



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 4 June 2013

Session 4

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.scottish.parliament.uk or by contacting Public Information on 0131 348 5000

Tuesday 4 June 2013

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	2903
SUBORDINATE LEGISLATION	2904
Children’s Legal Assistance (Scotland) Regulations 2013 (Draft)	2904
SCOTTISH COURT SERVICE	2906
PETITIONS	2961
Justice for Megrahi (PE1370).....	2961
Administrative Justice (PE1449).....	2964

JUSTICE COMMITTEE
18th Meeting 2013, 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) (Ind)

*Colin Keir (Edinburgh Western) (SNP)

*Alison McInnes (North East Scotland) (LD)

David McLetchie (Lothian) (Con)

*Graeme Pearson (South Scotland) (Lab)

*Sandra White (Glasgow Kelvin) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Chic Brodie (South Scotland) (SNP)

Nigel Don (Angus North and Mearns) (SNP)

Rt Hon Lord Gill (Lord President of the Court of Session)

Iain Gray (East Lothian) (Lab)

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con) (Committee Substitute)

Kenny MacAskill (Cabinet Secretary for Justice)

Lewis Macdonald (North East Scotland) (Lab)

Margaret McDougall (West Scotland) (Lab) (Committee Substitute)

Eric McQueen (Scottish Court Service)

Cameron Stewart (Scottish Government)

CLERK TO THE COMMITTEE

Irene Fleming

LOCATION

Committee Room 2

Scottish Parliament

Justice Committee

Tuesday 4 June 2013

[The Convener *opened the meeting at 09:45*]

Decision on Taking Business in Private

The Convener (Christine Grahame): Good morning and welcome to the Justice Committee's 18th meeting in 2013. I ask everyone to completely switch off mobile phones and other electronic devices as they interfere with the broadcasting system even when switched to silent. Apologies have been received from David McLetchie and Jenny Marra, and John Lamont and Margaret McDougall are attending as substitutes. I also welcome to the committee Lewis Macdonald and Chic Brodie; others might well join us during the course of the evidence taking. *[Interruption.]* I beg your pardon—I meant Iain Gray, not Lewis Macdonald. That was a bad start.

Item 1 is a decision on taking business in private. Does the committee agree to take in private item 6, which is further consideration of our approach to stage 1 scrutiny of the Tribunals (Scotland) Bill? It is proposed that we take the item in private, as we will be discussing possible witnesses.

Members indicated agreement.

Subordinate Legislation

Children's Legal Assistance (Scotland) Regulations 2013 (Draft)

09:46

The Convener: The next item is an evidence-taking session with the Cabinet Secretary for Justice on an affirmative instrument. I welcome to the meeting the cabinet secretary and Scottish Government officials Kit Wyeth, head of the children's hearings team, and Catriona MacKenzie, legal aid policy manager. I see that we are also joined by Felicity Cullen, but I do not know who she is. *[Interruption.]* The clerk has just told me that you are a legal adviser, Ms Cullen. You are not mentioned in my notes, but you are welcome anyway.

I invite the cabinet secretary to make an opening statement on the draft regulations.

The Cabinet Secretary for Justice (Kenny MacAskill): Thank you, convener. I am pleased to be here to discuss the draft regulations, which make provision for state-funded legal representation in children's hearings and their associated proceedings, detail how children's legal aid will operate and make assistance by way of representation available to certain persons in certain circumstances.

The regulations form part of the implementation of the Children's Hearings (Scotland) Act 2011. The act, which is due to go live on 24 June, strengthens and modernises the children's hearings system, and the changes that it introduces are focused on improving outcomes for children and young people and ensuring that the system is more child and young person-friendly and that it is nationally consistent but locally delivered.

As part of those changes, we are replacing the current interim arrangements, which have been in place since 2002, for providing legal support to children and parents in hearings. The regulations will provide a permanent and sustainable national scheme, administered by the Scottish Legal Aid Board, for the provision of state-funded legal representation in children's hearings. Restrictions will continue to apply to the granting of such legal representation other than in urgent and emergency situations, and it will need to be apparent that a child or parent needs that support to participate effectively in the children's hearing.

That is a very brief overview of the regulations and their context, and I am happy to answer any questions.

The Convener: Members do not seem to have any questions, so we will move to item 3, which is the formal debate on motion S4M-06775, on approval of the draft regulations.

Motion moved,

That the Justice Committee recommends that the Children's Legal Assistance (Scotland) Regulations 2013 [draft] be approved.—[*Kenny MacAskill.*]

Motion agreed to.

The Convener: The cabinet secretary will be staying on for the next item, but I thank the officials for attending.

I suspend the meeting for a minute for a changeover. Members should not leave their chairs.

09:49

Meeting suspended.

09:50

On resuming—

Scottish Court Service

The Convener: Now that we are all sitting comfortably, I shall begin.

I thank the Cabinet Secretary for Justice for staying for item 4, which is an evidence session on the Scottish Court Service's report "Shaping Scotland's Court Services". I welcome the cabinet secretary's officials from the Scottish Government: Robert Sandeman, who is from the civil law and legal system division; Cameron Stewart, the courts reform bill team leader; and Nicholas Duffy, from legal services.

The cabinet secretary will make a short opening statement on the proposed court restructuring.

Kenny MacAskill: I welcome the opportunity to speak about the Scottish Court Service's recommendations on a future court service. It may be helpful to the committee if I explain the constitutional position in relation to the proposals. The Scottish Court Service is an independent body corporate, established under the Judiciary and Courts (Scotland) Act 2008. Its board is chaired by the Lord President of the Court of Session. The effect of the 2008 act, which was passed unanimously by Parliament, is that the Scottish Court Service is answerable to the Lord President rather than Scottish ministers. The working of the courts is therefore an operational matter for the Scottish Court Service and, of course, the Lord President, who has a statutory responsibility for the efficient disposal of business in Scotland's courts.

The SCS has proposed the closure of certain sheriff and justice of the peace courts. However, the legislation provides that it is for Scottish ministers to lay before Parliament the orders implementing the proposals. The orders have been laid, and I understand that the committee will consider them at its meeting next week.

Clearly, ministers had to satisfy themselves that the policy implemented by the orders is justified in the circumstances. Ministers must consider the bigger picture, looking across all the Government's portfolios. We deliberated carefully on the options that were presented, particularly in view of the representations that have been made about particular courts, and the Cabinet has given its consent to the proposals. We think that the proposals strike the correct balance in the current economic climate. We are satisfied that the proposals measure up to the principles for provision of access to justice that were developed in discussion with the judiciary—specifically, that

most court users should be able to travel to their local court by public transport so as to arrive at the start of the case in which they are concerned, and return home by public transport the same day.

The Scottish Court Service is not immune from the financial pressures caused by the severe cuts imposed by the Westminster Government, which affect all walks of life. South of the border, 93 of around 330 magistrates' courts and 49 district courts are to be closed. According to *The Times* and *The Telegraph*, the United Kingdom Government is considering the privatisation of courts.

The Scottish Court Service is therefore seeking to save £4.5 million from its revenue budget. It estimates that the proposals will save almost £1 million a year, and an estimated maintenance backlog of £3 million.

Although the Scottish Court Service presented its recommendations on 9 April and I gave my consent on 18 April, it is self-serving and misleading to suggest that consideration was rushed. The Scottish Court Service proposals were consulted on last autumn, and I have been aware of them since that time.

I regularly meet the Lord President and the chief executive of the Scottish Court Service to discuss these and other matters. I am reassured by the SCS's commitment to avoid compulsory redundancies. I am delighted that the SCS made a commitment to introduce videolinks from the locations where sheriff courts are being closed. That will assist cases such as Rothesay. Vulnerable witnesses will be able to give evidence in Rothesay rather than having to make the journey to Greenock, as is the case at present because there are no vulnerable witness facilities in Rothesay. It is also significant that Capability Scotland has indicated that it supports the move of cases to courts that all have facilities for disabled court users.

Many of Scotland's courts date from Victorian times and are not fit for purpose in the 21st century, and many are underused. Some others lie close to bigger courts, where business will be scheduled more efficiently in terms of court and shrieval time.

Although a court may be regarded as an important element in the community, that needs to be balanced against the fact that many similar, and indeed larger, communities function without a local court. The reality is that it is a better use of a shrinking budget to concentrate funds on a smaller number of better equipped courts, where modern facilities can be provided for victims, witnesses and jurors.

I welcome the opportunity to answer questions from committee members.

The Convener: Thank you very much, cabinet secretary. I welcome to the committee Nigel Don and for the second time—I will tell him why later—I welcome Lewis Macdonald.

I will call John Finnie first, and then John Lamont, Graeme Pearson—I ask members to indicate if they want on the list—Iain Gray, Sandra White, Alison McInnes, Chic Brodie and Margaret McDougall. Is there anyone else while I am at it? I will include Lewis Macdonald as well.

John Finnie (Highlands and Islands) (Ind): Good morning, cabinet secretary. A recurring theme in the submissions that we have received is the capacity of the courts to which business will be transferred to deal with the cases that will now come their way. Among the factors suggested are the on-going issues about other court business making its way down from the Court of Session. How robust is the case that the courts to which the business is to be transferred have the capacity to deal with it?

Kenny MacAskill: I think that it is very robust. Court business has been reducing significantly. You are right that other matters that are under way will increase some aspects, but a very limited amount of business will be transferred from the Court of Session to the sheriff court. It must also be taken into account that there will be a specialist damages sheriff court in Edinburgh, unless it is decided that that court should be sited elsewhere.

Those matters have been dealt with, and I have drilled down into them with the Lord President and with the chief executive of the Scottish Court Service. It is not in their interest to make matters difficult for them and their staff. I have also spoken directly to, for example, Edinburgh's senior sheriff clerk, who is perfectly comfortable that his court is undercapacity and will be able to cope not just with the business that will come in from Haddington but with the business that will be transferred from the Court of Session.

John Finnie: Will there be no issues with churn at any of the courts that will receive the additional business?

Kenny MacAskill: The current position is that some of the courts are undercapacity, and the SCS wants to make best use of capacity to make the service efficient. I am told by the sheriff clerk that that is certainly the situation in Edinburgh.

Clearly, churn is a significant problem in the Scottish Court Service, but it is being worked on. The proposals are part of not just how we change the structures but how we do business. We are looking at and driving forward the making justice work programme, which started with Sheriff Principal Taylor, Sheriff Principal Bowen and Lord Carloway taking a significant look at how we improve aspects of justice, how we get people to

courts, how we make best use of our courts and how we bring in technology. Some of that is long overdue. That is why we are here. Some of those things cost money. Almost all the Scottish Court Service's proposals are fully supported in terms of improvements, but we have to get the money and savings from somewhere.

John Finnie: The Scottish Government's toolkit "Handling Domestic Abuse Cases" sets great store by the timeframe within which such business is dealt with. We have received representations from Ross-shire Women's Aid, which expresses concern that the current service at Dingwall, which is adequate, will be diluted if it is moved to Inverness. However, it has also been proposed that clustering domestic abuse cases at Inverness—this could be mirrored elsewhere—would not only ensure that all the support services were in place on a given day but help with other developments such as building specialism among sheriffs. Do you support the clustering of domestic abuse cases?

10:00

Kenny MacAskill: Yes, and I think that it is also supported by both the Scottish Court Service and the police. We have a specialist domestic abuse court in Glasgow, but we do not have that opportunity at other courts. However, in Edinburgh, for example, there are clusters, and there are specialist sheriffs with knowledge and experience who get cases that go back to them. I support that approach.

I think that the point on that by Ross-shire Women's Aid is well made. Similar points have been made to me by Scottish Women's Aid, with which I meet regularly, and they have been taken on board not just by the Lord President and the Scottish Court Service but by the Judicial Institute for Scotland regarding how we get the best deal. Part of that will be dealt with as we move towards law reform and ensuring that summary sheriffs have specialist expertise and training. We have seen that clustering and creating expertise work well in other jurisdictions. The point is well made, and I have no doubt that it will be taken on board.

John Finnie: I have previously asked in Parliament and, indeed, in my submission to the review for a specialist domestic abuse court in the Highlands, but obviously that has not been taken up. Are you able to give an assurance that the clustering format will be applied there?

Kenny MacAskill: That is ultimately an operational matter for the Scottish Court Service. However, it is my understanding from discussions with the chief executive, the Lord President and, indeed, those in charge of judicial studies that we will have the required specialisation among those

who deal with such cases, the continuity that will give experience and wisdom, and clustering. That approach was supported by Dame Elish Angiolini when she was Lord Advocate, and the current Lord Advocate, Frank Mulholland, continues to support it. It involves not just how the courts position themselves on the issue, but how the Crown and the police position themselves.

It is fair to say that we have seen an approach in Strathclyde—with, for example, the MARAC, or multi-agency risk assessment conference—that mirrors and adds to the benefit of the domestic abuse court. There is a clear desire by all involved—the courts, the Crown and the police—for specialisation and clustering to deal with cases speedily and efficiently. We do not need to create and establish elsewhere the same kind of structure as that in Glasgow, which works well because of its size; good relationships between the bodies involved can achieve what is required. I can give you the assurance that each and every one of those organisations is committed, and work is on-going.

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): Good morning, cabinet secretary. I will focus my questioning on two areas. The first is the general policy objective behind the proposed closures, and the second relates to concerns about effects in my constituency.

On the overall policy objectives, is it correct that over the past four years the Scottish Government has cut the Court Service's capital budget by 80 per cent?

Kenny MacAskill: There have had to be cuts; equally, those cuts have been less, I think, than what is taking place south of the border. That has to be borne in mind by those who are members of the same parties and who share the same allegiances as those in the coalition Government down south.

Jonathan Djanogly, as Parliamentary Under-Secretary of State for Justice, stated:

"It is unacceptable that dozens of buildings never intended, and not fit, for the requirements of a modern court system are still being used. It is undesirable in the current financial position that the taxpayer continues to fund buildings that offer outdated and inadequate facilities to victims and witnesses ... very few of us actually attend court more than once or twice in our lives, and even fewer use public transport to get there. It is simply not good use of taxpayers' money to operate courts simply to shave minutes off a journey that many will never need to make."—*[Official Report, House of Commons, 14 December 2010; c 816.]*

Those words are probably much harsher and more brutal than how I would have expressed myself, but I quoted them because they came from a member of John Lamont's party down south,

which is imposing greater cuts. Indeed, that party is responsible for the cuts in budget that I have to account for, deal with and manage as the Cabinet Secretary for Justice in Scotland.

John Lamont: With the greatest of respect, I was asking about the Scottish justice system. I repeat the question: is it true that the Scottish Government has cut the Court Service's capital budget by 80 per cent over the past four years?

Kenny MacAskill: We have had to make challenging decisions in relation to the Scottish Court Service because of the significant cuts brought in by Westminster. Those cuts have affected every walk of life in Scotland. I do not think that there is one area that has not been challenged because of the austerity forced upon us by the United Kingdom coalition Government. So, yes, I accept that I have had to make those cuts, but it is the policy of the Government that you support that has forced that upon us. Governments elsewhere in Europe seem to take a different tack and seem to be achieving much more success, yet you continue to listen to George Osborne and ignore the pleas of John Swinney.

John Lamont: Are you suggesting that the UK Government has cut the Scottish Government's budget by 80 per cent?

Kenny MacAskill: No. I am suggesting that you have made significant cuts to every walk of life. We have had to try to balance matters here in Scotland.

The Ministry of Justice is considering proposals to privatise courts in England and Wales to save around £1 billion. Hard decisions have to be made by this Government. We seek to defend the interests of justice and to maintain a visible police presence in our community and an integral civil legal aid budget that will allow for progress as opposed to haemorrhaging. It gives me no comfort and joy to come here and preside over cuts. The reason that I require to preside over cuts is the mismanagement of the economy by a previous UK Government and the slash-and-burn actions of the current UK Government.

The Convener: I will allow robust questioning back.

John Lamont: I am far from clear about whether the objective for the closures is to save money or to deliver a better justice system in Scotland. You are giving out confusing messages. The closures are about either saving money or delivering better justice. Which is it?

Kenny MacAskill: It is not either/or. That may be the case in your world, Mr Lamont; in ours, it is about both. It is exactly the same as what we have done with Police Scotland—we had to make the changes. We cannot ignore the fact that there are

huge budget cuts for which we have to prepare, so we seek to make economies. To deny that there are budget pressures would be to deny reality.

Just as we did with the move to a single police service in Scotland, which you opposed, we seek to get the best possible service—

The Convener: We are dealing with courts, cabinet secretary. I have allowed you a bit of leeway because I want committee members also to be robust in their questioning, but I want to keep to courts.

Kenny MacAskill: I am dealing with courts, convener. We are seeking to make the best use of the facilities that we have—which is the position that is being taken south of the border, where courts are outdated and underused—to ensure that we get the best possible service. We wish to ensure appropriate provision for victims and witnesses. Many of the buildings do not provide for those who are vulnerable and require the most care. We must also recognise that we need areas of specialist provision, which Mr Finnie commented on.

The backdrop is that the reshaping of Scotland's court services is driven by financial cuts that we cannot ignore. We have to balance the books—we are on a fixed budget.

The Scottish Court Service is right that it can get a better, more efficient service out of this. By making savings in buildings, it can meet requirements and provide the technology that everybody wants. However, it has to balance its budget. In a nutshell, the exercise is driven by the requirement to meet the budget cuts, but the SCS will provide a better service in fewer buildings—a better service that is long overdue and which will better provide for those who require to appear in our courts in whatever capacity.

John Lamont: Turning to the service that will be provided to my constituents, the Court Service's figures show that 330 cases were heard at Duns sheriff court and that, typically, the JP court sat for 25 days a year. If Duns court closes, residents of Berwickshire will have to travel to Jedburgh court. Will the cabinet secretary outline how a witness or a victim is expected to get from Eyemouth to Jedburgh court in one day using public transport?

Kenny MacAskill: As I answered previously in Parliament, the statistics that I have are that in 2011, 13 summary trials proceeded to have evidence led, and in 2012, 12 trials proceeded to have evidence led. So, yes, one trial a month will have to move from Duns to Jedburgh. No ordinary civil proofs proceeded in 2011 or 2012. Nobody who has to give evidence in a civil proof will be required to go to Jedburgh.

Yes, moving cases from Duns to Jedburgh is clearly an issue. However, such issues are looked at by the Court Service and are taken into account by the Procurator Fiscal Service, with regard to instances in which there may be vulnerable witnesses.

You should not seek to overplay your hand, Mr Lamont, when there is only one trial a month and no proofs at Duns sheriff court.

John Lamont: Do you therefore dispute the contention of Sheriff Kevin Drummond, who appeared before the committee two weeks ago, and others in the legal profession in the Borders, who clearly take a different view from you?

Kenny MacAskill: I am going on clear statistical evidence that shows just what the business in Duns was: one trial per month and no proofs.

Graeme Pearson (South Scotland) (Lab): Good morning, cabinet secretary and panellists. You will know that a fair list of people have made representations to us about their concerns about court closures. This is not merely a matter of politics; it is also a matter of providing appropriate services.

Earlier, you talked about churn, in a different context. It has been suggested to me by Scottish Borders Council that, in effect, in its area the costs of providing justice are being churned to other partners, so that although it looked like some savings might be made in the Court Service budget allocation, other partners would be faced with higher and additional costs.

The second connected point that Scottish Borders Council made to me was that the level of consultation was particularly poor. It had made an offer to cover the Haddington sheriff court costs that the Court Service had identified as achievable savings, but it received no feedback and there was no depth to its consultation.

What do you think about the notion that many costs will be churned to other partners, and that among those partners there is a belief that they have not been consulted adequately about the impacts?

Kenny MacAskill: I have met representatives of Police Scotland and those are not concerns that the chief constable or any of the staff raised with me. They are not concerns that have been raised with me by the Association of Directors of Social Work, nor have they been raised with me by the Scottish Legal Aid Board, so I am not sure to which partners you are referring.

Graeme Pearson: I mentioned the Scottish Borders Council, in particular.

Kenny MacAskill: I do not see how the costs would be passed on to that council. I am happy to

try to answer, but I do not see from where the cost implications for Scottish Borders Council would come. The implications are more for social work, the Crown, police and legal aid, none of which have made any such representations to me. I believe, however, that there has been engagement and liaison between the Scottish Court Service and Scottish Borders Council relating to the possibility of a justice centre in Galashiels.

I think that Graeme Pearson's comments about Haddington should have referred to East Lothian Council. The chief executive of East Lothian Council spoke briefly with the chief executive of the Scottish Court Service; there was an indication that East Lothian Council might be willing, or prepared, to pick up some small costs related to the court. It is not prepared to pick up the larger costs, and discussions did not drill down into who would be responsible for the outstanding repair bill of almost £0.5 million.

The suggestion that the Scottish Court Service has not been prepared to discuss matters is not true. Perhaps East Lothian Council was not prepared to read the script in respect of what the cost implications would be. A token offering of support for Haddington is not what the Scottish Court Service would have expected.

Graeme Pearson: It is unfortunate that you would imagine that the council's leader and senior officials would utter untruths on this. They certainly believe that they have been neglected in the consultation; that belief is reflected by other councils. East Lothian Council is included in the list of those who believe that they have not been adequately consulted. I hope that you go back to the drawing board and ensure that the consultations are completed properly.

I will change the subject, because I am conscious that there are a lot of other questions to be asked.

10:15

Earlier, you mentioned comments in *The Telegraph*. I read *The Telegraph* this morning and saw a commentary about the way in which trials are handled in England and Wales. The usual picture was presented of witnesses, lawyers, the accused and victims all milling about and hoping to be heard in the court environment. Witnesses from whom we took evidence in relation to another piece of legislation told us that, often, witnesses are called to courts and have to loiter in the buildings while nothing happens.

You also mentioned the use of videolinks and new technology. That may be a laudable aim for the future, but papers suggest that there is not a great deal of evidence that that technology is

currently being used. Surely our aim should be to deliver a better service to vulnerable witnesses, witnesses and victims, who are already under a great deal of stress. We should be trying to provide the best possible environment for them. A lot of the submissions that we have received in the past few weeks indicate that your proposals do not provide for that best possible service. Can we be sure that we are managing our trials and people's appearances effectively, and that we have sufficient capacity to enable us to avoid churning cases to other locations?

Kenny MacAskill: The making justice work programme is about trying to ensure that we minimise disruption. Of course, there will always be some disruption. Graeme Pearson has more experience of such matters than I do, and will be aware that some people attend court only when they are absolutely required to do so due to the enforcement of a police order. That is the nature of their relationship with our society and our laws. Other people have a different approach to attending and good progress has been made by the Scottish Court Service, the Crown and the police, working together, in that regard.

We should realise that in the system in Scotland the glass is half full and is getting more full. Yesterday, I was with the director general designate of the forthcoming national crime agency. The people who will be involved with that agency can see the good work that is being done here, and we will work with them to learn from south of the border.

We can hold our heads high. Last week, I attended the Victim Support Europe conference, which was hosted in Edinburgh by Victim Support Scotland, and saw that, again, in European terms, we are doing a good job.

There are challenges for all and the work is on-going. The issues around technology are probably similar to those that we face in our own lives. We have to get broadband capacity in place, we have to train sheriffs and clerks to use the systems, and many buildings are not suitable for some of the technology.

In respect of communities where a court is closing, which Mr Finnie asked about earlier, the chief executive of the Scottish Court Service has given a clear commitment that videolinks will be installed. Indeed, as Capability Scotland said, videolinks will provide better facilities for vulnerable people than are currently available, because many of the buildings that we are closing do not provide for vulnerable witnesses, which is why some vulnerable witnesses must currently go from, for example, Rothesay to Greenock, despite the fact that there is a court in Rothesay. Under the new arrangements, those people will be able to give evidence by videolink from Rothesay.

I assure you that the Crown, the police and the Scottish Court Service all recognise the issues. The making justice work programme is about partnership working, because one silo cannot operate independent of the others.

Graeme Pearson: I am grateful for that clear assurance.

Procedures allow this committee to make a decision about closures without the question going to Parliament. As a parliamentarian, do you agree that, in the interests of democratic accountability, it would be far wiser to allow Parliament to decide on this issue, and would you encourage us to move in that direction?

Kenny MacAskill: We must deal with these matters as expeditiously as possible. The process was set out in the Judiciary and Courts (Scotland) Act 2008, which all parties signed up to and voted for. Consideration is also given to the matter by the Lord President and the chief executive of the Scottish Court Service.

I said at the outset why it was agreed that Government would have to look across portfolios; that has been done. Parliamentary committees exist to scrutinise issues, to drill down into them and to question me in a way that cannot be done in the chamber. It seemed to me that the best and most efficient way to deal with the issue was through the committees—unless the committees decided otherwise—which is why we drafted the legislation that was supported by every party that is represented in the committee and Parliament.

Graeme Pearson: That sounds like a no.

The Convener: I clarify that we are following the standard negative procedure. Of course, there are other options, but this is the normal process.

There are many supplementary questions; I would normally take them in order; I am not going to do that today, but will just let everyone come in. I add that because I am in the chair, I will not ask questions about my constituency, which would be unfair. It will be tough for me, but I am not going to do it. I make that point now, in case anyone wonders why I do not mention the courts in my constituency.

Iain Gray (East Lothian) (Lab): In your introductory remarks, cabinet secretary, you outlined the responsibilities in this matter, and you pointed out that the Lord President has a statutory responsibility for the efficient disposal of business in our courts. I am looking at the Lothian and Borders sheriffdom performance reports for April, which is the latest month for which data are available. The percentage of cases that were disposed of within 20 weeks is 83.8 per cent in Haddington, and 58.4 per cent in Edinburgh. In the justice of the peace court the figures are,

essentially, the same. If we are pursuing the efficient disposal of business, how will that be achieved by closing an efficient court and moving its business to an inefficient one?

Kenny MacAskill: I do not believe that Edinburgh sheriff court is inefficient. It has its challenges, but it is a better court and facility, which I know having appeared as an agent in both courts that you mentioned. For example, there are within the court at Haddington no dedicated witness facilities, which Mr Pearson just asked about.

It is also important to say that the court closures are not taking place in isolation, but are part of civil law reform and the making justice work programme. That is why the Scottish Court Service has looked at the issue, crunched the numbers, and is confident that Edinburgh is working under capacity and that it will be able to deal with further changes. As new technology goes live, we will see an improvement.

Iain Gray: That might all be true, but the target that Scottish ministers—you—set for our courts is 85 per cent of cases being disposed of within 20 weeks. Edinburgh is currently achieving 58.4 per cent, in spite of the fact that you have told us that the sheriff clerk has assured us that he is content that his court is operating under capacity. His court is under capacity, but it is missing your target by a significant degree. My local court is delivering very close to your target, so why are you going to close my court and move it to Edinburgh?

Kenny MacAskill: It is not your court, as such; you are the local elected representative, and the court covers a wide area in the county of East Lothian, which was originally Haddingtonshire.

However, times move on. I know that Iain Gray has spoken in Parliament about how Haddington court was there before the reformation, but so were a range of statutes that have had to change, from statutes on capital punishment down to statutes on the stocks. Life moves on.

I also refute Iain Gray's caustic view of Edinburgh sheriff court. It is doing a good job. It has, for domestic violence cases, for example—as Mr Finnie mentioned—specialist facilities that are envied elsewhere; we need to provide for that. Various things that happen in East Lothian are currently dealt with in Edinburgh because of the requirements for vulnerable witnesses or juries, for example. Those are matters that we have to address—

Iain Gray: I am sorry to interrupt, cabinet secretary, but is that or is that not the target by which the performance of courts is judged?

Kenny MacAskill: Edinburgh sheriff court is under capacity.

Iain Gray: No—it is underperforming.

Kenny MacAskill: Edinburgh sheriff court is doing a good job in dealing with the cases that come before it. It can provide security and better facilities for vulnerable people, which is why some cases that ought jurisdictionally to go to Haddington currently go to Edinburgh. That was the situation in my day, when I appeared in courts; various jury matters and matters relating to children would be transferred to Edinburgh, because Haddington court was viewed as not being appropriate. Edinburgh sheriff court is able to deal with such business and it will do so. I have the utmost faith in the Scottish Court Service to provide for that, whether through the chief executive or the sheriff clerk.

Iain Gray: I remain puzzled by how the cabinet secretary judges the performance of our courts, if not by their achieving or failing to achieve his own targets. However, if he is content with the performance and efficient handling of business at Edinburgh sheriff court, is he content with the current cost per sitting day at Edinburgh sheriff court, which is more than £4,000, whereas by comparison the cost of a sitting day at Haddington sheriff court is £2,415? If the exercise is not about efficient delivery of justice—I have to say that it appears not to be—but is about saving money, can the cabinet secretary explain how we will save money by closing a cheaper court where business is expedited at lower cost and moving that business to a court that costs twice as much?

Kenny MacAskill: I shall attempt to explain. The court business of Haddington will be absorbed within the Edinburgh sheriff court building without adding to the Edinburgh overheads. The accommodation costs—utilities, rent, rates and water—for Haddington will cease to be incurred, to say nothing of the maintenance backlog of £0.5 million. The same costs for Edinburgh may increase, but only marginally. The combined staff costs and combined judicial costs will be the same as they are now.

Because Haddington generally operates only one court per day, while Edinburgh operates on average 12 per day, the Edinburgh figure should be divided accordingly to achieve a more realistic comparison. Mr Gray is not comparing apples and apples; he is comparing apples and pears. The savings are there to be made, they have been number crunched by the Scottish Court Service and they have been reviewed by us.

Iain Gray: In carrying out that number crunching, the SCS uses a calculation of gross internal areas to compare running costs, which gives us running costs of £81 in Edinburgh and £72 in Haddington. By any measure, business in Haddington court is cheaper and more efficient

than in Edinburgh, and Haddington is the court that you are going to close.

I want to ask about silo thinking, because the cabinet secretary said that the important thing is that services do not to operate in silos. He referred to East Lothian Council, which has taken a broad view in recognising the cost of additional travel for social workers and the cost to the towns in that local authority area—for example, the impact on the economy of Haddington.

The local council has made a number of generous offers to the Scottish Court Service, which, I am afraid, the cabinet secretary dismissed as “token”. It offered to make a substantial contribution to the on-going running costs of the court in order to avoid closure, and I have an e-mail from the chief executive of East Lothian Council which shows that it has offered to pick up half the cost of the £0.5 million maintenance backlog. Would the cabinet secretary like to apologise to East Lothian Council for dismissing that as a “token” gesture?

Kenny MacAskill: I would like to put on record the fact that the average period between first calling of a summary criminal case and trial in Haddington is 15 weeks—

Iain Gray: You might want to do that, but my question is about the offer that has been made by East Lothian Council to pick up the costs in order to avoid closure.

Kenny MacAskill: I am more than happy to address that, Mr Gray, but I would be in dereliction of my duty if I did not provide additional information in answer to a previous question, as I have now done, because I think that it will be of benefit to the committee. If you will do me the courtesy of allowing it, I will put that on record and then address the second matter.

Iain Gray: I will do that if you do me the courtesy of responding to the question that I have asked you.

The Convener: I ask the cabinet secretary to answer the second part of your question after he has answered the first part.

10:30

Kenny MacAskill: In Haddington, the average period between first calling of a summary criminal case and trial is 15 weeks. In Edinburgh, the average is 17 weeks. The corresponding period for civil business between allowing and calling a proof is 12 weeks in Haddington, but is only six weeks in Edinburgh. I believe that the service that is offered in the two courts is relatively consistent. In some areas, it is better in Edinburgh, and that is what we will seek to build upon.

Contractual arrangements are a matter for the Scottish Court Service, but it has stated to me that although there was a tentative offer, no details were discussed and it would not expect to recover all the costs of court operations. Indeed, Iain Gray has said that there was an offer of 50 per cent relating to one aspect—the maintenance backlog. As I said, that does not address vulnerable witnesses and other matters.

I hope that you will accept I have now put on the record clarification on a previous question and that I have answered the point that you made about discussions between East Lothian Council and the Scottish Court Service.

Iain Gray: My question was whether you are willing to apologise for the incorrectness of your previous answer, in which you stated that East Lothian Council refused to consider picking up a share of the £0.5 million maintenance backlog. That information is out of date, cabinet secretary.

Kenny MacAskill: I have put on the record the position of the Scottish Court Service in its discussions.

The Convener: Thank you. I call Sandra White, to be followed by Alison McInnes.

Sandra White (Glasgow Kelvin) (SNP): Good morning, everyone. It is still morning—it has seemed like a long morning, already

Chic Brodie (South Scotland) (SNP): Even in Glasgow?

Sandra White: Yes—even in Glasgow.

The cabinet secretary has talked about buildings, and Iain Gray mentioned efficient delivery of justice. I want to talk about access to justice for witnesses and accused persons. We are looking at the whole issue of court structures. Graeme Pearson was right—we have received a deluge of papers from many people.

However, one thing that has not been mentioned this morning—and I do not think that it was mentioned in the submissions that we received—is access for children in particular, and children’s hearings. In previous evidence sessions, we heard that children’s hearings, particularly in Dundee, are held through other offices and not in the courts. Is that something that we are going to roll out to other areas, with the new court structures? Witnesses mentioned that it seems to work well in Dundee.

The other issue that I want to pick up on is videolinks. Graeme Pearson mentioned that, and the cabinet secretary mentioned Rothesay. Iain Gray and others have asked about buildings, but Children 1st said that some of the buildings are not fit for purpose and Victim Support Scotland supports more use of videolinks. Will the cabinet

secretary or the other witnesses tell the committee whether there has been expansion of videolinks? Do you have any examples, and how successful has it been? Will that service be expanded so that vulnerable witnesses do not have to travel?

Kenny MacAskill: There are two aspects to that question. On Dundee sheriff court, points were made by Kevin Drummond—whom I know and have the highest regard for—about what would almost be peripatetic courts. The position of the Scottish Court Service is that some things could never be moved out. In my experience as an agent, evidence was taken in hospitals and on commission in people's homes, but some criminal matters will always require to be dealt with in court for the security of those who are required to give evidence, never mind the other reasons. It is possible to consider what can, in some cases, be done outwith the normal court building.

When I practised law, I appeared not only in Haddington and Edinburgh but in Dundee, and referrals from children's hearings in Dundee were dealt with not in Dundee sheriff court but in the building that housed the reporter to the children's panel. That is where the young people went, and the sheriff travelled there. I have made inquiries and can say that that is still the position in Dundee—the sheriff moves. I am delighted to say that the Scottish Court Service is in consultation with the Scottish Children's Reporter Administration about whether that can be done in other areas.

There is general recognition that it might be appropriate to hear certain hearings and referrals from children's panels in the children's centre, and not the sheriff court. The Court Service is engaging with the Scottish Children's Reporter Administration on such matters. In some circumstances, that approach might not be possible simply because of the size of the SCRA office but, as I have said, the Court Service is also willing to consider whether it might be better to deal with, say, adults with incapacity and other areas of law in a less legalistic environment. That approach would certainly apply to children; I welcome the Court Service's willingness to consider other areas in that respect.

As for videolinks, a new secure live link videoconferencing network will be introduced in six northern courts—Aberdeen, Elgin, Inverness, Kirkwall, Lerwick and Stornoway—and four other locations. That work is due to be completed this month and will reduce the need for participants to get to the court. I can therefore give Sandra White and Graeme Pearson a clear undertaking that we will try to accelerate the technology, although I must note that this is not only about technology but about ensuring that we have the necessary

capacity and systems and that people are comfortable with using the technology.

We have been trialling the system. On a tangential matter, I have seen for myself how people at Barlinnie can appear before the sheriff at the custody court without having to be taken from prison to court in a van and, quite often, taken back again.

Things are moving. We would, of course, like them to move faster, but I assure the committee that they certainly are moving.

The Convener: This might be a sneaky supplementary, but I note that you just slipped in a reference to peripatetic courts. Can you clarify that such courts will actually be courts and not just places where evidence is taken?

You also mentioned that the SCS has been having discussions not only about children's hearings but about vulnerable adults. Am I right in thinking that you are talking about taking evidence not just at a bedside, in the field or whatever, but actually as a court?

Kenny MacAskill: Absolutely. When I appeared at Dundee sheriff court back in the 1990s, the hearing would take place in the reporter's offices. It was a hearing because the grounds for referral had not been accepted by the child and there had to be proof for the case to be heard. The Court Service is considering that approach for elsewhere; it would be a case not just of taking evidence on commission, but of conducting the totality of the proceedings in an environment that is more suited to children's hearings, at least initially. As the Court Service has realised, the law changes and we are dealing with witnesses who are vulnerable adults and witnesses who are vulnerable children. In such cases, there might be better places than courts to hold proceedings.

The Convener: Was Sheriff Drummond wrong to suggest that legislation would be needed for that?

Kenny MacAskill: My understanding is that we do not need legislation, but if it is required we will address that. I am not aware of legislation that provides for that approach in Dundee but restricts its use elsewhere. I imagine that it probably depends on the nature of the hearing, but the Court Service is certainly seeking to work with the SCRA on the matter; if legislation is required, it will be introduced. Something has happened somewhere along the line; I have not practised law since 1999, but I know that that is still the situation in Dundee.

The Convener: I am sorry for coming in there, Sandra; I did not know whether you were going to ask that question.

Sandra White: My question was, indeed, similar to your follow-up, convener.

Alison McInnes (North East Scotland) (LD): Many of the people who corresponded with the Scottish Court Service during the initial consultation raised very genuine concerns about the dangers of centralising our justice system and understood that the value of local courts goes beyond bricks and mortar. What weight do you give to local access to and visibility of justice in the towns and communities around Scotland?

Kenny MacAskill: Obviously, it is very important and individual issues have been highlighted not just by you but by organisations such as Citizens Advice Scotland; indeed, one of CAS's legal advisers made the same point to me on Saturday.

I have to say that the Scottish Court Service has factored in this element. After all, we are talking about people travelling distances of less than 20 miles in the main, not 200 miles or more. I do not underestimate the challenges in certain circumstances, but we are talking about a small number of cases and limited distances.

We want to keep justice local, but we accept that law has changed. It is now much more specialist: there is no longer just civil and criminal law; there is law that relates to adults with incapacity, mental health and children. People also expect the law to deal with commercial matters and reparations, and with issues such as adoption. There must be some element of specialisation, which can be brought about by ensuring that there is a critical mass of sheriffs. Some cases are already directed to particular courts where they can be dealt with.

Alison McInnes: The distance might be only 10, 12 or 15 miles on a map, but you are removing local justice from small rural towns and villages and making people travel to cities. In my area, Stonehaven has been a county town for a long time, but it has now been demoted, and people have to travel to Aberdeen. Do you understand that the principle of justice being seen to be done in people's own communities is an important part of the justice system?

Kenny MacAskill: Yes, it is, and that point was made to me when I met some people from Rothesay. I understand that there is sometimes a need for naming and shaming, and that is why the courts are public buildings except in very limited circumstances. The public opprobrium is delivered by the sheriff, and it is important that such matters are dealt with and aired in the local paper or in other ways. However, given the limited distance, the difficulties for the local press can be overcome. Nobody is making the decision with any relish or

zealousness, but financial issues challenge all areas of civil life.

To be fair to John Lamont, cuts do not always come from the UK Government. Just last week, I was sitting with representatives of the Church of Scotland in an area of my constituency as they sought to go from three churches to one. That is all very sad, but I fully support them. It is the right thing to do, and it is being driven by changes. People will have to go further to get to their church, but that is the world in which we live.

Alison McInnes: In his written evidence, Scotland's Commissioner for Children and Young People stated:

"Overall, I regard many of these proposals as having a potentially detrimental effect on children and young people."

The Scottish Court Service's equality impact assessment gives that issue cursory attention. What consideration did you give to the specific needs of children and young people, particularly vulnerable children, in advance of taking the decision?

Kenny MacAskill: The Scottish Court Service's proposal on grounds of referral to children's hearings—which has been mentioned today—is an excellent one. When I practised law, I always considered the situation in Dundee to be much better than that in Edinburgh. On the subject of grounds of referral, there is an issue with children mixing with more serious criminals, because that may lead to a trajectory of offending, so I welcome the action that is being taken in that respect.

Views on vulnerable people are well represented by Capability Scotland, because the issues concern not only children but adults. Capability Scotland welcomes the benefits from having court buildings that are routinely able to provide for the needs of vulnerable people.

We have an assurance and a guarantee from the Scottish Court Service that, where people are not going into the court building, videolinks are now being provided.

We are where we are, given the financial challenges that we face. However, as a result of the changes, we will provide a court system that has the specialist expertise that is required on the shrieval bench and in many other areas. We will be able to provide many areas with a videolink service that was not there before, and the facilities for vulnerable people who have to go to court to give evidence in what is a challenging situation will be better.

Alison McInnes: With respect, cabinet secretary, what you have mentioned this morning is all very ad hoc. You say that you hope certain things will happen, and some of them might, but

would it not be much more sensible to ensure that all your good ideas that are going to help things are implemented before we close the courts?

Kenny MacAskill: I said that the videolink service is coming in June. We are now in June—the relevant briefing came to me before that, but the service is coming this month. It is not necessarily here today, but it will be in place later this month.

The buildings to which the business of some courts is being moved are better, and will provide for that business. They are already established—for example, Edinburgh hosts the jury trials for certain cases that have come from elsewhere. I assure you that those elements are in place. As I said, I welcome the action that the Scottish Court Service is taking with regard to the SCRA and on adults with incapacity.

Some of the changes are work in progress, and some are shortly to be delivered. You make the fair point that we have to keep our foot on the accelerator.

10:45

The Convener: I ask that we be provided with the details, if you have them, of where videolinks will be placed prior to any proposed court closures, which I think start next year.

Kenny MacAskill: We will get that information to you.

The Convener: It would be grand if we could have it before the debate next week, if that is possible.

Kenny MacAskill: It will be possible.

Alison McInnes: Cabinet secretary, you mentioned the European directive establishing minimum standards on the rights, support and protection of victims of crime. You and I were at the Victim Support Europe conference last week, so you will be up to speed on that. Article 18 of the directive requires

“that measures are available to protect victims and their family members from secondary and repeat victimisation”

and

“from intimidation”.

Many of the people who have corresponded with us have raised concerns about extra travel, particularly the impact on vulnerable witnesses in rural areas, who will have to travel on the same buses back and forwards to court as the accused and, therefore, will be more exposed to the possibility of “secondary and repeat victimisation”. How do you respond to that?

Kenny MacAskill: You are right to raise those concerns. They are legitimate and

understandable, but those matters are, have been and will be dealt with by the Crown Office and Procurator Fiscal Service. Most of the issues related to criminal cases. They are dealt with by the Crown at present, which has given a clear assurance that it will make arrangements—sometimes particular, special arrangements and sometimes more general ones. There is a clear assurance that any victim who worries will be able to engage with the Crown Office individually or through Victim Support Scotland. In most instances, the point that you make, which I accept is a fair one, is a matter more for the Crown than the Scottish Court Service, but we have engaged and liaised with it and it has given us those assurances.

Alison McInnes: My two local courts are Stonehaven and Arbroath. Both of them are efficient and have space to do business properly, but their business will be sent to receiving courts. In Stonehaven’s case, that will take the receiving court to 97 per cent capacity. Do you consider that sensible?

Kenny MacAskill: As I say, the Scottish Court Service has looked at matters and taken them into account. It is satisfied—as am I, having looked at the information and spoken to people—that the change is capable of being dealt with and that the capacity exists. Never mind the fact that, in many instances, people are working in those areas rather than the place in which they reside. Those matters have been factored in and the capacity exists.

Alison McInnes: You said earlier that many of the courts that you are closing do not provide properly for vulnerable witnesses. Arbroath has a good support network. Not only does the court provide for vulnerable witnesses but, nearby, there are victim support and women’s aid facilities. Those are not available in Forfar.

Kenny MacAskill: Arbroath meets the requirements for some matters to appear there, but Forfar is capable of meeting all the requirements for accessibility, so the decision has been made that Forfar is a better venue. There are factors to consider, which you have mentioned, as have Graeme Dey and Mike Weir. However, we have worked with the Crown to ensure that we deal with those who come from remoter parts of Angus and have to go to Forfar as opposed to Arbroath. The court in Forfar is perfectly capable of dealing with the capacity issues.

The Convener: I will let members know where they are on the list. If they can remember, that is fine; if they cannot, they should write it down. I have Chic Brodie, Margaret McDougall, Lewis Macdonald, Roderick Campbell and Colin Keir. They are not forgotten and I have not fiddled the list. That is as it has been from the start.

Nigel, are you indicating that you want in as well?

Nigel Don (Angus North and Mearns) (SNP): Yes, I will go at the tail end.

The Convener: You do not have to. Do not feel compelled.

Nigel Don: No, I will go at the tail end. That is all right.

Chic Brodie: I thank the convener and the members of the committee for affording me the courtesy of being allowed to ask a couple of questions.

Cabinet secretary, you are aware that the Scottish Court Service report on Haddington was disputed and that the dispute was presented in the form of a forensic analysis prepared by an independent accountant. That report confirmed annual cost savings of £81,000, but £34,000 of that was depreciation and I understand that £47,000 of revenue expenditure may be covered by East Lothian Council. However, the issue is the capital saving of £471,000 from the maintenance budget. It is my understanding that, only five years ago, there were virtually no dilapidations required. To follow on from Graeme Pearson's question, would it not have been better to have had clear engagement and definition about how the figures were arrived at, so that the dispute could have been avoided?

Kenny MacAskill: There is a dispute and a report was provided by a forensic accountant. I clarified various matters in response to Iain Gray's question about how the Scottish Court Service disputed those figures. I stand by that. I am not qualified, architecturally, to comment, but we are all aware that many buildings in Scotland have faced significant issues over recent years because of climatic changes. However, it is clear that—I do not think that anyone disputes this—the maintenance backlog is approaching £500,000 and that remains outstanding. I do not know why that is the case.

Chic Brodie: On the radio this morning, a gentleman from the Law Society said that the backlog of maintenance arrears for the whole of the Court Service was £53 million. How could that be? That must have happened over many years, so how could we get to that situation?

Kenny MacAskill: Many of our courts are Victorian. Some, such as Selkirk, were presided over by Sir Walter Scott. The buildings provide great history and great landmarks in our communities. However, they come not only with modern-world challenges relating to the care and maintenance of the fabric because of the climate that we face but with challenges relating to how

the facilities are provided, whether physical or technological.

Chic Brodie: Thank you. I have one last question. In the foreword to the consultation, the Lord President said:

“Radical changes are imminent in the provision of both civil and criminal justice.”

The exercise has been carried out—and we all know how heavy the cost reductions must be—but has the SCS looked at one particular area in isolation, or has it looked at the efficiency across the service from top to bottom?

Kenny MacAskill: Absolutely. That is why the SCS has viewed some courts as sacrosanct. Whatever savings and costs there may be, we recognise—as does the SCS, to its credit—that Kirkwall, Lerwick, Stornoway and Lochmaddy are island communities that must be dealt with. Rothesay is somewhat different because of its proximity.

The SCS looked at Scotland geographically. It has accepted that there cannot be a situation in which there is no court between Wick and Inverness, which is why courts there have been retained. I give you an absolute assurance that the SCS has looked at the issue holistically and on a pan-Scotland basis. The SCS faces significant challenges because investment was not being made in years past, before the Lord President, the SCS chief executive and even I were in situ. We have buildings that are lovely to look at but cost a fortune to maintain.

Chic Brodie: There are other areas of revenue expenditure. I know very little, so forgive my naivety, but how do you measure the efficiency of the senior members of the Scottish Court Service and those that dispense justice?

The Convener: We are wandering off topic. I realise that you extended your question to ask about a holistic approach, but you are moving into an area that is not part of the questioning session, Mr Brodie. It was a good try.

Margaret McDougall (West Scotland) (Lab): Good morning, cabinet secretary and the others on the panel. I have a question on costs. I have before me a letter to Christine Grahame, the convener, from Catherine Dyer, Crown Agent and chief executive of the Crown Office and Procurator Fiscal Service. She states that the likely additional costs for witness travel to sheriff and justice of the peace courts will be £15,000 and £16,600 for higher courts, and that staff relocation costs will be £24,000. That adds up to £55,600. The savings on buildings will be £46,332. How can that be justified?

In her letter, Catherine Dyer also states that it will be possible to meet all those costs

“out of the existing budget.”

If we can meet all those costs from within the existing budget, why are we looking to make these closures and savings?

Kenny MacAskill: Catherine Dyer is an outstanding official and representative, but she is an official and representative of the Crown Office and Procurator Fiscal Service. In looking at matters, she is commenting on the implications for the Crown Office and Procurator Fiscal Service locally.

As I said in my statement at the beginning, the matter is driven by a position taken by the Lord President and the chief executive of the Scottish Court Service. There are implications across portfolios, so as a Government we are obliged to look at the impacts on the Crown Office, on the police and on victims and witnesses. We have looked at matters holistically, and we recognise that there are issues and challenges for the Crown Office. However, as Catherine Dyer has said in her letter, the Crown Office is perfectly capable of addressing those.

Indeed, it would be fair to say that the Crown Office has gone further and faster than the Scottish Court Service in moving to a regional model of east, west and north to ensure that matters are dealt with in a pyramid structure. To some extent, I think that that is where the Lord President wishes to take the Scottish Court Service.

Margaret McDougall: Turning to the local matter, I note that Irvine justice of the peace court is to be closed and its business transferred to Kilmarnock. Many concerns have been raised about the travel costs and other implications for what is a quite deprived area in North Ayrshire. People from the likes of Ardrossan, Saltcoats, Beith and Dalry will need to travel to Kilmarnock, which will involve an additional cost and may have an impact on their attendance, given that bus services are being reduced. What are your comments on that?

Kenny MacAskill: When I discussed that matter with Convention of Scottish Local Authorities leader David O'Neill, he made the point to me that there is no sheriff court in North Ayrshire. Actually, he could not understand some of the issues that were coming up because he does not represent that area, but I have the highest regard for him. There are currently areas where there are no courts—there is no court in East Kilbride or Glenrothes—and some of these things are historical. The Scottish Borders has four courts because we had Peeblesshire, Roxburghshire, Selkirkshire and so on. These things change, although I know that Mr Gray has disputed that.

I grew up in Linlithgow, which had a sheriff court, but the court has moved to Livingston because the population has moved. Linlithgow is no longer the county town. Linlithgow is a lovely place—I met many friends from there on Sunday at the junior cup final—but the business comes out of Livingston. Some of these things are just the way of the world, and we need to recognise that the Scottish Court Service must also sometimes take cognisance of where the business is and where people are coming from.

There are challenges, and I accept many of the points that you make. People will need to go that bit further to get to Kilmarnock, but that is a matter of less than 20 miles and people are probably doing that anyway for other matters. As I said, I can give you an assurance that both the Crown Office and the Scottish Court Service are taking that into account.

Margaret McDougall: I am glad that you mentioned David O'Neill, because I spoke to him after you made a similar statement in the chamber a few weeks ago. David O'Neill told me that he may have said that there is no sheriff court in North Ayrshire, which is true, but previously as leader of North Ayrshire Council administration he worked with Scottish National Party councillors to lobby to get a sheriff court in North Ayrshire. Can you perhaps clarify that?

Kenny MacAskill: It may be that, ultimately, the Scottish Court Service will consider that. For example, I think that a justice centre in Galashiels would be of benefit to the Borders as that is the point where buses, and indeed ultimately the train, will go into.

The Convener: I am getting a world tour of various courts and so on. The cabinet secretary disnae half get about with football matches. I am surprised that you have time for it, cabinet secretary.

Lewis Macdonald (North East Scotland) (Lab): Cabinet secretary, you said that it was important to avoid silos. When the Scottish Court Service's findings were announced on 16 April, I asked you whether you would consider the economic impact on county towns of court closures before reaching a decision. You said that you would. Then, at the beginning of May, you responded to my colleague Richard Baker and said that a proper assessment of economic impact had been made before a decision was reached. Can you tell us who made that assessment and whether it will now be published?

11:00

Kenny MacAskill: I made the assessment on the basis of the information that comes before me from the Scottish Court Service. Your question is

predicated to some extent on a point that I heard with incredulity on the radio, which was that the savings could all be made by simply improving fine collection. To build on what I said in the chamber, the SCS is having increasing success—86 per cent of the value of sheriff court fines imposed between April 2009 and 31 March 2012 has either been paid or is on track to be paid through instalments and the measures that we put in.

What my incredulity is based on is the fact that it is not possible to fund justice services from fine incomes as most of that income goes straight to the Treasury south of the border, which is imposing the cuts. Those are devolution arrangements that were introduced in the Scotland Act 1998. You have represented a Labour Government in this Parliament on those arrangements. You know as well as I do that, in the main, the fine income paid in Scottish sheriff courts went to Alistair Darling and goes to George Osborne. I am incredulous at the suggestion that I am able to get it to reduce and minimise the cuts being imposed by the coalition.

Lewis Macdonald: Cabinet secretary, when you start talking about Westminster, we have to suspect that you are on shaky grounds on the matters for which you are responsible. Are you telling us that no one has done an economic impact assessment on the court closure proposals?

Kenny MacAskill: There has been assessment in terms of how we look across the board. All that I was pointing out, Mr Macdonald, was that your suggestion that all of this could be sorted out if we simply took any outstanding fine income, for which we have an 86 per cent collection rate, is not possible because the money goes directly south of the border.

With regard to the economic analysis, the Scottish Government's business and regulatory impact assessment was developed in conjunction with the Scottish Government's economists and it concurs with the economic impact assessment carried out by the Scottish Court Service.

Lewis Macdonald: Well, I am glad that you got to the point. I, too, listen to the radio and I noticed that you chose not to answer questions on these matters on the radio this morning. There is an economic regulatory impact assessment. Will you now publish that?

Cameron Stewart (Scottish Government): It was submitted with the draft orders.

Lewis Macdonald: Where is it now?

Kenny MacAskill: Maybe you should check your papers.

The Convener: Now, now, gentlemen. It is in the public domain, is it?

Cameron Stewart: It was submitted with the draft orders.

The Convener: Unfortunately—I do not mean unfortunately; I do not know what I mean—Mr Macdonald is not on the committee. The committee has that information.

Cameron Stewart: It should do, yes.

Lewis Macdonald: That is very helpful. If it is in the papers that I have seen, it is clearly a shallow and superficial examination. In light of Mr MacAskill's commitment to discuss these matters with Cabinet colleagues, I wonder whether he has now done so and, in particular, whether he has discussed with them the proportionality of the closures and their impact on local communities with the savings that he proposes will be made?

Kenny MacAskill: Yes, I have discussed that with Cabinet colleagues.

Lewis Macdonald: Mr Russell has publicly expressed concern that the level of savings is not proportionate. He said:

“the very small savings anticipated should be seen in the light of a further rundown of those normal activities in all other similarly sized Scottish communities.”

Does the cabinet secretary believe that Mr Russell now accepts that there is no impact on justice in the committees that he represents?

Kenny MacAskill: I met Mr Russell, who brought in a delegation from Rothesay, including those who have appeared in court and those who represent newspapers. As I said to Alison McInnes, some fair points were made regarding the requirement for some public opprobrium, not simply that dispensed by the bench but that dispensed in local papers. We can work through that. However, you would need to ask Mr Russell about that. What I can say is that I was delighted to engage with Mr Russell as he sought to represent his constituency.

Lewis Macdonald: That was helpful. I want to ask about a matter for which you have direct responsibility: the intentions of the Scottish Court Service. Two weeks ago, Eric McQueen suggested that, as a result of feasibility studies that will be undertaken, there might well be another round of court closures, if indeed this round of closures goes through.

Kenny MacAskill: The Scottish Court Service keeps matters under constant review. I note that Margaret McDougall has just proposed a court for North Ayrshire; it is not for me to comment on that and I do not know whether such a view has been given any credence by the Scottish Court Service.

In any case, I think that Eric McQueen was referring to the establishment of justice centres, particularly in the Borders. In West Lothian, for

example, we recognised that, because the population lived in Livingston and greater Livingston, that was where the needs and requirements had to be met and that it would be better to move proceedings from the lovely but historic sheriff court at Linlithgow, where I also appeared as an agent, and establish something that could deal with a whole array of matters and which was able to co-locate.

As I have said, these issues are kept under review. Whether something is established somewhere in North Ayrshire or at Galashiels will be for Mr McQueen, but I give the committee a clear assurance that we engage on these matters with elected members and local authorities. Of course, any further proposals would have to come back to the committee.

Lewis Macdonald: In response to Iain Gray, you compared the presence of sheriff courts in some Scottish towns with capital punishment, stocks and other antiquated things that needed to be reformed. You and I might be old enough to remember this, but many other committee members—

The Convener: Careful now, Mr Macdonald.

Lewis Macdonald: Mr MacAskill and I might be old enough to remember the Government that abolished capital punishment. Will you be proud to be remembered as the justice secretary who closed so many sheriff courts across Scotland?

Kenny MacAskill: I will be proud to be remembered as the Cabinet Secretary for Justice who stood up for Scotland in the face of moves that have had such huge budget implications, who delivered a 37-year low for recorded crime and indeed who has presided over the record number of police officers who are patrolling Scotland's communities and keeping us safe and secure.

The Convener: I think that that exchange leaves us at love-all. I should point out that the papers for the Justice Committee are in the public domain and, if people want to view the economic impact assessments, they will find them with the draft orders.

Please do not think that I am curtailing the discussion, but short questions would be useful. Lord Gill is waiting and I want to give the committee a 10-minute break—or perhaps it will be an eight-minute break now. It is getting shorter all the time.

Roderick Campbell (North East Fife) (SNP): Cabinet secretary, I was pleased to hear your remarks about the use of premises other than courts for judicial matters.

Two weeks ago, Sheriff Drummond told us:

“As far as I can see, there is no body of principles or policy formula against which we can measure these proposals with regard to the provision of rural justice.”—*[Official Report, Justice Committee, 21 May 2013; c 2831.]*

Moreover, James Wolffe said that where applicable

“in areas of rural mainland Scotland, sheriffs rather than people should travel”.—*[Official Report, Justice Committee, 21 May 2013; c 2833.]*

His view was also endorsed by Stuart Naismith of the Law Society of Scotland. With regard to the next level down, Lauren Wood of CAS mentioned the possibility of peripatetic summary sheriffs or specialists. Does the Government have any thoughts on those views that it could share with us?

Kenny MacAskill: As I have said, I have discussed the matter with Eric McQueen and I think that such a proposal is simply not possible for certain criminal proceedings. For example, there are security and safety issues to take into account; indeed, some facilities do not have appropriate cell facilities. We cannot countenance such a move in those circumstances.

That said, I welcome the sensible position that has been taken by and which I recall as a historical matter in Dundee sheriff court, and I am delighted that the approach is being considered across the board. In fact, that move was in train long before I spoke to Eric McQueen about it.

I also welcome the initiative as we consider new areas of law, especially with regard to adults with incapacity. The courts came into being at a time when there were only civil and criminal matters to deal with; indeed, divorce was probably not even a civil matter because, at that time, it was dealt with in the Court of Session. The courts, therefore, would have been dealing with litigation claims involving horses, farming stock, or road traffic accidents, and with criminal matters.

The world is more complex now. Our courts need to deal with issues related to adults with incapacity, adoption, mental health matters, commercial issues, bankruptcy and so on. Some matters, but not all, will be suitable for being dealt with in premises other than courts—I give you an assurance that the Scottish Court Service will consider that—but some will always need to be dealt with in a normal court, because of security risks, the need for specialists and so on.

We are in a new world with regard to technology. Videolinking will change matters. The Government is willing to consider all the issues that have been raised, but we will be driven by the clear advice that is given by the Lord President and those who serve under him in an administrative capacity, either as the chief executive or as sheriff clerks.

Roderick Campbell: I am still a member of the Faculty of Advocates and should declare that interest. Cabinet secretary, you referred to the fact that you last practised as a lawyer in 1999.

I want to ask about solicitors and solicitors firms in towns that will be affected by the closures. If I may be a bit parochial, I can say that I am not aware that any of the leading criminal firms have an office in Dundee. If they do summary legal aid work, they will not be paid for travelling. What kind of advice would you give the firms of solicitors who are facing those issues?

Kenny MacAskill: As was the case with the Linlithgow firm of Peterkin and Kidd, when firms find that the world has changed, they will continue to provide their service in a different location. Equally, many of those that are engaged in specialist criminal matters will probably find that they are doing more business in the busier court—they will be doing more criminal representation in Dundee because more people are likely to be appearing there.

As the Crown has pointed out, the fact that an offence has occurred in a jurisdiction does not necessarily mean that the people come from there. Significant numbers of people who appear in Kirkcudbright sheriff court are not people from Kirkcudbright, which is a remarkably law-abiding area. Often, they are people who have got off a ferry at Cairnryan and committed a road traffic offence while they are heading for the M74 or the M6. Ironically, the changes might well result in people appearing in their local court rather than another court, because they were travelling at the time of the offence.

Colin Keir (Edinburgh Western) (SNP): My question is about the movement of some cases from the Court of Session. Some concerns have been expressed about the ability of courts to hear those cases in a full and proper manner. Could you comment on that?

Kenny MacAskill: In 2012, there was a decrease of 6 per cent on the previous year in terms of criminal business. We are 19 per cent down from the peak in 2006-07. In terms of civil law, there has been a drop of 35 per cent. Business has fallen in our courts, which is why there is capacity in those buildings.

You are right to indicate that the draft courts reform (Scotland) bill proposes to move some cases from the Court of Session down to the sheriff courts. As I said, there will be a specialist injuries court, and the clear information from the Scottish Court Service is that the volume that is being transferred is perfectly capable of being soaked up.

We have declining business, both civil and criminal. Although increased business will be

generated in a downward push from the supreme courts, it is all capable of being addressed. That has been number-crunched.

Nigel Don: As a local member, I have no interest in seeing Stonehaven court closed. However, I am now at least reassured that the business can be transferred to Aberdeen without that court being as overwhelmed as it might have been suggested that it would be.

The figure of 97 per cent for the capacity of the court, which Alison McInnes mentioned, is one that I put in print. Unfortunately, however, it derives from the Scottish Court Service giving us information that records every day as a full day, when they are actually fractional days. I am quite clear now that there is, in fact, considerable capacity left in Aberdeen. Indeed, in the last year, Aberdeen and Stonehaven business put together is less than it was the year before in Aberdeen alone. I am quite happy about that.

I wonder whether I might pick up on the issue of transport to court. I am particularly concerned about that in the south of my constituency because it is much more difficult to get to Forfar than it is to get to Arbroath. I also want to pick up on the issue of alternatives to using the courts and recognising that civil work might well be done outside a court in a more local venue. Do you feel that there is the capacity to bring some local business, particularly civil business, back into the community through other routes? People do not want to travel to the city to deal with a local issue if it can be dealt with locally.

11:15

Kenny MacAskill: I fully understand where the member is coming from and his points are well made, as they have been made before by Mike Weir MP and others. There could be some specific geographical issues that the Crown could consider and work with, and the Scottish Court Service will also take them into account.

There are people from more distant parts who will have to go to Forfar when they would have been routed into Arbroath. I know that the geography of the Mearns will give them some challenges. I assure the member that the Scottish Court Service and the Crown Office and Procurator Fiscal Service will take that into account and will work with you and others and the particular individuals concerned.

On the local aspect, I go back to a point I made earlier. Some things will always have to be dealt with locally. Equally, as we move towards summary sheriffs and work on the proposed courts reform bill, we will move towards a more pyramid-like structure that will mean a lot more business being dealt with more locally and more quickly and

efficiently. We are talking about getting the landscape and buildings right, but the intention of the Scottish Court Service and of the Lord President is to ensure that those at the very top deal with the specialist cases that they have the talent and intellectual capacity to deal with, that other matters are dealt with more locally, and that we have the specialisations necessary to deal with domestic violence so that it is not dealt with by someone who is well meaning but has not been properly trained.

If we are talking about matters going out of court, we have to look at technology, but we have to take on board the points about children's hearings and what might happen with adults with incapacity. It is clear that, if we were starting from scratch, we would not put into court someone who is involved with child abuse at the same time and sometimes, in smaller courts, in the same room as someone who has gone to court to adopt a child on the greatest day of their lives. That is the landscape that we have inherited because of the existing court buildings and system.

I assure the committee that the court service is working as best it can to provide for all the new challenges and to make changes. At the end of the day, I also assure the committee absolutely that we are talking about providing for the care and benefit of those who require to be in court because they are victims and witness. We are not just dealing with court closures and court reform; we have also introduced the Victims and Witnesses (Scotland) Bill because we recognise the challenges for those who have suffered and those who require to do their duty as citizens. They all require to be treated with dignity and respect.

The Convener: That has been a long evidence session. I thank the cabinet secretary and indeed committee members and other members for the manner in which they have asked their questions. I will suspend the meeting for eight minutes—that is quite good—and we will then move on to the next panel of witnesses.

11:18

Meeting suspended.

11:26

On resuming—

The Convener: I welcome our next panel of witnesses: Rt Hon Lord Gill, Lord President of the Court of Session; Eric McQueen, chief executive, Scottish Court Service; and Kathryn MacGregor, legal secretary to the Lord President. Thank you very much for waiting. You were slightly delayed because our previous evidence session, which you heard, was quite long.

I know that you wish to make a short opening statement, Lord President.

Rt Hon Lord Gill (Lord President of the Court of Session): Thank you very much for inviting me to this meeting, convener. I hope that I can make a useful contribution to your committee's deliberations.

I think that what you are really looking for from me is a statement of the main principles that underlie the High Court, sheriff and jury reforms, so I will start with that. I will give you the general policy framework that has led to the proposals. I will defer to the chief executive, Eric McQueen, on the detailed statistical and financial questions, because he has all that information at his fingertips.

The background to the proposals is important. Whether it likes it or not, the Scottish Court Service must achieve a reduction in its budget of 20 per cent over the four-year period from 2010-11 to 2014-15. We have no choice in the matter; that simply has to be done. At the moment, 40 per cent of our running costs are tied up in buildings that form the court estate and the very considerable costs of their upkeep and maintenance. Those facts help to set the scene.

That requirement has necessitated that we take a fresh look at the distribution of court provision in Scotland. We have to see whether there are ways in which it can be streamlined and made more efficient and, at the same time, achieve the economies that we have to achieve. As we see it, the way forward is to have dedicated High Court centres in Glasgow, Edinburgh and Aberdeen, with additional High Court capacity in other designated sheriff courts whenever it is needed.

We propose that, as a sort of long stop, there should be an opportunity for High Court sittings to take place not in the three main centres or even the satellite designated courts, but in any other court if I or the Lord Advocate considers that to be in the interests of justice. Therefore, there is quite a bit of flexibility in the proposals. We propose that the changes are phased in during the period from now until 2015.

There is a recognition that the days of the circuit approach to High Court justice have passed into history. At present, 80 per cent of High Court trials are conducted in the three centres of Glasgow, Edinburgh and Aberdeen. Of the remainder, only about half of the cases can be said to be local to the courts in which they are heard.

11:30

There is a considerable opportunity for better case management and more flexibility and efficiency in the disposal of business in two ways.

First, having dedicated centres will mean that there is less downtime. If trials go off or finish prematurely, instead of the court simply stopping for the day and coming back when the next trial is programmed, we can have a running programme in those courts, so that there are no gaps, as there are at the moment.

Secondly, by moving away from the circuit system, we reduce the intrusion that the High Court makes into the sheriff court. As you know, in the days when the High Court went on circuit, other than in Glasgow, it sat in the local sheriff courts in places such as Stirling, Dumfries, Oban and Ayr. That constituted quite an intrusion into the work of the sheriff court, because it meant that during those weeks the sheriff court could not operate to full capacity. There will be a considerable improvement in that regard.

That is all that I wish to say about the planned approach on the High Court side. I would like to say a word about the provision for sheriff and jury trials, because there are many more jury trials conducted in the sheriff court.

The idea is that we should have 16 dedicated sheriff courts that will handle the sheriff and jury trial business. At the moment, those 16 courts account for about 86 per cent of the case load, so it is not all that revolutionary to dedicate those courts as sheriff and jury courts. I hope that, over time, those courts will become centres of specialisation in that form of criminal litigation.

In addition, for flexibility, we propose that other sheriff courts can be used for sheriff and jury trials wherever the sheriff principal considers that it is in the interests of justice that that should be done. The outlying courts, such as Lerwick, Kirkwall, Stornoway, Lochmaddy and Portree, would remain as courts of universal sheriff jurisdiction to hear all shrieval business. That is just a matter of practicality. The plan is to phase the proposal in over a 10-year period.

I think that members will agree that we are proposing a fairly flexible model. There will always be cases that are appropriate for the smaller sheriff courts, and the proposals do not rule out the use of those courts for sheriff and jury trial. The plan is to give the sheriffs principal discretion in the matter, because they know what the local conditions and needs are. In general, though, I would expect almost all of the sheriff and jury work eventually to coalesce in the 16 centres.

Those are the proposals. I would be happy to answer any questions.

The Convener: I know that this will be a less robust session than the one that we had with the cabinet secretary—or perhaps not. We shall find out when John Lamont asks his questions.

John Lamont: I will be on my best behaviour.

Lord Gill: After the cabinet secretary's grilling, I am absolutely terrified.

The Convener: I am sure that you are not.

John Lamont: Good morning, Lord Gill. I refer you to paragraph E of the Scottish Court Service's "Principles for provision of Access to Justice", which states:

"The SCS should ensure that most people will be able to travel to their local court by public transport so as to arrive at the start of the case in which they are concerned, and be able to return home by public transport on the same day."

Two weeks ago, when we heard from Mr McQueen and his colleagues, it was clear that there is at least the possibility that somebody travelling from, say, Eyemouth in my constituency to the court in Jedburgh will have difficulty in using public transport. Indeed, it was foreseen that they might need to stay overnight to ensure that they arrive on time. Do you accept that the proposals cut across the principle in your own document?

Lord Gill: No. It is rather unhelpful to assume that, if a case comes from Eyemouth because a crime is committed there, the witnesses will necessarily come from Eyemouth, too. Even in the present situation, witnesses have to travel considerable distances to courts just because they happened to be caught up in an incident in a particular place.

Our best estimate is that the effects of the changes should be fairly neutral. There are such difficulties at present. All that I can say is that there are difficulties with public transport in certain areas. We recognise that, but that is against a background of much wider access to cars than in the past. That is probably as much as I can say on that. These problems are perennial.

John Lamont: With the greatest respect, that is a very metropolitan outlook on life. In areas in my constituency, there is a real issue with public transport, and the changes, at the least, will make matters much worse. It is true that things are not ideal now, but I want to know whether you accept that the changes will mean that matters significantly deteriorate.

Lord Gill: I acknowledge that there are difficulties. I am not dissembling about that. All that I am saying is that difficulties exist at present. I do not see that the changes are necessarily going to make matters any worse. I accept that they might in individual cases.

John Lamont: Are the changes about saving money or about delivering a better justice system for Scotland?

Lord Gill: The impetus for all of this work arose from the need to save money, as I have explained

to you, but one of the outcomes of the cost constraints that we are suffering from has been to make us question certain assumptions that we would have continued to make in more prosperous times. When we find ourselves having to take a long, hard look at the existing system, certain weaknesses that we had not noticed over the years become obvious and apparent.

My feeling is that a perfectly good intellectual case could be made for the changes even if we were not living in these rather unusual economic circumstances. In a modern Scotland, there is a good case to be made for having centres of specialisation and excellence and making the most efficient use of resources. If we were to sit down today and plan a justice system for Scotland based on a network of High Courts and sheriff courts, it would be nothing like the present pattern, which is based on a Victorian model.

That has been recognised down through the years. When I was a young counsel, I appeared in Dunblane sheriff court, Nairn sheriff court and Kinross sheriff court. All those places have passed into history because it was recognised that they were simply underperforming.

John Lamont: Related to that is the issue of justice centres. It has been suggested that, in my constituency in the Borders, the remaining courts will close and a justice centre will open in Galashiels, and it has been suggested that the same will apply in Fife, Lanarkshire and the Highlands. They do not correspond to the boundaries of existing sheriffdoms. Will you clarify which areas are under consideration for the creation of law centres?

Lord Gill: The proposal that I am speaking to today does not involve the creation of justice centres. However, in the consultation paper that we issued last year, the question of establishing justice centres was foreshadowed. The Scottish Court Service board has no concluded policy decision on that matter; the board has made no decision to establish such centres.

If you are asking me for my own view, it is that the idea is well worth exploring. I think that we ought to look into it and see what the advantages and disadvantages could be. I would expect that over the next year or two the Scottish Court Service board will turn its mind to that and see whether there is any value in the proposal. At the moment, I have a completely open mind on it. All that I am saying is that it would be unwise not to pursue the idea.

Eric McQueen (Scottish Court Service): May I add to that?

The Convener: Yes. I was expecting you to do so.

Eric McQueen: That point is exactly what I tried to explain to the Justice Committee two weeks ago. We are going to use feasibility studies to assess what opportunities and benefits we might get from justice centres. It is our intention to take forward the feasibility studies, engage with partners and bring back the results to the SCS board for a policy decision on whether we might want to go in that direction in the future.

John Lamont: I think that the Law Society for Scotland said at the committee meeting two weeks ago that the logical conclusion of what you propose is having just one court serving the whole of Scotland. How do you react to that? There appears to be a big drive to centralise regardless of the challenges that rural communities face in accessing justice.

Yes, we want to have the best quality of justice delivered in Scotland, but I do not accept that that should necessarily mean centralising all the courts into one body in the Borders or, indeed, as the Law Society suggested, one court for the whole of Scotland. I just do not accept that. Do you have a view on that?

Lord Gill: I cannot imagine the Scottish Court Service board ever reaching such a view on a policy. It is certainly not my view and I think that it might be rather a difficult one to implement. I do not take that as a realistic proposal.

Eric McQueen: There is an irreducible core of buildings that will have to be operated from—there is absolutely no question or doubt about that. No further wave of court closures is planned, but what we will do is look at four areas to see how we can improve the delivery of justice there. That may involve a building or a number of buildings, with television links or other ways of accessing justice. We want to do the feasibility studies to understand all that.

The Convener: Can you clarify whether a justice centre might have satellites?

Eric McQueen: That is what we are looking at as part of the feasibility study. It may be that certain types of court business could be done in different areas. That is what we are exploring in considering the notion of a justice centre and what it would mean for the wider community that it would serve.

Lord Gill: If it is any help, I should mention that, when my colleagues and I were working on the civil courts review between 2007 and 2009, we visited a justice centre in England to see how it worked. I have to say that there are some considerable advantages in the idea, but whether it can be adapted to Scottish conditions is another matter—that remains to be seen.

11:45

Sandra White: Good morning, Lord Gill and Mr McQueen. I thank Lord Gill for his very concise contribution. It was short, but it was to the point, and I quite like that rather than a rambling one.

The Convener: Well, you should not ask a rambling question in that case.

Sandra White: I am not asking a rambling question—I am just thanking Lord Gill for his concise contribution.

One interesting aspect of the evidence that we have had from witnesses—not only from lawyers, but from others—is access to justice for ordinary people.

I was interested in Lord Gill's comment that having three dedicated centres for High Court trials would lead to "less down time", "no gaps" and the implementation of "a running programme".

We have heard from witnesses that the court process sometimes does not use time efficiently. Lord Gill, will you expand on your comments and tell us what you mean? How would the changes affect witnesses? I imagine that there would be an improvement for witnesses who are going to court.

Lord Gill: The programming of trial business in the High Court is a nightmare because one can never predict the length of a trial. The only thing that can be depended on is that the unexpected will happen. The accused might plead guilty halfway through a trial, but by the time they decide to do so, the witnesses in the next case have all been sent away because the previous case was expected to run on. Those sorts of ups and downs happen all the time.

With sittings in an outlying court, there is a tendency to allocate trials—there may only be two, three or four—to specific days. That is just the way in which the planning must be done. If cases go off, one tends to find that the court stops for the day and comes back on the following day.

We believe that, if we can focus all the work on three centres, it will give us tremendous flexibility. There will be a pool of judges and prosecutors on hand, and panels of prospective jurors will come in day by day, some in the morning and some in the afternoon. That will offer much more flexibility, and planning will be much easier.

Sandra White: That is fine. Thank you very much. I may come back in later.

The Convener: I will have to decide on that. I have a tiny modicum of power here, although it is shrinking by the week. Roderick Campbell will go next, followed by Graeme Pearson.

Roderick Campbell: I will ask a couple of quick questions for the record.

First, there are concerns about the local press's ability to cover court proceedings if courts are further away. Perhaps Mr McQueen could comment on that. What do you advise?

Eric McQueen: The dedicated court reporter is certainly a dying breed in a lot of areas. The press are now making much more use of press associations to get the stories from courts.

In the shorter term, in any areas where court closures are taking place we will work with the local press to find out whether there is a different way for us to communicate with them—for example, electronically. Our longer-term ambition is to provide online access for the media to secure information about cases and court outcomes. That plan is much more about moving towards an online facility to allow the media to access information in real time.

Roderick Campbell: Secondly, can you update us on the strategy for reducing the number of police witnesses who are called to give evidence?

Eric McQueen: I have two specific things to say on that, one of which I covered in my submission.

One of the first—and very simple—things that we will put in place this year is a scheduling system for police officers. At present, trials are simply allocated at a time that suits the court, irrespective of whether the relevant police officer is on duty or off duty. If he is off duty or due to start a backshift, there can be a significant overtime cost to the police. We are now putting in place an electronic schedule that will try, as far as possible, to match trial times with the availability of police witnesses.

The second thing, which I think will have the biggest effect, is a pilot that we are now rolling out with Police Scotland, to stop police officers having to sit about court waiting rooms all day waiting for trials that might never take place. The standby arrangements that we will have in place with the police will allow police officers to be deployed to the local police station and to come to court only when it is known on the day that the trial is going ahead; otherwise, they will be stood down and will be able to be put back into operational business. That has been a successful pilot that we have had running across Strathclyde, and Police Scotland now wants to roll it out across the whole country. The police think that it will be a significant step in reducing a lot of the current downtime for police officers.

Roderick Campbell: I believe that you will have seen a written submission entitled "The Impact of Court Closures on Cupar". It concludes rather strangely by saying:

"The SCS consultation cited six job losses and operating costs saved of around £92,000 per annum resulting from the closure"

of Cupar sheriff court. That is incorrect, is it not?

Eric McQueen: First and foremost, there will not be any job losses at any of the courts when the closures take place. In virtually every case, staff will move to the court where the business is going. Sometimes, due to individual preference, staff will move to another court. However, we are absolutely clear that there will be no job losses at all as a result of closure.

We have seen the document to which you refer, which was produced by consultants on behalf of the Fife and Forth Valley community justice authority, and it is an interesting document, which makes a whole range of associations with regard to the cost transfers that might apply and the jobs related to the criminal justice system. We would have some difficulty in relating those directly to the closure of Cupar sheriff court. Our view is that people will still be prosecuted in Cupar and that there will still be a need for civil litigation in the Cupar area. People will still require the same professional legal advice, and social work will still provide the same pre-court services to accused persons in Cupar and the same community disposal work afterwards. What we are doing is moving where the cases are held the short distance from Cupar to Dundee, so we struggle to see the logic and sense of the suggestion that it will constitute a £2 million hit on the economy of Cupar.

Roderick Campbell: If the court practitioners are in Dundee, or wherever they are spending money, there might well be a transfer of money from the Cupar economy to the Dundee economy.

Eric McQueen: There may be a transfer, and that is why we have said that, although there will be an impact, it will be minimal and short term. Clearly, others have different views, of the kind that are portrayed in that paper.

Roderick Campbell: Without getting too het up about methodology, the thing that I find most difficult to grasp is whether the impact will be short term or permanent, however much it is. Why do you say that it will be purely short term?

Eric McQueen: The legal market will rework how it provides the services. I do not think that there is a suggestion that all the solicitors for Cupar will close their offices and move en masse to Dundee. Their models will change and vary with business, as happens in the private sector. We do not envisage a massive move either of legal services or of social work services from the Fife and Forth Valley area to Tayside, but in future there will be different ways of working and operating.

Roderick Campbell: What is plan B if those plans go awry for whatever reason? You have already suggested that any feasibility study for

justice delivery in Fife would include north-east Fife. How would the Court Service cope if unforeseen circumstances should arise or things do not go quite as well as they could? Is there a plan B if things go wrong?

Eric McQueen: If the recommendations are rejected?

Roderick Campbell: Yes.

Eric McQueen: We have tried to make clear in the consultation our view that the status quo is not an option and that simply carrying on as we are now is not something that we can envisage, irrespective of the decision of the committee or of the Scottish Parliament.

What we are trying to find out is whether there is a way of designing a 21st century court service with investment in the right places and in technology, so that we can reap the benefit of the justice reforms that are coming our way. However, if the view of Parliament is that we should continue to operate from a 19th century court estate, that is exactly what we will do. We will continue to invest in buildings that we think are inefficient and not well used, and to take big risks with backlog maintenance, and we will have to look hard at the head count of the staff in the organisation to reduce costs.

All of those things would have an impact on sitting days and our ability to put through justice, and our view is that we would be unable to make the radical and transformational change that we want to make and that we would be tied to operating the system as best we can, with all the inherent risks that that carries.

Graeme Pearson: Good morning. I want to cover a couple of areas with the Lord President and, if there is time, one area with Mr McQueen.

Lord Gill, you have said that you have taken a long, hard look at the current situation and you have obviously considered the detail of the proposals. How much time have you spent looking at the proposals? What criteria did you apply in making your judgment on the impacts? Finally, how comfortable are you with the outcome and the recommendations in the proposals?

Lord Gill: This has probably been the most extensive consultation exercise that I have ever experienced. Initially, we had discussions at board level with the senior management to find the main areas where change could be made. When we were beginning to formulate some tentative ideas, we held a series of roadshow events throughout Scotland not just for lawyers but for just about everyone involved in the justice system in one way or another at which those ideas were extensively discussed. In the meantime, Scottish Court Service staff were building up a statistical and

financial case for each of the courts that examined costs and areas where savings could be made. A lot of work went into that very thorough exercise, which led to the publication last December, I think, of “Shaping Scotland’s Court Services”. We then consulted extensively with the sheriffs principal, who have a particularly direct interest in the issue, and the whole matter was discussed extensively at board level.

I hope that I have managed to explain that we have gone about this in a very thorough and committed way and that the proposals have been thought about very carefully. Of course, we recognise that all change has its pros and cons and its advantages and disadvantages but, on balance, our considered view is that this is the way forward.

Graeme Pearson: In the context of the proposed changes, much has been said about the culture within courts and what has been called the people part of these changes. As I said earlier, victims and witnesses have given not very positive accounts of their experience with the courts. How confident are you, Lord President, that you can change the technology to the extent that is necessary for success and still deliver proper trial management and access to justice for the general public?

Lord Gill: Long before I was Lord President—and my experience goes back to the 1960s—I was concerned about how court users were dealt with in our court system. Things have come on so much in recent years. We are now sensitive to the needs of vulnerable adults and witnesses and have put in place systems and facilities to enable children to give evidence remotely. The court administration is now much more conscious of court users’ needs and the sensitivities in dealing with disadvantaged witnesses and children and, in respect of the sheriff courts that are going to be closed, we have said that we will provide a videolink to the court to which the work is being transferred.

All the measures will mitigate the impact of the changes. I assure the committee that the Court Service is extremely sensitive to the needs of court users who have special needs. The whole atmosphere is different from what it was in the old days.

12:00

Graeme Pearson: In that context, I have a supplementary question. Trials often occur with juries present in which the nature of the accused presents special challenges and fears that evidence might be tampered with or threats might be made. You are narrowing down the opportunities for High Court trials and sheriff and

jury trials to take place in particular locations, so will there still be flexibility to deal with those challenges if and when they come up in future?

Lord Gill: I think so. It is much easier to guarantee that with highly focused specialist court centres; it is not so easy to do in outlying courts.

If I may, I will go back to what you asked me about earlier. Another huge change in the culture has been in the protection of complainers in sexual offence trials, who are protected to a degree that was never the case 30 or 40 years ago. That has been a major improvement in our system.

Graeme Pearson: I have a final question for Mr McQueen. You probably heard that in the earlier evidence session East Lothian Council and Scottish Borders Council raised questions about the impact of the proposals on their services. A view was expressed that although you might well deal with costs within the Scottish Court Service’s budget, those costs will then be faced by other public services which, on some occasions, might spend more money to cover the savings that the Court Service will achieve. It was particularly noticeable that East Lothian Council and Scottish Borders Council felt that the consultation process had not been effective and that their voices were not heard to the extent that they would have wanted. Does that cause you concern? Do you have an opportunity to go back and deal with that issue?

Eric McQueen: It always causes me concern when people feel that they have not truly been part of a consultation and I will certainly go back and carry on discussions with both councils, as I have done in recent weeks. We tried to involve the councils at a very early stage by writing to all the chief executives way before the consultation, inviting them to all the dialogue events and engaging with the staff. We have had a level of engagement with them from then on in.

I have had discussions with the chief executives of each of those local authorities and assured them that what we want to do, if these proposals are accepted and taken forward, is to look at how their services integrate with the courts in a different area. For example, do social workers have to travel physically to a court or is there a different way of doing that business? Part of that is about our commitment to installing videolink facilities in those areas and how we can help to change how local authorities integrate with the courts. Are there things that can be done to reduce concerns about the costs that might be transferred to them? There are a lot of opportunities for us to address such issues. Certainly, I am working with the chief executives of the two authorities that you mentioned and I will

carry on doing that to reduce any concerns that they have about knock-on costs.

Graeme Pearson: They have mentioned those concerns to me during the past week.

The Convener: On the issue of videolinks, the cabinet secretary said that something would start in June and that he would be able to provide us with information about where videolinks will be set up in areas in which courts are closed. We want to have that information by next week. Will it be available before the debate?

Eric McQueen: If the cabinet secretary said that it will be available, I am quite sure that it will be. Let me be clear what we are talking about—

The Convener: We will not be watching the world cup; we just want to know. It is a serious point. We are being told that if we vote for the proposals, certain courts will be closed as of early next year and into 2015, but that we are not to worry because videolinks will be set up in the courts before they close, if they close. We need to know that.

Eric McQueen: Our absolute commitment is to provide that in every court by the time that it closes. There is no doubt about that.

The Convener: If they close.

Eric McQueen: Yes. We have said that on a number of occasions. We have also talked about—the cabinet secretary talked about this earlier, too—what is being installed in the north of Scotland, which is the next stage of videoconferencing. Using the cloud technology—

The Convener: Sorry?

Eric McQueen: The cloud technology.

Chic Brodie: I can explain it to you.

The Convener: Clouds? I am out of my depth now and I do not want to know about it.

Eric McQueen: I am a bit like you on that one, to be honest. It is the next stage of technology to help us with videoconferencing and help us take it out to wider areas. We have a fairly big programme already on how to increase the videoconferencing capacity and the absolute guarantee is that, if court closures proceed, we will install a videolink facility in those areas by the time that they close.

The Convener: There are difficulties with videolinks, as the committee heard in its evidence on the Victims and Witnesses (Scotland) Bill. The facility is not all that it is made up to be, because sometimes we need a person in front of us to determine the validity or level of credibility of their evidence.

Eric McQueen: We fully accept that videoconferencing is not the perfect solution, but we also fully accept that it can be a very good solution for the vast majority of cases. Technology has come on in leaps and bounds in recent years from crackly screens and slow-moving images to things that pretty much replicate real life. We took the senior judiciary to demonstrations of the latest technology and it has a strong view that videoconferencing is the way forward and that it should be in use more quickly. The senior judiciary recognises that videoconferencing has a real place in the court environment.

In recent months, we have started to move criminal appeals to be done by videoconferencing. Rather than transporting people from all over Scotland down to Edinburgh for criminal appeals, such appeals have started to be done by videoconference. We have been working with the Scottish Prison Service to install video facilities in Scottish prisons and we are moving to a position in which everyone in prison will participate in criminal appeals by videoconferencing.

We want to extend that to appeals by people who are on bail, so that people will simply go to their local sheriff court—whether it is in Aberdeen, Inverness or Dumbarton—and participate in a videoconference with the appeal court in Edinburgh.

Videoconferencing is not just on a wish list for the future; we are integrating it incrementally into the way that we deliver our service.

The Convener: I will have to learn about clouds at some point.

Lewis Macdonald: Lord President, I apologise because I missed the opening part of your remarks, but I heard you say that a perfectly good intellectual case could be made for the changes, regardless of the budgetary element. Would it be fair to characterise that intellectual case as a case for greater specialisation and centralisation in our courts?

Lord Gill: I hope that there will be greater specialisation in the courts—we badly need that. A key proposal in the civil courts review is to have specialist sheriffs in various subject areas. I honestly cannot see the case against that. It seems absolutely self-evident, in this day in age, that one should be able to specialise in the justice that one provides to the public.

Lewis Macdonald: I note that you are firmly for specialisation but not necessarily centralisation.

Lord Gill: No—certainly not.

Lewis Macdonald: That is the point to which I sought to come. On the same basis of intellectual rigour, do you accept the argument that there may be a tension between increasing specialisation in

function and maintaining local access to justice in communities—

Lord Gill: I can see that.

Lewis Macdonald: If so, do you feel that the balance in the proposals is correct?

Lord Gill: If we were to keep the present pattern of courts it would be impossible, in my considered view, to have specialisation in the smaller courts. A volume of work is needed to do that.

We acknowledge the value of local justice and the idea that there should be a pattern of courts distributed throughout Scotland—that is a given, as far as the Court Service is concerned. The problem with the courts that have been proposed for closure is that they are underperforming. They simply are not performing efficiently. More than half of them do not sit for more than three days a week and the volume of business that they do, when compared with the cost of maintaining them, is in our judgment disproportionate. That is the difficulty in the outlying courts.

Lewis Macdonald: I appreciate that, but I am sure that you will appreciate that the same comments could be made about quite a number of outlying courts, as you described them, which are not subject to closure proposals. I suspect that that is the case in every sheriffdom, but certainly in the larger rural sheriffdoms there are a number of courts whose performance by the same measure is poorer than that of some of the courts that are proposed for closure. Can you explain to the communities affected by the proposed closures of the Stonehaven and Arbroath courts, for example, why they are to be closed rather than other courts?

Lord Gill: The idea is that if we close a court like Stonehaven and transfer the business to Aberdeen, that in effect will mean that the Aberdeen court will work more efficiently because it will have less downtime because of the transfer of the work. That is the idea behind all this.

Lewis Macdonald: But we heard from Mr McQueen and his team at the committee meeting two weeks ago that, far from hitting a target of 16 weeks for calling a trial, the period for the court in Aberdeen is more like 23 weeks. I therefore wonder how adding business will increase the efficiency of a court that is already clearly struggling to meet all its objectives.

Lord Gill: I am not sure that that is entirely right. I defer to Mr McQueen's judgment on statistical matters, but my understanding is that existing provision in the courts that are not to be closed is more than adequate to accommodate what will come from the courts that are proposed for closure, bearing in mind that the courts that we

propose to close account for less than 4 per cent of the civil case load of the sheriff courts in Scotland.

Lewis Macdonald: May I remind you of another comment that Mr McQueen made two weeks ago in relation to the Borders? He said:

"We are trying to look at how we can best deliver justice in the Borders by having one central hub, which will be the main place where we deliver that business."—[*Official Report, Justice Committee*, 21 May 2013; c 2807.]

Assuming that that is the principle and that it applies to and underlies the other feasibility studies that are under way, do you anticipate, as Lord President, that the consequence of further examination will be further specialisation and therefore a further round of closures of local courts?

Lord Gill: I would hope that there will be further specialisation as the years go by, but whether that will involve centralising to a greater extent than we now propose is an entirely different matter, and it remains to be seen.

Mr McQueen can answer for himself, but when he was talking about the Borders problem, I think he was saying that one possibility that could be pursued by way of research would be to have a justice centre somewhere in the Borders. However, as I have tried to emphasise, that is no part of these proposals.

Lewis Macdonald: One of my colleagues quoted the figure of £53 million for the backlog maintenance cost across the estate. One of the witnesses who made a submission to the consultation suggested that some £60 million has been spent on upgrading Parliament house over the past six years. Can you confirm those figures? Are people right to draw the conclusions that they have done about the Scottish Court Service's priorities over that period?

Eric McQueen: I am happy to confirm both those figures, but I am also happy to give a bit of explanation. When I came to the Justice Committee last November to look at the financial planning, we talked about backlog maintenance for the Court Service, the cost of which at that time was about £57 million. Thanks to support from the Justice Committee, we got additional funding last year, which we ploughed into dealing with the backlog. We have brought down the figure for the backlog to about £53 million.

Backlog maintenance is a big issue for every organisation that has a large property portfolio. We carry out periodic condition surveys of all our buildings to find out, in terms of the Royal Institution of Chartered Surveyors' building standards, what work is required to bring them back to a satisfactory condition. That gives us the

estimates that allow us to plan for future years and to decide where to prioritise maintenance.

We have to carry some risk on some of those things, because we must prioritise which of them are the most important in terms of legislative compliance or health and safety. That means that we sometimes do work to replace a building's electrical circuit boards, for example, although people might prefer us to spend money on improving things for victims and witnesses. However, that is the sort of decision that we have to make in running a big, complex estate. I am quite clear about where we are with backlog maintenance and why we are in that position.

You mentioned Parliament house. We are just coming to the end of the Parliament house contract; in total, the budget for it was £65 million and I think that we expect the final spend to be in the low £60 millions. The project has been delivered on budget, on time and on quality. How it has been delivered is a tribute to the Scottish Court Service.

I will give a potted history of the Parliament house situation. About 10 years ago, a scheme was in place that was going to run to way over £120 million. That was brought to a stop to allow us to reassess things and to consider the best strategy. At the same time, we looked at a business case for moving away from Parliament house altogether and having a development on a greenfield or brownfield site on the outskirts of Edinburgh.

The major problem with Parliament house is that it is a grade A listed building and is a site of special historical interest. It should be a landmark building for the whole of Scotland.

12:15

The Convener: I am glad that you did not move to a greenfield site. It would have been a bit like going to B&Q. I do not mean to malign B&Q, but I like the old Parliament house building.

Eric McQueen: Had the decision been taken to move out of Parliament house, that asset would have been left with the Scottish Government. The infrastructure and the services were shot, and there was no fire certificate in place for the building. It would have cost as much to move out as to redevelop the building. From the point of view of the benefit to the nation and to the Scottish Government's purse, the investment of the £65 million in Parliament house over that five or six-year period was quite a sensible business case decision.

Lewis Macdonald: But you would accept that the assets that sheriff courts represent for local

communities are often of comparable value to the value that you place on Parliament house.

Eric McQueen: They are often of comparable value, which is why we try to carry out planned investment in them in the same way, so that we keep them in the state that they deserve to be in and which is right for them.

The Convener: I was distracted by the idea of a move to a greenfield site. A new building next to KFC would not have had the same status.

Chic Brodie: Good morning. This has not been handled very well, has it, Mr McQueen?

Eric McQueen: It depends what you are referring to.

Chic Brodie: The fact that you have had to have meetings recently with the chief executive of East Lothian Council and Scottish Borders Council—I will come back to some of the detail—suggests to me that, had those discussions taken place before you produced your report, there might have been less of the angst that I encountered at a public meeting, and there might not have been a need for a forensic analysis by an independent accountant in the case of Haddington court.

Eric McQueen: You could suggest that that has been the case but, equally, you could suggest that we have had a very good process of dialogue and consultation, as the Lord President explained. In any situation in which there is a difficult decision to be made, it is always the case that as the decision point approaches, the heat gets turned up. That is what we are in the midst of now.

Chic Brodie: That is certainly not the way in which I ran my businesses, but there you are.

On the Haddington court situation, there were revenue expenditure savings of £81,000, of which £34,000 was a non-cash element—in other words, depreciation.

Eric McQueen: That is correct.

Chic Brodie: I understand that that £47,000 will be covered by East Lothian Council.

The big issue is a capital saving of nearly £500,000 on the Haddington court building. When did the Scottish Court Service last have an independent review carried out of the state of the building?

Eric McQueen: We commission independent condition surveys of all our buildings. I could not tell you precisely when Haddington court was last in that cycle, but it—

Chic Brodie: Would it surprise you that I was told—

The Convener: Just a minute—let the witness finish.

Eric McQueen: We hold a cycle of independent condition surveys of all our buildings.

Chic Brodie: Would it surprise you to know that a check on the state of the building was done just five years ago and that a figure of £500,000 might seem a bit extreme?

Eric McQueen: I am not aware of what the position was five years ago. That is the first that I have heard of it.

Chic Brodie: I will ask a few wider questions, if I may.

Eric McQueen: I am sorry—I would like to make one general point that is worth making.

We have tried to approach the issue with integrity and professionalism. We have not looked at costs or financial savings in an attempt to somehow bring this together as part of a business case. My point relates to one that Lewis Macdonald made earlier. We have tried to look at the issue sensibly by thinking about what the ideal model is for a future sheriff court estate rather than about what buildings we should close to make a financial saving.

That is why we have looked at courts that sit for fewer than three days a week where we think that the travelling distances are reasonable, and courts that sit within 20 miles of another sheriff court where we believe that it can comfortably take the capacity. That is the rationale that we have used. We have not included or discounted sheriff courts because they have a small saving or a large saving. In some cases, the saving is quite small. Courts are not included for financial reasons. This is not about trying to produce a case for the closure of a particular building. I make that point to make it clear that we have not done a separate financial exercise just to try somehow to justify the recommendations.

Chic Brodie: I understand. Thank you for that. Far be it from me to question your integrity, and I am not doing that. I just believe that early consultation, efficiency, openness and transparency might get us to the end result, and I—

Eric McQueen: Sorry—can I just clarify that that is exactly what happened? When we came out with the consultation document back in September last year, exactly the same figures for all the courts—on the savings, the costs and the impact—were part of the discussion and the consultation. There is no question that we have come out late with a different or revised set of figures.

Chic Brodie: To my mind, that does not sit well with your having to have conversations with council chief executives.

Eric McQueen: I understand what you are saying.

Chic Brodie: There is a suggestion that some justices of the peace may resign because they are not prepared to travel. That would have wider implications for statutory declarations and passport applications. What consideration and conversations took place with the JPs across the whole programme?

Eric McQueen: We have had discussions over the past two years with the Scottish Justices Association, which represents the JPs in Scotland, about the proposals and the closures. I attended the JPs conference in Lothian and Borders to speak to them specifically about the proposals. You are right—JPs have raised a lot of concerns. Understandably, they are concerned about the closure of the Haddington court, but it has not been for a lack of dialogue and discussion with them.

JPs are appointed not to a sheriff court but to a sheriffdom, and within the terms of their jurisdiction they can serve at any court in the sheriffdom. Clearly, most people will serve at the sheriff court that is closest to them, but our full expectation is that the revised JP business court programme in Edinburgh, if it takes in the Haddington business, will be open to the same JPs.

The same concerns were raised at the point of unification, when we closed a range of district courts. People were concerned that justices of the peace would no longer sit because the business was moving to a different area. What we found was that, although there was a level of turnover, many of the JPs carried on and new JPs came into the programme. We have dealt with similar issues in the past and we have had quite a good, positive result.

Chic Brodie: My last question is for Lord Gill. Some time ago, you said:

“Radical changes are imminent in the provision of both civil and criminal justice.”

Were they looked at at the same time as the changes to the Court Service?

Lord Gill: The whole exercise that I have been talking about today has been conducted against the background of the court reform proposals. My view is that the proposals that I am speaking to today will greatly assist in the implementation of the court reforms.

Chic Brodie: Thank you.

Alison McInnes: Good morning. I have two general questions and I will then ask a couple of specific questions if I have time.

In a democracy, justice needs to be done and to be seen to be done. You said in responding to John Lamont that you would never have only one court, but I am genuinely interested in what you think would be the optimum number. Are there any dangers for society in justice being delivered remotely? What safeguards do we need in the court system?

Lord Gill: It is quite likely that, 20 or 30 years down the line, the landscape in the courts will be very different from what we are talking about. That is just what happens in a changing world. I predict that there will be much greater use of remote access to the courts as the years go by. It is the coming thing and it is to be found in many other jurisdictions in the world. At present, all that we are putting forward is a proposal that appears to meet the needs as they are in 2013. I imagine that circumstances will continue to change over time.

Alison McInnes: Do we need any checks and balances in the system?

Lord Gill: It is perfectly possible—I am not arguing for this; I am just saying that it is possible—to have a system that is based entirely on remote access to courts. I am not saying that that is a good idea, but the technology exists. However, I think that Scotland will always want to keep the local link, and I predict that there will always be sheriff courts dotted around the country, in locations where the greatest need exists. That is why Livingston was created as a court centre.

Alison McInnes: You have touched on my second point, which is about videolinks. Whenever problems were raised, Mr McQueen and the cabinet secretary assured us that videolinks would solve them. Is there not a particular role for the court? You said that you think that all the work could be done remotely, but surely the court has a particular, special role. Is there not something about drawing people into the court to carry out justice?

Lord Gill: Yes, I agree with you entirely. The only point that I made was that the technology exists for remote access. I am not saying that I am in favour of it.

Alison McInnes: You said that you hoped that, over 10 years, you would develop centres of specialisation. Would each of the 16 courts have all the specialisations?

Lord Gill: That is the plan.

Alison McInnes: You said that you would give sheriffs principal the discretion on that.

Lord Gill: Yes. In each sheriffdom, the sheriff principal has his finger on the pulse daily. We have tried to build some flexibility into the proposals. We are not rigidly saying that certain cases could happen only in certain courts; we are saying that, if the need should arise, the sheriff principal should have the flexibility to allocate a case to another court.

Alison McInnes: Right—however, the sheriff principal will not have the flexibility to determine what specialisations are developed.

Lord Gill: No. The sheriff principal will obviously have a big say in establishing the various specialisations in his sheriffdom. We would look to his judgment in the matter. We want to have specialisation in all areas such as family law, commercial law and child law—that sort of thing.

Alison McInnes: On the High Court proposals, you said that you would consider sometimes having cases elsewhere in the interests of justice. Will you give examples of what that would mean?

Lord Gill: In the proposals, we have three designated courts in which we will concentrate High Court work. In addition, there is provision to farm trials out to what one might call satellite courts—sheriff courts that are within easy reach. If we are talking about Glasgow, for example, the obvious one is Paisley. However, we are also saying that the Lord Justice General and the Lord Advocate will have the power to allocate trials to courts beyond even that range of overflow courts, if the need arises.

Alison McInnes: In what circumstances might the need arise? That is what I am trying to establish.

Lord Gill: One thought that comes to my mind is that we could have a trial in which there was some intense local feeling and it would be in everyone's best interests if it were not heard in the area in which the crime was committed—I am speaking purely theoretically. That is the sort of situation in which we might say that, because the trial might take a month or two, it would be best to farm it out to a sheriff court that is not on the list. In that way, the trial could take place on its own without clogging up the system in other courts.

Nigel Don: I will start with Mr McQueen. As I indicated the last time that we discussed the subject, we will have to take on trust the capacity of Aberdeen to take Stonehaven business. I understand that; I have now seen the numbers. However, my constituents in Stonehaven will not regard that as an ideal arrangement, and I need to disagree with you, although I can see your point of view.

I welcome the idea that there will be a videolink at Stonehaven and I ask where else there might

be a videolink in an area such as the Mearns—others have their own areas, of course.

I will pick up on job losses. I do not want to talk about individuals, as that would not be appropriate. I am sure that, in principle, you meant precisely what you said—that there would be no redundancies and that people could move. If there are people for whom that is not sensible in practice, what will you be able to do for them?

12:30

Eric McQueen: We are working very closely with the trade union side and with every member of staff to find out what the right option will be for them. Our first principle is that we would like staff to move with the work, and we have been able to achieve that for the vast majority. Other staff might prefer, whether for travel or personal reasons, to move to a different court. We have put arrangements in place to make that happen for the small number of staff who want to do that.

If we have staff—I think that one person might fall into this category, but I do not want to go into individual areas or whatever—who genuinely believe that a move to a different location is not right for them, we may help them to try to find a way to leave the organisation early under a voluntary-type scheme. We would not push that at all and that is not a priority or an issue for us. That would happen only if the individual or the trade union side explicitly felt that that was right for the person. However, in 99.9 per cent of cases, we will move individuals to a location that works best for them.

Nigel Don: Let us hope that we do not have to return to that issue—we will see.

It is clear that, if the Stonehaven court is closed, we will have to worry about the building. I have no doubt that we will have lots to say in discussing that. Does Lord Gill see any scope for civil matters in particular coming back into the community? I do not think that I am the only person who feels that some of what goes to court could equally well be sorted almost in a solicitor's office if all the parties were there—or possibly in a local hall, if we really needed a public building—and that there is absolutely no need to disappear off to a court, local or otherwise.

Lord Gill: I agree. In our civil courts review report, we did not argue in favour of compulsory mediation or compulsory alternative dispute resolution. We thought that that was not such a good idea. However, we said that every encouragement should be given in the court system to get cases out of the court and into other forms of dispute resolution, such as mediation.

The role of the summary sheriffs will be vital because, as they will deal with low-value claims, I expect that one of their initial tasks will be to adopt streamlined procedures that are as informal as possible without prejudicing the just solution of a case. It will be up to summary sheriffs what they make of the job, but there are opportunities to deal with small claims in a completely new way.

Nigel Don: Might that include summary justice going to the claim rather than the claim having to come to it?

Lord Gill: That certainly was not a firm proposal in our review report, but I can see that that would be a very real possibility and I do not rule it out. Nothing in the law would prevent that, as far as I can make out.

Nigel Don: That is great. Thank you. I said “summary justice”, but I meant summary sheriffs, of course.

The Convener: Further to that, I understood from Sheriff Drummond that we were not just talking about ADR or mediation and summary sheriffs, and that a change in the law would be required to allow a sheriff to say, perhaps with the sheriff principal's leave, “This is a court for the purposes of this, not just for evidence taking.” Will you clarify the position for me? What is the status? Can a sheriff currently say that the harbour at Eyemouth or the village hall at Broughton is a court for such purposes?

Lord Gill: I read Sheriff Drummond's evidence and enjoyed it very much.

The Convener: I knew that you would.

Lord Gill: He made the point that, instead of asking the litigants to go to the court, the court should get out and go to the litigants. There is a great deal in that, particularly in a rural sheriffdom such as his. He suggested that that would require legislation, but I am not sure of that. However, the matter is being investigated. It was discussed in my private office the other day, and we are looking into it.

The Convener: That is excellent. I knew that Sheriff Drummond would be worth his weight in gold in coming to the committee.

I will conclude the session, which has been very long. I thank you for giving evidence and thank committee members for their questions. I suspend the meeting for three minutes to allow the witnesses to move out.

Lord Gill: Thank you to the convener and the committee for your courtesy.

12:36

Meeting suspended.

12:41

On resuming—

Petitions

Justice for Megrahi (PE1370)

The Convener: It has been a long morning. Item 5 is on two on-going petitions. The first is PE1370, by Justice for Megrahi, calling on the Scottish Parliament to urge the Scottish Government to open an independent inquiry into the conviction of Abdelbaset al-Megrahi for the bombing of Pan Am flight 103 in December 1988.

You will see from paper 3 that the petitioners are asking the committee to write to the Scottish Government to ask whether it agrees with the petitioners' claims that it has powers under the Inquiries Act 2005 to appoint an independent investigator and, if so, whether it would be willing to do that to investigate the petitioners' allegations.

I make a declaration that I have signed up to the Justice for Megrahi campaign.

John Finnie: I will comment on the very useful paper that has been provided by the Justice for Megrahi committee. I know that the paper is on public record but, with the committee's indulgence, I will quote from some of the passages that are important to me. They relate to the comment that the Justice for Megrahi people

"never have asked the Scottish Government to investigate these matters for themselves."

The Convener: Where is that in paper 3?

John Finnie: It is on page 4, in the paragraph under the heading "The Justice Directorate". Moving to the next paragraph, we should be concerned if the Justice for Megrahi people are concerned that

"the Justice Directorate is consciously misconstruing our request".

It is helpful that there is an acknowledgement in the following paragraph that the Government

"admitted that ... such powers"

of investigation exist

"under the ... 2005 Inquiries Act".

An important point is made in the section that is headed "Reflection", on page 8. Referring to the case, it says:

"It poses profound and basic questions we ignore at our peril, namely: what do we perceive justice to be, what role ought it to play in our society and whom should it exist to serve?"

The next paragraph refers to

"one misguided decision in a showcase trial."

There is no issue that I am asked about more when people ask me in conversation what committees I am on and I mention that I am on the Justice Committee. People always have a view on the issue and, almost without exception, that view is summed up by the phrase

"one misguided decision in a showcase trial."

I could go on at length. The secretary to the Justice for Megrahi committee, Robert Forrester, poses an interesting question when he talks about the

"Standards of Professional Responsibility and Statement of Essential Duties and Rights of Prosecutors"

on page 10 of paper 3. What avenue of redress is there? It is clearly a matter of public concern if eminent people such as the Justice for Megrahi people feel compelled to put such phrases in a public document.

With regard to the covering paper from the clerk, I certainly support the idea of writing to the Crown Office and Procurator Fiscal Service to ask for comment on the matters that are outlined in paragraph 10 on page 2 of paper 3. I hope that the committee supports that action.

12:45

Sandra White: I hear all that John Finnie has said. Obviously, I am quite familiar with the petition, as I was a member of the Public Petitions Committee at that time. I note that page 2 of paper 3 states:

"JFM's allegations are being taken forward by the police and investigations are ongoing."

Do we have an update on that? Is that what John Finnie was talking about?

The Convener: Sorry, do you want to say a bit more about that, so that we have it on record?

Sandra White: Can we have an update on where the investigation is? I think that the committee wishes to keep the petition open, but in what terms could we write to the COPFS about that? I am not sure about the proper procedure, but I do not think that our committee can ask for an investigation into allegations. However, we could certainly write to the Crown Office about some of the issues.

The Convener: Sorry, I am having words with the clerk. I wish that I had one of those earpieces that the BBC people have, as I am having to lean over to find out what action is open to us.

Roderick Campbell: I hear what John Finnie and Sandra White say, but I am not happy about writing in terms that ask the Crown Office to account for public criticism by JFM. I am not sure

that I want the Justice Committee involved in that spat.

The Convener: I agree, but what do you think we ought to do?

Roderick Campbell: To be honest, I am fairly happy with suggestions b, c and d in paragraph 10 of the paper.

John Finnie: I hear what Rod Campbell says, but the issue is a matter of public protocol and how people respond. We need to be reassured that, if a citizen—never mind an organisation—tenders a confidential matter to the Government, the Government will not, as is asserted here, go public with it in a newspaper article.

Suggestion c in paragraph 10 suggests that we ask the Government

“whether it will keep JFM informed of developments in the investigation of their allegations”.

That is entirely in line with the good practice that we have heard about in relation to the Victims and Witnesses (Scotland) Bill, so that should not be in any way challenging.

The Convener: Rod Campbell said that he is not unhappy with writing to the Crown Office and Procurator Fiscal Service to ask

“what resources have been allocated to the investigation of JFM’s allegations; ... whether it will keep JFM informed of developments in the investigation of their allegations; and ... whether it has instructed the police on how to proceed with the investigation into JFM’s allegations.”

Roderick Campbell: Yes, I am happy enough with that.

The Convener: It seems fair enough that we write about that to the Crown Office.

The paper suggests that we consider

“whether to write to the Scottish Government on behalf of the petitioners asking for comments on its powers to appoint an independent investigator”.

If we ask simply for the Government’s views, that will get the issue shot of once and for all. Either the Government has the power or it does not have the power. What do members think?

Sandra White: Personally, I am in favour of writing to the Crown Office—

The Convener: We have agreed that we will write to the COPFS.

Sandra White: We have agreed to write on suggestions b, c and d in paragraph 10, and I certainly support doing that. I am not sure where writing to the Scottish Government about its powers to appoint an investigator would get us to, but I will go with the wishes of the committee.

The Convener: The petitioners have asked us to write to the Scottish Government

“to ascertain whether or not the government accepts that it has the power under”

the Inquiries Act 2005 or any other act

“to appoint an independent investigator”.

We could just ask the Scottish Government for its view on whether it has any power to appoint an independent investigator into the claims. As a fact of life, the answer that we get back will be either one or the other. Either the Government has the power or it does not have the power. I think that we might be in a position to ask that.

John Finnie: The suggestion in the second last paragraph of paper 3 is that the Government has acknowledged that in response to a parliamentary question. The issue is not about whether it has the power; it is about whether it chooses to exercise it.

The Convener: I think that that was about instituting an inquiry, not an independent investigation. I am sorry that we do not have the parliamentary question and answer before us.

We should just seek clarification about whether ministers have powers under statute to instigate an investigation—and it is an investigation, not an inquiry—into the entire al-Megrahi affair. We know that there are powers, but they are limited to matters that are not reserved.

Are members happy for us to write to the COPFS for comment or further information on points b, c and d in paragraph 10 of paper 3, and to ask the Scottish Government to comment on whether it has powers under any statute to appoint an independent investigator to investigate the allegations made by the campaign?

Members indicated agreement.

The Convener: In that case, I hardly need to ask members if we are keeping the petition open.

Administrative Justice (PE1449)

The Convener: In PE1449, Accountability Scotland calls for an independent Scottish administrative justice council when the UK Administrative Justice and Tribunals Council system is abolished. The committee will remember that we recently considered a Public Bodies Act 2011 consent memorandum on a UK order abolishing the AJTC. The Scottish Parliament gave its consent to the order on 21 May. The order is still to be passed by Westminster.

We have also been in correspondence with the Minister for Community Safety and Legal Affairs to establish what arrangements will be put in place after the abolition of the AJTC. The Scottish Government intends to create an interim expert advisory committee until the new structure for devolved tribunals has been created. It then

intends to create a replacement Scottish committee for administrative justice and tribunals.

12:52

Meeting continued in private until 13:02.

The petitioners have asked for the opportunity to comment once details of the interim expert advisory committee become known. Paper 4 therefore suggests that we could write again to the minister asking her to keep us informed of any developments with the interim committee. If we do that, any response will be in the public domain. Are members content?

Members *indicated agreement.*

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

Available in e-format only. Printed Scottish Parliament documentation is published in Edinburgh by APS Group Scotland.

All documents are available on
the Scottish Parliament website at:

www.scottish.parliament.uk

For details of documents available to
order in hard copy format, please contact:
APS Scottish Parliament Publications on 0131 629 9941.

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@scottish.parliament.uk

e-format first available
ISBN 978-1-78351-232-4

Revised e-format available
ISBN 978-1-78351-246-1