JUSTICE COMMITTEE

Tuesday 26 January 2010

Session 3

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JUSTICE COMMITTEE
4th Meeting 2010, Session 3

CONVENER

*Bill Aitken (Glasgow) (Con)

DEPUTY CONVENER

*Bill Butler (Glasgow Anniesland) (Lab)

COMMITTEE MEMBERS

*Robert Brown (Glasgow) (LD)
*Angela Constance (Livingston) (SNP)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Nigel Don (North East Scotland) (SNP)
*James Kelly (Glasgow Rutherglen) (Lab)
*Stewart Maxwell (West of Scotland) (SNP)

COMMITTEE SUBSTITUTES

Aileen Campbell (South of Scotland) (SNP)
John Lamont (Roxburgh and Berwickshire) (Con)
Mike Pringle (Edinburgh South) (LD)
Dr Richard Simpson (Mid Scotland and Fife) (Lab)

*attended

THE FOLLOWING GAVE EVIDENCE:

Oliver Adair (Law Society of Scotland)
Ian Bryce (Law Society of Scotland)
Ken Dalling (Law Society of Scotland)
John Logue (Crown Office and Procurator Fiscal Service)
Vincent McGovern (Law Society of Scotland)
Frank Mulholland (Solicitor General for Scotland)

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Andrew Proudfoot

LOCATION

Committee Room 1

Scottish Parliament

Justice Committee

Tuesday 26 January 2010

[THE CONVENER *opened the meeting at 10:02*]

Decision on Taking Business in Private

The Convener (Bill Aitken): Good morning, ladies and gentlemen. There is a full turnout of committee members, so we have no apologies. I remind everyone to switch off mobile phones.

Agenda item 1 is to decide whether to take item 3 in private. Do members agree to do so?

Members *indicated agreement.*

Summary Justice Reforms

10:03

The Convener: The principal business today is summary justice reforms. I draw members' attention to paper J/S3/10/4/1, which is a summary justice reform cover note, and to the written submissions that we have received.

I welcome the first panel, which consists of representatives of the Law Society of Scotland's legal aid negotiating team. In particular, I welcome Oliver Adair, who is convener of that team. He is joined by Ian Bryce, Ken Dalling and Vincent McGovern. I understand that John Scott has a case at the High Court that has overrun, so he is not with us.

I invite Mr Adair to make an opening statement.

Oliver Adair (Law Society of Scotland): Good morning, ladies and gentlemen. I am aware of the committee's time constraints, so I will confine myself to thanking members for the opportunity to come here to answer their questions. I am happy simply to move to questions.

The Convener: Thank you for that, Mr Adair. That is helpful.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): Good morning, gentlemen.

In the second last paragraph on the second page of your written submission, you say:

> "In the early days of the Summary Reforms we observed for ourselves, and were made aware of, cases which had been diverted from court but which seemed inappropriate for alternatives to prosecution"

because of their "serious nature". Will you expand on that, and particularly on the alternatives to prosecution that are available?

Vincent McGovern (Law Society of Scotland): I think that you are asking about direct measures. The Law Society's position on direct measures has been fairly consistent; it goes back to the McInnes report and, thereafter, the consultation period before the introduction of the Criminal Proceedings etc (Reform) (Scotland) Bill. Let me explain. The society understands the rationale for the policy, but concerns have been expressed about presumed acceptance—that is, the opting-out provision—and those concerns remain. I am sure that members understand how that provision operates. If someone is offered a fixed penalty, it is simply presumed that they will accept it, and it is recorded against them unless they take an active step to challenge it. The society had concerns about that at the consultation stage of the legislation. It is also fair to point out that paragraph 14 of the "Summary Justice Reform: Summary

Justice System Model" policy document, which set out the criteria that would be used in the application of direct measures, stated:

"Serious or persistent offenders will not be offered a direct measure."

That is the policy that direct measures were designed to implement. The profession was concerned about how consistently the policy was being carried out.

We must qualify our position by saying that the guidance that the Crown uses in implementing the policy remains confidential, and, as we do not know what its guidance is, it would be unfair for me to be critical of how it is operating the policy. The cases that were highlighted to Cathie Craigie were anecdotal and attracted press attention; there were concerns about the types of case in which direct measures were being offered. Obviously, the use of direct measures by the Crown and by the police by way of antisocial behaviour fixed penalties has expanded—an enormous number are now issued. The written submission from the Association of Chief Police Officers in Scotland indicates that, since April 2007, more than 100,000 penalty notices have been used. We are concerned about that not so much with regard to serious offenders—although I qualify my comments with the information that I have already given—as with regard to persistent offenders. There is something that I have to say to members if the policy is that persistent offenders are not to be offered direct measures. I hesitate to say this, but we have probably more than 100 years of front-line court room experience among us—I have that at least, I think—and we constantly represent offenders who appear from custody with records that have a significant number of direct measures or fixed penalties recorded on them, along with previous convictions. Those persons were persistent offenders before they were offered direct measures, they are persistent offenders while they are being offered direct measures, and they will remain persistent offenders after the issuing of direct measures. I can say that simply because of our daily experience of persistent offenders coming to court with a litany of direct measures attached to their records.

I will crystallise our concern. We understand that the Crown's use of direct measures is scrutinised—the Inspectorate of Prosecution in Scotland has produced information on them in a report that members are probably familiar with—but we would like the police's use of direct measures to be subject to the same sort of scrutiny, because no information seems to be available about how the police operate direct measures. As I have said, the use of direct measures is expanding, and they are now a significant feature of the summary justice system.

Cathie Craigie: I am sure that my colleagues will go into that issue in more detail later.

I am concerned that people are inappropriately avoiding going before the courts. Solicitors who have contacted me have had concerns about that, but I have not heard anything about the matter for some time. Have things settled down?

Vincent McGovern: Inappropriate use would involve the application of direct measures in cases in which, under the criteria, an offence was sufficiently serious that it should not attract a direct measure, or the offender was a persistent offender.

It is difficult for us to comment with any authority on how the Crown is using the policy, because its guidance is confidential. It would not be fair of me to offer you anecdotal personal experience of such inappropriate cases if the issue has been drawn to your attention. What concerns us more is whether there is appropriate scrutiny at police and Crown level in relation to how direct measures are applied.

The information that the committee has received in the Scottish Parliament information centre report and from the summary justice review committee suggests that non-payment is a recurring problem. One reason for that relates to the opt-out provision: on occasion, people do not make an informed choice to take up the direct measure, and when that happens, the fine tends not to be paid.

It is regrettable that the system might suffer from credibility problems if non-payment becomes a significant issue. That is worrying, as the system is designed to be more robust and to address the problem of defaulters. As I read it, the information in the SPICe report suggests that the problem remains and is not necessarily reducing.

I cannot give an example to show that everything is fine with direct measures, because I do not have that information. I can give a general comment, which is that the Law Society's reservations about the policy remain.

The Convener: Before we move on, I would like some clarification from Mr McGovern. You quoted the policy as stating that a direct measure would not be used for people who were both serious and recurrent offenders. Your understanding is that it is not being used for either category, so it is not being used in cases that are serious and would normally go to court and in cases in which an offender has multiple previous convictions.

Vincent McGovern: No, convener—I quoted the policy as referring to "serious or persistent offenders". I qualify my remarks by saying that I restrict my comments to persistent offenders,

rather than suggesting that the issue pertains to serious and persistent offenders.

I feel confident in commenting that, from my daily experience, persistent offenders are offered direct measures regardless of their level of recidivism. It is now common to have clients who appear from custody with six, seven, eight or nine fixed penalties, and some sheriffs take account of that when they are deciding whether to grant bail. To be frank, I do not understand how the policy operates with regard to persistent offenders.

The Convener: We can pursue that, but in the meantime I call James Kelly.

James Kelly (Glasgow Rutherglen) (Lab): Mr McGovern, you have expanded on your concerns about the use of direct measures. What, in your view, is the alternative to that policy?

Vincent McGovern: The Law Society supports the rationale behind the policy: we believe that if it is properly implemented, it is not necessarily a problem. I would not feel comfortable commenting on the policy per se; I have raised issues that relate to the operation of the policy.

To follow the policy to the letter, if the offence is sufficiently serious it should invite a prosecution. If the offender is sufficiently persistent in their offending, an antisocial behaviour fixed penalty would not be appropriate. The correct course of action would be appropriate operation of the policy, rather than any alternative to it.

James Kelly: How could the policy operate more effectively?

Vincent McGovern: There must be proper scrutiny of the Crown Office and Procurator Fiscal Service and the police as the stakeholders that are using the policy, which is an issue to which I am sure the committee will pay close regard. I appreciate that the issue has been examined and reported on during inspections of the COPFS.

If there is robust and equal scrutiny of the two agencies that use the policy, that will give comfort and confidence that the policy is operating properly and as intended.

Stewart Maxwell (West of Scotland) (SNP): Good morning, gentlemen. I will pick up on some of Mr McGovern's comments. The summary justice review committee originally highlighted the issue of the speed with which the system operates. To take you back a step, I presume that you agree that that problem had to be dealt with.

10:15

Oliver Adair: There is no doubt that the Law Society engaged in that process with a view to supporting the early disposal of cases when that was appropriate. We supported from the outset the principle of making the system much more efficient.

Stewart Maxwell: I just wanted to clarify that. Can you set out the progress that you believe has been made in that area, given your earlier remarks? I presume that you believe, given your support for the changes in principle, that some progress has been made in spite of the problems.

Oliver Adair: I do not think that there is any doubt that the statistics that have been produced by various agencies including the COPFS and which were detailed in the letter of 9 March from the Solicitor General for Scotland, who will be giving evidence later today, outline the progress that has been made and the speeding up of the resolution of cases. In many cases, witnesses have not been required to attend court, which has meant that civilians have not been inconvenienced and more police officers have been available to be on the street. That has been an example of the way in which working together can operate.

The changes to the law that were put in place have been supported by changes in the legal aid regime. A scheme was devised—largely by the Law Society, certainly on the legal aid side—to fit with those changes to the law so that we were in a position to resolve cases at a much earlier stage, when that was appropriate. The statistics show that that is happening.

It is significant that the submissions refer to that process of acceleration, which began in June 2008 when the legal aid changes came into effect. I firmly believe that that was a good project and a good example of working together, and that the changes that it produced are working.

Stewart Maxwell: That is helpful. You commented that witnesses are not being inconvenienced and that more police officers are able to be on the streets. One big issue that has arisen in discussions over many years is the effect of the continual churning of cases and of adjournments. Some people have referred to an adjournment culture operating in the courts. Can you explain what impact the reforms have had on that area? If you believe that the system—like any system—is still not perfect, what further reforms do you think could be introduced?

Oliver Adair: A larger number of cases are being resolved at a much earlier stage, which effectively means that cases that are set down for trial are, in the main, those that are likely to proceed to trial. The trial courts are not overloaded with cases as they might have been previously, when sometimes as many as eight, nine or 10 trials were set down for one day, which was never going to happen. The scheduling of court business now means that cases that are set down for trial are likely to proceed on that date—subject, of

course, to the inevitable things that can happen, such as witnesses not turning up. The reforms have helped in that area.

We can further improve the system by ensuring on a national scale that Crown evidence is disclosed at an earlier stage. Disclosure works effectively in some parts of the country, but it is less effective in others. Disclosure of evidence at an earlier stage would mean that cases could be disposed of—if appropriate—at intermediate diets, if not even before that.

The committee will see from the Law Society's submissions that it suggested that the intermediate diet stage could be changed, with intermediate diets taking in the afternoon and a designated fiscal being available in the morning to discuss those cases. It was also suggested that cases that were going to go to trial need not even be called in court. The defence and the Crown could certify that such cases were proceeding to trial, and only cases that were going to be adjourned for good reason or disposed of would require to be called in court. Therefore, there is still scope for improvement in disclosure and in intermediate diet procedures.

Stewart Maxwell: I do not want to put words into your mouth, but you mentioned the inconsistent application throughout the country of the early release of information by the Crown. Can you expand on what you mean by that?

Oliver Adair: You will appreciate that the information that we get on that comes from practitioners in different parts of the country. In some areas, practitioners tell us that disclosure happens very early. As you probably know, there is now a system in which practitioners receive not disclosure of the Crown evidence but a summary of the evidence with the complaint. That is helpful because it gives you something to speak to your client about, which can sometimes promote the early disposal of cases. If that does not happen, you rely on what is called the disclosure package, which contains the statements. The information that we get from around Scotland suggests that in some parts of the country, that works very well and very promptly, whereas in other parts, it does not.

Sometimes you are handed the disclosure package at the intermediate diet stage, which obviously means that you have not had the chance to discuss it with your client, so you either have to continue the case to the trial stage or ask for a continued intermediate diet so that you have that opportunity of going over the information with your client.

Stewart Maxwell: For clarification, are you suggesting that it is a consistent problem in some areas, or is it a problem that occurs randomly across the country and pops up in individual cases?

Oliver Adair: In general, it appears to be a geographical problem, rather than one that can appear at random in any sheriffdom.

Stewart Maxwell: That is helpful; perhaps we should take up the matter with the Crown Office.

Bill Butler (Glasgow Anniesland) (Lab): Good morning, gentlemen. The Law Society's written evidence includes concerns that some alleged offenders are unaware of their options. In particular, it refers to the fact that they have to opt out of direct measures, whereas the previous option was that they opt in. Mr McGovern alluded to the issue in his response to my colleague Cathie Craigie. Mr Maxwell received the answer from Mr Adair that perhaps the disclosure package does not work uniformly throughout the country. Are there any other areas in which the fairness of the summary justice system, including fairness to the accused, is being compromised as a result of efforts to achieve a more efficient or speedier system? You might not want to go as far as saying that the system is compromised, but are there any areas in which it could be improved?

Ian Bryce (Law Society of Scotland): One issue that ties in with the Solicitor General for Scotland's letter to the committee relates to opting out of the procedure. A difficulty that we had with the whole opt-out procedure was that in many cases, the recipients of the offers are not particularly literate and not particularly well-educated, and they have chaotic lives. I have seen letters that offer direct measures, and one of the things that they say is that a direct measure is not a previous conviction. You asked about fairness. I was interested to read in the Solicitor General's letter to the committee his indication that, although a direct measure is not a previous conviction, it seems to fulfil every function of a previous conviction. By that, I do not just mean that a direct measure can be a consideration when a sheriff considers bail in a subsequent case; I mean that that regularly happens. In addition, direct measures are taken into account in sentencing and by the Crown when it considers how it will proceed with cases in future, and they show up in an enhanced disclosure check, which can have a serious effect on people's future job prospects. In respect of fairness, I am slightly concerned about the issue. The direct measure may not technically be a previous conviction—but if it walks like a duck and quacks like a duck, it is a duck. It seems to me that a direct measure does everything that a previous conviction does, if it is deemed to be accepted.

Bill Butler: I take your point: if it quacks, it seems to me that it is a duck. You said that a letter offering a direct measure states that it is not a

previous conviction, but you showed how in almost all aspects it is treated the same as a previous conviction. Is there any aspect of the direct measure that is not treated as a previous conviction? Is there any part of the duck that has perhaps got mixed up with something else?

Ian Bryce: Perhaps it is my fault for using that example.

A direct measure falls off someone's record after two years, whereas you will be aware that a previous conviction hangs about for as long as the Scottish Criminal Record Office records it.

Bill Butler: Is that the only difference?

Ian Bryce: I am struggling to think of another difference.

Bill Butler: If you are struggling to think of another difference, I take it that that is the only difference that the Law Society sees. Is that correct?

Ken Dalling (Law Society of Scotland): The only other specific difference relates to our concern that, when a direct measure is offered, people perhaps do not take legal advice and do not fully consider their options. Their decision not to do anything about the direct measure may simply be either opportunistic or convenient for them. There is a concern about not only the circumstances that follow from the direct measure but the circumstances that underlie the direct measure, with people being required to opt out and not having the opportunity of a court prosecution, not knowing the full detail and not having the circumstances fully considered.

Bill Butler: Should a letter that offers a direct measure go into much more detail, with a definition of a previous conviction? Should it say that it is still open to the alleged offender to take legal advice?

Ken Dalling: We correspond with clients daily, so we know that correspondence on these matters is very difficult. The Crown has to have a one-size-fits-all letter that it can send out in such circumstances. That is not an easy job, because sometimes the more information you give, the less chance there is of somebody taking in any of the information at all. A letter offering a direct measure certainly has to make it clear that it is a significant matter that will have consequences going forward, in relation to which the person has to consider their options and on which they should take legal advice. The letter containing the offer currently indicates that people could speak to a solicitor or go to a citizens advice bureau. I do not wish to end up having a meeting with the Solicitor General to discuss the terms of his letter, but it must be emphasised that a direct measure does not make the matter go away. A lot of clients think that if they just pay the money, the matter will be forgotten, but it will not be. That was an initial concern about a system of direct measures, and it is certainly a concern about a system in which the person has to opt out.

Bill Butler: Are you saying that the Law Society's view is that the letter should say much more clearly that a direct measure is a significant matter that has consequences, and that legal advice should be taken?

Oliver Adair: The more information that the letter contains, without becoming confusing, and the more that it stresses that it would be appropriate to take legal advice, the better. The root of the problem is the change from people opting into the scheme to people opting out of it. Under the previous scheme, the person had to take an active decision to get involved with a direct measure, which meant that they would probably take legal advice and would then opt into the scheme. The problem lies not so much with the direct measure or even necessarily with the letter—although it could perhaps be more informative and robust—as with the change in the system.

Bill Butler: The possible deficiencies in the areas that we have just been talking about are now on the record, but are there any areas in which the fairness of the summary justice system is being compromised to some extent or could be improved?

Oliver Adair: Unless you have specific examples that you want me to comment on, I do not have any other particular issues that I would raise in that regard.

Bill Butler: I am grateful for that. I did not have a particular example in mind; I just wanted a general statement of yea or nay. If you had a particular issue, that would have been good, but you do not, so that is fine.

Nigel Don (North East Scotland) (SNP): Good morning, gentlemen. I apologise for my subterranean voice this morning.

I am interested in your comments about the letters that you send to clients, and I would like you to draw on your whole experience. I am aware that a sizeable fraction of our population does not read and write terribly well, and it is probably fair to say that those who have fallen into your hands are more likely to be in that category, so you will have experience of writing letters to people who may well not understand them, one way or another. Can you give me a feel for whether letters that go from the prosecution offering direct measures are understood? Am I right in thinking that there is a fraction of the population—Mr Bryce has commented on the fact that the people involved are not necessarily the world's brightest,

and that many of them live chaotic lives—that might not understand the letter? Is a letter, in that case, a fair way to communicate?

Oliver Adair: Our experience suggests that the problem is partly that a large number of clients do not understand and do not read letters, and perhaps do not even receive letters, because an aspect of their chaotic lifestyle is that they change addresses extremely frequently. Our collective experience is that very few clients come to us with the letters seeking advice, which suggests that they are not getting the letters, or are just not coming to seek advice when they get them. The fact that we do not get many clients seeking advice on whether they should opt into or out of the system suggests that the letters are not being considered as seriously as they should be.

10:30

Ian Bryce: To a certain extent, the letters are the starting point. We can judge the letters and the whole opt-out system only by the results. As for the effect of recording of direct measures, it was probably only after the reforms came in that sheriffs began to turn their minds to how they should consider such measures. It took some time for people to record more than one, two or three direct measures, so that even if there were convictions, bail would become an issue. There is little doubt that we are now reaching a phase in which sheriffs are turning their minds to whether bail should be an issue in cases in which accused persons have only direct measures recorded, which makes it more of an issue for us because that begins to impact on justice.

There is an issue about the percentage of penalties that are recovered, as members will see from the evidence that is before them—I think it is highlighted in the submission from the Scottish Justices Association. When thinking about the reasons for the low recovery rate, it is not unreasonable to speculate that one reason might be that people are either not aware of fines being recorded or are not understanding sufficiently the status of the fines.

Nigel Don: I will pursue the matter further. I am concerned that money is collected: I do not want to be on the record as suggesting that that does not matter, but I am far more concerned about justice. If people who are in the system are simply not understanding what is happening and how they should respond, we have a justice problem. Can you suggest—from experience—how we could better communicate with the people who do not bring in letters to you and take advice? How do we get them to take the appropriate advice? I am concerned that they should understand what is going on, so that they might change their behaviour in the future. We are talking about persistent offenders. The bottom line is that we have to do something about persistent offending.

Oliver Adair: I suspect that the answer is to reiterate what we have said, which is that it is sometimes not easy for us to communicate with our clients. Many of our clients use a letter simply as a prompt to come into the office to speak face to face with us, rather than considering its content. That makes it difficult for the Crown to get a letter—however it is designed—to have the desired effect. I go back to my point about the opt-in, opt-out system.

Ken Dalling: Where an accused person—for want of a better phrase—who is to be diverted is sent a fiscal fine letter or something else that means that they have to take a positive step to get themselves on to the next stage of challenging the allegation that has been made, it is virtually impossible to know whether they have properly considered the matter. Where they have to respond positively and say, “Yes, I’m here and I’m paying the fine”, or “I’m challenging it”, different considerations apply. However, it is not practical to send out an individual civil servant to everyone who is to be diverted in order to make sure that the individual understands what is happening. In an opt-out system, there is a danger that people will fall between the cracks.

Vincent McGovern: Just to highlight that point, when our model for criminal legal assistance was being devised, certain calculations were set out in respect of what was expected to happen. The model had to calibrate figures to arrive within budget targets. One of the direct-measures figures that were factored into the model was that anticipated challenges to direct measures would run in excess of 20 per cent. The significance of that figure was in costing the legal aid aspect. However, the regional model that was based on use of direct measures with the opt-out facility suggested that 25 per cent of those who were offered them would challenge the measure. I am not 100 per cent sure about the figure for challenges, although it is available, but I think that it is about 2 per cent. If you look at conviction rates as opposed to acquittal rates, that sort of proportion seems to be disproportionate.

The Convener: Without wishing to go on the trail of quacking ducks, I have a couple of follow-up points. Mr Bryce said that the so-called conviction remains just as long as SCRO keeps it on the record, but it is statutorily governed by the Rehabilitation of Offenders Act 1974.

Ian Bryce: Yes—although my practical experience of schedules of previous convictions is that the application of the 1974 act is not always immediately obvious. I am aware that previous convictions can and should fall off under certain circumstances, but it is not my experience that that

always happens entirely accurately. That is why I phrased my point as I did.

The Convener: Mr Adair answered Stewart Maxwells questions with some interesting points. We are all for cutting procedures where possible, but it would not be practical for the defence solicitors and the Crown to agree in an office—perfectly congenially and professionally, as I know would happen—which cases should go to trial. As you well know, many accused persons fail to appear and a warrant cannot be taken unless they are present when the trial is fixed, hence the need for an intermediate diet.

Oliver Adair: No. The point that I was making is that the accused would attend the intermediate diet. My point was that after discussion with the procurator fiscal, if it were decided that the case would be set down to proceed to trial, it would not be necessary to take up court time by calling the case simply for the defence and the Crown to stand up in court and say, "This matter will proceed to trial". A document could simply be placed in the file to certify that the accused had attended the intermediate diet, discussion had taken place, evidence that could be agreed had been agreed, and the matter would continue to trial. Court time would not have to be taken up to do that.

The Convener: What would be the statutory position if the accused failed to turn up at the trial diet and the Crown sought a warrant? How would the sheriff or magistrate know that the accused was aware of the trial diet?

Oliver Adair: I understand the point. There might have to be some sort of provision whereby the certificate would have validity that would allow the court to do that. I do not think that it would be impossible to achieve that. My point was simply about trying to save court time.

Ian Bryce: The Law Society's proposal that the intermediate diet should be called at 2 o'clock contained a suggestion that accused people still be required to attend, as would be the fiscal, at 10 o'clock in the morning. The idea is that if the certificate included a certification that the accused person had been present at an intermediate diet, the sheriff or justice of the peace could be confident that the person knew about the trial. It is important to note that the Law Society's suggestion about intermediate diets did not involve the accused person not turning up; he still has to be there at 10 o'clock in the morning. Thereafter, if the matter was discussed with the procurator fiscal and all parties—the accused would be consulted, too—were in agreement that the case would proceed to trial, he would be allowed to go with the provision of that certificate.

The Convener: Again, Mr Adair's evidence suggests that there has been an improvement in the churn of cases. I do not think that our paths have crossed in the past. Where do you practise?

Oliver Adair: I practise in Hamilton sheriff court and the main court.

The Convener: How many trials are put down for summary trial at Hamilton sheriff court?

Vincent McGovern: We spoke to our district procurator fiscal about that yesterday. The scheduling for trials is ambitious at the moment—it is six trials per court. That means that the period from pleading diet to trial diet has been extended to try to lessen the load on the court to six. Previously the number could run as high as 10.

The overall picture is positive and the message coming through about summary justice reforms is that the system has reaped enormous benefits. We have to state that fairly. One of the key areas to which the success can be traced is in the co-operation between the Crown and the defence, which has made an enormous difference to how cases can be disposed of and accommodations reached. Always where appropriate, we seek to resolve a case at the earliest opportunity. We have made a significant contribution to the success that the Solicitor General will, I think, highlight in his appearance before the committee.

Trials are clearly unavoidable in certain circumstances, but the pressure on courts will ease. The rate of early resolution of cases in Hamilton, where Mr Adair and I practise, is running at 30 per cent of first calling, with an additional 24 per cent of cases that continue then being resolved. That is a big improvement on the situation pre-summary justice reform, when the rate was in the teens—17 per cent to 19 per cent.

The Convener: Such are the nomadic traits of many criminals that you gentlemen will appear in other courts. Does the same situation pertain in Glasgow, for example, from where we have some contradictory evidence, on the basis of a submission from the Glasgow Bar Association?

Ian Bryce: I cannot answer that, Mr Aitken. I have not done a trial in Glasgow for some time.

Oliver Adair: I am not in a position to answer for Glasgow. One of the things that you will have observed from the submission is that Glasgow has, unfortunately, elected not to participate in the system. Unfortunately, we do not have any input from Glasgow.

Robert Brown (Glasgow) (LD): I have a couple of slightly different questions. On access to information, you have indicated that there have been some difficulties in getting data from the national criminal justice board. What sort of data

are you referring to and what exactly is the difficulty?

Ian Bryce: The discussions that took place with regard to the legal aid framework that was designed to complement the regulations involved making decisions on an overall budget. In simple terms, it involved a projection of how many cases there would be, with a view thereafter to effectively dividing the sums in an agreed manner according to the number of cases. When we were discussing that, none of us knew how it was going to work in practice. It involved estimates which, in the main, came from the Crown. We were anxious to be sure that the estimates were correct because they had budgetary implications, so we commenced a review process with the Scottish Legal Aid Board, the Crown Office and the Scottish Government, which is on-going. I echo Mr McGovern's comments: we are extremely grateful for the fact that we appear to be listened to these days and that the Scottish Government has taken on board what we have said and has involved us in the review process.

On access to information when we attend the review group meetings, an enormous amount of information and statistics is involved in assessment of whether summary justice reform is working. We are given specific information as and when we ask for it but, to be quite frank, it is sometimes difficult to know what we need to know. It is also difficult to know what to ask for, because we do not have access to everything that is available.

We are told that the national criminal justice board has access to enormous amounts of data. Although we might be signing ourselves up for more work by saying this, we would like to look at the data ourselves to see whether we can extrapolate information that we can bring up usefully in the review group. We do not, however, have access to those data at the moment. To get information, we have to ask for it, but sometimes we do not know what to ask for, which is why we have raised the issue with you. As our submission indicates, we have not been told formally that we cannot have access to the data.

Our understanding is that the national criminal justice board is made up of a number of agencies. The Scottish Legal Aid Board has told us that it would welcome our having access to the data, which it thinks would make the review process more meaningful. We understand that some bodies that are involved in the national criminal justice board are less happy about our having access to the data, although we have not had those bodies formally identified. The matter is on-going. We are anxious to have the data and we understand that the main objection to our having access is in respect of confidentiality and misuse of data. We simply state on the record that we are representatives of, or spokesmen for, the Law Society of Scotland. I hope that we could be trusted to maintain confidentiality. We understand the need to do so if we were given such access.

Robert Brown: My other question is on the summary of evidence, when you get it and so on. I want to ask about the quality of the summary. The faculty of procurators of Dumfriesshire has said that the summary bears only a passing resemblance to what the witness statements say, and that the admission information is somewhat garbled. I do not know whether "garbled" is the right word, but, in any case, the information does not quite identify exactly what the quality of admission was.

Ken Dalling: The difficulty is, of course, that the summary is simply a summary. It is a part of the police report that is submitted for consideration on prosecution by the fiscal. It is the part that the fiscal thinks is relevant to give us a heads-up in relation to initial instructions. I am aware of the submissions that were made on behalf of the Dumfriesshire faculty. A fiscal who marks the papers and edits the summary has to follow a difficult course.

In my experience in Stirling, the Crown summary—the bit of the summary that it has, rather than just the bit that we get—is usually not regarded as a secret and often not an awful lot has been taken out of it. Of course, one might see in a full witness statement that the accused has been interviewed for 20 minutes. The detail of such a question-and-answer session, even if it has been only handwritten, will take up a significant volume of paperwork. Initially, when the case is being reported, that information is not given to the Crown.

10:45

When we come to consider a matter after an accused has given us a denial of guilt and we see the full picture, it can be illuminating to see that there is more than just the initial admission recorded in the summary. There can be an explanation, which might not just be mitigatory but entirely exculpatory. That is the stuff that we need to know.

I am not sure that there is a question of fault in relation to that. We have to have a staged process and we have to have the initial information that gives us enough to work with and which allows us, as appropriate, to get cases out of the system at an early stage. We have to be sure, however, that we get reliable information.

When we compare statements with what a witness gives in evidence at a trial, the question arises as to how reliable the statements are—the

human factor comes in. It is difficult to say that there is always uniformity in the statements, never mind in the statements and the evidence, as against the evidence and the summary. It really is a human process.

Robert Brown: I understand the difficulty. As an ex-procurator fiscal, I know the sort of documents that you are talking about. Is that a quality-control matter? Could improvements be made? The information feeds into your ability to take accurate instructions from your client and to progress cases.

Ken Dalling: Undoubtedly. I am aware from my friends in Falkirk that they went through a period of having very low confidence in summaries. Depending on what the client is telling you, the information can either be critical to the instructions that you are taking or entirely subsidiary. If it is critical and you have no confidence in the summary, you have to take a line of least resistance, which is a safe course, such as going down a full disclosure route, which inevitably means a plea of not guilty and dates being fixed.

Oliver Adair: We should stress that we do not doubt the good faith of either the police officers who submit the information or the fiscals who prepare summaries. They have to do that fairly quickly, so there might be mistakes. The value of the summary is, as was said, that it gives a heads-up about issues that we can meaningfully discuss with clients. Prior to that, we got only the complaints, so there really was nothing to say to the client other than, "You're charged with assault." At least now we can go to the client with some basic information, which can promote a more meaningful discussion. If there is scope for the client to say, "Well, actually, that's right", we will have something to discuss with him—which might, in appropriate circumstances, result in earlier disposal of the case than would otherwise have been possible.

Robert Brown: On the admission aspect, is it not the case that in some jurisdictions you get the quotation of the admission? Would it be useful for that to be standard across the country?

Ken Dalling: We usually get that—I think it is uniform. The concern that is highlighted by the faculty is about the context. It is easy to look through a 20-minute interview and pick the one bit where the accused has said the most harmful thing about himself. Without context, the admission does not really have value.

The Convener: Gentlemen, that was most useful. Thank you very much indeed for taking the time and trouble to come here and for the short, sweet and relevant answers that you gave. If that is the standard of your pleading, I am sure that there must be very happy sheriffs throughout Scotland.

10:48

Meeting suspended.

10:49

On resuming—

The Convener: I welcome the second panel. Frank Mulholland QC is the Solicitor General for Scotland and John Logue is head of policy at the Crown Office and Procurator Fiscal Service. As I have indicated, we have a lot to get through, and I believe that the Solicitor General has kindly offered to waive his right to make an opening statement.

The Solicitor General for Scotland (Frank Mulholland): Yes, that is the case, convener. Good morning, everyone. I thought it prudent to dispense with an opening statement, although it has been drafted and is available.

The Convener: At the conclusion of the meeting, I will ask you whether there are any points that you wish to raise, but we now move straight to questions, which I will open.

Crown Office figures indicate that the number of criminal reports that have been received by the prosecution dropped from approximately 307,000 in 2007-08 to roughly 285,000 in 2008-09, which by my calculation represents a 7 per cent decrease. Why has that happened? What impact has it had on the Crown Office and Procurator Fiscal Service?

The Solicitor General for Scotland: There are a number of reasons for that. The use of fixed-penalty notices by the police has certainly had an impact in reducing the number of cases that are reported to the procurator fiscal, but there has also been a reduction in crime across the country. A combination of those two factors has resulted in a slight decrease in the overall number of police reports that are sent to procurators fiscal.

The impact of that is that there is less work to deal with, but the decrease in the number of reports that are sent to the procurator is not particularly significant. There are other matters that procurators fiscal must deal with, such as disclosure. Running a modern prosecution service requires a lot of work. I do not think that there are many fiscals across the country who are twiddling their thumbs.

The Convener: So, there is no slack to be taken up.

The Solicitor General for Scotland: There is not, in my experience. Fiscals up and down the

country work extremely hard and provide a very good service to Scotland's public.

Nigel Don: Good morning, gentlemen. This is not meant to be flippant, although it might appear to be so if we are not careful. Previous conversations with my local police inspector lead me to believe that his best policeman is the rain. We know how much weekend weather affects crime rates. It occurs to me that the statistics that we have seen over an eight to 10-year period seem to change quite remarkably—by plus or minus 10 per cent—in ways that, from this distance, appear to be random. Is there any correlation between long, hot summers, or summers such as the one that we have just had—which felt like winter—and crime statistics? I would have thought that the weather might have something to do with antisocial-behaviour related offences. Is that considered in the overall scheme of things?

The Solicitor General for Scotland: I am unaware that anyone has done an empirical study of the issue, but my experience and that of colleagues is that, when the weather is poor, the crime rate goes down and antisocial behaviour decreases. It is common sense—if it is too cold to go outdoors, it follows that fewer antisocial behaviour crimes will be committed in public.

Nigel Don: Forgive me, but that tends to suggest that the trends that we see from year to year might relate to factors other than simply the measures that we take in relation to the criminal justice system.

The Solicitor General for Scotland: That is right. I am saying that I am not aware that any empirical study has been carried out to monitor and assess that, but I know from experience as a prosecutor in Glasgow that years ago, when house-breaking was more prevalent than it is today, more house-breaking offences were committed during long, hot summers than during long, cold winters.

The Convener: We proceed to a question on alternatives to prosecution.

James Kelly: Comparison of Crown Office statistics for 2007-08 with those for 2008-09 shows that the disposal of a fiscal fine was used in nearly twice as many cases in 2008-09, but Government statistics for the same period indicate that fewer cases were dealt with using fiscal fines in 2008-09. Would you care to comment on the difference between what the two publications show?

The Solicitor General for Scotland: John Logue will deal with that; he has the actual figures.

John Logue (Crown Office and Procurator Fiscal Service): This is a useful opportunity to explain what appears to be a difference in the figures. To understand the figures, it is necessary to appreciate the difference between a fiscal fine that is issued by the prosecution—which may not be accepted or paid—and a fiscal fine that is recorded as having been paid or accepted. What first appears, from the figures that Mr Kelly cited, to be a doubling of the use of fiscal fines is not an increase in the use of fiscal fines; it is an increase in the acceptance of fiscal fines.

To get a consistent measure of what prosecutors do, it is necessary to look at the numbers of fiscal fines that are issued. When one does so, it is quite clear that in 2008-09, the number of fiscal fines that were issued decreased slightly, which was contrary to what we expected would happen as a result of summary justice reform. Looking back, however, it is accounted for by the use of police fixed penalties, which had a greater than expected impact on the use of fiscal fines. It is sometimes quoted that fiscals used twice as many direct measures or fiscal fines as a result of summary justice reform, but they did not; what happened was that, because of the change to deemed acceptance, the number of fiscal fines that were accepted increased. I do not know whether that helps.

The Solicitor General for Scotland: I can add to that. The figures that I have are that there has been a 99 per cent increase in the number of cases disposed of by fiscal fine but an 18 per cent reduction in the number of fiscal fines issued.

James Kelly: I understand the explanation. What is your objective for the operation of fiscal fines as far as the longer-term statistics are concerned?

The Solicitor General for Scotland: Our objective is the efficient and speedy disposal of summary criminal business. A statistic that struck me when I read the McInnes report was that in the period in which McInnes looked at the issue, a third of the business in district courts in Scotland involved cases in which fiscal fines had been offered, the vast majority of which were dealt with by a plea of guilty at first calling. The McInnes committee's recommendation that the fiscal fines system should be opt out as opposed to opt in explains that.

Angela Constance (Livingston) (SNP): Good morning. I am interested in how you judge the impact of fiscal fines, given the change from an opt-in to an opt-out system. The Scottish Parliament information centre's paper alludes to the fact that there appears to have been a large increase in the likelihood that, once issued, a fiscal fine will be treated as the final disposal. However, with the move to an opt-out system, a fiscal fine may be treated as having been accepted even though no money has been received. I understand

that under the previous system, the risk of prosecution was removed only when the first payment was received. What evidence is there that fiscal fines are still effective?

The Solicitor General for Scotland: I have a couple of points on that. The opt-out rate is running at about 5 per cent. In addition, there is a procedure in the Criminal Proceedings etc (Reform) (Scotland) Act 2007, whereby recall of a direct measure—a fiscal fine—by the court can be sought, which means that if someone forgets that they have received a letter and suddenly discovers that they are being pursued for payment of a fiscal fine, they can proceed with a court case to determine their guilt or innocence, if they wish. In other words, there is a procedure built in to the 2007 act whereby someone can seek the recall of a direct measure by the court.

You asked about the effectiveness of fiscal fines in relation to payment. Interestingly, there has been quite a significant increase in the payment rate for fiscal fines post summary justice reform. The payment rate for fiscal fines at the time of the McInnes report was estimated to be around 40 per cent. Currently, it is running at between 60 and 70 per cent—it was about 60 per cent for last year and the figures for the first quarter of this year show that it is running at close to 70 per cent. That is a significant increase, which I understand is a result of the policies and practices that fines enforcement officers are adopting. Fiscal fines are effective partly because they are paid and partly because, if they are levied and are not paid, the accused can seek a recall of the direct measure.

11:00

John Logue: On the effectiveness of fiscal fines, it is worth remembering the difficulties that Sheriff Principal McInnes found with the previous system of fiscal fines. He found that before summary justice reform, there was no response at all to almost half of all fiscal fines that were issued—nothing was done—and the only way in which any action could be taken was for the matter to return to the prosecutor and be taken to court. That meant that, as the Solicitor General said in his previous answer, many thousands of cases—up to 30 per cent of the business in the district courts before summary justice reform—were brought as a result of people doing nothing with their fiscal fines.

When Sheriff Principal McInnes looked at those cases, he found that almost all of the people pled guilty at the first opportunity, many of them by letter, so in his view there was a large body of work, particularly in the district courts, that did not need to be in court and was in court only because of the way in which the fiscal fines system was structured. The new system has allowed such cases to be dealt with through a payment enforcement measure, so that court time is not taken up with people who plead guilty at the first opportunity.

The Solicitor General for Scotland: There was also a practice in some areas whereby offenders thought that, if they made one payment of a fiscal fine, it would go away and would not be pursued. The figures that I have given showing the significant increase in the payment rate of fiscal fines suggest that that culture no longer exists.

Angela Constance: I am heartened to hear of the progress that has been made since the implementation of the reforms. I am interested in the figures that the Solicitor General cited. I may be reading the wrong page, but table 12 in the SPICe briefing cites its source as the Scottish Court Service's quarterly fines report 2. The table shows that, at 5 October, 42 per cent of fiscal fines were fully paid and 6 per cent were on track, so 48 per cent of fiscal fines were either paid or were going to be paid. That is less than the figure of close to 70 per cent that you have cited. Is that a more up-to-date figure? Where could the committee source that information?

John Logue: In comparing the situation now with how it was before summary justice reform, you must look at all the categories for payment having been made in full, payment being on course and payment being in arrears. Those categories made up 40 per cent of all fiscal fine cases before summary justice reform. The Solicitor General's figure was arrived at by totalling the percentages in the final line of table 12 in the categories "fully paid", "payments on track" and "payments in arrears". Admittedly, some of those involve payments that are in arrears; nevertheless, unlike under the previous system, payment is still being made and is being enforced. Those figures total 64 per cent compared with the 40 per cent that Sheriff Principal McInnes identified. That 40 per cent did not refer to cases in which there was full payment of the fines on time; it referred to cases in which payment had been made to some extent. The situation has improved considerably.

The Convener: I accept that it has. However, previously people paid £5 and that was the end of the matter in many cases, as you know. Is it not a little optimistic to include the 16 per cent of cases in which payment is in arrears in the cumulative number of fines now being paid? Some people in those 16 per cent of cases will not pay any more—is that not the case?

John Logue: My understanding of the figures is that "payment in arrears" refers to cases in which the enforcement process is continuing with the fines enforcement officers. The people may be behind in their payments—they may have missed one payment or have more substantial payment

difficulties—but the point of the new fines enforcement scheme, which the Parliament introduced, is that those people should not simply be left alone or brought to court. They are part of the new enforcement system in which fines enforcement officers have a range of measures at their disposal that do not require recourse to the courts. Again, that goes back to Sheriff Principal McInnes's finding that bringing such people back to court was an unnecessary use of court time and that they could be dealt with more effectively in another way—one that ensured that they would pay, in due course, through one of a number of means.

The Convener: By any standards, that is a significant improvement. Have a lot more conditional offers been made or diversions been offered in cases relating to, for example, section 3 offences, which usually involve money coming in from motoring offenders, as opposed to the more criminal offences, where there is often a reluctance to pay?

John Logue: Careless driving is not subject to a direct measure; it is prosecuted in justice of the peace courts.

The Convener: In all cases?

John Logue: More serious cases might be prosecuted in the sheriff court, but they are not subject to direct measures. That is nothing to do with legislation from this Parliament; it has to do with Westminster road traffic legislation.

The Solicitor General for Scotland: One of the benefits of the unification process is that the Scottish Court Service now has responsibility for the collection of fines, including fiscal fines. Following the creation of fines enforcement officers, the signs are positive that the direction of travel is towards more payment rather than less payment, which was a problem that Sheriff Principal McInnes recognised.

John Logue: I can offer you more information, convener. I think that you asked whether there had been any change in the types of offences for which direct measures are used, and used careless driving as an example. Broadly, the types of offences for which direct measures are used after summary justice reform are essentially the same as they were before summary justice reform. The majority of offences for which direct measures are used are offences such as breach of the peace, not having a television licence, urinating in public, shoplifting and so on, which was the case previously. There is one alternative to prosecution in the case of careless driving, which is a driver improvement scheme. However, that started five or six years ago and involves extremely small numbers of people, so it does not affect the payment figures.

The Convener: No money is involved.

John Logue: That is correct.

Nigel Don: Somewhere in the papers that I went through in the past 24 hours, I read that the current system does not give the fiscal enough information to enable them to know what level of fine the accused could pay. Does that concern you?

The Solicitor General for Scotland: I do not think that that is correct. In my experience, one of the sections in the standard police report concerns the offender's means. That is the information on which the fiscal assesses payment rates or the level at which the fiscal fine should be set.

Nigel Don: So you expect the police to gather that information.

The Solicitor General for Scotland: Absolutely.

Stewart Maxwell: As the Solicitor General mentioned earlier, following summary justice reform, the police have had to deal with an increase in the number of alternatives to prosecution, and there has also been a higher maximum level of fiscal fine. Mr Logue, you seemed to suggest that there had been no impact on the types of cases in which the higher maximum fine was issued. However, table 8 in the SPICe briefing suggests that 83 per cent of cases in 2009 were under the old maximum, which means that 17 per cent were above that maximum and were therefore dealt with differently from how they had been dealt with before. Can you expand on your earlier comments, with reference to that table?

John Logue: Table 8 indicates the level at which fiscal fines are offered. My point earlier was that there has been no significant change in the types of offences for which fiscal fines are offered—before summary justice reform, breach of the peace was the most common offence for which a summary fine was offered, and that is still the case.

The increase in the use of higher-value fiscal fines does not indicate that different types of offences or different charges are subject to fiscal fines; it indicates what Sheriff Principal McInnes recommended and what the Parliament approved in raising the level of fiscal fines—fiscal fines may now be used, proportionately, for more serious offences, including more serious breaches of the peace or more serious cases of shoplifting, which might previously have made their way to the district court. That reflects not a change in the types of offences but a change in the nature of the offences for which fiscal fines can be offered.

Stewart Maxwell: That is helpful, thank you. You are effectively saying that, with small

exceptions, we have not expanded the types and ranges of cases that are dealt with using fiscal fines. Instead, fiscal fines are being used to cover more serious breaches of the peace. Effectively, those come within the same range.

James Kelly: We have received a submission from the Scottish Justices Association, which suggests that there is a lack of information being provided to prosecutors to allow them to make informed decisions on alternatives to prosecution. Does that need to be addressed?

The Solicitor General for Scotland: The quality or extent of information in police reports, upon which procurators fiscal base their decisions, is obviously important. If a report is deficient, there will be discussion between the procurator fiscal and the divisional commander or someone else in charge, which might get back to the reporting officer, who may be asked to provide further information. It is open to procurators fiscal to request full statements before taking a decision.

In my experience, the vast majority of police reports contain a lot of information—sufficient information for a procurator fiscal to take a view and decide which course of action to follow. If they do not, systems and processes are in place to improve those reports.

James Kelly: So you are confident that those systems and processes are sufficient to ensure that the police provide accurate information to prosecutors.

The Solicitor General for Scotland: Absolutely. If a police report is inaccurate, that is a very serious matter, which a procurator fiscal will take up with the reporting officer and the senior officer.

The standard police report contains various parts and assists the reporting officer. It focuses the mind of the reporting officer, who has to report the case to the fiscal in a particular way and give them certain categories of information.

To return to your point, I reiterate that, if the report is deficient, the matter will be taken up with the police or another reporting agency.

John Logue: I can illustrate the point that the Solicitor General has just made with some figures. In the year to November 2009, 70,000 cases were disposed of in the sheriff courts. Of those, 40,000 were disposed of by pleas at the pleading diet—that is, at the very first opportunity. Those cases are dealt with entirely based on what the police provide at the very beginning. If there was any significant problem with the quality of police reports, that number would not be so high. The majority of cases are now disposed of at the first opportunity as a result of summary justice reform, and that is based on the high quality of information from the police. There are systems to allow prosecutors to pick up on questions on the odd occasion, but the figures illustrate the point that the system is well capable of dealing with what the police provide.

James Kelly: I would be interested to hear your comments on the written submission from the Association of Scottish Police Superintendents. It stated that insufficient attention was being paid to protecting communities from persistent offenders.

11:15

The Solicitor General for Scotland: I know from speaking to procurators fiscal throughout the country that they are committed to the concept of community justice. They engage with local communities and police officers and commanders on the issues that they face. They are well aware of the issue that you raise. We have prosecution guidance and policy, but procurators fiscal are given discretion. For example, if through engaging with the community and speaking to local police officers a procurator fiscal is aware of a particular problem in an area, they will take action by applying a bespoke prosecution policy to that problem.

I will give an example of how procurators fiscal deal with persistent offenders, which the member asked about. What they do—I did it myself when I was a procurator fiscal—is work with the local divisional commander to identify a number of persistent offenders, which used to be referred to as the top 10 persistent offenders. The procurator fiscal and the police will then take action to try to address that particular problem. Procurators fiscal are well aware of the problem of persistent offenders and take action with the police to deal with them.

Robert Brown: A report by the inspectorate of prosecution in Scotland said that the new provisions on fiscal fines are generally proportionate, but the report made three recommendations. For example, one was that the Crown Office should clarify the hierarchy of guidance. I am not entirely sure whether it falls to you to take forward those recommendations, but will you give an update on the situation?

The Solicitor General for Scotland: In relation to the first of the three recommendations, John Logue has more up-to-date information than I have and he will deal with that.

Recommendations 2 and 3 have been implemented. The third recommendation was on the 100 per cent audit of cases of assault to injury that are dealt with by direct measures. That process is in place and will continue. To explain the background, procurators fiscal operate a system that is referred to as FOS—the future

office system—in which cases are reported electronically to the procurator fiscal by the police and marked electronically. The information technology function gives the ability to extract from the system all assaults to injury that are dealt with by direct measures such as a fiscal fine. The cases are then reviewed by a senior member of the legal staff to check that the decision is right and in accordance with the guidance. That happens on a daily basis. The system was put in place as a result of concern that was expressed about 12 months ago about assaults to injury being dealt with by direct measures. The system will continue to be in place to deal with the concern that the public have.

John Logue has up-to-date information on the first recommendation.

John Logue: All the recommendations were accepted without question. On the first recommendation, we are aware that the inspectorate is carrying out a follow-up review in relation to compensation offers. On the hierarchy of guidance, rather than amend guidance on several occasions, we are waiting until we have the conclusions on compensation offers to pull together a variety of guidance issues, some of which we have decided on ourselves since the guidance was first produced. The recommendation will be implemented in due course, once we have that second report from the inspectorate.

Robert Brown: I have a question about fines enforcement officers. The Association of Chief Police Officers in Scotland has made the point that, in its experience, there has been an increase in means warrants and that

"The full benefit of Fines Enforcement Officers ... is still to be realised in most areas."

That does not entirely match with the figures that you gave earlier on that issue. Do you have any comment on those observations by ACPOS?

The Solicitor General for Scotland: Under the old system, two bodies dealt with the recovery of fiscal fines and so on. The Scottish Court Service dealt with sheriff courts and local authorities dealt with fiscal fines and district court fines. I understand that fines enforcement officers are working through a backlog of work that existed in the recovery of local authority fines and penalties. Time will tell, but I hope that superintendents will see a positive direction of travel in the near future.

Robert Brown: The information from the Scottish Justices Association is that its experience is that that improvement is not apparent yet. Did you expect improvements in the position by this time?

The Solicitor General for Scotland: I take your point, but the unification process is not yet complete—it is almost complete. As I said, time will tell—it is still too early to tell.

Nigel Don: One purpose of the summary justice reforms was to speed up the process. Will you review the bits that have been speeded up and say what has contributed to that process?

The Solicitor General for Scotland: I will give a couple of statistics that I hope speak for themselves. The 26-week target is a measure of how well the system is working. It relates to the time from the charge to the verdict for an accused—the last accused if multiple accused are involved. In 2008-09, 74 per cent of cases met the 26-week target; in 2007-08, the figure was 68 per cent. That is a significant improvement.

A further target is the 20-week target, which runs from the first calling to sentence. That also shows significant improvement: 82 per cent of cases were disposed of within 20 weeks in 2008-09, whereas 79 per cent were disposed of within that time in 2007-08. That is a positive development.

There are several reasons for those improvements. First, the police liberate more accused on undertakings; they are given a date on which to attend court, which obviates the need for an administrative process for the citation of accused persons. As Law Society colleagues said, a second reason is earlier disclosure with a complaint—a charge sheet. In effect, the accused receives what the procurator fiscal receives, which is a summary of the evidence. Thirdly, processes that relate to intermediate diets have been strengthened—the judiciary are more proactive about whether parties are ready to proceed to trial. Fourthly, the administrative process has been streamlined. Before SJR, if an accused pled not guilty by letter, the case had to call in court. Now, clerks can fix trials without the administrative court burden that applied before. Other developments are the electronic citation of witnesses; changes in legal aid arrangements to promote the early preparation and resolution of cases; the Du Plooy discount for early guilty pleas; and earlier disclosure of evidence in addition to the summary of evidence that is provided to the accused's solicitor with the complaint. Taken together, all those measures are having an impact on the efficiency of the summary justice process.

Nigel Don: Thank you for that list. Which of those measures is having the largest impact? Where else can you make progress?

The Solicitor General for Scotland: I would not say that one measure was more important than the others. The impact comes from a combination of them all working in their own ways.

I was interested to hear Mr Adair say that he had spoken to a district fiscal to find out the court loading of the summary trial court in Hamilton. If I

am right, he said that it is six. Before I took my current job, I was the area procurator fiscal for Lothian and Borders. I did summary trial courts from time to time, and I can tell you that it was routine to have 14 trials fixed for a day. Hamilton is a busy court. It probably has the same court loading as Edinburgh, give or take a few thousand cases. A significant reduction in the number of trials that are set for the court is a welcome development. You do not need me to set out the difficulties that are caused when 14 trials are set, given, for example, all the witnesses who require to be cited. The court could never get through 14 trials in a day.

Certainly anecdotally, the feeling throughout the country is that summary justice processes are getting much better, but things can still be done to improve the system—you asked about that. I would like to look at how we deal with victims and witnesses, because we rely on them to come along to court and give evidence in trials. In a solemn case, we can stagger witnesses and give them a date and time to attend court, but that is much more difficult in summary cases. At present, if six cases are set down for a day, we cannot tell some people to come along at, for example, 12 o'clock. I wonder whether we could do that. It would require some systems thinking about whether we could have sittings of trial courts—a morning sitting and an afternoon sitting.

Speaking personally, I have always wondered whether there is an argument for being creative about when summary trial courts sit. If the court sits from 10 until 4, an employed person who is cited to give evidence in a trial will need to take time off work. I wonder whether there is an argument that trial courts should sit in the evening. However, that is a personal view. I am not in any way expressing policy.

Nigel Don: On that point, I put in a plea not just for the person who is working but for the person who is self-employed, who gets zero compensation. I can attest to that from experience.

Are there things that the Parliament needs to do to help you to improve things in the way that you mention, or do we simply require systems thinking, clear thinking and co-operation within the criminal justice system?

The Solicitor General for Scotland: We certainly need systems thinking. Much of that already goes on. For example, I read with interest about some of the practices in Alloa, where there are arrangements for witnesses to be brought to court by taxi. I think that there was also a reference to a disabled witness being brought to court by police car. I am not saying that the police should become a taxi service. What I am saying is that there is a great capacity for systems thinking and we must encourage it throughout the country, to try to improve the criminal justice system for the benefit of its users, who are the public.

Nigel Don: The statistics that you quoted are national statistics. I accept that that is probably how you get them. You may or may not want to disclose it, but are there areas of the country where things are not as good as they should be? If so, are you working on that?

The Solicitor General for Scotland: There are challenges in every area of Scotland, but I am not aware of any particular festering sore that requires to be dealt with as a matter of urgency. I do not want you to get the impression that I am in any way complacent. There are challenges throughout Scotland, in every fiscal's jurisdiction, but I am not aware of any particular problem.

11:30

Stewart Maxwell: I do not know whether you heard the Law Society of Scotland's evidence.

The Solicitor General for Scotland: I did.

Stewart Maxwell: When I pushed its representatives on that particular point, they said that there were certain geographical problems with regard to the inconsistent application of early disclosure. Given what you have said, are you aware of such localised systemic problems, as opposed to other difficulties throughout the country with the bedding in of the system?

The Solicitor General for Scotland: I am not aware of such problems. If the Law Society knows of a particular problem area, it should let us know about it and we will deal with it.

The Crown deals with disclosure very sensitively and in accordance with the data protection principles. After all, much of the information is sensitive and the last thing that you would want is for it to be lost or found in a skip. At the moment, we disclose electronically, which means that police statements, for example, are put on to a pen drive; the solicitor is advised that the information is available for uplift; and when the drive is collected a signature is required and so on. I am not in any way criticising anyone, but sometimes the material has been available for uplift but has not been collected until the day of the intermediate diet. That, of course, is anecdotal, but it might have caused problems.

We think that our proposal to carry out disclosure through a password-protected website will greatly benefit practitioners. After we have received statements and checked them to redact out any confidential information such as home addresses and mobile phone numbers, we will upload them on to the website. Each solicitor's office, which will have a password, will then be notified that the information is available for

download. We are about to pilot the scheme in Glasgow and indeed are very grateful to the three solicitors firms that have agreed to take part. I certainly hope that it will have benefits with regard to earlier disclosure, because we well recognise that the earlier the material is disclosed the greater the benefits for the criminal justice process in dealing with cases earlier, more speedily and more efficiently.

John Logue: Another significant benefit of the new website is that it will, for the first time, give us computer-generated statistical data on when disclosure takes place, which will provide a very reliable basis for dealing with what is at the moment an anecdotal picture of the variety of practices throughout the country.

However, we should bear in mind that as a result of the change that we introduced in October 2007 we are legally required to ensure that disclosure takes place at the very beginning of every summary case. At that point, the defence is in exactly the same position as the Crown. It has the summary of evidence, which is all that we have.

Stewart Maxwell: It is clear that there is a lot of work going on and progress being made in this area. With the obvious caveats about the security of such a website—of which you are no doubt aware—I think that it will be very interesting to see how the pilot turns out.

The Solicitor General for Scotland: It will be interesting. We have done a lot of work to protect this very sensitive personal information while ensuring that the system is as efficient as possible and the best that it can be.

Stewart Maxwell: In that case, the Law Society should perhaps direct its comments about problems of inconsistency in certain areas to the Crown Office.

The Convener: That would be appropriate. I suspect that some of its members have already done so.

The Solicitor General for Scotland: If any practitioner, solicitor or representative body has an issue, I encourage them to contact us and we will work towards dealing with it.

The Convener: That has happened constructively in the past.

Your comments were interesting, especially those on the availability of courts, which are not utilised 24/7. It struck me that you might have been reading some of my speeches—that is always to be encouraged. Once we get the case into court at the trial level, there is still a problem of the churn, which we may or may not be able to do something about. Do you have any up-to-date figures on how many cases are adjourned at the trial?

The Solicitor General for Scotland: I think that John Logue has up-to-date figures.

John Logue: I cannot give you specific figures on adjournments. However, you can get a good indication of the level of churn by comparing the number of cases that are disposed of by a trial with those that are disposed of by plea—in large majority, they are the cases that have previously been adjourned. The outcome gives a sense of how much effort is going into something that is a trial and something that then ends up not being a trial. Before summary justice reform, the ratio was about 1:5. In other words, for every trial in a trials court, another five cases would be disposed of by some other means. In the most recent year for which the figures are available, that figure is somewhere between two and three. Over the past year, it has continued to fall from above three. For every trial, between two and three cases are disposed of by some other means. That indicates that there is still churn, which we absolutely need to tackle and reduce. However, the situation is improved and we want to keep on improving it.

The Convener: I accept that that is the de facto position and that it is difficult for much to be done about it, but do you have any suggestions about what might be done? What could the committee do to assist?

The Solicitor General for Scotland: The situation is in part cultural and in part down to numbers. With court loading, for example, if you have 14 trials set down for a summary trials court, there is no way that 14 cases or trials can be got through. Solicitors know that. It stands to reason that many of those cases will have to go off because there will simply be no time to deal with them. However, if six trials are set at, say, Hamilton, the chances are that court time will be available to deal with them. Again, there is less of a prospect of the majority of those cases being adjourned and continued to other dates. We hope that that will have an effect not only on the churn situation but on measures such as electronic citation of witnesses. About 40 to 45 per cent of witnesses in a summary trial are police witnesses. With greater liaison with the police and better standby arrangements, there will be less of an opportunity for churn and cases will be dealt with on the day on which they are expected to be dealt with.

The Convener: I think that you may have anticipated the question that Angela Constance was going to ask. Are there any other issues in that regard?

Angela Constance: The Solicitor General has indicated his personal views about how things can

be improved for witnesses. However, I wonder whether he could state how summary justice reforms have impacted positively on civilian and police witnesses, and what will be done to improve things further.

The Solicitor General for Scotland: First, I will give you an encouraging statistic. As a result of the summary justice reforms, 50,000 witnesses have been saved citations. They have not been required to come to court because those cases have been dealt with earlier, on pleas. We are not seeing cases pleading at trial in the numbers that we saw previously. That is a hugely important figure—50,000 fewer witnesses have had to come to court. As I said earlier, about 40 to 45 per cent of those 50,000 are police witnesses—you can readily appreciate the effect on police forces of those officers being available for other duties such as being on the beat and detecting and preventing crime, instead of attending court. That is one important benefit of the summary justice reforms.

Other important benefits include the higher payment rate or recovery rate for fines and the bringing of the punishment closer to the commission of the offence—part of the concern was that there was too much of a time gap. People who have attended Red Hook community justice centre in New York have noted that those who commit a crime there on one day can appear before a justice on the same day. If the person pleads guilty, they will in many instances be sent out for a bowl of soup and a slice of bread and then start community service. That kind of principle is to be applauded, it seems to me, and that is what we are trying to do. Part of the ethos of the summary justice reforms is to bring the punishment much closer to the commission of the crime.

The Convener: Again, you appear to have been listening to the right speeches.

Cathie Craigie: The Solicitor General's observations about what is happening in America are very relevant. As we would hope to replicate that here, let me put in a word for the community court in Glasgow—

The Solicitor General for Scotland: I would be happy to accompany you to New York.

Cathie Craigie: Well, that is an invitation. However, let us move on.

Crown Office figures indicate that, from 2007-08 to 2008-09, there was a 2 per cent reduction in the number of JP court disposals and a 10 per cent reduction in the number of summary sheriff court disposals. I would have expected the number of disposals by JP courts to be higher. Is there any reason why that number was not greater?

The Solicitor General for Scotland: I thought that the numbers had increased. The figures that I have indicate that there was an increase in the number of accused who were prosecuted in the district court. For example, in 2007-08, 36,600 accused were prosecuted in the district court. After the summary justice reforms, in 2008-09, 43,800 accused were prosecuted in JP courts or district courts. That is in line with expectations, as the McInnes report anticipated that the reforms would result in an increase in district court business. Those are the figures that I have.

Cathie Craigie: That is what most of us would have expected. However, the briefing that we have been given indicates otherwise. We perhaps need to check that our briefing has correctly interpreted the number of disposals.

The Solicitor General for Scotland: Mr Logue might be able to clarify that point.

The Convener: Ms Craigie's question was predicated on figures that we have been given. Clearly, we will follow up those figures, but perhaps Mr Logue can add some knowledge.

John Logue: I might be able to save the committee having to follow up the figures. Does the question refer to the figures in table 1 in the SPICe briefing, "Summary Criminal Justice Reform"?

Cathie Craigie: I do not know. Our briefing contains a reference to the 2004 report "Summary Justice Review Committee: Report to Ministers", but I do not know the source of the figures that have been provided.

The Solicitor General for Scotland: We can go away and check. We will set out in writing to the convener what the actual figures are. Certainly, the figures that I have show an increase in the number of prosecutions in the district courts and JP courts.

Cathie Craigie: Seemingly, the information was gathered from the Crown Office website, on the page "Case processing—last 5 years".

John Logue: I can explain that. Those figures refer to cases disposed of. As was pointed out earlier in relation to fiscal fines, the number of cases disposed of cannot be equated with the level of prosecution. The level of prosecution in the JP court increased by 20 per cent from 2007-08 to 2008-09.

11:45

Cathie Craigie: Okay.

The Convener: We were comparing apples with pears.

Bill Butler: What are the views of the prosecution on the merits of prosecuting cases before lay justices as opposed to professional judges?

The Solicitor General for Scotland: Having prosecuted cases before both lay and professional judges, it seems to me that it is about the most appropriate forum. I do not have a problem with the quality of justice that is delivered by district courts. It is very high. In my experience, justices care passionately and deeply about justice and fairness, and the quality of legal and factual decision making is good. However, I confess that it is three or four years since I appeared in a district court. I think that I last appeared at Haddington court, and I was very impressed with the quality of justice that was delivered there. I do not think that there is any difference in quality.

Obviously, there is more experience in the sheriff court. They use trained lawyers, so that is self-evident. If we are talking about pure justice, the justice that is delivered in district courts is not second class, in my experience.

The Convener: We have a number of questions that we have not had time to ask. We will write to the Solicitor General for his response, if that is in order. In the meantime, as no other issues have arisen as a result of the evidence given by the Solicitor General and Mr Logue, I thank our witnesses very much. The session has been informative and constructive, and we are grateful to you.

11:47

Meeting suspended until 11:51 and thereafter continued in private until 13:11.

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