



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 6 March 2012

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JUSTICE COMMITTEE
8th Meeting 2012, Session 4

CONVENER

*Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

DEPUTY CONVENER

*Jenny Marra (North East Scotland) (Lab)

COMMITTEE MEMBERS

*Roderick Campbell (North East Fife) (SNP)

*John Finnie (Highlands and Islands) (SNP)

*Colin Keir (Edinburgh Western) (SNP)

*Alison McInnes (North East Scotland) (LD)

*David McLetchie (Lothian) (Con)

*Graeme Pearson (South Scotland) (Lab)

*Humza Yousaf (Glasgow) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Robert Black (Auditor General for Scotland)

Assistant Chief Constable Alistair Finlay (Police Service of Northern Ireland)

Professor Nick Fyfe (Scottish Institute for Policing Research)

Andrew Laing (Her Majesty's Inspectorate of Constabulary for Scotland)

Lewis Macdonald (North East Scotland) (Lab)

Chief Superintendent David McCracken (Her Majesty's Inspectorate of Constabulary for Scotland)

Professor John McNeill (Police Complaints Commissioner for Scotland)

Alison Payne (Reform Scotland)

Dr Kenneth Scott (University of the West of Scotland)

Ian Todd (Police Complaints Commissioner for Scotland)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

Committee Room 2

Scottish Parliament

Justice Committee

Tuesday 6 March 2012

[The Convener *opened the meeting at 10:01*]

Decision on Taking Business in Private

The Convener (Christine Grahame): Good morning and welcome to the Justice Committee's eighth meeting in 2012. I ask everyone to switch off their mobile phones and other electronic devices, as they interfere with the broadcasting system even when they are switched to silent.

No apologies for absence have been received.

Committee members would wish to put on record their sadness at the untimely death of Paul McBride QC. I personally crossed swords with him in debates on a couple of occasions, but that was business. In the green room, he was very personable, and I got on very well with him, so I am personally saddened. On behalf of the committee, I extend our sincere condolences to his family and friends on his untimely death. He is a great loss to the Scottish legal system.

Agenda item 1 is to decide whether to take items 5, 6 and 7 in private. Do members agree to do so?

Members *indicated agreement.*

Police and Fire Reform (Scotland) Bill: Stage 1

10:02

The Convener: Agenda item 2 is our second evidence session on the Police and Fire Reform (Scotland) Bill at stage 1. I welcome to the meeting our first panel of witnesses: Assistant Chief Constable Alistair Finlay of the Police Service of Northern Ireland; Professor Nick Fyfe, who is director of the Scottish institute for policing research; Dr Kenneth Scott, who is director of the centre for criminal justice and police studies at the University of the West of Scotland; and Alison Payne, who is research director at Reform Scotland. Good morning to you all and thank you very much for your written submissions.

As usual, we will go straight to questions from members.

Graeme Pearson (South Scotland) (Lab): Will Alistair Finlay give us some insight into the lessons that he has learned in connection with the governance and local accountability challenges that have been faced with a single national police force?

The Convener: If other members of the panel want to self-nominate, I will indicate that I will call them to speak.

Assistant Chief Constable Alistair Finlay (Police Service of Northern Ireland): I thank the committee for inviting me to the meeting.

The subject that the member raises is so broad and deep, and experiences are so different, that I will try to keep my comments on it relatively short in the first instance.

The challenge that Scotland faces is how to get national accountability with local buy-in and the local feel that we need for policing. It is clear that that is achieved in Northern Ireland through district policing partnerships, which will change to become policing and community safety partnerships from 1 April.

As the committee will be aware, the model was devised by the Patten commission, which 10 years ago studied the future of policing in Northern Ireland and was involved in the coming into existence of the Police Service of Northern Ireland. The model has worked better in some areas than in others; it depends on who is involved in a particular district policing partnership and the make-up of the committee. However, the context is different because the politics of Northern Ireland is different, and positions are pretty polarised.

For example, in north and west Belfast, the district policing partnership meeting has become

very challenging for the local police commander. There is a difference between the role of the policing board nationally, which is to hold the chief constable and the organisation to account, and the role of the district policing partnership, which is to be informed about local performance and to inform local issues. However, sometimes that line, which is fairly indistinct at the best of times, is definitely blurred. The area commanders, who are chief inspectors in all areas in Northern Ireland, are held strongly to account in quite a bruising and confrontational way. Success for some people is seen as pushing the commander to the point where he or she either does not know or cannot produce the required information.

In other areas, the approach is much more constructive and the balance is different. It all depends on the personalities on and management of the committee, and how it has been set up over time. Some area committees and district policing partnerships are much more enabling and contribute a lot. They reflect local people's needs and concerns and gain an understanding of what is happening in policing in their local area and how policing can be supported locally. That last aspect is often missed out; it is not just about holding to account and being informed, but about how we galvanise support for policing in areas where that is sometimes pretty peripheral at best.

Graeme Pearson: Can you give us some insight into how the Northern Ireland Policing Board operates and who is on it? How does the board manage the governance issues and at the same time acknowledge operational independence?

Assistant Chief Constable Finlay: The board is made up of 19 members: 10 are independents and nine are elected members of the Northern Ireland Assembly. The elected members are appointed under a system of proportional representation—the d'Hondt system—in order to get cross-party representation on the board. The independent members put themselves forward in response to an advert and are selected by the Northern Ireland Department of Justice through a process that is designed to reflect community background, the particular skills that can be brought to bear on the board and other issues.

The board operates through its principal public meetings, which are held 10 times a year. They can attract significant public interest through the media, because policing in Northern Ireland is still very political. The board also operates below that in a less visible way. It does most of the business through a number of thematic committees, such as human rights and professional standards, human resources, and resources and improvement. They deal with the people, the infrastructure, the resources and the approach to policing, which is

often done through the human rights and professional standards committee.

Human rights are a core bit of the business. The difference between the Police and Fire Reform (Scotland) Bill and what we have in Northern Ireland is that human rights are absolutely up there in lights and up front as the underlying, core principles for policing in Northern Ireland. That is reflected in how we deal with our code of ethics, the number of human rights advisers involved and how the issues inform training and manifest themselves in policing on the ground.

That is all done against a background of Patten designing a new police service for a different time and seeking to involve all communities. It is only a short time since Sinn Féin became actively involved in the governance of policing, so we are relatively young, in terms of our overall governance involving people from across the political spectrum.

Patten talked about operational accountability, and we are operationally accountable for, but independent of decision makers on, what we do and our priorities. Our priorities are set through the policing plan, but operational priorities are developed as they arise and as we go about our business. My experience is that we are held to account particularly on the policing of public order, which is contentious, forceful and impactful in Northern Ireland. People hold us to account for the style of policing, the amount of force that is used and why we took certain decisions.

Graeme Pearson: I will ask one last question and then allow others to come in.

The Convener: No, I will allow others to come in, Graeme. You are doing a Humza.

Graeme Pearson: Sorry.

Assistant Chief Constable Finlay mentioned different styles of local accountability and accountability through the national board. One of the matters that exercised the committee at last week's meeting was how to connect local issues to the national board to get an effective response. Is there a connection between the local community safety partnerships and the board? If so, how does that operate and how is it traced through the system?

Assistant Chief Constable Finlay: The principal connection is within two plans: the policing plan, which the board produces for and in conjunction with the PSNI, and the local policing plans, which are developed by the district policing partnerships—or the policing and community safety partnerships, which is what they will become.

In developing the national plan, the board consults to find out what key issues exercise the

local areas, some of which are gathered up. They are unsurprising and tend not to differ from area to area. They tend to concern antisocial behaviour, burglary—or housebreaking, as it is known in Scotland—and road safety. Road safety is more of a concern in some areas than others. Northern Ireland had a long history of road deaths, but we have managed to turn that round quite successfully.

The local and national plans have a large degree of overlap. We have eight policing districts, each of which is headed by a chief superintendent and within each of which there are a number of area commanders, who are chief inspectors. The challenge for the district commanders, as we term them, is to strike the balance between performing against the organisational aims under the policing plan and meeting local needs. That involves some footwork in resource allocation, addressing most of the overlapping aims and doing some local initiatives to try to tackle issues that are specific to a particular area and about which people are exercised—it can be as localised as the impact of antisocial behaviour in a particular housing estate.

Graeme Pearson: If local people are unhappy and do not feel that they are receiving a response from the community safety partnership, is there a mechanism for raising that with the national board?

Assistant Chief Constable Finlay: The structure of the public meetings that we hold 10 times a year has changed. The board recently decided that it would be useful to allow the public to ask questions of the chief constable and the senior management team. What happens depends on the number of people who come along. Most questions are answered by correspondence in the first instance, but the facility exists to ask a question at the meeting. More often, questions are asked by a member of the board on behalf of the community.

The other principal route is through the Police Ombudsman for Northern Ireland. It is more normal for people to make a complaint to the ombudsman, who will pursue it in his usual fashion.

10:15

Humza Yousaf (Glasgow) (SNP): Good morning. I will pick up on what you just said and then move on to ask other questions.

In your opinion, as long as its concerns are heard, is the local community really bothered who sits on the board for the 10 public meetings that take place every year? Do people demand that board members are local councillors, for example? Do they mind the fact that those involved are MLAs and independents, or are they just worried

about whether their concerns are being dealt with adequately? Are they bothered who the individuals on the board are?

Assistant Chief Constable Finlay: I do not think that they have been asked that question or have found it an issue. The board was designed to have that balance between political and independent members. The same structure is reflected in the district policing partnerships, which have a balance of 10 political representatives and nine independent members, utilising councillors rather than MLAs. I do not know whether the public have thought about options to replace the board—that has not really been considered.

Within the structure of public services in Northern Ireland, which is significantly different from the structure in Scotland, the 26 councils have few functions. Many functions are delivered nationally in different ways, such as through a national roads service or education and library boards. That completely different public services structure may influence policing. However, the contentiousness of and the political interest in policing are such that there must be some political involvement in the representation of communities.

Humza Yousaf: Thank you. I turn to Reform Scotland's written submission. As we can see, local accountability is a huge issue. The Reform Scotland submission states that

"the Scottish Police Authority should be made up of representatives of each of Scotland's local authorities".

It adds:

"Due to the national elements of policing, we would be happy for representatives from the Scottish government, whether minister or senior civil servant, to also sit on the board."

How big does Reform Scotland envisage that the Scottish police authority board will be?

Alison Payne (Reform Scotland): That is more a question about the number of local authorities in Scotland. The 32 local authorities in Scotland need to be represented to ensure that local voices are heard. However, you should not reform the police because you do not like the number of local authorities.

You asked whether the public mind who represents them. If you asked whether a function should be removed from Holyrood and MSPs and given to Westminster and MPs, there would be an outcry. Why should there not be an outcry when a function is removed from local government and given to Holyrood? Policing is a local government function at present and we feel that, although there has been a lot of debate around and justification of the bill on the basis of financial savings, no justification has been made for removing the function from local government.

Humza Yousaf: Are you suggesting that there should be a restructuring of local authorities before we proceed with the bill?

Alison Payne: No. The policy memorandum accepts that policing is largely a local function, and we are saying that, to reflect that, we need local representatives in the system.

There are potential problems that we are concerned about. We think that it is a fantastic idea to have local commanders matching up with local authority areas—that is brilliant and long overdue. However, what would happen if a local authority pushed one idea and the chief constable pushed another? The local commander would be caught in the middle. Also, what would happen when a local authority was of one political persuasion but the Scottish Government was of another? Unless the police board is made up of councillors, so that the chief constable is, in turn, answerable to councillors from across Scotland and can take all the local circumstances into account, the system will be messy. A more accountable policing structure is not created by removing councillors and replacing them with unelected, appointed quangos.

Humza Yousaf: If we pushed ahead with the bill but kept the current local authority set-up, taking on board your suggestion of having on the same board one representative from each of the 32 local authorities—different local authorities of different political persuasions—how would we be able to hold anybody to account, and how would the board be able to come to a decision on any matter, given all the local perspectives?

Alison Payne: It is not about the political persuasions; it is about the local needs and the different priorities of the different communities. For example, members of a political party who represent the Highlands may have a completely different view about policing in their area from that of members of the same political party who represent an urban area. It is more about taking account of the needs and priorities of local communities. We do not think that a centrally appointed quango can represent our local communities better than our elected councillors already do.

Humza Yousaf: No—I get the idea of the local police plan and the fact that there might be a conflict between national priorities and local priorities, which was mentioned at last week's meeting. People need to be open to compromise in relation to such matters.

The aspect of Reform Scotland's proposal that I am struggling with is the idea of having 32 local representatives on one board, each of whom would have their different priorities, depending on whether they were from the Highlands, an urban

area or a rural area. I cannot see those 32 local representatives having any influence whatever, because there would be numerous different voices all speaking at once and numerous different perspectives. How could the board possibly come to any joint decision?

Alison Payne: That arrangement would reflect the structure of local government in this country. We have 32 local authorities. Equally, 32 local commanders would be involved. Those local commanders would come together and have meetings to discuss what was going on. Rather than unelected, appointed quangos being involved, it would simply be a case of bringing together individuals who represented the interests and priorities of their communities to ensure that the policing structure linked back to our communities.

Humza Yousaf: I do not know whether anyone else wants to comment.

The Convener: I am leaving it up to witnesses to nominate themselves if they want to comment. If none of them does, we will move on to the next question.

Dr Kenneth Scott (University of the West of Scotland): There is an issue with the size of the police authority and the link between the local and the national, but we must recognise that not all policing is local. We welcome the fact that the bill puts a duty on the chief constable to provide local policing—that is absolutely correct—but one of the benefits of having a single force is that it will be possible to take a much wider strategic view and to develop a capacity for operating beyond the local level.

For example, as members will know, we already have a national organisation that deals with crime and drug enforcement but which does not fit into any pattern of local accountability. It should be accountable, and the way of making it accountable is to ensure that the Scottish police authority can review what happens not just at the local level but at the national level. My suspicion is that, in the context of a single force, there will be more police operations at a national level. It would be a surprise if the capacity to investigate major incidents, serious crime and serious organised crime were not likely to be organised at a level above the local. That is important from the point of view of making best use of the resources and the experience of the police service.

Although local accountability is important and local policing will make up the bulk of policing in Scotland, the bill offers the opportunity to develop a framework that goes beyond that at a national level.

Professor Nick Fyfe (Scottish Institute for Policing Research): I will add a footnote to that.

One of the other issues that the bill raises is that it assumes that there is something called “local policing”, but it does not offer any definitional clarity on where the boundaries of local policing begin and end. That is a crucial issue as regards the responsibilities of local authorities. If local authorities are to be involved in the development of local policing plans, what can they expect to see in such a plan, given that, as other witnesses have indicated, there are so many connections with regional and national issues?

There needs to be some clarity on what local policing means, particularly as “local” will have very different meanings in different parts of Scotland. In Edinburgh or Glasgow, “local” might mean neighbourhood based, as opposed to something on a larger scale. It would be useful to have a better understanding of that.

The Convener: Is there not already a pragmatic understanding of that on the ground? If we were to ask a policeman, they would know perfectly well what was meant by “local policing”—they would know exactly what area was being talked about. Is it not the case that in different areas, such as the Highlands and Islands, my part of the country in the Borders or Edinburgh, there is already an understanding of what that means? Are we bothering about something that we do not need to bother about?

Professor Fyfe: The issue arises more in the context of the resources that are available to a local community when it requires more specialised policing support, which might be offered at a regional or a national level.

The Convener: Is it not also the case that if something happens in my area or in the Highlands, such as a murder or a missing person, the local divisional commander can call on aid from outwith the area? That already happens: the police already share resources. The commander can say that they do not have the resources—that they do not have an aircraft, say, to do a heat search for a missing person. As far as I know, that happens already. We are not starting from nothing.

Professor Fyfe: That is right, but it is about understanding where those regional resources will be based within the configuration of the new police service for Scotland and how local areas will be able to access them.

Assistant Chief Constable Finlay: Perhaps I can help from a Northern Ireland perspective. The local is scalable, from the neighbourhood all the way up. We have to judge what local means in the context of what whoever is speaking to us means by local. We describe district policing as local policing; it is what happens with the resources at the district commander and area commander

level. The national level consists of the equivalent of the Scottish Crime and Drug Enforcement Agency—the serious crime branch, which is headed up by one of my colleagues—and my own resources, which are road policing and specialist uniform support. We deploy those resources and it is our job to deploy them to the right place at the right time. We weigh up risk and use all the information that we have to achieve the desired outcome, and we go in to support the district commander.

There is sometimes tension between the local and the national, and sometimes we have not been good at keeping our local level informed of a national development, which means that we step into an area with unforeseen consequences. We have recognised that and are working on ways to improve the situation. It is down to the police leadership to sort out those issues. The effect of such a scenario is that the local—right down to the neighbourhood cop—might blame the national for something that happened that was outwith our control. That creates tension in the organisation, which can potentially come to the policing board as an issue.

The Convener: I want to move on. I will bring in David McLetchie, because he will also cover local accountability. He is not jumping the queue, as he was ahead of Lewis Macdonald. We will then have questions from Lewis, Rod Campbell, John Finnie and Alison McInnes. I tell you that just to keep you all sweet, but I know that you always are—David is always sweet.

David McLetchie (Lothian) (Con): Good morning. Within our current eight-force structure, is there a misallocation of resources between different parts of the country? In other words, if we started tomorrow with a Scottish police force and you had to allocate resources for local policing, would the resources go to exactly the same places tomorrow to which they are allocated today? Are some places overpoliced and overresourced, if I can put it that way, and others underpoliced and underresourced? Do you expect the formation of a national police force to change or correct imbalances that exist in the current force structure?

Assistant Chief Constable Finlay: I will have to lean on my knowledge from before I was in Northern Ireland. The resources that we have in particular areas may reflect the funding that has been given to particular police authorities and police boards to construct their organisation. My guess is that there will not be huge changes to the funding pattern. I do not know whether the Highlands and Islands could do without a whole load of resource but, equally, I do not know whether it justifies a whole load more resource.

The whole organisation would have to look at where the risks were and at how you shape the organisation so that you put the resources in the appropriate places to meet the right level of risks. That must be balanced with not denuding areas of a standard of policing that is accepted locally in respect of its accessibility and responsiveness and its local contact and accountability. I am not sure that there would be huge or wholesale change; something might happen over a period of time, but I would have thought that whatever happened would be more marginal.

What is more likely to happen is the use of national resources or the brigading of some resources across the eight police forces to create the national force. That will sit above the local element and will float around, providing additionality and ensuring a more flexible response than we might have at the moment.

10:30

The Convener: What exactly do you mean by national resources?

Assistant Chief Constable Finlay: From my point of view, national resources would cover roads policing, specialist searches and crime investigations or surge operations, in which we would put a footprint of people on the ground over a period of time to achieve a particular outcome. That outcome might be reassurance, higher visibility after a serious crime or participation in a wide-area search and we might use, say, the air support unit and other such assets across the province or the country. The eight districts work to a resource allocation model that covers, for example, the size of demand, the number of crimes, the number of calls made, the size of the population and other issues. The allocation is constantly being reshaped in fairly small ways to reflect changes in the country's composition or particular issues at particular times.

Professor Fyfe: This is a very interesting question to which there is not necessarily any straightforward answer. Part of the issue is the relationship between demand and need, and the police carry out a lot of work to determine risk in particular communities and therefore the need for particular resources. However, that might not necessarily map to the demand in particular communities for, say, highly visible forms of policing. As a result, balancing demand and need is a crucial issue in resource distribution and work is clearly being carried out on a resource allocation model that will ensure a level of transparency about the allocation of resources across Scotland within a national structure.

As for the style of policing that communities want, some styles, particularly those in a

community-focused model of policing, require a much higher visible police presence, whereas other styles might reflect a more response-based model. Again, that will affect the level of resources required to police particular areas.

David McLetchie: Some have expressed a fear that the answer to the question of demand and need that you have identified might be different under a single-force structure than it is under the present eight-force structure. Under the current structure, there is greater political pressure and higher demand for a particular model of community-based policing; however, when all of that is dissolved into a single-force structure, there will not be the same local political pressure as evinced through police boards, local councillors and so on. The fear is that resources might be transferred from local policing needs to national policing, national priorities, surge operations and the other types of operations that Assistant Chief Constable Finlay described. Is it reasonable for people to have that fear and those concerns?

Dr Scott: The problem with that view is that it perhaps overestimates the degree of political influence on policing at the local level.

In the present structure, police forces are aware of the views of not only their police boards, but their communities, because they encourage people to express such views in surveys and so on. There is already clear thinking in Scottish police forces that community policing, for example, is an important strategy that needs to be engaged with and put in place, so I do not think that it is simply a result of external pressure. In the thinking about how best to police Scotland, there is now a clear view that community policing is a significant and important approach, and we can see that if we look at the structures of the current forces on the ground.

Although I do not disregard the fact that there might be political influence at a local level, it is probably more important to consider the influence of the public at that level, and the response of the current forces to that. I do not see that position changing as we go forward.

Alison Payne: Our concern is about who determines the balance of need. How can central decisions about resources take into account different communities' demands for different styles of policing? If you remove local government's ability to increase the policing budget—or decrease it, if resources are needed elsewhere—one sort of resource will be imposed on Scotland from the centre. Local authorities need to be able to take differences into account and they are best placed to judge their local communities' needs and the different styles of policing that are needed in, say, urban Glasgow versus the Highlands. Reform

Scotland's position on the finance is that we need to keep local government involved.

David McLetchie: In Edinburgh, the council has paid additional funds to the police board to enable it to recruit additional police officers specifically for community policing. In effect, the council has taken a political decision, in response to public pressure or demand, to provide an additional measure of funding support so that additional officers could be recruited for community policing. Under the funding model of the single police force, where would be the incentive for that to happen? How could it happen?

The Convener: Our witnesses are making faces at one another.

Assistant Chief Constable Finlay: I am not entirely sure. I do not know whether that is the right question. Is that what we want to achieve? Is it not that we want to spell out what we want the chief constable to achieve and he or she will then be held to account for achieving that? The chief constable, with the board or the authority, will discuss the total resource and be held to account for how he or she and the management allocate that resource and meet communities' needs.

I would have thought that Strathclyde Police is evidence of that approach, which has been in operation for some time. It has to balance the pull of Glasgow, including the city centre and major events, and the rural areas, islands and dispersed communities down in Ayrshire. There has never been a perfect balance, because it is an imprecise science, but things have been pretty well balanced over a period of time in the 12 council areas within Strathclyde.

The Convener: We will move on, if that is all right, David.

David McLetchie: Absolutely.

The Convener: I have Lewis Macdonald, then Rod Campbell, John Finnie and Alison McInnes.

Lewis Macdonald (North East Scotland) (Lab): We heard in evidence last week that, under a single Scottish police force, much of the strategic planning and operational management might happen not at the level of the 32 local authorities or at the level of Scotland as a whole, but at a regional level. You mentioned Strathclyde, but whether that happens at the level of city regions or in another way, it is likely that there will be an important tier of service delivery that is between the local and the national. Is there a gap in the plans in relation to accountability that we need to address?

Alison Payne suggests that the 32 councils be represented on the national board, but might there instead be a case for regional accountability that comprised local councillors, which would then be

represented at a national level? Would that provide the link between local communities and their concerns and the strategic level of delivery, whether it is regional or ultimately national? I would be interested to hear the views of all the witnesses on that.

Dr Scott: There may be a case for that, but the danger is that it might take us back—partly, at least—to the current situation. We have to moderate the argument about local council involvement by recognising the fact that Audit Scotland's work in recent years has shown that there are problems with the way in which police boards operate and with their effectiveness in holding chief constables to account.

Perhaps the best way to consider the issue would be to approach it from the top, rather than the bottom. The bill enables the Scottish police authority to form sub-committees whose membership could include people who are not necessarily part of the authority. That would provide a mechanism for identifying and monitoring certain types of policing that are performed at the in-between level. The move towards a single force means that it would not necessarily be the best step to go back to the current wards model, which has been shown, in certain respects, not to be as effective as it could be.

The Convener: Ms Payne, you have been offered a middle way.

Alison Payne: Reform Scotland disagrees with the current structure of eight boards. The general public are not really aware of where their representation lies within it. We want the structure to be recreated. Equally, however, we want to see greater accountability targeted downwards.

Although 32 board members, plus people representing specialist national policing, would result in a large board, that reflects local government structure in Scotland. Whether 32 local authorities are too many for Scotland is a completely separate issue. We should not structure the police on the basis that we think that the local government structure is wrong. If we continue to believe, as the policy memorandum states, that policing is largely a local service, it should be structured to reflect the local government structure.

If we do not want policing to remain a local service, we should say so. If that is the case, what is next? What else would be brought into the centre because it was believed that that was the best place to deal with it? It could be housing or social work. We are concerned about setting a bad precedent for local government functions. Although 32 may seem a large number, that is what we have.

Lewis Macdonald: Do Nick Fyfe and Alistair Finlay have a view on the regional tiers? Alison Payne and Ken Scott have given us two different answers, one saying that it is the local stuff that really matters and that that is where accountability should lie, and the other saying that we can deal with the regional tier from the top, rather than the bottom. What do others think?

Assistant Chief Constable Finlay: I do not know whether regional tiers are needed or not. Perhaps we need to try something to see whether it works.

One of the frustrating things for those encouraged to get involved in and join the district policing partnerships in Northern Ireland—perhaps I did not make this clear in response to Graeme Pearson's first question—is that they do not have the power to change some of the things that they thought they did. Whatever the number of tiers, it is important to delineate their capacity and function; otherwise, we risk frustrating those people who will develop an interest in policing.

Public interest in policing is slightly overstated. People tend not to be hugely interested until they need to use the service; then, if they are dissatisfied, we get calls. If the expectations of those who are encouraged to get involved in the governance and accountability of policing are not met, that can be frustrating for them and lead to negative energy.

Professor Fyfe: The only other point that I would add is that a lot of activity is already happening at the regional level, particularly in partnership working between police forces, health, social work and housing. It is crucial to see what happens to that under the new structure. Where will that activity move? Will it move down to the local level? Will that compromise what can be achieved in the existing strategic partnerships at a regional level, or will it be pushed up to the national level? The regional level is critical and there needs to be careful scrutiny of how it plays out under the new structure.

10:45

Lewis Macdonald: I think that roads policing was mentioned in relation to Northern Ireland. There will not be a separate strategy for roads policing for each of the 32 local authorities in Scotland, although there will be separate strategies for different parts of Scotland, depending on the character of the roads and the challenge facing roads policing.

Is there a risk that we will end up with a national board overseeing what is happening throughout the country but no accountable tier for regional decisions? For example, an assistant chief constable would be in charge of strategy at a

regional level, yet the only accountability would be to the local council or to the minister.

Assistant Chief Constable Finlay: The terms “strategy” and “strategic” can be flexible, if you like, in terms of what is strategic at any one time.

Using the example of road policing, I envisage that we would have key strategic aims on reducing the number of road deaths, on pedestrian safety and on how we educate people. There will be core aims, and below those there is the issue of how that is delivered, which will depend on the geographic space, however that is defined. How that is supported will depend on whether it is on a regional or a local basis—it will be done differently in rural areas.

Analysis will have to be done of the information that we have. For example, we have done analysis and discovered that road policing is needed in rural areas in the early hours of the morning more than it is needed on motorways, because motorways are the safest roads. It is about putting the right resources into the right place at the right time, being held to account for doing that, and achieving the overall aims. How we layer that overall strategy and who is responsible for the bits of that strategy will probably depend on the structure of the organisation.

The Convener: I have a practical question. I understand what you are saying about strategy and so on. Taking roads as an example, the divisional commanders in Borders, East Lothian, the City of Edinburgh and Midlothian all co-operate practically because that is the way life is—roads do not stop at the boundaries. Do you see that changing under the legislation? Will there be any change for the public? At the end of the day, although other things are important, will we have that practical co-operation without any problems and without having to set up the middle structure that was being suggested for accountability?

Assistant Chief Constable Finlay: I think that it will continue. From the day before the new structure is introduced to the day after, people will, broadly speaking, still be talking to the same people. The noticeable difference will perhaps be how the resource is utilised.

For example, how we police the roads is not down to the roads policing branch per se—it is a policing issue. That goes right down to local involvement in speed detection: local contributions to partnerships on speed detection and whether fixed cameras are used, whether SPECS schemes are used, how marked vehicles are deployed and the use of specialists and suchlike. That becomes a policing deployment and management issue. I do not anticipate that that will be significantly different, but the resources of the specialists will

perhaps be used differently to be more effective and efficient.

The Convener: It might be better.

Assistant Chief Constable Finlay: Absolutely.

The Convener: I keep thinking about how ordinary people will see it. They want to know that if the bill becomes an act after stage 3, nothing will change, or that things will be a bit better rather than worse. That is the most important test.

Assistant Chief Constable Finlay: There is a strong potential for that.

Lewis Macdonald: Alistair Finlay talked about the size of the board at Northern Ireland level—which was 19 if I heard him correctly—and the important layer of working that is done by thematic committees made up of board members.

Is it your view that the number of board members is appropriate to the number of tasks—in other words, to the work that is required of the sub-committees? Are there too many or too few board members? Is the balance between elected members and appointed members correct? What are the other witnesses' views on the optimum size of a board and the optimum balance between elected and appointed members?

Assistant Chief Constable Finlay: A difference of size and scale is involved. The population of Northern Ireland is 1.7 million or thereby. Geographically, a person can drive from one end of Northern Ireland to the other in two and a half hours. That will cover the province. There are now just under 7,000 police officers and just under 3,000 support staff in its police service. Its size and scale are different from Scotland's, and the context is different. That is a health warning about reading across.

I have never really thought that a board of 19 is too big or too small. The number could have moved up or down a bit, and that would have been fine. That number of people is manageable, and the balance between the elected members and the non-elected members is probably right. All the non-elected members come with some perspective—the design is that they should do that—so there will be a breakdown of groupings. The non-political representatives will align with various parts at various times. I do not think that the model is particularly bad.

Lewis Macdonald: Are 19 people enough to staff the committees?

Assistant Chief Constable Finlay: Yes. Nineteen people are enough to staff the sizes of committees that are utilised. The sizes of the sub-committees enable pretty good dialogue. Most of them have five members, which is a good number

for purposeful engagement and conversation. That is where the detailed work is done.

Lewis Macdonald: Do the other witnesses have a view on the optimum size of a board?

Dr Scott: As members know, the bill does not make any statement at all about any balance between appointed and political members. It says:

“The Scottish Ministers must appoint as members ... persons who ... have the skills and expertise relevant to the functions of the Authority”,

although I believe that there is a policy statement from the Government on local government representation on the SPA. That would obviously be appropriate, but the “skills and expertise relevant” phrase is vital. It is also vital that those who are appointed to the authority are supported so that they can do the job properly, and part of that support must mean the SPA being separate from the Scottish Government and the civil service. There is no comment or statement on that in the bill, but it seems to me that that is central to the business of getting public confidence in such an authority and to the authority's ability to carry out the stated purpose of holding the chief constable to account.

The Convener: Should the SPA posts be full time or part time? Should they be salaried or should there be appearance money? I do not know how often the board will sit.

Dr Scott: I do not have a particular view on that. I take it that the remuneration will be in line with other arrangements for such bodies. The point that I am making is that, if the SPA is seen simply as an adjunct to the work of the civil service, that will carry certain dangers.

Alison Payne: Our concern about the creation of a quango that is separate from the Scottish Government is who will be accountable. When something goes wrong, somebody on the political side must answer for that. If a quango is separated from the person in the street, they need to know where and who they can go to when something goes wrong, because ultimately there must be somebody who takes the blame or is in control. If councillors are on the board, there is at least a link to the public. Our concern about appointed board members is that, irrespective of their skills or their background, they will not represent anybody and will lack accountability.

The Convener: Is it not the case that if policing went belly up in a major way in Scotland, the ultimate responsibility would lie with the Cabinet Secretary for Justice and that he or she might have to resign?

Alison Payne: Equally the situation could be as happened with the Scottish Qualifications Authority when there was a big mix-up with all the

exams. It was not a huge problem, but it was a big one. It was not the responsibility of a minister but was passed over to the quango, and it was the quango's heads who went. We feel that such a situation is wrong and that there must be political accountability.

Having councillors on the board will ensure that, if there is a difference between what a local authority wants its local commander to do and what the chief constable says, everything will be connected back and the chief constable will be answerable to local councillors.

The Convener: With respect, Ms Payne, it depends where the fault lies at the end of the day. If the fault lay with operational personnel, then it would be appropriate that they went. If it lay somewhere else, it might be appropriate that a politician bit the bullet.

Jenny Marra wants to come in, then we will go on to Rod Campbell. *[Interruption.]* Oh, sorry, Lewis, do you still want to come in? I do not mind your competing with Jenny. It is not my problem.

Lewis Macdonald: I think that Professor Fyfe wants to respond, and I am keen to know the witnesses' views on the question of how many people it takes to run a national police authority and its committees.

Professor Fyfe: Echoing Ken Scott's points, I do not have a strong view about the number of people, because it is the quality of the engagement that is critical, both at the local and the national level. The issue of the information to which the police authority has access and its ability to generate its own information about police performance is vital. One of the issues that has emerged from work in England and Wales is that the existence of masses of what has been described as unrefined police performance data has hindered proper debate about policing. Giving the Scottish police authority the ability to research, understand and investigate issues so that it can put that information alongside information that the chief constable provides is vital to enriching the debate about the nature of policing.

The Convener: Lewis, I do not want to pursue that line of questioning because I think that the Local Government and Regeneration Committee has asked those questions, rather like the Finance Committee. We will wait and see what the *Official Report* says about that.

Jenny Marra (North East Scotland) (Lab): Just on the back of Ms Payne's point, is it a good thing for the balance between citizen and state for the police to be a quango?

Alison Payne: No.

Jenny Marra: I wonder whether Professor Fyfe can call on his international research to answer on that.

Professor Fyfe: What is striking about the international context is the variety of different relationships between police organisations and the state. At one extreme is France, which has a very centralised system with little local political involvement in policing, and at the other extreme is the United States, which has a hugely decentralised policing system in which there is a strong relationship between policing and electoral politics.

The different relationships between the police and state have evolved through the political traditions and cultures of countries. We have to work within the political traditions of the country in which we live, in which there has been a distribution of power between central Government and local government and the police in determining issues of governance and accountability.

Jenny Marra: Is this the ideal model for designating police?

Professor Fyfe: Clearly, the bill moves a lot of power towards a centralised model. There are concerns that that will begin to create a democratic deficit in terms of local political involvement because, historically, we have managed and governed policing in the United Kingdom by distributing power between central and local government and the police.

Jenny Marra: Does it bring the police closer to Government?

Professor Fyfe: It certainly leads to a more centralised model.

Jenny Marra: I wonder whether the other panel members have a take on this.

11:00

Dr Scott: In our policing system the crucial element is the much-quoted ideal of constabulary independence and, as far as the bill is concerned, we need to carefully consider the extent to which the chief constable has the freedom to conduct police operations in the way that is best suited to their conduct. After all, that is what is meant by constabulary independence; it means that the chief constable is not at the beck and call of politicians or ministers but is able to make operational decisions independently. This is a crucial area of the bill, which makes statements about the chief constable's independence, which are put negatively: for example, ministers are not entitled to have any say in operational matters. That is fundamental. The extent to which the chief constable is permitted to get on with his or her job

without unnecessary interference will be the crucial test of the whole impact of this proposal on policing and the relationship between the police and the state—after all, that is the principle on which our policing system has been built—but of course that does not mean that there should not be proper monitoring and accountability.

Jenny Marra: Does the bill provide for all that?

Dr Scott: It goes a long way in that respect. One might raise questions or concerns about a couple of areas, including, for example, the fact that this is by and large a centrally funded single force and, crucially, the need for the process of appointing the chief constable to be seen as robust and independent.

Assistant Chief Constable Finlay: Chief constables will want strong governance and accountability, because a strong accountability mechanism that is routed back to elected members and the people gives legitimacy to policing by consent and gives the police the authority to do what they do. After all, they tend to be the agency that employs coercive force on citizens and strong and transparent governance and accountability are critical to giving them the right operational independence. I think that that is best achieved through the local level and through elected members, but certainly policing will look to be held strongly to account.

In recent years, the lengths of the legs of the tripartite or three-legged stool that we have hung on to have become different, with a strengthening of the central Government rather than the local leg. The bill seems like a step towards following that particular route through.

Jenny Marra: Is a non-departmental public body the ideal model for designating police?

Assistant Chief Constable Finlay: An NDPB would work, but the question is less how it is structured than what it comprises and how people get into it.

The Convener: Members have been very patient. I call Roderick Campbell, John Finnie and Alison McInnes. Believe it or not, Alison, you are on my list—I know that it seems like you have been waiting for a long time.

Roderick Campbell (North East Fife) (SNP): I want to take up with Alison Payne the issue of just how big the Scottish police authority should be. Scotland's local authorities vary in size from Clackmannanshire to Glasgow, but nevertheless you suggest that the police authority should comprise at least one representative from each of those local authorities—I do not know whether you think Glasgow should have more than one—as well as Scottish Government representation by ministers or civil servants. However, you do not

mention the involvement of anyone else with skills and expertise. Is that not perhaps a little impractical? If you are not going to include others with skills and expertise on the authority, you are replacing one body of which you are critical with another that is simply lopsided.

Alison Payne: Do you feel that the councillors who are currently on the joint boards do not have the necessary skills and expertise?

The Convener: The answer to that is probably yes.

Roderick Campbell: Why is it right for Glasgow City Council to have only one representative and for Clackmannanshire Council also to have one?

Alison Payne: We accept that our local authorities are diverse—we have done work on that at a local government level—but we have structured our response to the bill to reflect the current structure of local government. There are a number of issues to do with local government in Scotland that need to be considered, but we believe that policing should reflect the current local government structure. Ideally, there should be a representative from each local authority on the board, so that they have an input. That would be our preference. However, perhaps there is a middle ground whereby there could be a committee for each of the current eight forces, and they could be represented on the board, ensuring that it would have locally elected representation.

We accept that a board comprising 32 members based on the current structure of local government, plus additional members, would be huge. We are not kidding ourselves that that would work; we are simply saying that that is the structure of local government in Scotland. If there is a middle way, that would be better than what is proposed as long as the local electorate knew who their voice was on the board.

Roderick Campbell: What about the issue of skills and expertise? That does not feature in your model of a police authority; you have just got local people and civil servants from the Scottish Government on the board.

Alison Payne: At the moment, councillors are responsible for housing, local education and other local government functions. If you want to remove functions from local government because you do not believe that the participants have the necessary skills, that is another issue. However, we believe in local accountability, which means having councillors on the board.

Roderick Campbell: What do the rest of the witnesses think about the balance between local and national accountability and the general skills and expertise that are required on the SPA?

Dr Scott: Initially, it would make sense to use the experience of local councillors who have been conveners of police boards. My personal view is that, in the longer term, it may not be necessary to specify a local government presence, but it makes sense initially to make use of that experience, especially during the critical period of transition and change.

Professor Fyfe: I echo that. A lot of expertise has been built up over many years through local authorities' involvement with police boards, and it is vital that we make use of that in the transitional period. That will be a critical time in the implementation of the new police service.

Assistant Chief Constable Finlay: The support that is provided to an independent police authority will be important as well. We ask elected members—whether MSPs or councillors—to be a Jack-of-all-trades in representing the interests of their communities and constituencies across a range of issues. Getting people up to the required level of knowledge, skill and insight in something as complex as policing can take quite a while and those people cannot be immersed in it full time because they have other things to do. The support of officials and the support infrastructure around performance, finance and such things will therefore be very important in helping the elected members to discharge their obligations by providing detailed briefing.

John Finnie (Highlands and Islands) (SNP): My question is for Professor Fyfe and Assistant Chief Constable Finlay and concerns the tensions that can exist between certain elements in any system, old or new. We have heard about accountability and ministerial direction. Professor Fyfe, you state in your written submission that the bill will

“secure and maintain ‘constabulary independence’”.

You go on to say that it

“embodies a fundamental principle that Scottish Ministers should not issue directions to the Authority in respect of a specific police operation or the way in which the Police Service is carrying out a specific operation.”

We know that ministerial power of direction is common across the public service. How can ministers exercise the will of Parliament without that power?

Professor Fyfe: Can I pass that over to Ken? He drafted that bit.

The Convener: You are passing the buck—Mr Scott, you will notice that he called you Ken when he was passing it over.

Dr Scott: Yes, he is always very polite when he is putting me in it.

That statement repeats the wording in the bill, and brings us back to the dilemma around constabulary independence, which I mentioned earlier. We do not live in an ideal world, so such things are not 100 per cent one way or the other, and there is a balance to be maintained. However, there is rightly suspicion among the public about politicians telling chief constables what to do. Equally, it is a valid point that Governments are elected on policies, some of which have to do with maintaining law and order and dealing with crime.

It is a question of the level of generality at which such direction or advice may be offered. It would be quite appropriate—as has happened—for the Government to say, “We have a concern about the growth of serious organised crime in Scotland, and we would like the chief constable to take account of that.” That is different from saying, “This is what you will do in order to counter the growth of serious organised crime.”

John Finnie: And the minister would be reflecting the will of Parliament.

Dr Scott: Yes.

John Finnie: I want to ask Mr Finlay about policing in the north of Ireland. If I have noted it correctly, you said that the area commanders were chief inspectors and the district commanders were chief superintendents. We have received a lot of information to suggest that there could be tensions between certain areas based on the police hierarchy. Was it a conscious decision by Patten to have the same rank in each area, or was that subsequently developed by the PSNI?

Assistant Chief Constable Finlay: The history is that the eight districts and the eight district commanders, which is the situation that we have now, developed post-Patten. Patten used the terms “area commander” and “district commander”. When the PSNI was first formed, we had an area commander for each of the 26 councils. The rank of those commanders and the size of the areas varied depending on the geography and the nature of each council. We moved from a dispersed model to brigade those in a structured way, and we now have the eight district commands. They might have been better called area commands—we should perhaps have used your language rather than the other way round.

The district commands carve up the space of Northern Ireland into eight chunks. Each of those is coterminous with a number of the councils, and each council area has a chief inspector. Not all council areas have their own chief inspector; in some cases, one chief inspector will cover more than one council area. The legislation designates the area commander as

“a rank not less than that of chief inspector”.

That will change in due course as the Northern Ireland Assembly examines the council structure, as it has undertaken to do.

We did not start from there: we ended up with that model because we were ahead of the game. Northern Ireland was going to rationalise its public administration and go down to seven councils. We moved ahead of that, and then the political decision was taken not to do that. That is how we ended up with eight areas: there were going to be seven councils, but we split Belfast into two districts. It is part of the history of the review of public administration, and is linked to getting what we think are the right spans of command and brigading those. Each of the eight districts will have broadly similar resource structures.

John Finnie: Was the decision to move to that structure taken in light of what I presume was the Assembly's intention to move to seven councils?

Assistant Chief Constable Finlay: Yes.

11:15

John Finnie: Did that mean that the constituent councils were not involved in consultation on that process, or were they consulted on how the 26 would be reduced to seven or eight?

Assistant Chief Constable Finlay: Two different processes went on. The review of public administration was an Assembly/Executive-driven process, which the councils were fully involved in, because they were to be reduced from 26 to a much smaller number. It was because of the difficulties in getting engagement with some of the councils that the decision was taken to walk away from that. The proposal is now back in the programme for government, but it involves a different number of councils—off the top of my head, I think that the figure is 11, rather than the seven that was envisaged initially.

We had recognised that we needed to reorganise to make better use of resources and to change our spans of control, our rank ratios and how we organised ourselves. We moved ahead of the game. We went to that structure and then local government did not go to the same structure, but we have stuck with that structure and we will continue to stick with it until we see what happens in due course with local government structures and what functions councils are vested with in the future. As I said, the functions of councils in Northern Ireland are significantly different from the functions of a Scottish council.

John Finnie: Given that the reform of the local authorities did not go ahead—

The Convener: Before you go ahead with that, you asked an interesting question, which I do not

think was answered—I am not saying that not all your questions are interesting.

John Finnie: I will remember that.

The Convener: I think that you asked about a pecking order of ranks. If I am right, you asked whether, if the divisional commanders are of different rank and someone with more scrambled egg and braid asks for something from central resources, such a request will command more weight than a request from a divisional commander who is of a lower rank. Was that not your question? I thought that you asked about a pecking order.

John Finnie: No—

David McLetchie: It is a good question, though.

The Convener: I know.

John Finnie: With respect, I feel that Mr Finlay answered that very adequately. I asked about the parity of the two.

The Convener: If you did, I got lost. I was waiting for the answer to that.

John Finnie: Yes, it was about everyone of a certain designation being the same rank, so we have the chief superintendents for the divisions and the chief inspectors for the districts.

Assistant Chief Constable Finlay: The convener asked for clarity on whether that meant that a commander in one area could lever in more resource because they had more influence as a result of having a higher rank. The answer to that is probably no, because we have regional assistant chief constables. They are the people you work with in your management team—they oversee the whole of that—so, at that stage, their rank leverage did not have an impact.

We resolved all that in 2006, when we moved to the current structure of eight districts, with chief superintendents—

The Convener: So they are all the same rank.

Assistant Chief Constable Finlay: They are all the same rank.

The Convener: I need to be told things simply.

Assistant Chief Constable Finlay: It is now the case that they are all the same rank. We moved from a more patchwork model to a universal model.

The Convener: But that is not what the bill proposes.

Assistant Chief Constable Finlay: No.

The Convener: Should it?

Assistant Chief Constable Finlay: In Northern Ireland, the structure and the size are significantly

different, so I do not think that the pattern that we have used can necessarily be replicated.

The Convener: Does anyone else want to comment on whether all the commanders should have the same rank?

Dr Scott: Increasingly in policing, the role and function that someone carries out is what matters, rather than the rank that they have. I know that the public perception is that ranks are still extremely important, but my feeling, as someone who has worked with police forces quite a lot, is that, at certain levels, ranks are slightly less important on the inside than they are on the outside. What is important is the function, the boundaries of that function and what is expected of the people who fulfil that function. I am sure that there are many chief inspectors who can argue their corner just as effectively as chief superintendents.

The Convener: We have got that on the record now.

John Finnie: Now that you have moved to that model, is there any push to revert to a previous model? You say that the present model has been in place since 2006. Is there any dissatisfaction?

Assistant Chief Constable Finlay: No. We have not had any great push. The eight commanders have had to work with the councils, the chief executives and the district policing partnerships to manage people's expectations and make them appropriate to the roles that people undertake. There was always a demand from people for the commander to come to their meetings, but the commander covers a large span of Northern Ireland and the appropriate person to go to the meeting might be the inspector, or it could be the area commander as the chief inspector. It took time to get buy-in to that approach, but we have built and sustained local relationships and demonstrated that those people have the capacity and capability to change things in their local area by using the tools within the organisation.

John Finnie: "Local" is seen as an extremely positive word, as we heard from Ms Payne. Is it correct to say that you would not expect your local police areas to have plans on human trafficking, terrorism, drugs or cybercrime, which would be covered in larger plans?

Assistant Chief Constable Finlay: Indeed. The local is based on what local communities feed into the district policing partnership. It is about the volume issues that we deal with in terms of visibility and responsiveness, and key issues around antisocial behaviour, burglary and car crime, particularly speeding. There are local plans for those things.

There are organisational plans on counterterrorism, people trafficking and serious organised crime. All those big issues happen somewhere on the ground, and there is a connection with the local neighbourhood constable who feeds information and intelligence back up within the organisation. That information is assimilated, which allows things to happen.

All the people who commit crime and all the people who are vulnerable live somewhere and have some rooting in the geography, so the local has an essential role to play. On a day-to-day basis, officers deal with the volume issues and suchlike, but their local knowledge of what is happening in their area, who lives there and the changes that are happening there is imperative to the national.

John Finnie: If it is not possible to implement the local plan with the resources that are available, how is that dealt with?

Assistant Chief Constable Finlay: That is usually dealt with on a tasking and co-ordinating basis. People bid for resources, if you like, from the centre, whether that is for roads policing, for specialist uniform support or for additional detectives from serious crime to work on a particular case. Wherever the requirement emits from, there will be a bid for additionality against a justified business case, and we will prioritise the need with a view to fulfilling as many requirements as we can. We seek to strike the right balance with regard to not just threat and risk but geography, which is also important.

John Finnie: You used the term "business case". Just to be clear, is that an evidenced position that does not relate to the rank of the individual local commander?

Assistant Chief Constable Finlay: Absolutely.

The Convener: I have got that sorted in my head now. Rank does not count. Is that not true? I ask the police officers in front of us to agree that rank does not count. I am sure that they will agree. *[Laughter.]*

Graeme Pearson: We saw that at our last meeting.

David McLetchie: Yes.

Assistant Chief Constable Finlay: We prioritise threat and risk in a measured and structured way, and that is how we allocate additional resources to a particular task for a particular period of time. Locally, we can also use tools such as overtime.

The Convener: I know that Alison Payne wants to come in, but I want to move on. Perhaps she can chip in with her comments later.

Alison McInnes has been so patient. She has almost knitted a jumper—not that she has been doing that; that is not on the record, Alison. You have been paying close attention for hours. On you go.

Alison McInnes (North East Scotland) (LD): Thank you, convener. I have a couple of questions on any lessons that can be learned from the police reforms in other European countries. Mr Finlay spent some time at the beginning of the meeting talking about how the new Police Service of Northern Ireland had to build confidence. He said that a great deal of work needed to be done. In contrast, in Scotland, there is significant confidence in the police, so we do not have that problem.

We are about to introduce to the system strong political direction, which has not previously existed in it. The minister responsible for justice will appoint the chair and members of the SPA—provided that it has a complete budget—and approve the policing plan. Does that reform put at risk our confidence in the police service in Scotland?

Dr Scott: Personally and from an operational perspective, until it begins biting on the ground—if it ever does—I am not sure whether the vast majority of people would notice.

Alison McInnes: We know from the Danish research that public satisfaction with local policing fell dramatically as a result of reform: public confidence in the police as a whole fell by 14 per cent over the three years during which the reform was implemented. Does Dr Scott think that there are lessons to be learned from that?

Dr Scott: I will do what Nick Fyfe did to me earlier and let him answer.

The Convener: I have heard someone say something similar before: “I agree with Nick.”

Professor Fyfe: We have done a lot of work on police reform in other parts of the world, in particular in Europe. It is disappointing that there is remarkably little evidence on and systematic evaluation of police reform, although Denmark and Finland commissioned long-term studies of its impact.

Denmark is an interesting case. The University of Copenhagen was commissioned to do a four-year study of the reform programme’s impact. As Alison McInnes alluded to, one of the things that it tracked was citizens’ perceptions of local policing, including local visibility. It also focused on officers’ knowledge of local crime and policing problems and discovered that, as a result of police-force mergers, officers’ knowledge of local neighbourhoods decreased dramatically, which began to undermine trust and confidence.

The study made some other interesting findings. It looked at the impact of the police-force mergers on police officers. It was agreed in Denmark that police officers did not have to relocate to the new regional headquarters; they were allowed to remain in their local policing areas. An unanticipated effect of that was that they had problems staffing many of the specialist policing functions that take place at a regional headquarters, because a lot of officers were not prepared to disrupt their family lives by commuting longer distances to work. Deployment of resources during the period of transition was an issue.

The work in Finland revealed that senior officers’ perception of the impact of reform was different from that of more junior officers. Senior officers tended to be quite positive about it and what it was achieving, but there was a significant decrease in the morale of junior officers during the reform process, partly because they felt that there was a lack of communication about what was happening and partly because there was a huge degree of uncertainty about what their jobs might entail.

The useful lessons from those studies are that you will need to monitor the implementation process carefully, to recognise that the way in which a reform is implemented will have different effects in different locations, and to realise that there is value in tracking the impact of reform so that, if things are not going as intended and amendments need to be made, you can introduce revisions to the process.

Alison McInnes: May I continue, convener?

The Convener: I feel that I should let you go on, because you have been waiting to speak for such a long time.

Alison McInnes: I believe that policing is part of the local authority family for good reason, at present. Modern policing carries out a lot of preventative work that links to social work, education, criminal justice and even the work of the fire and rescue service, which are all local authority responsibilities. The evidence from Denmark is that there is less time for preventative activity when there is no local police presence. Our community planning processes are quite well developed. What risks are involved and can you suggest safeguards for us to insert in the bill that would ensure that reform does not spoil the community planning networks?

11:30

Dr Scott: To come back to local policing, an issue that has emerged during consideration of the bill is that the more important local relationship is not between the local council and the police but between the community planning partnership and

the police. However, I believe that I am right that the bill says little—if anything—about that significant relationship. It could be argued that, at local level, the police's prime link should be not with the local council—which is, after all, also part of the CPP—but with the CPP itself. There is a risk in that only one of the partners in the partnership is restructuring and reorganising, so a great deal of care needs to be taken to ensure that the impact of restructuring of policing has no adverse effect, that the other partners understand what is happening with policing and that policing is flexible enough to fit in. The police do not lead on all areas at local level—for example, child protection might be led by social work—so in restructuring for whatever reason, the police must accommodate the links that are not going to change and ensure a seamless transition. The point about CPPs is well made and the issue is perhaps less clearly developed in the bill than it needs to be.

Alison McInnes: That was useful.

Alison Payne: On resources, we believe that, given all the areas that link into policing and the fact that budgets are getting tighter, local authorities should still be able to weigh up priorities and be able to choose to put resources not into the police but into, say, criminal justice, social work, improving housing or other measures that can help to prevent crime in the first place. However, they will not be able to do that under the current proposals, and I think that that is a risk.

Alison McInnes: Can Mr Finlay quantify the amount of time the PSNI spends on community planning and preventative work?

Assistant Chief Constable Finlay: I am not sure that I can do that, but I can say that Northern Ireland is particularly envious of Scotland's CPPs. Northern Ireland has neither those statutory partnerships nor the crime and disorder reduction partnerships that exist in England and Wales, so it is extremely difficult to achieve partnership working there.

On the back of the review of public administration and moves to reduce the number of councils in Northern Ireland, there was a lot of interest in, and activity on, the community planning model that was adopted in Scotland and there were many mutual exchanges in order to develop such a system. However, all that came to an end when the plans for local authority reform fell. I would guard against putting in place anything that might dilute something that is so valuable that you do not actually realise how valuable it is until you do not have it any more.

As for being able to quantify prevention work, I think that our primary purpose is to prevent crime and prevent people from coming to harm. Even police patrols and police visibility are all about

prevention; for example, road patrols are all about modifying people's behaviour on the roads. As a result, it is very difficult to quantify our prevention work. We have crime prevention officers who deal specifically with prevention, but part of the *raison d'être* of policing is to keep people safe.

The Convener: Two members want to ask brief questions on issues that have not been raised, but I am afraid that I cannot take supplementary questions if the committee wants to finish at a reasonable time. Graeme Pearson has a question on forensic science and Rod Campbell has one on VAT. I am sure that Rod knows that the Finance Committee is dealing with VAT in relation to the bill.

Graeme Pearson: Last week we heard evidence that people are in a quandary about the separation of forensic science from a chief constable's ambit and direction. There seems to be anguish about it. I think that in Northern Ireland forensic science is independent of the PSNI. How have you resolved who directs and who is responsible for management of crime investigation using forensic science?

Assistant Chief Constable Finlay: There are regular meetings between the director, the deputy chief constable and Drew Harris, who leads in the serious crime branch, about prioritisation of work in, and the capacity and capability of, the Northern Ireland forensic science service. In addition, as I understand it, there are mutual relationships with the forensic science set-ups in Scotland whereby their capacity is utilised, and vice versa with regard to specialisms that perhaps all laboratories do not need to have.

As you will be aware, the forensic science world has been thrown up in the air a wee bit with the Westminster decision to disband the Forensic Science Service in England and Wales, which has created some issues.

We work on the basis of having regular meetings to understand what the role of each organisation is. Those meetings feed up to the NI Department of Justice because the forensic science laboratory is a non-departmental body of the DOJ, which is where round-table discussions will take place if there is a resourcing issue.

Graeme Pearson: The crux is who makes the decisions at the crime scene. Is it fair to say that the police say what they want done and that forensic science dictates how it will be done?

Assistant Chief Constable Finlay: Yes. The scene-of-crime aspect is dealt with internally in the PSNI. We have scenes-of-crime officers who do all the forensic recovery with partners, and will do that package in such a way that we can get the low-copy number DNA analysis, if that is appropriate. That process is directed by a forensic

manager, who is part of the organisation, and the information then goes to the forensic science laboratory. I do not think that we should tell the laboratory scientists what to do, but we tell them what we want them to look for; it is then for them to decide the order of events in which things are processed to recover the best evidence.

Graeme Pearson: Do you manage the scenes-of-crime officers or are they managed by forensic science?

Assistant Chief Constable Finlay: We manage scenes-of-crime officers.

Graeme Pearson: Is that different from the set-up in Scotland?

Assistant Chief Constable Finlay: Yes.

Roderick Campbell: The Police Service of Northern Ireland is able to recover VAT on supply of goods or services. What discussions have you had with the Treasury on that? Can you give advice to the Scottish Government on that issue?

Assistant Chief Constable Finlay: I can tell you what I know about it.

The Convener: That is all we can expect.

Assistant Chief Constable Finlay: It is a long-standing arrangement that affects not only the PSNI but other public services in Northern Ireland. The reason is the structure of public services in Northern Ireland. A centralised model was put in place some considerable time ago due to conditions in Northern Ireland over previous years during the troubles and so on. Centralised units were put in place such that, for example, housing came from the Northern Ireland Housing Executive. That model included a decision being made—I do not know by whom or in what capacity—that we would be treated like a local authority. As a consequence of that, we recover VAT.

The Convener: Should the police perhaps ask the Scottish Government to treat it as a local authority?

Assistant Chief Constable Finlay: I think that—

The Convener: Anyway, I hear what you are saying.

Jenny Marra: Can I ask a brief supplementary?

The Convener: I am not taking supplementaries because I know that the Finance Committee is considering VAT in relation to the bill: forgive me. I suspend the meeting for 10 minutes. The next witnesses have been waiting for a long time.

11:39

Meeting suspended.

11:50

On resuming—

The Convener: I welcome our second panel of witnesses and thank them for their patience. We are joined by Professor John McNeill, Police Complaints Commissioner for Scotland, and Ian Todd, director of the Police Complaints Commissioner for Scotland; Andrew Laing, Her Majesty's inspector of constabulary for Scotland, and Chief Superintendent David McCracken, principal inspection manager at HM inspectorate of constabulary for Scotland; and Robert Black, Auditor General for Scotland, and Miranda Alcock from Audit Scotland.

As panel members saw in the previous evidence session, your microphones will come on automatically when you indicate that you wish to speak. If you want to answer a question, please indicate that to me and I will call you to speak.

I thank you all for your written submissions. For anyone who thinks that the Justice Committee does not work, I am holding up the written submissions—this pile does not even include the additional pieces that have come through. I thank the Scottish Parliament information centre for an extremely helpful briefing paper on international comparisons of police reform.

Do members have questions? I will take John Finnie first this time, followed by Alison McInnes—you get in there, Alison—and Humza Yousaf.

John Finnie: Good morning, panel—it is still morning.

I have a question for Professor McNeill. It is important that the public have confidence that their complaints about individual police officers are properly investigated. Given that there remains a requirement for any matter suggesting criminality to be referred to the fiscal service, with a serious incident is there the potential for three layers of investigation?

Professor John McNeill (Police Complaints Commissioner for Scotland): It is important to recognise at the outset that, when it comes to confirming public confidence in policing, the bill's proposals raise the bar significantly through the establishment of an independent commissioner. There are a couple of areas in which we could strengthen it further, and Mr Finnie has referred to one of those areas.

At the moment I have a memorandum of understanding with the Crown, which works very effectively. I would have thought that this is a clear instance in which a well-defined MOU between the

Crown and the new police investigations and review commissioner would strengthen the existing provision rather than confuse it further. However, that opens up a much wider area because, as you know, there is a provision in the bill for all serious incidents involving the police—serious incidents being defined as any indication that the police may have caused or contributed to the death or serious injury of an individual, serious injury that is suspected of happening in police custody, and the use of firearms—to be referred to the commissioner.

To avoid any confusion, I would recommend that rather than there being a provision for referral by the police, referral is mandatory—there is an automatic trigger. That would do a lot to confirm public confidence in policing. The basis on which all oversight bodies operate is that an automatic trigger refers such cases—those in which there is a suggestion that the police may have caused or contributed to death or serious injury, where there is a suspicion that serious injury has occurred in police custody, or where firearms have been used—in a mandatory manner to the independent body. That would go a considerable way to confirming public confidence in policing.

John Finnie: I will give you a specific incident, and you can tell us how you and your staff would respond to it.

For instance, a pre-planned police operation may involve authorised firearms officers being dispatched to a location in anticipation of an armed robbery. If, unfortunately, a police officer had to discharge their firearm, where would the investigation of the armed robbery and the investigation that would arise as a result of your dealing with a serious incident start and finish?

The issue of forensics around such an event in other jurisdictions has proved to be problematic. How would you ensure that the public would—quite rightly—get some reassurance that the investigation of that crime of armed robbery would continue, and that those who were charged with investigating it would not be hampered in doing so?

Professor McNeill: I will attempt to answer that, and then refer you to my colleague Ian Todd, who has a bit more direct experience in those areas.

The primary issue from my perspective is access to forensics. The bill currently provides for the Scottish police authority to make forensic services available to the police and to the Crown at no cost. I understand that it also provides that those services may be made available to the proposed independent investigations and review commissioner. However, if they were to be made available to the commissioner at cost, that could

seriously disrupt the capacity of the independent body to carry out some investigations.

One thing that we need to nail at an early stage is that, in order to conduct any independent investigations—however complex they might be, and before we start getting into MOUs about who has primacy in some areas and who does not—we need to make a clear provision that the PIRC will be provided with forensic services free of cost and will therefore be operationally effective.

With regard to what happens in the investigation of the crime, and in relation to satisfying the public about the appropriateness of the police actions, we can learn a fair bit from the experiences of Northern Ireland, the Republic of Ireland and England and Wales.

I concede that I do not have any direct knowledge of how that operates. Perhaps Ian Todd can add to what I have said.

Ian Todd (Police Complaints Commissioner for Scotland): The example that Mr Finnie gave is something that has happened in the past few days—

John Finnie: If there has been such an incident, that is not what I am alluding to. It is a general point.

Ian Todd: Okay, but it is that type of incident. The police must continue with the investigation of the crime. The investigation of the use of the firearm might currently involve an outside force. Given that there will not be an outside force in existence—and there are questions that arise from that under article 2 of the European convention on human rights—the bill proposes that PIRC would be responsible for carrying out the investigation around the use of that firearm.

The Convener: I need to know who or what “puck” is.

Ian Todd: Sorry—the PIRC is the police investigations and review commissioner, which is what the bill proposes to rename the current Police Complaints Commissioner for Scotland.

I would envisage that, as happens now, there would be two twin-track investigations: one into the crime and one into the use of the firearms. It is important that proper MOUs exist between the new body—the PIRC—and the police force to ensure that neither of those investigations would be compromised or hampered.

Professor McNeill: One element that must be strengthened to ensure that that happens is the requirement for the police—and the proposed Scottish police authority—to co-operate fully with the new independent body. Currently, a fair amount of that is expected to be addressed in regulations.

It is crucial that, up front, no gap opens up between the police and the independent investigative body and that no time is lost in investigating any alleged incidents.

12:00

Such considerations would be strengthened if the bill required the police service of Scotland and the Scottish police authority to have a duty to co-operate. If we had the combination of mandatory referrals for serious incidents involving the police, free forensic services and a requirement for the police to co-operate, a lot of other matters could be addressed in detailed memorandums of understanding. Indeed, such a package would strengthen public confidence in policing at a time of fundamental change.

John Finnie: That kind of public confidence is important. Do you envisage such memorandums of understanding covering every effort to avoid duplication?

Professor McNeill: It is in no one's interest to have duplication of effort, not least because it is an additional expense on the public purse and a waste of scarce specialist resources. Moreover, it sends out very confusing messages to the public and it is crucial to have clarity about who has primacy. If, as I recommend, the bill's provisions governing referral to the independent body are strengthened by requiring it to be mandatory in all serious incidents, if the police and police authority are subject to a duty to co-operate and if the forensics are available at no extra charge, the independent body has a real chance of confirming public confidence in policing by demonstrating its independence and impartiality.

John Finnie: Do you envisage people from your department attending the locus of such events?

Professor McNeill: Yes. Indeed, that is the norm in other oversight bodies.

This brings me back to my point about the police having a duty to co-operate fully with the new independent body. We do not want any delay in securing the crime scene or the possibility of erosion of evidence. I should make it clear that this is not my area of expertise—I have no investigative background—but other oversight bodies have demonstrated that with the police's co-operation and through an on-call service they have been able to secure scenes. They can be at the scene very quickly and, thereafter, can take control and have primacy.

John Finnie: So you would envisage your department having primacy.

Professor McNeill: In the categories that are set out, it is essential that the independent body has primacy. Otherwise, we simply retain the

current system in which, in effect, the police investigate the police.

Andrew Laing (Her Majesty's Inspectorate of Constabulary for Scotland): Although HMIC largely supports the bill's proposals, I support Professor McNeill's call for clarity and his suggestion that referrals to the PIRC be mandatory. However, with regard to the example of a shooting during a pre-planned firearms operation, we must be aware of the many tensions within that. First of all, there is the initial crime, the investigation of which is under the direction of the Crown Office and Procurator Fiscal Service; there might also be a subsequent crime, depending on the legality of the shooting. The PIRC would absolutely have a locus in providing an independent response—as, indeed, an independent force would do at the moment—but it would do so in concert with the Crown agent with responsibility for directing the investigation. In that case, it would be up to the Crown to sort out primacy. That would not happen quickly, and the important thing will be to secure both scenes quickly in a way that allows the best preservation of evidence.

As I said, there are tensions. If the bill is very prescriptive in setting out who has primacy and in determining powers that individuals have, we will not have the flexibility that will be necessary if we are to be able to adapt. We must be careful in that regard. The PIRC will be very new, and we need to allow it to evolve. If it is set in legislation, it will be difficult to unravel it.

The position that I am promoting is that the general principle should be set out, and the bill should not be overly prescriptive.

The Convener: Graeme Pearson has a question on this specific point. After that, I will let Alison McInnes in. She had to wait a long time last time.

Graeme Pearson: Given that we are aiming for April 2013, is there sufficient time for the necessary recruitment and preparation to ensure that the PIRC will be in place in time?

Professor McNeill: Subject to a number of important conditions being met, the answer is yes. In the Republic of Ireland, the Garda Síochána oversight commission required six months to develop an investigative capacity. The clock started ticking on those six months with the appointment of a head or director of investigations, who was someone who already had considerable experience of carrying out investigations. That individual had sufficient resources allocated to them to ensure that the commission was set up properly.

The provision in the bill is for some £2 million to £4 million to establish the investigative capacity,

based on the notion that there might be around 35 investigations a year. If you have enough money to appoint the body of investigators that you need for that, and sufficient time, that will be doable. One of the weaknesses in the current provision is that it is less clear that there will be sufficient for set-up costs, as opposed to running costs. For example, there are fairly heavy demands with regard to securing suitable and secure information technology, and there will be other issues to do with the accommodation and equipment that is required in order to get that body up and running.

Overall, the task is doable. The timeframe is tight, and the question of whether it can be met will be determined largely by how quickly an investigations and review commissioner is appointed. That individual will appoint a head of investigations, who will start to assemble the apparatus. In fairness, we have already scoped some of the work and have shared our experiences and the experiences of the other oversight bodies with the Crown, the forensic services, the Association of Chief Police Officers in Scotland, the Scottish Crime and Drug Enforcement Agency and the Scottish Government. Currently, we are working with the Crown and ACPOS on a Government-led project to make a reality of the proposals.

Alison McInnes: A couple of my points have already been explored.

The confidence in the independence of the new police complaints commissioner is important. It is important that it is there from the outset rather than being layered in after the new police authority has been set up. However, as you have commented, a number of things in the bill that relate to the new service rely on statutory instruments being introduced down the line. Do you have a view on whether the things that would trigger investigations into serious incidents involving the police, for example, should be included in the bill?

Professor McNeill: I accept fully the primacy of the Crown in relation to the direction of investigations. That being said, there might be a slight difference between Andrew Laing and me with regard to how they are triggered. In some circumstances, I favour an automatic trigger. The definition of a serious incident is set out quite clearly in the bill as one in which there is an indication that the police may have caused or contributed to the death or serious injury of an individual, or in which there has been a serious injury in police custody or firearms have been used. I accept that it is by no means clear cut how the process should proceed, but I remain of the view that such circumstances should be specified as triggering a mandatory referral.

There are a number of other areas in relation to which it is possible to confirm the notion that the new body will be independent. There is an extremely important provision whereby the commissioner will be able to carry out public interest investigations. That could move Scotland from being at the rear of the pack to being the front-runner. I think that we can go further. The bill talks about the commissioner holding public interest investigations when certain things have not happened. Perhaps not unexpectedly, I recommend that no qualification should be placed on that. It should be a matter for the commissioner what investigations are carried out in the public interest. Again, there is a clear link to the role and the primacy of the Crown.

Alison McInnes: That was helpful—thank you.

Andrew Laing: Just for clarity, I am comfortable with the mandate that Professor McNeill is talking about. There should be scope, outwith that mandate, for others to make referrals as and when they feel that it is in the public interest to do so. I do not think that we are in any disagreement on that.

The Convener: Can you give me an example of what it might be in the public interest to investigate?

Professor McNeill: I do not anticipate that the power would be used very often. The bar to trigger its use would have to be pretty high. There might be public concern about, for example, the use of kettling by the police. In Scotland, we are fortunate in that we have not had widespread concern about kettling, notwithstanding the fact that I have recently published a complaints-handling review that dealt with the issue.

The provision might be used to investigate an issue such as that or some systemic, on-going concern about police practices. It might be used to investigate a suggestion that there were blanket practices in the police—in regard to handcuffs, say. It is difficult to determine the circumstances in which it would be used. What is crucial, and what distinguishes Scotland from some of the other jurisdictions, is that no ministerial direction is required for such an investigation to be held. This is a matter for the commissioner. The fact that there has been no attempt on the part of Government ministers to have any qualification on the use of the power moves Scotland ahead of places such as the Republic of Ireland.

The Convener: Sometimes we get into extremely technical language. Members of the public might like to know what is meant by certain things, and an example helps with that.

Humza Yousaf: My question is largely directed at the Auditor General, but I am, of course, happy for any of the witnesses to respond to it.

If I went outside on the street and asked 100 people, "Who sits on your local police board?", I would be astounded if one person could tell me anyone who sat on their local board so, in my view, although we have local representation, there is still a degree of accountability deficit. What reason for that did the Auditor General find in his report? How do we overcome it?

Robert Black (Auditor General for Scotland):

Thank you very much for giving me the opportunity to respond to that question, because I think that it strikes at the heart of one of the most important issues that the committee will consider: the democratic accountability of a single police force in Scotland.

Although I would prefer not to look back too much but to concentrate on looking forward, I will begin by looking back very briefly. As committee members will be aware, Audit Scotland has conducted best-value reviews of each police authority in Scotland on behalf of the Accounts Commission, which is formally responsible for the oversight of local authorities. We found a mixed picture. We found that some police authorities are strong in some aspects of their work and others are strong in other aspects. It is difficult to generalise, and we need to recognise that the local circumstances and context of each police authority differ. Even within a police authority, the circumstances of individual local authorities differ.

12:15

My second point is not something that has emerged from Audit Scotland reports, but I venture to make it from my long experience in local government as a local authority chief executive. Councillors, perfectly properly, are concerned primarily with the interests of their community and their local authority. That tends to mean that the commitment that they can give to the governance role of policing is limited. They do not necessarily have the background to be able to fulfil that role, and the pressure on the diary means that they might not always have the time to do so.

I commenced my written submission with quite a strong statement for an Auditor General. I said:

"the Scottish Parliament should have a much greater role in providing democratic oversight of the new national force than is currently proposed."

I went on to remind us all that the Scottish Parliament operates in a very democratic way. It is open to the public, meetings are televised and *Official Reports* are produced. Somewhere in there, there must be a really good model for ensuring that there is no democratic deficit in Scottish policing.

From my reading of *Official Reports* from this and other committees, it seems that there is,

understandably, much concern about the proper role of councillors in the oversight of policing. I recognise and respect the role and, as a former local authority chief executive, I would value it, but there must also be a significant critical role for this Parliament. You, ladies and gentlemen, are elected to represent the community of Scotland and you are by far and away the best-placed people to take the lead in holding the new Scottish police service to account on behalf of the people of Scotland.

In my submission I suggested two or three models, about which you might want to think seriously. There might not be time to go into that today. However, as we look to the future—and this brings me back to Mr Yousaf's question—there is an opportunity to create a democratic forum at the level of the Scottish Parliament, which has a profile with the people of Scotland and will be recognised and trusted for what it does to hold the service to account.

Humza Yousaf: I appreciate your comments. You mentioned difficulties with the involvement of councillors in governance, given their diaries and their interest in local communities. Does the same not apply to MSPs? Might we fall into the same trap?

Robert Black: Yes, indeed. There is an issue in that regard. I observe your work at close quarters on a daily basis, and I am conscious of the huge pressures on your time. That is why I suggest in my paper that we might need to think about some kind of vehicle within the Parliament, which would have a specific focus aside from what we might call the on-going issues to do with the making of legislation and policy, and which could sit back from time to time and consider objectively the performance of policing in Scotland and the relationships with local communities. The approach would require careful attention, but the situation merits it.

Humza Yousaf: I am sure that the convener wants to move on to other questions, but—

The Convener: No, this is an important issue. The proposal is interesting and, given the pressure on parliamentary committees and their personnel, it needs substantial consideration.

Humza Yousaf: On that point, what about going down the route of the public appointments process? The Auditor General seemed fairly happy with that, in the context of his role.

Robert Black: Are you talking about appointing members of the Scottish police authority or the chief constable?

Humza Yousaf: Sorry, I should have clarified that I meant the Scottish police authority.

Robert Black: Let me try to help your thinking on the matter. There are some parallels between the need to preserve the independence of the Auditor General and the need to preserve the independence of the chief constable and the discretion that is available to the Scottish police authority. Ever since I became Auditor General, I have said that the greater the independence of judgment that is given to office-holders, the more important it is to have good systems of accountability, so that they are held to account for their decisions and for the use of resources. That is certainly true for the post of Auditor General, and I think that it will be at least as true for the chief constable and the Scottish police authority.

I have an Audit Scotland board, which consists of me in my official capacity, the chair of the Accounts Commission in his official capacity and three non-executives—we do not need a big board—who are appointed by the Scottish Parliament through the Scottish Commission for Public Audit. That means that the board has a non-executive majority, and it has the full confidence of the Parliament because it was the Parliament that appointed it.

I am conscious that, in making such comments, one tries to go with the grain of the legislation, but I encourage the committee to seriously consider whether it might play a role, at the very least in confirming the confidence that the Parliament has in the members who are appointed to the police authority. People need to have confidence in those being appointed, and the general public would, I think, welcome the committee having such a role.

Yet again, that was a rather long answer, but this is an important issue. I am comfortable with the public appointments process—it has great strengths—but I wonder whether it could be flexed a bit, to allow the Parliament to be satisfied with the make-up of the board.

The Convener: Would that be a process along the lines of the one for the appointment of the Scottish Information Commissioner, which has to be ratified by the whole Parliament?

Robert Black: It most certainly could be.

This is such an important issue that I want to add one more thing, while I am in full flow, and then I will be quiet. I understand that there is a genuine concern to ensure that that independence of the chief constable is safeguarded, and I again encourage the committee to think about the parallel with the Auditor General. Members might know that I am demitting office fairly soon, and that there is a process under way to appoint my successor. An appointments panel, chaired by the Presiding Officer, will go through a rigorous process. Once a candidate has been identified, the Presiding Officer will put a motion to the

Parliament, which will then vote on it, and the candidate's name will be presented to Her Majesty and the appointment will be made by the Crown. That person will have secure tenure of office for eight years.

I have never felt that the arrangement compromises me at all but, at the same time, I have never felt that it does not make me accountable to the Parliament through the Scottish Commission for Public Audit and the Public Audit Committee. There are arrangements that guarantee independence without the need to define in statute such things as operational independence, which is almost impossible anyway—otherwise it would have been done by now.

Professor McNeill: I have a long-standing interest in this area, having been on a police authority, studied police authorities and looked at other models, including the Northern Ireland one. This is a critical element of the bill, opening up as it does the potential for a strong axis between the police authority and the investigations and review commissioner to raise the standard of complaints handling, but that is predicated on the competence of the authority. I am not making light of any suggestion of a democratic deficit, but my primary concern is that the individuals on the Scottish police authority are competent, in the sense that they hold the command team to account. I have repeatedly said that there is a world of difference between hearing an account and holding to account. What characterises the current provisions leans more towards hearing an account than holding to account.

The Convener: We are all nodding—about police boards.

Professor McNeill: It is essential that the members of the police authority do not subscribe to any notion of operational independence. It is operational primacy. It is not a blank cheque. It is part of holding to account. They should hold the command team to account for the deployment of resources.

Andrew Laing: I am in grave danger of simply repeating what you have already heard, but the point is so important that perhaps I should do that. Perhaps I can give it a slightly different tint.

Last year, as a supplement to the best-value 2 reviews that we and Audit Scotland conducted jointly of authorities and forces, HMIC published a report on the governance and accountability of policing in Scotland. I do not wish to take up too much of your time, but I will paraphrase it. It stated that local elected members were highly interested in policing and were dedicated to it, but they were appointed to their positions through a process of election, not selection. We found deficits in relation

to the professional knowledge and competences that we might expect to see on a professional board, and that extended to some of the back-office support.

In professionalising the Scottish police authority, the bill will address much of that. However, that leaves the question of democratic accountability. If we have a completely professional board, where does democracy come in? There are two areas in which I believe it can come in. The first is through the Parliament, which will have an oversight responsibility, and the Auditor General has suggested a number of ways in which that could be exercised. The second lies in some definition of what accountability is.

I am in danger of stealing Professor McNeill's adage about holding to account, but a clear statement is needed that accountability comes with consequences. In the model that is proposed at a national level, accountability of the chief constable has to be drawn by the board. The chief constable needs the freedom to exercise day-to-day management of his staff and resources, but that does not preclude those at a local level, including local authorities and elected members, from calling on local commanders to answer questions and provide reports.

At the moment, policing is largely self-regulated. Chief constables often provide police boards with reports according to their timescales and on subjects that they select, and they invite the boards to question them on those reports. We need to strengthen that significantly.

The other aspect is around operational independence and primacy. Professor McNeill and I tend to use different language, but I think that we largely agree. The question that has to be drawn out and answered in the bill is what the independence part means and what it will be independent from. As I think I said at the Local Government and Regeneration Committee, it is not independence from the citizen or the system of governance, but independence to exercise and execute the law free from undue influence. The bill does not go far enough in setting that out.

That presents two problems. The first is that we have evidence through some of the earlier reports that chief constables have the liberty of exercising their better knowledge of operational independence over boards. They can use it, in effect, as a defence mechanism. Secondly, in the absence of that definition, we will get into muddy waters at the Scottish police authority when we start to talk about the use and allocation of resources. The bill goes some way towards defining what is meant by independence, but there needs to be a clear statement that draws it closer together for the benefit of both parties.

The Convener: We look forward to somebody presenting us with an amendment on that.

I will take members in the order in which they put their hands up, because we are now mixing lots of questions and I do not think that there are any clear supplementaries. I have Rod Campbell, then Colin Keir, then Graeme Pearson, then Lewis Macdonald, then David McLetchie.

Roderick Campbell: We have heard a lot of evidence this morning about local accountability. Mr Black, I note that in your written submission you say that "a vital element" is provided by the "local policing plans to be considered by local authorities".

However, you go on to say that

"the SPA board could establish its own mechanisms for engaging with local communities and ... councillors."

Will you elaborate on what those mechanisms should be?

12:30

Robert Black: That is a good and somewhat challenging question. One must talk about the matter in context. It is very important that the members and officials of the proposed Scottish police authority be able quickly to build trust and confidence with local councillors, particularly if the model will be of the Scottish police authority being primarily a body that operates at national level.

It is extremely important that the members of the board get a good understanding of the real and proper concerns that councils will have in their areas, and that they have an informed discussion around that because the circumstances in local authority A will be significantly different from the circumstances in local authority B.

What kind of discussion might that be? For me, it would involve asking the local council about what issues are of major concern to it in respect of effective and proper policing in the interests of the safety of its community, and how that might be reflected in the local plan—the Scottish police authority must take an interest in that—and the national plan.

I understand that HMIC is working intensely on some key performance indicators for the police service. We welcome that and are supporting it, so the discussion could also be about what performance measures the local authority and councillors would want to be incorporated in the local plan and reflected in the national plan, so that we can have a good conversation about the performance of policing.

That is just to give an indication of the range of conversations that could take place. In the interests of time I will stop there, although I can think of other ways that local accountability could

happen. However, that set of conversations is really important.

One other thing I would mention—

The Convener: I am sorry to interrupt, but if you have additional comments that you want to make that are not in your submission and that you have not given us in oral evidence, I ask you to write to the committee about them. That goes for all panel members.

Robert Black: I will take that opportunity.

Roderick Campbell: Could I ask about something else?

The Convener: I think that Mr Black has finished.

Robert Black: That is fine. I will stop there.

The Convener: If you have cut yourself off it would be helpful if you would give us the supplementary information in writing.

Professor McNeill: One area in which there is an opportunity to strengthen local accountability is in complaints handling. As I understand it, there is a requirement on the local commander to provide the local authority with statistical information about complaints, which the local authority can interrogate for patterns and trends. That will also give the local authority an opportunity to escalate any concerns, not just within the police on professional standards but to the Scottish police authority. Admittedly it is fairly narrow, but there is an opportunity to address complaints handling at local level.

Andrew Laing: Perhaps I can paint a bit of a picture that is more practical than what you would see from the bill. What we are talking about generally is a fundamental change to policing in Scotland; it will bring about a fundamental change to the governance system. However, governance is not just the board, and accountability is not just at the top and bottom levels—it is that whole thing about scrutiny, inspection, audit, performance reporting and how public those are.

My expectation of the proposals in the bill is that there will be a national policing plan, which will filter down to local-commander level. There will continue to be a close relationship between local commanders and local partners, although it is yet to be established whether that will come through community planning partnerships or some other body. Perhaps I can come back to touch on the pathfinders.

With regard to scrutiny, audit and inspection, HMIC will stop looking at eight forces and will start to look at 32 building blocks—the local authority areas. That will include performance information and best-value reviews at local level. Best-value reviews are based on the characteristics of good

governance and good police forces. Within that, we will be looking to see how the relationships are. Although there is, in my view, no direct accountability at local level, there is an absolute need for a strong relationship, and we will report that back through the governance system and, ultimately, to the Scottish police authority.

Pathfinders have been set up within local authority areas to try to establish how that relationship can be built up. There is a danger, in some areas, that significant bureaucracy will be created, with a divisional commander of whatever rank servicing the needs of local policing, the community planning partnership, the local vulnerable people board and a new police committee. There is a grave danger that local commanders will be stuck in that bureaucracy and will not have time to pay attention to policing. At the moment, the pathfinders are set up to go in a number of directions. Some relate to community planning partnerships and some are new police committees. HMIC has a concern about how that will evolve over the coming period.

Chief Superintendent David McCracken (Her Majesty's Inspectorate of Constabulary for Scotland): To emphasise the role of Parliament, I should say, as Andrew Laing said, that we would submit the reports about best value and the effectiveness and efficiency of the police service not only to the Scottish police authority but to Parliament. There has been discussion about the mechanism by which Parliament would scrutinise, of course, but the point is that for the future service to be effective and efficient it has to be able to cater to local and national needs.

The Convener: Perhaps the next Justice Committee will have less legislation to deal with and will have time for other matters. At the moment, we are not really in that position.

Colin Keir (Edinburgh Western) (SNP): All the questions that I had written down have been answered, but there is one other question that I would like to ask.

With regard to national priorities and local priorities, councillors are always going to think about their local area and national politicians might think more about the strategic concerns. That will be reflected in the board, but how do you see that situation being resolved, when those two levels will be pulling in different directions?

Andrew Laing: I do not think that the situation will be greatly different from the situation that we have at the moment. Nationally, ACPOS creates a Scottish strategic assessment, which outlines the pressures that are building up around policing in the period ahead. That is disseminated among the forces, each of which adopts it and creates a force plan, which is disseminated among local

commanders who, in a slightly different way, create their local priorities and police towards them, and also take on board the views of local people, the community planning partnerships and so on. That will be perpetuated.

Will there be tensions? The independent review of policing, which was dealt with by this committee's predecessor committee in 2009, highlighted those tensions. I suggest that there is always overdemand for policing. Everybody would like police on the beat—rightly so, because that provides confidence and reassurance. In the background, we know that we have more to do around serious organised crime, terrorism and crimes involving sexual offences and so on, which are hidden from the public eye.

The challenge is for the chief constable to devise a system that ensures that local and national needs are met, and for the governing body to hold them to account on that. As I said previously, tensions should be highlighted through the performance review scrutiny and audit mechanism. The system will deal with that.

12:45

Outwith that, on whether there should be an escalation or resolution mechanism in the bill, I genuinely believe that, on 95 per cent of occasions, the national and local plans will be reflective. They will not be completely different aspects. Where they are not reflective, the mechanism that is being designed will allow for communication back up through the system. That might mean that an individual goes to their local councillor, who then takes up the issue with the local commander. Alternatively, that person might go to an MSP, who takes the issue to the Scottish police authority. There are mechanisms built into the bill to allow that communication to take place.

The Convener: The national policing plan must have a degree of flexibility. In my patch—the Scottish Borders—the issues will not be about terrorism or serious organised crime. They are more likely to be road traffic accidents and vulnerable missing persons. In other patches, there will be different issues. I take it that, although there will be priorities in the national plan, flexibility will have to be built in for local areas. Consider the diversity of areas that members of the committee represent.

Andrew Laing: That is absolutely right. The majority of policing happens at the local level. Earlier, the committee heard evidence about Ireland. If we cast our minds back, we will see that the reality of counterterrorism is that it does not just happen in big cities; it also happens in the Borders and in central Scotland, for example. The local plans will focus on local issues that are

absolutely important to local people and communities, but they must take cognisance of the overarching aims.

The Convener: I do not dismiss the prospects of such issues arising in those areas—heaven forbid that they do—but the volume and nature of policing will be different in different parts of the country.

Andrew Laing: Yes.

Robert Black: I simply want to reinforce your line of thinking, convener, and to return to the conversation that I had with Mr Campbell a few minutes ago. It is important that there is good dialogue between local commanders and councillors—with the involvement, as appropriate, of the Scottish police authority—about councils' perception of the needs and priorities of their areas. It is also important that the chief constable, along with the SPA, help to give local commanders the confidence and skills to enter into such dialogue and to have a good discussion that builds local trust and confidence.

Some time ago, for another purpose, I asked someone in Audit Scotland to list all the things that police do; it came to a list of more than 50 things. Not all those activities are relevant to local policing in all parts of Scotland: for example, wildlife crime might be more relevant in one area than it is in another; royal and VIP visits tend to take place in some parts of Scotland and not in others; and counterterrorism activity appears randomly across the country. It is important that we build local diversity into the mesh of police planning, which is exactly the point that HMIC is making.

Chief Superintendent McCracken: Rightly, there is much discussion about the tension between local and national priorities, but there is a difference between a healthy tension and an unhealthy one. It is fair to say that there will be a set of ministerial priorities that many people will not recognise as being relevant to them. The bill contains certain facilities that go some way towards obviating the issue and, in our submission, we suggest other things.

For example, sequencing is important. We have said that, before the ministerial priorities are set, the Scottish ministers should pay due regard to the professional assessment of need that the service produces. At present, the bill says that the Scottish Government should consult people, but that provision should be strengthened. A professional and independent assessment of need throughout Scotland should be placed before ministers before they make the decision.

While we are talking about checks and balances, a second point is simply the fact that the service cannot be effective and efficient unless it

manages to balance local and national need appropriately.

Graeme Pearson: I declare an interest, as a member of ACPOS and because all my previous writings and submissions are completely in sympathy with what Mr Black has said. I had no reason to expect that, so I am grateful for his submission today.

Mr Laing has indicated that governance is not only about the board. However, if we get the oversight and governance of the service right and that process is displayed in public view, that will form a healthy beginning to what will be a step change in how policing is delivered in Scotland. If policing is to be by consent, that consent can only be knowing, and that knowing can be based only on information.

The only model that we currently have in Scotland is the Scottish Police Services Authority, which was formulated largely by many of the people who have contributed to the bill that we are considering. I checked the website last week to find out what is going on in the SPSA—for public knowledge—and discovered that the most recent minutes were from June last year.

Given that the suggestion that Mr Black made in his submission would cause some inconvenience in trying to reorganise public governance and put some pressure on people in Parliament, does the panel have any view on whether it is worth the effort? Will we be satisfied instead that a minister will be in the very strong position of influencing the membership of the board, paying for the board, providing the budget and having the board be accountable to them?

The bill is silent on the citizen and on the duties of Parliament. Proper governance is the key issue in the bill, and I would welcome the panel's view on that.

Professor McNeill: In my view, a board takes on a life of its own once it is established; it is not static. I will go back a little bit and talk about my experience of board appointments. The role of ministers in the process is perhaps overemphasised. It is the public appointments process, and there is a prioritised list. There may occasionally be attempts—it has happened most markedly in Northern Ireland—to reflect political realities, but in general, ministers throughout these islands have, in my experience, taken a fairly cautious approach.

As I mentioned, boards take on a life of their own, which means that they flex their muscles. I have had direct experience of boards holding officials to account. They can—and many do—account to the public by giving people an opportunity to question them; we heard from Alistair Finlay that that is quite common practice in

Northern Ireland. They can also do that by moving around the country, and by checking their performance against that of other bodies such as the National Audit Office south of the border and the equivalent body here.

I am more of a glass-half-full person with regard to boards and their ability to hold people to account in a way that is not constrained by political whim.

Robert Black: You will not be surprised to hear that, as an auditor, I am more of a glass-half-empty person.

The Convener: You are smiling when you say it.

Robert Black: I will say simply that I think that Mr Pearson's comment is absolutely on the button. As I mentioned earlier, the bill is significantly deficient in giving recognition to the role that the Scottish Parliament should play in holding the new policing system to account on behalf of the people of Scotland. I encourage you to give that issue serious consideration—as, I am sure, you will.

I will draw on the experiences that we took from the performance audit of the Scottish Police Services Authority that we carried out a couple of years ago. It is important to distinguish between the role of holding to account in governance terms—that is the Scottish Police Services Authority's role of ensuring that the authority uses its resources properly, efficiently and in accordance with the Scottish police plan—and democratic accountability, which involves members of Parliament and councillors. I acknowledge and understand the arguments that the committee has heard for having councillors on the Scottish police authority, but I caution you and encourage you to bear in mind the distinction between the two functions.

It is important that the Scottish police authority has a clear task to undertake, which is to hold the police to account. That involves having the right skills and expertise around the table, independent of the chief constable, and it involves issues such as vetting and security clearance, so that the authority can get into the really important issues of Scottish policing in a way that is not possible in a forum such as this committee, almost by definition.

My report on the Scottish Police Services Authority commented on tensions in the composition of the SPSA's board. We said that some key people on the board, such as chief constables and police conveners, sometimes came up against a tension or conflict of roles because of the offices that they held. Elected members on police boards or authorities have a duty to their councils and their constituents but, at the same time, they have a fundamental duty to support the board. That can lead to difficulties.

I will give one or two examples of scenarios that could arise—it is useful to do in our minds a stress test, as the private sector says, of what could happen. Let us say that local authority A challenges the Scottish police authority about the allocation of resources to its area. If a councillor from that area is a member of the authority, which way do they jump? Are they there to speak out on behalf of the local authority to which they were elected, or are they there to make the case for the police authority?

If a councillor from council B made representations to the police authority about the allocation of resources, but councillor A was a member of the authority, councillor A would have the inside straight in such a discussion. What role would councillor A play?

Another area in which a stress test is useful is civil unrest and policing of demonstrations, which I am sure has been mentioned in the committee's discussions with others. If council C is concerned—rightly or wrongly—about police engagement in policing a demonstration or civil unrest, and a councillor from that council is on the police authority, what is that councillor's role on the authority? Is it to represent their constituents and their local council? What happens if the unrest occurs in the area of council D, which is not represented on the authority? All sorts of tensions could be created, which need to be worked through. I am not sure whether all of us have thought clearly enough about that.

I return to the point that we must make a clear distinction between the governance arrangements, which the bill provides for well; in that respect, I think that the glass is more than half full.

The Convener: I am glad.

Robert Black: We must make a distinction between those arrangements and the separate set of arrangements for democratic scrutiny, which must involve members of the Parliament and councils, through the various mechanisms that we have begun to talk about today.

The Convener: Section 40 says that the SPA must lay its annual report before the Parliament, so it is open to any Justice Committee to call anyone to speak to that report. In the first parliamentary session, our predecessor committees often took evidence from Her Majesty's chief inspector of prisons after he had laid an annual report, and they raised issues about particular prisons or the general rise in the prison population. That mechanism exists, but I caution that, as Mr Black knows, committees are under continual pressure, although they must make their own time to some extent.

As you were talking about having a councillor on the SPA, I was mindful of planning committees, on

which members have a quasi-judicial role, which means that they either absent themselves when a planning issue arises in which they have an interest, or take no part in representing their constituents on the issue. Committee members might already be aware of examples of when it is difficult to have representatives on quasi-judicial, independent committees. Do you want to comment on that, Mr Laing?

Andrew Laing: I do not want to perpetuate the half-empty or half-full glass analogy, but as a member of the inspectorate I would be interested in what was in the glass and whether it was clean.

The Convener: Yes, indeed: the forensics and the questions of where and why. We are with you.

Graeme Pearson: And who pays for it.

Andrew Laing: Those are perhaps the points that Mr Pearson was driving at. I agree with Mr Pearson and have said throughout the programme of reform that the key is good governance. We have not necessarily had bad governance in the past, but it has not been as strong as it could be. As we move towards a national system, good governance will be essential.

It is interesting that that was the very question that the 1962 commission tried to resolve. We see in England and Wales a significant divergence in that the governance system has been put in place locally, whereas in Scotland we are moving more towards a national system. The biggest distinction is that in the Scottish police authority we are looking at a professionalised body and at competence, capacity and capability, whereas in England and Wales they are looking at a localised system. I think that we will see marked differences over the period.

There are two important aspects to that, the first of which is about democracy. I believe that there is scope in the bill for the democratic will and need of the people, reflecting the views of communities and citizens, to set priorities and to ask for and get reports on how policing performs against those. The key to governance is whether the chief constable will be properly held to account, whether the priorities that have been set will be achieved and whether that will be done in an effective and efficient way. We are probably talking largely about the same kind of thing across the board. The board must exercise significant strength in holding the chief constable to account.

On a slightly separate, spin-off note, we talked about all that the public appointment process brings and whether it is the right mechanism. One of the issues centres on the timescales that we have and is about how quickly we can pull everything together. We have asked how easy it will be to pull together the PIRC in the time

available. The same question must be asked about the police force itself.

At the moment, the timescale for the appointment of the chief constable, the chair and the support office for the chair is back-ended and loaded towards the latter part of this year. That is about putting the primary postholders in place. If that happens towards the latter quarter of this year, the support teams—the deputies, assistant chiefs, chief executives and so on—will come into place within only a few weeks of the force going live. I know that that is not a matter for the bill, but it is a significant area of concern that needs close attention paid to it.

The Convener: Thank you. That is now on the record.

Five more members want to ask questions. I am mindful of the time—I will not say that that is the end of the questions, but time is running on—so I ask for short questions and short answers. That request is not for people who are coming in for the first time, but for those who are re-entering the scene. Lewis Macdonald is next, then David McLetchie. Alison McInnes has been in before and I believe that John Finnie has been in before, then there is Rod Campbell. Those who are coming in for a second bite should ask shorter questions, but I am not putting a constraint—except for letting you know of my hunger—on those who are coming in for the first time.

Lewis Macdonald: Thank you, convener. I will take that into account. My question is for the Auditor General. We heard earlier this morning that in Northern Ireland the police board of 19 members was adequate and appropriate for carrying out the role of a national body for the PSNI and for operating important thematic committees such as those on human rights, professional standards and human resources. Clearly, those are important governance issues. Does the Auditor General have a view as to what size of board will be necessary in Scotland, given that the SPA, too, will presumably rely heavily on thematic committees? What number of board members will be necessary in order to deliver effective committees as well as an effective national authority?

13:00

Robert Black: This is an area in which I can be of assistance to the committee, because we produced a report, “The role of boards”, some time ago. It is a complicated issue. We looked at boards in a number of public sector bodies and found that they varied enormously in size and that it was difficult to specify an ideal number. It is important to balance the skills and expertise needed for a board to fulfil its governance function

with ensuring that it has enough people to carry out the workload.

Interestingly, one of the statistics that we dropped into the report was that the average number of members on a FTSE 100 company board is about 11, which resonates with the bill. I am comfortable with that order of magnitude, but it will only be possible—I am sorry to sound like a stuck record—if we are clear that it is a board of governance, not a board of representation. If it becomes a board of representation, it will inevitably become much larger and, consequently, operate at two speeds at once. At the first speed it will focus on the governance role, while at the second speed it will focus on the role of holding to account on behalf of communities, which is really difficult.

A number of years ago—I am sure that members will recall this—the SQA went through an extremely difficult period. We did not do an audit of that, but one of the problems that struck me from observing it was that, when the SQA was originally constituted, it tended to be a large representative board with lots of interests on it and, frankly—this was not the fault of anyone on the board—it lost the ability to do the tight governance role, to measure risk management and to hold the executives to account. Of course, we know what the consequences were. I think that the bill has it about right on the board of governance.

Finally, I find it interesting to talk to boards around Scotland. A significant public body—I would prefer not to name it, because this is based on a private conversation—has done away with its committees, because it believes that all the big issues should involve all the board members, who think that their knowledge and understanding of the business will improve by not operating committee silos. They find that that works extremely well and they form ad hoc groups for particular purposes. I am not saying that that is a model, but it demonstrates that it is important not to overlegislate and to allow the new system to evolve and develop.

Lewis Macdonald: I have a quick question for Mr Laing about his comments on reorganisation. You said that you will cease to look at the current eight forces and look instead at the 32 council areas for KPIs and accountability, but that you are concerned that there is a danger that that could generate a lot of bureaucratic burden for local commanders. Could that burden be reduced by placing some of the accountability and KPIs at a regional level? That is the level at which decisions will be taken if the ACPOS work on structure and operational practice, which was explained to us last week, is borne out.

Andrew Laing: That raises two issues. On the debate on regionalisation, a bit of me strongly says that once a chief constable has been given day-to-day responsibility for the force, they should have the flexibility to manage. Whether that becomes functional, or regional at certain levels, is a matter for which they should be held to account.

My comments about bureaucracy may have caused confusion. My concern about the 32 local authority areas is that, if we have 32 police committees in addition to 32 community planning partnerships, the local commander will be sunk administratively. The reason why HMIC is going down the road of developing performance information based on 32 local authority areas is that the relationship, as set out in the bill, is at the local authority level, and that allows comparisons to be drawn.

The technology that we hope to invoke and the programme of inspection that we hope to bring in will not add on a huge layer of bureaucracy; in fact, over the past year, chief constables have commented on HMIC's light-touch but very focused approach and we hope to promote that in future. It is vital that we provide those building blocks for cross-comparison with local elected members and, if there are 32 committees, to be able to combine them in two, three or six regions and get the relevant information. I am concerned about the bureaucracy that will be brought not by HMIC's approach, but by additional committees at a local level.

David McLetchie: I will ask Mr Laing a couple of questions about the inspectorate. Paragraph 4.9 of HMIC's submission suggests that the inspectorate be given the status of "a body corporate". What is the inspectorate's current status and what would such a transition mean?

Andrew Laing: We have recently spent a lot of time trying to clarify that suggestion. Perhaps I can begin my response with a bit of pragmatism: although my post in the HMIC is an independent position appointed under royal warrant, it is not always perceived that way. Because I sit in St Andrew's house, I am often seen as being part of the civil service and as being very close to the minister; conversely, as an ex-police officer, I am seen as being very close to the chief constables. We must ensure that, with a single Scottish service and a single Scottish police authority, and given the issue of ministerial direction that we have raised, HMIC is seen to be and is perceived as being wholly independent.

The move to corporate body status is relatively simple. As far as other legislation is concerned, my position and the body's position would stay the same, but I would be able to employ people. At the moment, I can take people only on secondment, which will present difficulties if, after the creation of

the single Scottish force, I need to draw officers from that force and tell them to inspect their chief constable. Having corporate body status will allow me to employ people and to create a separate corporate entity. That would be an overt statement of independence and will be really important as we move forward. At the moment, we are not even a non-departmental public body; we are simply a body that has no definition other than that it is set out in a list with 15 or 16 other agencies.

David McLetchie: I am always puzzled by the different categories of public body; I have never quite understood why one group falls into one category and not another. I suspect that there are historical aspects that have never been fully rationalised, although I wonder whether, given the present context, we should be carrying out such rationalisation.

HMIC wants to be a body corporate. Can we be clear whether, under the proposal, the SPA and the PIRC will be bodies corporate?

Professor McNeill: We are a non-departmental public body. I think that I operate what is described as a corporation sole—in other words, the body operates in so far as the commissioner exists.

The Convener: A corporation what?

Professor McNeill: A corporation sole, spelled S-O-L-E.

The Convener: Not S-O-U-L, then.

David McLetchie: So you are not a poor soul.

Is there any logic to these different statuses? I understand why we need independent bodies and why, for example, the PIRC, the inspectorate and the SPA should be independent, but why are they independent in different ways and to different degrees?

Andrew Laing: Having done some work on this, I can perhaps venture an explanation. There are different levels of tie-in to the Government and the Administration. I have just checked HMIC's official status; it is "another national body", which means that I am not directly accountable to the Parliament or the Administration. In fact, my appointment—and the appointment of HMIC itself—is a non-ministerial appointment of the Scottish Administration; in other words, I have a link back to the Scotland Office that provides a level of independence.

David McLetchie: Mr Black, can you enlighten us?

Andrew Laing: My answer might not have helped much, but that is the position.

David McLetchie: No, it was interesting to learn that there is a reserved element in your status.

The Convener: That has cheered David McLetchie up. The union is not lost.

Robert Black: At the risk of prolonging the session, convener, I will express a degree of sympathy with the sentiment that Mr McLetchie is expressing. In our report, "The role of boards", we categorised public bodies into: colleges of further education; non-departmental public bodies, of which there are 29; NHS bodies, of which there are 23; executive agencies, of which there are 11; non-ministerial departments, of which there are three; and a public corporation—Scottish Water. When we were doing the work we had difficulty identifying quite how some bodies are defined in the way that they are, particularly in the NDPB category.

The point that is worth making is that it would be helpful to the committee to keep the focus on the accountability line.

The Convener: I want to leave the issue of why we have all those animals—we can leave it for David McLetchie's bedtime reading.

Robert Black: For the purposes of the committee's current consideration, the nature of the accountability that is attached to the Scottish police authority, HMIC and the chief constable is important. Who appoints the accountable officer is also important, whether it is the Parliament or the Scottish ministers.

The Convener: I am getting light-headed.

Professor McNeill: There is a direct consequence attached to my role as police complaints commissioner, which will continue into the role of the police investigations and review commissioner. Given that everything is vested in that individual, it is essential that they have legal protection against, for example, threats or actions of defamation. In the past three years, at least three complainants have sought to raise defamation actions against me. Unlike the other public ombudsmen, I have no protection against defamation, and, as far as I can see, there is no provision in the bill to afford such protection to the police investigations and review commissioner. A key element of the oversight is that the commissioner be afforded such protection.

David McLetchie: Mr Laing, in your submission you said that the bill does not provide for HMIC involvement in the appointment of senior officers—chiefs, deputies and assistant chiefs—but you think that you should continue to provide an advisory service in a fully independent body. Is a fully independent body that is charged with inspecting a police force somewhat compromised if it has played a part in the appointment of the senior management of the force? Is your independence best preserved by having nothing to do with the appointment of the senior officers, so

that you can in no way be compromised in relation to the provision of advice on the merits or suitability of candidates?

Andrew Laing: HMIC's role is one in which we must tread a pretty difficult line from time to time. HMIC is the independent professional adviser to ministers, boards and chief constables on a variety of matters, yet it is charged with inspection and with ensuring effectiveness and efficiency. There is undoubtedly a difficulty in treading that line.

As we move to a single force in Scotland and a Scottish police authority that might have no professional police experience on it, I question where such independent professional advice on policing will come from. In my current position it is important that I offer independent advice, to balance the commentary from a number of stakeholders. Such advice will be vital to the Scottish police authority in future. The reality is that the vast majority of professional information passed to the SPA will come from the single force, so I think that there is a role for HMIC in that regard.

On my quest to retain my role in appointments, which has come about by history or impute, the role is, again, advisory. It is simply to sit in on the selection process, ensure that procedures have been followed, and provide those who will make the decisions with a commentary on the level of evidence provided—whether it is professionally competent, for example. I am not sure where else we would get that from.

13:15

Robert Black: One of the last substantive jobs that I did as chief executive of Tayside Regional Council was to help the authority to appoint a new chief constable, and the expert advice that HMIC provided was absolutely invaluable. I want to support the previous comment by saying that it was not HMIC's role at that time to recommend a candidate, but its involvement was absolutely invaluable in providing assurance about the appointability of the candidates among whom the police authority was making a choice.

The Convener: I really am going to stop after the next two questions, otherwise we will be here until teatime—if that is not an old-fashioned word.

John Finnie: What are the panel's views on the proposal in the bill to alter the composition of the police appeals tribunal? I should declare an interest: I was on the tribunal for a very short period, but did not complete any cases.

The tribunal is currently made up of four people. It is chaired by someone appointed by the Lord President of the Court of Session, and also includes a retired chief officer, someone from the

police board—invariably the convener—and someone from the subject constable's staff association, who is retired—it could be someone from the Association of Scottish Police Superintendents. The proposal is to have three members, all of whom are solicitors or members of the Faculty of Advocates. That seems to be an erosion of the rights of officers. Do members of the panel care to comment on that?

The Convener: Lawyers—that is a bad start.

David McLetchie: There are not enough lawyers.

The Convener: Yes, there are not enough lawyers—that is what David McLetchie and I say.

Andrew Laing: I commissioned some work back in October to look at cases involving the conduct of senior officers and of police officers generally. One finding that is becoming clear is that although cases can involve what would be otherwise classed as employment matters, we have entered into a world in which they are subject to almost a complete judicial process, with the test being at a criminal level.

At the lower level—before we get to the police appeals tribunal—we have moved away from a system in which an individual officer or member of staff is alleged to have committed some form of misconduct, their line manager makes a presentation on what it is, the staff association defends them and the chief officer or senior officer sits and adjudicates. We now regularly see systems in which the member of staff is represented by a Queen's counsel, the force is put in a position in which it has to buy in legal representation to withstand the challenge, and the chair has to be accompanied by a QC to provide them with advice. We have not come to a conclusion on the findings of our report, but if there were a suggestion that we took further steps to make this a much more rigorous judicial process, I would be slightly concerned.

John Finnie: If that is the case, there would certainly appear to have been serious erosion over the past few years. Parity of representation is a long-standing issue. Perhaps Professor McNeill can comment on the fairness to the individual officer.

The Convener: I am sorry, but I am mindful of the time. We have supplementary questions on the specific point. John Finnie's question is on a serious issue, but could you put your responses in writing?

John Finnie: May I clarify that? I have a meeting at 14:00 and I am happy to go there without having consumed food. We must be seen to scrutinise these important issues, and if that means further sessions, I am content with that. I

am conscious that we are always being told that there is a time imperative.

The Convener: That is on the record, but it is for me to regulate proceedings, John.

John Finnie: Yes, of course.

The Convener: The room has to be vacated at 20 to 2 to allow another committee to sit and we still have business to get through. I am conscious that you have raised an important issue, but there is nothing to prevent the witnesses from providing us with additional written evidence on the important question that you have asked.

I am ruling that we will move on. I ask Rod Campbell for a short question, because we have several other items on the agenda and, whether we do them or not, I have to dispose of them in the time that we have before we have to vacate the room. I apologise to you, John, but that is the position. Rod, will you ask your question quickly, please?

Roderick Campbell: I will be very brief. It is a short question for Mr Laing. I have seen your comments on forensic services in your written submission, but are you aware of anything that has been detrimental to the interests of criminal justice in the forensics regime that has existed since 2007?

Andrew Laing: I will be as brief as I can. The segregation of forensic services from the force is an important issue. It is appropriate that services that concentrate on identifying individuals, marks, crime scenes and so on, and which hold responsibility for the maintenance of databases should be segregated from the force, but I hold a strong view that the flexibility that is needed to direct scenes-of-crime officers in the collation of marks should sit with the force and the chief constable.

The reality is that crime trends develop quickly in different parts of Scotland, and the chief constable needs the flexibility to direct his or her resources towards tackling that. If that means that, for a period of time, every car that is broken into in Glasgow should have a scenes-of-crime officer attending to it, the chief constable should have the opportunity to allow that. In the system that is being proposed, under which scenes-of-crime officers will sit within forensic science services, we get into a debate over the memorandum of understanding and who pays for services, and that flexibility is reduced.

The two points are, first, that the analysis of scenes-of-crime marks and evidence should sit separately from policing but, secondly, that the ability to collate them should sit within policing to provide the flexibility to respond to public need.

Roderick Campbell: The proposal in the bill is slightly different from the current position. Are you aware of any instances in which the situation that has prevailed since 2007 has been detrimental to criminal justice?

Andrew Laing: In relation to the description that I have just given, I am aware of discussions about budget constraints in the SPSA, which led to a quick conclusion that the number of scenes-of-crime officers would have to be reduced. That led to some difficult conversations between ACPOS and the SPSA, but it happened over a prolonged period. It is that sort of inflexibility and lack of control that cause me concern.

The Convener: Thank you for your evidence. I know that John Finnie would like you to follow up on the question that he asked. If you wish to provide any other supplementary evidence, including comments on questions that we did not ask but ought to have asked, please write to the clerk and your comments will be supplied to the committee and included in its consideration. Thank you.

We move straight on to item 3. The committee is invited to agree to delegate authority to the convener to consider and approve any witness expense claims that are received in relation to the Police and Fire Reform (Scotland) Bill. Are members content?

Members indicated agreement.

Subordinate Legislation

Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2012 (SSI 2012/26)

Title Conditions (Scotland) Act 2003 (Conservation Bodies) Amendment Order 2012 (SSI 2012/30)

Police Grant and Variation (Scotland) Order 2012 (SSI 2012/49)

Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Amendment Regulations 2012 (SSI 2012/50)

13:22

The Convener: We have four instruments to consider under the negative procedure. The Subordinate Legislation Committee has drawn our attention to SSI 2012/26 due to a failure to follow proper drafting practice. Do members have any comments?

David McLetchie: I draw it to the committee's attention that SSI 2012/26 will establish a visiting committee for Low Moss prison. It might end up being abolished before it is constituted.

Alison McInnes: My point is similar. I want to check whether the visiting committee will be set up with the same composition as the current ones. That is not clear to me from the paper. I wonder whether the clerk can help.

The Convener: I am assured that it will indeed be set up under the same arrangements.

Given that what members have said about the prison visiting committee is on the record, is the committee content to make no recommendation on the instruments?

Members indicated agreement.

13:24

Meeting continued in private until 13:43.

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