetary claims up to £1,500.

Summary cause procedure as we now know it was introduced in the sheriff court in 1976. Its origins were in the Grant report, a royal commission report published in 1967. Enabling legislation was introduced by the Sheriff Courts (Scotland) Act 1971. The present summary cause and privative jurisdiction limits of £1,500 were fixed in 1988 when the small claims procedure was introduced.

In 1980, the Royal Commission on Legal Services in Scotland recommended the small claims procedure as follows:

"there should be a small claims procedure within the sheriff court which is sufficiently simple, cheap, quick and informal to encourage individual litigants to use it themselves without legal representation."

The basis for that recommendation is also contained in the Sheriff Courts (Scotland) Act 1971. The present jurisdiction limit for small claims has remained unaltered since the procedure was introduced in 1988.

The proposals to increase the jurisdiction limits in the sheriff court have been the subject of extensive consultation. In July 1998, the Lord Advocate, who at the time had policy responsibility for such matters, issued a consultation paper. The Lord Advocate sought views on a range of possible increases to jurisdiction limits; an option of forum for personal injury actions for sums that fell within the small claims limit; and the provision of an additional level of expenses for small claims that exceed £750.

Two hundred and forty-four copies of the consultation paper were issued and 53 responses were received. Those who responded are listed in the Executive note, of which members have a copy. The responses demonstrate the substantial support that exists to increase the jurisdiction limits in accordance with the provisions in the order.

A large majority of consultees favoured increasing the small claims limit to £1,500. A smaller number favoured an increase in line with inflation, which, at that time, would have produced a figure of approximately £1,200.

When the small claims procedure was introduced in 1988, a decision was taken to include actions for personal injury. At that time, it was recognised that potential problems might arise from the relative complexity and expense of the claims and that, in the light of experience, changes might have to be made. Research was commissioned to monitor the impact of the small claims procedure on personal injury claimants and litigation. The research report recommended providing a right to opt in to the small claims procedure. In the course of the consultation, views on that proposition were canvassed. However, such an amendment would require primary legislation.

The terms of the research and the nature of many of the responses suggested that it was necessary to take a decision about the future of small claims for personal injury. We took regard of those findings and of the position in England and Wales, where personal injury actions were excluded from recent increases in small claims jurisdiction. The small claims order that is before the committee today provides for the exclusion of personal injury actions from the small claims procedure. The exclusion addresses many of the criticisms in the research report. It also means that litigants who require to pursue such claims will benefit from having the right to apply for legal aid.

At present, no expenses are payable for claims below £200 and expenses for claims up to £750 are limited to £75. The order proposes increasing the £75 limit to £100 for claims up to £1,000 and for an additional level of expenses to be introduced for claims that exceed £1,000. Consultees broadly supported those proposed increases in the expenses limits, although differing views were expressed as to how the limit should be applied.

The views of consultees on the increase to the summary cause and privative jurisdiction limits ran across the range of values that were offered in the consultation paper. Some consultees favoured an increase to £3,000, while others suggested an increase as high as £50,000. It was also suggested that consideration be given to prescribing different limits for summary cause and privative jurisdiction limits, with the privative jurisdiction limits being increased to £50,000. That was the view of sheriff principals, who saw that that would remove more low-value cases from the Court of Session. That proposal would also require primary legislation.

It seems to me that the passage of time alone justifies the changes proposed, when one bears in mind that the existing limit has been in place since 1988. Taking into account the mixed views of respondents, as shown in the consultation, and the position elsewhere, where the equivalent limits are much higher than those that are proposed today, I consider £5,000 to be the right level at which to set the limit. That is because that figure, being at the lower end of the range, is around the middle of the range set out in consultation responses, with the same number of consultees seeking increases above and below that figure.

It seems to me that those increases in the jurisdiction limits are justified. Many people believe that the increases were warranted before now. The increases may not satisfy everyone, but they reflect accurately the views that were expressed by the consultees who responded to the consultation.

The committee may know that the orders were first presented for consideration last year but, before the orders were debated, ministers were persuaded that the conditions for change were not right. In particular, the point was made that an on-going review of the procedure rules for summary cause and small claims should first be completed. That review is now complete and it is my intention to change the jurisdiction limits at the same time that the new rules come into force, which is likely to be April of next year. I am satisfied that the time is right to make the changes. They will benefit the large number of litigants who will, as a result, have access to the informal, quick and relatively inexpensive court procedures for summary causes and small claims.

I appreciate that the committee has before it the GMB union's petition. When I come to close, I will be happy to deal with issues regarding the petition that may be raised in the debate.

I conclude by re-emphasising that the purpose of the orders is to improve access to justice and to provide quick and inexpensive outcomes for claimants.

I move,

That the Justice 2 Committee recommends that the draft Small Claims (Scotland) Amendment Order 2001 be approved.

That the Justice 2 Committee recommends that the draft Sheriff Courts (Scotland) Act 1971 (Privative Jurisdiction and Summary Cause) Order 2001 be approved.

The Convener: Before we begin, members should bear in mind that we are involved in a debate and not in an evidence-taking session.

The background note that members have on the orders sets out

"On 21 February, the then Deputy Minister for Justice, Angus MacKay wrote to the then Convener of the Committee, Roseanna Cunningham, indicating that the Executive no longer intended to move the Orders (JH/00/7/10). He had received late notice of concerns requiring further investigation before the Orders could be implemented."

Has there been continuity in the investigation of late notice of concerns?

Iain Gray: Is the convener looking for a response? I am not sure whether I can respond to your question now, or whether you want me to sum up at the end of the debate. However, I can answer the question.

The Convener: If you could.

Iain Gray: The key concerns that came into play at the time that the orders were previously laid before the Justice and Home Affairs Committee were concerns about the scale of the solicitors' fees that would apply in summary cause cases and about the table of recoverable expenses.

Progress has been made since then and that leads us to believe that the time is right to return to the orders. That position is also summarised in the Law Society of Scotland's letter to the committee. It addresses those two points. First, the Law Society sets out that:

"it is important to add however that in our view it will be essential that successful parties in Summary Cause litigation are not penalised by being unable to recover the cost of bringing the litigation from the unsuccessful party."

To that end, we will be making full representations on the summary cause fees table to the Lord President's advisory committee on fees, prior to our meeting with that committee on 17 December.

Secondly, the society says that it now feels able to support the changes. In paragraph 2, it says:

"Following a comprehensive review of the Summary Cause Rules by the Sheriff Court Rules Council, we are now satisfied that our concerns in relation to Summary Cause procedure have been addressed."

The key point is that the scale of fees must follow the change to the jurisdiction limits that are proposed in the privative jurisdiction and summary cause order. In its letter, the Law Society of

Scotland is expressing confidence that that will happen. I have given a commitment that the new orders will not come into force until the new rules and the scale of fees that flows from them come into force.

Those were the two key concerns when the orders were previously laid. Those have now been addressed, which is why we are returning to the orders and laying them again.

Mrs Margaret Ewing (Moray) (SNP): I realise that this is supposed to be a debate, but in some ways we are asking questions of the minister.

I was interested in the issue that he raised about the exclusion of personal injury claims. Most of us were receiving e-mails, faxes and phone calls about that issue up until last night. Will he clarify when the exclusion will be effected in legislation and when the details will be available to those who are involved?

I will pick up on one of the points raised by the GMB. So much of all this comes back to money. The GMB claims in its submission to committee members that some £40 million that was earmarked for the increased resources necessary for personal injury cases has been handed back to the Executive, because of the possible increase in human rights cases. Will the minister confirm whether the money has changed hands? What is the Executive making available for personal injury claims?

10:15

Iain Gray: On the last point, I am not aware of that sum of money having been earmarked for personal injury claims and handed back. I think the point made in the petition is that £40 million of resource for the court system had been set aside to deal with human rights cases, but has not been required. The point was a general one about additional resource having been made available to the courts and not having been used. That is my understanding of the point that is made, although the petition came to us very late—as I know it did to the committee.

I will make two points about personal injury claims. When the orders come into force, the first change will be that personal injuries will be removed from the small claims procedure. The key advantage to litigants will be that they will become eligible to apply for legal aid to pursue those claims. The second change is that the orders will allow for special rules for personal injury claims within summary cause procedure. That will have an impact on the kind of expenses that become recoverable. That will mean, for example, that the requirement to seek expert medical evidence will become a recoverable expense in personal injury cases taken under summary cause procedure.

Mrs Ewing: What are the implications for the legal aid budget?

Iain Gray: We have considered that and it seems to us that the impact on the legal aid budget will not be so great that it cannot be dealt with within the current budget. I make the point that I always make when we discuss legal aid: the legal aid budget is demand-led, so if the changes lead to further calls being made on the legal aid budget, those calls will be met.

Bill Aitken (Glasgow) (Con): Personal injury claims are the nub of the matter. The minister has alleviated some of the concerns. I would be interested if the minister, at some juncture, could talk us through the steps that would be taken in a personal injury claim of an estimated value of £4,000 that results from an accident that someone has had in the course of their employment. I ask him to outline how the claim would be pursued, the type of action under which it would be pursued, the expenses that would be available and the availability of legal aid. That would provide reassurance.

There are other points. First, the Court of Session's traditional function has been not only to make determinations on individual actions; it also helps to formulate the law of Scotland. If a great number of actions are taken out of the Court of Session and go to the sheriff court, that invaluable function might be, if not lost, diluted. That is a concern.

The number of cases that would be called in sheriff courts throughout Scotland is another concern. Sheriff court timetables have to give priority to criminal matters and to certain civil matters, for example custody cases involving young children. That is perfectly understandable. What will be the time and resource consequences for the sheriff courts in that respect, because that must be considered?

There is also the point of legal principle, which has been upheld in Scotland for many years, that the party to an action should be able to determine under which jurisdiction the action is held—that is, whether it is held in the sheriff court or the Court of Session. That principle was upheld as recently as 1990 in a judgment by Lord President Hope. Although what is being proposed has attractions in respect of the administration of the law, it appears that there are ways in which principles are being diluted, and I question whether that is desirable.

Iain Gray: I will start with the final point and go backwards. No principle is being diluted, because what we are discussing is a change to the jurisdiction limits, which exist already. We are discussing the point at which they are set, so I do not see that we are changing a fundamental principle.

You asked how a claim to the value of £4,000 would be handled. It would be handled under the new orders under summary cause in the sheriff court. Having said that, if the case was particularly complex or difficult—and the point is made in the petition and probably elsewhere that claims of lower value can be just as complex and difficult as large claims—there is the possibility of a remit first to ordinary cause procedure, and to the Court of Session, if the court considered that to be appropriate. That addresses the point about the right to have the case heard in the court in which the pursuer wants it to be heard.

The point was made about the importance of the Court of Session in making the law of Scotland. That is correct. The issue is how many cases relating to claims of between £1,500 and £5,000 are heard and defended in the Court of Session. As far as we can find, the number per year is in the low 20s. Something like 0.5 per cent of personal injury cases fall into that category, so the particular group of cases that we are talking about—those that help to make the law—is very small. Most of the cases that are defended and heard in the Court of Session are of significantly higher value than £5,000. Indeed, the other aspect of the Court of Session that sometimes—

The Convener: I am sorry to interrupt you, but I want to stop you on that point and ask a question about the numbers that you have given us. That information is useful, but what if we add the number of cases that settle for less than £5,000? The petitioners made a point with which the committee has a lot of sympathy, about the right to negotiate a settlement by going to the Court of Session. The petitioners' main point is that that right would be lost. You cannot examine only the number of cases that are defended and concluded in the Court of Session; you must also consider the cases that are lodged and settled.

Iain Gray: There are two different points. I was responding to Mr Aitken's point about the role of the Court of Session in developing the law of Scotland by taking its decisions. My point is that the effect of passing the order will be small, because the number of cases that fall into the category of having the potential to change the law is very small. Your point is different, and it is important.

There is no doubt that the vast majority of cases of the kind that we are discussing are settled. That makes it difficult to obtain evidence on what occurs in those cases and to judge what the impact of change might be. The vast majority of outcomes involve a private arrangement between the parties.

There is concern that, although the cases raised in the Court of Session are mostly of significantly greater value than £5,000, many of them are settled for less than that amount. If that is the situation, concern about the scale of recoverable expenses—what could be recovered and the costs that would have to be carried by the litigant or a trade union that backed the claim—could have an impact on the outcome. If a case was raised in the Court of Session but settled below the limits, the scale of fees and recoverable expenses that would normally apply would be the Court of Session scale. That would be the situation unless the opponent raised an action with the court to have a lower scale of expenses applied. The evidence that we have suggests that that hardly ever happens. There is no evidence that the court would as a matter of course agree to such an action.

I am not convinced that the central concern about cases being raised in the Court of Session but settled for less than £5,000—the privative jurisdiction limit—would have the impact that has been suggested. However, I return to the point that I made initially: it is very difficult to obtain evidence on what happens in such cases. If the Parliament approves the order, we will commission a monitoring and research project that could cover the first 12 months of operation of the new jurisdiction limits. For the first time, we would endeavour to find a way of obtaining evidence on what happens in cases that are settled as well as in cases that are defended. That might prove difficult. It would require consultation with the legal firms that do the work and the examination of cases that have, for example, been anonymised. Nonetheless, I believe that we must address the issue, because at the moment the private nature of settlements means that we do not have the evidence base that we need.

Bill Aitken: I want to return to the issue of personal injury claims so that I can be satisfied that the measure will not in any way be prejudicial to those. A claim for £4,000 would be dealt with under the summary cause procedure.

Iain Gray: Yes.

Bill Aitken: Legal aid would be available to cover the legal expenses that were claimable. What are you attempting to do here? Are you attempting to set up a situation similar to that which prevails in England? I would be greatly reassured if you could deal with those points.

Iain Gray: Bill Aitken is correct to say that legal aid would be available. The scale of expenses that would apply would be the summary cause scale. As I said, the letter that the committee has received from the Law Society of Scotland makes it clear that it intends to ensure that the existing provision is changed in a way that does not disadvantage litigants. It is not possible to agree that before considering the orders, because the scale of fees must flow from the jurisdiction limits.

I repeat that there will be a special procedure and a special table of fees and recoverable expenses for personal injury claims, which will allow for expenses that are particular to that kind of case—for example, the requirement to seek medical evidence—to be included and, therefore, recoverable. The orders go to some length to address the concerns that lie behind Mr Aitken's question.

The orders are not driven by the situation in England and Wales, which is different, although in my opening remarks, I referred to the middle-value claim limit, which is comparable to summary cause procedure in England and Wales, which stands at £15,000. We are proposing a privative jurisdiction limit that is significantly lower.

10:30

Bill Aitken: But, in England and Wales, personal injury claims have been removed from the equation, in a simplified procedure.

Iain Gray: Yes, in England and Wales, personal injury claims have been removed from the small claims procedure and we propose to do the same. That will allow people to apply for legal aid and it will mean that the scale of fees will not be the restricted scale of fees that applies to the small claims procedure.

Bill Aitken: Thank you—that is very helpful.

Stewart Stevenson (Banff and Buchan) (SNP): It is probably worth while my saying at this stage that I am minded to oppose these orders, although I am prepared to be persuaded by the debate and the minister's answers. My reason for opposing the orders relates to concerns that have been raised about the consultation process. It seems unusual that at this stage and at the second attempt to make progress with the orders, we still find ourselves bogged down by considerable misunderstandings over technical issues. I would have expected that by this stage things would be relatively straightforward and would not involve a huge amount of debate.

Like everyone else, I have received a lot of information over the past 24 and 48 hours—right up until 15 minutes before I came to the committee. I would point particularly to a letter from the solicitors for the GMB. It says:

> "Our union clients are, as you will see from their Petition, very concerned about the effect of the proposed Order and in particular … the lack of consultation with themselves as major users of the Court of Session."

I find it slightly baffling that the union should say that and I am in two minds as to why it should do so. Is it that the union had a responsibility to take the initiative and make its case heard? Yes, of course, it had a role in doing that. Or, is it that the Executive—in this as in other issues—is consulting far too narrow a circle of regular consultees? I find it astonishing that, after all this period and after two rounds of consultation, the GMB still says that it has not been consulted.

If the GMB is correct in saying that it is a major user of the Court of Session for personal injury cases, the minister and his colleagues in the Executive ought to have anticipated the need to consult the GMB. That raises significant questions about the consultation process. I give notice that, if unanswered questions remain after today's debate, it is likely that I will raise the issue again in Parliament, so that it can be more widely explored and discussed. However, if I have misunderstood, or if the GMB has in some way failed properly to represent its members on these issues, I am perfectly prepared to be persuaded today. I will be interested to hear what the minister has to say.

Iain Gray: I, too, find the comments in the GMB petition on the lack of consultation rather puzzling. As the convener made clear, the consultation process took place some time ago, in 1998, when 244 consultation papers were sent out. We received 53 responses, including one from the Scottish Trades Union Congress. I have the covering letter to that response, which is on GMB notepaper and was signed by the GMB's legal officer. It is clear that the GMB participated in that consultation, although its response was part of a collective response from the STUC.

It is unfortunate that the long time that has elapsed between the consultation and reconsideration of the orders may have made it unclear that our action relates to that consultation. I have some sympathy with that view, so I will explain why it has taken so long to act on the 1998 consultation.

The then Lord Advocate was responsible for the policy and launched the consultation. By the time that the responses had been received, the UK Government had already stopped legislating on matters that were to be devolved under the Scotland Act 1998, which was then imminent. Therefore, the Lord Advocate did not proceed with the legislation as he had intended. After the Scottish Parliament was established, progress was made on the orders and they were laid before the Parliament.

As we have discussed, the orders were withdrawn at that stage because of concerns about solicitors' fees and the scale of recoverable expenses for summary cause procedure. As a review of the rules has now been conducted and the Law Society of Scotland has been assured that solicitors' fees and recoverable expenses will be dealt with—as it says in its letter to the committee—the time is right to make the orders. However, three years have elapsed in the interim

and the GMB may not have connected the previous consultation with the current action.

Stewart Stevenson: In the light of the difficulty that appears to have arisen on consultation, is the minister prepared to undertake on his part or that of his Executive colleagues to consider the consultation processes that the Executive carries out, to prevent a recurrence of such a situation? If views conflict between a major user of the system—in this case, the GMB—and you, we should understand why and ensure that that does not recur, because such situations are generally not helpful.

Iain Gray: I am happy to take that point. We are always prepared to consider the effectiveness of our consultation. I repeat that the delay that was caused by the passing of the Scotland Act 1998 may be a factor. I hope that that will not apply in future. I take Mr Stevenson's point.

Stewart Stevenson: I accept the minister's point too.

Mrs Ewing: I will move on from consultation. Minister, you said en passant to Bill Aitken that if the orders were passed, they would be monitored over, say, the next 12 months. Will you give more detail on that monitoring? Have guidelines been produced for that? How will the civilian population and not just the legal profession be involved in that?

Iain Gray: If the changes are made, we will need to monitor their effect on the distribution of civil business in the sheriff court and between the sheriff court and the Court of Session. It is also important to consider the effectiveness of the new summary cause and small claim rules. I suggest that the mechanism for doing that will involve the Scottish Executive's central research unit. I intend to instruct that unit to produce early research into the outcome of the jurisdiction changes and their effects on the sheriff court and the Court of Session.

I said that research would be conducted over the first 12 months of the operation of the rules. We should be clear that that will not mean 12 months from now.

I have also said that we need to commission research to evaluate the working of the new rules on summary cause and small claims and the effect that they have not only on claims settled in court but—as the convener said—on those that are settled out of court, which are, in fact, the vast majority of claims. My one caveat is that that is an evidence base that has not been developed before—you will appreciate that there are some difficulties because of confidentiality. However, it should not be beyond the wit of the central research unit to identify a way of gathering that information. I expect the unit to consider the shift from ordinary cause to summary cause, from summary cause to small claim in the sheriff court and from the Court of Session to the sheriff court; and to examine how the new rules are operating. In addition, there will be research into the impact or effect on settled cases.

Mrs Ewing: Will that be reported back to Parliament?

Iain Gray: Yes.

Mrs Ewing: And, if necessary, will another review take place?

Iain Gray: My intention is that the review will be published and laid before Parliament. I would expect the committee to return to the matter at that time and, if the review had not appeared, to ask where it was.

The Convener: I refer you to the long list of consultees to the original consultation. I did not see a consensus emerging on a limit of £5,000; more people were in favour of a limit of £3,000. It troubles me that severe concerns have been expressed to the committee so late in the day by many firms of solicitors, people who are active in the field of personal injury and the petitioner. A central theme of many of the submissions is that people would have signed up to an inflationary increase. I have no idea what that would have turned out to be. Can you address any of those points?

Iain Gray: An inflationary increase is difficult to calculate. It depends on the method you use for the calculation, but it would be honest to say that an inflationary increase—even at 2001 levels—would lead to a limit of less than £5,000. It would perhaps be of the order of £3,000—that is an approximation, though, and I would not like it to be regarded as an exact calculation. We propose an increase that is somewhat above an inflationary increase. I make two points on that. First, it provides some headroom in future, as the value of money changes, so that the limits do not become out of date almost immediately. I suppose an alternative approach would have been to change the limits annually. That would not be the proper way to go on a decision that—as we have seen this morning—is important and difficult and ought to be made for a reasonable period.

Secondly, the intention is not particularly to shift cases from the Court of Session to the sheriff court but rather to shift the balance within the sheriff court between ordinary cause procedure, summary cause procedure and small claims procedure. It is our view that summary cause procedure is a litigant-friendly and, most important, timetabled procedure, which allows the relatively quick settlement of claims. Perhaps I will return to that. Your point is entirely fair, convener, that there was no consensus on what the limit should be.

The table in your paper of responses on summary cause and privative jurisdiction limits presents that quite graphically.

The limits in the responses ranged from £3,000 to £50,000 and, although we do not have a consensus, we have chosen something like the median. The most important point is that our proposal is at the bottom end of the range of limits that was considered, although it is not the lowest, which was £3,000. That is how we chose to deal with the responses.

10:45

The change in the limits for the summary cause procedure is meant not only to take account of inflation, but to shift the balance in the sheriff courts. One purpose of that is to give more litigants access to a procedure that is timetabled. Such litigants can be certain that their claim will have an outcome in a given time. The time that procedures take is a concern. I think that the committee is considering a petition on cases of asbestosis and how they are dealt with in the Court of Session. A fundamental concern about that matter—which I think is raised in the petition—is that claims in the Court of Session take an inordinate length of time. One purpose of setting a limit of £5,000 is to have more cases considered by a procedure that is timetabled and therefore quicker. That will give better access to justice and better and quicker outcomes for litigants.

The Convener: Some consultees made the point that whatever limit is agreed, the additional work will be done in the sheriff courts. Those consultees would not be happy to sign up for a new limit or an increased number of cases in the sheriff courts, unless there were additional sheriffs and courtrooms. That point has not been addressed.

Iain Gray: The point was made that many of the claims that we are discussing are settled. We believe that the main effect of the changes in the sheriff courts will be to shift the balance between the three different procedures that are available in sheriff courts. The overall outcomes on work will not be extreme. The Scottish Court Service is aware of the orders and is trying to plan accordingly. As I said in response to Mrs Ewing, it is important that we monitor the effect of the orders. If the research shows that they are imposing a new and unacceptable burden, we will have to address it. However, we believe that such a burden will not come about.

The Convener: The committee received the background papers only recently and has had only the past couple of days to try to understand the procedures. The issue of recoverable expenses is detailed and deserves more time than we can devote to it. We talked earlier about legal aid. Are there circumstances in which, when legal aid is successfully applied for, the solicitor deducts from the settlement any expenses that the pursuer has to pay?

Iain Gray: If someone is successful in their application for legal aid and in their claim, a contribution might be recoverable, depending on the legal aid rules.

The Convener: Is it normal practice for solicitors to deduct the difference from the settlement?

Iain Gray: The recoverable contribution is normally recovered from the opposition or defender.

The Convener: But it is possible that the pursuer will still have a bill outstanding, even if they qualify for legal aid.

Iain Gray: If the pursuer is successful and expenses are considered by the court to be recoverable, or they are recoverable as part of the private agreement, that should not happen. I make the point again that that is one of the concerns at the heart of what happens in settled cases, where the evidence is difficult to get at. When the committee considers the impact of the jurisdiction limits in a year from now, or a year from April, it will be crucial that there is some evidence to show whether or not that has happened. That will be central to the committee's deliberations at that time.

The Convener: There are no further questions from members, so I invite the minister to wind up.

Iain Gray: I do not want to take up too much of the committee's time. I tried to answer questions as we went along, but I have points to make on three key concerns that were raised by the petition and by other means. We discussed the first concern, which is consultation. I tried to show the committee that consultation took place, although I conceded that it took place some time ago, and I tried to explain the reason for that.

Secondly, there are two specific concerns about access to the Court of Session. On the first of those concerns—the right to have a case heard in the Court of Session—I pointed out that, in cases of particular complexity or difficulty, it is possible for cases to be remitted to the Court of Session. The other concern was about the effect of raising an issue in the Court of Session if it leads to a settlement that is below the privative jurisdiction level. The answer to that lies in the Law Society of Scotland's commitment that it will ensure that the summary cause fees table—once it is agreed by the Lord President's advisory committee—does not prejudice or penalise those who are involved in litigation in summary cause. I have also made the

point that a case that is raised in the Court of Session and settled would normally recover expenses on the Court of Session scale, unless the defendant—the losing party—was to ask the court to apply the summary cause fees. As things stand at the moment, such a motion would be extremely unusual. The issue of access to the Court of Session will not have the effect that is feared.

The third concern is about the scale of fees for solicitors and expenses that can be recovered. That was the key issue that led to the orders being withdrawn previously. Since then, the review of the sheriff court rules has been completed. We have also introduced in the orders special rules for personal injury cases under summary cause, so that expenses such as those for medical evidence will be covered and recoverable.

I believe that the orders go some way to meeting those concerns. However, I have stated today that the Executive will monitor and evaluate the impact of the orders, should they be implemented, for around 12 months from their implementation, and that we will go to some lengths to include, as far as confidentiality and so on allows, the impact on cases that are settled, as well as those that are defended and heard.

Finally, I understand that the committee has three options this morning: it can recommend rejection or acceptance of the orders, or it can ask for further information. If further information were to come before the committee, by whatever means, we ask that the Executive be given sight of it and that we be given the opportunity to respond to and debate the points that are made.

The Convener: The orders must be dealt with by 26 November, which is the date by which Parliament would expect us to make a recommendation. I realise that the issue is complex and has become controversial in the past few days. I am mindful that we must make an important decision. If members are not satisfied that they understand all the issues, or if they wish more information, they should not feel under pressure to make a decision today. We could deal with the matter at our next meeting—I will give members room, should they need it. There is a lot of paperwork—even I, as convener, have not had the chance to read all the information.

I have concerns about the letter from the Law Society of Scotland, which was presented to me this morning. In the society's original submission in 1998, £3,000 seemed to be its view on the upper limit. The letter does not address why the Law Society is now happy to recommend an upper limit of £5,000. Only the Law Society—not the minister—can answer that and I feel that it should do so.

The petitioner has raised a number of issues and is entitled to have an answer, whatever the committee recommends. It might not be possible to get answers to all the questions. I am particularly interested in the number of Court of Session cases that settle and I would like to find out whether it is possible to get those figures.

There are other issues, which perhaps only the petitioner can address. In spite of the explanation, there are diverse views about the consultation. The GMB makes it clear in its petition that it was not consulted. Members heard from the minister that a letter was received from the GMB. We need further clarification on that.

Bill Aitken: The matter is quite complex and it is not reasonable that we should be asked to make a determination on it today. A considerable volume of correspondence has been received by all members and, as Mr Stevenson testified, a letter was received as recently as 15 minutes before the start of the meeting.

The matter would benefit from some individual research by members, so that we can be satisfied that we are following the correct course of action. The decision would have far-reaching consequences for such claims and we must be entirely satisfied that, if we agree to raise the upper limits, we will not prejudice vulnerable litigants. I want another seven days to investigate the matter.

Stewart Stevenson: I sympathise with the comments of the convener and Bill Aitken.

The minister mentioned the petition from Frank Maguire on behalf of Clydeside Action on Asbestos. I would like that group to have the opportunity to comment—within the next week, so that we are not delayed unreasonably—on how it might benefit or be disadvantaged. The minister suggested that the group might benefit and I would like to hear its view.

Mrs Mary Mulligan (Linlithgow) (Lab): I will not repeat what others have said, but I agree that another week would be helpful. The minister gave us answers to several questions. Having received the additional letter, I would like time to put all the information together so that we can feel confident about the decision that we take.

Mrs Ewing: I sympathise with the concept of not taking a clear decision today. My only problem with that is that we might be inviting another load of material to arrive late the night before and early in the morning of the committee meeting. Is there a mechanism to ensure that the questions are addressed in next week's discussions?

George Lyon (Argyll and Bute) (LD): I have great concerns about how we ended up in this position. With two days to go, we suddenly

discover that there is a controversial order that needs to be discussed and about which lots of issues are being raised. Timetabling is a major concern—why do we have such a short time to get to the bottom of genuine concerns that have been raised by the public?

The minister has done a reasonable job of answering some of the questions. Nevertheless, the committee has not had time to consider the matter properly. If we decide to take a further seven days and if any more points need to be raised, we have to get the information quickly to allow us time to consider it before the next meeting.

Many of us have commitments. We are out and about doing other things and it is not always easy to gather information and find time to read it. If information does not arrive until Monday or first thing on Tuesday morning, that puts us in an invidious position. Any further information on the matter must get to us as soon as possible. I have not seen the letter from the Law Society to which the convener keeps referring, and I do not think that anyone else in the committee has seen it. Those are serious issues that must be addressed.

11:00

The Convener: The orders were laid on 25 October and processed in exactly the same way as any other order, so there are no difficulties with that. The orders must be dealt with by 26 November so that Parliament can hear what the committee has to say. Parliament will make the decision; all that we are doing is giving Parliament the committee's view, which will be influential.

A lot of information has arrived in the past 48 hours, which is not enough time for members to take it all in. There are some questions in members' minds and this morning's session has been helpful.

As Margaret Ewing has rightly pointed out, I am not inviting another barrage of e-mails and correspondence. It is up to the public or firms of solicitors to contact members. However, I am clear that I have a responsibility to ensure that the questions that members have asked today are the right questions to ask. The GMB, which went to the trouble of petitioning the Public Petitions Committee, should have its questions answered. The letters that arrived late this morning should be put in order with a note to explain the main points. If members agree, that is how I propose to deal with the matter over the next weeks.

Scott Barrie (Dunfermline West) (Lab): I do not want to prolong the discussion unnecessarily. However, on your point about a barrage of communication, I do not think that the committee needs any more information on the issues. The issues have been raised and we need time to consider them, the minister's responses and our decision. We do not need more people lobbying us and telling us what the issues are; we are clear about the issues. We are having difficulty with assimilating that information in such a short time.

The Convener: That is helpful. Are we agreed?

Members *indicated agreement.*

The Convener: Members will get a background note summarising that information. We might have to exchange correspondence in order to get the answers we are seeking. We will do that as quickly as possible. I will meet the clerks this week and it will be an agenda item for next week's meeting.

I thank the minister and his team.

I offer members a five-minute comfort break.

Meeting adjourned at 11:03.

11:15

On resuming—

Crown Office and Procurator Fiscal Service

The Convener: I thank the witnesses for their patience. Good morning and welcome to the Justice 2 Committee. We have with us Deputy Chief Constable Kenneth McInnes, from Fife constabulary, who is representing the Association of Chief Police Officers in Scotland—which we will call ACPOS from now on—and Chief Superintendent Allan Shanks, who is president of the Association of Scottish Police Superintendents, or ASPS. We have an additional guest this morning in Jack Urquhart, who is the general secretary of the ASPS.

I welcome all three witnesses and thank both organisations for their written submissions, which have been very helpful. We will go straight to questions, if that is okay with the witnesses. If you feel, however, that the committee has not covered all the issues in its line of questioning, I will give you a chance to sum up at the end, so that everything that you wish to offer the committee as evidence is on the record.

Stewart Stevenson: I have a series of questions that are, in essence, about your mechanisms for managing resources in your relationship with procurators fiscal. They are not all big questions, so do not worry too much. I ask both the chief superintendent and the deputy chief constable to answer my questions.

First, have you categorised the various types of communication that you have with the Crown Office and Procurator Fiscal Service—COPFS—and do you analyse the proportion of resources that each type of communication consumes?

Do you wish me to expand on that?

Deputy Chief Constable Kenneth McInnes (Association of Chief Police Officers in Scotland): No, I am quite happy to answer that question. There is no difficulty in doing such categorisation. The communications that we have with the Procurator Fiscal Service cover a range of issues, including cases in respect of criminal charges, sudden deaths, fatal accident inquiries, complaints against the police, search warrants, major inquiries, citations and other matters.

The answer to the second part of the question, on whether we have analysed the commitment of resources in respect of that, must be no. In many aspects of our role, we see ourselves as being agents of procurators fiscal. There has never been a time when we have had to question the amount of commitment that we have given to that process.

Chief Superintendent Allan Shanks (Association of Scottish Police Superintendents): Communications exist at all levels, from electronic media to personal contact. There is some variation, depending on the areas in which different procurators fiscal operate. There is more personal communication between officers and the fiscal service in the smaller and more rural areas but, as Kenneth McInnes said, we act as agents for procurators fiscal when investigating crime. We are—on paper—very much at their direction, although in fairness the majority of investigations into more minor crimes are directed by the police and are ultimately reported to the fiscal service.

It would be difficult to work out and categorise how much time is spent on telephone calls, on personal visits, on writing reports and on e-mail correspondence with the various procurator fiscal offices. There is no direct categorisation under which we can say that X per cent of our time is spent reporting or communicating with the fiscal service.

Stewart Stevenson: I will move on to my second question. Are there key performance indicators—KPIs—service-level agreements or other targets that you must meet in dealing with PFS requests? Similarly, are you aware of KPIs or service-level agreements that the PFS must meet in responding to requests that you might make of it?

Deputy Chief Constable McInnes: On performance indicators in the criminal justice system, we record at different stages statistics for analysis of the way in which cases are prepared and submitted to the PFS, and also of the way in which cases are reported to the children's reporter through fast-tracking of juveniles. A series of indicators are kept and analysed for those processes.

Stewart Stevenson: Do you publish the analyses?

Deputy Chief Constable McInnes: I am unsure where the analyses are published, but they are widely acknowledged within the criminal justice system. I am sorry that I do not have a clear answer to your question.

Stewart Stevenson: Would it be possible to supply that information later?

Deputy Chief Constable McInnes: I am sure that it would be.

Stewart Stevenson: Thank you. Superintendent?

Chief Superintendent Shanks: I have nothing

further to add to that.

Stewart Stevenson: Okay. We are getting there. Do you have a planning system and/or a methodology, such as PRINCE—projects in controlled environments—which is widely used in public services, that you use to plan and resource court work and/or the associated fiscal work?

Deputy Chief Constable McInnes: The Scottish police service uses PRINCE II methodology for all its planning processes. I am not aware of a particular application of PRINCE II methodology in planning the way in which we provide support and communication to the PFS.

Chief Superintendent Shanks: I add that most of our procedures with the PFS have evolved over the years through practice and expediency. I must say that much of our work with the PFS is reactive, so it would be difficult to legislate for every set of circumstances. We are an organisation that responds to demands from the PFS.

Stewart Stevenson: I have a small final question. Paragraph 11 of the ACPOS paper that is before us refers to "electronic signing of documents". Can you say how much effort or time it would save if you had the technical and legal ability to sign electronically documents that you currently exchange by e-mail and similar means?

Deputy Chief Constable McInnes: That matter relates to case-related papers. It has arisen specifically from the monitoring arrangements that have been put in place to observe the ways in which the guidance from the Lord Advocate on the application for and grant of search warrants has been applied. Clearly, there is an issue about the time it takes to get search warrants, where they are justified. The issue of electronic signatures has come up in relation to attempts to ease the time scales for getting search warrants. I know that that has been discussed in a joint working group on development comprising ACPOS and the Crown Office. I believe that there is broad consensus that the issue could be taken forward to legislation.

Scott Barrie: The written submission from Sir Roy Cameron stated that the PFS is requesting more information in police reports. What sort of information has the PFS been requesting lately?

Deputy Chief Constable McInnes: The issue arises from additional demands that are a particular result of the European convention on human rights. We have all assessed our procedures to ensure that we have properly fulfilled our responsibilities on human rights. The COPFS tries to ensure that it has satisfactory levels of information when decisions are made about the way in which trials are conducted, evidence is led and prosecutions are made. Naturally, that has led to more demands for clarification on a range of issues, which involves the police in more effort. That is the main reason for the increase in demands.

Scott Barrie: Is the information necessary or crucial in the marking of cases by procurators fiscal and deputes? Does providing that information place an unrealistic burden on officers?

Deputy Chief Constable McInnes: No. I believe that the requests for information are proper responses to the needs of human rights legislation and good practice. The reasons for supplying the information are not a problem, but supplying it naturally creates additional work.

Scott Barrie: Is that view shared by officers? You might understand that it is necessary, but do police officers who deal directly with the Procurator Fiscal Service feel resentment because they are being asked for more and more information? Do officers understand fully why the information is necessary?

Deputy Chief Constable McInnes: Chief Superintendent Shanks might be able to comment on that. From my observation, the request for more information creates in some instances a perception that there is increased demand without good cause.

Chief Superintendent Shanks: Front-line officers have the clear perception that demands from the Procurator Fiscal Service are increasing for no good reason. We all subscribe to ensuring that the rights of individuals are adhered to. The Scottish justice system is rightly proud of its past treatment of offenders—it adhered to human rights principles before the introduction of human rights legislation.

Although a third of cases that are submitted are not proceeded with in court and about 15 per cent of cases are marked "no proceedings", a considerable number of requests for extra information come from the Procurator Fiscal Service. Officers perceive that those requests add nothing to the decision-making process. They are concerned because they work more, but do not get a return on or an explanation for the requests for information.

Scott Barrie: The submission from ACPOS mentions

"the unrealistic timescales for delivery of legal documents."

In a reply to one of Stewart Stevenson's questions you mentioned search warrants and time delays. Will you clarify the nature of those legal documents and how you think the time scales could be improved?

Deputy Chief Constable McInnes: Could you draw my attention to that part of the submission?

Scott Barrie: I hoped that you would not ask me

that. I think it is in section 2.

Deputy Chief Constable McInnes: I have a point to make about time demands. As Allan Shanks said, given our responsibility as part of the criminal justice system, it is in the nature our work to supply information for the Procurator Fiscal Service. We respond to demand, which can involve fairly substantial documentation with a turnaround period of a day. That demand on forces, police officers and staff can be extensive, but they respond well. That is the nature of the work with which we are involved. I am not in a position to comment on whether demands for case preparation or papers could be made earlier.

Chief Superintendent Shanks: It is clear to officers that in many matters we appear to be running up against the proverbial wire and close to end deadlines. For example, officers might receive a request to collect a document from the Procurator Fiscal Service that is to be served on the same evening or the following day, to allow due process to continue.

We accept that such procedures must be hurried at times, but the fiscal service is perceived to be leaving things to the last minute because of pressures in its environment. We receive late requests for statements and additional documentation, and witnesses are cancelled or re-cited. All that adds to police officers' burdens. We make mistakes too, and we leave things late, but the perception grows that the situation at the fiscal service is becoming more fraught.

11:30

Mrs Ewing: You referred, in response to my colleague, to the number of cases that are marked "no proceedings". Your written submission says that there

"appears to be wide disparity across the country in the practice of writing-off cases as 'No Proceedings'."

Does evidence for that exist?

Chief Superintendent Shanks: It is fair to say that much of the evidence is anecdotal. My association's response is a combined response. Some comments reflect the consensus, and others reflect different experiences in Scotland.

We have found from our discussions that minor breaches of the peace in smaller and more rural areas are proceeded with because pressures on fiscal services in such areas are not great. However, in more urban environments, minor cases appear to be more readily marked "no proceedings". That leads us to think that in areas of greater demand on the fiscal service, marking cases "no proceedings" might be an expedient means of reducing the case load for courts.

Scott Barrie: I will conclude this part of the questioning and direct my question to Mr Shanks. Your association's paper says that the police are

"expected to provide analysis of evidence"

in their reports. What does that mean?

Chief Superintendent Shanks: The standard police report system that is in place, which has been agreed throughout Scotland, is meant to provide a common style of report to which all police forces subscribe and whose content all fiscals understand. In my 30 years' service with the police, I have seen the police report grow from six lines of explanation about the circumstances of a case to about three pages of A4.

Officers are now expected to detail the evidence. They are required to show antecedents—background to the case—and to provide analysis of the evidence, which might say something like, "The witnesses Smith and Jones saw the accused in the bar prior to the incident and spoke to him while he was drinking heavily. The witnesses Brown and Green saw the accused lift a tumbler and threaten witness So-and-so." The evidence must be broken down to show the detailed corroboration of some elements of the charge. Some people consider that that is doing the fiscal service's job.

Many years ago—dinosaur that I am—I spoke to a procurator fiscal, who asked me why the police bothered to put so much in their reports. He was talking about the smaller police reports from days of old. He said that when somebody appeared before him from custody on a charge of breach of the peace, all that he wanted was sufficient information to explain to the sheriff or the justice the circumstances of the case, if the accused pleaded guilty. If the fiscal wanted more detailed information, he would obtain that when statements were submitted to allow the case to proceed to trial.

Last year's statistics show that more than 50 per cent of court cases were dealt with on their first appearance. Police officers must write a lot to complete extensive reports that—were there the agreement of the fiscal service—could be reduced to provision of sufficient information for the fiscal service to provide an explanation when a case went to court and the accused pleaded guilty, and for the court to make a decision on bail and other matters. Perhaps a compromise solution could be found.

Scott Barrie: I do not want to put words in your mouth. My understanding of what you are saying is that police officers might think that they are now doing the job that the procurator fiscal service did in the past.

Chief Superintendent Shanks: That is the clear perception of the officers. They ask why they

must do that, when they have gone through a mental analysis of evidence to ensure that there is sufficient evidence to support a person's arrest, or caution and charge. They wonder why they must bother explaining that in the report.

The Convener: Before we move on, I would like to clarify what you said about late requests for information. It is important for the committee to understand whether that has been a feature of the system for as long as you can remember, or whether it is a recent phenomenon. Does it relate to a reduction in resources or is it part of the culture of the organisation?

Deputy Chief Constable McInnes: I am not aware that late requests for information are a new phenomenon. That problem has always existed and relates to events surrounding cases that require information. The question is whether information could be requested earlier to allow it to be dealt with more systematically. I cannot think of an example to give the committee.

Chief Superintendent Shanks: It is fair to say that that is not a new issue—it has not happened only in the past few years. Late requests for information have been happening for a long time. Perhaps the advent of e-mail means that we are getting more of them.

George Lyon: You seem to be contradicting what you said earlier, which was that the Procurator Fiscal Service seems to be under more pressure now than it was previously and that requests for information and processing of information were coming later and nearer deadlines. Have you evidence to substantiate that, or is it only anecdotal evidence that suggests that the system is under more pressure than it was? You contradicted yourself with your two statements.

Chief Superintendent Shanks: I am not consciously contradicting myself. If I have done so, I apologise. There is strong anecdotal evidence. If you spoke to most operational police officers, they could give you specific examples of when they have received from the fiscal service late requests for information, having submitted reports a considerable time previously.

I will go through the process. An officer submits a charge report, which goes to the fiscal service. That results in the accused being called to a pleading diet. The accused then pleads not guilty and a request comes in for statements, which are submitted. A short time before the trial, the officer might get a request for additional information or a clarification on a point. That leaves a clear impression in the officer's mind—he or she wonders why the fiscal service did not pick that matter up earlier, because the officer must now rush around at the last minute to obtain the information to go to trial.

George Lyon: That is not based on evidence—it is just anecdotal.

Chief Superintendent Shanks: I cannot quantify the number of late requests for information.

Bill Aitken: Subsection (xi) of section 3 of the ACPOS submission refers to

"inconsistencies in the desertion of cases and use of fiscal fines".

Could you confirm that when you say "desertion of cases" you mean cases that have been deserted and "no pro-ed", in the words of the trade. Can you provide examples of such inconsistencies, anecdotal or otherwise?

Deputy Chief Constable McInnes: I support my colleague's points, but unfortunately the evidence is anecdotal. The reference to the matter in our written submission is to try to provide some assistance in considering areas in which the perception has developed that decisions are not clear to the observer. The silence of the Crown Office and Procurator Fiscal Service leads to those perceptions. However, there is only anecdotal evidence on the matter; I cannot support the perception with any hard evidence.

Bill Aitken: Cannot you even support it on the basis of fiscal fines?

Deputy Chief Constable McInnes: We have never carried out comparative analysis of how fiscal fines are decided across different fiscal areas. We would do so only if we needed to show some differentiation between decisions that are made in different areas or on different types of cases. As I said, the evidence is anecdotal and the perception simply increases. Three or four paragraphs in our written submission fall into the same category. The point is that the Crown Office and Procurator Fiscal Service does not have to explain its decisions, which in itself engenders a degree of uncertainty about its decisions.

Bill Aitken: If the police were sufficiently concerned by the fact that a fiscal was not proceeding with a case, or was dealing with the matter with a fiscal fine, would not some senior member of the force phone the fiscal to ask about the thinking behind the fiscal's decision?

Deputy Chief Constable McInnes: I refer you to our written submission, which mentions the fact that there are very strong links between the police service and the fiscal service in a number of different matters. For example, within any police area, there are regular liaison meetings between senior officers and procurators fiscal, at which concerns are usually addressed to the satisfaction of both sides. That said, it would be wrong to

assume that all issues that might concern individual officers would always find their way to those high-level meetings.

Bill Aitken: Your written submission states that

“the introduction of conditional offers and fiscal fines”

has

“resulted in a decline in the reporting”

of relatively minor matters. Would you welcome greater use of conditional offers and fixed penalties?

Deputy Chief Constable McInnes: Yes. Those are sensible ways of trying to streamline the process in the criminal justice system. However, they also have the consequences, which have been mentioned. We were simply answering the question that we were asked.

Bill Aitken: Are you aware of the collection rate in relation to conditional offers?

Deputy Chief Constable McInnes: I do not have the figures to hand, so I cannot give you a clear answer to that question.

Bill Aitken: Are you aware that payment of the first £5 instalment in effect bars further proceedings. Have you found that to be a problem?

Deputy Chief Constable McInnes: Not as such. Once a matter is passed to the procurator fiscal service, we play very little part in the process. As a result, officers might feel frustrated if they later discover that a case was concluded unsatisfactorily, although such information is generally not available to them. It all becomes part of the slightly mystical process that takes place when a matter leaves the police.

Bill Aitken: Mr Shanks, will you enlarge on your organisation’s concerns about the working of the fiscal fines system?

Chief Superintendent Shanks: There are probably two issues to address. First, we need to find out where a procurator fiscal might utilise a fiscal fine. There is certainly evidence that some fiscals are more open about the areas of legislation where they would use that option. For example, a local byelaw in one area prohibits drinking in public and the fiscal has indicated that a fine would be the first course of action in such cases. However, that still requires police officers to take considerable time to complete a full standard police report in the knowledge that—as you rightly point out—the process stops as soon as the first instalment of the fiscal fine is paid and the recovery of that money is left in abeyance.

A further issue is that, because of the use of a fiscal fine, there will be no record of previous convictions for the person. The Association of Scottish Police Superintendents would support a move towards greater use of a fixed penalty-type arrangement for minor offences. That would reduce reporting procedures for the police, allow moneys to be recovered and a punishment to be imposed and, perhaps, allow some record of conviction. However, fines recovery in that area must be taken out of the judicial process as that would impose additional burdens in respect of default warrants, for example.

11:45

Bill Aitken: Do you have any evidence of the repeated use of fiscal fines on an individual offender?

Chief Superintendent Shanks: No such evidence has been given to me.

Deputy Chief Constable McInnes: I understand that that happens, but I have no evidence for the committee. The fiscal service would recognise that that happens.

The Convener: I want to follow up on fiscal fines, which are a major part of our inquiry. To use your words, there is a perception that there is more use of fiscal fines. That is not borne out in the figures, but representations have been made to me as a constituency MSP that fiscal fines are used for more serious offences, for which they should not be used. I have been given examples of repeat offenders who have been given fiscal fines and examples of offences that clearly do not fall into the category of offences for which fiscal fines should be imposed. My evidence is anecdotal, but fiscal fines are a matter of sufficient concern to the committee to be included as a key area of investigation. Any information is therefore important.

It was suggested that it is important to divide up the inconsistencies geographically and according to types of crime. Do you have any evidence that fiscal fines are being used for more serious crime?

Deputy Chief Constable McInnes: I do not have any clear evidence that I can bring to the committee that identifies discrepancies in the use of fiscal fines. Concerns have been expressed from time to time, but I am not aware that the issue has been raised in such a way that it has led to ACPOS or any other police association analysing it in greater depth. Unfortunately, therefore, I am not in a position to provide you with such evidence.

The Convener: So concerns have been raised with you.

Deputy Chief Constable McInnes: Concerns have been expressed from time to time in normal work involving officers, victims and individuals in the community, but never in a way that has led us

to consider the issue to be of particular concern.

I made the point to Mr Aitken that many issues need to be addressed by police organisations. To a large extent, fiscal fines are considered, analysed and evaluated by the fiscal service itself.

Chief Superintendent Shanks: Police officers do not have a strong follow-up interest in particular cases. Their first indication that someone has gone to court and pleaded guilty is a request for statements. Our biggest contact is feedback from the victims of crime and incidents. When they hear that someone has not gone to court, they contact the police and ask why. The point was made in respect of "no proceedings" cases. Sometimes we get it in the proverbial neck if a case has been marked "no proceedings". The victim of the crime will ask the police why the case was not proceeded with, but we are not privy to the decision. Such cases cause frustration among officers. Our work in preparing cases would be reduced if there were greater understanding of the fiscals' policy in respect of "no proceedings" cases. We would have the opportunity simply to give a warning in the knowledge that the case would not be proceeded with in court.

In Edinburgh many years ago, careless driving was reported for fairly minor crashes and accidents until the procurator fiscal indicated that they would not normally proceed with a careless driving charge unless there was an injury, extensive damage or a particularly blatant type of careless driving. As a result of that policy, we managed to reduce the number of reports that we had to prepare in relation to careless driving. If that could be extended to an indication that certain types of more minor offences would be more appropriately dealt with by a warning, it would reduce the work load on the police and the Procurator Fiscal Service as they would not have to consider the reports and mark them as "no proceedings" cases.

The Convener: We have heard from others that the communication at a formal level is not a great concern but I want to deal with day-to-day communication with the Procurator Fiscal Service. The ACPOS submission mentions that problems are experienced in contacting procurators fiscal out of hours. Could you expand on that?

Deputy Chief Constable McInnes: The issue of contacting procurators fiscal outwith business hours relates to some but not all fiscal areas. Occasionally, it is difficult to contact procurators fiscal out of hours. In the worst cases, those difficulties hamper inquiries. Historically, there is an incompatibility between the Procurator Fiscal Service, which works office hours, and the police service, which works 24 hours a day. The ability to link across can be strained before the start of a working day, for example.

The inability to contact procurators fiscal outwith business hours means that it can be difficult to get search warrants. That was highlighted in the procedures that were examined and evaluated following the Lord Advocate's guidance. The Crown Office and Procurator Fiscal Service recognised that more had to be done to ensure that procurators fiscal are more accessible by senior investigating officers who are carrying out inquiries. Pilot studies were carried out in Edinburgh, Inverness, Dumfries and Stranraer to find out whether the situation would be improved by issuing new equipment to procurators fiscal, such as portable faxes and laptop computers, to enable communication by e-mail and so on.

It has been accepted by the Crown Office and Procurator Fiscal Service that there can be difficulties in accessing procurators fiscal. That is true across the range of inquiries in which police officers become involved. Clearly, there is a need for early contact in serious inquiries, in which the procurator fiscal plays an important role.

The Convener: What is the procedure now? I know that there is a duty system for deaths, but, other than for that, how would you contact a procurator fiscal outwith office hours?

Deputy Chief Constable McInnes: There would be a communication from the procurator fiscal's office that would indicate who was on call. That information would be available to senior detective officers and would be placed in the force operations room.

The Convener: We have heard strong evidence from the Procurators Fiscal Society, which is concerned about day-to-day liaison with the police. I would like to pursue your suggestion that the Procurator Fiscal Service should appoint a dedicated member of staff to liaise with each police division. Do you share the concerns of the Procurators Fiscal Society that liaison is not what it should be?

Deputy Chief Constable McInnes: There are issues that are often not addressed properly at working practitioner level, because the correct person cannot be accessed. Anything that could be done to address that problem would be helpful. In certain initiatives, the police have identified an officer to be involved with the fiscal service. The same could be done by identifying a nominated officer from the fiscal service to be involved with a police division. That would be a helpful approach.

George Lyon: I will ask about the management of cases going to court. The final paragraph of section 2 of the ACPOS submission suggests that

"ever increasing demand for more information, has placed a heavy demand on forces to service these needs, to the detriment of front line tasks."

The submission goes on to suggest that the task

of managing legal documents and witnesses could be streamlined to be more efficient and effective. How can that be achieved? Perhaps Mr Shanks would also like to comment on that point.

Deputy Chief Constable McInnes: In looking for processes that might assist in the management of legal documents and witnesses, it is important to recognise the fact that we are already some years down the path of electronic communication with the fiscal service. That is a significant step forward. In many ways, it has brought advantages to the police service by requiring a degree of standardisation across all fiscal offices. However, it inevitably leads to difficulties in marrying up hard copy documents with the electronic reports that are submitted to the fiscal. The fiscal could introduce arrangements to ease the way in which the police manage those documents and to ensure that papers are properly married up with the electronic version that goes to the fiscal.

After several years, the management of witnesses is still a major concern to all organisations in the police force because of the amount of police time that is spent at court, often unnecessarily. In 1992, an Accounts Commission report identified that only 2 per cent of the police time spent at court was used productively in giving evidence. Things have developed significantly since then, and the introduction of intermediate diets has certainly gone some way towards clearing away those cases that would not require witnesses to attend court. We have also entered into arrangements whereby police officers make themselves available in the police office or thereabouts so that they are on quick call if they are needed as witnesses. That goes some way towards solving the problem, but we still have the extremely complex process of trying to ensure that witnesses are brought together at a convenient time when the accused is available and—this is what interests us—when police time can be properly utilised and not wasted. We cannot afford to have police officers sitting around courts doing nothing.

Chief Superintendent Shanks: I agree with Mr McInnes's comments, particularly in relation to documentation and the use of officers. It is certainly the case that officers' time spent at court is unproductive. I wonder whether there are areas in which we can make better use of joint minutes of agreement between prosecution and defence in relation to evidence that will not be contested, which would allow officers not to appear in court.

I contrast our situation, where officers regularly are cited to attend court but do not appear, with the situation in England and Wales. I am not advocating a move to a structure similar to that in England and Wales because I have great respect for the Scottish legal system. However, my colleagues in England and Wales rarely appear in court, because agreement is reached with the defence on areas of evidence. There is an opportunity to develop that side much further.

12:00

Mr Lyon also mentioned documents. Witness citations and the service of legal documents is another big issue for the police. There has been an experiment with the postal service of witness citations, which the association is keen to have expanded. The service of witness citations impacts considerably on police officers. Service of witness citations and subsequent cancellations are real issues for police officers. Anyone could come to my local police station and watch the fax machine on a Friday afternoon as it churns out cancellations for court on Monday. That places an immediate and considerable burden on the police. There is an opportunity to make greater use of the postal service in cancellation—the earlier cancellation of witnesses would avoid the need for personal contact.

George Lyon: Section 3 of the ACPOS submission makes recommendations about how the current process could be redesigned by introducing a fast-track system of search warrant applications, citing and countermanding of witnesses, and more joint minutes with defence agents. Have those suggestions been discussed with the Crown Office? If they have, what was the outcome of those discussions?

Deputy Chief Constable McInnes: You would need to consider each of those ideas separately to understand how much discussion there has been and what the ideas are based on. I am happy to go through those points for you.

The initial point is about

"introducing a fast track system of search warrant applications".

We mentioned that there is a joint working group involving the Crown Office and Procurator Fiscal Service and ACPOS. That group is monitoring the pilot study of a new approach to applications for search warrants. That approach involves a fast-tracking element to ensure that procurators fiscal can be contacted quickly. The pilot studies have been relatively successful and it has been agreed that we will expand the use of the fast-tracking process throughout the country. We will also provide training to fiscals and the senior detective officers involved.

George Lyon: Where have those pilot studies been carried out?

Deputy Chief Constable McInnes: In Edinburgh, Inverness, Dumfries and Stranraer.

George Lyon: How long have they been going on?

Deputy Chief Constable McInnes: For the better part of the past year, as I recall—certainly between 2000 and 2001.

I turn to the second point about

"audit systems for existing arrest warrants".

That causes concerns in some areas. In one force area, some effort has been made by chief officers and the local fiscal to ensure that the fiscal plays a greater part in ensuring that arrest warrants have been properly administered. In most force areas, when the arrest warrants reach the police, the police are left to administer them. Clearly, if they are not enforced properly, issues may arise with individuals who claim that they were in a position where the warrant could have been enforced. We need to ensure a strict audit procedure. In one area of Scotland, work has been done to bring the procurator fiscal into the process and that is relevant.

My colleague has referred to the issues that are associated with our third suggestion, which was about

"making the citing and countermanding of police and civilian witnesses more efficient".

There might be long lists of 30 or 40 civilian witnesses in High Court trials. A huge demand is placed on the police if we receive an instruction from a procurator fiscal late in the afternoon that those witnesses are not required for the following day and if that is repeated two or three times in a week. We have been involved constantly in discussions with the Crown Office and Procurator Fiscal Service about where the responsibility for that lies. Until now, we have been unsuccessful in shifting the responsibility—it is a major bugbear.

The pilot scheme for postal citations has proved to be significantly successful and we are awaiting its roll-out throughout Scotland. It would appear that progress is being made.

George Lyon: Will you expand on that point and explain what you mean by postal citations?

Deputy Chief Constable McInnes: As things stand, the responsibility lies with the police to deliver citations manually and to contact witnesses personally to countermand their need to attend as a witness. That is a massive responsibility and work load for the police service. In some areas that task is carried out by police officers and elsewhere it is done by support staff who carry out that role full-time. In any case, it is a big demand.

The move towards postal citations—addressing communications to witnesses through the normal postal system—has proved successful. It is hoped that that move will be rolled out throughout Scotland. There seems to be positive light and progress, but it is a major issue for us.

Allan Shanks has alluded to the suggestion that there should be more joint minutes of agreement with defence agents. Evidence to support that is anecdotal—this area falls into the category of areas where we are unaware of how the Procurator Fiscal Service reaches decisions. At times, there is a concern that, perhaps, joint minutes of agreement are not often pursued as strongly as they should be. I concede that the defence agent and the accused person need to be in agreement before that can be done.

I have covered fully in a previous answer the suggestion that the amount of time spent by police officers on court duty be reduced. Prisoner escort duty is really just an extension of that. Significant work is being carried out to review the way in which prisoner escorts are provided. At the moment, the police take on a significant burden in ensuring that accused persons appear in court and are returned to prison following trial.

For Fife constabulary, there are a number of trips between Kirkcaldy, Dunfermline and Edinburgh over the course of a day. That is a huge burden for the police to carry. A review involving the Crown Office and Procurator Fiscal Service and the courts, which is trying to identify the options for change in that area, is being carried out. For example, in England and Wales the whole system is outsourced; there are options that we can consider and work is being carried out on that.

The Convener: I will stop you there, because there is a lot to get through.

Scott Barrie: I have a question on postal citations. Some of us spent part of our summer recess visiting procurator fiscal offices throughout Scotland. One of the offices that I visited was taking part in the pilot scheme for postal citations. The staff there said that there was no discernible difference between the number of people not turning up when the police had delivered the citation and the number of people not turning up when the citation had been delivered by post. When we reported back, I expressed my concern that the pilot scheme appears to have been going on for some time. Everyone says that it is relatively successful and yet it is not being rolled out throughout Scotland. Do you know of any impediments to that, or is the legal system simply not moving on as quickly as other people think it should?

Deputy Chief Constable McInnes: I know of no impediment to taking it forward. However, I am conscious that there is a need to resolve the associated funding issues, which may have been progressed satisfactorily. If the Crown Office and Procurator Fiscal Service takes on board postal

citations, I know that it will want the funding that goes with those. The police might have to release funding that is currently provided to them for that purpose. That would clearly be a difficulty. I do not know what progress has been made on the issue.

George Lyon: Does Chief Superintendent Shanks have anything to add to that? I had a specific question, but it was addressed in the two previous answers.

Chief Superintendent Shanks: The main points have already been made.

Scott Barrie: You have answered most of the questions that I wanted to ask, which concerned the time spent by police officers in court. I am interested in some of the potential solutions to the difficulties that you have identified and in ways of making more effective use of police time. Could police officers be doing something rather than just sitting around in court waiting to be called before being sent away because they are no longer needed? Are there information technology solutions to that problem? I appreciate that Chief Superintendent Shanks admitted that he was a dinosaur. I am probably not far behind him in this respect and I cannot think of anything off the top of my head.

Deputy Chief Constable McInnes: I can offer the committee a generalisation based on what we have already discussed. It is right for us to use the opportunity provided by a review of the Crown Office and Procurator Fiscal Service to address the issue of police time spent in court. That is very relevant. However, it would be more accurate to say that the issue concerns the whole criminal justice system. If we are to make any progress in this area, we must ensure that all players in the criminal justice system are brought round the table to identify ways forward. Unless all players are involved in the process, we cannot make significant progress. It is not fair for us to suggest that a review of the Crown Office and Procurator Fiscal Service will necessarily produce all the solutions that we are seeking.

Scott Barrie: That point is taken.

Mrs Mulligan: In both written submissions that we have received, it is suggested that there is a need for the Crown Office and Procurator Fiscal Service to be more attuned to local concerns and more aware of enforcement initiatives that are under way. In the ACPOS submission you say that you want to allow

"Procurators Fiscal to become more involved and play an active part in enforcement initiatives"

The ASPS submission states:

"Prosecution policies are … seldom compatible with the needs and expectations"

of local communities. How can that situation be improved? Could organisational and structural improvements be made that would address the problem?

Deputy Chief Constable McInnes: There are ways in which the problem can be addressed, but this issue has important implications for the resourcing of the Crown Office and Procurator Fiscal Service. Like other colleagues, I am impressed by approaches that have been taken in other countries, where an element of the prosecution service is regarded as a community prosecution service. We would like fiscals to become more involved in initiatives by the police to establish priorities through consultation with the local community.

A group is currently reviewing the licensing provisions of the Civic Government (Scotland) Act 1982. Some of those provisions relate to fairly low-level offences, and the Crown Office and Procurator Fiscal Service has had difficulties prioritising them. If the service were in a position to recognise more clearly the strength of local opinion and community needs, it would be able to improve its response to the offences concerned.

Chief Superintendent Shanks: Joined-up justice has to be developed. It goes beyond the police and the Crown Office and Procurator Fiscal Service. For a long time, members of the community have commented to police officers at meetings, "Why did such-and-such happen? Why was nothing taken forward on such-and-such an issue?" The Procurator Fiscal Service has, to a degree, been anonymous in its decision making. There is no openness about why it makes particular decisions. There are examples of good local liaison between commanders in the police and procurators fiscal, but such liaison has to be encouraged.

12:15

Each local authority area now has community safety groups, or community safety forums, and there is an opportunity for local fiscals to be involved in such groups. They may not necessarily attend every meeting, but they are tuned in to the priorities in the area and local policing initiatives. Those policing initiatives are arrived at following widespread consultation with community groups, elected members and interested parties, and through the use of postal surveys, to identify local people's priorities.

There is an opportunity now for the Procurator Fiscal Service to be more in tune with that and to say, "We agree that these are the priorities in the area and we will take action, and if we can't, we will explain why." We all recognise that there are priorities and actions that the fiscal service has to take, but perhaps there should be more openness

and accountability so that the Procurator Fiscal Service can say, "I'm sorry we couldn't follow up on that initiative in relation to anti-social behaviour because we had other priorities in another area." Some explanation would help in that regard.

Mrs Mulligan: Scott Barrie referred to the fact that we have visited a number of procurator fiscal offices throughout the country. On one of those visits it was suggested to me that there is inadequate liaison between the police and fiscals when initiatives are being implemented. Is there a system whereby that can be communicated, or is there a need for improvement?

Chief Superintendent Shanks: Clearly, there is room for improvement. A lot of the communication that exists is down to local personalities. If there were a structure in place such that the Procurator Fiscal Service had a positive role in relation to objectives and local strategies to deal with community issues, that would formalise the procedures.

I know of examples where local commanders and criminal investigation department heads have good liaison with their local fiscal. The local fiscal has signed up and said, "You are dealing with a housebreaking initiative. I will support that. You identify the people you are targeting and I will make sure that they are dealt with collectively by one depute to make sure that there is ownership of the issue." That has been successful, but it is not replicated throughout the country. There is an opportunity to formalise that liaison and build it into procedures so that people are linked up in a more positive way.

Deputy Chief Constable McInnes: Over the past few years, police forces throughout the country have developed an approach to carrying out initiatives that respond to local and national priority needs. Over the piece, there have been times when the police have not involved fiscals sufficiently at the outset. We have learned quickly from that, and if that was a criticism from the Procurator Fiscal Service, it should no longer be a criticism of the eight forces.

George Lyon: I would like to deal with the resourcing of the Crown Office and Procurator Fiscal Service. We have had a submission from the Procurators Fiscal Society that makes bleak reading. It highlights a service under severe pressure, poor morale and an ever-increasing work load. I ask both organisations whether, in their view, the Procurator Fiscal Service is performing adequately. If not, in what other ways does that manifest itself in terms of the service's performance?

Deputy Chief Constable McInnes: From our observations, we get an extremely good service from individuals in the Crown Office and Procurator Fiscal Service. It is a very professional service.

We have touched on areas in which there is a lack of openness in decision making. There is perhaps a need to be involved more in community issues, which would expose for us the resource implications in the Procurator Fiscal Service. We are aware that, day to day, there are heavy resource demands on the fiscal service. However, I am not sure that I am in a position to say whether the fiscal service fails to provide an adequate service. I would stop short of saying that.

Chief Superintendent Shanks: I would not like to criticise the fiscal service. We have considerable professional respect for the work that it does in demanding circumstances. The fiscal service has to react to what we submit to it. As Mr McInnes says, it does a tremendous job in that respect.

However, there is scope to improve the job that the fiscal service does. For example, we sometimes find, when we try to speak to a procurator fiscal about a particular case that we have submitted, that one fiscal has marked up the papers and that we cannot get hold of someone else to make a decision on it. The person who ends up prosecuting the case in court is not necessarily the one with whom we have liaised or who has marked up the papers. We get the impression that that is down to pressure of resources and the fiscal service having to share out the work load among the different staff in the respective offices.

George Lyon: Do you not think that that is a management issue rather than one of resources?

Chief Superintendent Shanks: I do not think that it is a management issue. It is not unusual. Out-of-hours contact was mentioned earlier. I have to say that during-hours contact is also difficult. The fiscal staff are all committed to court work. If we try to get hold of someone during office hours, perhaps to authorise a search warrant, it is difficult to get through on the phone. It is not unusual for us to go and knock on the door to see if there is anybody there.

George Lyon: Do you mean that it is difficult to get through to a procurator fiscal or to the fiscal service?

Chief Superintendent Shanks: I can only speak from my own experience and from anecdotal comments. My experience is that, where there are more resources, there is a noticeable difference in the number of cases that proceed and perhaps a noticeable reduction in the number of difficulties that arise in cases.

Stewart Stevenson: I have a question on access to case files. Are you aware of any steps to

consider the introduction of electronic case management, which is now widely used in business, to provide a range of people with access to cases of one sort or another?

Chief Superintendent Shanks: I understand that, with such a system, cases would be marked up on electronic media and would be available for all to see. The reasoning behind particular decisions would also be available. I also understand that electronic case management would provide an audit trail of various contacts with, for example, defence agents and police officers so that, as required under the European convention on human rights, we would have a proper audit trail of decisions and processes. That would be welcome and would assist in speeding up access to that level of information.

Stewart Stevenson: But you do not know of anything that is happening to deliver that yet?

Chief Superintendent Shanks: I am not aware of it being delivered in my area at the moment.

Deputy Chief Constable McInnes: I think that the Crown Office and Procurator Fiscal Service already has an electronic case management system. Our point is that we do not have access to it. I am not sure that we particularly want access to it, other than to share in understanding some of the decisions that the fiscal service makes.

There is a much wider approach to the development of information technology, which is the integrated Scottish criminal justice information system—ISCJIS. It involves all the criminal justice agencies. The police have been involved right from the outset. It started off with electronic communication between the police and the Procurator Fiscal Service and has now developed to include the Scottish Prison Service and the court service. The project is making significant progress.

In the background, as I understand it, the Crown Office and Procurator Fiscal Service uses its own electronic case management system. That system is not part of the ISCJIS. We do not have access to that information.

George Lyon: You clearly have grave concerns about the reasoning behind cases not being proceeded with. That comes through in your evidence. The ACPOS submission highlights the need to ensure that

"case decisions are consistent with the emphasis upon securing justice, as opposed to what can be effectively managed within available resources".

That is a fundamental issue. Do you have concerns that that does not always occur and can you provide the committee with evidence to substantiate your position?

Deputy Chief Constable McInnes: I will fail you again on that. We do not have evidence to back that up. I return to the answer I have given several times—we are not privy to the decision-making process, which means that a perception will always build up among the individual officers, the witnesses and the victims who are involved in particular cases. I fully understand the reasons for the approach that is taken and the sensitivity associated with the issues but, from time to time, that leaves us slightly concerned about the process that has been applied.

George Lyon: Would you go so far as to indicate that you suspect that that is why some cases are not proceeded with?

Deputy Chief Constable McInnes: That is not how I worded it.

George Lyon: I just ask the question.

Chief Superintendent Shanks: In the most recent year that has been accounted for, nearly 44,000 cases were marked "No proceedings". That is a significant proportion—about 15 per cent—of the cases reported to the Procurator Fiscal Service.

I know that the committee will hear representations on behalf of victims next week. It is important that the victim understands why nothing has happened in a particular case. If we could understand the decision-making philosophy or policy behind decisions, that would reduce our work load considerably and would stop us submitting cases to the fiscal service that will subsequently be marked "No proceedings". The work load of the fiscal service would also be reduced, as it would not have to examine the cases and mark them "No proceedings".

George Lyon: My final question is addressed to Mr Shanks. In your submission, you state:

"The limited resources of Crown Office are leading to a presumption towards early release"—

bail—

"in serious cases (including murder) in order that statutory time limits do not require to be applied."

The Solicitor General has suggested that the current 110-day rule should be re-examined. Would you favour a longer period of pre-trial detention being available in serious cases?

Chief Superintendent Shanks: My personal view is that we should rightly be proud of the criminal justice process in Scotland. The 110-day rule—which has proven to be highly adequate—ensures that people who are subsequently found not guilty are detained in custody for the minimum period of time. My point of view—which I think reflects the view of my association—is that I would

not subscribe to any extension without careful consideration.

Even complex cases work adequately within the 110-day rule, provided that all the procedures are followed through. I would not subscribe to a wholesale extension.

Deputy Chief Constable McInnes: The 110-day rule is a fundamental part of the Scottish criminal justice system. Before considering any change, we would want to consider the reasons for seeking change. We would be happy to contribute to any review.

The Convener: As well as the 110-day rule, there is the Bail, Judicial Appointments etc (Scotland) Act 2000. We dealt with that act as it related to the European convention on human rights. Are you suggesting that more people may have been released on bail since the passing of that act?

Chief Superintendent Shanks: The suggestion arose from comments in our association. Following the introduction of the European convention on human rights and its full application in the Scottish system, a greater number of people were released from custody prior to proceeding. The ECHR has also resulted in a greater number of people who are to appear in court not being kept in custody by the police.

The presumption has moved, perhaps rightly, towards early release and having to have greater justification for keeping someone in custody. The decision boils down to the person's capacity to reoffend, the likelihood of their interfering with witnesses prior to the case coming to court and the seriousness of the case.

The Convener: If more people are being released from bail for those reasons, is that having an impact on an accused person turning up for trial? Are more of them absconding?

12:30

Chief Superintendent Shanks: Bail is an issue that reaches into the wider realms of criminal justice in Scotland. We could quote a number of examples of people who have been released on bail, who reoffend and are subsequently released. It may be that the fiscal service does not have the capacity to remand that person in custody. In that case, the 110-day rule can come into play. It may be that other factors are involved. One example is the persistent housebreaker, who is caught, bailed with a condition not to reoffend, caught again and released. That is not an uncommon occurrence.

The Convener: Do the police have to work to an internal deadline when preparing reports within the 110-day rule time scale?

Chief Superintendent Shanks: Yes.

The Convener: What would that be?

Chief Superintendent Shanks: Different deadlines apply. The procurator fiscal would normally ask for full statements to be made within seven days of a person going to court. If someone is arrested on Sunday and appears in court on Monday, the procurator fiscal would be looking for full statements for the case within seven days. We have some latitude on key statements, but the deadline allows the Procurator Fiscal Service time to go through precognition and develop the indictment. It is fair to say that the deadline gives us tight time scales.

The Convener: I have listened to what has been said about liaison between the police and Procurator Fiscal Service and how that plays out day to day. If additional resources were found to improve liaison and a different approach to openness was introduced, would that improve the quality of justice? If more day-to-day contact was established between the police and local procurators fiscal to ensure that the charges were right in the police report from the beginning, would that improve the quality of justice?

Deputy Chief Constable McInnes: I believe that it would. That would be an application of resources to an area that we all regard as good practice. That would inevitably improve the quality of justice.

Chief Superintendent Shanks: I agree. It would provide openness and mutual understanding between the police and the Procurator Fiscal Service. That openness would be available to members of the public—to use the oft-used phrase, justice would be seen to be done. We would be working together with common goals and we would be pulling in the same direction. It would be very welcome.

The Convener: It is hard to summarise the evidence, as you have given us so much, so I will not attempt to do so.

On that last point, would it be fair to say that your concern is to tackle resources or is it to do that and tackle the culture, to make it more open? Do the two distinct areas need to be tackled?

Chief Superintendent Shanks: I agree with that. We have identified the area of resourcing, but openness and accountability are also important. That goes for both sides: the police and the Procurator Fiscal Service.

The Convener: The committee will consider the inquiry reports into the case of the murder of Surjit Singh Chhokar. What effect will the two reports' recommendations have on the relationship between the Crown Office, the Procurator Fiscal Service and the police?

Deputy Chief Constable McInnes: A number of recommendations detail areas, including witness liaison. Unfortunately, those matters are being addressed elsewhere and I am not in a position to provide the committee with information at this point. The recommendation about the introduction of an inspectorate of the Crown Office and Procurator Fiscal Service is consistent with the information that we have provided to the committee today. That might open up the process by which decisions are made within the Crown Office and Procurator Fiscal Service.

Chief Superintendent Shanks: I am aware that there is an action plan to deal with the recommendations of the Jandoo report. I noted with interest the Lord Advocate's announcement last week of additional financial resources for the Crown Office and Procurator Fiscal Service. We certainly welcome that announcement, which is a positive step forward in addressing some of the issues that we have discussed this morning.

The Convener: Before we conclude, are there any other subjects that have not been covered that you would like to talk to the committee about?

Deputy Chief Constable McInnes: The committee has given me an excellent opportunity to provide evidence, and I am grateful for that. As I said earlier, the review of the Crown Office and Procurator Fiscal Service is an opportunity to raise issues that relate to the criminal justice system in general—that is, all the agencies involved in the criminal justice system.

Chief Superintendent Shanks: I agree. I appreciate the opportunity to speak today. As I said, we must recognise the considerable regard in which the Scottish justice system is held throughout the world. That was demonstrated following the Lockerbie trial. I see the review as an opportunity not to change the system radically, but to influence the way forward so that it becomes more open and joined up.

The Convener: The committee shares your view about the need to move towards a more joined-up justice system—a view which is, I believe, shared by the Justice 1 Committee. In our budget report this year, we made strong recommendations about that. The concept is an important one, which we are debating with the Minister for Justice.

On behalf of the committee, I thank the witnesses, who have covered a range of important subjects. We have tried to take in as much as we can, but we will have the opportunity to scrutinise in detail what you have said because it will be in the *Official Report*. Your contribution has been very helpful to our inquiry.

We have reached the end of today's agenda. I know that today's session has been long, so I thank members for their indulgence.

I remind members that we shall next meet on the morning of Tuesday 20 November. I also remind them that I asked them to pass on details of families or other individuals from whom we should take evidence. I am keen that we hear the experiences of individual families. Unless I hear from members, I shall use my powers as convener to call people from whom I think members would want to hear. I make another plea to members to let the clerks know names as soon as possible.

Meeting closed at 12:37.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

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