The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 18 March 2014

Session 4

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JUSTICE COMMITTEE
9th Meeting 2014, Session 4

CONVENER

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

DEPUTY CONVENER

*Elaine Murray (Dumfriesshire) (Lab)

COMMITTEE MEMBERS

*Christian Allard (North East Scotland) (SNP)
*Roderick Campbell (North East Fife) (SNP)
*John Finnie (Highlands and Islands) (Ind)
*Alison McInnes (North East Scotland) (LD)
*Margaret Mitchell (Central Scotland) (Con)
*John Pentland (Motherwell and Wishaw) (Lab)
Sandra White (Glasgow Kelvin) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Julia Clarke (Which?)
Sheriff Gordon Liddle (Sheriffs Association)
Sheriff Colin Pettigrew (Sheriffs Association)
Fred Tyler (Law Society of Scotland)
James Wolffe QC (Faculty of Advocates)
Lauren Wood (Citizens Advice Scotland)
Sheriff Lindsay Wood (Sheriffs Association)

CLERK TO THE COMMITTEE

Irene Fleming

LOCATION

Committee Room 1

Scottish Parliament

Justice Committee

Tuesday 18 March 2014

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

Decision on Taking Business in Private

The Convener (Christine Grahame): Good morning and welcome to the ninth meeting in 2014 of the Justice Committee. I ask everyone to switch off mobile phones and other electronic devices completely, as they interfere with the broadcasting system even when switched to silent.

Sandra White is unable to attend the meeting, you will be pleased to hear, because she has a dreadful cold and we do not want Alison McInnes to get it. We did it on your behalf, Alison.

Agenda item 1 is a decision on taking in private item 4, on our work programme, and item 5, on a further draft response to the Standards, Procedures and Public Appointments Committee on its inquiry into the procedures for considering legislation. Do members agree?

Members *indicated agreement.*

Courts Reform (Scotland) Bill: Stage 1

10:01

The Convener: Our main item of business is agenda item 2, which is our first day of evidence taking for stage 1 of the Courts Reform (Scotland) Bill. We will hear from members of the Sheriffs Association later, but for now I welcome our first panel of witnesses: Fred Tyler, member of the civil justice committee, the Law Society of Scotland; James Wolffe, Queen's counsel and dean of the Faculty of Advocates; Julia Clarke, principal advocate, Which?; and Lauren Wood, policy manager, Citizens Advice Scotland.

We will move straight to questions from members. Margaret Mitchell will be first, followed by Elaine Murray and Roddy Campbell.

Margaret Mitchell (Central Scotland) (Con): Good morning. What is your opinion of the bill and its provisions and what impact will it have on access to justice and equality of representation?

The Convener: That is just a general sweep. Panel members can self-nominate if they want to answer, and their microphone will come on automatically. Mr Wolffe will respond first.

James Wolffe QC (Faculty of Advocates): Thank you for the opportunity to give evidence today.

The Faculty of Advocates welcomes the opportunity to modernise Scotland's court system. There is a serious job of work to be done and it is in everyone's interests for civil justice to operate in a manner that produces just outcomes within a reasonable time and at reasonable cost. I certainly welcome many of the proposals in the bill that are designed to improve the sheriff courts as a forum for civil justice, and I welcome the proposals to introduce summary sheriffs and shrieval specialism.

On access to justice and equality of representation, I have particular concerns about the increase in the sheriff court's exclusive jurisdiction. It is perhaps important to understand the present position on access to justice and equality of representation. At present, the system in the Court of Session works effectively, particularly with regard to personal injury cases, and it will be important for the committee to separate out personal injury cases and the issues that relate to them from other types of case. For a start, I recognise immediately, and I have produced statistics that show, that in the Court of Session there is a body of personal injury claims that, although significant to those pursuing them, are at the lower end of the value scale. As far as I

understand it, that issue does not apply to other work.

For personal injury claims in the Court of Session, pursuers can instruct counsel on a speculative—or no-win, no-fee—basis. That means that the pursuer has the benefit of effective and skilled representation at no cost to them. If the pursuer loses, no fee is charged; if they win, the fee is met as part of the award of expenses. If such cases shift to the sheriff court without the ability to transfer with them the mechanisms under which the current system operates, and if we create an environment in which pursuers cannot instruct counsel in such a way, access to justice and equality of representation will diminish.

The Convener: I take it that you are referring to sanction for counsel in the sheriff court and to awards of expenses. Will you explain that?

James Wolffe: It is important to understand that, in the Court of Session, parties have a right to instruct counsel. In the ordinary course of events, counsel's fees will follow success as part of the award of expenses in someone's favour. In the sheriff court, everybody is free to instruct counsel, but an award of expenses does not include counsel's fees unless the sheriff has sanctioned the use of counsel. In practical terms, the sheriff decides whether the litigant ought to have counsel.

If, in the transfer of cases from the Court of Session to the sheriff court, we have a system in which counsel cannot be routinely instructed, because of the rules about expenses in the sheriff court, the ability of ordinary men and women who are pursuing such cases to instruct counsel will diminish. That will affect the equality of representation.

Margaret Mitchell: Is your solution to amend the bill to enable counsel to be instructed in the sheriff court?

James Wolffe: There are two ways of looking at the issue. One aspect is what the right number is. Various people have made separate points about the quality of justice in the Court of Session, but I invite the committee to say that, if there is to be a structural shift of cases into the sheriff court, counsel should be able to follow those cases and litigants should be able to instruct counsel without artificial restrictions on their ability to do so.

Margaret Mitchell: Is there a step before that? Do you have a suggestion for improving the threshold, which affects the number of cases that are likely to shift, or are you happy with the £150,000 figure?

James Wolffe: I still say that £150,000 is far too high, particularly when one looks at comparable jurisdictions. In Northern Ireland, the relevant limit is £30,000. If a case there is worth more than that, it must go to the High Court—that is not optional.

Given that, as I understand it, the basic rule in England and Wales is that the limit is £25,000, or £50,000 for personal injury cases, I suggest that £150,000 is far too high. I think that, in considering what the right number is, we need to separate out personal injury cases from other cases. If one looks at the data and the settlement figures for personal injury cases in the Court of Session—this is based on my figures, which are by no means a complete set—one will immediately see that in 70 per cent of those cases people settle for a figure of £20,000 or less.

Robust measures will have been built into the bill to discourage people from bringing cases to the Court of Session that are low value or which are worth less than the exclusive competence threshold in the Court of Session, and one expects that, if they work, solicitors and counsel will be careful about how they take cases into the Court of Session and a substantial shift of cases at, let us say, the £20,000 level, can be achieved. If one is looking for an international comparison, I point out that the limit in Northern Ireland is £30,000, which builds in some allowance for—

The Convener: Forgive me for interrupting, but to what period does the £30,000 figure relate? You have given top lines from various other parts of the United Kingdom, but are those figures recent?

James Wolffe: In Northern Ireland, the figure was increased from £15,000 to £30,000 last year. I am afraid that I do not know when the English figures were last changed.

The Convener: That is helpful.

James Wolffe: It is important that we do not lose sight of the non-personal injury cases, in relation to which I recognise that there is a case for increasing the threshold for the sheriff court's exclusive competence. However, I am not aware of any substantial evidence, or indeed any evidence at all, that non-personal injury litigants are making choices about the forum in which their case is heard that might be thought inappropriate. In particular, I am not aware of any evidence that commercial litigants are choosing inappropriately to take cases to the Court of Session.

However, there is a real issue about compelling non-personal injury litigants, who at the moment choose to bring cases to the Court of Session for reasons that, to them, are good, to take cases into the sheriff court system at a time when, as we all recognise, that system requires reform that will take a period of time—indeed, 10 years, according to the Scottish Court Service's estimate. On the non-personal injury side, therefore, I suggest that an increase equivalent to the Northern Ireland figure of £30,000 is sensible, and it can be

reviewed as the sheriff court reform process moves forward. That would ensure that exclusive competence marches in time with the progressive nature of the sheriff court reforms.

Margaret Mitchell: If it was—

The Convener: I think that Ms Wood wants to come in, too.

Margaret Mitchell: I want to make just a little point to put things in perspective.

The Convener: Okay, but then I shall let Ms Wood in.

Margaret Mitchell: I understand from your submission that if the threshold were £150,000, it would apply to only 9 per cent of cases going to the Court of Session, and that until now only one case has ever got anywhere near £150,000. So, if I have understood—

Roderick Campbell (North East Fife) (SNP): That was a defamation case.

Margaret Mitchell: I see—I am sorry.

James Wolffe: Yes, it was defamation.

Margaret Mitchell: If I have understood what you are saying, you think that, given the proposed court reform and the question whether sheriff courts are able to cope, change should be more gradual and the threshold should be set not at £150,000 but at around £30,000, which will be manageable and will probably be an improvement. Is that right?

James Wolffe: In short, yes. The 9 per cent figure that you mentioned is for personal injury cases, and the one case that I cited was a defamation case.

The Convener: Thank you. I shall let Ms Wood in, as she has been patient, and then Ms Clarke.

Lauren Wood (Citizens Advice Scotland): Thank you for inviting us to the meeting. First, I should say that we come at this from a different angle from that of James Wolffe. We certainly welcome the bill, which is a key instrument for the programme of reforms that will happen, and we particularly welcome the specialisation of sheriffs and the introduction of summary sheriffs and simple procedure, which will make a big difference to a huge number of users of the court system.

We should not forget that the bill is part of a much wider picture of reform of Scotland's civil justice landscape. The court system is one element of the delivery of justice. If we consider the way in which many people approach their problems, it is clear that the courts are not necessarily the place where they expect or want to end up when they have—

10:15

The Convener: I think that we all know that here—it is a case of grannies and sucking eggs. I appreciate that you are making those comments for the record, but we already realise that what you say is the case.

Lauren Wood: Reform will—we hope—happen on the preventative side of justice in order to prevent a lot of cases that should not be in the court system from getting there.

With regard to the bill, it is important to think about what we are aiming for at the end of the process. Many of the thoughts that have been expressed on representation, for instance, are very much tied to the current system, and I think that we should be aiming for a system that is much more progressive and proportionate.

As for the balance of representation, we should keep in mind the situation with employment tribunals, which is an example of a balance that has swung too far the other way. I always have that caution in my head when we discuss the presence of counsel in the sheriff court system. There is a place for counsel but, with employment tribunals, there has been a change from a forum that should have been accessible to parties in person to one in which counsel is regularly instructed against a party litigant or lay representative. It is important to have proportionality, but that does not necessarily mean that there is a need for the most extreme form of representation.

The Convener: Surely Mr Wolffe is suggesting that, in personal injury cases, the pursuer be entitled to counsel. Given that, in such cases, they would generally be pursuing employers, such a measure would seem to assist ordinary people.

Lauren Wood: That might be true in personal injury cases, but there are many other cases that we cannot lose sight of. James Wolffe is right to say that the discussion cannot simply be about personal injury cases. There are many other things that will be affected by similar discussions.

Margaret Mitchell: Are you talking about cases in which there was no counsel on either side, and in which there was different representation on both sides? Do you think that that is what will come out of the bill, and that it will be good for improving access in general?

Lauren Wood: A lot of Citizens Advice Scotland's experience relates to lower-value claims—the things that will fall under simple procedure and which will fall to summary sheriffs. The rules for such claims should be such that people are able to represent themselves, and it should be much easier for party litigants to be involved.

With lower-value claims under the simple procedure, the assumption from the start should be that counsel are not involved and, indeed, that lawyers will not necessarily be involved.

The Convener: It is a long time since I was in practice, but I recall a sheriff being very gentle with party litigants in the small claims court by making allowances while they related a long narrative that had, practically, nothing to do with the claim, whereas they were quite tough on the lawyer who was representing the other side. Does that not already happen to some degree? You spoke about inquisitorial situations. My experience is old, but does it not happen to some degree now in small claims cases that sheriffs tend to help party litigants?

Lauren Wood: That sometimes happens, but it depends on the sheriff.

The Convener: Of course—it always did.

Lauren Wood: When the small claims process was introduced, the aim was that it would be much more open even than it is now. It started as a process in which sheriffs were supposed to sit round a table with the claimants, not wearing wigs or gowns. From having spoken to various people who have been involved as the years have gone on, I know that that was how it started off, but the sheriffs started to sit behind the bench, and started to wear their wigs and gowns.

When the sheriff is on the bench, he or she may take an easy approach with people in such cases, but in Edinburgh sheriff court, for example, the ethos that the small claims process was designed to have has been slightly lost because when people go in the door they have to go through a metal detector, there are police guards standing there and they have to walk past the criminal courts to get to the civil court, which is on the upper floor. That is a very daunting experience.

The Convener: We have to accept that there is a very good reason for going through security. Nevertheless, I take your point.

Julia Clarke (Which?): For us, the bill is all about proportionality; it is about people being able to access justice at the lowest cost and through the most accessible process.

Our particular interest in the bill is the inquisitorial system—the new simple procedure—which I think will make a great deal of difference to the consumer. Many more consumer cases will go to court because of the new procedure, because people will be better able to access the system. We believe that the bill is very important in terms of proportionality, because people will be able to prosecute their rights at the lowest possible level at the lowest possible cost. It is important that that will move a great deal of business out of the Court of Session and into the lower-cost court—the sheriff court—where processes are easier for people to understand, are more easily accessible and where the cost is considerably lower. The cost is about a third of the cost of going to the Court of Session.

We would like many consumer cases to be dealt with in that easy-to-access inquisitorial system. Cases might possibly not even be heard in court, but could instead be heard just with the sheriff and the parties concerned, in a far less formal setting—possibly online through much greater use of information technology systems.

Fresh thinking should be applied; many consumer cases are fairly simple. They are about asking, “Did you get the kitchen?”, “Did your car work?” or “Did you get the holiday?” People are currently unable to access justice in many such cases. We would therefore like the ceiling for the new simple procedure to be raised to £10,000, as it is in England, because consumers in Scotland pay the same costs for consumer goods. If it cannot be done now, we would like it to be done later; we would like to have the simple procedure reviewed and the ceiling increased to £10,000.

Basically, people want to access justice at the easiest level. The process should be easy to understand and should require as little help as possible from lawyers. We would like lots of people to present themselves as party litigants and, when they have help, to have the case heard at the lowest level and to have the most proportionate level of support.

Margaret Mitchell: There are—

The Convener: Just a minute, Margaret. Other people are waiting to speak.

Margaret Mitchell: I just want to ask—

The Convener: Elaine Murray and Mr Tyler want to come in.

Fred Tyler (Law Society of Scotland): The Law Society of Scotland also welcomes the opportunity to come along this morning, so we thank the committee for the invitation to do so.

As we make clear in our written submission, there is much in the bill that we support. The society also has a great deal of sympathy with and agrees with a great deal of what the dean of the Faculty of Advocates has said.

It is accepted that the current threshold of exclusive competence in the sheriff court is far too low and that reform of the sheriff court is essential, but as we say in our written submission, the Law Society considers that a change to a threshold of £150,000 is a “seismic change”. The Law Society represents a broad church of solicitors. On the one hand, personal injury practitioners would be happy

to follow the Association of Personal Injury Lawyers—APIL—line of a £30,000 limit, whereas some insurance practices would be perfectly happy with a limit of £150,000.

The Law Society of Scotland civil justice committee has come to an informed view based on all the evidence that has been provided by both sides to the debate, and considers £50,000 to be an appropriate sum, with the opportunity for the Scottish Civil Justice Council and Scottish ministers thereafter to monitor that increase. We do not think that it is necessary to increase the threshold beyond that, to the highest level.

In relation to access to justice, many solicitors are perfectly capable of conducting in the sheriff court cases at significantly higher values than £5,000, and some—relatively few at this stage, I venture to suggest—would be comfortable and confident presenting cases at the upper level of £150,000. There is a serious issue—

The Convener: I am sorry: are you talking about personal injury cases at the £150,000 level?

Fred Tyler: Yes.

The Convener: You are not talking about other cases—for example, contract cases.

Fred Tyler: There is concern in relation to other cases; defamation has been mentioned. According to our research, there has been only one case in the entire history of Scots law in which the damages that were awarded exceeded £150,000, and my understanding is that that case is currently under appeal. Defamation is a highly specialised area and it is not one of the designated areas. There are specialists both at the bar and on the bench in the Court of Session, and I would be concerned if defamation were to be sent to the sheriff court without the opportunity of a transfer. I appreciate that there are provisions for remit, but they are restrictive. That is one of the Law Society's concerns.

As I indicated, if there was an increase to £50,000, many solicitors would be in a position to conduct cases themselves, given their current experience and levels of training. However, I think that there would be a period between the introduction of a new level and more solicitors getting up to a level at which they have the advocacy and pleading skills that would mean that pursuers who are currently represented by counsel would be represented by a similar skills level. There is a serious concern about the level of representation, particularly as insurance companies may be able to instruct counsel, but pursuers, not knowing whether they will have sanction for counsel, will not know whether they are able to instruct counsel.

The Convener: Thank you.

Elaine Murray (Dumfriesshire) (Lab): In some of the evidence that we have received, concern has been expressed that the sheriff courts are already overcrowded, and some witnesses have stated that some of the proposals in the bill, particularly those that will transfer more cases to the sheriff courts, will exacerbate an already difficult situation. The Government might argue that there will be the specific personal injury court, but I understand that it is to have only two sheriffs, and that summary sheriffs will be appointed as other sheriffs retire rather than the capacity of the sheriff court system being added to.

What are your views on the current sheriff court workload? I have constituents whose family law cases have been adjourned, with people trekking down from Sanquhar to Dumfries, and the case not being heard and so on. Is that going to get worse? Is sufficient resource being put into the sheriff court system to make the proposals work?

Fred Tyler: There is considerable concern on the part of the Law Society that, unless sheriff court reform is properly resourced, it will make the situation with overcrowded sheriff courts even more difficult. There is also a serious concern about whether a personal injury court with only two sheriffs would be able to cope with the volume of work that would go to it. Based on experience of what happens in the Court of Session at present, it is far from inconceivable that a clinical negligence case with a value of less than £150,000 would tie up a sheriff for four to five weeks. In that event, it is difficult to see how the remainder of the business in the personal injury court could be properly managed. There is real concern that there must be, if we go with reform, suitable resourcing for the number of summary sheriffs who would be available to conduct business, and for training specialist sheriffs.

James Wolffe: I endorse those comments. Again, it is perhaps important to separate the two issues—personal injury work and other cases. On the other work, the effect of the increase in the exclusive competence threshold of the sheriff court will be to compel litigants who currently choose to go to the Court of Session to litigate in the appropriate local sheriff court. I would not want to tar the whole sheriff court system with any brush at all, but experience as reported by my members suggests that the sheriff court does not do well with more complicated and contested litigation. That is one of the reasons why we support sheriff court reform.

10:30

One has to appreciate that in non-PI cases in which litigants have chosen to come to the Court of Session, they are likely to have done so because, in their view, the case merits that court

for one reason or another. The case might be a commercial case, so the litigants would want to use the commercial court in the Court of Session. One can envisage that such cases would likely be at the more complex end of the scale. One must be concerned that taking such cases into the sheriff court system when that system is being reformed—which will take some time—will not serve those litigants well.

If I understand it correctly, paragraph 98 of the financial memorandum suggests that the savings to the public purse of shifting non-PI cases to the sheriff court are likely to be "marginal". If the savings to the public purse are marginal, one must ask what the benefits are, given the issues that I have mentioned.

As Fred Tyler said, it is essential that the personal injury court be adequately resourced for the business that it receives. I agree entirely with what he said about the issues that could arise if that court is to have only two sheriffs.

Julia Clarke: I just wanted to pick up James Wolffe's point about savings. The savings to the public purse, which are welcome and valuable, are one thing, but the savings to the consumer are absolutely crucial because they could allow people to come to court who cannot currently pursue justice because of the costs.

On the £150,000 limit, unless there is a substantial limit, many more cases will not come into the sheriff courts. That is about proportionality in the system, which is what consumers require when it comes to access to justice.

Other suggestions are that we move some of the simple procedure consumer cases into different settings, and that we open the courts after hours or have weekend sessions. There are all sorts of ways in which we could proceed.

The additional aspect of more specialisation will really help to resolve consumer cases, and specialisation of sheriffs and better case management will speed up the cases.

I take Ms Grahame's point about the small-claims situation, which is patchy. Sheriffs do a very good job with small-claims cases, but sometimes a party litigant is asked upon what point of law they are relying, and they look around blankly because they do not know—as any of us non-lawyers would—and the case is continued.

By putting in place a system that is accessible to people, we can really speed things up. There is no particular reason why these cases should be part of the overall system. They could come out of the system and make way for the more complex cases—personal injury cases in particular—which we understand must be remitted.

Elaine Murray: Do you agree with what other witnesses have said about resources? I think that the concern is not that the bill cannot work but that the resources are not in place to make it work.

Julia Clarke: That is an issue; I can understand concerns about everything happening at once.

The Convener: It is all right, Ms Wood. I see that you want to come in. Do not be agitated.

Lauren Wood: I absolutely agree with what Julia Clarke said. There are concerns about civil business being squeezed, particularly in the bigger courts as the court closures programme moves ahead. I know that the committee has heard evidence about particular concerns in Aberdeen, for example.

On civil business in the lower tiers, the in-court and lay representation projects—some of which are run by citizens advice bureaux across the country—make a huge difference to party litigants and sheriffs. Mediation goes hand in hand with a couple of those projects, which has also proven to be largely successful. One of the recommendations in the Gill review was that such projects should be available and should be attached to every court. That would help litigants and sheriffs.

I sat with the in-court adviser in Edinburgh sheriff court last Thursday. He did not stand up to speak for the party litigants who were there, but he briefed them beforehand on what would happen, where they should stand and the points that they should make as part of the hearing at that level. When they were presented to the sheriff the points were coherent and were what he wanted to hear, and the litigants were standing in the right place. That helped both sides in that case. The adviser can take pressure off by giving litigants a much sharper idea of what the hearing is about for them.

Citizens Advice Scotland feels that recruitment of summary sheriffs should happen much sooner than just as sheriffs retire. Summary sheriffs will represent a new type of sheriff who will be much more accessible. We would very much like to see being realised the ideals that we outlined in our written submission on practice in relation to summary sheriffs. If they are recruited as sheriffs retire over a period of 10 years, there is a very real danger that people in different parts of the country will have quite different access to justice, depending on their postcode. That is to be avoided.

Fred Tyler: Julia Clarke made one very important point that the Law Society recognises—

The Convener: I am sure that she made more than one.

Fred Tyler: Indeed, she did, but there is one that I want to pick up on on behalf of the Law

Society, which is that savings to the consumer are important. That has been fully recognised, but I must emphasise that the vast majority of personal injury cases proceed on a no-win, no-fee basis—there is no cost to the pursuer or consumer. That is a very important point to bear in mind.

Elaine Murray: I understand that there is a bit of concern that under the current proposals some commercial cases that are currently heard in Scotland would migrate to the High Court of Justice because they would be able to get into that level of the judiciary.

James Wolffe: That is certainly a concern that has been expressed by some of my members who specialise in commercial work. There is already a degree to which cases that could be heard in Scotland are heard elsewhere, in particular London. Commercial litigants are often able to make choices about the forum in which they appear, not least because they can say in their contracts that any dispute under the contract will be decided in a particular court. There is at least a risk that the proposals will discourage from using their local Scottish sheriff courts commercial litigants who would be asked whether they want to go through the court system in London or to litigate in Scotland for a claim that is worth £150,000.

Elaine Murray: What would be the financial implications of that in terms of court fees? If that business does not come into our court system, will that have financial implications?

James Wolffe: In the long run, our independent separate legal system depends on there coming through the courts a body of case law on which they must decide. Leaving aside any other issues, if we create a situation in which the Court of Session as the supreme court of Scotland is not hearing a sufficiently significant volume of difficult cases for it to develop the law, in the long run the law will be the poorer. I think that the committee has evidence from the academic community expressing concerns along those lines.

The Convener: But a difficult case can always be remitted from the sheriff court to the Court of Session, even if it is not of very high monetary value, if there is some difficult or testing issue of law. Is that not the case? That would not change.

James Wolffe: I recognise that. It is fair to say that the provisions on remitting cases whose value is below the exclusive competence level are framed extremely narrowly. They say that, even if the sheriff considers that the importance or difficulty of a claim makes it appropriate to remit the case to the Court of Session, exceptional circumstances must still apply.

The Convener: What happens now, if an exceptional circumstances provision does not apply? What will change?

James Wolffe: I am afraid that I do not know the terms of the current rule, but I can come back to you on that. I am just looking at the bill. As I read it, it says that exceptional circumstances must be considered, in addition to the importance or difficulty of a claim.

The Convener: Is that a change from the status quo?

Fred Tyler: I believe that that is a change, because a double test will be introduced. The sheriff will have to find that exceptional circumstances apply and the Court of Session will have to accept that there is special cause. The Court of Session will also have to

"take into account the business and other operational needs of the Court."

The society has a big concern about what that will mean in practice. If the court was particularly busy one week, a case might not be remitted, whereas, if the court was quiet the next week, a similar case might be remitted. That is unclear and clarification is required.

The Convener: I am not sure whether Roderick Campbell asked to come in.

Roderick Campbell: I did.

The Convener: You are so subtle sometimes.

Roderick Campbell: I refer to my registered interest as a member of the Faculty of Advocates.

I will kick off by looking at sanction for counsel. When Sheriff Principal Taylor reported last year—the Scottish Government is yet to reach a view on his report—he recommended that

"The current test ... should remain one based on circumstances of difficulty or complexity, or the importance or value of the claim, with a test of reasonableness also being applied"

and that

"When deciding a motion for sanction for the employment of counsel ... the court should have regard, amongst other matters, to the resources which are being deployed by the party opposing the motion in order that no party gains an undue advantage by virtue of the resources available to them."

I ask the legal practitioners in particular for their comments on what Sheriff Principal Taylor said.

James Wolffe: I say immediately that I very much welcome the change of tone on sanction for counsel from the Government's policy memorandum, which suggested a much higher test. If there is to be a structural shift of cases to the sheriff court, one might ask whether a rule that restricts the use of counsel by reference to

sanction from the sheriff remains the right way to control litigation costs. The rule limits litigants' ability to choose to use counsel in cases in which the sheriff does not grant sanction and it limits the ability of counsel to offer their services across the board in the sheriff court.

Sheriff Principal Taylor's recommendations were made before a recent change in practice that allows counsel to appear in the sheriff court in appropriate cases without a solicitor having to sit behind counsel. I would welcome a much more radical examination of how counsel might be instructed in the sheriff court.

The rule on sanction for counsel, which has no counterpart in the other jurisdictions of the United Kingdom or in Ireland, limits solicitors' ability to use counsel in the most flexible way. It also limits the development of business models that seem to work well in the other jurisdictions of these islands and in personal injury litigation in the Court of Session, where solicitors choose to use counsel routinely as a flexible resource in all sorts of cases.

10:45

Fred Tyler: The principal difficulty for a pursuer—for a claimant—is that, when he commences the case, he will not know whether sanction for counsel is going to be granted. In those—

The Convener: I will just interrupt at this point. We have not raised the issue of legal aid. Is that relevant as well?

Fred Tyler: The Scottish Legal Aid Board will no doubt carefully consider whether sanction will be granted in the legal aid system for the employment of counsel. That will be considered separately.

The Convener: I appreciate that. My point is that, if a pursuer goes to a solicitor and asks for counsel, the question is not just whether the sheriff will sanction counsel; if pursuers are applying for legal aid, they have to get over that first hurdle.

Fred Tyler: Indeed—that is correct. For a no-win, no-fee case, it would normally be up to the solicitor, with the client's instructions, to decide whether to go to counsel. If one does not know whether the cost of instructing counsel will be recoverable, that either imposes a very significant risk to the pursuer himself, who may have to put his hand in his pocket and pay the costs from his damages, or it puts the solicitors at a significant risk, if they are going to carry that risk.

My other concern, and the impression that I have gained, is that, albeit that Sheriff Principal Taylor has suggested that the rule should be retained with an additional test of reasonableness, the intention is that the rule may be interpreted more stringently: in cases of a value of up to £150,000, there may be a considerably more stringent application of the test in deciding whether the case is appropriate for the sanctioning of counsel.

Roderick Campbell: Let us move on to the more general question of whether it is cheaper for cases to run in the sheriff court than in the Court of Session. The Government's policy memorandum notes:

> "One practitioner told the Scottish Government that the average cost of raising a three-day proof in the Court of Session was £30,000-£40,000, whereas a three-day proof in the sheriff court will cost around £10,000."

Do you have any general comments on that, particularly if counsel are not used and solicitors start conducting cases of substantial value in the sheriff court?

Fred Tyler: With respect, taking one example as the basis for coming to a view is perhaps not the most helpful approach. It is undoubtedly the case that, if counsel is not used in the sheriff court, the costs will be less. In general terms, the costs may be less in any event. That is not the only issue, however.

We are considering access to justice and the availability of proper representation for litigants. Whereas cost and proportionality are undoubtedly issues, we have to look beyond them. The sweeping view that, in every case, it is cheaper to litigate in the sheriff court is not entirely accurate. In the more complex cases—say, those of a value of between £100,000 and £150,000—there could be significant complexities involving the use of expert witnesses. Counsel may well be sanctioned for such cases, and the cost can turn out to be significantly higher than might have been anticipated.

Lauren Wood: I have a point to make about another aspect of the reform. We welcome the increased use of case management as cases progress, as case management will be key to a lot of the practicalities when it comes to discussions around sanctioning counsel. We would always welcome such discussions being a consideration as part of the case management process, as opposed to people assuming that use of counsel will be sanctioned.

If consideration is given to sanctioning counsel in individual cases, that will, as part of the case management process, reduce the risk of sanction for counsel becoming a normalised part of the civil court experience. To normalise sanction for counsel without considering the individual case would undermine a lot of the changes that are being made. It could effectively make the sheriff court the Court of Session by another name, and we strongly wish to avoid that.

Again, I think that a lot of lessons can be learned from the example of the increased use of counsel over time in the employment tribunal becoming a normalised part of the process.

Julia Clarke: I support Lauren Wood's point entirely. Rather than more counsel coming into sheriff courts, we would like to see much more alternative dispute resolution in the system, particularly at the beginning. That would mean that fewer people would go to court in the first place and that they would be able to access the system at the most proportionate level.

The Convener: That was in the submissions. Thank you.

James Wolffe: I should say immediately that I entirely support the appropriate use of ADR throughout the court system. However, I am afraid that I cannot let Lauren Wood's point about the normalisation of sanction for counsel pass. The starting point ought to be that advocacy is a specialist professional skill. That is why we require our members to undergo a course of intensive training in the skills that we consider appropriate to fit them for their professional task. Litigants need effective representation, whatever court or tribunal they are in. Perhaps unsurprisingly, that is the starting point from which I view matters.

The Convener: We have heard an awful lot about the importance of counsel in the sheriff court. Some might say that your point is about self-interest and to do with income. It is a point that people would make, so I put it to you that the loss of fee income for counsel, which I understand is already a pressure for them, would be even greater and that therefore it is for reasons of self-interest that you come here today as the trade union leader for the bar and argue its corner.

James Wolffe: I entirely recognise that I am vulnerable to the comment, "He would say that, wouldn't he?" It is absolutely right to say that, unless one is careful, a feature of the proposals will probably be that they will have a significant impact on the independent bar in Scotland. That will probably happen in any event, and I do not shrink away from that point. However, you should not listen to me; instead, you should look at the submissions that the committee has received from the Educational Institute of Scotland, the union movement and Clydeside Action on Asbestos. In a sense, I am quite content to allow them to provide evidence on the benefits that, with regard to who might represent them, they perceive in having access to skilled representation through the use of counsel.

The Convener: Mr Tyler wants to make a point.

Fred Tyler: I just want to make it clear that the Law Society does not consider that automatic sanction for counsel should be available in the sheriff court. However, for reasons of equality of representation and the ability of litigants to be properly represented in appropriate cases, sanction for counsel, at an appropriate stage and with an appropriate test, should be available.

The Convener: But not the test that is on offer.

Fred Tyler: It depends how the test is applied. At the moment, it is almost automatic that sanction for counsel is applied for in the sheriff court for anything that is reasonably complex. The question is whether, in the new world, the test will be applied in the same way. I have gained the impression that the intention is to apply it far more stringently such that counsel will be sanctioned on fewer occasions.

John Finnie (Highlands and Islands) (Ind): Good morning, panel.

I have a question for Ms Wood. Your written submission refers to the need to follow

"design principles with accessibility for users as the primary consideration."

You touched on the issue earlier—perhaps it is not something that will be covered in the bill. Can you expand on that?

Your submission also states that "non-court settings" should

"foster the easy promotion of peripatetic Summary Sheriffs".

Why is that important?

Lauren Wood: Many of the issues that will come before summary sheriffs will involve lower-value claims. Some housing issues will go to the tribunal, but other housing issues will remain part of what summary sheriffs will deal with.

We have a vision of how a summary sheriff should practise in the best interests of users of the system, part of which is that they should sit outwith court buildings. That would avoid the situation that arises at Edinburgh sheriff court, where someone who raises a claim to get their £400 back for a fence has to go through metal detectors and past criminal courts, which is a very daunting experience, and would mean summary sheriffs sharing premises with, for example, tribunals or perhaps even village halls up north.

The Convener: I recognise the significance of "up north" in what you say. John Finnie will be delighted with that mention of the Highlands and Islands.

Lauren Wood: Or the Borders, of course.

The Convener: It is all right—I do not need that, but John Finnie does.

Lauren Wood: If there were part-time summary sheriffs, the need for housing issues in rural areas

to be dealt with by the sheriff sitting half a day in one place and half a day in another place 50 miles away could be facilitated. For example, a summary sheriff who was employed one day a week could sit for half a day in Ballater and half a day in Stonehaven. That new approach would take justice to the people, rather than things being the other way round, and we would very much support it.

The Convener: When we carried out work on sheriff court closures, we put to the cabinet secretary the point about a sheriff being able to decide on a more suitable place to hear evidence, to hear a proof or whatever. I think that it was agreed at some point that there would be such flexibility. Perhaps John Finnie can remind me about that.

John Finnie: I do not recall any agreement being quite that firm, convener. As Ms Wood said, an attitudinal change is required and would need to be built on.

The Convener: Yes.

Lauren Wood: Such an attitudinal change would also greatly underpin the inquisitorial approach. As we outline in our submission, we envisage summary sheriffs sitting without wigs and gowns. That has not happened in the small claims process.

Julia Clarke: I think that the consumer vision, in particular for small claims, is that the system should be easy to access.

John Finnie: Mr Tyler, in your submission you mention the proposed abolition of honorary sheriffs.

Fred Tyler: Yes. I think that the concern is that in rural communities, where there may be a single sheriff, a part-time sheriff or a summary sheriff may not be available. If an honorary sheriff is not available, that will reduce the provision of swift justice for the local population when it is required.

The Law Society's position is that we favour the retention of honorary sheriffs who are legally qualified, so that that facility would be available. Our proposal is cost neutral, because my understanding is that honorary sheriffs do not receive any remuneration.

Christian Allard (North East Scotland) (SNP): First, I ask the Faculty of Advocates for clarification. You said that clients have a choice about whether to go to the Court of Session or the sheriff court. The firms that you represent must provide advice. What criteria do they use to advise clients on which court they should go to?

James Wolffe: Currently, the client has a choice for any case above £5,000. I should say that I do not personally practise in the field of personal injury, so others might be better able to advise you on that aspect.

The first point to bear in mind is that clients will first of all go to their solicitor, who will take a view as to whether it is necessary or appropriate to involve counsel. The solicitor will advise the client on the pros and cons of litigating in the sheriff court and in the Court of Session. For example, in the commercial field I would expect clients to be told about the relative cost implications and relative benefits of the Court of Session having an experienced commercial court, which has specialist judges who apply procedures that are intended to be business friendly.

It is absolutely right to say that, in the context of personal injury work, firms that represent personal injury claimants will routinely bring cases in the Court of Session, no doubt for a whole variety of reasons, including the benefits of the procedure there and the economies of scale that they can secure by litigating in a single forum—although, as I said, you would be better to ask somebody else about the details.

11:00

I think that that is one of the reasons why there is a desire to shift personal injury cases into a national personal injury court, which is intended to replicate the same benefits of a centralised centre of excellence in personal injury work. That is all very well, but the question that I am posing is whether those benefits will actually be secured if the national personal injury court is not properly resourced and if a key ingredient in what makes the Court of Session work—the involvement of counsel—is taken out of the picture, or at least is not used in quite the same way.

Fred Tyler may be able to say more about that.

Fred Tyler: I am a personal injury practitioner and it is not my practice to raise low-value cases very often in the Court of Session—my cases in the Court of Session tend to be higher value.

The principal reason for raising personal injury cases in the Court of Session is that the system is extremely efficient under the rules that were formulated by Lord Coulsfield some years ago. We have an experienced bar, an experienced bench and experienced personal injury lawyers based in Edinburgh. There is little judicial involvement in personal injury cases because 98 per cent of them settle—it is rare that a case has to come before a judge. There is also a relatively predictable outcome in Court of Session cases.

As James Wolffe says, the idea is that the new personal injury court should replicate that efficient system and at lower cost. That is to be commended; the problem is that we do not know

where the personal injury court will be. It has been suggested that it may be in Edinburgh or in Glasgow, but we do not know how that will work. We do not know, for example, whether solicitors in Aberdeen would prefer to use a centralised personal injury court or a specialist sheriff in their own court. If there are specialist sheriffs dotted around the country, the predictability of outcome and consistency of decisions will not be the same as it currently is in the Court of Session.

I am not arguing for a minute that we should leave matters the way they are, but there are some concerns that the new personal injury court may not be able to replicate the current efficient system in the Court of Session.

Christian Allard: I would like to press that point. To what extent is the possible settlement figure a criterion for deciding where a case should be taken? Is that the reason why you propose a figure of £50,000?

Fred Tyler: At the moment, the decision on whether a case goes to the sheriff court or the Court of Session is quite straightforward. If the value is under £5,000, it must be in the sheriff court. Many practitioners will routinely raise relatively low-value cases—between £5,000 and £10,000, for example—in the Court of Session, because of the efficiency of the system. Settlement sums tend to be much less than the sum sued for, and it is the sum sued for that will determine in which court the proceedings are raised. At the moment, as a solicitor instructed by the client, if I consider that the case is worth £6,000, I am at liberty to raise it either in the sheriff court or in the Court of Session.

The Convener: There are other things that we should have asked you about, Mr Tyler, so after Mr Wolffe's next comment I would like to ask something completely different.

James Wolffe: I wonder whether I might just make an observation on Mr Allard's question.

Fred Tyler is absolutely right to say that the criterion in the first instance will be the sum sued for and that the settlement may be much less than that. In our submission, we start from data about the settlement figure and identify the proportion of cases at certain settlement figures that can be excluded from the court. I recognise immediately that the sums sued for in those cases might have been significantly higher—that may be an issue in identifying the appropriate figure.

I point to the fact that the bill contains mechanisms under which judges are to be directed to remit cases to the sheriff court if they take the view that the value is lower than the exclusive competence. There are also signals that the rules on expenses will be used to discourage cases that should not be brought in the Court of Session from being brought there. It is a matter of judgment whether one thinks that those measures will be, in and of themselves, sufficient to have that effect or whether we should go for a higher figure. I set out the faculty's position in the written evidence.

Christian Allard: I have another question for CAS, convener.

The Convener: I want to follow up on Mr Tyler's point that different judgments will perhaps be made by different sheriffs if people decide to go to a specialist sheriff for a personal injury case rather than to the specialist personal injury court at the sheriff court level. Will the sheriff appeal court not remedy that issue to some extent—perhaps not immediately, but in due course—in that decisions on any appeals that are taken will be applicable Scotland-wide? As I understand it, at present the sheriff principal's decision applies only within the sheriffdom.

Fred Tyler: The difficulty is that only a small number of cases will ever reach the sheriff appeal court, just as, at present, only a small number of cases go to the inner house of the Court of Session. At present, the judges of the Court of Session all sit in the same place and they no doubt confer in relation to the cases that come before them. The specialist bar and specialist solicitors are all based in one place. Our concern is that, if there are little pockets of specialism in different places in the country, there will not be the consistency that we have at present in the Court of Session, which we would like to see replicated in the personal injury court if it operates as is intended.

The Convener: So the sheriff appeal court will not be a remedy—

Fred Tyler: I do not think that it will resolve all the problems, although it may resolve some issues. It is certainly of benefit that the decision of the sheriff appeal court will be applicable throughout the country, as that means that it will be binding on all sheriffs as opposed to the current position in which the sheriff principal's decision binds only the sheriffs within his sheriffdom.

The Convener: Okay—thank you.

John Pentland wants to come in next.

John Pentland (Motherwell and Wishaw) (Lab): I understand that the Faculty of Advocates does not agree that there should be a court for appeal. You might want to give your reasons for that, but I wonder whether that approach would have any European Court of Human Rights implications. My understanding is that, if a person is making an appeal, they go from the sheriff court to the Court of Session and then they can go to the European Court of Human Rights.

James Wolffe: You are absolutely right to say that the Faculty of Advocates, in its written evidence, expresses reservations about the introduction of a sheriff appeal court. The oddity is that, as I understand it, it will usually sit as a bench of one and that, as Fred Tyler observes, that one will in effect be writing the law for the whole of Scotland within the shrieval system. There will be a possibility of an onward appeal to the inner house, but it will be through a narrow gateway. If someone gets to the inner house, they will have the possibility of a further appeal to the UK Supreme Court; once they have done all that, certain cases may go to the European Court of Human Rights.

I do not see any particular implications for the European Court of Human Rights, but I suppose that one might ask whether it makes sense in a relatively small country such as Scotland to set up two parallel appeal structures rather than routing all appeals to the supreme court of Scotland—to the inner house.

The Convener: I take it that you would prefer to have three judges for the sheriff appeal court, which was Lord Gill's proposal.

James Wolffe: One of the traditional occasional objections to the current process for appeal to the sheriff principal has been that it involves one judge deciding appeals on decisions from another single judge. Ordinarily, one might think that having a larger bench in an appeal court is a good idea.

The Convener: I will take Christian Allard's supplementary question, but then I really want to move on. We have another panel after this one—I am very sorry that we are so pressed for time.

Christian Allard: I just have a quick question for Ms Wood. You talked about the vision of what the bill should be about. Do you think that the idea would be to have more people representing themselves? Will the bill bring that idea to fruition?

Lauren Wood: That picks up on something that Julia Clarke talked about earlier, which we very much support in relation to the lower-value claims in particular.

It is not easy to bring a claim if you are a party litigant and something has gone wrong with, for example, the work that a joiner has done in your home. The process is not simple; there are complex forms to fill out. People might normally be able to deal with these things but, when they have a crisis in their life that leads them to go to the court for a resolution, the fact that they have been affected by something so deeply makes it even more difficult for them to fill in forms and follow the rules of court.

Christian Allard: So you see access to justice as being different from access to a solicitor. Being able to represent yourself would be a better way of accessing justice.

Lauren Wood: Yes, particularly in what will become the simple procedure. The rules for the simple procedure should be very easy for people to follow. We also envisage an information system as part of the justice digital strategy, which would include toolkits to lead people through the process and outline other pathways that they could go down. People do not necessarily want to go to court. It is really important that, as part of these reforms, other options—such as alternative dispute resolution, mediation and online arbitration—are embedded in the system and made available to people. There are a lot of other options that people could use.

The Convener: I would like you to expand in writing on your views on in-court advisers, which can provide clarity to and help party litigants.

Lauren Wood: Certainly.

The Convener: We have one final question from Elaine Murray, which is on an important point.

Elaine Murray: Currently, there is no time limit for judicial review. The bill proposes a three-month time limit, with judicial discretion to depart from that. Some witnesses have said that that is too short. I invite comments on that.

Fred Tyler: The Law Society's position is set out fairly clearly in our written submission. The concern is that a three-month period would be insufficient to enable litigants to do the necessary work and to obtain the funding that they require to put in place before they can go to court.

There are a lot of judicial reviews in which claimants have to apply for legal aid. Legal aid applications tend to be fairly lengthy. For the application to be granted, a certain degree of preparation requires to be carried out. Not all the preparation that would be required for presentation of the application for permission would be done at the stage of applying for legal aid, so the case would be front-loaded by the legal aid application and the necessary information for that. Only after that would it be possible to put together the case for making an application for permission to the court.

There are a number of other issues, which we have set out in our written submission. If I can expand on the issue further, I will be happy to respond in writing.

The Convener: That would be very helpful—thank you.

Mr Wolffe, I do not know whether the faculty took a view on that issue.

James Wolffe: The faculty has not expressed any view, but I will offer a couple of observations. First, we have a very low incidence of judicial review applications in Scotland compared with the position in England and Wales. It is not evident that we have a particular problem with judicial reviews being brought that should not have been brought.

On the particular issue of time limits, there is a place for controlling judicial review applications on the ground of delay or the passage of time. The rules that are applied, which are based on the common law doctrine known as mora, do not work well in the context of judicial review for a variety of reasons. That is a sound justification for statutory control in relation to a case that is brought after an inordinate period or after such a period that would prejudice in some way the proper administration of the system.

Concerns are being expressed about the proposed three-month limit. That is a very short time relative to other time limits that we have in our system. Indeed, other written submissions provide evidence about whether that time limit can be applied to all cases, bearing in mind the importance of judicial review as the mechanism by which Government and public authorities are held to account in the courts.

The Convener: You do not want to nail your colours to the mast by proposing an alternative time limit.

James Wolffe: Given that the faculty has not expressed a view, I will not offer one.

The Convener: You cannot offer a view. It was unfair to ask that question.

James Wolffe: Not at all.

The Convener: I thank all the witnesses for their evidence. If, having sat and heard the evidence, you are itching to tell us something that you did not have the opportunity to mention, please write to us with supplementary evidence.

11:17

Meeting suspended.

11:23

On resuming—

The Convener: I welcome the second panel to the meeting. I was trying to work out how I refer to three sheriffs. Should that be a trio or a triumvirate? I do not know. In any case, I very much welcome Sheriffs Liddle, Wood and Pettigrew, all of whom are representing the Sheriffs Association. I thank you for coming.

I go straight to members' questions.

Elaine Murray: I invite your comments on a question that I asked the previous panel about the concerns over the workload implications for the sheriff courts. Is the bill sufficiently well resourced to tackle any additional pressures that might arise as a consequence of its provisions? In particular, will it be sufficient to have only two sheriffs in the proposed personal injury court and to bring in summary sheriffs only when other sheriffs retire or, in order to be successful, will the proposals need to be better resourced?

Sheriff Lindsay Wood (Sheriffs Association): The bottom line is that we need to be resourced properly, because more business will come our way. We are happy to take it, but we need to be resourced.

It is difficult to work out what the landscape will be in the next few years. We provide a public service and the public deserve a good service, so there is no point in overloading us such that we cannot do the work. We are kind of busy right now with what we do.

The advent of summary sheriffs will change things for sheriffs. Summary sheriffs will do at a lower level a lot of the work that we do now. By and large, sheriffs will do just solemn work, proofs, debates, fatal accident inquiries and family work. We will also have the opportunity to do appellate work. We are happy to do the work, but we must not be overloaded, because that will backfire.

The Convener: Will you expand on what being properly resourced means?

Sheriff Wood: I am talking about time to do the work that is required of us. A lot of the work that we do is volume work, which will by and large be taken away from us—that includes summary crime work, civil stuff and small claims. We will have the chunkier stuff to do and we will have to be given the time in which to do it. It is difficult to be more specific than that.

Elaine Murray: The proposal appears to be that summary sheriffs will replace, rather than be additional to, existing sheriffs.

Sheriff Wood: Yes. We have 141 sheriffs, and that number will come down in time. It might take 10 years to have the right complement of sheriffs and summary sheriffs. I am not quite sure how that will play out and the situation will vary from one court to the next. I sit in Glasgow, where I can see that there will be so many sheriffs and so many summary sheriffs. It is a wee bit more difficult to work out whether a one-person court will have a summary sheriff or a sheriff. It is interesting.

The Convener: I hope that the camera was on you when you said that—I am sure that it was. Your mannerisms and facial expressions spoke volumes.

Does any other sheriff wish to give us general views?

Sheriff Colin Pettigrew (Sheriffs Association): I endorse what Sheriff Wood said. The question is whether the resources will be available to front load the system, to pinch a phrase that Mr Tyler used. As I read the bill and the proposals, the idea is not to front load the system but to progress.

I agree with Sheriff Wood that we are probably looking at a 10-year span. The bill is not for 2014 but for 2030 and 2040. We do not want to do such reform often, so the bill looks at the long term. It will not solve the problem tomorrow, but it might solve the problem in five years' time. If the aim is to solve the problem more quickly, resources will have to be found. We have no control over the resources; we operate within the parameters that we have. However, we recognise that if we are simply substituting a new summary sheriff for a retiring sheriff, the change will necessarily take time.

In the meantime, if work comes down from the Court of Session to the sheriff court, that will create a load, which will require man management by the Court of Session and by the sheriffs principal in deciding how much can come down. The powers might exist, but the change might not be as quick as the public or the committee wishes.

Sheriff Gordon Liddle (Sheriffs Association): I will expand a little on what my colleagues have said. If summary sheriffs were being created to exist alongside sheriffs and split the workload, if the workload was to stay as it is and if other things were equal, one would assume that no further resources were required and that we could operate within the resources that we have. However, there are severe difficulties at the moment in relation to summary trials, which are being set for months ahead, and in relation to quite a lot of other business, which the resource is not available to meet.

It is obvious that the more complex the work—I refer to solemn as opposed to summary criminal business and to civil cases whose value is greater—the more time it will take. That has traditionally been the case. For example, a summary trial can be through in half a day, but we might get through only two solemn trials a week. It is just a matter of fact that the more complex the business, the more time is taken up. We welcome the shift of business coming down to our domain from the Court of Session and the High Court, but it means that more work will come our way. That is why we need more resources—more sheriffs, more court time and more courts.

11:30

The Convener: If you think that this point is not relevant, please do not respond to it. However, it would be useful for the committee to know whether a busy urban sheriff court handles business in a different way from a rural sheriff court. Sheriff Wood is a Glasgow sheriff. Where do you sit, Sheriff Pettigrew?

Sheriff Pettigrew: I think that you will find that we are all urban sheriffs, albeit in different jurisdictions. I am in Paisley, but Paisley buddies would say that that is a long way from Glasgow. In reality, the boundary is sometimes very fine. For example, it runs down the middle of the Gap store in the Braehead shopping centre.

To be serious for a second, though, we are a smaller court. Glasgow sheriff court is obviously a much bigger court. I therefore have some experience of running a court that is slightly smaller, which brings its own difficulties with it. Under the new proposals, we are to be a jury centre, which will attract business. However, we will also have to continue to deal with lower-level claims. Undoubtedly, like Sheriff Wood's court, my court will in the fullness of time have sheriffs and summary sheriffs, which will ultimately be a question of management. I think that there will be a management role for the sheriff in that environment to manage how the jurisdiction is divided between the sheriffs and the summary sheriffs. We might come back to that point later on.

Where there are concurrent jurisdictions, though, somebody must allocate the business. It will not be possible for the sheriffs principal to do that, given all their other responsibilities. In my view, it will have to be done by a senior sheriff, who will be able to look at the way in which the business is planned and, with the sheriff clerk's assistance, allocate it across the board.

The Convener: Are you based in Edinburgh, Sheriff Liddle?

Sheriff Liddle: I am. I have covered just about everything that a sheriff would be expected to cover, as I have nearly 14 years' experience as a sheriff. I have had a specialism in the family court for about a year and a half, but I am no longer doing that.

The Convener: That is interesting. Obviously, there is a big range in what the different courts do. I once went to Selkirk sheriff court, which is small. All the criminal work was taken first, but I was sitting there expecting it to be like Edinburgh sheriff court, which has separate courts. There is a big range in what happens in different courts.

Sheriff Wood: Absolutely. Glasgow is an example of that. Summary sheriffs will come in

only as sheriffs retire, and that is why it will take 10 years. We then have to get the balance right to meet the workload. I know that we are talking about civil stuff, but we expect that in time we will be given increased sentencing powers, which will mean that a lot of the High Court work will come into the sheriff court.

Elaine Murray: Given what you said about change having to happen over time, should the increase in the exclusive competence threshold for things such as personal injury cases be introduced more gradually, or in a staged manner, in order to ameliorate the situation?

Sheriff Wood: I do not think that that needs to be staged. That will be done by sheriffs. We need to identify the sheriffs with the right expertise and specialism to man the personal injury courts.

Elaine Murray: But some of that will be done by specialist sheriffs in the other courts.

Sheriff Wood: Yes. In Glasgow, as in Edinburgh, we have specialists. I am a specialist sheriff who has done a commercial court and I have been sitting as a drugs court sheriff for 10 years. However, that is not all that we do in Glasgow. We all do other things. I am all for specialism and expertise, but we must watch that we do not de-skill people through that. If a sheriff becomes just a one-trick pony, it is difficult to put them elsewhere where they will need to be a bit more rounded.

Margaret Mitchell: Leaving aside the issue of resource, you have mentioned time and case management. Is there a concern about the estate, given the intention that courts will close? Three courts have already closed, and three will go in May and four in January.

Sheriff Wood: There are mixed views on that. We have absorbed the district court into Glasgow sheriff court, and that has put pressure on the building. There is the same amount of business, but there is more going on and there are only so many courtrooms.

We have concern about some of the courts that are shutting down, but that concern is not so much about the fact that they are shutting down as it is about whether the courts that the business is going to can absorb the work without that pushing back dates and it taking longer for people to get to hearings and to justice.

Sheriff Liddle: I agree with that. There is concern about the courts estate. Edinburgh sheriff court is a case in point, because we are having to pick up the work of other courts that are being closed. For example, we do not know how the work of Haddington sheriff court is going to fit in. At the moment, we are pretty much full and that is a concern. If the personal injury court were to come to Edinburgh sheriff court—there are sheriffs here with experience in personal injury law going back many years—it is hard to see how that could be accommodated within the building. Therefore, it might have to go elsewhere.

Sheriff Wood: The Court of Session, for example.

Sheriff Pettigrew: In Paisley, we also house the district court and we are almost invariably running the full nine courts for five days a week. It will be a question of management. If we are to act as a jury centre, which is the plan, there will be no juries in Greenock—all the juries from Greenock will come to Paisley. Whether the criminals will come up the M8 is a moot point, as is the issue of whether the witnesses and jurors will come. If we take out the three courts that are capable of holding jury trials at the moment, they will not be available for something else. A court such as the one that I was in yesterday, in which there were 50 accused appearing, requires a big room; otherwise they will be milling about the public concourse and there will be issues of public safety.

I was interested in the comment that the lady from Citizens Advice Scotland made in the previous evidence session. In an ideal world, we would separate the criminal from the civil, but that is not possible in the estate that we have. We will have to try to ensure as much division as possible in the building. If the only time that someone goes to court is as a civil litigant and they meet some of the—shall we say—more regular customers there, that will not be conducive to access to justice.

There are concerns purely about the estate. I am told that models have been run, and I have no doubt that the SCS is working on that. However, it is a management situation that will be dictated by volume of business.

Alison McInnes (North East Scotland) (LD): I have a couple of follow-up questions before I come to my substantive questions.

Sheriff Pettigrew, you will also have heard Citizens Advice Scotland say that it is looking for a more innovative and accessible approach from the new summary sheriffs. It has suggested that they might sit in the evenings, at weekends and in non-court settings. How do you respond to that?

Sheriff Pettigrew: The easy response would be to say that I am a sheriff and I am not going to be a summary sheriff, but that would be a bit glib. If summary sheriffs made themselves available as practitioners on a part-time basis, they would be likely to be more available to sit outwith what you would call the normal court hours and in buildings other than the courthouse. I understand that we must try to make the maximum use of the estate that we have. In that situation, we would be trying to run a system that was of assistance to the

litigants. At the moment, in my jurisdiction, if a sheriff is handling a summary cause or a small claim, they have to be available on a Friday. For obvious reasons, I have had to discharge cases on a Friday because litigants—quite properly because of their religious observance—have not been able to attend court on a Friday and have wanted to be elsewhere. Those are management issues that would need to be looked at.

The summary sheriff offers flexibility, particularly if he or she works part time. The other issue is that if he or she—particularly she—is able to work part time, that may open up the judiciary and make it more diverse than it is at the moment. Sheriff Liddle and I were at a conference on judicial diversity last week, considering the role of people other than what one might call the traditional middle-class male—

The Convener: Well, looking at you—[*Laughter*.]

Sheriff Pettigrew: I accept that criticism, convener. It is about opening up the judiciary. On the question of sitting outwith the normal court hours, I point out that there will be sheriffs with family or care responsibilities. We are now of an age when we might not have family responsibilities, but we might have responsibilities for senior relatives.

The Convener: Sheriff Liddle is not agreeing with you on that.

Sheriff Pettigrew: With responsibilities for elderly relatives, the issue is not necessarily gender specific, but options would be available if we took things outside court hours.

Alison McInnes: I would be astonished if the gender imbalance in the judiciary was down to there not being enough part-time roles. There is a whole lot more at play than that, but I accept the point.

Sheriff Pettigrew: If I gave that impression, it was misleading. I was not suggesting that. I was simply saying that that would be one advantage that would be available. I am not for a minute suggesting that that is in any way the sole reason. I agree with you.

The Convener: I am looking at the gender balance round the committee table. It would have been 5:4 if Sandra White had been here today. We do quite well in the Parliament, in the committees, anyway. That is irrelevant, but I just thought that I would say it.

Alison McInnes: Do the other sheriffs have any comment to make on the suggestion from Citizens Advice Scotland of meeting outwith—

Sheriff Wood: There is nothing wrong with the suggestions, which are good suggestions. It is just a matter of finding the funding to do that sort of thing. It would mean taking things outwith the traditional court estate.

Alison McInnes: I have a further follow-up question. You have said that you foresee implementation taking 10 years. We are therefore talking now about something that will be implemented in 2024. Is that ambitious enough? Is it possible to future proof things that far ahead?

Sheriff Wood: I think so—but it is not something that can be done tomorrow. Although there are some aspects where we can just flick a switch, we cannot do that generally. We are all for a third tier of judiciary, but the changeover cannot just happen like that. It takes time, because there are people in place. I suppose that one approach would be to offer packages to sheriffs to go early. That might accelerate things.

Alison McInnes: I have a couple of other points to make about summary sheriffs. First, the Sheriffs Association has expressed concern about the terminology. Perhaps it would be worth exploring why there are concerns about that and what confusion there might be.

Secondly, since the Gill review, the exclusive jurisdiction of the new summary sheriffs has expanded into areas around family law and the Children's Hearings (Scotland) Act 2011. Are you happy with that increase in the jurisdiction?

Sheriff Wood: I do not have a problem with it. It was either Gordon Liddle or Colin Pettigrew who raised the matter earlier. We will have concurrent jurisdiction on everything that summary sheriffs do. In family law, for example, we do not need to do everything; some things can be done at a different level by summary sheriffs. Some things are particularly important, however. There are complex matters such as the removal of children and things that really matter—real family matters. A system should be devised whereby the public can get the best service for those tricky things through sheriffs dealing with them.

Sheriff Liddle: I will make one comment based on my family law experience. For the most part, one would say that child welfare hearings, for example, are fairly straightforward and could be dealt with by a summary sheriff, who, after all, will have 10 years' experience, which is the same as what we have to have. However, there are cases that unexpectedly raise some very difficult questions of law, and which become complex. It is hard to identify those cases in advance. A case might introduce cross-border law, for instance, with regard to the relocation of a child. We do not know when such a situation might arise. I suggest that there will be cases that you want someone other than a summary sheriff to deal with, because

of their complexity or importance, including their importance in setting down a precedent.

The difficulty then is how to identify a complex case that should go to a sheriff and who has responsibility for routing it to a sheriff. I am talking about gate keeping, and it seems to me that one way of dealing with that is to place the gate-keeping role, if there is one, with the senior sheriff, who would then be in a position to stream business that really does not need to be dealt with by a senior sheriff, and to identify business that does require to be dealt with by a more senior sheriff.

11:45

The Convener: If a case has gone to a summary sheriff and it then transpires, during the course of evidence, that it is much more complex, can it then be remitted further up to be dealt with by a sheriff? I should know that, but I do not. It seems to me that it would be quite difficult if part of the evidence had been heard by one sheriff and then the case was moved on to another sheriff.

Sheriff Wood: We may have been talking down summary sheriffs too much, and I apologise if that is the impression that has come across. It may well be that the summary sheriff is comfortable and at ease with family matters, and may have a background as a solicitor or advocate in family matters.

I am not sure, and I cannot give you chapter and verse, but I am sure that there will be an opportunity to remit in certain cases.

The Convener: The interventionist approach was referred to. Do you really act as referees, or do you sometimes find yourselves in that position anyway, without it being in legislation?

Sheriff Wood: I have been doing that for years.

The Convener: I suspected that.

Sheriff Wood: It works, I think. Some sheriffs are uncomfortable doing that. To some extent, it depends on your personality whether or not you can grasp things and bang people's heads together in a gentle fashion.

The Convener: My goodness, you are scary. I am getting scared. I do not ever want to be in front of this man on the wrong side of the box.

Sheriff Pettigrew: In the small claims courts, and to a lesser extent in the summary courts, the existing rules provide for us to be interventionist. On days when we are sitting, we are encouraged to become involved with two-party litigants, who tend to think that a case is about X when in reality it is probably about Y. They may never have heard of Y or have any concept of the legal parameters involved, so you have to assist them.

Speaking personally now, not on behalf of my colleagues, I have a slight concern about the bill; it is to do with the simplified procedure. As I read it at the moment, it talks about negotiation between the parties. I have no difficulty in assisting parties to present their case, in becoming interventionist or in trying to identify the issues and then leaving the parties to tease them out, and I have no difficulty in asking questions, as I do frequently in proceedings, to try to assist parties. However, I am not negotiating, because I have to maintain neutrality.

My only concern about the use of the word negotiation is that it is more applicable to a mediation situation, and if it is important and relevant there are in-house mediators, as previous witnesses said, to whom one can refer cases. They are not available in every court, but they are available in numerous courts. There could be issues if the judge—whether you call him a summary sheriff, a sheriff or whatever—were to negotiate, because a person who does not get the result that they want could then ask to what extent the judge was independent, and that could reveal a plethora of unnecessary appeals to the sheriff appeal court.

Sheriff Liddle: The phrase used in the new provision is "negotiate with", and although that is only a small difference, there is a massive difference between negotiating with and facilitating negotiations between. I think that facilitating negotiations between is something that those who have taken a judicial oath would be comfortable with, because you can do that and still maintain impartiality, and ultimately deal with a decision if the negotiations fall through. However, if you have crossed over to being involved in negotiations, it would be difficult for that judge to move on and to make a decision impartially having been involved in the actual negotiations.

John Pentland: I want to go back to the resource implications. On the surface, it appears that a high volume of work is coming the way of the sheriff courts. Sheriff Wood said that he welcomes the new business. If the funding is not available to cover start-up costs and to allow you to carry out the work, might our court service go into meltdown or crisis?

Sheriff Wood: We should remember that we are going to lose a lot of business to the summary sheriffs. It is difficult to evaluate the size of what is coming in against the size of what is going out. That is my concern. We are pretty full on all the time so, if what comes in is more than what goes out, the public and the court service will suffer. The difficulty is that we are not flicking a switch and bringing in a swathe of summary sheriffs—it will take time. Maybe that is a good thing, because

the system will bed down and we will understand how the mixing and matching will be done.

I am not anxious about it. We just need to kind of suck it and see and learn from what happens. As I said, we welcome the changes, which will elevate our standing as sheriffs and give us the opportunity to do more challenging stuff.

John Pentland: So you are giving the committee a guarantee that we will not have a court service in crisis.

Sheriff Wood: I am not giving any guarantees, but I am happy to take on the work.

John Pentland: Does Sheriff Pettigrew or Sheriff Liddle have any comments?

Sheriff Pettigrew: I endorse all of what Sheriff Wood has said. The difficulty is that there are already individual pressures in individual courts. It would be naive to imagine that, in the short term, those pressures might not increase. I do not think that they will increase to the extent to which we have the cataclysmic effect that you suggest, Mr Pentland. It is a question of management. Ultimately, that comes down to sheriffs, sheriffs principal and the SCS managing the process in the best way possible. At the end of the day, we are all striving for the same result, which is access to justice for the public in a proper forum and in a reasonable time.

The Convener: Sheriff Wood, you referred to the senior sheriff in a sheriffdom, who does the management and assessing. Is there such a post?

Sheriff Wood: That is unofficial. In Glasgow, it is the person who has been the sheriff the longest. It does not make them any better.

The Convener: Right. I just wanted to be clear on that—there is a sort of hierarchy.

Sheriff Wood: Yes, but it is more difficult to have a senior sheriff when there is only one sheriff or two.

The Convener: Well, if there was only one, they would de facto be the senior sheriff.

Roderick Campbell: The financial memorandum states that the Government anticipates that 5 per cent of cases in the proposed sheriff appeal court will be heard by more than one sheriff, and 95 per cent of cases will be heard by just one sheriff. How do you feel about the proposals for the sheriff appeal court and how will they work in practice?

Sheriff Wood: Again, we welcome the proposals on a sheriff appeal court. As you know, there is already a sheriff appeal court anyway, through the sheriff principal. A lot of the stuff that the sheriff principal does involves interlocutory appeals that really do not amount to much. It is for the sheriff principal to decide whether he needs to bring in somebody to assist him to do the meatier civil appeals. However, with criminal appeals, there is value in having one or two sheriffs who are experienced in criminal work sitting alongside the sheriff principal, who, as far as being a sheriff principal is concerned, will have done only civil work. Those sheriffs would assist the sheriff principal in dealing with the workload.

The Convener: Does anyone else on the panel want to comment on the sheriff appeal court? You do not have to.

Roderick Campbell: Can I ask a couple of other quick questions, convener?

The Convener: Of course.

Roderick Campbell: We have a written submission from Ailsa Carmichael QC, who is a part-time sheriff. She raises concerns about the place of residence requirements in the bill, which seem to enable the Lord President to make provisions on where a sheriff should be resident. As well as concerns about practicalities, she raises a concern on diversity grounds. Sheriff Pettigrew mentioned earlier that he and Sheriff Liddle were at a recent conference on judicial diversity. Do you have any comments on the place of residence requirements?

Sheriff Liddle: The power to require a sheriff to live in a particular place is not a new power. This is a consolidation exercise, and there are other consolidation exercises that I think are properly identified as such, with the change of personality involved.

I will give an example. Section 10 of the Sheriff Courts (Scotland) Act 1971 contains a power exercisable by the Scottish ministers to require a sheriff to move out of a sheriffdom and into another. Certain reasons are involved in that. The requirement may arise where a sheriff in another sheriffdom is ill, where a vacancy occurs or where the move appears to Scottish ministers to be expedient for any other reason, so there is a framework in relation to moving a sheriff from one place to another. On the back of that, it would have been open to require residence under a different provision.

Under section 2 of the bill, the power to require a sheriff to move from one sheriffdom to another—to another court, in fact—is moved to the Lord President on his own, but no criteria are set out for him to exercise that power. They might have been lost in translation or that might be intentional—I do not know. As well as the power to move a sheriff anywhere in the country, he has the power to require residence.

In the most recent recruitment for sheriffs principal, the Lord President made it clear, in

exercise of a power that he has, that a sheriff principal has to live within the sheriffdom and has to be within an hour's drive of the base court. I can tell you as a matter of fact that that has restricted applications, because there are people—in diverse situations, oddly enough—who simply cannot do that.

On the ability to require a sheriff to live in the sheriffdom and the ability to move sheriffs, under the bill, the Lord President for some reason loses the protection that Scottish ministers have in using this really quite swathing power. Under the 1971 act, if ministers decide that, for reasons that are clearly set out, they need to move a sheriff from one place to another, they cannot really be criticised for that as long as the criteria have been properly exercised. I do not see the Lord President being given the benefit of that comfort under the bill. The power is simply available and there are no criteria for exercising it. It is a pity that he might be placed in a position where he is criticised and he cannot say, "I did this under these criteria." That is true of any Lord President and not just the current one.

However, the criteria may have been lost in translation. If so, there might be some comfort for part-time Sheriff Carmichael.

Roderick Campbell: That is helpful. On the simplified procedure, we heard from the previous panel that the proposed £5,000 limit is too restricted and that, if we make the proposed changes, it should go up to at least £10,000. Do you have any comments on that?

Sheriff Wood: I do not know whether it is for us to say what the privative jurisdiction should be. The jump from £5,000 to £150,000 is a big one and clearly has significant implications for the faculty in particular.

12:00

Roderick Campbell: No; I was talking about the simplified procedure.

Sheriff Pettigrew: The same thing would apply. My concern about the simplified procedure is not the financial limit but the fact that most, but not all, of the housing cases will now be done in that way. We all sit in urban centres and have huge housing case loads, which will undoubtedly benefit from the simplified procedure. However, under that procedure, it will also take a lot of time to do that work.

With respect, it is not for us as serving sheriffs to go into the policy of whether the figure should be £5,000, £7,500, £10,000 or whatever. I firmly believe—I think that we all endorse this—that, in the 21st century, the exclusive jurisdiction at £5,000 is inappropriate but it is not for us as a body to pitch a figure for where it should be. We will deal with what we are asked to deal with perfectly competently.

Sheriff Liddle: I would add that £5,000 or any other amount is, of necessity, the arbitrary fixing of a figure. It does not necessarily reflect what happens in small claims summary cause courts. By that, I mean that the most difficult of legal questions can arise with £500 at stake. An example of that would be someone saying that a plumber turned up and did not do their job properly. All the lawyers know that that raises difficult questions in relation to professional competence under the Hunter v Hanley test, as it is known.

The Convener: Thankfully, I do not know the Hunter v Hanley test. We will not ask you to expand on it at the moment.

Sheriff Liddle: I can expand on it simply. One has to be able to prove that no person with the appropriate competence would have acted in the way in which the person acted. A party litigant has no chance of knowing that.

The figure does not matter much. That is a question for policy.

The Convener: While we are on that, we got into the business of remitting cases from the sheriff court to the Court of Session and the test being higher now. I am trying to find that in the explanatory notes or the policy memorandum. I think that we were told that the test would be exceptional circumstances as well as areas of complexity of law. What does the term "exceptional circumstances" mean?

Sheriff Pettigrew: The difficulty in answering that question is that it might vary from case to case and anything that I say now might be prescriptive, so forgive me if I do not answer the point directly.

It seems to me to be a policy issue. If the driver behind the system is to create a collegiate appeal court, by which I mean the inner house, free up the senators for doing that kind of work, devolve the other business—which the sheriffs are perfectly capable of doing—down to the sheriffs and introduce below that a summary sheriff level, we do not want a situation in which, if any particular case is thought to be too difficult, it simply gets sent back to Edinburgh again. Therefore, it is not unreasonable to have a change in the test, but I could not comment on how that will be interpreted.

The Convener: In cases such as that of the plumber, which Sheriff Liddle mentioned, I wondered whether there might be an area of such complexity of law that the case would be remitted to the Court of Session. That might arise. I just

wanted to know whether it was a higher test now, rather than to have specific examples. Of course, you cannot say that until you face it.

Sheriff Pettigrew: I am afraid not.

Margaret Mitchell: What are your views on the provisions on judicial review? Concern has been expressed that the three-month period might not be long enough to get legal aid in place, for example. On the leave of court to filter out unmeritorious cases, some people have suggested that that is not really a problem. Some have suggested that, if an application is refused, the oral hearing with another judge and the appeal that may go to the inner house of the Court of Session will add more expense. Do you have any views on that?

Sheriff Wood: We do not really deal with judicial review. It goes up to the Court of Session so it does not really apply to us.

Margaret Mitchell: Right. Do you have a view on honorary sheriffs? There has been—

Sheriff Pettigrew: Yes.

Margaret Mitchell: —some disquiet about honorary sheriffs being abolished

The Convener: There is a view—there was an answer before you even finished your question, Margaret.

Sheriff Pettigrew: To answer very simply—yes, I have a view.

I read the Law Society's submission and a lot of it makes very good sense. There will be potential difficulties in a country as diverse as ours, with the geographical spread of our population, if the office of honorary sheriff is simply abolished, as is proposed. That was not what was originally suggested. I may have missed something, but I have not seen any justification as to why the office is being abolished.

To give one example of a potential difficulty, with regard to the court in which I sit, until recently the sheriff for Campbeltown also sat in Paisley and went to Campbeltown as required in a one-week-out-of-four pattern. However, we need some judiciary input for the three weeks that she is not there and, of course, the honorary sheriff is available to deal with matters that require immediate attention and which cannot simply be transferred from the tip of the Mull of Kintyre all the way to Dumbarton.

If we do away with the honorary sheriff, who will deal with those matters? If a sheriff or a summary sheriff has to be brought in, there must be resource implications regarding where the person will need to be detained overnight, be it locally in the police station or wherever.

For straightforward matters such as those, I cannot understand why we should not keep the post of honorary sheriff, particularly as I understand from the Law Society's submission that the post of honorary sheriff is cost neutral. We should keep them, provided that they have a certain level of competence—I think that the Law Society suggested that they should not be someone who has no legal qualification. That is my view.

Sheriff Liddle: You may, in fact, get someone who has a great deal of experience. I believe that one of the honorary sheriffs in Edinburgh is Lord Hope of Craighead, who is one of the leading judges of our age; I believe that Lord Mackay of Clashfern was also an honorary sheriff.

Margaret Mitchell: Sheriff Wood?

The Convener: I am sure that Sheriff Wood would speak up if he wanted to.

Sheriff Wood: Leave them be. Leave honorary sheriffs be.

The Convener: Can I ask about access to justice? The Sheriffs Association has argued that the allocation of sheriffs and summary sheriffs across Scotland should take account of the needs of those who live in remote areas. It has also been argued that there is a need for peripatetic summary sheriffs. Would you like to comment? Have we already dealt with that?

Roderick Campbell: No, we have not. I am glad that you raised that point.

The Convener: Thank you very much, Roderick. I am getting a compliment—I must mark that in my diary.

Obviously there are concerns about access to justice, given court closures and so on, in particular with regard to rural areas. The Highlands and Islands area comes to mind—I say that for you, John.

John Finnie: That is very kind, convener.

Sheriff Liddle: I listened to the commentary from the first panel of witnesses and I have an observation to make. If a sheriff is required to move around, the time that they spend doing that has to be built into their available time. That is not a very efficient use of that resource, but it may be what is required.

I think that I heard a suggestion that a summary sheriff could spend half a day in one place and half a day in another place. Even if the time in between—which may be longer than an hour—is taken out of the equation, business just does not work that way. A sheriff could turn up only for the court to collapse quite quickly, or it may well sit for multiple days. When the sheriff turns up at the court in the morning, a number of cases might be

set down because, like a hotel booking system, there cannot be just one case—that would not be efficient. The sheriff might get a case that proceeds, with witnesses hanging around, only to have to say, "I'm sorry, I can't continue this case into the afternoon because I have to be elsewhere—although there may be nothing when I get there—so maybe we'll fix another day and come back then." It could become a bit of a mess.

Sheriff Wood: The court system right now is not perfect and there is a lot to be said for the suggestion that was made. We should certainly not forget the needs of the public. We have imperfections in the system right now. If we were to have peripatetic summary sheriffs, that might not be perfect either but it might suit the public better.

The Convener: Is there anything that the witnesses wish to say that we have not asked you about and which is within your remit?

Sheriff Wood: No, not really. However, I would like to thank you for asking the Sheriffs Association to come along to the committee to give an input. We were not able to make a written submission—we simply did not have the time—but we are very pleased to have been asked along and we appreciate your time.

The Convener: We understand the pressure on witnesses as regards making their submissions to fit the timetable that we have been given—we have nothing to do with that timetable, I hasten to add. I thank you all very much for coming.

Subordinate Legislation

Prisons and Young Offenders Institutions (Scotland) Amendment Rules (SSI 2014/26)

12:10

The Convener: Item 3 is consideration of the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2014 (SSI 2014/26). Members will recall that we have considered the instrument twice. When we first considered the instrument, we decided to write to the Scottish Government on the lack of transitional arrangements on the instrument as highlighted by the Delegated Powers and Law Reform Committee. We also asked for its comments on similar concerns regarding the proposed draft Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014, which we considered late last year. Additionally, we wrote to the Association of Visiting Committees asking for its views on the concerns of the Delegated Powers and Law Reform Committee.

Having considered those responses, we wrote back to the Scottish Government seeking a response to the issues that were raised by the Association of Visiting Committees. The latest Scottish Government response has been received and is provided in paper 3. Do members have any comments on that response? Do they think that it deals with the issues?

Members: Yes.

The Convener: We have resolved the issues, have we not? Alison?

Alison McInnes: Yes.

The Convener: Are members content to make no recommendation on the instrument?

Members *indicated agreement.*

The Convener: Thank you. The order will continue to be assessed and, if required, the need for any saving and transitional provisions will be included in the final version of the order so, in a sense, we have a backstop.

12:11

Meeting continued in private until 12:52.

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