



OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 13 December 2016

Session 5



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JUSTICE COMMITTEE
12th Meeting 2016, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

- *Mairi Evans (Angus North and Mearns) (SNP)
- *Mary Fee (West Scotland) (Lab)
- *John Finnie (Highlands and Islands) (Green)
- *Fulton MacGregor (Coatbridge and Chryston) (SNP)
- *Ben Macpherson (Edinburgh Northern and Leith) (SNP)
- *Liam McArthur (Orkney Islands) (LD)
- *Oliver Mundell (Dumfriesshire) (Con)
- *Douglas Ross (Highlands and Islands) (Con)
- *Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

- Angela Cullen (Audit Scotland)
- Gordon Dalyell (Association of Personal Injury Lawyers)
- Caroline Gardner (Auditor General for Scotland)
- Patrick McGuire (Thompsons Solicitors)
- Mark Roberts (Audit Scotland)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 13 December 2016

[The Convener opened the meeting at 10:19]

Draft Budget Scrutiny 2017-18

The Convener (Margaret Mitchell): Good morning, and welcome to the 12th meeting in session 5 of the Justice Committee. Agenda item 1 is scrutiny of the draft budget for 2017-18. It is my pleasure to welcome from Audit Scotland Caroline Gardner, who is Auditor General for Scotland, Angela Cullen, who is an assistant director, and Mark Roberts, who is a senior manager. We are pleased to have you before the committee today.

I refer members to paper 1, which is a note from the clerk, paper 2, which is a Scottish Parliament information centre briefing and the written submission that Audit Scotland has helpfully provided.

I understand that the Auditor General wants to make an opening statement.

Caroline Gardner (Auditor General for Scotland): Thank you for the opportunity to give evidence to inform the committee's pre-budget scrutiny. I will briefly highlight three points for you. First, over the past five years, the Crown Office and Procurator Fiscal Service's budget has been relatively static in real terms, which has reflected financial constraints across the public sector. In the past two years, the Crown Office has received additional financial support from the Scottish Government for specific casework and to reduce the time that it takes for cases involving domestic abuse to reach the courts.

Secondly, long-term financial sustainability is a central theme in our work. Due to the financial pressures that face public bodies, we have been encouraging them all to think about long-term financial scenarios and to develop strategies to deal with those. I am pleased to say that the Crown Office is developing a long-term financial strategy.

Thirdly, although the Crown Office is constitutionally and operationally independent, it is also an integral part of the justice system. My report last year entitled "Efficiency of prosecuting criminal cases through the sheriff courts" noted concerns about how well that system was operating, especially at local level. Our monitoring suggests that progress has been made since then, with improvements in the operation of local

criminal justice boards and internal restructuring of the Crown Office and Procurator Fiscal Service.

As you said, convener, I am accompanied by Angela Cullen, who is the appointed auditor for the Crown Office, and by Mark Roberts, who leads our work across the justice sector. Together, we will do our best to answer the committee's questions.

The Convener: Thank you very much. That is helpful. Members have questions.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Thank you for those opening remarks, Auditor General. They take me straight to an area in which I am interested, which is the long-term strategy over 10 years. What factors should be considered in that context? In my experience—I have been there, with that sort of thing—it is extremely difficult to look so far into the future. Are you expecting that the COPFS will, as a result of the exercise, identify changes to be made in the law that would give it stability? Is it anticipating changes in the law that are not necessarily being talked about? I will give an example. There might be changes in fixed penalties, which would reduce the number of cases that come into the court system at the bottom end. How will COPFS deal with such imponderables, and how would you expect to see that documented in what you will subsequently be auditing and engaging with?

Caroline Gardner: That is a good question on which I will ask Angela Cullen to come in, in a moment. I preface that by saying that the bodies that we audit are often anxious about the prospect of doing longer-term financial planning, and we recognise that in most instances they receive firm figures on their funding only a year or so ahead, through the Scottish Government's budget. It is not that we think that they can get a financial strategy that is right; rather, it is about the process of their thinking through changes, and what we know about the likely direction of public finances and how the bodies would react in different circumstances.

Angela Cullen will talk you through the specific things that she would expect to see in auditing the Crown Office.

Angela Cullen (Audit Scotland): That was a really good question, Mr Stevenson. A few years ago, when we published our report "Scotland's Public Finances: Addressing the challenges", we recommended—probably for the second or third time—that public bodies develop long-term financial strategies. We set out the areas that we expect bodies to cover and said that the information that is to be provided should not be in great detail, but should be high level.

We accept that bodies do not know what their budgets will be, but they know their costs, the costs' drivers and their priorities over the long

term. They also know where they could make savings and where they have made them historically, so they can model different scenarios or options. That might be about considering how legislation that they are aware will be introduced in the next few years might impact on their services and on demand for them. We expect bodies to consider a range of areas in a long-term strategy. The Crown Office is considering its long-term strategy at the moment and is making progress on it.

We do not expect long-term financial strategies to be developed and then just put on a shelf; rather, they should be living documents that should be dusted off and refreshed every year or so when new factors come in—for example, new legislation. We would certainly expect legislation that had not been anticipated but was then introduced two years down the line to be built in so that scenarios and options could be modelled around it.

Stewart Stevenson: We use the word “shelfware”, so I recognise what you have said.

I would like to take that a wee bit further and analyse the purpose of a long-term strategy. Is it to inform the Government of needs in an organisation’s functional area—I guess it will, in part, be about that—or should it be more focused on enabling the organisation to be flexible in its responses through its having done some strategic thinking about the consequences of a range of scenarios? If it is the latter, will that mean that the plan is less about numbers and more about activities?

Caroline Gardner: It is both those things and a third—especially for the Crown Office. We know that it is an integral part of the overall justice system. For example, in our report last year called “Efficiency of prosecuting criminal cases through the sheriff courts” we talked about the significant increase in work that had come through because of Police Scotland’s focus on traffic offences. The discussion therefore needs to be not only with the Government and within the Crown Office, but with the Scottish Courts and Tribunals Service, Police Scotland and other players, in order to ensure that everybody understands and, as far as possible, takes a joined-up approach in terms of the direction of the justice system.

My sense is that the most important focus is within the Crown Office, which will have the chance to think through its direction of travel in terms of the demand that it will have to deal with, how it can manage that demand and what is likely to happen to its funding.

The long-term strategy obviously links to other strategies—workforce strategy and the digital strategy, for example, which Angela Cullen has

also recommended that the Crown Office take forward and consider how to manage. I know that one of the committee’s concerns is whether the Crown Office has sufficient resource to deal with the demands that are made of it. The long-term strategy will help to identify the extent to which excess demand could be met through efficiencies in the system, and whether a discussion needs to be had with the Government about the resources that are needed to deliver the system as it currently stands. A long-term strategy plays both those roles: a detailed understanding of the pressures and where scope exists to work differently to meet them is a fundamental starting point for a sensible discussion.

Stewart Stevenson: I have a final question before I pass the baton to others. The long-term strategy will clearly engage quite a lot of people in the organisation. It will take quite a bit of effort and, perhaps, lead to quite a lot of debate about the organisation. Have you any sense of how many people or how many man hours might reasonably be thought proper to apply to the task? On the other side of the equation, what benefits will come from the organisation taking a strategic approach and how will we know that we have had any benefits?

I used to work for the Bank of Scotland, which published its first annual accounts only after it had been in existence for over 250 years. Until we on the computer side started to do strategic planning, the bank did none whatsoever, so I am therefore familiar with two worlds. On the Crown Office, how big will this substantial piece of work that will challenge and so forth be? When you audit the Crown Office, where do you expect to see the benefits from its having taken that approach? I guess parts of the Government will be listening to your answer, as well.

Caroline Gardner: I will ask Angela Cullen to talk about the specifics of the Crown Office. I may pick points up later if there is something to add.

10:30

Angela Cullen: I cannot tell you off the top of my head the cost of developing the long-term strategy or how many hours it might take. Development of the first strategy will take more time and involve more people. We would actively encourage the Crown Office to involve as many people as possible; often the people who are on the ground doing the work can identify where efficiencies can be made, so they should be involved in that.

Once a strategy has been developed, it should be easier to keep it up to date, as I mentioned earlier. Maintenance of the strategy should be

mainstreamed and given significant focus and attention.

Stewart Stevenson: If I may intervene at this point, I say that those are warm words, but I get no sense of scale from them. Please could you give me some sense of scale? Audit Scotland will look at the effort that was deployed on the task and comment on whether the Crown Office spent too much or too little time on it and whether the outcome was satisfactory. Do you have metrics for auditing whether the COPFS has successfully progressed the request for a 10-year plan?

Angela Cullen: I may or may not comment on how much it has cost COPFS to develop the plan. I will examine whether the strategy covers all the bases that we expect and whether the assumptions that have been made look reasonable, are in line with historical activity and predict future demand. By “historical activity”, I mean the Crown Office’s success to date in delivering efficiency savings. The question is whether the organisation is being overly optimistic in the early years of the strategy. I would also look at whether the Crown Office has built in plans that might need up-front investment in order that it can make the changes that are necessary to deliver the savings. I would look at all those things and say whether the strategy looks reasonable, rather than at how much it cost to produce.

I would expect benefits from the strategy: for example, I would expect it to reduce the cost base or—as the Auditor General said—to allow the Crown Office to have discussions with the Scottish Government, for example, on a prediction that, over the next five years, it will need a flat-cash budget or a slight increase in its resource base to allow it to meet demand that is coming its way.

I would also expect there to be awareness and ownership of the plan throughout the organisation and for everybody to understand their role and to identify where savings can be made.

Liam McArthur (Orkney Islands) (LD): Intuitively, where there is uncertainty—and the further that we go along the 10-year spectrum, the more uncertainty there will be—the human reflex in organisations is to make the case for maintaining as much of what they have as possible. The COPFS will be no different. Organisations build in arguments to support their case for resources, whether they face anticipated changes in legislation or workload pressures that are brought about through some other mechanism.

The value of the exercise seems to be that it provides an opening negotiating position. Once the detail of the budget is known, organisations can start planning on that basis where they might reduce activities and where they might be able to

deliver efficiencies. What is the upside in offering up those efficiencies? Needless to say, ministers will take and bank them—and look for others if budgets are tighter than were anticipated.

Caroline Gardner: Hypothetically, the other side of that negotiation is that the Scottish Government’s budgets for most organisations have reduced in cash terms at least over the past five years because of the downward pressure on the block grant from Westminster.

The process is difficult, as it always is at a time of reducing resources. That is one of the reasons why, as Angela Cullen said, we would expect a whole range of scenarios to be explored and sensitivity analysis applied to them to look for where there may be room to absorb rising demand within existing resources and to work differently to reduce costs in some areas to invest in others.

There is also an important role for the non-executive involvement in the Crown Office to ask challenging questions, bring experience from elsewhere and bring a fresh pair of eyes to the way that things are done. Incentives are clearly conflicting and competing in any process of that type; that is another reason why analysis that is clearly set out with a range of scenarios, different assumptions and different ways of responding to them is the best way in difficult circumstances. It is not perfect, but it gives a starting point for exploring what is really happening underneath the surface of the Government’s work.

Liam McArthur: You touched on the fact that we are well into a period in which budgets have been tightening. In the submission that you helpfully produced for the committee, you talk about the recommendation for the COPFS to

“develop a long-term financial strategy to inform its development over the next 10 years.”

I was slightly surprised by that. Given what we have gone through, is there not an argument that the COPFS should have been preparing such a strategy maybe not at the outset of that 2008-09 process, but certainly shortly afterwards?

If so, are there other organisations that you are auditing that have gone through that process earlier? Are we seeing benefits as a result?

Caroline Gardner: It is fair to say that most of the public bodies that I audit have struggled with the concept of longer-term financial planning. They have all had firm financial allocations for just the budget year ahead; sometimes they have had changes to their budget within that year, as I have reported elsewhere.

Liam McArthur: Have you, or has your predecessor, made that recommendation before and it has not been picked up on?

Caroline Gardner: Angela Cullen mentioned in her response to Mr Stevenson that the first piece of work that my predecessor did—I think that it was in 2010—was specifically about responding, after a decade of growth, to what looked like the start of a decade of real pressure on finances. That recommendation to take a much longer-term view on finances was made to the public sector in general, in which the Crown Office is obviously an important part. Many organisations have struggled with what that means; it is not something that they are particularly skilled in doing and they have tended to focus on managing the budget within year rather than on what they are to achieve in the longer term.

Angela Cullen recommended that approach in her audit report for 2015-16 and it was part of the discussion in 2014-15; although the work is now under way for the Crown Office, we feel that it could have started earlier than it did.

Liam McArthur: Have you set a timeframe for when you would expect to see the first iterations of that? You say that it is a living document, but when do you expect to see the first flush?

Angela Cullen: In response to the 2015-16 annual audit report that I prepared on the Crown Office, management accepted the recommendation. The timescale was that they would start the process, dependent on two issues. Shaping the future, which is a project to restructure within the Crown Office, had to be completed before they finalised the financial strategy, which would be refined when they knew the outcome of this year's spending review—that is due this week. The commitment was that they would have something in place by the end of this year.

Liam McArthur: Okay. Thank you.

The Convener: We have heard repeatedly that there is an issue about churn, or unnecessary delays. To quantify the impact of churn, is there an average cost for such factors as a day in court? We are discovering that it is a huge issue.

Caroline Gardner: The question of churn was a big issue in the work that we published last year on the efficiency of the court system. Mark Roberts will talk members through that.

Mark Roberts (Audit Scotland): We did not do the analysis quite in such a way as to put a specific cost on such things as a day in court. However, we built up a model that estimated that the total cost of churn to the system as a whole—the Crown Office, the court service and the police—added up to about £10 million during 2014-15. That was for cases that turned over unnecessarily in the course of that year.

The Convener: As that increases, will it start to show up anywhere? Where can we really see what is shown by that figure in a way that most people can relate to? We hear about churn, but what does it mean? We know that it means witnesses being disadvantaged and justice being delayed, but is there not a financial cost to be quantified?

Mark Roberts: There is absolutely a financial cost if the individuals involved have to attend court, and it has a wider impact on the economy as well as on the individual public bodies and the staff members who are preparing for a particular trial date, the police officers who have to attend as witnesses and so on. There is a cost in things not going ahead as planned.

The system as a whole is working very hard to try to reduce churn. We understand from more recent conversations that we have had that there is significantly better working across the various justice bodies to reduce the level of churn and improve planning, particularly for trial activity in solemn cases.

The Convener: Has there been any specific analysis of churn itself? Is it found particularly in solemn cases, or can it also be found in summary cases? Does it affect a particular type of case or does it happen generally across the board?

Mark Roberts: I think that it happens generally across the board. It is a particular focus for the Scottish Courts and Tribunals Service. I recognise that that is not the focus of the committee's work at the moment, but it is looking closely at the issue and working very well with the Crown Office on improving the understanding of it as a system as well as in terms of the management of individual operations.

The Convener: As you have said, the court system is interlinked, and the feedback that we are getting is that fiscals are under pressure, are underresourced and are dealing with too many cases. Preparation is not being carried out; some vital evidence might not be available; and all that is contributing to churn.

That was useful information.

Rona Mackay (Strathkelvin and Bearsden) (SNP): My question relates back to the financial planning strategy. Given that the figures show a pattern, with the number of trials going up and down and fluctuating, would you plan on the basis of the upside or on the basis of an average? Does that make things difficult for you?

Caroline Gardner: Clearly no public body knows what the future is. As Angela Cullen has said, we would expect the Crown Office to look at the level of activity and the fact that it has continued on the same trend for the past five

years. It could then say, "If we assume that there was a peak because of the reporting of historical sexual abuse cases, there might be a drop because those cases have almost been flushed out of the system, and this is what that would look like. If we assume that there are more scandals to come out, as we have seen in football over the past week or so, this is what that will look like." It would then end up with a fan pattern ranging from a worst-case to a best-case scenario, and that would let it plan on the basis of not just the costs of its current working but taking a different approach that might allow things to happen at lower cost or at faster speed. No one plan is going to be the outcome, but it would provide a way of thinking through what might be coming.

Rona Mackay: So it would look at both scenarios and make a guess on that basis.

Caroline Gardner: Exactly.

Mary Fee (West Scotland) (Lab): Good morning. I want to ask you about the digital strategy, which was touched on briefly in an earlier question. In paragraph 10 of your submission, you comment:

"COPFS does not ... have an agreed digital strategy".

It seems to me that, if the COPFS is looking at a long-term plan, such a strategy should be part of it. A lot of work has been done over the past few years on streamlining and joining together lots of local services, and I would say that a digital strategy should be part of that. What impacts will the lack of a strategy have on the streamlining process?

Caroline Gardner: You are absolutely right. It is important to distinguish between the overall system, in which a justice digital strategy has been agreed between the Scottish Government and the various significant players, and the Crown Office. Angela Cullen will pick up where the Crown Office is in that regard.

Angela Cullen: There is the justice digital strategy, and each of the bodies underneath that should have its own digital strategy for achieving the national strategy and know what that means for the organisation.

The development of a digital strategy has been a feature of the audit over the past couple of years, and we have made recommendations on that. You are absolutely right that that is one of the building blocks of a financial strategy, alongside workforce and estates and assets. As I understand it, the Crown Office has a draft digital strategy, which should be going to senior management and the board within the next few months. That is quite well progressed, and will hopefully be one of the building blocks that will feed into the financial

strategy that I expect to see by the end of the financial year.

10:45

Mary Fee: Is an investment required to develop that strategy, or does the Crown Office have the finances to do it?

Angela Cullen: It has been worked on over the past few years. In 2013, a new director of information technology was brought in and that has been one of his priorities, alongside lots of the other digital projects that the Crown Office has been working on with other justice organisations to improve the efficiency of the system.

Douglas Ross (Highlands and Islands) (Con): I want to pick up on a number of the points that other committee members have made, to tease out a bit more information. First, on strategic financial management, do you think that it is acceptable for bodies such as the Crown Office and others to almost ignore your recommendation?

Caroline Gardner: We obviously do our work to make a difference in the public interest and to make best use of public money. We think that, in the current financial circumstances, everybody should have a longer-term financial strategy and we have been recommending that for some time.

Douglas Ross: Is it acceptable that you have had to recommend that for some time, over successive years, but that only latterly has some action been taken? That is my question.

Caroline Gardner: Angela Cullen outlined the building blocks that are going into the process: the internal restructuring and the broader review of the work that is happening—those are important building blocks. Equally, as I said in my opening remarks, we would like to have seen faster progress, given the pressure that there is on the system.

Douglas Ross: What do you say to the Crown Office, annually, when that is not achieved?

Caroline Gardner: A conversation will normally take place between Angela Cullen, the appointed auditor, and the accountable officer and audit committee of the organisation. We highlight again that we think that it is important and why. Occasions such as this meeting with the Parliament are also an important part of the accountability process.

Douglas Ross: From my point of view, the fact that you continually have to repeat those statements seems to be a weakness; you expect something to be done and yet you have to repeat them annually. When you give that advice to bodies such as the Crown Office and they choose

not to follow it, does that diminish what you are saying? Other organisations may think, “They tell the Crown Office to do that but the Crown Office doesn’t do it, so we’re not going to bother either.”

Caroline Gardner: That is not really an accurate representation of the way that the audit approach works. We engage in a dialogue with the bodies that we audit, and there is a range of issues that we think each body should take forward. We have mechanisms such as reporting in public—reporting to the Parliament—when we think that there is a particular shortcoming. I would have liked to see faster progress, but I do not think that it is a major failing in the way that audit works or in the way that the Crown Office has responded.

Douglas Ross: It seems quite major. You have been mentioning the importance of a long-term financial strategy for successive years; indeed, your predecessor also mentioned it to the Crown Office.

In your response to Liam McArthur you said that it is difficult because of one-year budgeting, but your submission says that

“Irrespective of the fact that public bodies’ budgets are set annually”

they should be doing that. You tell them that, despite all the problems around annual budgeting, they should be doing long-term financial management, but that is not happening. The public and politicians rightly look to you to highlight those issues, but there is no point in just highlighting them if the bodies do not do anything and the situation continues indefinitely.

Caroline Gardner: There is no question but that I think it is an important recommendation. Angela Cullen wants to add something to my previous answer.

Angela Cullen: As the Auditor General said, the previous Auditor General originally made the recommendation back in 2010. We looked at it again in 2013 to see how the public sector had reacted to that. There had been some progress in some areas, but not across the board.

At that time, we discussed with public bodies what might help them to develop a long-term financial strategy. We heard a lot of comments such as, “Actually, we do not know what our budgets are so we cannot do that.” As auditors, we do not accept that argument; as I said, the organisations know their costs and they can model different scenarios. That was when we set out the basic elements that we would expect to see in a long-term financial strategy—that was in 2013.

Since then, we have been working with bodies to help them improve and develop in those areas, at both a national level and a local level. As

auditors, we go in to see what progress has been made and offer advice when that is necessary or when it is asked for. As the Auditor General said, we would encourage the non-executive board members to be involved in that, because they often also see what is happening in other bodies. There is a wealth of experience across the public sector. We can therefore point bodies to others that have developed long-term financial strategies, so that they can speak to them and find out what they did. We have done a lot of that.

Work has been on-going over the past year or so at the Crown Office, but I accept that it has been dependent on the shaping the future project. The COPFS had to complete a piece of work to allow it to inform its workforce planning, which would help it to model the numbers that it needed to allow it to work out the costs around that for its financial strategy.

Douglas Ross: On a similar theme, I will pick up on the point that Mary Fee made about the lack of a digital strategy. Audit Scotland highlighted that issue in its 2014-15 audit of the COPFS and did so again in the 2015-16 audit—therefore it was not dealt with the first time. Audit Scotland has now highlighted it again and you are saying, at the end of 2016, that a proposal will be put to the board at some time in the future. Is that acceptable? You state in your report that, without having a strategy—despite your reports twice reminding it about this—the COPFS is

“at risk of being unable to contribute fully to the delivery of an integrated approach across the justice system.”

Is it acceptable that the COPFS did not take that recommendation on board earlier?

Angela Cullen: It is disappointing that more progress has not been made. You are right that that recommendation was made twice. Things were happening in the background when we did the work this year as part of the 2015-16 audit. There was a draft strategy, but it was very much a draft and we commented that there was a draft strategy but that it was lacking in some areas. We made recommendations, which the COPFS accepted, and it said that it would work on those areas in developing a strategy. That is what I would expect to see in the strategy now.

Douglas Ross: When a comment was made in the 2014-15 report by the Auditor General, did you expect that in 2016 we would still be looking at a draft strategy that—from what you are saying—will have to be amended significantly. Was that the timescale that you were expecting at the time or did you expect this to be done a lot sooner?

Angela Cullen: The management response at the time indicated that the strategy would have been completed before now.

Douglas Ross: And what do you do when it is not completed? Do you just write the same in the next year's report?

Angela Cullen: We continue to work with the COPFS behind the scenes by looking at drafts, commenting on them and asking whether the strategy covers the areas that we would expect it to cover before the COPFS progresses it any further.

Douglas Ross: Although you would expect the COPFS to be able to provide you with an acceptable draft. It is almost as if it rushed something out because it realised that the issue had been mentioned twice and that it would get into trouble if it were mentioned a third time, so it shoved out a draft that needs quite a lot of work done to it. It does not sound like a strategy that has been developed through rigorous research or has had a lot of time put into it.

Angela Cullen: As I said, I would have expected the strategy to have been completed before now. It is possibly worth following up with the Crown Office why progress has not happened to the timescales that it specifically set out.

Douglas Ross: I have a final question, on the local criminal justice boards. You say that they were discussed in Audit Scotland's previous report but, as of April 2016, they have merged and are aligned to the six sheriffdoms in Scotland. Audit Scotland's submission goes on to praise the great work that they are doing. Is seven months enough time to analyse and consider how good the work is that they are doing? Is that sufficient time to enable you to put quite strong, positive words in a submission to the committee?

Caroline Gardner: As I said in my opening remarks, the report that we produced in 2015 stated that there was good joint working at the national level but there was much more variability at local level. Mark Roberts has been monitoring what has been happening since that report was published in 2015. I ask him to talk you through why we have the impression that you describe, which is based not on full audit work but on monitoring.

Mark Roberts: The reason for the original criticism in the 2015 report was that we had a lot of feedback from interviews with people. They said that, at a local level, criminal justice boards had struggled in the aftermath of various organisational restructurings, for example the establishment of a national police force and the reorganisation of the Crown Office into a federal structure. A lot of people felt that the relationships that had existed at the local level of the criminal justice boards had broken down. That contrasted with the strong positive joint working that was going on at the

national level through the Scottish Government justice board.

Recently, we have been meeting some of the key people who were involved with the original report—the Crown Agent, the chief executive of the Scottish Courts and Tribunals Service, and representatives of the justice directorate in the Scottish Government—to ask what has happened since.

Douglas Ross: So those are the people who are very happy about it. That is understandable. If you ask them, they are naturally going to be very positive about the process. I am just surprised that the Auditor General is writing about how good things are after just seven months, because it seems that you got feedback from quite a limited audience.

Mark Roberts: It is true that it is a limited audience. As the Auditor General said, monitoring is on-going. This is not a comprehensive, fully validated and tested piece of audit work. We will continue—

Douglas Ross: I am not saying that there are any issues but, from a politician's point of view, I pick up some things locally that I am not content with. If I raise any questions, someone will say that the Auditor General is very supportive of what is happening because, after seven months, Audit Scotland is writing about the good work and so on. However, it turns out that that analysis is based on feedback from quite a small number of people, who clearly have a vested interest in ensuring that this works successfully. I just wonder whether that is the type of rigorous approach that we would normally take to such statements.

Mark Roberts: We intend to continue to monitor this and follow up with a wider group of stakeholders over a longer period of time. Our monitoring of the impact of our reports is not a one-off event. We are doing this 12 or 15 months after publication. My colleagues and I will continue to speak to a wide number of stakeholders to get a full picture. This is the feedback that we have had to date, but I recognise your point.

Caroline Gardner: It is probably also worth noting that one of the important findings from our 2015 report on the sheriff court system was the extent of variability across different sheriffdoms. In some sheriffdoms, there were big problems with communication, churn, and delays in the system. Others were managing things much better. One of our recommendations was that there was scope to learn from the places where things were working well and spread that good practice through the system. We think that that is starting to happen through the local justice boards—with the caveats that Mark Roberts set out for you.

The Convener: I will let Stewart Stevenson in with a supplementary if it is very succinct.

Stewart Stevenson: It is fairly succinct. Douglas Ross has raised that issue perfectly properly. There is then the broader issue of what auditing is. I want to test the Auditor General's view of that against mine. First, there is a legal aspect: you have to sign off the accounts. The institution that is being audited has limited discretion over how accounts are presented, how things are counted up and documented, and so on and so forth.

However, the bigger aspect that we have been discussing is the "advice" that Audit Scotland gives—that is the word that I have constantly heard, quite properly. You are not responsible for running an organisation. The management of an organisation notes your advice and chooses which parts of it to implement. The management is responsible for accounting to you for its choices. In other words, you do not instruct the management; you point to areas that concern the management. You cannot be seen as taking anything away from the responsibility of the managers in an organisation.

I want to test whether that is your view. From your body language, I think that it is, but it would be useful to get that on the record.

The Convener: It would be helpful if you could couch your answer in terms of the Crown Office and Procurator Fiscal Service, which is specifically what we want to drill down on this morning.

Caroline Gardner: Thank you, convener. Yes, that view is absolutely right. That arm's-length relationship is there for a very important reason. We have to be able to report on the Crown Office independently. There are international standards on auditing that set out very specifically the fact that we cannot take management responsibility at the level of preparing the accounts all the way through to developing a strategy for the organisation. That is so that we can report on how it is doing without fear or favour.

In the context of my role, that reporting takes place here and is to the Parliament when there are issues of sufficient significance. In the case of the Crown Office, we have not felt the need to do that so far. We have done it for a range of other bodies. I do not think that there are any former Public Audit Committee members here, but I regularly report on a body when I think that the failings are significant enough to escalate to Parliament.

Under my performance audit powers, reports such as this one on the efficiency of the sheriff court system are the way of providing that assurance and making recommendations for

future improvement; there are a number in this report that are relevant.

11:00

Ben Macpherson (Edinburgh Northern and Leith) (SNP): I have a question in the same efficiency and churn framework in which the convener's questioning was orientated. I am interested in paragraph 3 of your written submission, which refers to witness costs as part of 15 per cent of the expenditure of the COPFS. Is specific data available on specialist witnesses and their percentage of costs in annual budgeting? Can that data be provided today or at a later date? We have looked at that matter in detail.

Mark Roberts: We do not have a breakdown of data on specialist witnesses, but the Crown Office might be able to provide that to the committee. Alternatively, we can get in touch with the Crown Office and get back to the committee in writing.

Ben Macpherson: I would be grateful for that. Thank you.

The Convener: I want to turn to something that was raised in a submission from a justice of the peace. Short-term faults were blamed on "the need to prioritise budgets".

He specifically referred to the costs arising out of the

"decision to appoint Summary Sheriffs"

such as the

"compensation package ... and benefits packages paid to Sheriffs".

Have those costs been quantified? Can you give the committee a figure for them?

Caroline Gardner: I do not think that we can give you a figure today but, as Mark Roberts said in response to Mr Macpherson's question, we are happy to liaise with the Crown Office to get that figure to the committee.

The broader response is that that is why the workforce plan that Angela Cullen referred to is so important. I know that the committee has heard concerns elsewhere about fiscals and fiscal deputies on short-term contracts and the training of fiscals. That is why a workforce plan is so important for us. It is important to have a longer-term view of what the staffing is likely to be for different types of staff and to ensure that that is developed in a consistent rather than a stop-go way.

The Convener: That is relevant because there is the issue of fiscal fines and justices of the peace maybe now just nodding things through, whereas they had a much bigger role before. The JP pointed out that justices of the peace are

volunteers, so their value for money speaks for itself. If a policy decision has been taken to appoint summary sheriffs, it would be good to quantify that in monetary terms as well as looking at what it means for what they do in court.

You mentioned training. The other issue that was raised in the JP's submission was the cost of introducing the Judicial Institute for Scotland and the fines enforcement agency. Does Audit Scotland have costs that are associated with that?

Caroline Gardner: We have not looked at that so far, but we will clearly take it into account in planning future work in the justice system. The committee may well want to explore the matter with the Crown Office when it gives evidence.

The Convener: The JP was quite clear that work was carried out in those areas more efficiently under the old system, that the introduction of the new organisations has a cost, and that improvements were not necessarily being made. Therefore, it would be very good to quantify the costs.

Liam McArthur: I want to follow up the convener's questions. I think that the Auditor General touched on short-term contracts. We have heard in evidence that people receive very high-quality and well-recognised training in the Crown Office and Procurator Fiscal Service and are released at the point at which the return on that investment is about to be realised. Is that a sensible approach for an organisation to take, particularly when budgets are under pressure?

Caroline Gardner: We produced a report on workforce planning across the public sector in 2013, I think. The purpose behind that report was to take a more strategic view of how organisations manage their workforce at a time when, on the whole, demand is increasing and finances are reducing. It is clear that it is not sensible for any of us to train people whom we do not have a role for in the longer term. The Scottish Courts and Tribunals Service, the Crown Office and our organisation tend to have peaks and troughs, and there is the question of how we manage those peaks and troughs and uncertainty about demand.

For any organisation, it is important to have a core of well-qualified, well-trained people who are able to do the job and who are building up the capacity and the confidence to do it in a way that is consistent and in line with the overall objectives that the organisation is trying to achieve.

Liam McArthur: To go back to the line of questioning that Douglas Ross was taking in other areas, you made a recommendation about this back in 2013. Certainly, all that we have heard in evidence to this inquiry is that it is still very much the modus operandi in the Crown Office, with no indication that it is likely to change or is beginning

to change. Having made that recommendation in 2013, and recognising that budgets are not going to improve markedly, what steps would you take to see a change in approach that means that the Crown Office does not squander its investment in training by releasing people to other roles and having so many people on short-term contracts?

Caroline Gardner: As I said in my response to the convener, having a workforce plan is a key part of that—looking at what is likely to happen to activity levels; to different types of staff, to the way they interact with each other and to the way in which the work is organised. We have recommended, both at a national level and specifically for the Crown Office, the importance of having a financial strategy, a workforce plan and a digital strategy. We understand that all three of those are in hand for the Crown Office and we will look closely at how quickly they are developed and how comprehensive they are, but, as Mr Stevenson said, it is the Crown Office's role to develop those now.

Liam McArthur: Absolutely, but presumably your role is to hold its feet to the fire.

Caroline Gardner: Indeed.

Angela Cullen: One of the things that we would expect to see as part of that workforce planning and strategy is the proportion of staff who are expected to be permanent. There might still be some fixed-term or short-term contracts to see the organisation through peaks and so on. In addition, I would expect to see the current status, where the organisation wants to be to meet its demand over the next five years, and how it will get there—for example, if it wants to change the ratio of permanent staff to short-term contract staff, how it will achieve that.

Liam McArthur: I have a question in another area. Before you came in, we were going through the figures and looking at the budgets for the COPFS over a period. There was a change in the way in which the figures appear. Previously, what was measured was spending in areas of work such as "Summary" and "Solemn", but that changed so that what is measured is "Staff Costs" and so on. We could understand why that move made sense from an internal management perspective but, from our—perhaps selfish—perspective in looking at the work of the COPFS, it took us away from the information that we are trying to drill down into. For example, where a cost is being borne by the service and a move could be made away from certain types of trial processes, we might want to know whether savings could be made without diminishing access to justice. Do you have a view on the change that was made? From an auditing perspective, do you have any comments to offer?

Caroline Gardner: I am a member of the tripartite budget process review group, which was set up by the Finance Committee and the Scottish Government to look ahead. One of the things that I think we should be seeking to achieve from that review is more information that links the amount of money that we spend with what we get for it—outputs, such as the sheriff and summary courts, and the outcomes that we are seeking to achieve. In my view, the more comprehensive, easy to use and linked to performance information can be, the better it is. Mark, do you want to say something about the specific shift in this case?

Mark Roberts: I do not have anything specific to say—just that it presents challenges, especially when we are trying to look for long-term trends in tracking budgets, if there is a change in the presentation at the lower-level breakdowns. It presents challenges to us when we are tracking shifts in resources.

Liam McArthur: As I said, I think that we can understand why, from a management perspective, the Crown Office would want to go in that direction. I do not want to put words in your mouth but, from what you were saying, there does not seem to be any reason why that breakdown cannot be provided, as it was before—even alongside the figures for staffing and other cost provisions.

Caroline Gardner: I would be surprised if that information was not available within the Crown Office.

Liam McArthur: Would we be entitled to ask for those trends over the last short while?

Caroline Gardner: I think so.

Liam McArthur: Good.

The Convener: In your opening statement, I think that you mentioned that additional funding was provided for specific casework and to improve the performance data for domestic abuse cases, which you said was a national priority. The additional funding has been quantified. Have there been any unintended consequences for the rest of the service as a result of that policy?

Caroline Gardner: Are you asking about the policy of reducing the time taken for domestic abuse cases?

The Convener: Yes, and providing additional funding for specific casework.

Caroline Gardner: Mark, is there anything that you want to say about that?

Mark Roberts: I am not aware of any unintended consequences. As I said in response to Mr Ross's question, we have not done detailed audit work on the performance data. We were particularly interested in performance in domestic

abuse cases because, as you say, convener, that was a national priority and additional funding had been provided for it, so it seemed to be an appropriate area to focus on.

We have not looked more widely at performance in other cases during the less formal follow-up work that we have been doing recently.

The Convener: Do you intend to do that? We need to look at the whole-case scenario. A problem or an unintended consequence in one part of the system can cascade down to other parts of the system.

Mark Roberts: We will certainly keep an eye on the on-going monitoring of the sector and how the justice sector as a whole responds to our recommendation about refining its suite of performance indicators. We have no immediate plans to do any formal audit work on that in the same vein as we looked at it for the 2015 report, but we continually look at what we can include in our programme of work.

The Convener: I will delve a little bit deeper into that, given that dealing with domestic abuse cases is a national priority. We have heard evidence that cases are continuing when perhaps they lack a sufficiency of evidence. If that is the situation, cases are going further into the system, with costs increasing as they go. That is not efficient for anyone, it is not delivering a good service and it is certainly not a good use of precious financial resources. Can you comment on that at all?

Mark Roberts: I cannot quantify or provide any additional evidence. The Crown Office would be better placed to respond to such questions to see whether it has any data on any unintended consequences of that prioritisation, as you describe it.

The Convener: Clearly, the prioritisation will have financial implications—that is self-evident. I would hope that Audit Scotland would find a way to drill down into that, because it is germane to the problems that we are hearing about.

We have heard that fiscals are under huge pressure—my admiration for them is boundless, but they should not have to cope with that huge stress. Have you quantified how many days' absence as a result of stress there are in the Procurator Fiscal Service? I believe that the situation is daunting.

Mark Roberts: Angela Cullen will correct me if I am wrong, but my recollection is that the average number of days lost in sickness absence in 2015-16 was 7.2.

Angela Cullen: I do not have the figure to hand, but I think that it was 10.1 days, and that the Scottish Government average is 7.2. The figure

covers all staff in the Crown Office and Procurator Fiscal Service, not just the procurators fiscal.

The Convener: Yes, I understand that. There is a significant rise there and, again, there are financial implications and a knock-on effect in the Procurator Fiscal Service. Are there any figures that you can send or present to the committee on the issue?

Caroline Gardner: The Crown Office is better placed to let you have the figures. It might be useful to restate that, when we did the work in 2015, we found significant differences across the different sheriffdoms in how cases were being managed. I expect that that has an impact on the stress levels that staff, particularly fiscals, experience. It would be well worth exploring with the Crown Office what it knows about that and whether there are any correlations.

The Convener: But you would not look at that—or at its financial implications, which are significant—from an audit point of view.

Caroline Gardner: The 2015 report looked at the overall effect of churn, and Mark Roberts has talked you through the figures that we brought together to quantify the costs of that. The Crown Office publishes its sickness absence rates in its annual report and accounts. As the auditor, Angela Cullen makes sure that its processes for producing that information are sound. To us, the absence rates are one indication of the pressure on the system, which is a focus of our overall work in the area, and it is key for the Crown Office to address that through its financial strategy, workforce plan and digital strategy.

11:15

The Convener: I am sure that you will have considered some of the issues that have been raised during our scrutiny of the Crown Office and Procurator Fiscal Service. Are there issues that have been raised that would cause you to reassess or review the areas that you have looked at so far and areas that it might be productive for you to look at in the future?

Caroline Gardner: That is a very good question. Before we came in, we were talking about the questions that had come up for us in reading the *Official Reports* of the committee's pre-budget scrutiny sessions. An issue that we do not have an insight into from the work that we did in 2015 or through Angela Cullen's audit work is the consistency of marking and how to get the balance right between having a more standardised approach and having discretion. Clearly, there is not a right answer at either end of that spectrum, but it felt to me in reading the *Official Reports* that something interesting is going on in that regard in

the system as a whole, and probably in specific parts of Scotland.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I have a supplementary to the convener's question about domestic abuse; I want to come at the issue from a different angle. Would you say that the prioritisation of domestic abuse offences has led to any efficiencies in the system in relation to such cases? Is it the case that, rather than the prioritisation of domestic abuse cases having an impact on other cases in the system, there are lessons that can be learned from the way in which domestic abuse cases have been handled that could be carried over into other types of cases without their having to be a national priority?

Caroline Gardner: I should start by saying that the legislation that set up the post of Auditor General specifically precludes me from commenting on the merit of policy. The fact that tackling domestic abuse is a Government priority is simply a fact, and I have no role to play in commenting on that. We will all have a view on the importance of tackling domestic abuse in Scotland's public life.

My interest kicks in when the Government has set such a priority. I am interested in how well the Government and the various bodies in the justice system are planning to respond to it, which involves thinking through what the effect might be on Police Scotland, on the court service and on the Crown Office and Procurator Fiscal Service, and what that means for the way in which the work is managed between them.

It would be entirely proper for the committee to ask the Crown Office how it has gone about responding to the prioritisation of domestic abuse. It is also an issue that it should be thinking about in the context of its longer-term financial planning, as Mr Stevenson suggested. The Crown Office should be considering what other priorities it would like to escalate for the future and how it could make space for those at a time when, although the overall pattern of crime is pretty steady, we are seeing some quite significant shifts in its make-up. Given the increased focus that I imagine there will be on historical sex abuse and cybercrime, the COPFS will need to consider how it is responding to such pressures. That is at the heart of what it should be doing for its financial and workforce planning, and of the way in which the overall national justice board looks to manage the system in the interests of Scotland.

The Convener: That concludes our questions. I thank you all very much for attending.

11:18

Meeting suspended.

11:22

On resuming—

Crown Office and Procurator Fiscal Service

The Convener: Agenda item 2 is an evidence session for our Crown Office and Procurator Fiscal Service inquiry. This is our sixth week of evidence taking for the inquiry. I welcome today's witnesses. Gordon Dalyell is Scotland's representative on the national executive committee of the Association of Personal Injury Lawyers; and Patrick McGuire is a partner in Thompsons Solicitors.

I refer members to paper 3, which is a note by the clerk; paper 5, which is a private briefing from the Scottish Parliament information centre; and the witnesses' written submissions, which we very much appreciate. I invite questions from members.

John Finnie (Highlands and Islands) (Green): Good morning, panel, and thank you very much indeed for your written evidence.

Mr McGuire, you comment in your written evidence that

"the COPFS treat the prosecution of health and safety crimes more like a civil court case than a criminal prosecution."

Can you expand on the manifestations of that approach in respect of what are very important matters?

Patrick McGuire (Thompsons Solicitors): Certainly. It is a practice that my firm and I witness constantly when dealing with such cases. Having carried out research on the matter, including speaking to various criminal lawyers, I know that there is nothing in statute—there is no regulation or law—that directs that practice and explains why it takes place.

In practice, in the case of a health and safety breach in which a prosecution is being considered, if the organisation in question gives no more than a general indication that it might be willing to plead guilty to any charges, the entire process becomes entirely informal because it is not underpinned by any regulation or law, and there are often very lengthy negotiations between the COPFS and the organisation's solicitors on what the indictment or charge says.

Ultimately, those negotiations can come down to what is called the narrative, which is the document that, if a company pleads guilty, is finally placed before the court and which details—often at a length of two, three, four or more pages—what has been agreed between the parties with regard to what happened. That is the very point of that document; it sets out what has been agreed in the

course of the negotiations between the COPFS and the solicitors representing the company, but the net effect—

John Finnie: I am sorry to interrupt you, Mr McGuire, but is plea bargaining not part of the system? What is different about these cases?

Patrick McGuire: The difference is, first and foremost, the length of time that is afforded to the negotiations and, secondly, the real, practical impact that that has on victims' lives. As I highlight in my submission, in the past 12 months my firm has been instructed in more than 2,800 work-related matters in the broadest sense, including disease, and my own internal research shows that in the past 12 months only 11 cases have resulted in prosecutions. Five of those cases related to non-fatal accidents, and the average time from the crime being committed to a guilty plea—I point out that all 11 cases involved guilty pleas; none went to trial—was three years and four months, while the average time for cases involving fatal accidents was five years and three months.

This is not about bad cases making poor law; these cases are pretty representative. There are no outliers in those statistics. The practical impact is that victims—and, in fatal cases, the families of victims—have to put their lives on hold. Things are strung out, and very little information comes from the COPFS.

Another issue is that if things go on too long, the prosecution can be prevented from taking place at all. There are two recent examples of that. The first is the Rosepark disaster, in which the negotiations took such a long time that the partnership, as it was, was able to dissolve itself. That meant there was no partnership against which a criminal prosecution could be brought. The matter was extensively covered in the press, and the then Lord Advocate, Frank Mulholland, tried to fight on and bring a prosecution. However, he was always doomed to fail, because of the law as it was. That law has now been changed as a result of an act of Parliament, but the length of time that the negotiations took allowed the company to effectively evade the law.

The second example in which things sailed very close to the wind—indeed, I refer to the matter in my submission—is the case involving the firefighter Ewan Williamson. The period of time between the fatality and what was, ultimately, a guilty plea was almost six years, but in that time, we had the transition to the single service. It was spotted very late in the day—and only through the vigilance of the Fire Brigades Union—that the legislation that brought in the transition contained no provision for the new single service to be prosecuted for the wrongs of the former services. That gap was plugged just in time for the prosecution to go ahead.

I just wanted to highlight the real human issues that are involved in the length of time that these things take and the continued trauma that that causes, but it can also have significant and profound legal implications for any prosecutions that might be brought forward.

John Finnie: What was the nature of your engagement with the Procurator Fiscal Service during that period? Do you think that there was a sufficiency of staff to deal with these cases, or were there too few staff? Was it that the staff did not have sufficient skills?

Patrick McGuire: I would not question the skills of the staff. Staff resources are certainly an issue but, as various members of my own firm and criminal solicitors who represent both sides in prosecutions have told me, there is also a mindset issue.

I am told—and it is my experience—that such cases are viewed less as criminal cases like other criminal cases and more as civil matters. Invariably, the solicitor who defends a company is the same solicitor who is instructed by their firm's insurance company to defend in what might become a personal injury case. Such solicitors have more of a civil mindset, which tends to bleed into people's attitudes and affect the nature of the negotiations, as they ought properly to be called, with the COPFS. That is at the heart of the issue.

11:30

John Finnie: Our inquiry is about the Crown Office and Procurator Fiscal Service, and I know that there are wider frustrations with the system. In your submission, you compared the situation with what happens when individuals drive without insurance for their motor vehicles. Will you expand on that?

Patrick McGuire: The matter is fully covered in the submission from APIL, too. We have laws that require certain people to have compulsory insurance, and failure to have that insurance is, by its very nature, a crime. We know how society views drivers who drive without insurance and we know that the COPFS comes down hard in bringing prosecutions against drivers who are found not to have insurance. In my experience, the same attitude does not apply to employers who do not have compulsory employer's liability insurance—society does not seem to care.

Over the years, my firm and I have been involved in numerous personal injury cases in which failure to have insurance has come to light and in which, on our clients' instructions, we have brought that to the prosecution service's attention but absolutely nothing has been done and there has been no prosecution.

John Finnie: Why have there been no prosecutions? Is it neglect of duty?

Patrick McGuire: I cannot say why, but the facts speak for themselves.

I come back to the point that I made in my submission about the need to be clear about our language—we are talking about health and safety crimes, not infractions or regulatory breaches. However, at the moment, I am afraid, they are not viewed in that way.

The Convener: What would be the consequences of someone not having employer's liability insurance if an incident happened?

Patrick McGuire: There would be a fine.

The Convener: But what are the consequences for the individual who wants to claim compensation?

Patrick McGuire: I apologise, convener; I did not follow your question. If there is employer's liability insurance, an injured worker will receive compensation if they are able to establish their case. If there is no insurance, the injured worker might have the opportunity to go against the company if it is solvent, but if it is not solvent, the person will not receive compensation. Of course, one could speculate, without incurring great criticism, that if a company is not doing what the law requires it to do by having compulsory insurance, it is far less likely to be solvent and able to pay compensation.

The Convener: Are there notable examples of that? The issue does not seem to have penetrated public awareness. Do you want to come in, Mr Dalyell?

Gordon Dalyell (Association of Personal Injury Lawyers): First, I thank the committee for inviting us to speak today.

In our submission we mentioned two cases, both of which cover the point about the lack of compulsory insurance and in both of which the effect was significant. In *Campbell v Peter Gordon Joiners Ltd*, a gentleman—he was an apprentice joiner—was injured in the course of his employment. He was working on a woodworking machine and, for some bizarre reason, his employer had an insurance policy that did not cover work with woodworking machines. When the gentleman was injured, he attempted to bring a claim against his employer, but the insurers declined to deal with the case because the situation was not covered by the policy. The injured worker then sought to sue the director of the company. The case went all the way to the Supreme Court, but he was unsuccessful, so the gentleman was left unable to claim compensation for a serious injury.

The second case that we mentioned is that of Kelly Stewart, who tragically lost her partner when he was killed in a diving accident. The employer did not have employer's liability insurance and was found guilty of a breach of the Health and Safety at Work Act 1974. A civil claim was raised against him but, although a decree was obtained, we have been unable to enforce it. When the defender in that case appeared before the court, the sheriff specifically said that he would not impose a monetary penalty to allow the defender to pay some form of compensation to the family. That is yet to be achieved. There can be quite significant difficulties for families and for victims of accidents.

The Convener: There is, therefore, a most definite case for having prosecutions as a deterrent to others.

Gordon Dalyell: In the fatal case that I mentioned, we asked the procurator fiscal's office why it had not sought to charge the defender with not having compulsory employer's liability insurance. The view was that it was not particularly relevant; it was not within the mindset.

That comes back to Mr Finnie's point. If there is a criticism in relation to mindset, it relates to the importance given to having compulsory insurance for employer's liability. As Mr McGuire said, we have such insurance for road traffic accidents, and a lot of the road traffic work that the procurator fiscal service carries out is about people not having insurance, whether or not there has been an accident. The same approach ought to be taken in employer's liability cases.

The Convener: Douglas Ross has a supplementary point.

Douglas Ross: Gordon Dalyell mentioned the cases of Campbell v Peter Gordon Joiners Ltd and of Graeme Mackie. His submission also mentions a fund of last resort. Will he give a bit more information about that, particularly in relation to levies?

Gordon Dalyell: You may be aware of the existence of the motor insurers' bureau, which was set up several decades ago. All insurance companies pay a levy to the bureau to cover people who have been injured in a road traffic accident if the person who caused the accident has no insurance. The suggestion is that a similar fund be set up for victims of accidents at work, so that insurance companies would pay into a fund to cover situations such as those in the two cases I just described.

Douglas Ross: So it would be insurance companies, rather than employers, who would pay.

Gordon Dalyell: Indeed.

Douglas Ross: You also mention in your submission that companies that are generally less scrupulous—because if they do not take out one insurance, they will not be doing other things—have a financial benefit over other companies, because they are not paying out for such things.

Does setting up a fund of last resort not almost say that we will not be able to deal with the problem, so we will ignore it? There have only been two convictions, both in the same year. Does setting up a fund of last resort not do what you suggest the Crown Office is doing by ignoring the issue and trying to find an alternative source of funding? It does not get to the root problem that has been mentioned.

Gordon Dalyell: There should be a combination of responses. There is no reason why the Crown cannot be forceful in trying to ensure that the law is complied with. There are measures that could be taken in relation to companies taking out compulsory insurance, such as their being obliged to lodge a copy of an insurance certificate at the same time as lodging a company return.

Douglas Ross: That would not get over the issue in Campbell v Peter Gordon Joiners Ltd, because they would have been able to lodge an insurance certificate.

Gordon Dalyell: There could be an investigation into whether the certificate was sufficient, as it was not in that case. The Crown would have to investigate that. If, as a matter of routine, there were an obligation on a company to lodge a certificate at the same time as lodging a return, the Crown or the Health and Safety Executive could report companies who failed to do so.

Patrick McGuire: To draw on the analogy with the motor insurance sphere, there is not any one answer. We are talking about regulating companies' behaviour at the same time as ensuring that victims are not wronged by bad employers. The fund of last resort would provide an answer to the second point by ensuring that no one goes without proper compensation. It is to be commended for that reason but it is not a complete solution in itself, for the reasons that Mr Ross has highlighted.

We need to consider what is and is not publicly acceptable. There have been many road traffic examples over the years, from seatbelts to drink driving to driving without insurance. The world is a different place because of high-profile prosecutions and campaigns, so we need to address both.

On the competence of this Parliament, we are talking about insurance and a fund of last resort, and members of the committee might think that that is something that we can recommend but that

we have no power over. However, it is important to remember that the motor insurers' bureau scheme—the fund of last resort—that Mr Dalyell spoke about is a contractual arrangement between the Westminster Government and the insurance industry. It is my understanding of the Scotland Act 1998 that while the Scottish Parliament could not introduce legislation to enforce a fund of last resort, there is no reason why it could not enter into such a contractual arrangement if the insurance industry was willing to do so.

Douglas Ross: I have a final question for Mr Dalyell. You say in your submission:

“Latest research from the HSE shows that 94.3% of companies required to have insurance do”.

That is a very specific number, which you then go on to state equates to 164,000 employees. If we know about the 94.3 per cent and that the remainder do not have insurance, why cannot prosecutors go after them? Is the figure an estimate or is it a reliable figure that comes from drilling down to individual companies?

Gordon Dalyell: It is based on a report that the Institute for Employment Studies produced for the HSE in 2012—I can provide a copy of it to the committee. Interestingly, the figure of 94 per cent is the higher estimate; the lower one was 81 per cent. The study is based on a sample of 2,000 businesses that were asked whether they had employer's liability insurance, of which 94 per cent said that they did. The reason why the figure might be as low as 81 per cent is that when the employers were asked to produce a certificate or refer to its terms, a number of them were unable to do so despite asserting that they had it. Therefore, doubts were raised in the report authors' minds about whether those companies had compulsory insurance.

The figure of 160,000 is taken from the same report. It, too, is an estimate based on the sample of 2,000 employers.

Mairi Evans (Angus North and Mearns) (SNP): I had some questions on insurance but they have largely been answered. On penalties for employers who are found not to have liability insurance, we have been told that a lot of them are not charged, so is it just that financial penalties are imposed on them?

Gordon Dalyell: Yes.

Mairi Evans: Your evidence talks about the very low rates of prosecution. I am interested to hear your opinions on why the number of prosecutions is so low.

Gordon Dalyell: It is primarily a question of resource. A number of witnesses who have already given evidence to the committee have commented on that and it is a matter of the

priorities for the Crown and the Government. However, our position is that employees within the workplace deserve to be protected. If somebody goes out to work in the morning, they ought to come back in the same condition as when they left.

A number of serious breaches of health and safety legislation have taken place. In a number of cases, there are very serious injuries and, in others, there are not. However, to continue the road traffic analogy, we think that breaches ought to be investigated and assessed for prosecution by the Crown. Several thousand accidents are reported each year and we think that that figure is an underestimate for the reasons that we go into in our evidence. If we only prosecute 50 to 100 cases each year, that is too low—prosecuting a percentage as low as 1 per cent of reported accidents is very low.

Patrick McGuire: I echo that. There is little doubt that resources are at the heart of the issue. The majority of employees in the COPFS who I deal with, particularly in the specialist unit, are absolutely committed. Subject to one point that I will return to in a moment, the law is generally robust and is there to be used, which is the point that I make in my submission. The very rich tapestry of health and safety regulations that we have in this country is so framed that the majority of accidents at work, certainly the majority of matters that members of APIL and Thompsons Solicitors see and that result in successful personal injury cases are, at the very least, *prima facie*, health and safety crimes. That tells you how small a number of prosecutions there are each year and that can only be because of resources.

It is a matter of priority, but the only way in which we will see accident rates drop, to achieve the aim that Mr Dalyell highlighted and which we echo 100 per cent—meeting people's absolute right to go home from their work in exactly the same physical and mental condition as when they left home that morning—is to address the situation aggressively and to change attitudes. That can be done only by using criminal law as a deterrent.

In my submission, I referred to one area in which I think the law is lacking in a way that is reflected, to some extent, in prosecution levels; that is at the highest end—the law on corporate homicide. We have had an act of the Westminster Parliament since 2007, but there has not been a single prosecution in Scotland under that legislation. There is no doubt in my mind, or in the minds of those in every single trade union that I represent in this country, that the law is insufficient. It needs to be improved and if it was improved, there would be prosecutions for corporate homicide. That would have the razor-

sharp deterrent teeth that we need in order to see behaviours regulated and changed.

11:45

Mairi Evans: Thank you. As a follow-up, I was wondering whether there were any difficulties in providing evidence in some of those cases. I know that that has been an issue for some of the organisations that we have spoken to, such as the RSPB and Scottish Environment LINK; they have not had the evidence to be able to prosecute cases related to wildlife crime, for example. Is that a relevant point here, from your perspective?

Gordon Dalyell: Yes. Health and safety law can be quite complicated. One of the reasons why cases take as long as Mr McGuire said in his earlier evidence to Mr Finnie is because there are complex factual situations. Frankly, in many cases, the Crown does not have the resource to deal with that quickly. There is an equality of arms issue; insurance companies instruct solicitors and experts and will devote a lot of resource to cases, and there are times when the Crown is at a bit of a disadvantage.

It was interesting listening to the evidence from the Auditor General earlier on. There was a question from Mr Macpherson about the amount spent on specialist evidence. That is a matter that is worth looking at in the context of health and safety cases, a lot of which involve a high degree of expert evidence. That is something that companies that have been prosecuted and their insurance companies will spend a lot of money on. I wonder whether the Crown has the requisite resource to match that. That is one of the reasons why so many cases are dealt with by way of a plea bargain; because taking a matter to trial involves a level of resource and time commitment that, frankly, the Crown is not able to achieve with the current resources.

Mairi Evans: That was going to be my next question: does the Crown have the expertise to deal with those complex cases?

Gordon Dalyell: It does; there are some very experienced and able practitioners within the COPFS. It is just the level of expectation and the amount of work that they have to do.

Patrick McGuire: I echo that. I agree that resources are at the heart of this, as I have said before. That is not to say that getting the evidence is a particularly impossible task; it is more about whether there are the resources to get the evidence. There is a very complex and well-established set of health and safety regulations in this country that, thankfully, has not yet been changed, so cases can be brought forward; the problem is finding the time and resources to build the case.

When I was preparing for this meeting, I spoke to all of our case handlers and on two occasions, referring to a couple of non-fatal cases in which there were prosecutions that took two or three years, the case handlers commented that they were “slam-dunk cases”—meaning that they were very strong cases in relation to the regulations—so they could not understand why they took as long as they did. I do not think that the problem is the law or getting evidence per se; it is having the people to build the evidence.

I accept that in civil law a case needs to be proved on the balance of probabilities, and there is no need for corroboration. A higher standard is required for criminal law, as well it ought to be, but it would and should be eminently achievable with the correct resources.

The Convener: Does Mary Fee have a supplementary question on that?

Mary Fee: I have a brief supplementary on health and safety. I want your opinion about the resource and support that are available for routine health and safety inspection and monitoring. I am talking not about what happens when an incident occurs and the Health and Safety Executive comes out but about the situation prior to that. Is enough financial support put into health and safety inspection and monitoring? Is that high enough up the agenda for the majority of workforces, companies and contractors? Is there a direct correlation between increasing numbers of incidents and decreasing numbers of routine inspections?

Patrick McGuire: In a word, no—there are nowhere near enough resources. Health and safety is not given anywhere near enough priority. There is absolutely no doubt that, if more resources were given to the pre-emptive and proactive investigations that we are talking about, the numbers of workplace accidents would reduce.

It has long been said that a trade union workplace is a safer workplace—if required, I can produce statistics that have established that. However, that turns on the fact that, in a trade-unionised workplace, there is at the very least an active health and safety representative who can bring pressure to bear on an employer and, on occasion, even bring health and safety matters to the HSE’s attention.

However, as terrible as it is to say it, we have to live with the reality of the economic times that we find ourselves in. I do not think that £1 billion will be magically found to do what is required. That is why I said in my submission that it is time to be imaginative in finding legislative means by which we can place more power in the hands of the people who really know what is going on in workplaces and who are best placed to know

whether employers are cutting corners or care about health and safety. Those people are the workers on the ground, who should be able to apply the remedies that I spoke about in my submission—specific implement, which involves saying, “Go and do this”, and interdict, which involves saying, “You’d better stop this.” Workers should be able to do that, with proper backing from trade unions, if the Health and Safety Executive cannot.

Rona Mackay: I return to delays around plea bargaining and the fact that there is no statutory time limit for bringing health and safety cases to prosecution. Is that a cultural or historical issue? Can you suggest any practical ways in which the Crown Office could improve the current situation? Would you like a statutory time limit to be brought in for the prosecution of health and safety cases?

Gordon Dalyell: To be fair to the Crown Office, it set up a health and safety division in 2009 that has had an impact, but it has been gradual because of the issue of resource. The Inspectorate of Prosecution in Scotland produced a couple of reports—in 2013 and 2015—and made a number of recommendations in the first report, most of which had been acted on by 2015.

As I said, a question of resource is involved. The inspectorate identified a workload of about 100 cases a year, which was regarded as a reasonable level for the division at the time. However, to put that in context, we know that there are several thousand accidents per year and that probably most of them involve some breach of regulations; not all of them go to prosecution, but certainly a number should in addition to the 50 to 100 that currently do. The Crown Office recognises the importance of health and safety, but it does not have the resources to devote to it.

Rona Mackay: Are you equating resources with staffing levels?

Gordon Dalyell: Indeed—the issue is about staffing levels and generally dealing with cases. It would be interesting to get the Crown Office’s view on time limits, which are a matter for it. Some cases can be complex, but others can be straightforward. To return to the motoring analogy, more prosecutions should take place for straightforward breaches of health and safety legislation as a deterrent. At the moment, most employers and insurance companies know that, in the absence of a fatality or very serious injury in a health and safety case, a prosecution is unlikely.

Rona Mackay: Would having a statutory time limit make the system more efficient, even from your point of view?

Gordon Dalyell: I am not convinced that that would be the case without adequate resource. You have heard evidence on the existing pressure on

the system, where there are time limits in relation to common-law crimes and the prosecution of High Court and sheriff court cases. Introducing additional time limits into the system without resource would not necessarily work.

Patrick McGuire: There remains an issue with perception and engagement, which could at least partly solve the issue that Rona Mackay highlights. Although there is no doubt that things have improved, my experience is that the clients my firm represents are left in the dark for long periods. There is not sufficiently regular communication and they are not sufficiently kept up to date with what is going on.

Rona Mackay: There is a lack of communication.

Patrick McGuire: There is a complete lack of communication. Despite some improvements, we are a significant distance from where we need to be.

Maybe that is where timetabling, in the broadest sense, comes into effect—not as a statutory timeframe for bringing a prosecution but as a clear requirement on the COPFS to properly engage with victims, families and, when they are invited to do so, their solicitors at pre-arranged timetabled events. The COPFS should be clear and say that it will be three months, for example, before it can report back to victims and families, and at month 3 it should do so. If the period is to be six months, it should tell them that. Keeping victims and families informed and engaged would go a long way towards ensuring, if not restoring, some faith in the system. There is no such faith at the minute because of the lack of engagement.

The Convener: Would Douglas Ross like to ask his substantive question?

Douglas Ross: My question kind of picks up from Rona Mackay’s questions. Gordon Dalyell’s submission says that the introduction in 2009 of a health and safety division in the Crown Office was a welcome addition and that its remit is

“to investigate and prosecute all health and safety cases.”

However, seven years after that addition, Gordon Dalyell and Patrick McGuire have come here with what I presume are the same complaints as they had when the division was introduced in 2009. If it is a welcome addition, why is it not working?

Gordon Dalyell: Resource. We made a freedom of information request and the Crown Office indicated that it receives something between 150 and 200 reports from the Health and Safety Executive and local authorities each year, of which it prosecutes between 27 per cent and 37 or 38 per cent. I have mentioned that each year many accidents take place that are in breach of regulations and should be prosecuted.

Douglas Ross: What was not happening prior to 2009 that is happening now? Do we have the same problems? A number of witnesses have said to us that, although the introduction of the new specialist unit in the Crown Office has helped, they still have the same concerns. My worry is that we keep saying that resource is a problem and we set up such units—this one has been established for seven years—but that does not seem to get to the root of the problems that you and your clients are still experiencing. Is the issue the unit? Is it the manpower in it? Is it the Crown Office in general? Where are the delays? I struggle to understand why the unit can be such a welcome addition when we still have the same problems. That is the point that I am getting at.

Gordon Dalyell: It is a welcome addition because it introduces an element of specialisation.

Douglas Ross: But it is not solving your issues with the number of prosecutions.

Gordon Dalyell: No. It needs additional resource.

Douglas Ross: So the unit is a welcome addition, but it is not working.

Patrick McGuire: To be frank, the bar was so low pre-2009 that of course the unit was a welcome addition. It is entirely logical that, if a team of prosecutors who will specialise in and prosecute only health and safety crimes is brought together, that specialism will bring an improved understanding, so we would expect a better level of prosecution. However, it is important to remember that the bar was low.

I entirely agree that more needs to be done. You asked what we mean by resources, and undoubtedly manpower is a big issue in that. However, I would not be quite as enthusiastic as Mr Dalyell and would not say that the issue is only about resources.

I have highlighted on a couple of occasions that, from my perspective and that of the clients we represent, an issue remains with—I hesitate to use the word “attitude”, because that borders on the pejorative—the means by which the unit engages with clients and its modus operandi for doing so. There continues to be a problem that needs to be addressed, and perhaps it should be addressed in the way that I discussed with Mrs Mackay.

12:00

Douglas Ross: I will move on to another issue. Mr McGuire mentioned the lack of—or little—information that comes from the Crown Office. The submission to our inquiry from the Jim Clark rally mentions an incident that happened several years ago. It says that 60 police officers took information and there was video footage of the incident, yet

the organisation is still waiting for information. It is not just waiting on a report and a final response; letters from the organisation’s chairman to the Lord Advocate have gone unanswered. That is just one example. Is that repeated across your sector? Is the lack of correspondence at the highest level a theme? If people are going to the Lord Advocate and he is not responding, delays will occur and criminal investigations will be lacking while we wait for those responses.

Patrick McGuire: The Jim Clark rally example is at the extreme end, but it is entirely representative of my firm’s experience of the modus operandi of the specialist unit.

Douglas Ross: You say that the example is at the extreme end, but it is well known, and the incident has been raised in the Parliament a number of times by my colleague John Lamont. Even with all that backing, the organisation is not getting anywhere with the Lord Advocate. Therefore, I imagine that one man and his solicitor would have even more trouble. That approach to such a high-profile incident is worrying for the general health and safety sector.

Patrick McGuire: I agree entirely.

Douglas Ross: Your submission mentions that there is a problem with the language that we use. You finish by saying that we have to be careful with what we say and how we use language, but you do not offer any alternatives. What language should we be using?

Patrick McGuire: As I think I said, we should call such incidents what they are—health and safety crimes. They are not breaches of regulations or infractions, but crimes that cause real damage to real people, and they have to be treated as such. We have to gear our entire system towards proper levels of prosecution, as well as towards proper levels of fines that would serve as a deterrent. In this context, the law has to serve as a deterrent to ensure that workplace accidents decrease.

Douglas Ross: Where does changing attitudes and language come in the priorities for addressing the concerns that you both raise in your submissions? Should we tackle that as a priority or will that come naturally if there are more successful prosecutions?

Gordon Dalyell: Tackling those issues is a priority. The overall principle must be that prevention is better than cure. The proper investigation and, where appropriate, prosecution of crimes—Patrick McGuire is right about that term—or breaches of the regulations is an important element of that, and the message to employers across the country needs to be enforced that such breaches will be treated as

crimes and prosecuted in the appropriate circumstances.

Patrick McGuire: I agree. It is not an aside to bring into the discussion the much misused and maligned term “elf ‘n’ safety”. At one end of the extreme, we are dealing with people belittling and making a joke of the rich tapestry of regulations that are there to protect people, to keep them safe and to ensure that they return home from work in the same physical and mental condition as before. How do we tackle that? Using the correct language is key to that, so that is 100 per cent a priority. That could be done quickly and, I hope, effectively.

The Convener: Patrick McGuire said that the Jim Clark motor rally incident is at the extreme end. However, the Office of Rail and Road’s submission mentions that, in England and Wales, the average time from the start to the conclusion of a prosecution case is 12 months, whereas in Scotland, the average time is 35 months. Perhaps if that figure were dwelled on or highlighted more, it might put the whole problem in perspective a bit more.

Mary Fee: Is the main reason for the delays in prosecutions the lack of evidence? Is a different burden of proof required for health and safety cases, or are there loopholes that allow organisations and individuals to get through the process without being prosecuted?

Gordon Dalyell: The burden of proof is the same; the Crown has to prove the case beyond reasonable doubt. One of the issues is that, for the reasons that we have already discussed, it tends to be the more serious cases that are investigated and, as a result, there can be matters of complex fact and evidence.

There is a culture of negotiation between the Crown and the defence. The Inspectorate of Prosecution in Scotland suggested in its report that up to 92 per cent of cases are resolved by way of a plea bargain; very few cases go to trial. One of the observations in the original report was that relatively few fiscals had experience of running health and safety trials, and I think that in cases that are dealt with by the health and safety division there is a culture of agreed pleas. It takes time for a plea to be agreed. The Crown has to investigate and get its own expert evidence; the defence is well briefed, well resourced and able, if not to persuade the Crown to drop the case completely, to come to what it regards as an acceptable plea.

Mary Fee: I suppose that that comes back to the point that Mr McGuire made about how people talk about “elf ‘n’ safety” and how health and safety is viewed. We have moved to a compensation culture and health and safety is

viewed not as a crime but as a question of how much money someone can get. How much of an impact has that had?

Patrick McGuire: I entirely agree. That version of health and safety is also the stuff of spin. Leaving that aside, I have no doubt that it has had an impact.

It is interesting that it is invariably the solicitors who are instructed by an organisation’s insurance company to have at least one eye on any possible compensation claim coming down the line who will be engaging in the informal negotiations. Therefore, those negotiations are as much about having an eye on a possible compensation claim and trying to mitigate that as they are about the criminal prosecution. People know that they are eventually going to plea out—to use the Americanism—and the process is far less about reducing the fine and considering guilt than it is about what the charge says, what the narrative says and whether compensation lawyers can march in. That is invariably my experience when we start to look at the charge and what has been taken out of it—those one or two wee things that have been picked away. That unquestionably happens with an eye on the compensation process.

To come back to your question about the length of time that is taken, I do not know whether that is only about the negotiations, but they are certainly a significant factor. If one thing can come out of this inquiry that would make a big difference in driving things forward, it would be to deal with that and find a way whereby the COPFS will see such a case not as a civil negotiation but as a crime that has to be prosecuted, principally to deter future injuries.

Gordon Dalyell: I want to make a point on that. I refute any suggestion that we have a compensation culture. A review was carried out by Sheriff Principal James Taylor a few years ago, which looked at expenses and funding in civil litigation; those matters will probably come to this committee in the next few months. In his report, Sheriff Principal Taylor explicitly found that there was no evidence of a compensation culture in Scotland. He raised the possibility of there being such a culture in England and Wales—although he doubted it—but in Scotland there is no evidence to support such a suggestion. It is a myth that is put out to support certain points of view on the part of the insurance industry.

Members are aware from our paper that there are between 6,000 and 7,000 reported workplace accidents each year. The true figure for industrial accidents is much higher than that, but the figures to bear in mind are that only 4,000 or so industrial accident claims are intimated each year and around 1,500 to 1,600 workplace cases are raised

in court each year. If we take the analogy of a pyramid, we have the number of accidents at the bottom—the accidents that are reported—then the number of cases that go ahead to a claim and, at the top, the number that go to court. It is a decreasing number. There is clear evidence to suggest that there is no compensation culture in Scotland.

Mary Fee: Thank you for that clarification.

Fulton MacGregor: I come from a criminal justice background, and one thing that the inquiry has done for me is highlight the vast scope of the COPFS and the pressures that are on it, particularly given the current resources in these times of austerity—that is well documented. For what it is worth, I believe that health and safety crimes should be treated robustly and prosecuted, where necessary.

I would like to ask the panel for its view on a wider issue. You have mentioned several times that people should return from work in the same physical and mental state in which they left to go to work. I worked in a busy social work office for 12 years and, over the years, many friends and colleagues of mine went off work with various degrees of mental and emotional stress. How wide should the scope of health and safety be? There would be massive resource implications if it were broadened. I know that you have mentioned mental wellbeing, but I get the impression that, in the main, health and safety offences are more about people who have been injured. I repeat that such offences should be dealt with robustly. How wide do you think that the concept of health and safety should be? What role should the COPFS have in that?

Gordon Dalyell: That is an important question. In our submission, we highlight the economic impact of accidents at work, on which the Health and Safety Executive has done a lot of research. It produces an annual report that looks at the financial impact on society. We mention that the cost to the United Kingdom is about £4.9 billion and that the cost to Scotland is £541 million. Those are the figures for 2013-14; the 2014-15 figures have just been released. The cost to Scotland is now about £490 million a year, but that is only the cost of workplace accidents. There is an additional cost, which is far higher, in respect of people who are absent from work through ill health that is caused by stress or mental health difficulties. Therefore, the issue has a significant effect on our economy and our society.

The HSE estimates that, annually, 16,000 people across the UK are permanently withdrawn from the labour market as a result of accidents at work or ill health. The Scottish figure is probably between 1,500 and 2,000 people a year.

The Convener: Are you aware of the Scottish work-related deaths protocol? We have received a submission from Action for a Safe and Accountable People's NHS that says that the protocol is not being used properly and that that is having "a multitude of consequences", including a loss of important evidence. Are you aware of the protocol? Do you have any experience of it in operation?

Gordon Dalyell: No.

Patrick McGuire: No.

The Convener: Thank you for that. That concludes our questioning. I thank you both for attending.

Before we move on to the next item on the agenda, I suspend the meeting briefly to allow the witnesses to leave.

12:13

Meeting suspended.

12:16

On resuming—

Criminal Finances Bill

The Convener: Agenda item 3 is to agree our approach to the legislative consent memorandum to the Criminal Finances Bill and, in particular, our call for evidence on the LCM. I refer members to the clerk's paper, which proposes that in the first instance we hear from the cabinet secretary before reporting to Parliament. I also specifically refer members to paragraphs 26 and 27 of the paper, which highlights the call for evidence set out in annex B.

Do we agree to have a call for evidence and to hear from the cabinet secretary?

Stewart Stevenson: I hope that this is not thought to be a big point, but I note that page 12 of the paper refers to unexplained wealth orders that can be made overseas. Does that hint at reciprocal arrangements and our doing the same here?

I raise the issue wearing a selfish hat, given that all members of the committee are what the paper refers to as "Politically Exposed Persons". I wonder whether that might be a factor in the draft call for evidence. I am not pushing for it—I am only posing the question.

The Convener: We can make inquiries and the issue can be raised in the evidence-taking session.

Stewart Stevenson: I am happy to delegate to the committee convener any action that might arise.

The Convener: Your point is noted. We will look into the matter further.

John Finnie: I note that paragraph 24 on page 9 of the paper refers to the consultation undertaken by Scottish Government officials. That consultation seems to have happened entirely with groups that are very unlikely not to back additional powers. Yes, we should have a call for evidence and yes, we should hear from the cabinet secretary, but I wonder whether we can also seek the views of the Scottish Human Rights Commission, because I think that there could be significant issues of collateral damage, particularly with regard to residential properties.

The Convener: I will hand you over to Peter McGrath instead of acting as proxy.

Peter McGrath (Clerk): Your point is noted. We have a standard list of consultees that covers a full range of people involved in the justice sphere, including third sector organisations and the likes of the Scottish Human Rights Commission. We will

also think about bodies that might have an interest in this but which are not on our list.

John Finnie: Many thanks.

The Convener: With that assurance, are we happy to issue a call for evidence and to invite the cabinet secretary to the committee?

Members indicated agreement.

Justice Sub-Committee on Policing (Report Back)

12:19

The Convener: Agenda item 4 is consideration of a report from the convener of the Justice Sub-Committee on Policing on its meeting on 8 December. This update will be a regular item on the committee's agenda, to ensure that all committee members are kept fully informed of the sub-committee's work.

Following the verbal report from the sub-committee's convener, Mary Fee, there will be an opportunity for brief comments and questions. If there are specific areas of work that the Justice Committee wants to consider, those can be looked at in our consideration of the work programme at a future meeting. Before I hand over to Mary Fee, Douglas Ross has a question.

Douglas Ross: I would like to ask this before Mary Fee makes her report, just so that it is not a reflection on anything that she will say—I am sure that that will be a perfect update. In preparing for a committee meeting, it is easier if there is a paper to read. I am sure that we will get a full update, but I wondered whether, in future, we could have a paper on the issues discussed. I know that we can all read the *Official Report* of the meetings, but a summary of the discussions, the points raised and action points would be helpful so that those of us who are not on the sub-committee are prepared prior to hearing a verbal update. Sometimes it is easier to read a paper and then prepare questions, rather than just listening and having questions on the hoof after that.

The Convener: I am sure that Mary Fee already has something in written form—

Mary Fee: Yes.

The Convener: I agree that it would be helpful to have that in advance. I ask Mary to give the verbal update.

Mary Fee: Thank you, convener. I appreciate the opportunity to update the Justice Committee on the work of the Justice Sub-Committee on Policing.

To date, the committee has taken financial planning evidence from Police Scotland, the Scottish Police Authority, the Scottish Police Federation, the Association of Scottish Police Superintendents and the Cabinet Secretary for Justice. We will report our findings in a letter to the Justice Committee, for consideration at next week's meeting.

The cabinet secretary, Michael Matheson, has given evidence to the sub-committee about his

policing priorities, which will help to inform our work programme discussion on 12 January 2017.

The Convener: Are there any questions from that? I believe that a letter will be forthcoming next week, and that that will have more detail in it.

Mary Fee: Yes.

The Convener: Members can have further consideration when they have something in writing before them. Is everyone agreed?

Members *indicated agreement.*

The Convener: The only other business that remains for me today is to remind members that our final meeting of 2016 will be on 20 December. We will take evidence from the Lord Advocate on the draft budget and we will continue our evidence taking for the COPFS inquiry by hearing from Her Majesty's chief inspector of prosecution in Scotland. At that meeting, we will also discuss the committee's European Union engagement. With that, I formally close this meeting.

Meeting closed at 12:22.

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