

# **JUSTICE COMMITTEE**

Tuesday 23 October 2007

Session 3

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# **JUSTICE COMMITTEE**

## **6<sup>th</sup> Meeting 2007, Session 3**

### **CONVENER**

\*Bill Aitken (Glasgow) (Con)

### **DEPUTY CONVENER**

\*Bill Butler (Glasgow Anniesland) (Lab)

### **COMMITTEE MEMBERS**

\*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

\*Nigel Don (North East Scotland) (SNP)

\*Paul Martin (Glasgow Springburn) (Lab)

Stuart McMillan (West of Scotland) (SNP)

\*Margaret Smith (Edinburgh West) (LD)

\*John Wilson (Central Scotland) (SNP)

### **COMMITTEE SUBSTITUTES**

\*Aileen Campbell (South of Scotland) (SNP)

Marlyn Glen (North East Scotland) (Lab)

John Lamont (Roxburgh and Berwickshire) (Con)

Mike Pringle (Edinburgh South) (LD)

\*attended

### **THE FOLLOWING ALSO ATTENDED:**

Kenny MacAskill (Cabinet Secretary for Justice)

### **THE FOLLOWING GAVE EVIDENCE:**

Alastair Crerar (Scottish Government Police and Community Safety Directorate)

Dr Daniel Donnelly (University of Paisley)

Ken McKenna (Scottish Government Criminal Justice Directorate)

Alastair Merrill (Scottish Government Police and Community Safety Directorate)

Dr Ken Scott (University of Paisley)

Chief Constable Pat Shearer (Association of Chief Police Officers in Scotland)

Barry Stalker (Scottish Government Criminal Justice Directorate)

Stephen Woodhouse (Scottish Government Police and Community Safety Directorate)

### **CLERK TO THE COMMITTEE**

Douglas Wands

### **SENIOR ASSISTANT CLERK**

Anne Peat

### **ASSISTANT CLERK**

Euan Donald

### **LOCATION**

Committee Room 1

## Scottish Parliament

### Justice Committee

*Tuesday 23 October 2007*

[THE CONVENER *opened the meeting at 10:30*]

### Interests

**The Convener (Bill Aitken):** Good morning, ladies and gentlemen. I ask everyone to ensure that their mobile phones are switched off.

We have apologies from Stuart McMillan. I welcome Aileen Campbell and ask her to confirm for the record that she is substituting for Stuart McMillan.

**Aileen Campbell (South of Scotland) (SNP):** I am substituting for Stuart McMillan.

**The Convener:** In accordance with section 3 of the code of conduct, I ask Aileen Campbell whether she has any interests to declare that are relevant to the remit of the committee.

**Aileen Campbell:** I have nothing to declare that is relevant to the committee.

## Decision on Taking Business in Private

10:30

**The Convener:** I invite the committee to agree to take in private items 8 and 9 today and all future consideration of written evidence received and the main themes arising from evidence sessions in our inquiry into the effective use of police resources.

Item 8 is consideration of whether to accept written evidence received in response to the call for evidence for our inquiry into the effective use of police resources. It is common practice for committees to consider such items in private. Item 9 is consideration of the main themes arising from the evidence session. Again, it has been the practice of the committees to consider such items in private.

Is that agreed?

**Members** *indicated agreement.*

## Subordinate Legislation

### Sheriff Courts (Scotland) Act 1971 (Privative Jurisdiction and Summary Cause) Order 2007 (draft)

10:31

**The Convener:** I welcome Kenny MacAskill, the Cabinet Secretary for Justice, who is a frequent visitor to the committee; Paul Cackette, who is head of the civil justice, law reform and international division in the Scottish Government; Hamish Goodall, who is the policy manager for civil procedure and law reform in the Scottish Government; and John St Clair, from legal and parliamentary services in the Scottish Government.

I refer members to paper 1 from the clerk, and paper 2, which is the submission from the Association of Personal Injury Lawyers.

I invite the cabinet secretary to speak to the order but not to move the motion yet, to allow officials to answer questions directly if required.

**The Cabinet Secretary for Justice (Kenny MacAskill):** The Government is committed to improving access to justice for all, so I am delighted to be here today to discuss the order. It is 19 years since the jurisdiction limits were last increased, so the time has come to set more realistic limits.

There are three procedures for dealing with sheriff court civil actions: small claims actions; summary cause actions; and ordinary cause actions. Where cases relate to recovery of a sum of money, that sum determines which procedure the case should follow. Our proposal is that a small claim will be a claim with a value of £3,000 or less. Summary cause procedure will apply for actions for more than £3,000 but less than £5,000, and ordinary cause actions will deal with cases with a value of more than £5,000.

Hard-working Scots who have perfectly valid claims are currently being denied accessible justice due to the existence of an artificially low small claims limit. A new small claims limit of £3,000 will mean that many more people will be able to make use of the less complicated small claims system within the sheriff court to resolve such claims. People who in the past were prevented from pursuing a claim against a business or individual will now be able to do so without having to employ a lawyer, with all the extra expense that that entails. I am sure that, like me, many members will have received inquiries from people who have incurred bank charges and who have been deterred from raising actions because the repayment that they sought exceeded

the small claims limit. Raising the limit will improve access to justice for people in that situation.

As part of the package of new measures announced today, I have decided to remove all personal injury actions from the small claims procedure. Such actions are different in their potentially technical nature and in the fact that legal representation and the availability of legal aid may be important. Personal injury cases are often complex and, in addition to legal representation, may require expert witness evidence and attendance.

There is a choice for litigants as to whether they litigate in the sheriff court or in the Court of Session. In order not to have too many low-value claims in the Court of Session, there is a limit below which that choice does not exist and it is necessary to raise actions in the sheriff court. That is known as the sheriff court privative limit, which we propose to raise to £5,000. The Court of Session is the highest civil court in Scotland. I firmly believe that run-of-the-mill cases below such a reasonable value as £5,000 ought at first instance to be raised in the local sheriff court. The raising of one limit cannot sensibly be considered in isolation from the others, as they are interdependent and impact on one another.

The proposed new levels balance the right to access to justice and its cost to the litigant with the efficient and effective use of court resources. The proposed limits represent an inflation-based increase with a build-in for future anticipated inflation, plus an additional element to signal my belief that an increase is due in principle. They also bridge the gap until Lord Gill reports in 2009, following his review of the civil courts. My expectation is that, as part of his review, Lord Gill will consider jurisdictional issues, including the financial jurisdiction limits.

In conclusion, the order means that, from next January, many more Scots will have better and cheaper access to justice.

**The Convener:** Thank you, cabinet secretary.

**Bill Butler (Glasgow Anniesland) (Lab):** I am not opposed in principle to raising the limits, but I have a number of concerns and questions with regard to the order. The cabinet secretary received a letter dated 16 October 2007 from John Quigley, the general secretary of Unite, in which Mr Quigley makes it plain that the union is disappointed that there has been no consultation. He refers to the

"significant impact upon the legal services which we can offer our members"

with regard to the issue of civil court limits.

He raises a reasonable point when he says:

"I have no doubt that this would have a significantly negative impact upon access to justice and health and safety. Unite believe that a Statutory Instrument with such far reaching implications should not be introduced lightly and should only be introduced after extensive consultation."

The cabinet secretary might wish to respond to the concerns that Mr Quigley raises in his letter.

More generally, it is my information that a similar change to the limits was withdrawn in the previous diet of the Parliament in order that consultation could take place with interested parties, and with stakeholders such as trade unions. Why has there been no consultation? Would the cabinet secretary consider withdrawing the order, consulting and then returning to the committee having had the benefit of such a consultation?

If that is not acceptable, would the cabinet secretary assure the committee that if the order is passed, notwithstanding what Lord Gill recommends in his civil justice review, there will be no attempt to come back to the committee in a year or 18 months' time seeking to raise the level of the summary cause limit yet again? The committee requires assurances from the cabinet secretary to satisfy it that it will not face a further order to raise the limit again. I would be grateful for the cabinet secretary's response to that concern.

Although, in principle, I am not against raising the limits, without such a cast-iron assurance on the question of Lord Gill's civil justice review, I would have to reserve my position with regard to the order.

**The Convener:** As I see it, that is four questions. I ask the cabinet secretary to respond.

**Kenny MacAskill:** I will do my best to answer all four—the convener can chivvy me if I have not done so.

To put matters in context, I should say that I ceased practising in the legal profession when I was elected to the Parliament in 1999. Before I ceased practice, the limits of summary cause and small claims were a matter of debate, not simply within the legal profession but in Scotland generally. That debate has continued since then. As I said, it is 19 years since we had a review, so inflation alone means that the matter must be addressed.

You asked why there has been no specific consultation. Consultation was taking place back in 1998—I remember on-going debate then. The previous Administration brought matters to the Parliament for consideration in the early part of the 21<sup>st</sup> century, so there was on-going discussion and debate then, although the matters were subsequently withdrawn. My predecessors who

held ministerial office in the Scottish Executive Justice Department took it on themselves informally to consult unions and relevant legal officials from the Law Society of Scotland and elsewhere, and letters were sent to numerous firms, asking for comments and assistance.

Discussions also took place between ministers and Opposition spokesmen. Hugh Henry consulted me when he was Deputy Minister for Justice—I do not know whether he consulted spokespeople from other parties. I have spoken to relevant interests among personal injury lawyers and trade union lawyers, who sometimes take a different approach. Therefore, it appears to us that the matter has been under regular and on-going review, although you were quite correct when you said that there has been no specific consultation on the draft order. It seems to us that after 19 years, given inflation and an array of other matters, the time has come when we have to take a decision.

I assure Bill Butler that our approach is not meant to provide for interim limits that will then be levered up. We are acting on the basis that we must drive matters forward, to allow greater access to justice for ordinary people in Scotland. I cannot give a blanket assurance that there will be no further statutory instruments, because I am advised that European Union directives on small claims will require to be transposed. However, I give an assurance that the draft order is meant to provide a holding position until Lord Gill concludes his more substantive review, in which he is considering not just the financial limits but the courts and procedures through which actions should be raised.

I think that I have answered the question about consultation. There is no intention to return to the issue—apart from action on procedural matters that might be required as a result of EU directives—until Lord Gill has given his necessary and full update on the position. I am not sure whether I have answered four questions—I might have answered only two. If Bill Butler tells me what I missed I will happily respond.

**Bill Butler:** I do not know whether I asked four questions. The convener counted for me, while I was carried away by the exuberance of my own verbosity.

As you said, it is 19 years since the limits were increased and inflation must be taken into account. Nobody would gainsay that we must consider the issue. However, trade union representatives made the point that, given that the most recent consultation on the issue took place before the Scottish Parliament was established, there has been no formal consultation in the context of Holyrood's devolved powers. You said that letters were sent to firms. Were letters also

sent to trade unions, which have a relevant interest in the matter?

I took comfort from your comment that you are not providing for

“interim limits that will then be levered up”,

but you went on to say that the order provides “a holding position” until Lord Gill reports. Are you saying that, whatever Lord Gill says, you are not predisposed to return to the committee with an order that levers up the limits?

**Kenny MacAskill:** That is absolutely right, subject to the caveat that I made about EU directives. There is no intention to increase the limits further until we know what Lord Gill suggests.

**Bill Butler:** I am reasonably content with, but not ecstatic about, that response.

10:45

**Paul Martin (Glasgow Springburn) (Lab):** I agree with Bill Butler in that I support the approach in principle but want to investigate the procedure that has been followed.

Cabinet secretary, you acknowledged that there has been no refresh of the consultation process. Why was there no consultation? Unite raised that issue. Has a precedent been set for the approach to such legislation in future? What prevented you from undertaking consultation?

**Kenny MacAskill:** The matter has been under constant review and discussion and has been the subject of interaction between previous Governments, trade unions and the legal profession since 1998. It seemed to us that the matter has been on-going. The trade unions have been in direct communication with the Government and have communicated indirectly through agents. There comes a time when we simply must make a decision.

**Paul Martin:** The matter that we are considering has been the subject of vigorous debate, as you rightly said. Are you unwilling to give the committee an assurance that you will consult on such important issues in future? Are you saying that if an issue has been debated extensively, you will not refresh the consultation process? Is a precedent being set for the approach to other instruments?

**Kenny MacAskill:** I assure you that if I kicked off legislation in 2007, I would hope that it would be delivered by 2016. We are considering an exceptional matter, which has been on-going since 1998. When we are talking about introducing legislation, such as a criminal justice bill—there is a proposal for next autumn in that regard—there will be appropriate consultation. We are talking

about a matter that has been the subject of discussion and debate in the broader body politic and in civic life in Scotland since 1998. It is our responsibility as a Government to deliver, so that hard-pressed Scots can gain access to justice.

**Paul Martin:** You represent a new, minority Government. I accept that there has been robust debate about the issue, but the new Government had a responsibility to refresh the consultation. What prevented your officials from suggesting that a consultation exercise be undertaken? John Quigley asked about that in his letter.

Perhaps the clerk can confirm this. I understand that it is good practice to carry out a consultation exercise before an instrument is brought before a parliamentary committee—the consultation should have been undertaken recently, not 19 years ago. I have read guidelines on the issue, which has arisen in the past. What prevented the minister from proposing a refreshed consultation exercise?

**Kenny MacAskill:** I inherit the obligations and actions of my predecessors. As I said, Hugh Henry consulted widely with relevant spokespeople, including me, which was appropriate. We do not have to restart the clock every time a Government changes. I am happy to progress the action that has been taken since 1998.

I regret the approach that you are taking. I received a letter from your colleague Duncan McNeil, who said that he was pleased to note the increase in the limits. His only complaint seemed to be that the new limit for small claims actions would be only £3,000. Your colleague did not want us to discuss further; he wanted us to go further. You might want to raise that with him—I can provide the letter if you want it.

**Paul Martin:** Can we have clarity on good practice? I understand that there should have been a consultation process.

**The Convener:** Nothing in standing orders requires that. Consultation is an essential part of the parliamentary and committee process. We are arguing about whether the consultation that took place in the past was contemporary, which is a matter for the minister.

**Margaret Smith (Edinburgh West) (LD):** I have two questions: one about the financial limits and one about the concerns that the Association of Personal Injury Lawyers expressed. On the limits, not for the first time I have a certain sympathy with Duncan McNeil's point of view. You mentioned the impact of inflation and I welcome the raising of the limit for small claims from a level that most members have accepted for many years is too low. Is the change proposed only because of inflation, or is there a policy on what sorts of people with which claims in which situations should be able to access justice through the small



claims route rather than through any of the more difficult routes?

**Kenny MacAskill:** You are correct that the proposal is not simply about the limit; it comes back to the points pushed by your colleagues Bill Butler and Paul Martin. Our view is that the proposal is a temporary measure rather than a piecemeal approach and that it will allow Lord Gill to carry out his review. I inherited that review, which was instructed by my predecessors. I welcome it because the situation requires to be looked at. Lord Gill will consider a variety of factors. Margaret Smith is correct that the matter is about more than simply the level at which we set the limit; that is why we decided that we needed to strike a balance.

It seemed to us that there were arguments for following the route taken in England, where the limits, if I remember correctly, are £5,000 and £10,000. The reason for not proceeding in that way was that England reached those limits by two or three increases over several years, with the first increase in 1996. There would be a considerable jump if we were to match the English levels in one fell swoop.

Where our measure leaves us in relation to Lord Gill's final position is a matter that will be commented on either by me or by my successors. However, our proposal strikes a balance to sort out a current situation that is unacceptable. The level at which we have set the limit might or might not be changed.

We have considered the effects of particular types of action, the major example of which is personal injury, which we recognise is an extremely complex area. Personal injury actions do not simply cover health and safety but deal with medical evidence, which can be particularly complex. That is why we have ruled those actions out of the order.

There are other instances in which cases can be remitted and further instances that it is suggested should be dealt with differently. That brings me back to the point that I made at the outset—we are proposing a holding measure until such time as Lord Gill can give us a fuller view on which Parliament and the committee can reflect. We believe that the measure strikes the right balance in terms of the level at which the limit is set and it offers the right protection, especially with regard to personal injury, where there was considerable cause for concern. We seek to protect people in such situations.

**Margaret Smith:** Given that we are waiting for Lord Gill to report and given that there have been incremental increases to the limit in England, the position that you put to us today should not

necessarily be seen as the end point in the process.

**Kenny MacAskill:** No, it is a matter for Lord Gill; I will not cut across his bow. It is important that we look at the nature of how we structure and deliver civil law and access to justice in Scotland. Lord Gill and his team are considering the situation at present but, as I said to Bill Butler, I assure the committee that I do not plan to increase the limit next year; I would prefer to wait until Lord Gill reaches a conclusion that we will review as a Parliament.

**Margaret Smith:** I pick up on the point about the submission that we received from the Association of Personal Injury Lawyers. I do not wish to go over ground covered by my colleagues, but your argument against consultation would have been stronger if we had not received such a submission from APIL.

As you said, personal injury is a technical and complex area, and I am a layperson. However, the association raises issues that will give us ground for concern if you do not have reasonable responses to them. APIL has serious concerns about the decision to make all personal injury claims up to the value of £5,000 summary causes in the sheriff court. APIL is concerned that that is likely to add to the amount of judicial time required. APIL also refers in its submission to the voluntary pre-action protocol under which, although offers may be slightly higher than they would be if the claim were decided in court, legal fees are cut out and people do not have to go to court. Under your proposals, APIL feels that insurers are more likely not to make their best offer before actions are raised. Although those issues are technical, they are still areas of concern. Will you put our minds at rest on them?

**Kenny MacAskill:** No matter where we set the limit, there will always be an argument. For example, the trade union lawyers make a different argument vis-à-vis sheriff court versus the Court of Session. No matter where we set the limit, there will always be some argument; for example, there will be arguments about claims of £2,900 if the limit is set at £3,000. If, as some, including Duncan McNeil, would like, the limit is set at £5,000, there will be a problem. There will always be a cut-off point, as there is currently for summary cause actions of over £750 and up to £1,500. The new measure strikes a reasonable balance and offers the protection that we need to provide. As I said, personal injury cases will be dealt with under summary cause actions as opposed to ordinary cause rules. Personal injury cases are complex and we have separated them from the order because of lobbying by APIL, the trade unions and the trade union legal firms.

Fees are for negotiation between agents and insurance companies. A balance has to be struck and we think that we have proposed a reasonable one. Will there be instances in which people feel they lose out under the new rules? The answer is probably yes. Equally, a great number of people lose out with the current threshold, including those who legitimately want to pursue the level of interest that banks have charged them. It is a matter of striking a balance that acts according to utilitarian principles. We have always discussed matters with the Law Society, and personal injury lawyers are obviously members of the Law Society.

**Margaret Smith:** I seek a final assurance. Will the specific points raised by APIL be kept under review so that when we return to the matter, we have information about the impact of the change to the small claims limit, if it goes ahead?

**Kenny MacAskill:** I am more than happy to ensure that Lord Gill is made aware of the representations and views from unions, APIL, the committee or whoever. It is appropriate that Lord Gill and his team should come back with what we hope will be a blueprint for civil procedure in Scotland that will serve us for many a year. I am happy to give you an undertaking that if Lord Gill is not already aware of such concerns—although I am sure that he is—he will be made aware of them.

**The Convener:** Before going to Cathie Craigie, we go back to Bill Butler on that point.

**Bill Butler:** It is not exactly on that point. I asked a question earlier and I do not think that the cabinet secretary responded, so I ask him to respond directly to this question. He said in response to me that letters had been sent out by his officials to law firms and so on. I then asked him why no letters were sent to trade unions. What prevented that correspondence with trade unions that have a genuine interest in the matter?

**Kenny MacAskill:** The major trade union law firms were written to. In my experience, such firms have, if not a stranglehold, a significant input. Certain firms, which I will not name, were in consultation and communication with the Government.

11:00

**Bill Butler:** I accept what you are saying. You were wise not to employ the word stranglehold—I commend you for that.

**The Convener:** Leaving strangling aside, we will move on to Cathie Craigie.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** I put on record my support for the comments that have been made about

consultation. I am disappointed that there has been no formal consultation on the issue since 1999. Can the minister tell us how the statutory instrument differs from the one that was put before the justice committee in the previous session of Parliament and subsequently withdrawn?

**Kenny MacAskill:** My understanding is that it is, if not on all squares as lawyers might say, to all intents and purposes much the same.

**Cathie Craigie:** The previous justice committee obviously had concerns. What has the justice department done to address them?

**Kenny MacAskill:** My recollection is that consultations took place. To his credit, Hugh Henry held significant investigations and had cross-party discussions. I do not know why matters were not proceeded with prior to May 2007, so I cannot comment. All that I can say is that it appears that efforts were made, and we take the view that the time has now come to drive the matter forward. It is not as if the instrument to which you refer was introduced in the previous session of Parliament—it was the one before that. There has been a significant passage of time—19 years have passed. If the provisions are exactly the same as those that were put before the previous committee, that shows that I am more than happy to accept my predecessors' proposals. The argument is further strengthened because time has marched on and we must ensure that our court system is fit for the 21<sup>st</sup> century. It is 2007, and people want to have easy and relatively cheap access to justice.

**Cathie Craigie:** Are we about to be given further information?

**Kenny MacAskill:** No. I am just being advised that other changes have been made while there have been no changes to the summary cause and ordinary fees limits, so the limits are out of kilter.

**Cathie Craigie:** I do not disagree with the principle of the order, but I have concerns about the timing. Lord Gill is currently conducting a review. The minister says that the order is a temporary measure and that it strikes the right balance, but that if Lord Gill takes a different view he will consider it. Minister, given that, as you say, the matter has been discussed since 1998 and Lord Gill is expected to report to ministers and the Parliament later this year—or perhaps February next year—why should you press ahead with this measure when there is clearly so much concern? As Margaret Smith indicated, the APIL has serious concerns. Why should we not take the time, while Lord Gill is examining the issue, to speak to the trade unions and the lawyers and practitioners who represent a large number of people who bring actions?

**Kenny MacAskill:** There are two issues. Lord Gill will not report until 2009. Clearly, the Government would have to consider and, no doubt, consult upon the report, and legislation would follow thereafter. The likelihood is that we would not be able to address the issue until 2010 or 2011, which would further increase the delay—it would not be 25 years in total, but it would not be far off it. Lord Gill is due to make an interim report, which will indicate the direction of travel, but his more full report is not anticipated until 2009. Action would probably be taken the following year.

On why we are making progress pending the publication of Lord Gill's report, it is not as if he is about to report, and it would be several years before we could implement his recommendations. You are correct to say that trade unions and the APIL have been making representations, but other voices—in the consumer lobby and elsewhere—are saying, "Do it now," or, like Duncan McNeil, "Well done, but you should have gone further." With all respect to Duncan McNeil—Cathie Craigie knows him better than I do—he has a track record of standing up for and fighting for trade union interests, especially in relation to those who have suffered personal injury in the workplace on the upper and lower Clyde. I tend to take his comments on the issue seriously, and I commend his letter to you.

**Bill Butler:** The cabinet secretary refers to a letter from Duncan McNeil—who is not present, and whose correspondence I always welcome—that we do not have. Will the cabinet secretary provide all committee members with that correspondence? For transparency's sake, I would like to linger over Duncan McNeil's words and see what he has to say.

**Kenny MacAskill:** Absolutely.

**Cathie Craigie:** Duncan McNeil has every right to make his views on the matter known to the cabinet secretary, and I welcome the opportunity to see a copy of his letter.

I understood that Lord Gill would make his interim report next year. Is that not an opportunity for the Scottish Executive to examine the issue more fully, consider the points that have been raised with members by the trade unions and by the lawyers body, and come back to us with answers? Serious concerns have been raised with the committee, and we have not had time this morning to get full answers to them. I assume that the minister and the justice department have seen copies of the correspondence from Amicus and the APIL. Before I can confidently support the order, I want answers to the points that have been raised, because our court system—particularly the sheriff court system—could be blocked and slowed down.

**Kenny MacAskill:** I do not envisage the sheriff court system being blocked or slowed down. You could argue that a substantial number of people will lose out on access to justice at an affordable rate if we do not take action. The difficulty in relation to Lord Gill's report is twofold. First, we do not know what he is likely to say in his interim report. Furthermore, although we know that the report is coming next year, the timescale is still fairly flexible. Secondly, Lord Gill could genuflect towards an integrated package that would require substantial change—the level of fees or the level at which actions are taken would be only one part of the package, because views would be taken on which courts do what and how matters are handled.

The order deals with only one factor in the court process—the level at which small claims and summary cause actions are set. It is possible to envisage a scenario in which some matters are dealt with by different courts. Whatever the approach might be, some matters may be dealt with in a different way. It is difficult to predict what Lord Gill will say.

I come back to the assurance that I gave Bill Butler, which is that we await with interest what Lord Gill says in his report. However, we cannot continue to do nothing until such time as it is before us, because 19 years would become 20, 21 and more. We have made the order on the basis that it provides immediate relief and a benefit by making the courts more accessible for ordinary people in Scotland. The committee has our assurance that we hope that the order will be part of a broader package that the Parliament will be able to reflect upon at some point post-2009. Given the nature of the legislative machinery, we are looking at 2010 or later.

**Nigel Don (North East Scotland) (SNP):** I am delighted that the limits are to be increased. The change is long overdue, but I think that we all know that by now.

Given that it is hoped that people will now feel that it is worth litigating for small claims—after all, that is the whole point—do we have an estimate of how many cases will finish up in court? Have the implications for court business been considered? Of course, the great benefit is not that people will litigate but that they will have the opportunity to do so. The threat that people might litigate will then keep business straight. However, I am interested to know the estimate for the change in court business.

**Kenny MacAskill:** It has been pointed out to me that in 1993, 72,714 small claims were initiated, but that by 2002 that number had more than halved to 32,256. That decrease occurred despite the fact that people arguably had more money and more consumer goods and other things on which

they could litigate. Clearly, the number of small claims was on a downward spiral. However, it is difficult to predict where the number will go to. We hope that the trend will bottom out once we allow people to exercise their right to action.

As a caveat, I ceased practice in 1999, but I recall that the level at which the limit is set is not the only factor—that ties in with the need for Lord Gill's reforms. There is also the hassle factor in going to court, such as the time that people need to take off work and the bureaucracy that is involved. The order is an interim measure to try to improve people's access to justice, but the Government recognises that wider matters affect people's ability to act.

However, given that the number of small claims has reduced by more than 50 per cent when, given the nature of the world in which we live, the trend should arguably have gone in the other direction, there is clearly a problem. I do not know what the precise numbers will be after the limits have been increased, but I have no doubt that contingency plans are being made by the Scottish Court Service. To some extent, we will just need to see what happens hereafter.

**The Convener:** We really must move on, unless members have any pressing issues that they wish to raise. The cabinet secretary has answered our questions comprehensively. I now ask him to wind up his remarks and to move motion S3M-482.

**Kenny MacAskill:** I am happy to have had the opportunity to engage with members today. I give the assurance that we do not mean to deal with the matter on a piecemeal basis. The order is an interim measure until such time as Lord Gill provides a basis for what we hope will be a vastly improved system that is fit for the 21<sup>st</sup> century.

I move,

That the Justice Committee recommends that the draft Sheriff Courts (Scotland) Act 1971 (Private Jurisdiction and Summary Cause) Order 2007 be approved.

*Motion agreed to.*

### **Small Claims (Scotland) Amendment Order 2007 (draft)**

**The Convener:** We move to the next agenda item. I invite the cabinet secretary to move motion S3M-479. Basically, this order raises the same issues as the previous one.

*Motion moved,*

That the Justice Committee recommends that the draft Small Claims (Scotland) Amendment Order 2007 be approved.—[Kenny MacAskill.]

*Motion agreed to.*

**The Convener:** Before we move on to agenda item 4, I suspend the meeting briefly to allow the cabinet secretary's team of officials to change.

11:13

*Meeting suspended.*

11:15

*On resuming—*

### **Licensed Premises Gaming Machine Permits (Scotland) Regulations 2007 (draft)**

**The Convener:** I welcome Ken McKenna and Jim Wilson from the Scottish Government's local government and licensing division, who have joined the cabinet secretary. I refer members to the clerk's paper J/S3/07/6/4, which relates to this agenda item. I invite the cabinet secretary to speak to and move motion S3M-481.

**Kenny MacAskill:** I welcome the opportunity to say a few words on the draft Licensed Premises Gaming Machine Permits (Scotland) Regulations 2007; my comments also apply to the draft Club Gaming and Club Machine Permits (Scotland) Regulations 2007. The regulations will implement the Scottish provisions of the Gambling Act 2005 that affect pubs and clubs.

To put matters into context, it might help if I make a few general points first. The Gambling Act 2005 establishes new controls on gambling to ensure that controls are not undermined by new technology. The act also provides new powers to protect children, to crack down on illegal gambling and to eliminate socially irresponsible practices. Although gambling is primarily a reserved matter, in January 2005 the Scottish Parliament agreed that the Scottish ministers should be given certain powers under the 2005 act. Section 285 of that act enables the Scottish ministers to make provisions equivalent to the procedures for certain permits in England and Wales, relating to club gaming, club machines and licensed premises gaming machines. That is what the regulations will do.

It is worth restating the licensing objectives of the Gambling Act 2005, which are: to prevent gambling being a source of crime or disorder, being associated with crime or disorder or being used to support crime; to ensure that gambling is conducted in a fair and open way; and to protect children and other vulnerable persons from being harmed or exploited by gambling. Those objectives fit well with the Scottish Government's safer and stronger strategic objective. Within that overall policy framework, the policy objective for the regulations is to have appropriate procedures

for clubs and pubs to obtain the relevant gaming permits.

Basically, clubs are allowed up to three gaming machines and, in certain circumstances, can offer some other gaming facilities. Pubs and some other alcohol-licensed premises are allowed up to two gaming machines and can apply to licensing authorities to increase that number. Local licensing boards are the appropriate authorities in Scotland.

The regulations set out the administrative procedures for obtaining club gaming and club machine permits and licensed premises gaming machine permits. They also set the associated fee levels. The aim is to have consistent, light-touch and user-friendly procedures. At the same time, we do not wish to place unnecessary burdens on businesses, licensing boards or the Gambling Commission, which is the United Kingdom-wide regulatory body.

The draft regulations were consulted on during the summer. Respondents were generally content with the provisions, but some minor modifications were made following the consultation exercise.

The regulations seek to take a balanced approach to modernising the regulation of small-scale gambling within the clubs and pubs sector. On one hand, there is a need to be prescriptive and to provide consistency and clarity to licensing boards, enforcement agencies, the gambling industry and the public. On the other hand, those same groups require flexibility and proportionate regulation. We consider that the right balance has been struck.

I think that I have said enough by way of introductory remarks on the regulations, but I am happy to answer any queries that the committee might have.

**The Convener:** The issues appear to be fairly straightforward. Do members have any questions?

**Cathie Craigie:** I refer the cabinet secretary to paragraph 18 of the regulatory impact assessment. I note that licensing boards will be responsible for administering and issuing permits. Paragraph 18 states:

“The fees payable to Licensing Boards are intended to cover the whole cost of the administrative work associated with permits”.

I also note that the fee level was the subject of consultation. Was the Convention of Scottish Local Authorities of the view that the fee level that has been set will be sufficient to cover the administrative costs?

**Ken McKenna (Scottish Government Criminal Justice Directorate):** COSLA did not actually respond—

**The Convener:** Sorry Mr McKenna, but I am afraid that you have no locus here.

**Kenny MacAskill:** My understanding is that COSLA did not respond to the consultation, but informal discussions suggest that there is no reason for alarm. I am happy to assure the member that, if there are problems, we will be happy to examine them—as we have examined other matters that genuflect towards licensing. The regulations set an interim level of fees and establish parity with what is happening south of the border. We will see how it works out.

**The Convener:** Members have no further questions. I remind the cabinet secretary that he has not moved the motion. I assume that he does not need to wind up.

*Motion moved,*

That the Justice Committee recommends that the draft Licensed Premises Gaming Machine Permits (Scotland) Regulations 2007 be approved.—[*Kenny MacAskill.*]

*Motion agreed to.*

### **Club Gaming and Club Machine Permits (Scotland) Regulations 2007 (draft)**

**The Convener:** I refer members to paper J/S3/07/6/5 on the regulations. I invite the cabinet secretary to move motion S3M-480.

*Motion moved,*

That the Justice Committee recommends that the draft Club Gaming and Club Machine Permits (Scotland) Regulations 2007 be approved.—[*Kenny MacAskill.*]

*Motion agreed to.*

**The Convener:** I suspend the meeting briefly so that the cabinet secretary and his officials may leave and the new set of witnesses may come in.

11:21

*Meeting suspended.*

11:27

*On resuming—*

## Police Resources

**The Convener:** It gives me much pleasure to welcome Pat Shearer, chief constable of Dumfries and Galloway Constabulary and vice-president of the Association of Chief Police Officers in Scotland; Alastair Merrill, deputy director of police powers, performance and resources in the Scottish Government; Stephen Woodhouse, head of police performance, efficiency and funding in the Scottish Government; Alastair Crerar, project manager for police performance in the Scottish Government; and Barry Stalker, principal research officer for the court affairs, prisons and offenders analytical team in the Scottish Government. Thank you for coming to see us this morning.

I introduce the gentleman to my right, Professor Nicholas Fyfe, who is director of the Scottish institute for policing research and a professor in the school of social sciences at the University of Dundee. In 2006, Professor Fyfe was appointed founding director of the SIPR, which is a consortium of 12 universities that undertakes research relevant to policing in Scotland. He has more than 20 years' experience of researching policing in the UK and internationally and is acting as committee adviser.

After going through the ranks, Pat Shearer was appointed deputy chief constable of Grampian Police in January 2005, prior to taking up his present position. Since May 2006, he has been chair of the ACPOS performance management development sub-group. I invite him to make a short opening statement.

**Chief Constable Pat Shearer (Association of Chief Police Officers in Scotland):** Thank you for giving me the opportunity to speak to you this morning about the Scottish policing performance framework. The framework was developed in response to Her Majesty's inspectorate of constabulary's thematic inspection on managing improvement, which came out almost 24 months ago and contained a number of recommendations. Recommendation 6 focused on the need to develop a suite of performance indicators and to rationalise them, recognising that the police service reports to a range of bodies and in a range of manners.

To assist the development of our approach to performance and performance management, we entered into partnership with the key interested parties—the Scottish Government, HMIC, Audit Scotland, the Scottish police authority conveners forum and ACPOS. Out of that, a senior strategic steering group was developed, which had oversight of our approach towards performance

measurement and, more important, performance management. Through that collaboration, we started to rationalise our suite of indicators to ensure that we did not have to report individually to three separate bodies.

11:30

The framework—which, as I say, was developed through consultation and close partnership working—strengthens our approach to performance reporting and assists our accountability at national and local level. It also assists from a policing perspective on a daily basis, by enabling us to continuously improve our performance. The framework focuses on the whole range of activity. It is of benefit to the public, in that there is greater accountability, and it is also of significant benefit to the service.

I should point out that the process is developing and the framework is in no way complete. The indicators have to mature, and it is important that we focus on the high-level objectives. That is the background to how the framework has been developed: looking at high-level objectives; below that, focusing on outcomes; and being conscious not to skew activity to focus too much on one measure or another.

One area that we are developing is the context in which performance management is carried out, by populating the framework with a range of contextual measures. That said, we are going through a developing and dynamic process, and many of the indicators and measures have to mature.

From an ACPOS perspective, the process is well supported and received. Additionally, we are developing our position with the local authorities, so that the framework is used for measurement throughout the country.

In tandem with that, I have responsibility for developing a performance system that more easily captures all the measures and information while avoiding becoming an industry in itself. We are in the process of procuring an information technology system that will enable us to capture the information more effectively and efficiently. It will also enable significant benefits to be obtained by individual forces in managing and understanding performance on a daily basis.

Essentially, that is where we are. The process is developing and dynamic, and we acknowledge that there are gaps that we want to fill. We are engaging with the Scottish Police Services Authority, and we would like to populate the framework with some indicators to reflect its substantial responsibility.

**The Convener:** Thank you, Mr Shearer. The committee will ask questions. Please feel free either to answer them yourself or to pass them to one of your colleagues. Fairly succinct answers would obviously be welcome.

**Bill Butler:** Chief Constable Shearer said in his introduction that the performance framework is in its infancy, which is to be expected, and went into some detail in explaining how the performance framework has begun to be developed. We are grateful for that. How will the framework improve on existing performance management systems for the police in Scotland? What deficiencies are there in existing performance management systems? How will the new framework, as you put it in your introductory statement, assist in improving accountability, in continuing performance improvement and in improving outcomes? Those are just a few simple questions to start with.

**Chief Constable Shearer:** There are different elements in the questions. On deficiencies, I think that we are maturing in our approach to performance management not just in respect of the police service in Scotland, but in relation to stakeholders who are involved with us. Historically, we have probably been too focused on areas that are easy to measure and, to a large extent, on crime and public order.

The committee will see that the framework has started to reflect the breadth of policing activity, from the service response to a person making a report either on the phone or in a police office through almost each stage of the process. It covers service response, public reassurance, how matters are dealt with in the criminal justice system and some efficiency aspects. We have in the past probably been too narrow in our approach to performance, and have focused too much on measurement rather than on management. There has been significant development in that respect.

On accountability, the range of individual indicators that we have had to respond to and report on has been too narrow. It is acknowledged that there is a fair amount of work to be done in improving indicators, but it cannot all be done overnight, in view of the fact that there is a consultation. We are working closely with Audit Scotland on that. The framework will reflect a greater breadth of activity and, through that, will make us more accountable.

The framework will also enable those to whom we are accountable to understand the breadth of activity and context in which we operate, which should assist in driving continuous improvement. We can continuously improve only if we understand all the factors that affect the measurements. That is probably where there have been deficiencies in the past—we have been too focused on narrow areas rather than on the

breadth of activity. We have focused on crime detections, but they may be influenced by a range of inputs and activities. We have to understand those inputs, how they vary and how they can have an influence.

Have I covered all your questions, or was there a fourth?

**Bill Butler:** That was it. Am I right that you said that the performance framework will, once it is developed, create greater transparency and have a greater breadth, which will lead to significantly improved accountability?

**Chief Constable Shearer:** Yes—I believe that that is right. The framework can also be used and populated more comprehensively at local level to reflect local priorities. It is not just about accountability but about individual forces measuring and understanding their own performance. For me, within ACPOS, that is one of the key elements to drive and continuously improve our performance.

**Bill Butler:** It is about not just simply constructive criticism from bodies such as police authorities, but the ability to be self-critical.

**Chief Constable Shearer:** Absolutely. The police service has to mature and improve in that area compared with our experience in performance management. There is a lot to be learned.

**Bill Butler:** Thank you. I am obliged for those answers.

**Paul Martin:** I want to move away from the technical language surrounding the operational side of your organisation, and to consider the situation from a community perspective and get into details of the policing activity that your organisation is involved in. If I live in an area that is affected by antisocial behaviour, what will the framework do for me in terms of policing activity?

**Chief Constable Shearer:** In terms of policing activity, we acknowledge that we need to develop the antisocial behaviour measures more in the framework. There are currently no effective indicators reflected in the framework, but that is one of the developing areas that we have to get into.

For members of the public, we would provide contextual information that will allow them to understand the demands on a police force, what resources it is putting in and the activities that it gears towards tackling antisocial behaviour. There is a bigger picture to understand that does not involve just one single figure.

When we develop measures, it is important for us to sit down and consider how the service works for the public and how they feel about it. It is all

very well to speak about numbers and the technical aspects, but one important element in which Mr Stalker is involved is measurement of quality—that is, how the public feel. We are keen to develop that through surveys, although we recognise that it is not just about surveys, but about our day-to-day interaction with the public and the feedback that we receive from them.

**Paul Martin:** The framework raises the issue of building in policing priorities. Will you give examples of such policing priorities? You provide statistics, but is it a problem that the public sometimes do not report crimes because they do not see the end product or feel that the police respond to them? Could you make dealing with that a priority? You could say that although the operational statistics that you present to elected representatives might show that there is not much reported crime in an area, that could be down to underreporting. Would you consider making underreporting a national priority?

**Chief Constable Shearer:** Underreporting could be a national priority or a local priority: a benefit of the framework is that it can be used locally or nationally. We acknowledge that there is an issue in that there is reported crime and there is the crime that the Scottish crime and victimisation survey indicates. We want to bring the two as close together as possible, which would show public confidence in reporting crime. If that were a focus, we would want it to be reflected in the framework so that we could, as part of public reassurance and community safety, reassure the public that we were listening and responding to their priorities nationally and locally.

**Paul Martin:** Many organisations and police forces are involved in the process. Given that many senior police officers, for example, will have different views on how to proceed, is it difficult to clarify priorities?

**Chief Constable Shearer:** Clarification of priorities is a challenge, but we recognise that how we operate has a structure. For example, the framework reflects the national policing priorities that ACPOS has agreed. We also work on a commonly agreed approach to intelligence management, so we can set and agree priorities. The framework can be used locally, so through the consultation process, we can move to reflect local priorities as well as national priorities.

**Alastair Merrill (Scottish Government Police and Community Safety Directorate):** The framework is about balancing what is seen by the key national stakeholders—ACPOS, Audit Scotland and police authority conveners—as being important nationally with the flexibility to determine sensible local measures and to allow the relevant police board to hold a force to account. The framework is not about establishing

a complete and comprehensive list of all priorities from national to local force levels—it is about setting out what is important, what we want to measure and what we want to achieve Scotland wide, and it is about allowing flexibility for forces, or units in forces, to set and agree local priorities that can be measured and reported on and on which they can be held to account consistently at local level.

**Aileen Campbell:** I am interested in hearing a wee bit more about your performance measures. It would be useful if you highlighted examples of performance measures in the framework that will clearly capture the information that you want.

11:45

**Alastair Crerar (Scottish Government Police and Community Safety Directorate):** As Pat Shearer said, the framework is at an early stage of development. We would be the first people to acknowledge that it is not as comprehensive as it eventually will be. We are working hard on developing more indicators.

I will give an example of the directions that we are moving in. Pat Shearer talked about covering the full breadth of policing through the four areas in the framework, and through the new service response area, which includes a measure on user satisfaction. Through force surveys, we will form an idea of service-user satisfaction, of what service aspects the public are happy with and of how they feel that the service can be improved. We are looking in the following year to link that measure with an indicator on public satisfaction from the Scottish crime and victimisation survey. We will measure service-user satisfaction but also the public's satisfaction and their view of the police and the service that they provide.

Another indicator from the Scottish crime and victimisation survey will be on fear of crime. By putting those measures together, we hope that we will get a clearer idea of public perceptions and experience, and of how the public feel about the service that they receive. That is the direction in which we are moving.

We have the traditional crime and detection rate data in the framework, but information on detection rates for each of the seven crime groups will be more clearly presented than has been the case in the past. It will be much easier for police authorities, the public and other people who want to understand police performance to see exactly what is happening in each group. Those are some of the matters that we are considering.

**Aileen Campbell:** In what way are you actively seeking to mature in that? How do you want to improve the measures?



**Alastair Crerar:** The move to having seven crime groups and separate detection rates for each group, rather than bundling them together as has sometimes happened, has been made in order to achieve clarity of reporting and accountability. This year, we are considering increasing the number of outcome indicators and having wider coverage to take in antisocial behaviour, youth offending and other matters that involve partnership work between the police service and the criminal justice system.

In the longer term, we are keen to develop the inputs element of the framework, so that more information is available on financial and staff resourcing. That will provide more clarity about the relationship between performance and resourcing and about how they work against or relative to each other.

**Cathie Craigie:** Alastair Merrill has explained that the framework takes into account the diversity among forces, but how will we know that, in the future development of performance management indicators, weighting has been given to ensure that we compare apples with apples instead of with plums?

**Alastair Crerar:** It is important—both across time and across Scotland—that we compare apples with apples. That is why, at this stage in the development of the framework, we are emphasising the quality of the data and working with the different forces—the ACPOS performance management business area is leading the way—to ensure that forces gather the same data in the same way so that the information is comparable. That work is on-going. The performance information IT system, which Pat Shearer mentioned at the start of his evidence, should contribute to that, as should increased use of national IT and data systems across Scotland.

If the framework is to be as successful as we hope in increasing the culture of performance management and improvement, then data are vital. Everyone must be talking about the same things and, as Cathie Craigie suggested, comparing apples with apples.

**Cathie Craigie:** The framework is intended to lead to greater accountability and transparency. We have seen some examples of published information, but I imagine that you will, through the current work, want to publish information in a way that can be easily understood by the public. What plans do you have, in the on-going IT work, to ensure not only that the information is understandable to all the professionals, but that it also means something to the public?

**Chief Constable Shearer:** In that respect, we are on a journey. Through the performance management system, we will be able to drill into all

our core systems: our command and control of crime system, our human resources system and so on. Although on a day-to-day basis there will be great benefit in forces' being able to understand their own performance and to continuously improve, the difficulty is that we have always looked back instead of using such information to look forward. Ultimately, through the performance management business area in ACPOS, we want to start pushing that information out to the public in a way that makes it understandable to them. That may be through our internet sites. Ultimately, we should be able to drill down to local communities and we should be able to present the information in a format that makes it understandable to them. We will undertake consultation on that.

I return to the point that I made earlier: it is of no use simply to present a range of figures; we must be able to explain them in such a way that the public will understand them, so that they can understand our performance and hold us accountable.

**Cathie Craigie:** Are you confident that you can do that?

**Chief Constable Shearer:** I am confident that we will be able to do it, although we cannot do it currently. The performance system will make it easy to pull out that information and, ultimately, it will be possible to push it out to the public. In my previous force, in Grampian, I introduced a performance system that has been a pilot for the present one. It will be much easier to push out the information once it is clear to us what the public want. The system will enable us to publish detailed information that goes down to the level of local communities. It will no longer be a case of continually aggregating up figures; we will be able to publish more detailed figures so that local areas will understand the service that they are getting.

**Cathie Craigie:** What is the timeframe for that?

**Chief Constable Shearer:** We are going through the procurement stage for the performance system at the moment. We are just about to sign a contract, and we are looking at a roll-out over the next 18-month period. That is quite a challenging timescale, but the system will put us significantly on the front foot in terms of accountability. It is not just about being more accountable, though; it is also about being able to manage our performance and drive continuous improvement, which is important when money is tight.

**Margaret Smith:** Good morning, gentlemen. I suppose that it is a matter of striking a balance, but is there any danger that, in pursuing the performance targets in the framework, efforts will be diverted away from other policing priorities? The public's worry is that—whether in respect of

the teaching profession, the medical professions or the policing professions—people might spend so much time in acquiring data that they do not get on and do the job. Do you have any concerns that, as we try to become more sophisticated in acquiring data and in the range of data that we acquire, people will be taken away from the main purposes of their roles?

**Chief Constable Shearer:** Absolutely. That was raised as a significant concern in the business case for introducing the performance management system. It was recognised that we do not want to create an industry that continuously diverts resources to pulling out information from all our systems. If our performance system rides on top of our core systems, that will do the job automatically for us and for the £8.3 million investment, we will get significant returns and significant savings. The performance system addresses resources' being used in ways we would not necessarily want them to be used. We want to be able to use our resources on the front line.

I will mention another issue concerning the skewing of activity, and I will ask my colleagues to comment. We looked at the policing performance assessment framework—PPAF—approach that was taken in England and Wales and the feedback that was received from chief constables there. It was felt that targets skew activity and drive them into narrow areas. We are consciously trying to achieve continuous improvement and to reflect the breadth of the context in which we operate. We have also developed a collaborative approach. The framework is not being imposed on the service; it has been developed in conjunction with our partners. Perhaps Stephen Woodhouse and Alastair Crerar would like to comment.

**Stephen Woodhouse (Scottish Government Police and Community Safety Directorate):** It is worth saying that there are no targets in the framework; there are merely indicators, which are there to give a direction of travel. Some of them might go up, some of them might go down—they are not targets, as such. Therefore, I do not think that the problem to which Margaret Smith alluded, which is a real concern to us, should exist.

**Margaret Smith:** Does Alastair Crerar want to add to that?

**Alastair Crerar:** No.

**Margaret Smith:** I want to pick up on the role of the public in all this. It seems to me, from what you have said so far—I hope that I am not misquoting you—that the public will come into the process some way into the development of the performance system. The system will pull together a certain amount of information in terms of performance indicators, and it will present that to the public, asking what they think before inputting

along the way what the public feel. What input did the public have at the outset of the process? Were they involved in setting high-level objectives and so on? Has any work been undertaken with individuals or groups in order to root the system in the reality of what many communities experience?

My second question is related to that. Context is mentioned in the framework document and its importance is stressed throughout it. Is there an overarching context for the framework of underreporting of crime to the police? If your starting point is that only 50 per cent or whatever of crimes—I am probably being generous—are reported to you in the first place, an awful lot of what goes on in communities is not going to be covered by the framework. I throw that in as an easy question.

12:00

**Chief Constable Shearer:** I will take Margaret Smith's last point first. The context that you mentioned—underreporting of crime—is where our survey and consultation approach is important. One of the measures of success for me will be if we can start getting our reported level of crime nearer to what the survey levels are indicating. That will be almost a target—one of the outcomes that we are looking for—so that the framework accurately reflects the context in which we are operating. That is a challenge that particularly concerns the issue of public reassurance. If the public are reassured about our activity and how open we are, we will, I hope, see that working its way through in terms of reporting crime. That is one of the challenges, and one of the areas in which we will measure—in a sense—how close we are coming to that survey.

If we roll it right back to base 1, our priorities are all set—and each chief constable's priorities are very much set—through consultation of the public. We work daily on setting our priorities within our areas based on public consultation and strategic assessments that help to bring all the elements together. The priorities are set with that in the background.

Regarding the performance framework, we have consulted the conveners of the various police and fire joint boards so that they are able to seek out views and then reflect those views. We have also consulted the Scottish Police Federation, HMIC, and Audit Scotland widely on development of the framework. We still have to work on how we feed the information back to the public at a local level, so that they can get it in a format that they understand and feel comfortable with.

**John Wilson (Central Scotland) (SNP):** Good afternoon, gentlemen. I am aware that in order to achieve a number of objectives within the current

performance framework, the police will be required to engage with a number of other agencies. Can you explain how the contribution of the other agencies to achieving those objectives is dealt with in measuring police performance?

**Chief Constable Shearer:** Okay. Very briefly, it is about a collaborative approach. The senior strategic steering group represents the key bodies that are involved: the Scottish Government, Audit Scotland, ACPOS and police authority conveners. At times, there are opportunities to consult more widely. It is very much about a partnership approach and bringing in the key stakeholders to ensure that the areas for which we are accountable are represented.

**Alastair Crerar:** The other aspect concerns the partnership outcomes that we are all seeking to achieve regarding criminal justice, safer communities and so on. We are capturing those within the framework through the high-level objectives and some of the outcome indicators. It is impressive that, within the senior strategic steering group, ACPOS has been prepared to sign up to objectives and outcome indicators that are not completely in its gift, for example on crime rates—reducing reoffending—or road casualty rates. The police service is one of the partners involved in achieving positive outcomes in those areas, and although it is not the only organisation responsible, it has clearly agreed to take on some of the responsibility through the outcome indicators.

We are now working on getting partner organisations to buy into the same outcomes and indicators. We have been working with the national criminal justice board's scorecard project, and we have recently met the Crown Office and Procurator Fiscal Service to discuss shared outcome indicators on cases that are submitted to the procurator fiscal and those that are marked for no proceedings, which we are looking at this year. We have also discussed embedding the 26 weeks end-to-end process time for the criminal justice system in the performance framework as a policing objective and outcome, while looking for the partners in policing to accept their share of responsibility. In some cases, it may be appropriate for an indicator to be shared across other frameworks. That is a little bit technical, but I hope that it is helpful.

**John Wilson:** I want just to draw that out, because there are a lot of partnership agreements in relation to the framework, work on which has to be undertaken. You said that you need to get the partners on board with some of the issues that are coming up, and I assume that there is some flexibility in taking the framework forward. We are only just over six months into the performance framework, and there will be lessons to be learned

for the future, but the question is how you engage with the other partners to ensure that you are working within the same framework. You are right to say that if there are other frameworks in place, those must mirror what is in the performance framework for policing, because there is no point in having such a framework if other frameworks do not tie into that and have the same objectives.

**Alastair Crerar:** Yes, absolutely.

**Chief Constable Shearer:** That is very much a challenge for us and for the Scottish Government in looking across the public sector. For example, some of the measures around drugs that are of interest are clearly in the partnership area. This is about being able to hold others accountable and to get agreements—in that respect, there is a lot of work to be done. It is acknowledged that the partnership area is particularly challenging, but we can assist in developing and leading in that area, and I hope that we will have some success.

**The Convener:** We turn finally to some questions on the Scottish crime and victimisation survey, which, as you will be aware, has provoked considerable interest, if not excitement. Perhaps I can start by asking why, in carrying out the survey—and I appreciate that it is now a year old or thereabouts—you did not ask the public about police visibility when trying to determine the levels of public anxiety about crime.

**Chief Constable Shearer:** I will pass that question to Barry Stalker.

**Barry Stalker (Scottish Government Police and Community Safety Directorate):** The survey covers quite a broad range of areas, and a lot of it is based on work that has gone on in the past. Over time, there have been trends for previous questions, and that limits the amount of space. The questions have been quite settled over time and, going back over the years that the survey has been running, there has not been, in my understanding, a level of interest that would allow us to change the questions to include questions on precisely the issue that you raise.

**Chief Constable Shearer:** The convener raises a very relevant point—visibility is the key issue for a range of members of the public and therefore it is an area in which we should be starting to develop surveys. In my area of responsibility—the performance management business area—we have started to develop a specific work stream in conjunction with the Scottish Government, so that we get real value out of not just national but local surveys. That will also ensure that there is some consistency and real currency, and visibility is a key issue.

**The Convener:** Thank you for that reassurance.

**Bill Butler:** The survey states that 57 per cent of respondents were generally satisfied with the way in which the police handled matters that were reported to them. Do you have any indication of the reasons why people were not satisfied with a police response? I am thinking of police response times or follow-up procedures. Did you get any information on that?

**Barry Stalker:** Are you asking whether there are data that would allow us to see the reasons why people were not satisfied?

**Bill Butler:** That is correct.

**Barry Stalker:** I do not think that we have that analysis—

**Bill Butler:** Why not? It is important to look not just at satisfaction levels but at dissatisfaction levels. Why, from a technical point of view, was such an analysis not included? Would Mr Shearer also like to comment?

**Barry Stalker:** I suggest that I get back to the committee on the issue in writing, as the information that the member seeks is not included in the written evidence that we have submitted. I would like to review the previous reports, so that I can be clear on the matter. I am not saying that we do not have the figures, but we do not have them to hand.

**Bill Butler:** Did the survey inquire into the reasons why people were not satisfied?

**Barry Stalker:** I would like to look at the questionnaire before answering that question.

**Bill Butler:** Okay. Perhaps the information could be supplied to us in writing.

Mr Shearer, would you like to comment more generally on the issue? Most folk would regard it as reasonably sensible in a survey to ask not only about what we are doing well but about what we could improve on.

**Chief Constable Shearer:** Absolutely. In my force, we focus in our local surveys and in our contact with the public on what people are dissatisfied with and why. Response times are raised frequently; clearly, much depends on the rurality of an area and on demand. Another common issue in both the north and the south of Scotland is feedback—updating complainers. Looking at areas of dissatisfaction is important, so that we can start to iron them out. I know that forces address the matter in local surveys and try to put in place strategies to counter dissatisfaction.

**Bill Butler:** Should surveys such as the one that we are discussing focus clearly on that side of the equation, as well as on satisfaction? Do you think that the focus of surveys could be improved? Is it fair to say that, if you were to get information on dissatisfaction levels, it would help you to achieve

the performance outcomes for which the framework has been set up?

**Chief Constable Shearer:** Absolutely. There is always scope for improvement. We now have a much more cohesive approach and are working together to develop future surveys. We want to co-ordinate local surveys, so that there is consistency and it is possible to compare them across forces. We also look at the complaints process and feedback through the complaints commissioner. However, that is away at the extreme—we should not have to wait for the complaints process and should pick up dissatisfaction through surveys.

**Barry Stalker:** There are two ways of looking at the surveys: there are the previous crime surveys, which were conducted outwith the context of our work on the performance framework; and there are future crime surveys. We are working closely with colleagues in the police performance team on future crime surveys and are seeking to address the issue that the member raises. The 2006 survey report may not have the same coverage because—

**Bill Butler:** Is it fair to say that future surveys should have added value, because they will include the other side of the equation?

**Barry Stalker:** I agree that it would be good for us to look at dissatisfaction levels. We will definitely consider the issue.

**Bill Butler:** I hope that there will be more than consideration and that a change will be effected, because it would be good for you to inquire into dissatisfaction levels.

12:15

**Margaret Smith:** Bill Butler has spoken about the need to make use of what is in the survey and to look behind what it includes. I do not have the questionnaire in front of me, so I am not sure how much focus it places on crime and how much it places on victimisation. I am probably stating the glaringly obvious when I say that there seems to be greater dissatisfaction among victims than there is among people who have reported crimes on behalf of other people or who have not been the victims of a crime.

There seems to be a general issue about how the criminal justice system deals with victims. How does the survey consider victimisation? I am not asking just about the police's handling of cases, because constituents who have been the victims of crime raise with me many wider criminal justice issues and tend to be fairly positive about the police—I guess that that is other members' experience. For example, if a pensioner who has been robbed does not get their money back, there is an impact on that person.

Information on wider issues to do with victimisation, rather than just on whether people were happy with the response time from the police constable, might be useful to the Scottish Government as it considers its approach. In a way, the crime and the policeman's involvement are just the entry points in a process that raises much wider issues. To what extent does the crime and victimisation survey go into those issues?

**Chief Constable Shearer:** You are right to say that the issue is not just our contact with victims but how people are dealt with at every stage of the criminal justice process. In the context of the Scottish policing performance framework, we want to develop that wider aspect through our partnership approach to the national criminal justice board, so that we minimise the number of times people must appear in court and so that we consider outcomes. That is an important element. Barry Stalker will talk about how the survey dealt with victimisation.

**Barry Stalker:** A benefit of the crime and victimisation survey is that it focuses on victimisation and seeks a broad range of data from victims and the general public. Victims have much information to give, based on their experiences. The recently-published report gives a good idea of the range of information that we have.

**Margaret Smith:** Can you pull together some of the wider information into a written submission to the committee? I think that most of us agree that we need to make use of the survey to develop better services for victims.

**Barry Stalker:** We will be happy to do that.

**Nigel Don:** You discuss the results of surveys, of course, but are the results disseminated throughout the police service, right down to the constables on the beat?

**Chief Constable Shearer:** Absolutely. I can give an example of how Dumfries and Galloway Constabulary learns from expressions of dissatisfaction. It is unfortunate, but a recurring issue—not just in my area—is victims' dissatisfaction with the feedback that they are given. People want timeous and detailed feedback. That is constantly fed back down the line. Officers down the line might not see the whole picture, but they are given the learning points that emerge and the whole picture is available to them if they want to see it.

**Nigel Don:** When I was a local councillor I was more aware of dissatisfaction than satisfaction—such is life. The main dissatisfaction was about inaccessibility. I noted that one of the context measures in the Scottish policing performance framework is the

"Number of telephone calls and incidents".

I encourage you to include the number of incidents that were not reported, either because folk felt that it was not worth picking up the phone or because they put the phone down after holding on for two minutes and not being answered. That is an important contextual measure. I am not blaming anyone for the situation, but, unless you have that number at your disposal, you cannot measure the performance of the police in their general public duty.

**Chief Constable Shearer:** That is a key element in relation to surveys that show a higher level of crime than the level of reported crime or incidents. In moving towards success in that area, if we can narrow the gap, that will show that we are getting closer to obtaining public confidence in reporting.

**The Convener:** Thank you, gentlemen. Two matters remain outstanding—first, a response to Bill Butler's question, and, secondly, a response on victimisation, which was raised by Margaret Smith. If you provide answers on those matters in writing, that will complete your evidence to the committee.

Thank you for coming to our meeting today. We found your evidence exceptionally useful.

12:21

*Meeting suspended.*

12:22

*On resuming—*

**The Convener:** I welcome the second panel. Dr Kenneth Scott was head of the school of social studies at Bell College, which is now part of the University of Paisley, and also director of the Scottish centre for police studies there. Our second witness is Daniel Donnelly, who was a long-serving officer in Strathclyde Police, latterly as divisional commander of E division, and who left the hurly-burly of policing in the east end of Glasgow for the scented groves of academe.

Thank you for coming, gentlemen. We look forward to your presentation; thereafter, the committee will ask questions. Who is going to lead?

**Dr Ken Scott (University of Paisley):** I will lead, convener. Thank you.

I will give a brief introduction and some background information on the work that we have been doing on policing. We are anxious to give the committee an opportunity to take the discussion wherever it wishes.

For about the past 10 years, Dan Donnelly and I have been working, mostly as a team, to research,

write about and publish on various issues that relate to Scottish policing. One of our main reasons for doing that work is that, compared with other parts of the United Kingdom and, indeed, Europe, academic interest in Scottish policing has been fairly limited. There has not been a great deal of information and evidence about Scottish policing.

The areas that particularly interest us relate to the structure, organisation and management of policing in Scotland. Arising largely from his practical experience, Dan is particularly interested in the changing face of community policing. Traditionally, community policing has been a strong aspect—in fact, almost a defining feature—of Scottish policing.

We are also interested in issues relating to accountability—in particular, the way in which the tripartite system works to ensure accountability, and the newer forms of accountability that are coming into play.

One of the reasons why we welcome this opportunity to speak to the committee is that underlying much of our work is the recognition that, despite the visibility of policing in Scotland, it is not necessarily a clearly understood area of activity. Much of the work that we are engaged in is not just academic research for its own sake; we are seeking to provide some public understanding of what the issues are in Scottish policing and how they relate to some of the things that are happening in policing elsewhere—even just in the rest of the United Kingdom. Although Scottish policing has its own particular history, tradition and way of doing things, it is nonetheless influenced by what happens elsewhere. In the past few years, a huge amount has been happening in policing. In trying to elucidate that, we hope to make some contribution to the public's understanding of what Scottish policing is and what it tries to do.

**The Convener:** Thank you. Do you wish to say anything at this stage, Mr Donnelly?

**Dr Daniel Donnelly (University of Paisley):** No, that was fine.

**The Convener:** It was a fair and succinct summation. We now come to questions, and I invite Paul Martin to begin.

**Paul Martin:** Good afternoon, gentlemen. You have quoted statistics on the increase of more than 4,000 police officers between 1976 and 2007. Has the number increased in line with statistics on crime in local communities?

**Dr Scott:** I suspect that the increase has tended to be more related to the requirements placed on the police service and the wide range of activities with which the Scottish police service now has to engage. There are some problems with the

statistics, in relation to the extent to which the numbers filter through to front-line activity.

As I am sure the committee is aware, there are considerable issues to do with numbers of police officers, such as the demographic issue and the lead-in time for recruiting and training police officers. On the other side of the coin is the extent to which those increased numbers are adding in the medium term to the gross number of police officers and gross policing resources when matched against issues of retirement and so on. That raises the question of the extent to which there are other ways of contributing to the numbers. For example, several forces are already bringing back retired police officers to make use of their experience. Simply looking at the gross increase in police officer numbers underestimates the complexity of the situation. There are signs that the Scottish police service is being creative by trying to make the best use of those resources. However, there are problems with the number of officers going out as well as with the number of those coming in.

**Paul Martin:** Other concerns might be about the political drive towards an increase in numbers, which might not be related to crime. The political drive to increase numbers might come from a minister who has decided that there should be an increase by a certain number. However, that does not take into consideration some of the statistics to which you referred.

12:30

**Dr Scott:** Yes, political considerations obviously come into play. To make a fairly obvious statement, I think that simply increasing numbers is not itself an answer to the issues that you are directing attention to. It depends on deployment, and new recruits will not necessarily be able to be deployed in the range of activities in which the police need to operate. Some care has to be taken, and the numbers have to be considered alongside issues of internal management, how human resources are deployed and what other resources are available to ensure efficiency.

**Paul Martin:** I remember Dr Donnelly in his previous life as Chief Superintendent Donnelly. He and I had some robust discussions about the need for additional policing resources in the Glasgow Springburn constituency. We have just referred to the most effective use of the available resources, which is a matter of looking at the number of police officers in an authority area, for example Strathclyde, and deciding how to make best use of them. Can the panel give the committee any advice on, or a specific example of, how we can make best use of the available police resources?

**Dr Donnelly:** In many ways, the police are a hostage to fortune. To return to the original question, a proportion of additional resources is connected to additional workloads outwith the police's control—for example if the police, as they are doing just now, develop more of a strategic approach to policing in crime analysis and the gathering of intelligence. Sex offenders units are another example of where part of the increase in resources goes immediately to exceptionally important aspects. What is left for the police to play with is usually fairly minimal.

Police managers and commanders take decisions on a daily basis. They will be aware of a strategic overlay—the priorities and the most important issues to the community—but things happen daily and decisions on the use of resources have to be taken. What is an effective use of resources one day may be different the next, and the resources may have to move.

The use of resources may reflect what is happening in the environment, whether that be Faslane, old firm matches or public order events—or a sudden upsurge in a particular crime. Commanders have to focus on such matters and move resources to tackle them. There is no easy answer. The best general answer is to attempt to keep officers on the street so that they are highly visible to the public. Modern police services are well aware of that and they try their best, but there has to be an acceptance of the use of resources on a daily basis—there has to be fluidity.

**Paul Martin:** If a directive from the centre says that the best use of resources is to place officers on the streets, how does that fit in with the idea of making best use of resources? There may be a local argument to say that resources are not best used in that manner. Are directives that are as specific as that helpful in making best use of resources?

**Dr Donnelly:** There must be an acceptance of fluidity at the local management level. Issues come up on a daily basis. That has been part of the dilemma of policing since time immemorial.

In general terms, the overlay should be that, whenever possible, officers are out on the streets, whether that is with community-style policing or whatever. That is an accepted part of policing—and it is more so now than ever before. Police forces try their best, but things happen. For example, when I was a commander I had to use large numbers of community police officers for the football matches. We had to police those matches, and that was the best use of our resources, but the opportunity cost was that those officers were abstracted from their local areas. The opportunity costs are managed better now and there are probably fewer of them in some areas.

The police are fully aware of these issues, but it is exceptionally difficult for them when they have minimal resources to begin with.

**Nigel Don:** Perhaps you could address an issue on which we have struggled to get answers in the submissions that I have seen so far. Will you highlight any areas of work in which the police have a remit but really do not need to have one? I mean tasks that do not need to be done by the police but could sensibly be done by other people.

**Dr Donnelly:** One aspect is that community police officers are involved in many tasks that have no real requirement for a sworn police officer—attending local events, for example—but it is a valuable part of a community police officer's role to be out in the community whenever possible.

Police officers also carry out other traditional tasks that are slowly being taken off them by auxiliaries. For example, on occasion, the police used to be a conduit between the community and local authority departments such as the housing department or education department. Now, the advent of community wardens and other auxiliaries is allowing them to give such tasks to other folk. There are many other examples. Some are minor offences that the police found it difficult to tackle, such as environmental issues such as dog fouling and litter. Community wardens are also taking on other tasks that do not require sworn police officers but in which they were involved, such as school visits.

The lesson is that we could release more police officers' time if some of those auxiliary roles were expanded.

**Nigel Don:** Does that suggest that there is consensus that the tasks that the police are doing at the moment are those that they should do?

**Dr Donnelly:** That is not 100 per cent true. The police are involved in some tasks because they are the only ones there. They are the first resort in many instances, but the service is fully cognisant of that and, slowly, other folk are taking on those roles.

**John Wilson:** Has an appropriate balance been achieved between nationally provided police services and services that are provided by local forces? If not, what needs to be done to address any imbalance between the funding streams and the resources that are available?

**Dr Donnelly:** Let us take the example of the Scottish Crime and Drug Enforcement Agency. It is a fairly new organisation and it has a requirement for additional resources, for which it will advertise in the coming year.

There are many such examples of the police service being in the throes of rebalancing and

taking on tasks. In other words, if the SCDEA receives the proper resources, that will remove some pressure from the eight police forces in Scotland. We are at the beginning of that transition. Many public agencies and members of the police service are fully aware of where those imbalances are, but actions are currently being taken that should redress those.

**Dr Scott:** I support that. With the recent creation of the Scottish Police Services Authority, a general case can be made for saying that it is important to make efficiencies by dealing at a national level with things such as—as the SPSA is doing—training, the Scottish Police College and the Scottish Criminal Record Office. The SPSA is also about to take on the provision of IT. Arguably, that development is long overdue, given that efficiencies and economies of scale can be achieved by dealing with such matters on a national basis. Other issues that might come up in due course include recruitment, for which a more central system might be developed.

All those changes have at least the potential to release local police forces to get on with the job that they have to do whereas traditionally, for example—although this might not be so much the case now—each force had its own recruitment department, which was often staffed by police officers. The considerable potential for efficiencies that exists in those business areas of policing might well be assisted by the development of the SPSA.

**Nigel Don:** Is there consensus among the police and among the public about what the police should do? Does that provide us with clarity on how to set priorities?

**Dr Scott:** I think that there are two sides to that. Like members of any organisation, the police are possibly unwilling to give up things that they already do. That is a given of organisational life. Back in the 1990s, the Home Office produced a considerable report on what were called the police's core and ancillary duties. The report found it impossible to come to a conclusion on the issue, and I am not sure that the position has moved on very much since then. As Dan Donnelly said, the police are providers of both first resort and last resort.

The other side of the matter is public expectations, which is quite a difficult issue. I think that the public view is that the police should do what they have always done as well as deal with all the new issues that arise. How to influence public perceptions and expectations about policing is an issue that will need to be thought about strongly in future, but it is not easy. Perhaps one way of going about that is to focus on effectiveness. If we can prove that people other than sworn police officers can do an effective job

in certain areas, the public might then say, "That's fine, as we're getting what we want done." They might then not be too concerned that the task is not being done by a traditional police constable. However, that is a big challenge.

12:45

**Nigel Don:** The committee is aware that the UK Government commissioned an independent review of policing in England and Wales, which reported recently. I confess that I have not read that report. Can you comment on how relevant the report might be to us in Scotland?

**Dr Scott:** Sir Ronnie Flanagan has published an interim report; I think that he is due to publish the full report in January. The report deals with a number of important issues that are related to the committee's concerns about bureaucracy, accountability and performance management.

The interim report is strong on acronyms, which makes it difficult to work out what is being said, but from my reading of it I think that its current recommendations are fairly technical. However, many interesting issues are raised in the main body of the report about, for instance, bureaucracy. It is easy to say that we need to cut down on bureaucracy, but it is difficult to do that while maintaining due process and so on. It seems that the report identifies such issues and addresses them.

Two other areas might be of particular interest to the committee. First, the report places a strong emphasis on what is called neighbourhood policing, which is possibly what we think of as community policing. There are a number of interesting ideas about how such policing might be given a higher priority in the overall scheme of things.

One that is perhaps worthy of attention in the longer term is the idea of emphasising neighbourhood policing as a career option for police officers and ensuring that the people who operate in a neighbourhood are there for a reasonable period, so that they develop an interaction with the community, which is important. A problem with police organisation generally is that people tend to move around a great deal, which creates a lack of stability.

The other area that deserves attention, and which will receive fuller attention in Flanagan's final report, is the issue of local accountability and how that might be effected.

**The Convener:** The committee will be issued with copies of the interim Flanagan report in due course. We now come to civilianisation, questions on which will be led by Cathie Craigie.



**Cathie Craigie:** The witnesses' book "Policing Scotland", which was published in 2005, highlighted the considerable extent to which Scottish police forces had been civilianised—in fact, a third of the total Scottish police force was civilian. In response to our call for written evidence, the Scottish Police Federation sent a submission in which it claims that there has been a 60 per cent increase in the number of civilian support workers over the past 10 years—from just under 5,000 to nearly 8,000. Can you outline the extent to which work connected with policing is now carried out by civilians? You referred earlier to community councils and to community events that police are expected to attend. Can you scratch the surface a wee bit and help us understand what areas are being covered by civilians?

**Dr Donnelly:** Yes. Back in the 1980s, three categories of civilianisation arose. The first was roles for which a police officer was not required, the second was roles that a civilian could carry out but which a sworn police officer would oversee and the third was roles for sworn police officers only.

Over the past couple of decades, the first category has been virtually exhausted—it has been civilianised. The second category is virtually the same. But there is now an overlap into the third category. That takes us much further than the original idea of civilianisation. Roles are now being carried out that, hitherto, we believed only the sworn police officer could do. If I cast my mind back, that includes taking fingerprints, searching prisoners, photographing prisoners, custody procedures and so on. Those roles have now been taken over by civilians.

Looking at the wider UK context, more and more civilians, including police community support officers in England and Wales and other non-police officers, have been using additional police powers to do various things. There has been a change in mindset regarding how far we can go down the road of civilianisation. There seems to be a willingness to go much further in order to release the sworn police officer. In some instances, that might just require a tweaking in legislation.

I will give an example—using just a little bit of poetic licence. If I woke up, went out and found that my car was being broken into, I might take a good look at the individual as they ran off and then drive to the local police station. I would go in and report the crime to a civilian in the police office. Another civilian might come out and photograph the car, dust it for fingerprints and lift a fingerprint. Another civilian in the police office would put it through the fingerprint computer system. Another civilian would take a note for the crime report.

Another civilian would take a description of the perpetrator and put it into the crime intelligence system, perhaps coming up with a possible suspect. Note that there are still no police involved.

If there was a hit with the fingerprint, and if a sufficient set of witness information was available, a civilian case management person could draw up a pro forma and e-mail the case to obtain a warrant at the procurator fiscal's department, and another civilian would do the business there. The warrant would come back and someone in case management would contact the individual's lawyer and make arrangements for the perpetrator to be brought in. Then, and probably only then—that is the case at the present time although, with a tweak in the legislation, this could change—would a police officer read out the warrant. Following that, a civilian custody officer would search the individual and take them into custody. Another civilian escort group would take the perpetrator down to court.

That is an example, but it illustrates the point that mindsets are changing. With will and with small tweaks in legislation we could do a lot more. All the police officers who in the past would have had to be brought in to listen to me and my story will now not be interrupted. Now, they do not need to be disrupted and they can carry on with their role and with the job that they are really being paid to do.

**Cathie Craigie:** I get the impression that you have used that example before. In your experience, do you believe that benefits have been achieved through civilianisation? What problems have been caused by it?

**Dr Donnelly:** There have been a lot of benefits. One of the best is getting a workforce that is not transient. The civilians are always there, developing their skills, whereas police officers tend to get moved about every couple of years. That is the nature of their role. With civilianisation, there is a tendency for individuals to remain, to develop and to become expert—in many instances more expert than the police officer might have become.

Another benefit has been provided by community wardens, who have been given enforcement powers to tackle problems such as litter, dog fouling and other environmental issues, which the police struggled to deal with because they were busy doing other things. Now, there is permanently a small army in the community to do those jobs.

Community wardens help to tackle other issues, too. I spoke to a group of wardens who had received 100 court citations in the preceding year, mainly in relation to serious crimes such as murder and attempted murder. When I spoke to

criminal investigation department officers, they made it quite clear that in some circumstances those cases would never have been brought to trial without the evidence of the wardens. The fact that wardens have a permanent presence on the street and can carry out particular tasks brings many benefits.

As with any organisation, cultural problems have arisen. In the 1980s, the introduction of community policing caused difficulty among mainstream police officers, who had difficulty coping with and accepting the small number of community police officers. That passed and community policing is now part of mainstream policing. In some areas, community wardens—along with the public and the police—are experiencing similar cultural problems. Existing traditions, practices and cultures are the main problem but, in general, civilianisation has proved its worth. There is no doubt that it has released sworn police officers to carry on with their jobs.

**Cathie Craigie:** Are there areas of policing in which civilianisation could and should be developed, but an individual or an organisation is holding that back? Could Scotland benefit from looking at examples of the use of civilian staff in other countries?

**Dr Donnelly:** There are such areas, but the will has to exist within the organisation. To give credit to the police, they now acknowledge that there are other areas that can be civilianised.

The issue goes wider, though. In the UK, for example, retired police officers are now employed by quite large companies that offer the services of senior investigating officers, forensic scientists and civilian support and IT staff. In parts of the UK, such officers are coming in and assisting with major incidents in major incident control rooms, which saves having to drag in detective officers, civilians and other police officers whenever there is a major incident, with the result that there is less disruption. The development of such strategic use of resources through outsourcing means that people who worked in an organisation and who are accepted totally by it—there are no cultural problems—can come in, carry out an excellent job and then leave. That means that the police force in whose area the major incident has occurred is not disrupted as much as it would normally be.

There are many areas in which civilianisation can still take place. One of the main ones is administration, bureaucracy and case management, in which trained civilian personnel can take a great deal of work from police officers. There is a pilot running in England in which the bureaucracy and crime administration of a detective officer has been reduced by 30 per cent. The fact that civilian personnel are running identity parades and taking the low-level statements for

which detectives are not required means that detectives are released to go and do more detection. Civilianisation is as good as our creativity and imagination allow it to be.

We now have a pool of people outside the police service who we can bring in to carry out certain tasks. We did not have that in years gone by.

13:00

**The Convener:** Where is the pilot in England?

**Dr Donnelly:** It is part of the modernisation programme in the Surrey Police. It is just one example.

**John Wilson:** Dr Donnelly described a crime scenario and said that, all through the process, people would be dealing with civilians in the police service rather than with an actual police person. How would the public perceive that? Something that comes through time and again in research is that members of the public do not think that we have enough police. Members of the public feel that they cannot find a police person when they need to. In the scenario that you described, it was clear that, from beginning to end, no police person would be involved.

**Dr Donnelly:** One would like to think that no police officers are in the office because they are all out on the street, and one would like to think that the public would notice the more visible police presence on the street, but as Ken Scott said, mindsets have to change for the 21<sup>st</sup> century—not only among police and politicians but, more important, among the public. For example, everyone uses 999 for police calls, but in many cases that is totally unnecessary. We have to encourage the public to change the way they do things. It is not just the police, the public services and the politicians in local government and central Government who have to change; the public have to change too.

What should matter is the standard of service that people receive, whether it was consistent and whether people were happy with it. If the answer to those questions is yes, does it really matter who delivered the service? We have to get that message across. Such a service can be provided without risk to the public and without affecting their safety, which police forces would never do. Balances can be achieved through the good strategic use of civilianisation. In many instances, much better service could be offered in that way than could be offered by the poor, harassed and overworked police officer. That message will have to be got across—it will have to be marketed—before we will be able to win the public over. We have some way to go with that.

**Paul Martin:** We have talked about releasing police officers from certain duties to give them more time. Community police officers work to shift patterns, which is understandable, but there will have to be a culture change within the police service so that community police officers have shift patterns that relate to the local crime trends. As we have said on many occasions, convener, criminals do not work to shift patterns; they work to patterns that suit them.

When we talk about releasing officers for other duties, should there not be a quid pro quo? We have to get something back. We might release officers, but we cannot continue with the present situation, in which police officers in some of the most notorious areas in Scotland are working at 8 o'clock in the morning—when many of the people we are concerned about are not working.

**Dr Donnelly:** You are entirely right but, in fairness to the police, they are looking into that. Things have changed somewhat since you and I discussed the issues seven years ago: shift patterns have changed, more flexibility has been brought in and there has been more acceptance from associations such as the Scottish Police Federation of what is required for the new century. When we consider some of the programmes that are being run on workforce modernisation, we see that such issues are being taken into account.

You are right to ask what the point is of releasing resources if we do not use them efficiently and effectively and if officers are not available when they should be. That question is being addressed and there has been some improvement over the years.

**The Convener:** I imagine that, over the years, there have also been some stormy meetings at London Road.

We will now move on to consideration of police accountability and governance.

**Margaret Smith:** Will you summarise the main strengths and weaknesses in the current arrangements for police governance?

**Dr Scott:** That sounds like a good examination question.

**Margaret Smith:** You have two minutes.

**Dr Scott:** The tripartite system has been in place for quite a long time. In its time, it reflected the balance of interests in policing as a national, local and independent process. It was important that an element of police independence was built into the system.

Nowadays, the problem is the lack of balance between the three elements—indeed, it is arguable whether the three legs of the system were ever of equal length. For a variety of

reasons, the balance has tipped considerably towards the central Government leg. Given that policing in Scotland is a big electoral issue, particularly since the devolution settlement, and that people are very concerned about it, the shift is understandable. It is therefore natural that Executives and Governments want to have a say in what goes on, but that has eroded the constabulary independence leg. However, the most imbalanced of the three legs is local policing. There are some real issues in respect of whether police boards can effectively carry out what is expected of them.

Of course, the role of police boards has changed as a result of legislation and other factors: they now have a number of responsibilities and duties, but the problem is in whether they can undertake them in a way that balances the positions of the chief constable and central Government. One phrase that is used to sum up the proper role of police boards is that they should “support and challenge local policing.” Generally speaking, boards are very supportive of their local forces. At this stage, the question we ask must be this: To what extent are boards in a position to effectively challenge local forces, in the sense of holding them and their chief constables accountable for what they do in their areas?

One of the big problems for police boards is that they are underresourced for the requirement to monitor and represent their communities. The classic situation is that, if a police board wants to know anything about what its local force is doing, it asks the chief constable to provide the relevant information. A problem arises in that respect, given that accountability needs nowadays to be much more objective. There is a real question about whether police boards are in a position to effectively hold the police to proper democratic account.

Another issue is the way in which police boards are composed. In Scotland, they are composed entirely of elected councillors, although people are not elected as councillors in order that they can sit on police boards. In six of the eight force areas, the joint-board system means that councils in the area nominate people, but there is a wee bit of a problem in terms of the extent to which people on police boards can represent effectively the interests of local communities. In a sense, they are representing the councils that nominated them. On balance, I suspect that what has happened recently has made it more difficult for local accountability to be effected through police boards.

**The Convener:** You have anticipated some of our questions.

**Margaret Smith:** I will not pursue the issue of police boards and police authorities. If I went down

that road I would be stepping on the convener's toes. I am more interested in strategic governance, on which you have touched. Slightly controversially, you said that the balance has tipped towards central Government. Some people would argue that, because ministers do not appear to have powers under statute to set policing priorities, all that ministers and Parliament can do is set a framework and give a general idea of what they want people to do and of the budget that is available. At least on paper, operational decisions are in the hands of chief constables, who must take cognisance of boards and local authorities, but you are saying that the reality is very different. How do you justify your claim that power has shifted towards central Government, given that—on paper—operational decisions are still taken by chief constables?

**Dr Scott:** South of the border, much of the imbalance is enshrined in statute. Acts such as the Crime and Disorder Act 1998 show transparently how the balance has shifted. Our studies have indicated that in Scotland there is little legislation and little on paper that says how the tripartite system works in practice. The Scottish Parliament has passed a massive amount of national legislation—about a third of all acts of Parliament during the first two sessions—that impinges on the police. Not all the acts have been on the police, but they have impinged to some extent on police activity. That has not necessarily been done consciously, but there has been a centralising process in that matters that are enshrined in statute to an extent determine priorities.

As a result of the constitutional change in Scotland, there is a wider Scottish view of the issues that relate to policing, and political leaders have been more proactive in expressing what they expect to see in policing. At the end of the day, it may be possible for a chief constable to tell the minister that something is not appropriate—I am sure that that will happen—but there is a tendency to go with the national priorities that have been set.

There is no doubt that the balance has shifted. The fact that the Government deals with police organisations such as ACPOS, the Scottish Police Federation and the Association of Scottish Police Superintendents also leads to centralisation. It is much easier to ask ACPOS to respond to a point than to traundle around eight individual chief constables.

13:15

**Margaret Smith:** Is it your view that we do not, at the moment, have a police service that is truly independent of political control?

**Dr Scott:** I would not say that it is politically controlled, but there are increasing political influences in the sense that a national view has been taken of what is required of policing.

**Margaret Smith:** Do you believe that the priorities of politicians and the public are reflected in the priorities of individual police forces? To some extent, one would expect that to be the case because both politicians and police forces are meant to be servants of their communities—they get the same messages from the same people.

**Dr Scott:** That may be the case more now than in the past, although it perhaps worked the other way in the past; chief constables may have been closer to their communities and may have been able to take those messages. Certainly, there is a centralising tendency that conveys messages to chief constables about what the priorities are.

**Dr Donnelly:** We alluded earlier to Sir Ronnie Flanagan's interim report, which says that there are insufficient mechanisms to allow the man in the street to get his point across. The report suggests that, in the context of neighbourhood policing, a slice of the budget could be spent by local communities, which could then see policing's impact. That is high on the agenda in other areas in the UK.

Two recent reports—one that was published during the summer and the HMIC's report—mentioned that the police authorities have, other than the ultimate sanction of dismissal, few sanctions against a chief constable who refuses to implement HMIC's recommendations. Audit Scotland's call management report also states that the police authorities are not really involved in the planning, monitoring or scrutiny of the more national, strategic issues such as IT systems and call management systems, and suggests that they should be more involved in that.

There are lots of issues there.

**Bill Butler:** Good afternoon, gentlemen. Let us return to Mr Scott's comments on the tripartite system. You said that it was fine in its time, but you went on to list several deficiencies that stem—in your view—from the fact that the balance is now tipped too far towards central Government or the chief constables. When you were asked whether police boards can carry out their duties effectively within the tripartite system, your answer was that they cannot. When you were asked about the extent to which police boards can challenge or hold to account chief constables, your answer was that they can do very little. When you were asked whether it is possible to represent local communities, rather than a centralised council, on police boards, you said that that would be very difficult. You also talked about a lack of resources.

Given all those deficiencies in a system that, in times gone by, worked reasonably well—there were checks and balances—what changes do you regard as being necessary to the composition or role of police authorities in order to tackle those deficiencies in police governance arrangements? If you were given the task of setting the situation right, how would you do it?

**Dr Scott:** There are several points to make. One possible model, which is being thought of in local government terms, relates to the fact that a conflict, or at least some tension, exists in being the provider of a public service while also monitoring and scrutinising that service.

One way forward might be to see police boards less in the traditional role of providing the resources for the police service. Police boards have never been in a position to specify the detailed provision, because of constabulary independence and the chief constable's role, so it might be better to be open and to say that the police board's role is to represent the community by holding the local police force to account, which means scrutinising what the chief constable is doing, what his or her plans are, how effectively those plans have been put into operation and how effectively resources have been used. In that way, perhaps a board could also be the voice of the community, which would get round the problem of members being nominated. Instead of the pretence that the police board was there to provide the service, the focus would be entirely on accountability.

**Bill Butler:** I understand the general sense of what you say, but if you are arguing for what is predominantly a scrutiny role, I note that you said that elected members on police boards lack the resources to challenge a chief constable effectively on his or her operational priorities and why they are correct. How would you beef up the scrutiny role for which you seem to argue to give elected members more resources, by which I think you mean more viewpoints and more sources of information rather than simply the word of—God bless him or her, but usually him—a chief constable?

**Dr Scott:** The board needs to be given some kind of manpower or personpower resource. As you probably know, as you come from there, Strathclyde joint police board, which covers half of Scotland, is resourced with one clerk and one assistant clerk.

**Bill Butler:** I was never a member of the board, but I will take your word for that.

**Dr Scott:** The resource is of that order. A huge amount would not be needed to increase that resource and have some independent servicing to the board, whereby information could be provided

to it. That is the kind of resourcing that we would need so that if the board needed information, it would not be the case that it could obtain the information only from the police service.

**Bill Butler:** Where should that resource come from? Should the councils that form a joint police board contribute pro rata according to their populations? Alternatively, are you arguing that the 49 per cent that comes via councils should come from the centre? That would go against your point that there is too much centralisation. Surely that would place too much resource power away from local government—although I guess that is only in form—and with the grant-aided expenditure settlement.

**Dr Donnelly:** I will use an analogy to answer that. When the performance management systems in the police service came into being, the eight Scottish police forces were not prepared for it. Over the years, they have developed audit, scrutiny and IT systems—those are well resourced in all the forces. If the role of the police authority changed along the lines that Ken Scott suggested, to deter duplication, I would imagine that some of the funds could come from there. The forces have no choice but to invest in that type of resource in order to produce the bureaucracy and the data. Would it not be better that the outside group—the police authority—did that, and killed two birds with one stone? I am sure that the funding would be adequately covered by taking some of the chores from the police service.

**Bill Butler:** Your point is well made, Dr Donnelly.

Dr Scott, you talked about changing the role of the joint police authorities. You said that the composition of joint police boards is a problem because they include councillors from each of the local authorities that make up the board. How do you change the culture from an attempt to represent—nothing can truly represent it—the whole corporate council standpoint, to what you seem to be arguing for, which is to put the local community to the fore?

**Dr Scott:** At the risk of suggesting even more committees, Flanagan makes the point in his interim report that if there is a focus on policing at the community or neighbourhood level, obviously accountability should also be at that level. Maybe, therefore, we have to think again about how to represent the voice of the community at those levels. Nobody is saying that that is easy. It is always quite difficult to set up public meetings and so on, and they still do not necessarily give a balanced view of the population.

Police forces tend to be organised in divisions, or what they call basic command units south of the border. There have been quite a few trials down

south to consider how to hold the basic command unit to account. Maybe, in future, that is where accountability needs to reside, rather than at the level of the force as a whole. I am not saying that there are no strategic issues that have to be considered. It may be quite appropriate that the police board can operate at that level. However, if what people are worried about is the policing in their area, and if the police are organising themselves on that basis, surely there has to be some means by which accountability can operate at that level.

**Bill Butler:** I do not know whether this is the case, but people could interpret what you are saying as an argument for self-nominating local committees that, unlike councillors and elected members, do not have direct accountability to the electorate. Do you accept that?

**Dr Scott:** I prefaced my remarks by saying that it is quite difficult simply to have that kind of self-nomination. There is an issue at the level of general principle, and then there is the much harder job of working out how that might work.

**Bill Butler:** I have one last question. You said that the tripartite system needs revamped—that is the thrust of what both of you have been saying. However, there are two areas that you did not specifically refer to as either working or creaking: controlling the budgets of police forces; and helping to ensure that best value is achieved in arrangements for policing—in other words, ensuring a proper balance between quality and cost of performance. How does the present system deal with those two areas? Well? Poorly? Just?

13:30

**Dr Donnelly:** It would not be my place to focus on any particular police force. Police authorities are now statutorily responsible for some of those tasks. Any additional support and expertise for the police authority would only make for much better scrutiny of the local force. That is the best answer that we could give. Like everything else it can be improved, but the group that could do a lot of the improvement probably does not have the expertise or professionalism to do so.

**Bill Butler:** So it is the resource that provides the expertise and the professionalism that is needed.

**Dr Donnelly:** That improves the scrutiny and the audit.

**The Convener:** I have one final question, gentlemen. You were present at the earlier evidence session. Do you have any comments on the Scottish policing performance framework?

**Dr Donnelly:** Not really. It is a comprehensive framework, and I await with interest the measurements at the end of the day. The proof of the pudding will be how the measurements come out at the other end.

**The Convener:** Thank you—it has been a most interesting session and the committee is very grateful.

13:32

*Meeting suspended.*

13:33

*On resuming—*

**The Convener:** Item 7 is fairly simple and straightforward. In the course of the inquiry, the committee will take evidence from a number of witnesses, some of whom may seek to claim expenses. I ask the committee to agree to delegate to me responsibility for arranging for the Scottish Parliamentary Corporate Body to pay witness expenses in relation to the committee inquiry.

**Members indicated agreement.**

13:34

*Meeting continued in private until 13:47.*

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