The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 17 December 2013

Session 4

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JUSTICE COMMITTEE
37th Meeting 2013, 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:

Cliff Binning (Scottish Court Service)
Gerry Bonnar (Review of Sheriff and Jury Procedure)
Sheriff Principal Edward Bowen (Review of Sheriff and Jury Procedure)
Felicity Cullen (Scottish Government)
John Dunn (Crown Office and Procurator Fiscal Service)
Kenny MacAskill (Cabinet Secretary for Justice)
Catriona MacKenzie (Scottish Government)
Michael Meehan (Faculty of Advocates)
Grazia Robertson (Law Society of Scotland)
Denise Swanson (Scottish Government)

CLERK TO THE COMMITTEE

Irene Fleming

LOCATION

Committee Room 6

Scottish Parliament

Justice Committee

Tuesday 17 December 2013

[The Convener *opened the meeting at 09:30*]

Decisions on Taking Business in Private

The Convener (Christine Grahame): Good morning and welcome to the Justice Committee's 37th meeting in 2013. I ask everyone to switch off mobile phones and other electronic devices completely, as they interfere with the broadcasting system, even when they are switched to silent. No apologies have been received.

Under agenda item 1, I invite members to agree to consider items 6 and 7 in private. Item 6 is consideration of witness expenses in relation to the Criminal Justice (Scotland) Bill, and item 7 is further consideration of a supplementary legislative consent memorandum on the Anti-social Behaviour, Crime and Policing Bill. Do members agree that those items should be taken in private?

Members *indicated agreement.*

Subordinate Legislation

Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2013 (SSI 2013/320)

09:31

The Convener: Agenda item 2 is evidence from the Cabinet Secretary for Justice on one negative Scottish statutory instrument: the Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2013. I welcome to the meeting the cabinet secretary, Kenny MacAskill, and Scottish Government officials. Denise Swanson is head of the access to justice unit; Catriona MacKenzie is legal aid policy manager; and Felicity Cullen is from the legal services directorate.

I understand that the cabinet secretary wishes to make an opening statement. Please do so.

The Cabinet Secretary for Justice (Kenny MacAskill): Thank you. I am happy to be here to assist the committee in its consideration of the Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2013.

These amending regulations do three things to the existing fee regulations for solemn criminal legal aid. First, they clarify existing provisions. That responds to the criticism of a lack of clarity currently by expressing the current operation of the fee regulations more explicitly in the provisions themselves.

Secondly, the amending regulations increase the flexibility of fees. That responds to the concern that there is not sufficient flexibility at present. Exceptional case status will be made available, and the Scottish Legal Aid Board or auditor will have the discretion to allow a fee where one is not otherwise prescribed.

Finally, the amending regulations restructure and extend provision for certain fees. Preparation fees for deferred sentence diets are being moved into the existing inclusive fee for post-conviction work. The change in structure means that fees for preparation where a case does not proceed to trial will also be made available.

Let me take the opportunity to be equally clear about what the amending regulations do not do. They do not reduce the amount of fees that will be paid to solicitors for solemn criminal legal aid, so they do not make savings to the legal aid fund.

The amending regulations do not, in my opinion, fail to comply with the European convention on human rights. I have seen no specifics from the Law Society of Scotland on how it believes that non-compliance would arise. The amending regulations are not a response to a breach of any

person's ECHR rights, but are a precautionary measure following the appeal court's comments.

I hope that that explanation is useful to the committee. I am happy to take any questions.

The Convener: Thank you, cabinet secretary. I remind people that this is an evidence session; we will, if necessary, move on to the debate afterwards. Members should therefore ask questions, please.

Roderick Campbell (North East Fife) (SNP): Good morning, cabinet secretary. What I am finding most difficult to fully understand is the variation in the figures on the cost of the changes. The cost is between £260,000 and £380,000, which is quite a band. Is there any more information on the assessment of the impact of the changes?

Catriona MacKenzie (Scottish Government): The bulk of the variation comes from the exceptional case status provision, because it is quite difficult to predict exactly how many cases will achieve exceptional case status. There is also some variation in how much would be paid out for each case individually, as that would be done on the basis of the circumstances of the case.

Roderick Campbell: So would I be right in thinking that £260,000 is the minimum figure and £380,000 is the maximum? Is that the best way of looking at it?

Catriona MacKenzie: Yes.

Sandra White (Glasgow Kelvin) (SNP): Cabinet secretary, in your opening remarks, you mentioned ECHR compliance. Has the Law Society of Scotland raised any specific issues with you in relation to how it believes that non-compliance would arise?

Kenny MacAskill: We have not had anything from the Law Society about that. All legislation that comes before the Parliament requires to be ECHR compliant. We believe that the regulations are ECHR compliant, but if the Law Society can tell us the specific basis on which it thinks that they are not, we will happily consider that and respond to it. All that we have received so far is its view that the regulations are not compliant—we say that they are—without any specifics about the why.

Alison McInnes (North East Scotland) (LD): Good morning, cabinet secretary. You said that the regulations will not reduce the amount of fees paid in total, based on the estimated cost of £260,000 to £380,000. However, how you arrived at those figures is not very transparent. It has been pointed out to me that when the Cadder decision came out, it was estimated that the cost might run to £5 million. In fact, at the end of the year, the cost was £330,000. Had you chosen to tackle this problem in the same way, you might have taken £5 million out of the legal aid budget and said, "We will redistribute it in this way." How accurate is the £260,000 figure?

Kenny MacAskill: All the figures are as accurate as they can be. We require estimates that will allow us to address situations that are case dependent, so flexibility is required. We have number-crunched as much as we can. I do not know whether Denise Swanson or Catriona MacKenzie wants to comment further.

Denise Swanson (Scottish Government): The estimates are based on figures provided by the Scottish Legal Aid Board, which based them on its knowledge and understanding of the various invoices that are presented to it by solicitors and on the volumes of business that are relevant to such legal aid fees. As Mr MacAskill said, the figures are based on assumptions and knowledge of how the system works.

Alison McInnes: What will happen to the funds if they are not drawn down in that way and if, in fact, few cases arise?

Kenny MacAskill: We are projecting an overspend of the legal aid budget, so unspent funds will be used to offset other areas. This is about our addressing a court case that arose to make sure that we are compliant and address the circumstances. A lot of these things are about preparing for specific cases. However, until we get such cases, it is difficult to be precise, because each case will be unique in its merits. This is about having the flexibility to address an issue that the judiciary raised, ensuring that we are compliant and that we have the budget. Any budget underspend could be used to cross-subsidise overspend in other parts of the Scottish legal aid budget.

Alison McInnes: How many meetings did you have with the Law Society to discuss the matter?

Denise Swanson: We regularly meet the Law Society's criminal legal aid negotiating team. We raise business with it through a combination of meetings and emails. We raised the issue with it early on and, throughout the development of the regulations, we corresponded with and met the team to discuss the matter. Not all our meetings are specifically about one issue; we perhaps cover three or four issues at one time.

Kenny MacAskill: Last week, I met the new president of the Law Society. The issue was not raised then. We have another meeting in the coming days and, as far as I know, the matter is not on the agenda. However, if he raises it, I will happily discuss it.

Margaret Mitchell (Central Scotland) (Con): Paper 1 says:

> "The Law Society of Scotland, while content with the provisions so far as they address the Appeal Court's concerns, is of the view that the cost of these new provisions should not be met by a reduction in detailed solemn fees",

whereas the cabinet secretary has talked about a flexible approach. How do the two statements marry up? Does the Government's approach set a precedent, or has such an approach been taken before?

Kenny MacAskill: I do not believe that our approach sets a precedent. We are talking about exceptional case status—the clue is in the word "exceptional". It will be the exceptional cases—cases that we do not expect to be the norm—that will need to be considered by SLAB or the auditor as a result of the decision in the McCrossan case, which is the subject of appeal to the Supreme Court. We believe that the amending regulations will provide the flexibility that is necessary to deal with exceptional cases without varying the totality of the funding that we provide.

Margaret Mitchell: Are you giving a guarantee that if the Government faces additional legal aid extensions in the future, it will not seek to offset those through a reduction in legal fees elsewhere?

Kenny MacAskill: I cannot do that. Unlike the situation south of the border, where legal aid has been chopped and a raft of matters have been taken out of legal aid wholesale, we have refused to do that. The Scottish legal aid budget is not capped, so we require to work on the basis of estimates and to address circumstances that arise. Sometimes, circumstances might arise as a result of court cases, such as the McCrossan case; at other times, they might arise as a result of our adopting a particular policy position. Unless you wish me to cap the legal aid budget, which I am loth to do, it is necessary to have an element of flexibility. Lady Paton made it quite clear that some exceptional cases require to be treated differently. We must trust the judgment of the Scottish Legal Aid Board and of the auditor and give solicitors and advocates who have carried out such work the opportunity to be recompensed. I do not see any way in which the matter can be dealt with other than by imposing a cap. As we are not prepared to do that, there must be flexibility.

Margaret Mitchell: Are you adopting a new approach that has not been used before? Are you setting a precedent?

Kenny MacAskill: No. This is the approach that has been taken to legal aid since I have been in office and, indeed, since I began practising as a lawyer. The legal aid budget has not been capped. We have never been in the situation in which no legal aid has been available two thirds of the way through the financial year. SLAB has always had to try to budget and has required to make changes—sometimes in advance and sometimes in arrears—to address the circumstances. That has been the case ever since SLAB and the legal aid fund were established.

Margaret Mitchell: Is it your view that there is no reduction in detailed solemn fees?

Kenny MacAskill: There is no reduction in the legal aid budget.

Margaret Mitchell: I asked whether there was any reduction in detailed solemn fees.

Kenny MacAskill: It would depend on the case.

Catriona MacKenzie: If you are thinking about the issue from the point of view of how individual cases will be affected, I point out that there has been a restructuring of how fees are distributed so, in addition to exceptional case status being made available, preparation fees are being extended, which makes it quite difficult to be able to give a specific answer. Potentially, there will be some reduction in the fees that solicitors will receive in some cases but, at the same time, other fees will be higher. In fact, we have created more opportunities for solicitors to be paid higher fees in certain cases.

Margaret Mitchell: It is in relation to that potential reduction that the Law Society has some concerns about access to justice and a possible breach of article 6 of the ECHR.

Felicity Cullen (Scottish Government): I do not think that we know that. The information that we have received from the Law Society is very unspecific—it does not say where it thinks that there would be a lack of compliance.

Margaret Mitchell: According to our papers, the Law Society seems to be saying that if there is a question mark over how much solicitors will be paid for taking on certain cases, they might be disinclined to take on those cases, as they might feel that the payment would not be adequate for the work that they would have to do. In such a scenario, there would be a concern about access to justice.

Kenny MacAskill: I do not think that that situation would arise. The cut that would occur in some circumstances to offset the increase in certain situations is not of such magnitude that firms will face penury. In order for us to be ECHR compliant, we must ensure that legal representation is made available, and it is always there—ultimately, through the backstop of the Public Defence Solicitors Office—so I do not see how we can be accused of failing to comply with the ECHR. Although, as we have explained, there may be circumstances in which there will be a

modest reduction in some element of the fee, in other circumstances the fee will be increased. As I said, on that basis there is no reduction in the general amount of the fund.

Margaret Mitchell: Is that approach a precedent?

09:45

Kenny MacAskill: I do not know. I imagine that there might well have been precedents but I am not aware of them. I can say that, throughout its existence, legal aid has never been capped. We have never followed the route taken by the Conservative coalition Government south of the border of entirely taking out of legal aid huge areas that we view as sacrosanct, such as cases involving asylum seekers, family law cases and even many aspects of injury litigation. People south of the border are no longer eligible to apply for legal aid for those things, in which we have maintained legal aid.

However, the system has come under pressure because of the difficulty in predicting the number of cases that might arise. My experience from 20 years in practice, never mind my six years as the Cabinet Secretary for Justice, is that tweaks, modifications and changes are made to the Scottish Legal Aid Board's disbursement of funds and that such aspects are dealt with as they arise and as updated figures become available.

On the question whether this is a precedent, I cannot say. However, I am happy to go away and inquire whether there is any precedent or indeed whether this is simply part of the changes that are made in-house during the year to address the challenges that the Scottish Legal Aid Board faces.

Margaret Mitchell: I think it would—

The Convener: Do you mind if we move on, Margaret? We have a whole pile of work to get through and you have had a good whack at the issue.

John Pentland (Motherwell and Wishaw) (Lab): Good morning, cabinet secretary. Do you think that, if the amendment regulations go through, cases will not progress to court because solicitors will not be prepared to carry out the initial groundwork?

Kenny MacAskill: No. Frankly, the changes are de minimis and I cannot for the life of me see any reason, other than cussedness, why solicitors would refuse to act. In any case, if they feel disinclined to act, the Public Defence Solicitors Office will act in their place.

The Convener: You might not have won any friends with that expression, cabinet secretary, but never mind.

John Pentland: You also said that if the regulations go through, solicitors will be paid the same amount of fees overall but in different and more transparent ways. Where has there been a lack of transparency in the past?

Felicity Cullen: I can give you the example of fees for research. Although such fees have always been payable, the drafting of the regulations tucked them away in a corner and did not expressly make it clear that the fees applied to research; instead, they were described as fees for other work. For reasons that I completely understand, the appeal court found that quite confusing. The old regulations—the Criminal Legal Aid (Scotland) (Fees) Regulations 1989—have been in place for some time now and, with hindsight, one can look back and think, "You know, we didn't express that quite as clearly as we could have done." As a result, the 1989 regulations are being amended by these regulations to clearly set out a specific fee that is exactly the same amount as before and to say to solicitors, "You may be paid a fee for research if you can show that the case is exceptional or that the preparation required is above and beyond the normal amount that a solicitor would have to carry out." That is an example of how we are trying to improve transparency to ensure that if not lay readers then certainly members of the profession can read the regulations and understand what they may be paid for.

Elaine Murray (Dumfriesshire) (Lab): Just as a matter of interest, do you have any idea what proportion of solicitors in Scotland undertake legal aid work at the moment?

Kenny MacAskill: A significant amount, I would have thought.

Denise Swanson: I think that about 1,600 do criminal legal aid work. Is that right?

Catriona MacKenzie: I cannot remember, so I would not be able to vouch for that figure.

Denise Swanson: I can provide the figures. We have separate registration for civil and criminal legal aid—

The Convener: But surely some will do both.

Denise Swanson: Yes.

Elaine Murray: Is there any indication that solicitors are coming out of legal aid work?

Denise Swanson: No—quite the opposite, in fact.

Elaine Murray: Finally, what would be the consequences if Parliament did not let the regulations go through?

Kenny MacAskill: In her opinion on the case of Her Majesty's Advocate v McCrossan, Lady Paton gave a clear steer that the changes need to be made. If they are not, we will face challenges and, ultimately, other difficulties. This is all about getting ahead of the game. Although that particular case is being appealed to the Supreme Court, the Scottish Legal Aid Board and officials up here are correctly trying to get ahead of the situation. I think that we would face a challenge that the fee being paid is inappropriate and that the regulations are inadequate and do not address the issue of exceptional status.

Elaine Murray: In those circumstances, what could be the consequences for the Government?

Kenny MacAskill: We would presumably face continual litigation for increased fees on a case-by-case basis. It is partly a matter of ensuring greater flexibility so that, rather than facing individual challenges in individual cases, we provide flexibility for the board or for the auditor to enable them to address matters.

The Convener: That concludes the evidence session on the regulations. We now move on to item 3 on the agenda, which is a debate on the motion to annul the Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2013 (SSI 2013/320). Under standing orders, the debate on the motion can last for up to 90 minutes—do not feel obliged.

I intend to call Alison McInnes to speak to and move the motion. I will then move to the open debate, when I will call any members who wish to speak, before inviting the cabinet secretary to respond to the debate. I will then invite Alison McInnes to wind up. At the conclusion of the debate, I will put the question on the motion. If the motion is agreed to, the regulations will be debated further in the chamber. If the motion is not agreed to, that will conclude parliamentary consideration of the regulations. I hope that you all followed that detailed explanation. Christian Allard looks bewildered—

Christian Allard (North East Scotland) (SNP): No.

The Convener: Never mind; I will try to do it in French another day, but I am sure that I will not succeed.

I call Alison McInnes to speak to and move motion S4M-08570.

Alison McInnes: I lodged the motion to annul the regulations because they appear to penalise solicitors unduly for Scotland's failure to comply with the European convention on human rights. Furthermore, they raise serious questions about how the Scottish Government intends to address problems of non-compliance in the future.

I do not dispute the need to comply with the clear steer that Lady Paton has given us. Indeed, I am sure that we agree that the Scottish Government needs to act to address the concerns that the appeal court highlighted earlier this year. It identified that the right to a fair trial, which is guaranteed under article 6 of the convention, could be prejudiced by the inequality of arms. We cannot allow such differences in preparation to persist. However, the question that is before us today is how this and other non-compliance issues should be resolved. The committee wrote to the cabinet secretary after our meeting on 3 December, and I am grateful for his response, but I believe that he has failed to confront the crux of the argument and to reflect on the principle that underpins the regulations.

It strikes me and the Law Society of Scotland as fundamentally unfair for the Scottish Government to transfer the cost of state non-compliance on to solicitors throughout Scotland through a 3.65 per cent reduction in the current fees for solemn proceedings across the board. I do not believe that there has previously been offsetting of that nature in order to achieve ECHR compliance. There is a danger, as Margaret Mitchell said, that the reduction will set a precedent.

In its written submission, the Law Society describes the regulations as a "stealth tax", or a means by which the Scottish Government is passing a financial burden—the cost of

"meeting an international obligation it owes to benefit the whole population"—

on to one section of the legal community. The SSI is a means to cut solicitors' fees. There is a real risk that, in shifting the weight of the problem on to another area of the system, the Scottish Government could establish the conditions for non-compliance elsewhere. That is one of the issues that the Law Society raises. If we were to reduce solicitors' fees regularly in order to address breaches of the convention, that could create, in the Law Society's words, "a spiral of non-compliance".

The Scottish Government asserts that the regulations as a whole will be cost neutral, yet it is surely difficult to quantify the impact of the proposed changes. In the absence of any draft guidance on how the provisions will be applied, there is certainty about cost reduction but none about subsequent expenditure. How often will the Scottish Legal Aid Board determine that a solicitor is entitled to certain fees? What will happen to the funding if it is not fully allocated each year? Will it roll on to the next year? Why has the cut been set

at 3.65 per cent? There appears to be a lack of transparency, and I believe that the regulations merit further consideration and consultation.

I move,

That the Justice Committee recommends that the Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2013 (SSI 2013/320) be annulled.

John Finnie (Highlands and Islands) (Ind): I am very interested in human rights and I cannot envisage a situation in which the Scottish Parliament would put in place anything that did not comply with the ECHR. We need to consider the overall package. Any suggestion of a downward "spiral of non-compliance" is emotive language, and it is less than helpful.

We also have to look at the financial reality of the situation, and there are huge challenges in that regard for the public sector. Any legislature with a fixed budget that has had the significant cuts that the Scottish Parliament has had would face such challenges. I do not think that anyone would like to see a reduction in fees, but I am reassured that the overall package remains the same. More important, compared with other jurisdictions, the overall range of coverage that is provided remains the same. For those reasons, I have no difficulty in supporting the regulations.

Roderick Campbell: There are some positives here. For example, preparation fees for deferred sentence diets will be moved into an existing inclusive fee for post-conviction work, and fees for preparation where a case does not proceed to trial will be made available. Those are positives, and I think that we must take them into account.

On the Law Society's argument about a "spiral of non-compliance", if what it has said was the case, it would be worrying. However, I think that the concern is more theoretical than practical, so I do not think that we should get too carried away with it. The Law Society also refers in its written submission to fees being

"reduced in one part of the system in order to subsidise fee levels in another",

but it is not a subsidy, because no real fees are paid at the moment in that area. I would say that it is therefore a reallocation and not a subsidy. If the situation was going to be repeated time and again, I would share some of Alison McInnes's concerns, but I do not think that it will be. We should oppose the motion to annul.

Christian Allard: I looked carefully at the Law Society's submission, but nothing in it has persuaded me. I listened to what the cabinet secretary said earlier, and I do not think that what is proposed is an exercise to try to save money. I do not see that it would reduce the amount of legal aid. I therefore oppose the motion to annul.

Margaret Mitchell: In the absence of an assurance that the regulations will not set a precedent, I am minded to support Alison McInnes's motion to annul. Is there any way in which we can get such an assurance this morning?

The Convener: The cabinet secretary will respond at the end of the debate, and then Alison McInnes will respond.

Elaine Murray: I came in this morning genuinely not certain about which way I was going to vote on the motion. However, I have been convinced that I must support the regulations rather than the motion to annul. A significant number of solicitors still do legal aid work and there is no evidence that solicitors are coming out of that. Although there will be a reduction in some fees, there will be the potential for payment for some aspects of work that have not been paid for previously. If we annulled the regulations, there would be serious consequences for the Government in terms of individual challenges in the future that could cost significant sums. On balance, therefore, I oppose the motion to annul.

The Convener: I am not persuaded by Alison McInnes's arguments. An interesting point was made about the very loose description of fees for preparation, which might involve somebody trying to find out what the law is when they should have known that in the first place. However, the provision is for exceptional cases. Criminal practitioners should have to do preparation and review the position only when something exceptional is put before them.

I am content with the route that the Government is taking—I do not always say that—in protecting the integrity of legal aid. I despair about what happens south of the border, where people are being deprived of access to legal aid in many important cases. I appreciate that there are tight budgetary constraints across the United Kingdom, but I think that the Scottish Government has made the right decision about legal aid in Scotland.

I will not support the motion, but I want to monitor the impact of the regulations to see whether the Law Society of Scotland's arguments come to fruition. We will be able to see whether the impact on other financial areas and so on happens only rarely. I am not persuaded by Alison McInnes's arguments, but I want to measure the impact of the regulations in due course to see whether they have the consequences that have been suggested.

10:00

Kenny MacAskill: I do not believe that there is any undue prejudice at all. The matter will be cost neutral. As Rod Campbell correctly said, it is more

a reallocation than anything else. The instrument is ECHR compliant, as John Finnie said, and there would be delays and consequences if we annulled it. John Pentland made a good point, but the likelihood is that, if the instrument was annulled, there would be individual challenges that would not only have a cost but could delay on-going criminal proceedings. That is the situation that we would face. The regulations provide greater transparency. As Felicity Cullen pointed out, the fact that they date back as far as 1989 shows that circumstances have just been allowed to stay as they were.

On Margaret Mitchell's final point, the historic difficulty that we face in legal aid is in striking a balance. We can have time-and-line accounting, where every individual item is done to the minute, or we can have block-fee accounting. There are good reasons to argue for both. If we go for time and line, it costs an awful lot more, because not only will the bill be bigger but the costs of accounting will be greater for both the individual lawyer and the board. If we go for block fee, we get things quicker. With block fee, people sometimes get paid more than they would have been paid on a time-and-line basis because the case is simple. In other cases, they will be paid less, because the case is that bit more complicated.

The regulations try to provide some balance in that calibration between time and line and block fee so that, when we have exceptional circumstances that would otherwise be dealt with differently, there can be greater transparency and flexibility. That gives the benefit of moving away from everything being time and line and the benefit, perhaps, of keeping costs on the swings and roundabouts, while also providing an opportunity where there is clearly some manifest wrong to those who have to put in a great deal of effort. As the convener said, it may be assumed that lawyers know the law, but there will be some cases where the law is novel, is being researched or whatever, and the regulations provide some flexibility in those circumstances. That is why I support the regulations.

Alison McInnes: As the Law Society of Scotland notes in its submission, if the Scottish Government accepts that it has to act to ensure state compliance, then it is its responsibility

"to make and fund the necessary changes."

That is fundamentally not fair. We have heard that it is an exceptional-case status, so we know that it is not the norm, and it might be that there are no such cases in any given year, so how can it be that the general totality of funding is paid out in solemn criminal cases? It cannot be the case. The proposal cuts the fees that are levied on every case, yet not all solicitors will carry out those exceptional cases, if indeed there are any in a given year, so there is a fundamental sense in which the regulations cut fees without proper consultation.

I absolutely accept that we must comply, but the issue is who funds the compliance. If the regulations are annulled, the Government will need to come back with a properly resourced option and we will not need to scaremonger about further cases of challenges. We will just need to go back to the drawing board, talk to the Law Society and find a more sustainable way forward.

Compliance can be achieved only through ensuring that the system is sufficiently resourced, and although I appreciate that the legal aid budget operates under significant pressures, I know that the Law Society has worked with the Scottish Government in recent years to identify savings that could be made. I acknowledge the pressures on budgets and I do not hide from the cuts in England, but it is a lazy argument to rely on that. We are a devolved Parliament and we should made the best decisions for Scotland.

I hope that members will back the motion to annul and enable Parliament as a whole to consider the regulations. I press my motion.

The Convener: The question is, that motion S4M-08570, that the Justice Committee recommends that the Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2013 (SSI 2013/320) be annulled, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
McInnes, Alison (North East Scotland) (LD)

Against
Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (Ind)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
White, Sandra (Glasgow Kelvin) (SNP)

Abstentions
Mitchell, Margaret (Central Scotland) (Con)

The Convener: The result of the division is: For 1, Against 7, Abstentions 1.

Motion disagreed to.

The Convener: That concludes parliamentary consideration of the regulations. I thank the cabinet secretary.

We are required to report on the regulations. Are members content to delegate to me the

authority to sign off the report, which will reflect the *Official Report*?

Members *indicated agreement.*

10:04

Meeting suspended.

10:06

On resuming—

Criminal Justice (Scotland) Bill: Stage 1

The Convener: Time presses, so we will move on to agenda item 4, which is another evidence session on the Criminal Justice (Scotland) Bill, on court procedure provisions. I welcome Sheriff Principal Edward Bowen, who conducted the review of sheriff and jury procedure, Morag Williamson, project manager to the review, Stewart Walker, the Scottish Court Service secondee to the review—I have never got to say the word "secondee" before; what a lovely word—and Gerry Bonnar, secretary to the review. I understand that the sheriff principal wishes to make an opening statement.

Sheriff Principal Edward Bowen (Review of Sheriff and Jury Procedure): I shall be brief. Thank you for inviting me here this morning. I begin by saying that I have been retired for two and a half years.

The Convener: Have we dragged you out of retirement for this?

Sheriff Principal Bowen: You have indeed, so please forgive a certain rustiness on my part. I have been involved in criminal cases in the High Court during that period, but I have been out of touch with what has been going on in the sheriff court. However, I am accompanied by three members of the team who assisted me with the review, who are well up to speed and more than capable of keeping me right.

The Criminal Justice (Scotland) Bill contains only a few provisions that arise from the report, because many of the recommendations relate to areas of organisation and practice that do not call for statutory provisions. As you might be aware, the main problem that was identified and addressed in the report was the waste on a large scale of the time of victims, witnesses, police officers and others who are required to appear at trial diets that do not proceed. The report proposed that that be dealt with by the introduction of a system that is in line with High Court practice, whereby cases are indicted to a first diet, with trials assigned only if the case is likely to proceed.

I also wanted first diets to be effective, so I recommended a statutory duty on fiscals and the defence to meet face to face before service of the indictment. That recommendation has not been accepted in its terms, but the new provisions will introduce a statutory obligation to communicate within 14 days after service of the indictment, and will require the lodging of a joint statement of

preparations two days before the first diet. I understand the reasoning behind that and I am content with those proposals, although they do not exactly reflect what I recommended.

Beyond that, the remaining provisions in the bill are, in the main, consequential on that change of procedure—in particular, the proposed removal of the 110-day rule and its alteration to 140 days, which might give rise to some issues. That is all that I wish to say at this stage. I hope that that helps to set the scene.

John Finnie: Does your decision that business meetings should be compulsory indicate failure under the existing system?

Sheriff Principal Bowen: In a word, yes. I heard a lot of sheriffs say that they gained the impression that the first time that the Crown and the defence spoke to each other was at the first diet and not before then. I heard from defence solicitors who said that they could not get hold of fiscals and from just as many fiscals who said that they had difficulty in speaking to defence agents when they wanted to. The clearest possible way forward was to place a statutory duty on both parties to communicate.

John Finnie: To what extent did you determine—if you determined it—that demands on staff in the Crown Office and Procurator Fiscal Service contributed to the lack of communication?

Sheriff Principal Bowen: It was difficult to get to the bottom of that. At times, one felt that the cause boiled down to the inappropriate operation of telephone lines—to something as basic as not being able to get through on the phone.

I cannot help but feel that the pressures that the present system generates as a result of all the work and scurrying around that must go on at trial diets—because everything is resolved at the last minute—must have a backlash further down the line. Fiscals who ought to be available to speak about cases at an early stage of preparation are too busy trying to sort them out when they are due to come to trial.

John Finnie: Telephone contact has been raised with me as an elected representative. The situation is similar in Police Scotland, which has a centralised telephone system. Is the issue as stark as that? Do the defence and the fiscal exchange direct line numbers?

Sheriff Principal Bowen: I heard from defence agents that they had been provided with hotline numbers that did not work. That was the position three or four years ago, but I know that communications have improved since then, particularly by email. I would not like to rely too heavily on what I said about my fairly limited communication findings.

John Finnie: Could it be said that you are trying to replicate the High Court model?

Sheriff Principal Bowen: Indeed. Aspects of the High Court model are acknowledged to be a considerable improvement—particularly the fact that trial sittings now proceed. In the main, the trials that are set down now go ahead. The figure is not 100 per cent, but it is a vast improvement on the situation before Lord Bonomy reported. I take the same line.

John Finnie: The High Court system is not without its frailties.

Sheriff Principal Bowen: It is not perfect.

John Finnie: Did you suggest any enhancements on it for the sheriff and jury system?

Sheriff Principal Bowen: The statutory duty to communicate goes beyond the High Court system, as does the written statement of preparation. That structure is more formalised than that in the High Court.

The Convener: I know that an act of adjournal is to be made, but what information do you expect to see in the written statement of preparation to assist in accelerating cases and preventing delays and adjournments?

Sheriff Principal Bowen: That will vary from case to case, but the basic starting point is the witnesses whom parties will require, as not every witness who is on a list that is appended to an indictment ends up giving evidence—far from it. The defence might say that it has not received sufficient information about the interpretation of mobile telephone evidence and that it needs further time to consult an expert or look into that. If there were vulnerable witnesses and special measures were needed to take their evidence, I would expect that to be included. I would also expect to see general issues that relate to forensic evidence and whether the fiscal and the defence have discussed any resolution of the case.

10:15

The Convener: I see that the written record is to be lodged not less than two days before the first diet, although there is shrieval discretion. The bill states:

> "The court may, on cause shown, allow the written record to be lodged after the time referred to".

What would happen if it was not lodged and the sheriff was angry about it and thought, "I'm not exercising my discretion here"?

Sheriff Principal Bowen: I would not underestimate the value of a certain amount of shrieval irritation. [*Laughter*.]

The Convener: Oh, believe you me, I have been on the other end of it.

Sheriff Principal Bowen: We agonised long and hard over the question of sanctions, both for the defence and the fiscal, if the document is not lodged, and we came to the conclusion that it was virtually impossible to come up with an appropriate sanction.

It is very much a matter for sheriffs to take a strong line, making it clear that, if that is not done, not only the court but the public will be inconvenienced. They can appeal to people's consciences on the matter.

The Convener: So you think that the sharp edge of the court's tongue will suffice.

Sheriff Principal Bowen: That puts it very nicely—yes.

The Convener: That expression was once used to me, which is why I remember it. It is ingrained, although it was directed not at me but at the other party.

Sandra White: I welcome your report, Sheriff Principal Bowen, having been on the sharp end of witnesses, you might say. I am sure that others here have been there, too. The churn and the lack of communication between prosecution and defence need to be dealt with for the sake of victims, witnesses and the general public, so I very much welcome your report.

I understand the point about the compulsory business meetings. Perhaps the word "compulsory" was too strong, but I think that we have to knock a couple of heads together—perhaps that is the wrong phrase—to make sure that people are speaking to each other.

John Finnie talked about replicating the High Court system. However, the Law Society of Scotland has questioned whether a system that works comparatively well in the High Court can be transferred to sheriff and jury courts. Do you have any comment on that? Are there any other reforms that might produce a culture of knocking heads together in the judiciary to stop the churn in the courts?

Sheriff Principal Bowen: First, in my view, there is a lot to be said for sheriff and jury procedure and High Court procedure being the same. We have a summary system of justice and a solemn system of justice. Purely from the point of view of professional familiarity, it makes sense not to subdivide solemn procedure again and to have different types of procedure for the two courts.

Secondly, the culture that you speak about should plainly be common to both courts. A number of cases start life on petition and one does not know whether they will be heard in the High Court or in a sheriff and jury court, so there has to be a degree of common approach in all cases.

The third factor is in fact a joint factor. Not so long ago, the sentencing power of sheriffs was increased from two years to five. It is likely that, when the wider reforms that were proposed in Lord Gill's review go ahead, a much larger volume of cases will be dealt with by sheriffs. The fact of the matter is that, at the top end of the sheriff and jury scale, in terms of seriousness and complexity, there is not much to choose between the cases that go through that court and the cases that proceed in the High Court. The argument in favour of making the two systems pretty much the same is quite compelling.

The Convener: I am just waiting for the Sandra White knocking-heads-together amendment to appear. That would get our attention.

Sandra White: I would like to do that, actually.

Margaret Mitchell: Having been on the Justice 1 Committee when the Bonomy reforms were first considered, I was supportive of the preliminary hearing to ensure that everything was in place and ready to go to trial. However, some concerns have been expressed about how practical it would be to replicate the system in sheriff and jury cases, given that the numbers of solemn cases are much higher in the sheriff courts. For example, last year, 691 people were found guilty in the High Court compared with 4,298 who were found guilty under solemn procedure in the sheriff courts. Does that huge difference in volume cause any concerns about whether it is practical to undertake the compulsory business meeting?

Sheriff Principal Bowen: When one starts to look at volume, one gets a picture of an even greater problem in the sheriff court and of the time wasted when trials do not go ahead. The numbers are quite revealing. Off the top of my head, I think that we were talking about expecting something like 1,200 cases out of 8,000 to go on. The difference is huge. The downtime—the time when the sheriff court programme is set aside for sheriff and jury trials that do not take place—is considerable. I think that I have a figure for that somewhere. [*Interruption*.] I will find it.

If more of that wasted time was devoted to preparing cases, that is to say, if the maximum effort went in at the earlier stage, the overall saving in not only court time but witness inconvenience time would more than justify the fact that more time would be spent at the first diet and preparation stage—that would be inevitable—but that is the improvement in the system. There were 1,750 days programmed in Glasgow in 2009 and only 780 days were used. That is an awful lot of court time that had to be moved at the last

minute and could be used much better at a different stage of the programme.

The Convener: Sheriff principal, other members of the panel can give evidence if they wish or provide data. It is just an evidence-taking session, so anyone can speak.

Sheriff Principal Bowen: Thank you.

Margaret Mitchell: Are you saying that, instead of tabling everything automatically and discovering at the last minute that there was no case to answer, there would be a much more realistic prospect of everything being in place? Is the answer to the huge volume that the same number of cases will not appear?

Sheriff Principal Bowen: I am happy to accept the view that the volume means that a lot of time will be spent at first diets and that that will have to be managed, but my answer is that it will save a lot of time further down the line.

Margaret Mitchell: Is there any resource implication? Does the closure of sheriff courts create any additional pressure?

Sheriff Principal Bowen: There must be a resource pressure on the Crown Office and Procurator Fiscal Service to change the way that it approaches matters. In preparing the report, I got a great deal of support from the COPFS and its response to the report was positive. I understand that it is still behind the proposals so, whatever the resource implications for it are, it is prepared to address them in the interests of efficiency.

I am sorry, what was the second part of your question?

Margaret Mitchell: Will the sheriff court closures have an impact?

Sheriff Principal Bowen: I do not think that there is any significant implication in that the courts that are scheduled for closure are, in the main, those with a low volume of sheriff and jury business, whatever else they might have done. Under the proposals in the Gill review, the movement towards centralised sheriff and jury business is inevitable. Indeed, as I understand it, the Crown Office has reorganised its system to make it more centralised. I do not think that changes in the sheriff and jury system raise any issues in terms of the court closure programme.

The Convener: I noticed that the panellists were in the public gallery when we were dealing with criminal legal aid earlier. It may not be within the remit but, broadly speaking, would there be any savings to criminal legal aid if we stopped having so many delays?

Sheriff Principal Bowen: I would not like to put money on that. I think that there will be substantial savings in the amount of money that is paid out to witnesses who turn up needlessly and the amount of police overtime—that sort of area. I would not like to make a prediction about legal aid.

The Convener: There may very well be savings to other areas of the criminal justice system.

Sheriff Principal Bowen: I would be very disappointed if there were not.

The Convener: Apart from more accelerated justice.

Sheriff Principal Bowen: Yes.

The Convener: Mr Bonnar, you are nodding.

Gerry Bonnar (Review of Sheriff and Jury Procedure): I am nodding. I am looking at paragraph 7.16 of the report, in which we calculated the numbers of witnesses who might be saved attendance, depending on several models. If an average of three witnesses were cited per case, we calculated that 7,224 witnesses might be saved from citation—if saved from citation is an appropriate way of describing it. If the average was five witnesses, just over 12,000 would be saved from citation and it would be almost 17,000 if the average number of witnesses per case was seven. Those figures were based on assumptions—

The Convener: I feel an arithmetical problem coming on, in which we multiply all these witnesses by some figure and come out with another figure. We are not doing that just now. Do you have that figure? Do you have an idea?

Gerry Bonnar: Paragraph 7.16 of the report sets out potential numbers of witnesses—

The Convener: But not in cash.

Gerry Bonnar: Not in cash; no. Sorry.

The Convener: That is the bit that I am thinking about. We can do that later.

Gerry Bonnar: Further modelling would—

The Convener: Yes, but there is obviously a real cost saving in this, and I presume that there is a saving in court time and sheriffs' time. Is there?

Sheriff Principal Bowen: I would like to think that they would be doing something else.

The Convener: Heaven forfend! I thought that you were away knitting or something instead.

Sheriff Principal Bowen: I am sure that their time would be filled. They would be more productive, because they would not be sitting in their chambers, waiting to find out whether or not a case was going to start.

The Convener: Yes. I hasten to say that I have not seen knitting pins in sheriffs' chambers. That was just a metaphor for time passed casually.

John Pentland: Sheriff Principal Bowen, you said that you were two and a half years out of the system. Please excuse me if you are feeling a wee bit rusty. I advise you that I am 20 years out of the steelworks and if you think that you are rusty, how do you think I feel? [*Laughter*.]

In your report you recommend the establishment of a compulsory business meeting and you advise that that would be appropriate. Should sanctions be applied if people fail to attend compulsory business meetings?

Sheriff Principal Bowen: The compulsory meeting recommendation was not picked up in the bill. Instead, there is a statutory obligation to communicate—whatever way you do it—and I can see the thinking behind that. I am quite happy with it.

In my answer to the question about the lodging of the joint statement of the state of preparation I spoke about sanctions. We also wondered about sanctions for not communicating and again came to the conclusion that it was a matter for sheriffs to take a firm line and point out that the obligation to communicate is a professional statutory duty and that it would let everybody down not to do it.

By and large, everyone I spoke to in the profession appreciated that it was the right thing to do. It is not something that is being forced on defence solicitors or fiscals; they want to do it. I do not have the notion that they will say, "This is all too much," although resource problems are possible. I hope that, with the enthusiasm that the Crown Office has shown, it will pick that up without difficulty.

John Pentland: If that is picked up, do you believe that the evidence that is used in the business meetings could be taken to court?

10:30

Sheriff Principal Bowen: It will not be evidence as such, although areas of agreement that are reached at the business meeting might then be put before the court formally. Usually, there is a joint minute of agreement that sets that out, which in itself avoids the need for witnesses to come forward. So part of the benefit of the process will be the early identification of the areas that can be agreed without the need to call witnesses to deal with them.

Roderick Campbell: Do you foresee any difficulties in changing the culture of defence solicitors, fiscals or the shrieval bench in relation to the provision?

Sheriff Principal Bowen: With fiscals, there should be no difficulty, because they are very much in favour of it. The defence agents who were involved in the review, particularly those from the Glasgow Bar Association, were all in favour of early engagement, so I do not think that there will be a difficulty with them.

Sheriffs also see the need to resolve cases early. There will have to be a change of programming because, at present, in some courts, sheriffs hear up to 40 first diets a day. That will not be possible with the system that I propose. I have indicated that each first diet needs at least 15 minutes. So if the day is not to be unbearable, the number of first diets will have to be brought down to 20 or fewer—18 is probably realistic. Given the sheriffs' acknowledgement of the benefits of the system, provided that they get the time to do it, I think that they will happily do their best to make the system work.

Roderick Campbell: So you do not foresee difficulties in ensuring that the written record of the state of preparation is lodged timeously. Will it be down to sheriffs to try to ensure that it happens in practice?

Sheriff Principal Bowen: If there are difficulties, pressure can be brought to bear, although I would like to think that doing so in open court would be the last resort. In the course of the review, I visited a number of sheriff courts. In the one that was working the best—I am happy to flatter the sheriffs there by saying that it was Kilmarnock—there was a good working relationship between the sheriffs, the fiscals and the local bar. In my view, they all pulled together well. That is the sort of local co-operation that I see as necessary to make the system work, and the proposals in the bill will help people to do it.

Roderick Campbell: How will we measure success and when should the system be evaluated?

Sheriff Principal Bowen: The only true measure of success will be when every single sheriff court jury trial that is set down for trial proceeds to a conclusion. We will never quite get to that, because some people will always change their minds when they get to the door of the court, but if we have a marked reduction in the figures that we have mentioned this morning on wasted time at trial diets, the system will have succeeded.

Gerry Bonnar: For completeness, I add that chapter 10 of the report makes recommendations on monitoring and evaluation.

The Convener: We will of course speak to the participants in the process in the next panel.

Margaret Mitchell has a question. She has told me that it is very short, so this is a test—I want to know whether it is short. Sandra White is the master of short questions.

Margaret Mitchell: Okay.

Sheriff Principal Bowen, you recommended increases in the time limits for various stages of solemn cases. In effect, that was because people cannot pack in more and prepare effectively without that. In an ideal world, would you have preferred the resources to be increased to meet the current time limits?

Sheriff Principal Bowen: The obvious answer is yes, but it is difficult to see that happening. The starting point in Scotland is the time limit that Lord Bonomy referred to as the jewel in the crown, which is the fact that we do not keep people in custody for more than 80 days without telling them what the charges are. The indictment has to be served within 80 days. When you think about it, in a case of some complexity, that is a very short interval of time. It is what follows from that that necessitated the recommendation that the 110-day limit be raised to 140 days.

In the current climate, in which cases are far more complex because of things such as DNA analysis, mobile telephone analysis and closed-circuit television, it is difficult to see how our timescales could be any shorter. To keep the 110-day limit, we would have to reduce the 80-day limit, which I do not think is possible.

Margaret Mitchell: That is helpful.

The Convener: That was quite a short question, although not the shortest.

I thank our witnesses for their evidence. I suspend the meeting for five minutes.

10:36

Meeting suspended.

10:41

On resuming—

The Convener: I welcome to the meeting our second panel on the Criminal Justice (Scotland) Bill: John Dunn, procurator fiscal, west of Scotland, Crown Office and Procurator Fiscal Service; Grazia Robertson, member of the Law Society criminal law committee, Law Society of Scotland; Michael Meehan, Faculty of Advocates; and Cliff Binning, executive field services, Scottish Court Service. Good morning to you all.

Margaret Mitchell: What are the implications of this reform for the Crown Office and Procurator Fiscal Service?

John Dunn (Crown Office and Procurator Fiscal Service): The implications for us include the opportunity to allow us to focus on the cases that actually require to go to trial, in the same way as we did in the High Court; the opportunity to reduce the number of witnesses who are brought to court; and the opportunity to have cases brought to trial on the first occasion, which will minimise inconvenience to witnesses and jurors.

There is also the opportunity to learn from the lessons of what happened in the High Court. I do not think that we can replicate that experience, because there is a different order of business in the High Court and in the sheriff and jury courts. However, we can be informed by the experience of what happened in the High Court, which Mrs Mitchell will remember from the Justice 1 Committee.

If we compare where we were with where we are now, there has been a very significant change. You will recollect that before Lord Bonomy started his report, 1,605 cases—at the highest and worst point—were indicted into the High Court per annum. There are now, on average, 750 cases being indicted into the High Court per annum and in 300 of those cases, evidence is required to be led in a trial. If we can capture a proportion of that in the sheriff and jury courts, where we get roughly 6,000 cases per annum, that will be a good place to be.

Margaret Mitchell: A number of witnesses in their written evidence have cited the Crown Office and Procurator Fiscal Service as being particularly under pressure, yet when we hear evidence directly from the COPFS there seems to be a reluctance to say that there is any pressure on resources. There are quite diametrically opposed views on that point.

John Dunn: We are living in times in which there is a requirement to make public sector savings, which inevitably puts pressure on us all. However, we have attempted to deal with that pressure by organising ourselves in such a way that we can cope with it. In the past—if I look at what I used to do back in 1989—I would do a little bit of this and a little bit of that. I would do some case marking, some summary trials, some sheriff and jury trials and some High Court preparation work. I was a jack of all trades and arguably the master of none.

We are now organised along lines of federations, or larger groupings of what used to be 11 areas. Within the federations, we are organised along functional lines so that we do a proportion of business that allows for some specialisation. There is pressure, but we have dragooned ourselves in such a way that we can try to accommodate that pressure in light of the savings that we have all had to make.

The Convener: Does anyone else want to come in on that? Mr Binning?

Cliff Binning (Scottish Court Service): No.

The Convener: You should not make little movements with your hands because I see you and think that you want to come in.

10:45

Michael Meehan (Faculty of Advocates): I was a full-time advocate depute for three years, which involved me preparing High Court cases for preliminary hearings. A point that has been made by all is that the scale is very different. In a four-week preliminary hearings cycle, an advocate depute will spend two weeks preparing cases and there will be two weeks in which hearings will take place but they will not be in court every day. On average, I prepared between 10 and 15 cases. That might seem to be a small number, but there could be five drugs cases with a huge number of productions, or murder cases in which every detail is very important. Even with that size of case load, the person who was preparing the case would have to read every single page of the productions and witness statements. That means that when we were speaking to the defence, we knew the case back to front when we were agreeing evidence and negotiating a plea.

A difficulty with the sheriff and jury model is that it seems highly unlikely that there could ever be a fiscal depute who was involved in dealing with sheriff and jury cases having that number of cases. If someone is not so well apprised of a case because of the sheer volume of cases that they have had to prepare, it is not so easy to discuss a case or conduct negotiations.

I have heard it said that it is only at the trial diet, when the fiscal who will prosecute the sheriff and jury case has watched the CCTV or has gone over the papers in that detail, that the plea has then been agreed. I am sure that the committee is aware, although it is not always apparent from discussion, that the impression is given of the defence suddenly offering to plead guilty, or the accused changing his mind. Sometimes there is more of a middle ground in which, perhaps because the evidence has been scrutinised more carefully or even because Crown witnesses do not turn up, and they were not expected to turn up, a plea is negotiated at the trial diet that would not have been accepted at an earlier stage.

Grazia Robertson (Law Society of Scotland): I wanted to say on behalf of the Law Society of Scotland that the suggestion of meeting and attempting to resolve resolvable cases would help the defence solicitors to know which cases to prepare for by way of a trial and give them some knowledge of when that trial might take place. At the moment, it is often unclear whether a trial that is allocated to a sitting will take place during that sitting or whether it might require to be adjourned to a later date. In our response, therefore, we have said that we support the measure.

However, it would be unfair if we did not indicate that the resource implications are not a minor factor. To enable the measure to serve the purpose for which it is intended, there will have to be proper resourcing. If it is not properly resourced, there could be further delay in the system. The clear suggestion is that if the sheriff is not satisfied that both parties are prepared for trial, he will not fix a trial diet. If both parties come to their first diet not fully prepared, there could be further delays in the system, which is why the Law Society's responses emphasise the financial implications while taking on board the earlier comments about the financial reality in which we are now working, and the changes that that has imposed on us over the previous years.

Margaret Mitchell: Would that be true for the defence and the COPFS?

Grazia Robertson: I would say so, yes. Both have to be properly resourced and organised in such a way that we can meet requirements. I find the suggestion that we need our heads to be knocked together quite understandable, especially having heard what Sheriff Principal Bowen said. However, when John Dunn is sitting in his fiscal's office and I am sitting in my defence lawyer's office, we are not having a coffee and wondering what to do next. We are, in our own ways, endeavouring to resolve cases that are resolvable, and to prepare those that are not resolvable to ensure that we can proceed to trial. There are difficulties with the suggestions that have been made, but we recognise their benefit with regard to meeting at the appropriate time and identifying those cases.

Margaret Mitchell: Convener, I am concerned that we are hearing evidence from the COPFS that it is managing perfectly well, whereas we are hearing from others that that is not necessarily the case.

The Convener: We heard an interesting point about the preparation of a case, in that it might be a different member of the PF team who deals with a case as it goes through. I am referring to what Mr Meehan said. When an advocate is handed a case, they will read it inside out, but it might sometimes be the case—perhaps I have got this wrong—that the party who is dealing with the case for the Crown, on the PF's side, might first get a good look at the papers only when the trial is staring them in the face, whereas the other people will already have looked at them. Is that the case? Would there be lots of fingers in the pie before the case reaches trial?

John Dunn: We aspire to minimise the number of fingers in those pies, as it were. It is not always

the case that the same person will be able to deal with the case from cradle to grave. Glasgow sheriff court is the busiest court by a long chalk. We are trying to organise ourselves into teams so that the case preparers sit on the same team as the case prosecutors. It is inevitable that there will be many instances in which it is not possible to have the same people dealing with a case from start to finish—all that we can do is to maximise the chances of it being the same person.

The Convener: That is helpful to know. However, will the provisions in the bill concentrate minds? When somebody is looking at the papers for a prosecution, and it seems likely that the case will go to trial, that can attract a more concentrated focus, because the statement or record has to be lodged within a certain time. That draws things together. I am not saying that there is a question of things being slipshod, or of tardiness, in the Crown Office and Procurator Fiscal Service, but perhaps the provisions will concentrate minds more, so that the case has to be sharp and the focus has to be brought earlier.

John Dunn: Your comment is fair. That represents a change in ethos and in the way in which we undertake our preparation for cases. Previously, sheriff and jury cases were prepared with the purpose of reporting to the Crown Office, and there were instructions from the Crown counsel on indicting the case. Essentially, there was a report to someone else to get their permission to indict the case. Nowadays, our case preparation involves a living document, which is prepared as if it were a trial document, so as to try to apply that focus—preparing for trial if there is one.

If all that happens as a consequence of the measures in the bill is that we add another layer of procedure without changing anything else, it will not work. We must change the culture. From June 2012 to June 2013, 769 cases were resolved by plea at the trial diet, which was 16 per cent of the case load. If the only thing that we do is to move a proportion of those pleas, if not all of them, to an earlier stage, that must create capacity to focus on the cases that are actually trials. All the things that we need to do—checking where the witnesses are, citing them, checking which evidence is actually required and seeing what can be agreed—are good things to apply to cases that will go the distance and which will involve witnesses giving evidence in court. It is a matter of focusing the issues.

The tools are all there, in the Criminal Procedure (Scotland) Act 1995: section 257 on the agreement of evidence, section 258 on statements of uncontroversial evidence, and defence statements under section 78. It is not for me to comment on judicial management, but it is well known that part of the culture is to apply the same shrieval management to sheriff and jury cases as now applies in the High Court.

Sandra White: I am interested in what you have just said about changes to the culture, and I was going to ask a question about that. I will not talk about knocking heads together, but—

The Convener: You have just done it again.

Sandra White: Yes; I will do it again anyway. When I am out and about in Glasgow, that is what people mention to me in this regard.

The Convener: Now you are blaming Glasgow.

Sandra White: No, no—I am talking about members of the general public being called to be witnesses in many weeks' time. That is a resource matter as far as I and others are concerned. I will return to the subject of resources in a minute.

Regarding the change in the culture, you have all agreed that holding the early meetings is correct, and that you can move along with that. Can you suggest anything else that would improve the culture between prosecution and defence lawyers who get together?

John Dunn: There are three things that will make that work. One is disclosure, which I hope that we are now on top of given that we have the secure disclosure website. It means that we are better at disclosing a case in earlier course to keep the defence informed about the case and its strength from the Crown's perspective.

The second thing is the opportunity of deploying a sentencing discount under section 196 of the 1995 act. A five-year sentence is a long time in anyone's view, and if the chances are that someone will get a third off that sentence if they plead guilty, they might find that an opportunity worth seizing.

We have spoken about early engagement, and heard about fiscals not getting defence agents and vice versa. I can sit here next to Grazia Robertson and we can throw pebbles at each other about how we cannot get in touch, but that will not help at all. We need to move forward constructively, which we are trying to do by having hotlines and advertising that service more widely so that people know who they can contact.

Another thing that we must do—and which we already do with the Faculty of Advocates in relation to the High Court—is ensure that the compilation and submission of the written record, which will contain sensitive information about vulnerable witnesses, is done securely. The Faculty of Advocates is almost universally signed up to the criminal justice secure email system, and we are trying to roll out the system to different practitioners at the sheriff and jury levels. Again, I

can sit here and tell the committee that our take-up rate is low, but we need to look at the reasons for that. Are there practical difficulties that explain that? The answer is yes.

We put quite a lot of effort into assisting defence firms in operating the secure disclosure system, and that has borne fruit, so I suggest that we will have to do the same with criminal justice secure email. One practical issue—we had not appreciated it at first—is that if someone signs up to criminal justice secure email and starts using it, and then stops using it for a month, their account is suspended. Those are the sort of things that we must appreciate and engage on to get them sorted out.

Again, there is the simple expedient of using the telephone, and ensuring that people know who they can contact in order to talk about the case. In the immediate aftermath of the accused's first appearance, the case preparer will now write to the nominated solicitor who is engaged in the case to identify themselves and say, "This is my direct line, and this is my solemn manager", and to begin to canvass the outlines of what might be an acceptable plea.

That is very early in the process—probably too early for anything meaningful to be discussed—but the information is there in early course. Where that starts to move slightly adrift in a jurisdiction such as Glasgow is where the case goes into the court system with regard to the sitting arrangements and knowing who has the case. Again, we have to work on that so that people know who to speak to, because communication is everything.

The Convener: Perhaps Mr Binning can comment. Does the Scottish Court Service have a role in that regard as part of a triangle that includes the defence, the prosecution and the court?

Cliff Binning: I would not necessarily see SCS personnel playing an active facilitation role in that particular context.

I reinforce what Sheriff Principal Bowen and others said earlier. In the context of programming the business of the courts, we seek to ensure the expeditious disposal of business and the best use of available court time. Both of those things are predicated on having the best level of certainty that is possibly achievable at the first diet, which covers certainty of intention as to the plea, and certainty of preparation and of length. The greater the level of certainty in those respects, the more effective the programming of the core business will be with regard to achieving those objectives.

The Convener: Who sets up the criminal justice secure email that you have?

John Dunn: We sponsor it.

The Convener: We all use email, attachments and so on for committee business. Will the record be lodged as an attachment in e-form?

I wanted to bring in the SCS so that I could hear about the communication between you, and whether you can say, "Yes, we are ready and this is here—we can send it as an attachment or an email. This is what we are putting down as a record and what we have as a minute of agreement, and it is all going in." Is that all in train?

11:00

John Dunn: It is all in train in the High Court, I believe. I think that the written record is submitted electronically in the High Court, and that is the aspiration that I would have for the sheriff and jury courts as well.

The Convener: Yes. Why is that not the case? What is the problem?

John Dunn: We do not yet have written records to submit. The issue is that the extension of the secure email to the defence community is at an early stage. It has not been without its practical difficulties, one of which is that the system is owned not by the Crown Office and Procurator Fiscal Service but by the Ministry of Justice, which means that we do not have complete control over it. However, that should not prevent us from working on the issues that are preventing people from communicating, so that we can do so securely. I reiterate that the communication has to be secure.

The Convener: Of course. We appreciate that. The information is sensitive and cannot be in the public domain.

Grazia Robertson: In our written submission, we said that, in the High Court, the Crown submits what is, in effect, its bit of the closed record and then we do the same from the defence perspective. It is not a collaborative bit of work to produce the one document.

The Convener: No, but any minute of agreement following on from that would have to be collaborated on, obviously.

Grazia Robertson: Yes. However, I should emphasise that, with regard to putting in the record, the Law Society had indicated that a system that was akin to that of the High Court system, where each party puts in its record in turn, rather than having to meet and do that together, would be slightly more sensible than the other way that has been proposed. That is just a practical concern. We are saying that, if we use the same system that the High Court uses for the lodging of the closed records—that is, the lodging of the

records—that would assist. That was me getting my terminology mixed up.

The Convener: I was thinking that.

Michael Meehan: I would make very much the same point that Grazia Robertson has made. The practice in the High Court is that each party puts in its own written record. I think that the Crown's one is called schedule 1 and the defence's is called schedule 2. The Crown will set out in schedule 1 its position with regard to a variety of matters—vulnerable witness applications, agreement of evidence, what technology is required by way of video recorders, whether interpreters are required and so on. Each accused—it is worth bearing in mind that there will be cases in which there are multiple accused—will put in their own schedule, which will be circulated electronically. There could be practical difficulties involved in getting everybody together to put in one document and, if you cannot get everybody together, no one can move forward. It would be easier if the prosecution could prepare its document, submit it to the court and copy other people in, and then each defence party did likewise. Under the proposal, if, in a case with five accused people, one of the accused had sacked their legal team or had disappeared, nothing could be done. However, if everyone else could be doing their bit, the process would not be delayed.

It is difficult to see how the system could work as well as it does in the High Court if it were not being done electronically. For example, the Crown will copy in the victim information and advice service when it puts in its written record, so the service will be able to update the complainers about what is going on. That is done easily by simply adding an address on an email.

The Convener: That issue would link into the Victims and Witnesses (Scotland) Bill, which we have just passed.

Michael Meehan: Yes.

Cliff Binning: I cannot think of any technological barrier to having the same system in the sheriff courts as is used in the High Court. The technology is there.

Sandra White: I think that we have wandered a wee bit—

The Convener: It was important to tease out the issue, because it is about information sharing.

Sandra White: Absolutely. I would have picked up on some of the stuff—

The Convener: But I pre-empted you.

Sandra White: I would like Grazia Robertson to respond to the question that I asked Mr Dunn about the culture change.

Grazia Robertson: As a defence practitioner who practises in Glasgow, I am not entirely at one with the idea of a culture change. You will have heard Sheriff Principal Bowen saying that, in his investigations and in the preparation of the report, there seemed to be a consensus that it was in everyone's interests to resolve resolvable cases and properly prepare for those that are going to trial.

It is not that the profession is reluctant to engage; rather, there is a sad realism born out of bitter experience. As the years have gone on and it has become more difficult to resolve cases for a variety of reasons, there is an expectation that matters will not progress. There might be an element of that but, if the systems are properly resourced—I hate to keep going on about that—and implemented, this proposal could work and, if witnesses are not required to attend court unnecessarily and matters can progress at a reasonable pace, there might be savings to the public purse. That is in the interests of everyone, including defence solicitors.

Sandra White: I was going to ask about resources, but you seem to agree that the situation has to improve not just for the courts themselves but for witnesses, victims and the accused.

Grazia Robertson: Yes. It is recognised that it does not help the perception of Scottish justice if members of the public who attend court do not have things explained to them and have to go away and come back again. There is of necessity certain information about a case that cannot be imparted to witnesses and sometimes a full explanation of what is going on has not been given. As a result, people go away with a very poor impression of what has gone on, and the fact that they cannot see what is being done leads to the suggestion that we are all sitting around not doing a great deal.

Additionally, panel jurors themselves might not be used and, as a result, will constantly have to go back and forth to the court. That is very wearing on people and I have sympathy for those people I see day and daily attending court and perhaps having to be sent away. It does not always happen but, when it does, it is unfortunate, and anything that lessens such a situation will benefit everyone.

Sandra White: That is not just a perception but the reality for many people, whether they be jurors or witnesses, who turn up at court and are not called. The trial might go on for six months. In some respects, the Scottish Court Service is very good at giving out information through texts, phone calls and letters, but the problem that most people see is the churn.

With regard to resource implications, Mr Dunn talked about replicating certain practices in the High Court and said that where 1,600 cases were being indicted into the High Court per annum previously, only 750 were being indicted now, and only 300 of those were actually going to court. I would think that bringing the numbers down in the same way in the sheriff court—and, indeed, improving on what has happened in the High Court—would result in a resource saving. After all, those who turn up at court get witness expenses and whatever and any savings that could be made in that respect could be put into having, say, a computerised system. Of course, it is not just about monetary savings but about saving people the bother of having to turn up at court when nothing is going to happen. When you talked about resource implications, were you talking about the computerised system? If we are going to save money from the witness expenses that are paid to people who have to turn up at court, could those savings not be put into other resources?

Grazia Robertson: There must be a system in place not just in Glasgow but elsewhere to ensure ease of communication between the parties. I imagine that the email and computer system will be of significance in that respect, but there are staffing issues to bear in mind, as someone needs to be at the other end of an email to respond to it and communicate with the sender; indeed, defence solicitors are cognisant of their own obligation to engage in that kind of communication.

As for any suggestion that people are not playing their part, the sheriff comes in at the first diet to ascertain what the parties have done and where the problems and issues lie. Each of us has to stand up in court and explain what has happened to date and why matters have not progressed as well as they should have done.

The Convener: Just for clarification, I believe that Mr Dunn said that the Ministry of Justice had ownership of the criminal justice secure email systems. Were you talking about the UK Ministry of Justice, or was that comment simply a slip?

John Dunn: I was talking about the UK Ministry of Justice.

The Convener: Thank you.

John Dunn: I cannot give you the exact detail on that, but what I can say is that we are trying to get better control over the system's administration to resolve some of the practical issues that defence agents are facing in using it.

The Convener: I do not want to dwell on the matter, but thank you for clarifying the point. The committee might well want to find out more about the system in place and even the historical reasons why the UK has ownership of it when justice is in the main devolved, apart from the international aspects.

Sandra White: I was going to pick up on the same issue, convener, but I think that we also have to get clarity about the resource implications. There seem to be a number of financial resource implications, but I have to say that I have not heard any answers about where the resources are going to come from to cover a member of staff who might, for example, have to open up all these emails. Surely if you stop the churn and have fewer cases going through and therefore have less of a workload and fewer witnesses turning up, the money that would be saved would offset any financial implications further down the line.

As for the matter involving the UK Ministry of Justice, do you know whether the Crown Office and Procurator Fiscal Service pays into that account?

John Dunn: I am not sure—I would have to check.

The Convener: That is why I said that we will have to use our own resources to find out more about why the Ministry of Justice runs the system and how we might bring ownership of it under the demise of the cabinet secretary and his department and expand it out. The discussion has taken an interesting route.

Sandra White: I believe that Mr Dunn wants to talk about the financial implications.

John Dunn: On the point about resources, I have already said that we could reduce our witness expenses and start to reduce the inconvenience to witnesses as a consequence of being repeat cited by ensuring that they come to court only when the case in question has gone through the gateway, if you like, and been deemed fit for trial. In the financial memorandum, that particular element was costed at £128,000 but, to reinforce my earlier comment, I have to say that only adding the compulsory meeting to this and changing nothing else will not be a recipe for success. We need to invest savings in the additional things that we need to do, such as engaging early with the defence, having the compulsory business meeting, compiling the written record and getting ourselves into a state of readiness to ensure that, if the court identifies that the case must be adjudicated through a trial, that happens first time out as far as possible.

Elaine Murray: Two principal differences between the bill and Sheriff Principal Bowen's report are the timing of the compulsory business meeting, which is to happen after the service of indictment, and the lack of a requirement for face-to-face meetings. Sheriff Principal Bowen seemed fairly relaxed about the fact that the bill was different; indeed, he seemed to understand the

reasons for those differences. Do you share his relaxation about the differences between the report and the bill?

John Dunn: I have to confess that, as a member of the reference group, I always held the view that the best time for the meeting was after the case had been indicted. Up to that point and until we get Crown counsel's instructions, we do not have the authority to indict it as a solemn case; in fact, if Crown counsel forms the view that it does not require a jury sentence, it might be reduced to a summary case. Of course, the case might also go to the High Court if it is found to be more serious than had first been thought. We do not know any of that until we get the authority to indict, at which point we know what we are dealing with.

There is nothing wrong with communicating beforehand, but there are certain issues that we cannot address at that point. For example, I would imagine that the first question that an accused person is going to ask themselves when they get the petition, which will not necessarily bear a close resemblance to the charges on the ultimate indictment, is, "What am I being charged with? What am I pleading guilty to?" This approach might work in some cases where there is only one charge but not in others.

Communication is certainly a good thing and stipulating that the compulsory meeting follows the indictment of the case is no bar to people speaking to each other beforehand. It simply means that, at the point at which you are required to communicate and detailed engagement has to kick in, there is a focus, because you know, for example, whether it is a jury case and what the charges are. As a result, I am quite happy with the proposal.

Grazia Robertson: The Law Society supports the timing suggested in the bill as appropriate.

Elaine Murray: Coming back to the financial implications, I think that Mr Dunn mentioned a figure of £128,000. According to the financial memorandum, the total cost of Sheriff Principal Bowen's provisions is £87,000 a year whereas the possible savings amount to £228,000 a year. Is there any reason for that discrepancy?

John Dunn: I suspect that I am looking at different figures. The figures that I have were submitted by COPFS, which identified savings of £128,000 from witnesses—

Elaine Murray: I am sorry—you were talking about your savings. Overall, the figure is £228,000.

John Dunn: And the figure for admin costs is an additional £6,000.

Elaine Murray: Right. Do you think that the estimates in the financial memorandum are reasonable? After all, they represent a significant overall saving as a result of the proposals.

John Dunn: I think that they are probably realistic, given what we have seen in the High Court but, as I have said, there will be additional costs from additional parts of the business.

11:15

Roderick Campbell: I refer to my entry in the register of interests, which says that I am a member of the Faculty of Advocates.

The bill provides that, although the written record of the state of preparation is supposed to be a joint agreement of the parties, it is the prosecutor who will have to lodge the written record with the sheriff clerk. In practice, will that put extra pressure on the Crown Office to make the running in that procedure? Will it not have significant resource implications?

John Dunn: As Grazia Robertson has referred to, if we are required to have a single document, that could be quite onerous—especially in a multiple accused case. As I understand it, the practice in the High Court is that there are separate written records, or a proportion of the written records are separate—Mr Meehan will correct me if I am wrong. That does not mean that we are all blindsided to what each other has submitted—records will be copied across so that we are all aware of what we are recording as the output of the communication that has been undertaken.

If it were the case that the Crown compiled a single document and was required to chase down every defence agent in a multiple accused case, that could be quite difficult. That is not how I perceive that it would operate in practice. It is not how it operates in practice in the High Court.

Roderick Campbell: Are you happy with how the bill is drafted on this subject?

John Dunn: I think that it is drafted in the same way as legislation for the High Court is. It is my understanding that "jointly", in essence, refers to an awareness of the contents.

Michael Meehan: I did not check the bill against what is in statute for the High Court. In my evidence earlier I indicated that the practice is that people put in separate written records.

This is fresh legislation. Some minor amendments could take out, for example, references to joint preparation. Subsection (4) of proposed new section 71C of the 1995 act says:

"The prosecutor must lodge the written record with the sheriff clerk".

Instead of that being a joint written record, it could be an individual written record, and each party would lodge with the sheriff clerk a copy of their written record and intimate a copy to the other parties. Minor amendments could be made to reflect the practice in the High Court.

Mr Campbell made a point about the Crown making the running. Albeit that the position is that there are individual written records, the Crown tends to make the running. The Crown issues its written record to the parties first of all, then others come in. There is no rule that requires the Crown to be first, but very often the Crown written record will be circulated to parties and then the defence party will send a written record to the High Court of Justiciary and copy in the Crown.

The Convener: Roddy, are you referring to the fact that there may be confusion? It looks like that to me.

Roderick Campbell: It is something that we can reflect on.

The Convener: The bill says that the prosecutor and the accused's legal representative will

"jointly prepare a written record"

and "written record" is singular thereafter, so it can be inferred that one record is being lodged. Is that not the case in those sections?

Michael Meehan: They give that impression. Subsection (2) of proposed new section 71C of the 1995 act talks about what should happen after the meeting.

The Convener: Yes; it says that they will

"jointly prepare a written record".

Michael Meehan: If the word "jointly" was taken out and subsection (2) was amended to say they will "prepare a written record of their respective states of preparation", that would work well.

The Convener: Thereafter there could be a plural reference to written records. I presume that if there were multiple accused, there would be multiple records, multiple defenders or whatever.

Grazia Robertson: The Law Society comments on the same issue in its written submission. The requirement for a joint written record could be misleading or lead to difficulties.

John Dunn: It has been nuanced in the practice note that the High Court delivered in 2005, which says that parties must prepare a joint

"written record of their state of preparation with regard to their cases. The written record must be a joint one, although it may contain separate statements of the prosecutor's and the accused's representative's state of preparation."

There seems to be a degree of nuancing with regard to how the written record would be submitted.

Roderick Campbell: To refer back to the first panel and to Sheriff Principal Bowen's comments on the question of culture—without misrepresenting him, I hope—I think that he seemed to take the view that we were at least halfway to achieving culture change, given the attitudes that had been displayed to his review. Does any of you disagree with that view and feel that it will be more difficult in practice to change the culture, or are you content with that view?

John Dunn: It is fair to say that enhanced judicial intervention will bring a rigour to matters, which is evident in the High Court. As to whether that is a bad thing, I suspect not.

The Convener: Does that mean sheriffs taking people into chambers and saying stuff?

John Dunn: Not in chambers.

The Convener: I know that sheriffs would say things in public as well, in front of a busy open court. I am talking about a situation in which both sides might be involved and there was displeasure—I take it that sheriffs would also have a quiet word in the ear as well as saying things in open court.

John Dunn: I spoke earlier about the absence of sanctions in relation to the written record not being submitted and parties not being prepared. The 2005 practice note says that the High Court judge would regard that state of affairs as "unacceptable". However, the reality is that those provisions have been in place for some eight years now and I am not conscious of there being any occasion when a written record has not been submitted.

Of course, there is a sanction for the Crown, if you remember, because we have time bars that require to be operated to. If we did not comply with the legislation, the court could properly say, "You have a time bar that is about to expire on X date and I am not going to extend it, because you have not done what you should do," so there is a disciplinary consequence.

The Convener: That would be bad news.

John Dunn: That would be bad news.

Michael Meehan: The written record form that is completed in the High Court has been revamped relatively recently in that, if the parties are not in a position to fix a trial date, they need to give detailed information about when the party was first instructed—about when disclosure was made. That will provide the preliminary hearing judge with detailed information setting out, before

the case calls in court, various steps along the way showing what has been handed over.

Both the Crown and the defence forms have changed somewhat relatively recently, so that type of information is available, which will inform the judge. Presumably, if one was to then conduct a review in later years, the forms would contain very useful information about why cases were perhaps not ready to go ahead when they should have been. An act of adjournal perhaps about a year ago changed the form to provide more information.

The advantage of what is contained in the bill about what is to go in the form—I think that it is covered in subsection (6) of proposed new section 71C of the 1995 act—is that it is to be prescribed by act of adjournal. It can therefore be amended as people become used to how it works in practice and find out what works, what does not work, what could be improved, what could be left out and so on.

Grazia Robertson: From the perspective of the Law Society, the written record could also be an opportunity to highlight any problems that emerge with regard to the preparation of cases or any problems from the defence perspective. If we are requiring people to put this information in the document and the document is there for the court to see, if any issues arise in the earlier stage of the preparation of the case, they may be highlighted by the written record. It would be a good opportunity to focus on any problems that might occur.

To take a simple example, if there turned out to be a technological difficulty at some stage with closed-circuit television footage—with regard to having it copied, having it disclosed, checking the quality or having it assessed—that could be highlighted in the written record. It could then perhaps be looked at and addressed. The written record could therefore provide an opportunity for focusing on any issues and resolving them.

The Convener: John Finnie is next with a question.

John Finnie: Thank you, convener—the point has been covered.

The Convener: I am not looking at anybody else so that I can say that I do not see anyone else with a question—I am blinkered in case somebody decides to ask a last gasp question. I thank the witnesses for their helpful evidence, which clarified some points that had not been raised before.

Petition

Solicitors (Complaints) (PE1479)

11:24

The Convener: Item 5 is on petition PE1479, which was referred to us recently by the Public Petitions Committee. It is a petition by Andrew Muir calling on the Scottish Parliament to urge the Scottish Government to amend the Legal Profession and Legal Aid (Scotland) Act 2007 by removing any references to complaints being made "timeously".

Members have a copy of the letter from the Scottish Legal Complaints Commission and the Law Society to the Minister for Community Safety and Legal Affairs, which contains proposed amendments to the 2007 act.

Do members have any views on the petition or have you all been beaten into submission now in some form or other?

Elaine Murray: There is obviously something behind the petition that is not clear from the papers that we have. Most complaints have to be made within a certain time period—that is quite normal, whether it is a complaint to an ombudsman or to anyone else. I would have thought that having the ability to make a complaint later if there are exceptional circumstances, as outlined in the SLCC rules, already addressed the problem that was raised by the petitioner. However, obviously there are some issues with the 2007 act, which have been referred to by the SLCC. Perhaps we need to get a bit more detail from the individual about what experience caused him to raise the petition.

John Finnie: In the paper from the clerk, paragraph 11 on page 2 refers to the SLCC consulting "stakeholders". I wondered who the stakeholders were and how you would establish stakeholders.

Roderick Campbell: I have some difficulties because I saw the SLCC submission only this morning, convener. Up until then, I was quite happy for the petition to remain open so that we could get the further information that we wanted and consider the petition further. I think that I will stick to that view because I am not sure that we have had enough time to absorb all the submission.

The Convener: We have options here. We could write to the SLCC in relation to the Legal Profession and Legal Aid (Scotland) Act 2007 and ask for more details on the recent consultation on the SLCC's time bar. We could also write to the petitioner to ask whether he has any evidence that

others have had similar difficulties with the SLCC's time bar.

Are members content to do that and to leave the petition open?

Members *indicated agreement.*

The Convener: Thank you. We now move into private session.

11:27

Meeting continued in private until 11:59.

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