



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# JUSTICE COMMITTEE

Tuesday 27 November 2012

Session 4

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**Tuesday 27 November 2012**

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**JUSTICE COMMITTEE**

**34<sup>th</sup> Meeting 2012, Session 4**

**CONVENER**

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

**DEPUTY CONVENER**

\*Jenny Marra (North East Scotland) (Lab)

**COMMITTEE MEMBERS**

\*Roderick Campbell (North East Fife) (SNP)

\*John Finnie (Highlands and Islands) (Ind)

\*Colin Keir (Edinburgh Western) (SNP)

\*Alison McInnes (North East Scotland) (LD)

\*David McLetchie (Lothian) (Con)

\*Graeme Pearson (South Scotland) (Lab)

\*Sandra White (Glasgow Kelvin) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Vic Emery (Scottish Police Authority)

Chief Constable Stephen House (Police Service of Scotland)

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

**CLERK TO THE COMMITTEE**

Irene Fleming

**LOCATION**

Committee Room 4



## Scottish Parliament

### Justice Committee

*Tuesday 27 November 2012*

[The Convener *opened the meeting at 10:00*]

### Decision on Taking Business in Private

**The Convener (Christine Grahame):** Good morning. I welcome everyone to the Justice Committee's 34th meeting in 2012. I ask everyone to switch off mobile phones and other electronic devices completely, as they interfere with the broadcasting system even when switched to silent. No apologies have been received.

Under agenda item 1, the committee is invited to agree to consider agenda item 4 in private. Are we agreed?

**Members** *indicated agreement.*

## Police Reform

10:00

**The Convener:** Agenda item 2 is an evidence session on police reform. The committee has agreed that we will focus today mainly on the governance of policing and the operational independence of the chief constable under the arrangements for a single national police force. I welcome our panel of witnesses: Andrew Laing of Her Majesty's inspectorate of constabulary for Scotland; Chief Constable Stephen House of the police service of Scotland; and Vic Emery, the chair of the Scottish Police Authority. We will move straight to questions from members.

**Colin Keir (Edinburgh Western) (SNP):** Good morning. My question is on the relationship, which has obviously been highlighted in the past couple of weeks, between the chair of the Scottish Police Authority and the chief constable of the police service. In *Holyrood* magazine, Mr Emery is quoted as saying that

"support staff should be subsumed within his chain of command",

whereas on the following page the chief constable asks for the right to maintain authority over all staff within the police, including support staff. Perhaps the chief constable and chair could take this opportunity to define their roles as they see them. Is there any problem with the relationship? If so, how will it be sorted? Mr House?

**The Convener:** I will let the witnesses decide who wants to comment first. Does Mr House want to speak first?

**Colin Keir:** My question was to both of them.

**The Convener:** I understand, but the convener actually picks who is going to speak.

**Colin Keir:** I apologise, convener.

**The Convener:** I have to have something to do here. Mr House?

**Chief Constable Stephen House (Police Service of Scotland):** The most obvious question is: is there a problem between us? No, there is not a problem between us—far from it. We have a very positive working relationship and we spend a lot of time in each other's company.

Is there a 100 per cent meeting of minds on the governance structure between the Police Authority and the police service? No, there is not 100 per cent yet. There is a significant level of agreement, covering the vast majority of functions, which the chair and I have thrashed out in the past couple of weeks. There are still a couple of areas where we need to work through how exactly the governance will work. Obviously, the chair will answer for

himself, but I think that our view is that some of that will only get worked out in the doing of it.

This is a new act and a new situation for us; it is not simply a merged service under the old legislation. Changes always take some getting used to, and there is some new thinking around as well—that is exactly why the chair was brought in, I think—and I am perfectly content with that. There are a couple of areas where we still have to reach complete agreement on what the governance structure will look like, but on the vast majority we are agreed.

**The Convener:** What are those two areas?

**Chief Constable House:** The two main areas are the direct relationship between the director of human resources and between the director of finance and the chief constable vis-à-vis the Police Authority—exactly where that relationship lies. We are down to the level of practicalities about where the director of finance and director of HR will actually work from on a daily basis. That may seem ridiculous, but actually it is not. That sort of practicality signals whom they are working with and for from day to day.

The chair will speak for himself, but my belief is that our agreement is that, on a day-to-day basis, the directors of finance and HR will work at the police headquarters—in, as I have put it, the same corridor as myself—and will come to my morning meetings and be part of my senior management team. However, they will also clearly have a responsibility to and a relationship with the Police Authority, because they will lead on strategy around finance and HR. The act makes it quite clear that the role of the authority is not simply one of scrutiny, but is a provision and maintenance role as well. The budget is the Police Authority's budget and the support staff are the Police Authority's employees. Therefore, the Police Authority must have some sort of locus in relation to the directors of HR and finance. It is a slightly complex relationship and that is why it has taken a bit of time to work out. We have agreed completely on how a lot of other functions will work in the new set-up, and we are still thrashing through the detail of only those two key posts.

**The Convener:** Can you spell out the other functions, please?

**Chief Constable House:** Yes, I can. For example, we have taken a purely pragmatic view on the role of director of information, communications and technology. The Scottish Police Services Authority has had direct control over that role for the past five years, and the police service does not miss very much that which it has not had.

Decisions on ICT tend to involve fairly large-scale strategic investments. All that I have asked

for—and the chair of the authority has completely agreed—is that the police service is an intelligent and powerful customer in relation to ICT requirements, and that it has some way of feeding into the ICT director our long-term, short-term and medium-term needs. I would not need the ICT director on my senior management team on a day-to-day basis, because that is not how the dynamic works.

With regard to communications and media, we have again taken a pragmatic view. The police service and the Police Authority are two different entities in law, with different responsibilities that are laid down clearly in legislation. It is therefore only sensible to think that they will have different views on different things.

For example, the Police Authority may not have nor wish to take any view on issues such as minimum alcohol pricing or the penalties for possession of a knife, while the chief constable and the police service may well want to take a position on those matters. We believe that it is entirely appropriate that both bodies have their own communications units through which they can express different opinions, because the Police Authority may want to take a view on areas on which the police service will be silent.

The same argument follows for the legal aspect, as the bodies are different legal entities with different legal positions, and they therefore need different legal advice. In addition, I, as a chief constable, will need operational legal advice on such things as provisions under the Police, Public Order and Criminal Justice (Scotland) Act 2006 and the Criminal Justice and Licensing (Scotland) Act 2010, and discipline regulations. One would not need those specialisms if one was working for the Police Authority. There are two different legal units working for each of the two bodies.

That applies in other areas such as audit. We believe that, from an ethical point of view, the audit function should come nowhere near the line management of the chief constable. Audit is effectively there to ensure that we are spending public money wisely and efficiently. It is the Police Authority's role to oversee the audit function, so audit should report directly to the authority and completely bypass the chief constable. At present, technically speaking, that is not the case within forces, as audit comes under the responsibility of chief constables. That is really quite messy, and it feels ethically far more appropriate that the audit function reports directly to the Police Authority.

Procurement is another such area. It seems to make sense, in deference to the fact that the Police and Fire Reform (Scotland) Act 2012 states clearly that the Police Authority has a provisioning and maintaining role as well as a scrutiny role, that

the authority takes care of procurement directly, which it chooses to do in a variety of ways.

All that we have asked for, and which has been agreed, is that we are intelligent customers. We can then say, "Here are the specifications for the type of vehicle that we need for motorway patrol work." We will not say which vehicle it is, but we will say what the specifications are. We might say, "Here's a specification for the side arms that we might need for our firearms officers," or "Here are the specifications for the uniforms that we would like." It is up to the Police Authority to go away and negotiate contracts with the private sector to provide that equipment.

Those functions make up the vast majority of what we are discussing and, as I said, we do not have an issue with them. The areas that we are still debating—and it is a debate—are HR and finance.

**Vic Emery (Scottish Police Authority):** I agree with Steve House. At the moment, we are focused on ensuring that the people of Scotland have the very best police force for the available funds. We are also focused on working together; in fact, we spend a lot of time together and between October and Christmas we will have achieved the appointment of all the deputy and assistant chief constables and have agreed a voluntary redundancy scheme. We have 12 members of the authority in place and are already beginning to consult on strategic priorities. Our focus is on ensuring that we are ready for day 1, and Steve House and I get along very well in progressing that agenda.

**Colin Keir:** How far have you got with resolving the two areas that are still under debate and, indeed, when can we expect a resolution in that respect?

**Vic Emery:** We have said publicly that all of the structures will be in place before the end of the year. On 4 or 5 December, we will have a joint meeting at which the issues will be debated together with the board. After all, this is not a negotiation between Steve House and me but an agreement between the police service of Scotland and the SPA, and there are 12 other board members whom I have to bring along with me.

**Graeme Pearson (South Scotland) (Lab):** Mr Emery, you have heard Mr House's outline of the areas that are still under debate. Can you share with the committee your view of how the authority would like those issues to play out?

**Vic Emery:** To be honest, I think that that is best left until we have an agreement with the chief constable. We are basically on the same page with regard to having a federated-type model—or what some people call a matrix model. If you look at the finance side of things and follow the money,

you will see that the money comes to the SPA, which is the accountable authority for that funding. The money is then separated into various components, and the head of each component is responsible for delivering the services within the budget. Clearly, a big chunk of that money will be for the police service of Scotland, which will have an agreed budget. Once its budget is agreed, it will be asked to deliver against it. As Steve House has already made clear, it will have a chief financial officer, a finance director, a head of finance or whatever they might be called who will be accountable to the chief constable and the part of the chief constable's team responsible for delivering services within that budget. As I said in my opening comments, our main objective is to give the people of Scotland the very best police service within the available budget.

**Graeme Pearson:** Governance is one of those salty issues that people find it hard to get their heads around and realise the significance of. I feel that the nub of the issue is that we understand who leads, is responsible for and is in charge of the police service of Scotland and who will call that person to account and ensure appropriate governance.

Perhaps I can illustrate my point by putting it into a different set of circumstances. At the weekend, I read in *The Daily Telegraph* an article not related to the police service, which said:

"So who was responsible for the shambles?"

The minister

"lumbered the"

organisation

"with a new governance system that everyone"

said

"wouldn't work. ... Instead she, and presumably ... civil servants ... introduced the present"

system, in spite of advice from people who knew what was needed, and

"a disaster"

was

"waiting to happen, which is ... what we've seen in recent weeks."

That was Greg Dyke, speaking about the mess that the BBC has found itself in. He said that the problem was that no one was quite sure whether the chairman or the director general was in charge.

I think that that concentrates the mind on the issue under discussion. We have a real chance to get this right. From my point of view—I cannot speak for anyone else on the committee—I want to be sure that you have all the sharpness required to call the chief constable to account, to

discipline that person if that is necessary and to bring forward whatever is required to put things right. However, I would also like to go home at night knowing that, if things go wrong within the service, the focus will be on the chief constable, who will be responsible for reporting to you and explaining things. Am I on the right page in terms of where you want to take this?

10:15

**Vic Emery:** I do not think that there is any difference between what you have said and what either Steve House or I have said this morning.

**Chief Constable House:** I do not have any difficulty with what you said either. I am not trying to change the subject, but I am not surprised that we are here, frankly. This is new legislation and two new organisations, so I would be amazed if everything had gone completely and utterly smoothly. If it had, it would probably have been wrong.

At some point in my selection process or at some media event, I was asked whether there was a danger of central control and domination of the police by a powerful individual—I think that people had in mind a senior politician—who might bully the chief constable into doing what he did not want to do but felt he had no choice but to do. I think that what you are seeing here is, frankly, that the governance, in macro terms, provided for in the legislation is probably working, because we are struggling with only a couple of key areas in a much wider canvas. The canvas is agreed, really, and we are not hiding the fact that we are struggling in a couple of areas. We are not going to the press about it, but we are saying to other people, “Look, we have an issue here.”

Frankly, I see it as a positive that we are here now and that you are trying to help us out with this issue to ensure that Parliament and the public have the clarity that they need. We want that clarity, too. We are working our way through this, but I am certainly not going to hide the fact that we have slight differences of opinion and want to see how this works out.

The alternative is that one of us caves in to the other and says, “Well, that is fine and we will just do what you want.” However, I do not think that that is appropriate to the public sector. Policing is a hugely important public service in terms of personal freedom and public freedoms in Scotland, so it has to be got right. The fact that not everything has happened instantly and smoothly does not bother me too much, to be honest. I know that some people take the view that this is spreading fear and despondency, but my view is that if it goes on a lot longer, it might start to become negative, but actually it has not been

happening for that long. As you heard the chairman say, we are very close to agreeing what the service will actually look like in terms of HR and finance on a day-to-day basis.

I should also flag up to you—I hope that I am not being presumptuous—that we think that this is the governance structure that will work but if, when we sit down and review it after a couple of months, we decide that something is not quite working, we will probably need to try to make some changes. This is really important stuff. If we just swept it under the carpet and said that everything was fine, that would be the wrong approach. Clearly, we are not doing that, but we are—I think maturely—saying, “Yes, there are some issues between us, but they are not huge fractures.” There are, if anything, differences of experience, and we bring different experiences to bear on this.

Going back to what Graeme Pearson said, I sign up entirely to the need for clarity. The public needs clarity on what the relationship is here. As far as I am concerned, the relationship is that I am in charge of operational policing—not operational police but operational policing—across Scotland, and I am completely accountable to the chair of the authority and the authority for the execution of that and for the spending of the budget and the use of all the resources. There is no problem in my mind about the accountability.

**Graeme Pearson:** Mr Laing, you have listened to our conversation thus far. You have previously reported as HMI on the current set-up in the different forces. Do you want to comment on what you have heard and on the lessons that you have learned from the past?

**Andrew Laing (Her Majesty’s Chief Inspector of Constabulary for Scotland):** We recently published “Best Value in police authorities and police forces in Scotland—Overview report”, which reflects back on three years’ worth of joint study by HMICS and Audit Scotland. The report perhaps reflects one moment in time, but it emphasises the need for governance and accountability in policing in Scotland to be strengthened significantly. HMICS made that submission in evidence to the committee during the consultation period. I think that what has developed in the Police and Fire Reform (Scotland) Act 2012 is a framework that will allow for far better governance scrutiny and accountability.

In reflecting on the chief constable’s comments, I would say that what we are going through at the moment is healthy and necessary. We have a new act, new functions, new posts, new people and new relationships being developed. There was always going to be some debate and discussion about where the boundaries lie. I do not think that it will end in December or January; that healthy debate and discussion will go on at a lower level



over the period ahead, as we see how things balance out.

I have listened to the discussion, but the reality for me is that there needs to be balance in any system—that is hugely important, in this case. It is about where the balance is set rather than the extremes of the situation. Operational segregation of decision making from the control of resource and finance reduces flexibility, but policing needs to be flexible and able to respond. If any significant direction of and control over the operational aspect—Steve House has clearly segregated the strategic bit from the quick-time bit—is exercised by the authority, which may be legitimate in terms of the 2012 act, that will reduce the ability to provide segregation for governance and accountability. In other words, it will not be able to hold itself to account. The consequence of that would be more external governance and scrutiny, which is probably not what is intended.

The scheme of delegation, the scheme of administration and the financial memorandum will, as they are being developed, show where the balance is, which will determine the role and nature of the involvement of HMI and the Auditor General for Scotland. However, from what I have heard today and over the period, I think that we are getting closer to a well-balanced system that will be commonly agreed by the board and the chief constable, and which should give us a great deal of confidence that the investment in the new authority, its professionalism and competence—the aspect that we criticised in previous authorities—and the capacity that that will support, will lead us to a position whereby we should have good, strong governance and accountability, and power invested in the chief constable to exercise his responsibility for day to day operational policing. I guess that that should, in turn, allow us and you to go home at night and rest, safe in the knowledge that policing is being well catered for.

**Graeme Pearson:** Can I just come back on—

**The Convener:** It sounds as though everything in the garden is growing in a lovely way and that we just have to wait a little while and it will all flourish. However, I still do not know what would happen at the end of day if something went wrong with, say, resources for policing—perhaps involving the wrong kind of equipment, of which the SPA would be in charge. Who, at the end of the day, would be responsible? Who would the public point to and say “That’s the person to blame. That’s where blame rests”? I am not clear about that. I know that what is operational and what is not operational is a fuzzy area; I have learned that much. You say, Mr Laing, that we can all be happy and content that it will all be okay, but is that right?

**Andrew Laing:** I am saying that we will, as the process develops, get much more clarity about where lines are defined. I will use two extreme examples. If something went catastrophically wrong with a police inquiry, my understanding is that that would fall fairly and squarely on the shoulders of the chief constable, who would be held to account initially by the Scottish Police Authority, but also by wider scrutiny groups if necessary. If there was a fundamental failing in the way that the overall finance of policing was being managed—that is, a failure to meet the overall savings benefits that were required—that would be a matter for the authority, which is singularly responsible for finance.

**The Convener:** What if something went wrong because of a cut by the SPA? What if it made a financial decision that meant that something down the line went wrong with policing? It is the grey areas that matter, not the easy-peasy ones.

**Andrew Laing:** Absolutely.

**The Convener:** Who would be responsible in the case that I described?

**Andrew Laing:** I guess that it would be for external audit or scrutiny to make a determination, which is no different from where we are at the moment. I hope that the financial memorandum, the scheme of administration and the scheme of delegation will set that out relatively clearly.

However, we are back in the muddy territory where we have always been in that regard. Members might recall that in the run-up to the 2012 act, I made a strong plea that we get a clear—or as clear as possible—determination about what I called operational independence and what John McNeill said was operational responsibility. The 2012 act has not covered that grey area, so it still exists.

**Graeme Pearson:** In fairness, it would be difficult to write every relationship into the act and then leave it to two professional people to deal with, because that would mean that they would not have any professional responsibility but would just tick the boxes.

The convener has touched on one of the key points: if there is a fudge and an overlap in responsibilities, we end up with no one being responsible. When Mr Emery spoke on 29 October, he said that the authority had

“a very wide-ranging set of responsibilities in the running of policing”,

and that he equated

“the Chief Constable to a Chief Operations Officer”,

He then reflected:

“The vision does not yet have a final form. It is the SPA that will develop that clarity.”

I accept that it is a healthy process and that we will get to where we want to be only by discussion. However, I also suggest to all three witnesses that the committee has a right to know what those discussions are and to be part of them. The public are also entitled to know what is being said in their name. It is not for the three of you to sort out the matter in a dark room, then to present the solution to us on 1 April and tell us to get on with it. It is too important for that kind of outcome.

We need to be clear about Mr Emery's responsibilities in calling Mr House to account and doing it effectively. That is what we want him to do, because HMI reports over the years have indicated that the problem with the current structure is not so much to do with management of policing but with the authorities calling the police to account rigorously to make the service better and better each year. We need to rid ourselves of as much fog from the relationship as possible.

**Vic Emery:** You should take comfort from the fact that we are going through the debate at the moment. We must get the relationship right from the beginning. I have no doubt in my mind that I hold Steve House responsible for policing in Scotland and all that that entails. I know that he accepts that responsibility.

**Graeme Pearson:** Do you feel that you run the police?

**Vic Emery:** No, I do not run the police. I run the SPA, which provides services to the police to enable them to do their job. It also provides the finances to allow them to do their job. A part of the process is to agree exactly what finances are required, what savings must be made and how those savings must be manifested so that policing is not compromised.

I go back to a point that I have made a couple of times: we are here to ensure that the people of Scotland get the best possible service at an affordable price. Mr House can speak for himself, but once we agree that service, he is responsible for delivering it. If something went wrong from a policing point of view, he would be the first port of call and the SPA would hold him accountable for it.

**The Convener:** Let us go right up the chain of cause and effect: who would hold you to account if a failure of the services that you provided to the police caused the policing failure?

**Vic Emery:** I am responsible to the committee and Parliament for delivery of the SPA's responsibilities and for the police service of Scotland. That is what the 2012 act requires of me. It anticipates that the SPA will deliver some services to the police.

**The Convener:** I will let others ask about what services the act mandates you to provide.

**Vic Emery:** We can deal with it now if you wish.

**The Convener:** Yes—if you wish. There is a lot of “the authority may” in the act and there is “the authority shall”. There is a big difference.

**Vic Emery:** I will repeat what I said earlier: you should be comforted by the fact that we are going through the debate now in order to get it right.

**The Convener:** Over the “mays”.

**Vic Emery:** Pardon?

**The Convener:** The debate is over the “may” parts—the parts in the section that deal with “may provide”.

**Vic Emery:** Absolutely.

**Chief Constable House:** I want to try to square off the discussion that was started by Mr Pearson. He asked Vic Emery whether he feels that he runs the police. Vic said no, and that he runs the SPA. To be clear, I lead the police. I do not believe that there is any doubt about that in anyone's mind.

10:30

There will always be grey areas around who is to blame when something goes wrong. If an investigation goes seriously awry, clearly the police have got it wrong. There may be reasons why they got it wrong: it may be that their training was not adequate because money was not available, or overtime was not available, or they had the wrong equipment, or the computer system did not work as it should have. That would have to be looked at and there are plenty of people to do that, including this committee, Parliament, the media and so on, as well as HMI.

I do not think that there are any issues at all between Vic and me on the distinction between the roles. I have not detected any ambition on his part to operationally control any police issues and we have gone through a number of areas where we have agreed that there is a split of provision.

**Andrew Laing:** On the convener's question about who holds the Scottish Police Authority to account, it is clearly responsible to and accountable to Parliament. Mr Pearson said that he does not want the three of us to sort out the matter in a darkened room and then come out with a decision. To make a clear distinction, HMIC is not part of the SPA or the police service.

**The Convener:** So, you are not in a darkened room with the other two gentlemen.

**Andrew Laing:** It is a very lit-up room, but it is one that I sit in alone.

**The Convener:** So, they are alone in their darkened room.

**Andrew Laing:** HMIC exercises that independence—

**Graeme Pearson:** I accept that.

**Andrew Laing:** Although my role here is to try to encourage the debate and to try to add flavour from our experience and from what we have learnt, it would be my responsibility—along with the Auditor General—to provide reports to Parliament to say, “Here’s where we think responsibility is.”

**Graeme Pearson:** I am grateful for the clarity that HMI has provided. I did not raise the issues to have a go at Mr Emery, but because of the language that was used in a key moment about the running of policing and the notion of the chief constable being the chief operating officer and the idea of how such visions develop. I just want to put it on the record that Mr Emery has now said that that is not the case; we have clarity on that and it helps the general public to understand where we stand.

**Vic Emery:** I will add to Andrew Laing’s point. It is not only HMIC that scrutinises and audits what we do; Audit Scotland does that too.

**The Convener:** Can I just clarify something? I think that Steve House and Vic Emery both said earlier that while two substantial areas are under discussion—where the directorates of finance and HR will be located and to whom they will be answerable—they do not see that those things will be fixed in stone. It might be final when we launch in April but after that, if it does not work out, is there room for tweaking?

**Vic Emery:** Yes, there will be room for tweaking. Again, Steve House and I have discussed the best way forward and the best way of testing that way forward for review, if necessary. The 2012 act is prescriptive in some areas and permissive in others, so we need to get the best solution. It is best that we take time to do that properly rather than rush into it.

**John Finnie (Highlands and Islands) (Ind):** I have a question for Mr Emery and Mr House that follows up on Mr Pearson’s point about use of language and how important it is. If I noted it correctly, Mr Emery, you said that we have to get it “right from the beginning” and if I noted you correctly, Mr House, at one point you talked about not being seen to cave in. My question to both of you is this: have you received legal advice with respect to your roles? If you have, from whom did you receive it and at whose behest did you request it? What was the advice and did you use the same person or persons?

**The Convener:** That is your starter for 10, Mr Emery.

**Vic Emery:** First, when I was appointed I asked—as anyone would—“What am I here to do?” The first document that I looked at was the act, because it describes what the SPA is here to do.

I then took legal advice on the act to find out about the art of the possible and what the act says we have to do. I then went to the Scottish Government with that legal advice on what the act is about and asked the Government what it intended the act to do. Basically, the Government confirmed that the legal advice was correct.

So, yes—I got legal advice.

**John Finnie:** What was the source of that legal advice?

**Vic Emery:** I do not know the name of the law firm, although I can follow that up and get it for you.

**John Finnie:** Who paid for it?

**Vic Emery:** It was paid for by the SPA.

**John Finnie:** Who sanctioned that?

**Vic Emery:** I did.

**John Finnie:** So you sanctioned your own legal advice.

**Vic Emery:** Yes.

**John Finnie:** Right. If, in the future, an employee had employment law issues, would you sanction their getting commercial legal advice on the issue?

**Vic Emery:** No. I am, however, responsible for the SPA and, therefore, for discharging the act, so I got legal advice on what the act enables me to do. If I was an employer, I would get external legal advice on any employment issue, in the same way as an employee would take their legal advice.

**John Finnie:** Of whom do you understand yourself to be an employee?

**Vic Emery:** I am an employee of the SPA.

**The Convener:** May we see that legal advice?

**Vic Emery:** I have already had a request for the legal advice from Graeme Pearson as an individual, and I have said that it is legally privileged, but that I am happy to provide it, although on a holistic basis. I would not want the legal advice that I received to be taken out of context, but I am happy to share it along with legal advice that has been given to other parties that are involved with the act.

**The Convener:** You said that the Scottish Government “Basically ... confirmed ... the ...

advice” that you received. “Basically” is a difficult word.

**Vic Emery:** It confirmed that some things are prescriptive and some are permissive.

**The Convener:** We can see that from the act, which uses the words “may” and “shall”. One is discretionary and the other is mandatory.

**Vic Emery:** Yes, but the act is general in some areas and not in others. Therefore, we needed the advice.

**The Convener:** Perhaps we can ask Mr House whether he got legal advice.

**John Finnie:** Yes—thank you, convener.

**The Convener:** Mr House, if you have advice, can we see it, so that we can see both sets of legal advice?

**Chief Constable House:** I got legal advice. I did that after a conversation with the Strathclyde lead lawyer, who alerted me to his concerns about the act in a specific area. He believes that the act does not allow the authority to delegate to me control over support staff, which, as far as I was concerned, was clearly a bit of a gobsmacking major problem with the legislation. I asked him to clarify that legal advice, so he went to an outside lawyer who has expertise in the area—whose name I do not know—and who provided written legal advice. Since then—

**John Finnie:** Was it a commercial lawyer?

**Chief Constable House:** Yes. Since then—

**John Finnie:** Who pays that bill?

**Chief Constable House:** The lawyer works for Strathclyde Police. Therefore, the bill will be paid for out of Strathclyde police authority’s budget because, at present, I have no employees.

**John Finnie:** I will ask you the same question that I asked Mr Emery. A range of new posts are being developed, so will the public purse pay for people to interpret their job descriptions and the like?

**Chief Constable House:** I will have to come back to you on that. I am not interested in my job description; I am interested in what the act allows me to do and whether it is workable for me in leading the police service. This was not a private—

**John Finnie:** I am confused why neither you nor Mr Emery went to, for instance, Scottish Government officials.

**Chief Constable House:** The reality of the problem is that Scottish Government officials wrote the act, so if I went to them and said—

**John Finnie:** It would perhaps make sense to know what they intended.

**Chief Constable House:** Can I finish my answer?

**The Convener:** Excuse me, but I am losing the thread here a little. I want to get back to the legal advice. With respect to John Finnie, I am not so bothered about the issue that he has raised, but I am bothered about whether we can see the advice.

**Chief Constable House:** You can see the legal advice that I have. I have no issue with that. What I was—

**The Convener:** So, Mr House, we can see your legal advice.

**Chief Constable House:** Yes.

**The Convener:** Mr Emery, can we see your legal advice?

**Vic Emery:** Yes, and I assume that you will get the Scottish Government to give you its legal advice, too.

**The Convener:** Well, the answer to that is probably no. Governments do not in principle give out their legal advice—that has been the case for the past 13 years. However, in fairness, we are entitled to see the legal advice that Mr Emery and Mr House have received, as you and what you represent are what we are concerned about.

Have you had legal advice as well, Mr Laing?

**Andrew Laing:** Absolutely not. I am independent—

**The Convener:** Good.

Can the committee see the legal advice to Mr Emery and Mr House?

**Chief Constable House:** You can certainly see my legal advice; I have no issue with that. Can I finish my point, please? I was—

**The Convener:** I want to finish this discussion before you do that.

Mr Emery, will you let us see your legal advice?

**Vic Emery:** Yes, I will—

**The Convener:** That is it.

**Vic Emery:** —in concert with all the other legal advice that is available.

**The Convener:** Now, you are not going to get the Scottish Government’s legal advice—end of story.

**Vic Emery:** If the Government has no legal advice, there will be none to see.

**The Convener:** The Government does not say whether it has taken advice or whether people can see it. Mr House has made a fair offer that we can see his legal advice, so it would be fair for you to let us see your legal advice.

**Vic Emery:** I am quite happy to do that, in a holistic way.

**The Convener:** We will not go back through that. I take it that the answer is no.

**Vic Emery:** The answer is yes, in a holistic way.

**The Convener:** What does that mean?

**Vic Emery:** That means seeing all the legal advice that is available. If none is available from the Scottish Government, it cannot be put forward, can it?

**The Convener:** The Government will not say whether it has taken advice. Every bill that appears has been legalised in that sense—otherwise, bills would not be endorsed and the Presiding Officer would not give them certificates. Can we accept that the act has been through that process? Given that, can we see your legal advice?

**Vic Emery:** Yes, you can—I will forward it to you as convener.

**The Convener:** If you forward it to me, it will be shared with the committee.

**Vic Emery:** That is fine.

**The Convener:** So we will have your legal advice and Mr House's legal advice—full stop.

**Chief Constable House:** Yes.

**Vic Emery** *indicated agreement.*

**The Convener:** Thank you very much. Will that be provided soon?

**Vic Emery:** Yes.

**The Convener:** I hope that it will be provided before the committee's next meeting and within seven days.

**Chief Constable House** *indicated agreement.*

**The Convener:** That is grand.

I am sorry for stopping Mr House earlier, but I wanted to resolve that issue, because we were going round and about. Mr House wanted to finish a point, which I rudely interrupted. After that, Mr Laing can come in—he has not had legal advice, which is great.

**Chief Constable House:** I do not want to return to whether Government legal advice exists but, whether or not it does, the Government and certainly civil servants have an opinion on the act's interpretation. If the committee does not get a civil

servant's opinion on what the act does and does not allow, it will not see the complete picture.

The legal advice that I was given makes no sense whatever unless it is read in the light of how civil servants are interpreting the act—that is the complete picture. I am sure that if the committee asked them, civil servants would be prepared to tell members how they interpret the act and believe that it should be interpreted.

**The Convener:** We have the policy memorandum, the explanatory notes and the stage 3 debate, in which a cabinet secretary is tested and must make general comments. That is where we will leave that for the time being.

**Andrew Laing:** What I will say was probably covered by Mr House. In getting access to legal advice, we must bear it in mind that it will be an external interpretation of a piece of written legislation.

My involvement in the process has been fairly extensive, as I have been a member of all the programme groups and project boards, I have given evidence to a variety of committees and I have looked at the subject from an impartial and independent perspective. The question centres on what the intent of the act was when it was written. The point that is being made is that legal advice will not give that intent.

I could pursue the issue to a defined point. If the act's intent was to ensure that the Scottish Police Authority took responsibility for all personnel and resource that were not police officers, it would not have prescribed simply the provision of forensic science services as a bespoke part of the authority's work.

My reading of the act is that it was written in a prescriptive way, but that was not the intent. Legal advice will interpret the prescription but not what lay behind it.

**The Convener:** That is the case, but the committee knows the difference between what is mandatory and what is discretionary.

**John Finnie:** I will ask the panel about ICT and about the relationship between the authority and the chief constable by reference to a historical ICT project, which I understand was called the platform system. I have heard various figures quoted for the project's cost, from several million to up to £14 million, and that the system is obsolete. I may be wrong; Mr Laing and I have previously discussed the project. The point of principle is whether the scheme of delegation or other mechanisms that are in place will prevent a repetition of that gross waste of public money.

10:45

**Andrew Laing:** I will make a short offering to ensure that the committee is aware that HMIC is building up terms of reference jointly with Audit Scotland to review the platform process. The committee should be aware of that independent interest in the matter. The findings will come out next year.

**The Convener:** The next member with a question is—

**Chief Constable House:** Can I say something?

**The Convener:** I am so sorry, Chief Constable House. I was not aware that you had indicated that you wanted to speak.

**Chief Constable House:** My apologies—I am not quite sure what the request-to-speak mechanism is.

**The Convener:** You need only glance at me and that should be sufficient.

**Chief Constable House:** My understanding of platform is relatively arm's length. It has been around for a number of years. I think that the intent behind it—which was to provide a single way of looking at performance across eight Scottish police services—was correct. Of course, the system is redundant now because there will be only one Scottish police service. It will have its own ICT strategy, and one benefit is that that will be easier to do.

On the governance, I return to what I suggested earlier, which is that, historically, the police and the whole public sector have not been very intelligent ICT customers because they do not understand how it works. I am all in favour of the introduction of a far more business-like approach to the identification, acquisition, installation and running of ICT projects.

The Association of Chief Police Officers in Scotland has made major steps in the past few years to improve how it goes about doing that. I will not comment on platform, but we are a far more intelligent customer than we used to be, and that is partly to do with the fact that the SPSA now exists.

In effect, the process works because when we decide that we have a need for something in the ICT field, we then discuss it with SPSA staff—and, in future, I think that we will discuss it with SPA staff—and explain what our business need is. They then decide how that need is best met, whether that is to build the product themselves, buy an off-the-shelf product or commission a private sector company to build a specific product for use by the police. That is the efficient and effective way of going about it—it is a fairly tried and tested methodology, and it is one that I have

no doubt that we will be embracing. That is why we said earlier that the ICT director can be slightly more arm's length, because such decisions are not made daily. We would develop a business case and eventually we would go in front of the Police Authority for it to agree and support that business case.

The future looks better. I am quite clear that the chair will be holding us to account to ensure that we are intelligent customers; everybody else will be holding the authority to account to ensure that it provides for the needs of the police service.

**The Convener:** That seems to be settled then. The ICT issue seems to be one that has been resolved.

**Vic Emery:** Yes.

**The Convener:** That is fine. [*Interruption.*] It is sorted. We will tick that one off then.

**Alison McInnes (North East Scotland) (LD):** I have some questions that I might want to come back to later, but I first want to pursue the clarity that does not exist—as yet—on issues such as HR and finance.

Mr Emery, you said that you spend a lot of time in Chief Constable House's company. What other company are you keeping? [*Laughter.*]

**The Convener:** I think that you meant to ask what company Mr Emery is keeping that is relevant to the legislation.

**Alison McInnes:** Yes, I meant to say relevant to this discussion. Who else are you spending a lot of time with? Is it with the civil servants? Is it with the minister?

**Vic Emery:** I hardly see the minister, although I have a regular slot with him, which I fulfil. I think that I have seen him once—I was with Steve House—since I was last before the committee. I spend the rest of my time with the newly appointed board and getting them up to speed on their legislative liabilities and responsibilities. We have met four times and that requires a lot of preparation. I am in the process of meeting all the conveners of the current police forces to ensure that we have a sensible handover and transition plans between the police service of Scotland and the existing forces. I, of course, also spend time with the chief constable.

**Alison McInnes:** What about the civil servants?

**Vic Emery:** At the beginning I spent a lot of time with civil servants, but I spend less and less time with them now because they are slowly handing over the mandate to the SPA.

**Alison McInnes:** We have heard this morning that there is concern around the interpretation and intent of the legislation, which goes to the heart of

the tensions that currently exist. I would like complete clarity on that. In your consideration, have you put a lot of weight on what the civil servants have told you is there and how they want the act to be interpreted?

**Vic Emery:** Yes. They put the act through Parliament and I needed to understand what their intent was in doing so. I then used that understanding to inform the newly appointed SPA board about its mandate and liabilities.

**Alison McInnes:** That is quite concerning, and goes to the heart of the problem.

The act instructs you to do certain things, so you have to do them. It is clear that you would like to do a lot of other things. Have you come to the job with a reforming zeal, or do you want to provide the best police service going forward without any changes—a seamless transition?

**Vic Emery:** You have covered quite a few different things. I would like a seamless transition. I have already explained to you that I have had meetings with some conveners. I have not met all of them, but I intend to do so in the next little while to ensure that we have a seamless transition.

I have picked up the act as my document for setting up the SPA, so I am surprised that you would be concerned that I use it as my primary document, moving forward, in informing the board of its responsibilities.

**Alison McInnes:** The concern is not that you should use the act, but that you should use it in conjunction with some extra advice about what was really intended by it.

**Vic Emery:** No—we did that because we needed to understand what the intent of the act was. It is prescriptive and permissive in different areas, so we needed to understand where we are going.

The fact is that the budget belongs to the SPA, which then splits it up into the various component parts, the biggest chunk of which goes to the police service of Scotland. There is an agreement between the chief constable and the 12 SPA board members to ensure that the budget is sufficient to undertake the reforming and policing of Scotland. That is what we are doing at present, and we are putting structures in place to ensure that there is proper governance and accountability.

**Alison McInnes:** It is clear that you are trying to develop structures, and much of the early questioning was around what happens if something goes catastrophically wrong. How do we provide the best police service if the chief constable does not have operational responsibility for the whole package?

I would like to hear from the chief constable. We saw from the Audit Scotland report—to which Andrew Laing referred—which was published just this month that more efficient and effective use of resources across the police workforce—

**The Convener:** Can I just clarify what you mean by “the whole package”? What concerns you? Is it the HR aspect?

**Alison McInnes:** The two areas that concern me are HR and finance.

**The Convener:** So your question is on whether the chief constable should be—

**Alison McInnes:** I want to know whether the chief constable feels that if he does not have direct responsibility for those functions, he can have a properly balanced and integrated workforce.

**The Convener:** Thank you. Mr House can respond to that.

**Chief Constable House:** Thank you for that; my answer is pretty simple. I believe that it is essential that I have day-to-day control of the HR and finance functions in the police service in order to provide a service for the public in Scotland. The act actually says that: it states that I have “direction and control of the Police Service.”

It does not say police constables, and if it meant police constables, it would say that. It says “Police Service”, and we are a mixed service of police officers and support staff. There are 6,000 support staff and 17,500 police officers, and “direction and control” of both those arms of the organisation is essential in providing policing for Scotland.

I am interested in the day-to-day control of—and in having a sizeable say in—the strategic direction and how that develops. I do not expect to have a final decision, unaided, on the strategic direction, because that should go—in the right format—to a board.

If we decided to change the recruiting model for police officers in Scotland and do things in a different way—more like the national health service, for example—I would expect to work that up in concert with my director of HR and take it to the Police Authority for discussion. If the authority agreed with the change, we would put it into practice. I think that it is—

**The Convener:** So the directors of HR and finance would be yours, and the SPA would be—to use your expression—the intelligent customer. I am being naughty, but I mean that the balance would shift.

**Chief Constable House:** There is a shift of balance, but the situation within the framework stays the same, which is that the budget is the SPA’s, not mine, and all the employees are the

SPA's, not mine; it effectively loans them to me to do the day-to-day running of the police service. However, I need direction and control over those people as much as I need it over uniformed constables.

**The Convener:** You are their boss.

**Chief Constable House:** Yes.

**The Convener:** That is fine.

**Alison McInnes:** Yes, but you need more than that, surely. You also need to be involved in shaping that resource.

**Chief Constable House:** Yes. Work on that is going on at the moment. It builds into the budget debate as well. We have heard about voluntary redundancies, but at Tulliallan we are deep in the middle of police reform and designing and developing HR and finance structures, numbers of staff, where they will work and what their jobs will be across Scotland. I believe that I must have the decision on that because, frankly, I am designing the machine to work for me on a day-to-day basis.

That does not mean that the Police Authority does not get to say, "Actually, we think that you've been overly dramatic in your cuts there. You need extra people in that unit," or "Actually, we think you can take more out of the management costs there." That is an entirely appropriate discussion to have. However, there is no point in me saying that I have direction and control of HR and finance if I have to take what I am given; I have to have a say in it. Just to be clear, we are not fighting battles here; there is no suggestion from the chair that I take what I am given. At the moment, we are doing the design and I expect to present that to the board and for it to say yes or no to the structure.

**Vic Emery:** I agree with that. The police staff will always be employed by the SPA, but before they become police staff, they are staff. When they get allocated to the police service of Scotland, they become police staff; and when that happens, they come under the direction and control of the chief constable.

**The Convener:** Section 21(3) of the 2012 act is where some of the mischief is, in that it states:

"Police staff and police cadets are, in the carrying out of their functions, subject to the direction and control of (and may be dismissed by) the chief constable."

However, you are saying that the SPA has another role in that area.

**Vic Emery:** No, I am not saying that at all. What I am saying—

**The Convener:** It is nothing to do with direction and control of policing.

**Vic Emery:** No. The policing—

**The Convener:** I understand that.

**Vic Emery:** The people who do the policing are police constables and police staff, and they are under the direction and control of the chief constable.

**The Convener:** Can Mr House clarify what is meant by police staff?

**Chief Constable House:** Police officers are sworn constables. We all hold the rank of constable, whatever our administrative rank is—that is, police officers. Police staff are support staff/civilians. Police staff are non-sworn constables.

**The Convener:** That is what I am getting at; the distinction is that they are not—

**Chief Constable House:** They are not police officers. They do not enforce the law of the land; they are there to assist us. There are 17,500 cops and about 6,000 support staff who are civilians or police staff: different names for the same thing.

**The Convener:** That is where the confusion arises for me: the direction of HR would be under Mr House, but police staff come under the SPA's remit. Is that correct?

**Vic Emery:** Yes, that is absolutely correct.

**The Convener:** But Mr House would be responsible for

"the carrying out of their functions ... direction and control"

and their dismissal—that is the problem.

**Chief Constable House:** I am not a lawyer, but I think that part of the problem is that police officers are not by definition employees, so they are not employed by the SPA.

**The Convener:** No, this is about police staff.

**Chief Constable House:** Yes. I am trying to make that distinction. Police staff are employees who are employed by the SPA, so the chair and board of the SPA are their employers. In effect, the board loans the police staff to the chief constable on a day-to-day basis, and I direct and control them to provide policing services across Scotland.

11:00

**The Convener:** You may dismiss them.

**Chief Constable House:** I may dismiss them, yes.

**The Convener:** This is where there are great tectonic plates, as it were, between you. It seems a bit messy, with the director of HR being with the SPA and you running all the other stuff—



**Chief Constable House:** I am not a lawyer, but this is what I think is the practical intention of the act. If we were to find a junior member of police staff—for example, somebody working in an HR department as an administrator—abusing other members of staff, that would be gross misconduct and I would oversee their dismissal. If the director of HR was guilty of such a thing, I would go to the Police Authority to say that we had a problem and that we needed to take action against a senior member of support staff. I would expect the Police Authority to be involved at that stage. However, if it was involved in the disciplining of every member of support staff, there would be nothing else for it to do.

**The Convener:** Direction and control are the other issues. You might not have as many support staff as you want, or you might have too many, because the SPA is in charge of that. Yet, you have the direction and control, which seems to me—

**Chief Constable House:** With respect, I have direction and control over 17,500 police officers, and I cannot have fewer than 17,234, so I do not have much leeway there.

**The Convener:** No, no. Sorry, I am not making my point clearly. Can anybody else see what I am getting at, or have I lost everybody?

**Jenny Marra (North East Scotland) (Lab):** I am not sure.

**The Convener:** The point I am trying to make is that the director of HR, if that post goes to the SPA, will decide who will be the back-room support staff, yet you are chief constable and the support staff are subject to your direction and control in the carrying out of their functions. It seems that there is a conflict. If the whole thing was in one pot—yours—it would be tidier and easier to manage. You have already said that you want direction of HR.

**Chief Constable House:** That is clearly my stance. I do not think that we are very far apart on that—we are agreed on the day-to-day stuff. Ultimately, we might not agree on the corporate lines of command.

**Alison McInnes:** However, the corporate lines of command could—under a different chairmanship, perhaps—pose a significant problem. For example, if the SPA took a totally different stance in relation to a particular group of support staff and decided that it was not needed anymore, whereas you felt that it was needed for you to be able to have a balanced workforce, discharge your functions properly and provide the best police service for Scotland, you would be at odds, yet the authority will have been ceded to the SPA.

**The Convener:** Possibly.

**Alison McInnes:** Yes—possibly. I am not criticising any individuals currently in post—I am looking for possible problems ahead.

**Chief Constable House:** I understand that problem. I am inclined to say that no system of governance will be perfect, and exactly what you describe could easily happen under existing legislation in the eight existing police forces and will probably happen at some point in the new police service of Scotland. That is why—with all respect to my chair—there are 13 members of the authority, I guess. It is not a one-on-one relationship and there is room for debate and discussion. That is the governance structure.

To me, the problem that you describe could happen, but it could happen under any governance structure. It would have to be thrashed out among mature individuals who would be trying to do their best.

**The Convener:** Mr Emery, do you wish to comment?

**Vic Emery:** It is pertinent to say that the act already contemplates that the forensic service will report directly to the SPA.

**The Convener:** We know that.

**Vic Emery:** That is better than 400 people. Under the agreements that we have already made, the ICT organisation will be in the SPA, which is another 450-odd souls. We are talking about a lot of people to be administered by the SPA.

**The Convener:** The counterargument is that the forensic service is mandatory—you are on safe territory there.

**Vic Emery:** In principle, it makes no difference.

**The Convener:** I do not think that the issue is the number of personnel; I think that the issue is the functions.

**Vic Emery:** It is the personnel, in terms of from where a common set of policies and procedures is orchestrated. That does not undermine for one second the responsibility of the chief constable to have a senior HR person reporting to him, in his command team, looking after all the souls who report.

**The Convener:** We accept that this is still a difficult area for the two of you and has still to be negotiated.

**Andrew Laing:** There is very little change between what has been proposed in the legislation and what we have at the moment. A unitary authority such as Fife is the employer of all non-warranted police officers, but direction and control

are devolved to the chief constable, who operates the system and has an HR director, a director of finance and so on.

Interestingly, about three years ago, there was a significant proposal to amend those arrangements and put senior support staff back into the local authority. HMI and Audit Scotland were invited to contribute to the significant and fairly public debate that followed, the outcome of which was that the status quo was the best option and that it was best for direction and control—including of the HR director and the director of finance, who are both police staff—to rest with chief constables so that they had the flexibility to make the necessary operational decisions. There is history to all of this, and to some extent it is repeating itself.

**The Convener:** That is helpful.

**Graeme Pearson:** Can I ask a question on that matter, convener?

**The Convener:** Please be quick, because Rod Campbell has been very patient.

**Graeme Pearson:** What I have to say might help Mr Emery. Back in July, the national police reform team signed off a kind of civil service structure, in which the director of finance, the HR director and the director of communications and public affairs would all report through the chief constable to the authority. As Mr Laing has pointed out, there is a real rationale behind such a structure that holds together and which might help in future discussions.

That is all that I wanted to say, convener.

**The Convener:** It is as if you are giving evidence, Mr Pearson.

**Graeme Pearson:** I miss it, convener.

**Roderick Campbell (North East Fife) (SNP):** I will be very brief, convener, because most of my points have already been raised.

Mr Laing, you said earlier that it was critical for the respective roles of the SPA, the police service and others to be clearly understood. However, from what I can determine from this morning's discussion, we are still some way from that point. Do you have a role in trying to assist that understanding between your two colleagues—with or without legal advice? How will you be able to do your job properly after 1 April if you do not have that clarity?

**Andrew Laing:** At this stage, our primary role is to assist with the evidence that we have gathered on the history of policing and policing governance. Almost two years ago, HMI published a fairly substantial report on governance and accountability in policing that set out some clear principles, many of which have been taken forward or incorporated into the legislation, and we are

now working very closely with the Auditor General on what we think are good models of governance and accountability. In those discussions, we are drawing on the findings of the eight best-value audits and inspections that have been carried out and, with the overview report, we have been able to provide some insight with regard to the best practice that we have found and what approach should be taken to the model of governance. We are in dialogue with both Vic Emery and Steve House on some of those aspects.

Our role in the interim period is very much about encouraging the parties to reach a conclusion on those matters, but the reality is that the devil is in the detail. Until the chief constable, the authority and the board are able to consider options in the context of previous findings and can come to a conclusion, and until we can see how that conclusion will work and what the scheme of delegation—in other words, how much will be devolved to the police service—the scheme of administration and the various relationships will look like, it is difficult to offer critical commentary on the matter. I guess that what I am saying is that, in the meantime, we are acting as a source of advice and academic evidence, which we will add into the pot.

Once we see what develops, our role next year, post 1 April, will be to work very closely with the Auditor General on developing a scheme of inspection and audit that will test out the various relationships. Those discussions are at an advanced stage. I also note that the legislation places a responsibility on me to have an inspection plan in place by the early part of next year. We will do that in consultation, and I hope that the plan will be presented to the committee to assure members that the work is being carried out.

**Sandra White (Glasgow Kelvin) (SNP):** Good morning, gentlemen. I thought that I would get a wee bit of clarity this morning, but the picture is now even more mixed up—certainly in my mind, anyway.

I am trying to get to the nub of the issue as regards HR and finance. I have listened to your evidence and I have written down the word “dispute” under “HR and finance”. Please will you clarify the position for me?

Mr Emery, you mentioned that the act is prescriptive in some areas, with mandatory provisions, and we have talked about the words “shall” and “may”, but you did not touch on the fact that responsibility for the forensic service is absolutely yours. That is in the act, it has been seen by everyone, and you have accepted it.

As far as I can see from my reading of the act, forensics is the only aspect that the SPA has responsibility for. Did something in the act click in

your mind and cause you to go and get legal advice about finance and HR? Where were you coming from in that respect? Given that the rest is up to the chief constable, why were you—I do not want to use the word “suspicious”—concerned that some other areas should be within the responsibilities of the SPA?

**Vic Emery:** First, forensics is not the only bit on which the act is prescriptive. It clearly states that only the SPA—which is a corporate body, unlike the police service of Scotland—can buy things, as Steve has already said. He used the example of cars. He will present a business case that says that he needs four cars to fulfil a specific role, and then someone in the SPA will go and buy them. That is quite prescriptive.

The reason why there is an on-going discussion on finance and HR is that they are key drivers in the governance of the whole—

**Sandra White:** Sorry to interrupt. That is why we are here today—to get some clarification.

You mentioned that the SPA is a “corporate” body, but that is not a word that I would use regarding the police, and I do not think that the public out there would see it as a corporate entity, either. They see it as a service that is designed to protect and serve them.

What I am trying to get at is that finance and HR are the sticking point and we have still not resolved it. Why did you think that you needed legal advice given that the act is not prescriptive or mandatory regarding human resources and finance?

**Vic Emery:** My legal advice was not simply directed at finance and HR. I do not want you to think that that was its sole purpose. The purpose of my legal advice was to ensure that the other 12 members of the board knew exactly what the act was asking them to do and what liabilities and responsibilities they were taking on. It is the first port of call. If we go into a corporate organisation, we look at its articles of association to see what it is there to do. The act describes that, and we need to understand the limits of what it allows the board to take responsibility for.

**Sandra White:** Thank you for that clarification. I think—

**The Convener:** I think that Vic Emery is referring to section 3(1)(b) of the act, which states:

“the Authority may provide and maintain anything necessary or desirable for the carrying out of police functions”.

Then there is a list:

“including vehicles, equipment, information technology systems, land, buildings and other structures”.

That is the discretionary part.

**Vic Emery:** Yes. That part is discretionary, but I think that Sandra White’s question was about finance and HR.

**Sandra White:** I think that the nub of the whole situation is finance and HR. That is the ultimate talking point or sticking point.

I thank you for what you have said. You constantly mention the SPA being a corporate body. That is the language that you use, but it is certainly not the language that I would use when talking about the police force. However, I will leave that aside.

You talked about operational matters, and I think that my colleague Alison McInnes got to the nub of that issue. As she said, if the person who is in charge of the police force wishes to have extra people put in certain places, surely that should be the responsibility of the chief constable, who has operational responsibility. That is the human resource part.

On the finance part, I note that you said earlier that HR and finance are best left until there is agreement with the chief constable as to exactly what finances are required. I noted that that was the language that you used. You said, “best left until we have an agreement”—not “an agreement between the two”, but, “until we have an agreement with the chief constable”.

You then mentioned that “the budget belongs to the SPA”—that was the language that you used. Would you not agree that the person who is at the forefront of the operational management of the police not only should but must—I will use that word—have some input into how many police officers are put on the beat or whatever and that that person will need the finances to be able to carry out that operation?

11:15

**Vic Emery:** Already this morning we have covered the fact that there is no dispute about that.

**Sandra White:** Sorry, I hate to dispute that, but I think that there is a dispute. I know that you are both being very nice about it and saying that you will be talking about the issue at your meeting on 5 December, which is only a couple of days away, but the act passed by Parliament is very important and will come into force in April. It is fine for people to say, “We are working it out between us”, but I think that basically the committee has a right to know exactly what is going on. I certainly do not feel comfortable with, or comforted by, the evidence that I have heard today. There still seems to be a dispute between the chair and the chief constable about finance and human resources, which are perhaps the most important

parts. Certainly, what I have heard today does not give me comfort.

**Vic Emery:** The chief constable can speak for himself, but there is no dispute between us on who controls policing—the chief constable does that. We agree an organisation structure and we agree a budget. He has 17,234 police and a considerable number of police staff, who become police staff when, as a result of the discussions that we are having, they are allocated to the chief constable to perform tasks. There will be fewer police staff in the future than there are now because the reform programme will take some of them out—we are trying to do that on a voluntary basis so that there is no harm to anyone. However, once those staff are within the police service of Scotland, they are under the control and direction of the chief constable and he can do whatever he needs to with them to satisfy the objective of the safe policing of Scotland.

**Chief Constable House:** I am sorry if I have sounded complacent up until now in saying that we are having a debate and that it is a sensible debate. I have not meant to sound complacent, and I understand that it causes some concern. I certainly think that the issue is important and I am grateful for the committee spending time looking at it.

We are down to differences of opinion around control over HR and finance. To go back more or less to where I started, the level of debate that we are now having is over where the director of finance will have his or her office and where the director of HR will actually work from. Will they report to the chief constable on a daily basis, or will they work in the SPA headquarters building away from the chief constable's headquarters? The answer is very clear—I think that this has been repeated several times today—that the directors of HR and finance will work next to the chief constable on my senior management team on a daily basis, and I will be responsible on a daily basis for direction and control.

We will also be developing a forward-looking strategy on HR and finance, but we would completely expect to discuss that strategy with the authority. We would do that mainly as we did in the past, which is by preparing a business case and providing papers for the authority's consideration. The change here will be that the authority will be far more proactive and far more demanding in its scrutiny because the budget is the authority's budget, which is given to it by the taxpayer. To me, all that sounds relatively healthy and if that is how it is thrashed out—whether it appears in writing is not the point, because what matters is how it works in practice—I am content that that gives me the flexibility that I need to direct and control the police service on a daily basis.

Of course there will be tensions and rubs with the authority. I was chief constable of Strathclyde Police for five years, and we had tensions and rubs all the time on different things. However, all in all—sometimes despite what Audit Scotland and HMI thought—I think that we did a pretty good job together, and I think that most chief constables across the board would say the same. There are always going to be issues and problems. Again, I am not being complacent. I am not saying that the problem is solved and fixed. I hope that we do not have to come back in front of the committee in a few weeks' time and say "Oh well, we are still thrashing it out", as I would not want to do that.

There is a time for debate and there is a time for getting on with it, and we are at the time for getting on with it. As the chair clearly said, the authority has a meeting on 5 December at which it will consider the governance arrangements. That is the timescale. I hope that the authority will pretty much agree what we have laid out this morning.

**The Convener:** Why are the SPA and the police service to be based at different locations? Is that necessary?

**Chief Constable House:** Actually, I think that it is necessary. Fairly early on, I stuck my oar in and suggested that that should be the case. The public have to understand that there is a clear distinction and definition between the two bodies. I do not know whether the police service is a corporate body, but it is a police service, and then there is a Police Authority that oversees the police service.

**The Convener:** So it is about perception.

**Chief Constable House:** It is about perception. The motorway miles between the two locations might be a pain in the neck, because there will be constant meetings of staff and so on.

**The Convener:** That is what I meant.

**Chief Constable House:** Actually, perception is important—it is important that we are not perceived as being in each other's pockets.

**The Convener:** I see Andrew Laing nodding, but I know large legal firms in which one partner could act for one side in a contract and another partner could act for the other side. There are walls between them, real and metaphorical. I understand why you are doing that, but it seems that there will be a lot of duplication.

**Chief Constable House:** If I may come back on that, much of the debate this morning has been about whether I, as chief constable, can assure the committee that I have operational control of the police service and that Mr Emery will not tell me what to do. If we worked in adjacent offices, to a huge degree, people would think, "Hang on, he might not be telling the chief constable what to do,

but the relationship is very cosy.” It is not meant to be a cosy relationship.

**The Convener:** I did not think that for one minute.

**Chief Constable House:** It is meant to be a slightly arm’s-length relationship. Politically, being in separate buildings is probably the right thing to do.

**The Convener:** Okay. I would not place you cheek by jowl. You could be at separate ends of a large building with a big corridor between, but there we are—it is not going to happen.

**Alison McInnes:** I have a couple of questions. The audit report that was referred to earlier noted:

“Across all of our audits/inspections we consistently found that police authorities do not provide strategic leadership”

on “equality and diversity issues.” It goes on to recommend:

“Training programmes for members of the SPA and those involved in agreeing local policing plans should include an appropriate level of training on equalities duties.”

What arrangements have been put in place and what priority is being given to that issue?

**Chief Constable House:** I think that the report refers to the police authorities, not the individual police forces, and that certainly will not be the case for the police service of Scotland, because equality and diversity will be shot through all our strategies. Obviously, the service has not been involved in the selection of members of the Police Authority, so that is an issue that the chair might wish to address, rather than me. However, we stand ready to provide training on equality and diversity to any member of the authority or its staff, which is just as important as anything else that they will need.

**Vic Emery:** At present, the board has not even met to agree the standing orders. Therefore, that is a piece of business that needs to be transacted. As soon as we get an HR organisation in place, we can put in place all those policies. As an ethos, we agree absolutely with the diversity agenda. Members will see that that is more than adequately demonstrated at board level in the SPA.

**Alison McInnes:** You are making appointments almost as we speak—you made some yesterday—without an equality and diversity policy or statement.

**Vic Emery:** Yes. We have no internal policy written yet, because we are only a month old. However, the chief constable and I sat on the interview panel, and diversity was part of our agenda in the interviews.

**Alison McInnes:** I am trying to establish the importance that the board will give to the issue. Will the issue be covered in one of the first papers that you bring to the board?

**Vic Emery:** Yes, it will be in one of the early papers. I would not say that it will be the first paper, but it will be an early paper. I am committed to diversity. I have worked all round the world, so I am committed to diversity.

**Andrew Laing:** In the best-value overview report, we found that the commitment to equalities and diversity in policing per se was good. The authorities have two functions. First, they have to provide a strategic oversight of what the police do. We found that that was largely passive. The second is that the authorities in their own right have a responsibility on equalities and diversity, which was not being picked up and adhered to.

In the recent appointment process, I sat as an independent adviser on the panel—alongside Vic and Steve—to ensure that all those aspects were covered. Given the timescale, it would be unreasonable to ask the authority to have those policies in place.

**Alison McInnes:** It is reassuring to hear that an independent voice was at the table.

On a separate question, it would be interesting to hear an update on your regional plans and how you see the operational structure of the police going forward. We have seen reports in the newspapers and so on, so I want to hear your view.

**Chief Constable House:** I am happy to talk you through that. As you will all know, policing is an inherently hierarchical organisation, and we love designing organisational charts. The chief constable is in place, and we now have four deputies in place. As the Police Authority chair said, we are in the middle of early selection and sifting for the seven ACCs who will be in place.

We have done a lot of planning on that over the past 12 months. There will be three territorial assistant chief constables: one covering the north of the country, one covering the west and one covering the east. There will be 14 divisional commanders reporting to those ACCs; in effect, they are already in place because a number of forces—as you probably know from your representation around the country—have already moved in that direction.

Tayside Police has moved to a single territorial division for the whole organisation, and so have Fife Constabulary, Central Scotland Police and Northern Constabulary. We are building on that structure in an attempt not to upset or alarm in any way our local council partners and the chief

executives and leaders in particular. We are trying to keep that change to an absolute minimum.

We are identifying designated local police commanders, as I am obliged to do under the law. I am also obliged to consult the local authority on the identity of those individuals. I have written to the vast majority of councils in Scotland, identifying someone as the local police commander, which is without exception the person who is currently in place. Letters are now starting to come back from the councils saying that they are very happy with the nominations. There is the odd query, and one or two councils have asked whether they have to be united in one division and why they cannot stand on their own as a police division. We are meeting representatives from those councils and talking them through the process, and so far we have been able to resolve concerns in that regard.

Once the divisional commanders are identified, that allows us to ensure that they have the type of mandate under the new act to go ahead with discussions with local councils and other local partners to create the 32 local policing plans that we are required by law to create for 1 April.

In the same timescale, we have to consult on the Government's four strategic priorities, and that consultation is under way. The authority will then create a three-year strategic policing plan, and I will develop an annual policing plan. That all has to fit together. However, to give the 32 councils and the local commanders a heads-up on that and give them some lead time, we are asking them to get on and start talking locally now to develop local plans, which will be inherently local. Although the plans will be informed by strategic directives et cetera, they are about the locality. If they are not relevant to the local area, they are not relevant at all. We want councils to start developing those plans, and they are at various stages in the process of doing so.

Underneath that, I have given instructions that I want each of the 353 council ward areas throughout Scotland to have its own policing plan up and running for 1 April. Those plans will be even more local, and will concentrate on the top three concerns that the public have in the ward areas in which they live and what the police are going to do about those concerns over the next 12 months.

That is how the structure is developing. We are moving forward with it because we have to. We are approaching December, and it has to be up and running for 1 April. I cannot have officers not knowing what the direction of travel is, what they are expected to focus on and what we are measuring them on, so we need that structure to be in place as soon as possible.

**The Convener:** There may be an issue about where the various headquarters will be. Is that part of the planning?

**Chief Constable House:** There will be only one police headquarters and there will be a debate about that. The interim headquarters is at Tulliallan. The jury is out on whether that is, operationally, the right place to have a headquarters, but no alternative has been identified and we are not doing any work on that at the moment.

11:30

I talked about having an assistant chief constable in the west. That person will cover the west but work from headquarters. The ACC for the east will cover the east but work from headquarters. The exception will be the northern ACC who, simply because of distance and geography, will have to spend a fair amount of their time in the north of the country. I would expect them to come to most of our major meetings either through videolink or in person, but they need to be on the ground.

**The Convener:** So there will not be three other headquarters. That has been raised with me.

**Chief Constable House:** We all live and learn on communications. I have spoken about the three regions and, as I have said, police are madly into hierarchy and will build structures, so the easiest thing for them to do was to think that, because there was going to be an ACC west, he or she would need their own headquarters. However, they will not have their own headquarters; there will be one headquarters and we will all work there alongside the directors of HR and finance.

**The Convener:** Thank you for that clarification.

**Jenny Marra:** I want to clarify something that came up earlier. I was interested in Sandra White's first question, but I do not think that we got a clear answer to it.

Mr Emery, why did you seek legal advice on whether you had jurisdiction over HR and finance or whether the act was clear that they came under the chief constable's control?

**Vic Emery:** I think that I already answered that. I did not seek legal advice with regard to HR and finance; I got legal advice on the interpretation of what the act empowers the 12 members of the board plus me to do. The advice was not concentrated on HR and finance. It is clear that the SPA is responsible for the complete budget—every last penny of it—and, therefore, has an obligation to ensure best value.

**Jenny Marra:** So your legal advice does not include advice on whether you have jurisdiction over HR and finance.

**Vic Emery:** It is advice on the act, which says in various places that some things are prescriptive and some things are permissive.

**The Convener:** I feel that I have gone round in a dizzy circle on that, but we will see the legal advice anyway and—who knows—we may have to take legal advice on the legal advice.

**David McLetchie (Lothian) (Con):** I ask the witnesses to update us on progress on the proposed reductions in the numbers of police staff.

**Chief Constable House:** I am happy to start off on that. We are, I hope, very near agreement. That does not imply any dispute at all. We are simply working through the process of designing a voluntary redundancy and early retirement package, which we hope to get out in the next few weeks. That has to go to the authority's meeting on 5 December to be agreed, which is entirely appropriate.

We are pretty well advanced in designing the proposed structures and staffing numbers for civilian support staff across the service. We have plans showing how many people we would want within HR, finance and our vehicle workshops, for example. To a degree, we still need to discuss where some of those units will be based. We have not finalised that yet, so we are not ready to go to the workforce and the unions to tell them exactly what we have in mind.

We have entered negotiations, but we need to get into really detailed discussions with the unions and various representative bodies on our proposals and what they think about them. They have valid opinions and might come back and challenge some proposals or say that there is a better way of making the changes. We must also ask the staff themselves whether they can see a better way of redesigning the service.

All that is in train. All eight police forces and the SPSA are experienced at running such processes. I hope that we will take the best experience that we have had of doing that and run a fully engaged and open process that will allow a number of staff to leave the service under voluntary redundancy ahead, I hope, of 1 April. The earlier that we can move people out voluntarily, the quicker we can restructure the organisation and start to make some real savings, which we need to do to hit our budget for 2013-14.

**Vic Emery:** I agree. A number of reform projects for doing things more efficiently have been going on for the past 12 months. We will be talking about a number of different VR options—in fact, Steve and I will meet yet again this afternoon

to go through some of that stuff, which we will present to the SPA board on 5 December so that we can move forward. Steve's point is absolutely correct: we need to get a four-year effect, as far as that is possible, so we need to move rapidly on a VR arrangement.

**David McLetchie:** What reduction in the number of police staff do you anticipate that there will be over the next three financial years?

**Vic Emery:** It is very premature to project that. We hope that quite a few people will seek to look for alternatives to their current employment before 1 April. Over the next two to three years, there will be a number of twists and turns in the road, and it would be premature to speculate on how many people might be affected.

**The Convener:** You must be brief, Mr Pearson, because we are all tiring.

**Graeme Pearson:** I will be very brief. In the context of staffing and the plan for the future, it is evident that in slimming down the executive—the ACPOS members—a substantial number of current posts will go by the wayside. Is there a plan to deal with those executive posts? Can you share any information with us on where we stand on that over the next 12 months? We are talking about significant posts that are a heavy draw on finance.

**Chief Constable House:** It is a difficult area.

**Graeme Pearson:** I am glad that I brought it up.

**Chief Constable House:** We are right in the middle of the process. We appointed deputies only on Friday—those appointments were announced publicly yesterday—so we are only starting to identify that there are some individuals who are performing a day job in key leadership posts for whom there will not be a formal place in the organisation after 1 April. The issue is a highly personalised one for a small number of people. That number will increase in the next month, because we will be placing ACCs. I think that we have 15 or 16 applicants for seven posts. As the vast majority of applicants are internal applicants who are in the Scottish system, there will be some displacement there.

There is no doubt that, during the business of reform, there will be a need for extra work streams to be carried out. Frankly, it will be for me and the authority to sit down with the director of HR and the director of finance to work out whether there is an exit strategy for the individuals concerned. I will give an example. Let us say that individual A has six months to go before they reach a pensionable retirement date. There is little point, I would suggest, in pursuing the section in the act that allows us to exit that person from the organisation when, in six months' time, they will be going

anyway. That would be the appropriate thing to do. On the other hand, if someone has 18 months, two years or a lot longer to wait, there must be an understanding that the public will get benefit from the continued employment of that individual. I believe that that will be eminently provable for a number of key people for the first little while in the new organisation.

We are moving from a situation in which there are eight chiefs, eight deputies and just under 20 ACCs to a situation in which there will be one chief, four deputies and seven ACCs. One of the deputies and one of the ACCs will focus specifically on the Commonwealth games and other major sporting events so, in time, that number may reduce again. We are talking about a significant reduction in senior management. That is my view. My caveat is that the authority needs to see the proposals. That is what we are interviewing against. Time has pushed us to go ahead and do that. I am grateful to the chair of the authority for allowing us to do that. If we had had to wait until December to advertise any of the posts, we would be in trouble by now.

**Graeme Pearson:** So a bit of thought is being given to the issue.

**Chief Constable House:** Thought is being given to it. We are balancing the need to treat individuals with respect with the need to treat public money with respect.

**Graeme Pearson:** Indeed. Thank you.

**The Convener:** It would be really nice to finish on a harmonious note. I know that Rod Campbell and Alison McInnes still have questions that they want to ask, but I suggest that we invite everyone back after 5 December, subject to their commitments, when we can have further questioning, if that is necessary. By that time, we will have seen the legal advice and we may have taken our own legal advice—who knows? We have had a fair crack at the issue; we have gone on for an hour and 40 minutes.

I notice that the witnesses were calling each other “Vic”, “Steve” and “Andrew” at the end of the discussion, so the chemistry on the Justice Committee must be doing something. We can only hope that you come to a reasonable agreement on the directors of finance and HR in the interests of the Scottish public. Thank you very much for your evidence.

11:40

*Meeting suspended.*

11:40

*On resuming—*

## **Subordinate Legislation**

### **Adults with Incapacity (Public Guardian’s Fees) (Scotland) Amendment Regulations 2012 (SSI 2012/289)**

#### **Court of Session etc Fees Amendment Order 2012 (SSI 2012/290)**

#### **High Court of Justiciary Fees Amendment Order 2012 (SSI 2012/291)**

#### **Justice of the Peace Court Fees (Scotland) Order 2012 (SSI 2012/292)**

#### **Sheriff Court Fees Amendment Order 2012 (SSI 2012/293)**

**The Convener:** Under item 3, there are five negative instruments for the committee to consider. All relate to fees. The Subordinate Legislation Committee has identified and drawn our attention to drafting errors in four of them, which is why they are before us. Members may wish to comment on those errors.

The Adults with Incapacity (Public Guardian’s Fees) (Scotland) Amendment Regulations 2012 contain two minor drafting errors. The Scottish Government has acknowledged the errors, but it has confirmed that it does not intend to amend the regulations as the errors have no legal effect. That is nice to know.

The Court of Session etc Fees Amendment Order 2012, the High Court of Justiciary Fees Amendment Order 2012, and the Sheriff Court Fees Amendment Order 2012 were all drawn to our attention on the basis of defective drafting. The Government has undertaken to lay amending orders to correct the errors before they come into effect.

The Justice of the Peace Court Fees (Scotland) Order 2012 has not been drawn to our attention by the Subordinate Legislation Committee.

Do members have any comments on any of the instruments?

**Jenny Marra:** I may be wrong, but it is my understanding that the instruments have not been drawn to our attention just because of the drafting errors but would have come to the committee in any case, because we are the lead committee.

**The Convener:** You are correct—I beg members’ pardon.



**Jenny Marra:** I want to put on record my comments about the Scottish statutory instruments as a whole. At this time of recession, and with welfare reform going through Westminster, large fee increases in our courts are particularly troublesome. They make litigation for people who are on low and limited incomes much more difficult. As welfare reform progresses through Westminster, it is likely that there will be more litigation, with people looking to take their cases to court.

I also wanted an opportunity—perhaps the clerks can tell me whether we will get one—to ask the Cabinet Secretary for Justice or the Minister for Community Safety and Legal Affairs whether they will be considering increasing the threshold for contributing to legal costs from £68 in light of the fee increases that are set out in the instruments. The two do not seem to match up.

Members must ask themselves whether we think that full cost recovery in our civil courts is a good idea to pursue, given that the courts are a public service, especially, as I have said, in this time of recession and the increased difficulties that are being caused by welfare reform.

**The Convener:** I do not think that the instruments refer to full cost recovery, although I may be wrong about that.

**John Finnie:** I have sympathy with Jenny Marra's comments. The papers state that the equality impact assessment will be "published shortly". Perhaps I should have checked to see whether the assessments are online, but they would certainly inform us about the matters that were raised quite properly by Jenny Marra.

**The Convener:** Full cost recovery does not relate to the cost of court expenses; it relates to the cost of the processes. I may be wrong about that—perhaps Rod Campbell can help me out here. Is it correct that the full cost of the processes would be simply the fees chargeable for the laying of the various court papers? Is it court fees and fees for services offered by, for example, the Court of Session?

**Roderick Campbell:** I am not certain.

**The Convener:** It does not include judicial costs.

**Roderick Campbell:** No.

**The Convener:** We are talking about outlays that people must make for petitions, summonses and writs.

11:45

**Roderick Campbell:** Has the general principle been discussed recently?

**Jenny Marra:** Lord Gill discussed the issue.

**Roderick Campbell:** I appreciate that.

**The Convener:** Would the committee be happy to get more information about the costs, against the background of welfare reform?

I thought that I heard the cabinet secretary say that he was in discussions about the £68 threshold. We are nowhere near stage 3 of the Scottish Civil Justice Council and Criminal Legal Assistance Bill—there is no date for that—so we have time to find out how the issue might resolve itself.

**Jenny Marra:** I thought that the cabinet secretary was discussing the criminal legal aid threshold of £68.

**The Convener:** That is correct.

**Jenny Marra:** However, I never heard him clarify that he was also looking to raise the civil legal aid threshold. Did he say that?

**The Convener:** He did. He definitely said that, if he raised the criminal legal aid threshold, he would raise the civil threshold.

**Roderick Campbell:** Is it proper to say that the business and regulatory impact assessment and the equalities impact assessment will be "published shortly"?

**The Convener:** What document are you referring to?

**Roderick Campbell:** That is what the policy notes say about the impact assessments. We are considering instruments without the opportunity of looking at the assessments. As a matter of procedure, is that permissible?

**The Convener:** Does the committee want to defer taking a view on the instruments?

**Jenny Marra:** Can we take oral evidence from the cabinet secretary or the minister?

**The Convener:** In the first instance, we would write to the cabinet secretary rather than take oral evidence. If members wish, we can look at the instruments again next week. In the meantime, the questions that members have asked can be put to the cabinet secretary. If members send their questions to the clerks, we will draft a letter to the cabinet secretary and have answers before we next consider the instruments. Would doing that be satisfactory?

**Jenny Marra:** Yes.

**The Convener:** The Government will not be happy about my saying this, but I want to ask about the number of times that amending instruments must be laid to correct instruments before they come into force. We always seem to

see that. Shall we ask how often the committee has had to deal with amending instruments, let alone substantial SSIs?

**Jenny Marra:** When we prepare for meetings, if we think that SSIs are coming before us because of drafting errors rather than because we need to consider their substance, that is slightly misleading.

**The Convener:** I have said already that what I said at the beginning was my mistake.

**Jenny Marra:** Okay—I see.

**The Convener:** I have already corrected that.

**Sandra White:** We all have the cabinet secretary's letter, which came with our papers. It says:

"I am willing to put forward an amendment to increase the financial threshold but this must be across civil and criminal business".

**The Convener:** The cabinet secretary has also said that publicly in interviews, so I was aware of his position.

We will ask the questions and come back to the matter next week.

11:48

*Meeting continued in private until 12:11.*

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e-format first available  
ISBN 978-1-4061-9333-6

Revised e-format available  
ISBN 978-1-4061-9347-3

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Printed in Scotland by APS Group Scotland

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