



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Justice Committee

**Tuesday 10 January 2017**

**Session 5**



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**JUSTICE COMMITTEE**  
**1<sup>st</sup> Meeting 2017, 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:**

Michael Matheson (Cabinet Secretary for Justice)

Neil Rennick (Scottish Government)

**CLERK TO THE COMMITTEE**

Peter McGrath

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



## Scottish Parliament

### Justice Committee

*Tuesday 10 January 2017*

*[The Convener opened the meeting at 10:02]*

### Decision on Taking Business in Private

**The Convener (Margaret Mitchell):** Good morning and welcome to the Justice Committee's first meeting in 2017. We have apologies from John Finnie.

Agenda item 1 is a decision on taking in private agenda item 3, which is consideration of the committee's draft report to the Finance and Constitution Committee on the Scottish Government's draft budget for 2017-18. Do members agree to take item 3 in private?

**Members indicated agreement.**

## Crown Office and Procurator Fiscal Service

10:03

**The Convener:** Agenda item 2 is an evidence session for our inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service. It is my pleasure to welcome to the meeting the Cabinet Secretary for Justice, Michael Matheson; Neil Rennick, who is director, justice, in the Scottish Government; and Willie Cowan, who is deputy director of the Scottish Government's criminal justice division. I wish the cabinet secretary and his officials a very happy new year.

I understand that the cabinet secretary does not want to make an opening statement. Therefore, I merely refer members to papers 1 and 2 and invite questions.

**Oliver Mundell (Dumfriesshire) (Con):** Cabinet secretary, are you satisfied that the Crown Office and Procurator Fiscal Service is adequately funded?

**The Cabinet Secretary for Justice (Michael Matheson):** First of all, I wish all members of the committee a happy new year. I look forward to working with you over the course of the year.

As members will be aware, the budget for the Crown Office and Procurator Fiscal Service is directly negotiated by the Lord Advocate with the Cabinet Secretary for Finance and the Constitution. As far as I am aware from the evidence that the committee received from the Lord Advocate just before Christmas, he believes that the budget is adequate for him to be able to fulfil his functions in delivering an effective and efficient Crown Office and Procurator Fiscal Service and to meet the public's expectations of the service. In that sense, I believe that the budget is adequate to deliver the services that the organisation requires to deliver.

**Oliver Mundell:** The committee has heard concerns from a range of witnesses about the lack of adequate resources, delays, cases not making it to trial because they have gone past deadlines, fiscals being under a lot of strain and pressure, and very high absence rates in the service. Where do you think that those concerns come from?

**Michael Matheson:** There will be a variety of reasons why some of those things happen; they will not all be based on finance. Having said that, I recognise that finance will play a part.

The Crown Office's cash settlement for revenue and capital costs for the forthcoming financial year is the same as the settlement that it has for this financial year. Obviously, it will have to find

efficiencies in its budget to be able to meet any in-year financial demands.

There is a range of factors. To equate all the issues to a purely financial matter is overly simplistic. There will be challenges that the service will have to meet and the Lord Advocate will need to take them forward in the way that he thinks best.

**Oliver Mundell:** As justice secretary, do you recognise that there is a resourcing issue in the service?

**Michael Matheson:** I recognise that, right across the public sector, there are challenges in managing budgets as effectively as possible. However, as you heard from the Lord Advocate in the evidence that you got from him just before Christmas, he believes that the budget is adequate for him to be able to deliver the service that is required.

**Oliver Mundell:** Where, then, are the concerns that we are hearing from other witnesses who interact with the service daily coming from? Are they all historical?

**Michael Matheson:** Which particular issues?

**Oliver Mundell:** There are issues around the burden that fiscals are under and concerns that they are being asked to cope with too high a workload. There are also concerns from defence practitioners that things are not working as well as they used to, that cases that are not properly prepared are going to trial and that some cases are facing delays that mean that they are not able to proceed.

**Michael Matheson:** It would be for the Lord Advocate to explain how the Crown Office deals with some of those issues, because how it deals with issues relating to individual cases and their management is his responsibility.

Overall, some of the challenges that the Crown Office faces today are no different from the challenges that it has faced for an extended period. I do not underestimate the challenges that fiscals face in terms of their workload and the demands that are placed upon them, but, as an organisation, the Crown Offices broadly manages things as effectively and efficiently as it can. How that is to be taken forward internally in the organisation is a matter for the Lord Advocate.

**The Convener:** Can I press you a little bit on that? The challenges impact on victims, witnesses and the criminal justice system—the whole churn of it. There is a wider view than merely looking at whether the Lord Advocate is satisfied that he can manage with the resources. Do you have concerns about some of the evidence that we have heard from various witnesses across the

board and which, frankly, I think is deeply concerning?

**Michael Matheson:** It is important that we always look at the justice system taking a whole-system approach. The way in which our courts, the Crown Office, the police and other parts of the justice system operate collectively is extremely important. The justice board looks at how those things can be co-ordinated effectively and how they can co-operate effectively to manage the challenges that they face, and it works to make sure that they operate collaboratively as well. That includes looking at how victim services are provided and how we can improve the system to reduce challenges that victims can face as a result of the way in which the justice system operates. There are still some significant areas where we can improve, although there have been significant improvements in recent years, which I am sure that you will recognise.

Is there more to do? Yes, there is more to do—right across the justice system, not just in relation to the Crown Office and how our fiscal service operates. However, by and large, significant improvements have been made to how we deal with victims. We want to build on that work.

I will give you a practical example of where we can help to reduce the challenges faced by some victims—particularly children—and vulnerable witnesses. I think that the evidence and procedure review made a compelling case for the need to change the way in which we deal with witnesses and victims in such circumstances. We are keen to look at how we can take that forward, and it will probably involve legislative change in Scotland. I think that it would be unfair to characterise the system as one that has not improved, because it has improved. There is more to be done, but the best way in which to do that is to look right across the system to ensure that victims and witnesses get the support and assistance that they require, from when they first come into contact with the police all the way through the justice system.

**The Convener:** You have mentioned victim support, which I had not intended to bring up until much later. There is a real concern that victim support funding has run out. In fact, the Moira Fund has written to the committee to express its concerns that the victims of homicide are not being supported, despite its having given £5,000 for the victims fund in this financial year and £5,000 in the previous financial year. The fund for victims of serious crime seems to be depleted and there is no separate representation or allowance for families that have suffered homicide, which is the most heinous crime that a family can suffer. Do you have a comment on that?

**Michael Matheson:** I am more than happy to look into the specific issue that you raise. We

provide more than £5 million a year to Victim Support Scotland at a national level to provide services right across the country. We also provide funding to organisations such as People Experiencing Trauma and Loss—PETAL—that work with individuals who have suffered as a result of a homicide. We provide funding to a range of organisations that operate at a national level and at a local level to support victims. As I said, if there is more that we can do, we should always look to do it.

I am more than happy to go away and look into the specific issue that the Moira Fund has raised with you. The victims fund is provided by Victim Support Scotland on our behalf to give victims some financial support in the immediate aftermath of a crime if they have experienced financial loss or financial difficulty as a result. Funding has been pretty consistent over recent years. As I say, we are always looking to see whether there are ways in which we can improve the system to ensure that we are meeting victims' needs as best we can.

**The Convener:** Okay. I will let others come in, but I want just to say that the correspondence from the Moira Fund states that, as well as working in Scotland, it works with the homicide support service in England and Wales, which has homicide case workers. In England and Wales, support for victims of homicide continues for 12 to 18 months, and if additional finance is needed, it is available.

The Moira Fund is a very small national charity with a handful of unpaid volunteers. It was formed after the death of Moira Jones, who was brutally murdered in Glasgow in 2008. The particular point that her mother, who started the fund, is alarmed about is that the victims fund has been depleted before the end of December 2016. She raises a legitimate concern about where that leaves anyone else who unfortunately finds themselves in such a devastating situation in the next three months of the financial year. I am happy to pass on that correspondence, cabinet secretary.

**Michael Matheson:** Yes. If you do, we can check the situation with Victim Support Scotland, which runs the victims fund for us to provide financial support to individuals and families. We can come back to the committee with further details once we have discussed the matter with Victim Support Scotland.

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

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** Good morning, cabinet secretary. In your initial answer you used the word "efficiencies" and you referred to the evidence and procedure review.

If an outside observer could compare how our courts were run 200 years ago to the situation now, they would recognise the same basic

structure, system and approach. We know that there is an appetite in the Crown Office and Procurator Fiscal Service, in your office and in the Lord Advocate's office generally to use technology so that people do not have to physically attend court, and to make radical changes to processes, but will those things actually benefit the operational efficiency of the system and make it run slicker and faster and, ultimately, more cost effectively? How are we placed to pick up that challenge and move the courts forward to something that makes better use of the opportunities that technology might bring?

10:15

**Michael Matheson:** There is no doubt that technological development can support us in improving efficiency in the justice system. In all these areas, the challenge in applying technology is to ensure that it is about not just the hardware but the cultural change that is necessary in organisations. For example, in recent years, we have introduced closed-circuit television links between our prisons and courts, and all our prisons now have those facilities in place. We also have arrangements for CCTV links with the court for first callings where individuals are in police custody. However, there are legal limitations to the circumstances in which those links can be used. The convener will recall that the Criminal Justice (Scotland) Bill, which is now an act, contained provisions that allow us to extend the types of case that can be dealt with through CCTV. Its use reduces the need for individuals to be transported to court and allows court time to be used much more efficiently.

We are getting such benefits from measures that we are taking forward and we are keen to make progress on those. That is all part of our digital strategy, which operates on a pan-justice system basis. There are other areas where technology could assist us further to make improvements. For example, I believe that there is a compelling case for the proposal in the evidence and procedure review on pre-recorded evidence, which would reduce trauma for children and vulnerable witnesses. The evidence is captured and agreed and is then played in court, without the need for individuals to go through a cross-examination as they would normally be expected to do.

There are challenges in that to do with balancing the rights of victims and witnesses with the rights of the accused so that their rights are protected. However, other jurisdictions have been able to do that and I believe that we should be able to do it, too. An important element of that is about creating a culture change in our justice system so that everyone agrees that that is the

approach that we should take as it could effect better outcomes for victims and our justice system.

Another area where technology could support and assist us in improving efficiency in the justice system is the use of body-worn cameras by police officers. There is no doubt that information that is captured in that way, if shared with defence agents, may result in earlier pleas being entered. Also, the court can consider that evidence much more efficiently and effectively. However, it is not just a case of providing our police officers with body-worn cameras; it is also about making sure that the Crown Office and Procurator Fiscal Service has the technology to download the information and share it with defence agents, and that it can then be used in courts. It is about that whole-system approach. If we are to apply additional technological developments in our courts or police service, we need to ensure that they can interact and that their use can be maximised. A key part of that is the culture shift, which is extremely important.

We have set out a very ambitious digital strategy to enable us to progress that type of technological advancement in order to generate efficiencies. We will do that in a systematic fashion to ensure that we get the best gains from it as we move forward.

**Stewart Stevenson:** You brought effectiveness into your answer as well as talking about efficiency. A couple of classes of witness—children and vulnerable witnesses—now use technology to give their evidence, which reduces their stress and makes their experience one that it is easier for them to accommodate. In addition to operational benefits, could such a benefit reasonably be delivered to all witnesses to make the whole process more effective and less stressful for them, and to make them feel more comfortable about coming forward to give evidence? Given all that we have been talking about today, are you in a position to give any early indication of—or even a timetable for—a sequence of things that might happen to begin to address those matters?

**Michael Matheson:** There are a number of different elements. First, as I have clearly set out, I want to see early progress in the area of children and vulnerable witnesses. Some of that progress can be taken forward through changes to the court process, but other parts will require legislative change. I am keen to introduce in the current session of Parliament legislation that will give effect to such changes.

We need to identify the model that works best for us. Scandinavia takes a particular approach to dealing with issues around children and vulnerable witnesses, and other jurisdictions have taken different approaches. I want to ensure that we

have a model that best fits the Scottish justice system and delivers that protection and support for children and vulnerable witnesses. That is an area in which we can make early progress.

Once we have taken that work forward, there will be an opportunity for us to look at other areas of our court system and expand provisions to other groups of witnesses and victims. However, we would need to take changes forward incrementally to ensure that we manage them effectively.

You asked me about other areas of benefit. It is not necessarily always about technology—it is also about the model that we use in our justice system. The “Evidence and Procedure Review Report” sets out a compelling case for the need to remodel the system to allow us to deal with summary cases much more effectively. A key part of that is the need to reduce some of the churn for witnesses in such cases. The Lord President has highlighted that as a priority area in which he wants progress to be made. Work has already started through the justice board to look at how that can be taken forward, and we will look at how we can make further progress in that area in the weeks and months ahead.

Technology can offer us efficiencies, but the evidence and procedure review has highlighted some of the models and processes that we use in the existing system as areas in which we need to make progress, and the Lord President has made it clear that that is a priority for him. That would help to reduce some of the burden on witnesses who are called to give evidence in cases.

**The Convener:** Does Rona Mackay want to come in?

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** My questions were about making the justice system less traumatic for children, and the cabinet secretary has answered all of them, so that is fine.

**The Convener:** Okay—we will move to Douglas Ross.

**Douglas Ross (Highlands and Islands) (Con):** Cabinet secretary, how many jobs do you anticipate will be lost in the Crown Office as a result of the Scottish Government’s real-terms cuts this year?

**Michael Matheson:** I am not expecting any at present. It would be for the Lord Advocate to set out—

**Douglas Ross:** I understand that. The Lord Advocate has suggested that there will be a cut. Given the figures that he used in his evidence session with the committee, which you said that you watched, what is your prediction for the numbers in the Crown Office to which that will equate?



**Michael Matheson:** The session that I said that I watched?

**Douglas Ross:** You said that you had heard the Lord Advocate's evidence.

**Michael Matheson:** Yes—I read the evidence. It is for the Lord Advocate to set out what his staffing levels will be.

**Douglas Ross:** He gave us the figures for the amount that he has to save. As a Scottish Government minister, what is your prediction of the number that the amount that he has to save would equate to?

**Michael Matheson:** It would be for the Lord Advocate to set that out.

**Douglas Ross:** So you are not worried what the figures are.

**Michael Matheson:** I am confident that the Lord Advocate has a budget with which he believes that he can deliver an efficient and effective service.

**Douglas Ross:** But he has to lose staff as a result of that budget—

**Michael Matheson:** In the evidence that you heard from the Lord Advocate, he said that it was very much in line with what the Crown Office was modelling and planning for.

**Douglas Ross:** Do you know how much he has got to save, in terms of staff?

**Michael Matheson:** It will be for him to determine that.

**Douglas Ross:** But he has already said it, so you did not pick it up from the evidence session.

**Michael Matheson:** I picked up the details of what he has in terms of his budget, but it will be for him to determine what that means in terms of staffing.

**Douglas Ross:** To help you out, he said that he had £1.4 million to save because of the real-terms reduction that has been delivered by the Scottish Government, and that staffing would account for 50 per cent of that. Given that figure, roughly how many staff does the Scottish Government expect the Crown Office to reduce by in order to meet the savings that are required as a result of the reduction that has been inflicted on it?

**Michael Matheson:** That is a matter that will be determined by the Lord Advocate—

**Douglas Ross:** I understand that but, surely, as cabinet secretary—

**Michael Matheson:** I think that it would be wrong for—

**Douglas Ross:** If I could just ask a quick—

**The Convener:** Let the cabinet secretary respond.

**Michael Matheson:** I think that it would be wrong for me to say what the staffing levels should be within the Crown Office, given that the Crown Office is run by the Lord Advocate. To start setting arbitrary levels for the number of staff that he should reduce the staffing complement by would be inappropriate. It would be unfair to put the Lord Advocate in that position.

**Douglas Ross:** That is why that was not my question. I would appreciate it if you would answer my question, which concerned predictions. We have heard that there is a real-terms cut in the funding from the Scottish Government to the Crown Office, and that the Crown Office has said that it will have to make savings of X amount, 50 per cent of which will come from staffing. I would—

**Michael Matheson:** Well—

**Douglas Ross:** If I can just finish my question. I would have thought that the Cabinet Secretary for Justice would want to have an idea of the number of staff who would be lost to a service that we are hearing from multiple witnesses across the sector is already underresourced. When the Lord Advocate says to Parliament and the Scottish Government that he is going to reduce staffing numbers by X, you might think that Y would be a more effective number.

**Michael Matheson:** The budget that the Lord Advocate has negotiated with the finance secretary is the same in cash terms as the one that he has in this financial year, in terms of revenue and capital. In evidence that you heard from the Lord Advocate, he said that that was very much in line with what the service was anticipating and planning for. I am not going to get into a situation in which I say that I expect the staffing complement to reduce by X. The reason why I will not do that is because the Crown Office is the responsibility of the Lord Advocate and it would be wrong for me to start setting expectations about what the staffing level should be within the Crown Office when that is a matter that is determined by the Lord Advocate. I am going to respect that position. It would be inappropriate for me to set arbitrary levels that the Lord Advocate might feel that he was in some way under pressure to deliver. The issue is a matter for the Lord Advocate to determine.

**Douglas Ross:** Will you have concerns if the Lord Advocate or the Crown Agent cannot fulfil the other 50 per cent through non-staff savings?

**Michael Matheson:** It is a matter for the Lord Advocate to determine how he can best take that forward.

**Douglas Ross:** So you would be concerned about that.

**Michael Matheson:** From the evidence that you received from the Lord Advocate during the budget scrutiny process, I am confident that he believes that he has a budget that will allow him to deliver the prosecution services that the people of Scotland deserve.

**Douglas Ross:** But he must make savings of £1.4 million, 50 per cent of which will come through reductions in staff. In our evidence session, we heard that there is no timescale for the non-staff savings, because the Crown Agent is still waiting for an analysis—

**Michael Matheson:** Well, the—

**Douglas Ross:** I am sorry, but I had not even asked a question yet, so I am not sure what you were going to answer. Does the fact that there is no timescale for that and that no analysis has been done of the options concern you? Are you concerned about the fact that 50 per cent of the savings will come from an area in which we still do not have an analysis of the options? If the savings cannot come from that area, further staff reductions might be required.

**Michael Matheson:** I would be concerned if I thought that the Crown Office was not able to manage its budget or the Lord Advocate was not able to take forward the necessary work. However, I am confident that the Lord Advocate is able to do that.

**Douglas Ross:** Will you guarantee that any time that the Lord Advocate comes to you in the next financial year to seek additional resources, you will grant that request?

**Michael Matheson:** The Lord Advocate's budget is negotiated directly with the finance secretary. It does not come from the justice budget.

**Douglas Ross:** The Lord Advocate said that if he were faced with a specific need that required more funding, he would ask for more funding. Would that extra funding be given by the Scottish Government?

**Michael Matheson:** You would have to take up that matter with the finance secretary. Just to give you—

**Douglas Ross:** But your Government—

**Michael Matheson:** If you do not mind, I would like to finish what I was saying.

I direct your attention to the actions that we have taken with regard to, for example, the additional demand on our justice system in relation to sexual and domestic violence cases. Over each of the previous two financial years and into the

third financial year, going forward, we have provided an extra £2.4 million to help to meet some of the pressures that the courts and our fiscals have faced as a result of increasing demand in that area.

We will always look to provide support where we can. However, if the Lord Advocate is looking to increase the overall budget for the Crown Office, that matter is negotiated directly between him and the finance secretary—indeed, constitutionally, that is the case.

10:30

**Douglas Ross:** Again, that was not my question, as I think you know. I am talking about negotiations not about the Crown Office budget but about additional funding that might be required in year. In evidence, the Lord Advocate said that if he required such funding, he would ask for it. As a member of the Scottish Government, can you tell us whether the Scottish Government will meet any demands from the Lord Advocate for additional funding in this financial year?

**Michael Matheson:** I am sure that that will be considered in due course.

**Douglas Ross:** Considered?

**Michael Matheson:** Well, that is what will happen. It would be rather naive to think that no matter what is asked for, I as a member of the Government will sit here and say, "Yes, that'll be agreed to." The request will be considered when it is received. It would be rather foolish to think that a member of the Government would give you such a commitment without knowing what the request would be.

**Douglas Ross:** I think that it is rather naive and foolish to suggest that the Lord Advocate—someone whom we all respect very highly—would come to the Government with a request for additional funding that was absolutely required that had not been fully thought through.

**Michael Matheson:** And that request would be considered then.

**Douglas Ross:** Okay. Are you concerned about the number of adjournments in solemn and summary trials due to a lack of court time?

**Michael Matheson:** I believe that in your inquiry you took evidence from Eric McQueen, the chief executive of the Scottish Courts and Tribunals Service, on the number of trials in Scottish courts having increased overall while the percentage of cases for which there is inadequate time having broadly remained much the same. In effect, the courts are operating more efficiently. The number of cases going to trial has increased, while the number for which there is a lack of court time has

remained broadly consistent over the past couple of years.

**Douglas Ross:** Since 2011, the number of adjournments due to the lack of court time in solemn trials has increased by 47 per cent; summary trials have seen a 69 per cent increase in delays over the same period.

**Michael Matheson:** But the number of trials has increased.

**Douglas Ross:** Fine—perhaps that is the question that you want to answer, but the question that I am asking is whether you think that the percentage increase in adjournments due to lack of court time has anything to do with your Government's decision to close courts?

**Michael Matheson:** No, it has not.

**Douglas Ross:** It has nothing at all to do with that.

**Michael Matheson:** No, and the evidence that you received from the Scottish Courts and Tribunals Service confirmed that that was the case.

**Douglas Ross:** But the evidence that we received from the Scottish Criminal Bar Association suggested that the lack of courts is resulting in more and more trials being adjourned due to a lack of court time.

**Michael Matheson:** As you heard in evidence from the Scottish Courts and Tribunals Service, the 10 courts that have received additional work as a result of the court closure programme have all increased their efficiency in dealing with court cases. You are not recognising that the number of court cases going to trial has increased overall, while the percentage for which there has not been court time has remained broadly the same. That means that the courts are operating more efficiently, because they are dealing with a greater number of trials.

**Douglas Ross:** What you are not recognising is that you are taking the submission of one witness. That is perfectly acceptable, but let me take that of another. The defence solicitors from Aberdeen, Edinburgh and Glasgow said that the closure of courts in many of these areas has resulted in a backlog of cases and more adjournments. Do you not accept that?

**Michael Matheson:** I do not accept that, and I do not believe that the evidence that the Scottish Courts and Tribunal Service gave to the committee actually—

**Douglas Ross:** But what about the evidence that other people have provided to the committee?

**The Convener:** Please let the cabinet secretary respond.

**Michael Matheson:** You have to keep in mind the fact that the Scottish Courts and Tribunals Service is responsible for managing the services, and the data that it has provided demonstrates that what you have said is not the case. The number of cases that the courts are dealing with has increased, while the proportion of cases for which there has been no court time has broadly remained the same. The number of cases that are being dealt with within the timeframe set by the courts service has actually been maintained and improved. The facts that have been provided by the Scottish Courts and Tribunals Service based on how it measures the efficiency and performance of the courts do not hold to the view that you are putting to me.

**Douglas Ross:** I am disappointed that you are not open to suggestions from other witnesses in the inquiry and that you are quoting only the evidence that suits your argument.

**Michael Matheson:** I am basing my argument on the hard evidence that has been provided by the Scottish Courts and Tribunals Service. I think that that is a perfectly reasonable thing to do.

**Douglas Ross:** But you do not think that the evidence from defence solicitors across Scotland is hard evidence.

**Michael Matheson:** I understand some of the concerns and issues that they have raised but, that said, the hard evidence—the facts and figures—provided by the Scottish Courts and Tribunals Service does not hold to the view that you have expressed.

**The Convener:** Perhaps I can come in here, cabinet secretary. No adjournment is really desirable, but what is coming through this morning—and I am sure that you do not intend this—is a suggestion that the situation is just the same as it was or that there might have been a slight improvement. Surely we can do better than that.

An adjournment puts pressure on everyone in the court service. People turn up to appear at court, having taken days off work, and the case is adjourned. We are talking about everyone's view of the criminal justice system and the evidence probably paints the worst possible picture.

The SCTS always gives a rather optimistic picture of everything, and its view is not always borne out when it is tested in subsequent years. It might say that it is quite happy with things, but it is not just the Scottish Criminal Bar Association that is talking about this; it is social work, police and all the users of the courts, even the judiciary itself. Some suggest that the court closure programme has had an impact. In view of that, and in order to take a balanced approach, should you not take cognisance of that?

**Michael Matheson:** I do not believe that the court closure programme has led to greater difficulties in the system, particularly in relation to court time. In 2013-14, 40,137 cases were called to trial. In 2015-16, it was 52,366. The proportion of cases that were adjourned because of a lack of court time in 2013-14 was 6.3 per cent. We want to reduce that figure as much as we can, and in 2015-16, it was 5.6 per cent.

The courts are dealing with more cases going to trial but there has been a reduction in the number of cases that were adjourned because of a lack of court time. That indicates greater efficiency in the way in which the courts are dealing with cases. Do we want to see that 5.6 per cent figure reduced? Yes, we would like to see that happen and some of what we discussed in answer to Stewart Stevenson's questions was about achieving greater efficiency in how the courts operate, whether through the use of technology or by remodelling parts of the system to make it more effective and efficient.

On the basis of the hard facts, it would be fair to say that we can see that the progress that the SCTS has made has allowed there to be improvement while it is dealing with an increasing number of cases going to trial.

**The Convener:** As you have the figures before you, can you say what the greatest cause of adjournments was?

**Michael Matheson:** The greatest cause of adjournments? Let me see—it would be a combination of the Crown Office and the defence.

**The Convener:** Can you give us any more details than that?

**Michael Matheson:** No, not from these particular tables, but that is the principal reason.

**The Convener:** Do you see the difficulty, cabinet secretary? You have come before the committee today and you are quite relaxed about the Lord Advocate deciding on the number of staff. We have expressed to you the evidence that we have heard about adjournments, which affect everyone in the criminal justice system and reflect badly on it, yet we do not know what the issue is with the combination of the defence and the Crown Office that causes the maximum number of adjournments.

**Michael Matheson:** I can get the committee some more information on that, if it would help with your inquiry. However, it is important that we make judgments on the basis of clear evidence—

**The Convener:** Which is what I am asking you for.

**Michael Matheson:** It has been suggested that there are fewer cases and the system is getting

worse, but the hard facts demonstrate that the SCTS is dealing with more trials and the number of adjournments because of a lack of court time is reducing. It is important that the information on which committee members are basing their judgment is the hard information that we have from the SCTS on how it is dealing with these matters.

**The Convener:** Absolutely, but that is why it would have been good for you to give us detailed information about what causes the maximum number of adjournments. It is fundamental to the whole inquiry.

**Michael Matheson:** The biggest overall factor will be witnesses not being present or available when cases go to trial.

**The Convener:** Could you provide us with a breakdown—

**Michael Matheson:** I can ask the SCTS to provide you with a more detailed breakdown of the information if that would assist you in your inquiry.

**The Convener:** That would be very helpful.

**Michael Matheson:** I hope that you will take the information that it provides as being an accurate reflection of the data and how the court service is managing these matters, because it is based on hard information on how the courts are operating on a daily basis. That is not to say that there are not areas where improvements can be made or that some of the concerns raised by the Scottish Criminal Bar Association do not have legitimacy, but to try to portray there being some kind of deterioration in the situation is factually inaccurate.

**Douglas Ross:** Just very quickly—

**The Convener:** The extra data and an explanation and detailed breakdown would be very useful. I hope that you will reflect on those too, cabinet secretary.

I am conscious that others want to come in so I am going to move on. Stewart Stevenson has a supplementary, and I will take Oliver Mundell with a supplementary too.

**Douglas Ross:** On a point of order, convener.

**The Convener:** You cannot have points of order in committee, but I will take your point anyway.

**Douglas Ross:** I am sorry—I know that Stewart Stevenson had one before. *[Interruption.]*

**The Convener:** I said that we do not have points of order. What is your point, Mr Ross?

**Douglas Ross:** I just want to make sure that the cabinet secretary has given the correct evidence. I wrote down that he said that the number of adjournments has reduced. He quoted percentage figures and I just want to be sure that when he

said that the number of adjournments has reduced, that evidence was correct.

**Michael Matheson:** The 5.6 per cent is a proportion of the 52,366 figure.

**Douglas Ross:** What are the numbers for the two percentages?

**Michael Matheson:** It will be 5.6 per cent of 52,366.

**Douglas Ross:** And, according to your evidence, that is less than the 6.3 per cent of however many it was.

**Michael Matheson:** It was 40,000.

**Douglas Ross:** So what are the figures?

**Michael Matheson:** There are more cases going to trial, and the number in which there is a lack of court time is proportionally lower.

**Douglas Ross:** What about the actual numbers? You said that the number of adjournments has reduced.

**Michael Matheson:** So the actual figure—the proportion is higher in terms of hard cases. There are 26,781—

**Neil Rennick (Scottish Government):** It was—

**Michael Matheson:** Sorry—is it this figure here?

**Neil Rennick:** It was 2,873—

**Michael Matheson:** —and 3,218, but proportionally, that is a smaller percentage of the cases going to trial.

**Douglas Ross:** I was asking about the number of adjournments.

**Michael Matheson:** Yes, due to a lack of court time.

**Douglas Ross:** So that is it—3,218 is the number of adjournments.

**Michael Matheson:** It is.

**Douglas Ross:** As compared with 2,873.

**Michael Matheson:** Yes.

**Douglas Ross:** So that is an increase in the number of adjournments.

**Michael Matheson:** Yes, but proportionally a smaller—

**Douglas Ross:** Just for clarity, you did say—

**The Convener:** We have got that.

**Douglas Ross:** Your evidence is now correct—I think that that is important.

**Michael Matheson:** Proportionally, it is a smaller percentage because the number of cases

going to trial has increased, so you have got the accurate information.

**The Convener:** But the number has gone up.

**Stewart Stevenson:** In highlighting the sources of adjournments, you identified the defence as being one of the joint leaders. What work is being undertaken with defence agents and their organisations to try to improve the performance of the defence? It is clearly not the responsibility of the cabinet secretary or, indeed, the Lord Advocate, but I wonder what assistance and work there is to get the defence down the league of sources of adjournments.

**Michael Matheson:** That leads again into the evidence and procedure review, which has been looking at how we can get greater efficiency. As part of that, work is being done jointly with the Law Society for Scotland, for example, to look at how we can get greater efficiency in the court process and ensure that the Crown shares information as early as possible to allow for the preparation of cases, and to model the court process in taking it through. The review is looking at all those aspects to make sure that we improve efficiency right through the system.

It goes back to the point that I was making at the start, which was that it is important to take a whole-system approach. A mistake that can be made is to think that if we deal with one part of the justice system, that will automatically improve things overall—we have to deal with it on a systemic basis. The justice board and its subgroups are looking specifically at those measures, including looking at how we can support defence agents in their preparation.

**Oliver Mundell:** Why do you think that the number of cases has gone up?

**Michael Matheson:** As I mentioned, as a proportion of the cases that are going to trial, the number has reduced overall, so if you look at—

10:45

**Oliver Mundell:** I meant, why do you think that the overall number of cases going through the system has gone up?

**Michael Matheson:** There is a variety of reasons. Partly, it is to do with the availability of witnesses, and some of it will be around preparation of cases. There is a variety of factors in that but, overall, given that a greater number of cases are going to trial, there has been a proportionate drop in the number of cases for which there is no court time.

**Oliver Mundell:** I am just asking why more cases in general are going to trial. You are saying

that that is because there is now more court time—is that right?

**Michael Matheson:** No. For example, there has been an increase in the number of domestic and sexual violence cases and, given their very nature, more of them end up going to trial. With the investigative procedure that the police now have for domestic violence, in some instances it is no longer a single case but multiple cases that are coming forward, which are more complex and take up more time in court as a result. In some cases, there are multiple victims. By the very nature of these cases, it is less likely that there will be an early plea entered and they are more complex and challenging cases, which means that more go to trial.

**Oliver Mundell:** I welcome that fact, but would you accept that that is a policy decision that has resulted in an increased number of cases?

**Michael Matheson:** I think that it is a reflection of the increased complexity of cases, yes. For example, there have been changes in investigative technique. The Crown Office has staff dealing with domestic and sexual violence cases at a national level. The police now have their own specialist staff in these areas. It is a reflection of changes in approach, which—alongside the fact that this is now a greater priority for us as a society—have driven some of the demand in the system, as well as the complex nature of the cases.

**Oliver Mundell:** Could that demand have been better anticipated in order to avoid some of the figures that you were talking about before? I accept that in percentage terms, it is less—

**Michael Matheson:** Good.

**Oliver Mundell:** But when you look at the evidence of committee witnesses, you see that those percentages and the increased number are giving a perception to the stakeholders who are involved at all levels in the criminal justice system that things are not working as efficiently as they could. If that number continues to increase in real terms, it undermines justice, does it not?

**Michael Matheson:** That is a reasonable point to make in that, when there are such changes, they can at times drive unintended consequences in the system.

I am sure that you will appreciate that it is difficult to anticipate the number of cases. The number of historical sex abuse cases coming forward has been very difficult to anticipate. A large part of that has been driven by the major issues that have come to the fore through the Savile case and so on, which have driven more complaints.

To assist with that, as I pointed out to your colleague Douglas Ross earlier, we have provided

additional resource to different parts of the justice system to help meet some of that demand. We have done that over the past two years and we will do it into the next financial year as well. We are helping to support both the Crown Office and our courts in relation to court time and judicial time to deal with the increase in demand due to more domestic violence and sexual violence cases. As evidence that you have received from Audit Scotland has highlighted, that has allowed us to have greater efficiency in dealing with these cases, particularly the domestic violence cases, and in meeting the timeframe for dealing with them.

It is difficult to anticipate the number of cases but, where we can, we will try to do that and work with other parts of the justice agencies to meet that demand. Equally, we need to make sure that we remain alive to that issue in the course of any given year, and we have responded to that issue over the past couple of years, particularly given the demand around domestic and sexual violence cases.

**Oliver Mundell:** My concern is that the Crown Office is still going through a period of transformational change. There seem to be constant changes in guidance and policy and the organisation is doing things differently. That makes some things challenging for staff on the ground—the people at the coalface who are dealing with these cases every day—as they are being stretched and pulled in different directions. We have to be careful about some of the teething issues for what are intended to be improvements. When a case is adjourned, it leaves every single person who is involved in it with a negative impression of how justice is done in Scotland. That needs to be looked at a bit more closely.

**Michael Matheson:** I am confident that the Lord Advocate will be keen to ensure that the Crown Office and Procurator Fiscal Service operates as efficiently and effectively as possible and that it tries to support staff as best it can. No doubt, when he gives evidence to you, he will be able to explain how it will seek to address some of those issues.

I do not underestimate the challenges that exist for fiscals in meeting some of the demands in the day-to-day job that they have to do but also in being part of an organisation that is changing, which brings challenges in itself. It is important that the service is alive to those issues and that it tries to address them as best it can, but that is a matter for the Lord Advocate, who is responsible for the operation of the Crown Office and the way in which it deals with the staff in the organisation.

I think that, by and large, we are very well served by our Crown Office and Procurator Fiscal Service. We have some outstanding members of

staff. We can see that from the cases that end up going to court and the way in which they deal with them. There will always be areas where the service can be improved and there will always be challenges and pressures in the system at any given time but, by and large, we are still very well served by our prosecution services and I am very confident that the Lord Advocate will continue that in the year ahead.

**Oliver Mundell:** But you are mindful of those pressures—

**The Convener:** That was a supplementary question, Oliver.

**Oliver Mundell:** Sorry. I will stop there.

**The Convener:** I think that you covered things well.

We will welcome the additional information that you are going to provide, cabinet secretary. There is no doubt that all members of the committee are fully behind the staff in the Crown Office and Procurator Fiscal Service and recognise that they do a magnificent job under pressure. I think that an analysis of the information that you are going to provide will help to support them further, so we look forward to receiving it.

I will bring in Ben Macpherson, who has been waiting patiently, and then Liam McArthur.

**Ben Macpherson (Edinburgh Northern and Leith) (SNP):** Thank you, convener. I want to return to one of the core themes of the inquiry: victims and witnesses. I welcome the statements that you made earlier about the whole-system approach and victim support services. At the end of last year, when we had the Lord Advocate here giving evidence, he warmly welcomed the significant increase in the justice portfolio for voluntary organisations that work in the criminal justice sector to support victims and witnesses. The funding is rising from £4.5 million to £15.8 million. Can you elaborate on where the additional funding for voluntary organisations will be targeted or is that still being processed?

**Michael Matheson:** Some parts of it are still to be determined. It is partly linked to the additional £20 million that the First Minister gave a commitment to make available to improve the way in which we deliver services for victims of domestic violence and to assist us in eradicating violence against girls and women. A significant portion of the £15.8 million is about helping to support those services and address that issue much more effectively.

The funding includes other elements such as the £2.4 million that we provide to help to support the efficiency of our fiscal service and the court service in dealing with these cases, with a portion of the funding then going to third sector

organisations to help them in the support that they provide to both victims and witnesses. As an example, one of the things that we have been able to do as a result of that additional funding over the past year or so is to extend the range of services that Rape Crisis Scotland provides. For example, in Mr McArthur's constituency, for the first time we are able to provide the right type of support for women who suffer sexual violence in the islands. Previously, that was not available because there was no dedicated service there.

We can now provide greater national reach in some of the services in a way that was not possible previously. We will continue to take forward those types of approach. A significant proportion of the support for the domestic and sexual violence areas is also helping to improve the management of cases through the justice system and supporting the services that third sector organisations provide to victims and witnesses.

**Ben Macpherson:** One of the significant themes that have come through from the evidence that we have taken is how important victim support is before, during and after the trial process. When the Crown agent appeared before the committee prior to Christmas, he confirmed to me that the increase in funding will not directly increase funding for the victim information and advice service. Can you envisage at this stage how the VIA service will benefit from the increased funding to third sector organisations?

**Michael Matheson:** Obviously, we will be providing additional support directly to third sector organisations that are working with victims of crime that will be over and above anything that is provided by the VIA service and will provide additional capacity for the system overall. Although it will not be additional resource for the VIA service, it will be additional resource provided to organisations that are working with victims of crime. It will therefore provide us with additional capacity across the system that will be of support to the direct support that is provided by the Crown Office through the VIA service.

**Ben Macpherson:** That will be welcomed by the whole committee, because support for victims has been such a key theme in the evidence that we have taken in our inquiry. Thank you for expanding on that.

**The Convener:** Mary Fee has a supplementary question.

**Mary Fee (West Scotland) (Lab):** Good morning, cabinet secretary. Ben Macpherson asked the question that I originally wanted to ask. However, can you give us a bit more information about the victim information and advice service? One of the things that we have heard from the

witnesses in our inquiry is that, once they engaged with the service, it could be very good but that it was they who had to initiate the engagement and the service was not proactive enough in some cases. Although I appreciate that it is the Crown Office that operates the VIA service, will you give a commitment to work with the service to ensure that it becomes more proactive in how it operates and deals with victims?

**Michael Matheson:** I am more than happy to work with any aspect of the service to support it to improve, but it will obviously be for the Lord Advocate to explain how he intends to take that forward in the Crown Office. We can provide additional support for the organisations that work with victims and witnesses and support them outwith the court system. Part of the challenge for the system is often to ensure that individuals are aware of what support is available to them. One of the provisions in the Victims and Witnesses (Scotland) Act 2014 is a requirement for services to publish data and information about what support they can provide to victims and witnesses.

As I said, it would be for the Lord Advocate to determine how to change anything in the Crown Office in that regard. However, I can assure you that I am keen to ensure that the wider work that we are doing on victims and witnesses dovetails as closely as possible with the support services that are delivered through the Crown Office.

**Mary Fee:** That is fine.

**The Convener:** We heard compelling evidence from witnesses, some of whom had been traumatised rape victims, that their experience of victim support through the VIA service was not what they had expected—for example, they were not informed of matters in time, including the adjournment of a trial. The most worrying point was that at least two of them said that, had they known what they would experience during the trial, they would not have gone through with it. That is a matter that must surely concern us all, cabinet secretary.

11:00

**Michael Matheson:** Very much so. That goes back to a point that I made earlier. Although there have been significant improvements, there is still a lot more to do to improve matters for victims and witnesses. I am very conscious that there are still systemic challenges in our justice system, particularly for the accused, around how some of the system currently operates. A very good example of that concerns child victims. Although there are certain supports—there are certain protective measures around the ability to give evidence through closed-circuit television—a system that allows evidence to be taken prior to

the trial is a much better system in helping to meet the challenges for child witnesses. There are still areas in which we need to make significant changes and improvements for victims, and I am determined to do what we can to achieve that while ensuring that the checks and balances in our justice system are appropriately protected and managed.

I fully accept that there is more to do, although significant progress has been made.

**The Convener:** I think that you will find very illuminating the letter from the Moira Fund that we will send to you, especially its comments about the families of the victims of homicide and the support that they receive.

I have a dilemma, as poor Liam McArthur has been waiting to speak for ever. Can we leave Fulton MacGregor's question to—

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** It is on the issue that is being discussed.

**The Convener:** Is Liam McArthur okay with Fulton MacGregor asking a question?

**Liam McArthur (Orkney Islands) (LD):** Yes. That is fine.

**The Convener:** Okay. Carry on.

**Fulton MacGregor:** Thanks very much.

I had a line of questioning on that matter, but Ben Macpherson and Mary Fee covered the issue quite well and probably come from a similar standpoint. However, what is the cabinet secretary's view on victims becoming involved? I can see the complications of that before an accused person has been found guilty, but what about once a person has been found guilty? What is your view on victims being involved in the sentencing options that are available, if they wish to be? My previous job was in criminal justice social work. I am not talking about deciding a sentencing option; I am talking about victims maybe being involved in the report and evidence-gathering stage, as they used to be. That has gone by the wayside. Do you have a view on that?

**Michael Matheson:** Obviously, we currently have the victim impact statement. If there are issues with how that is operating and there is evidence that suggests that there are problems with it, I would be content for that to be looked at to see whether there are ways in which we could improve how it operates. If victims organisations have views on how the needs of victims can be better met in our justice system, I am always open to considering them. I can give the member the reassurance that, if there are ways in which we can improve that, I am open to exploring them. I do not have a fixed view on what the best option



is. That should be informed by the experience of victims. If there is any evidence of current provisions not operating as efficiently or effectively as they could be, I would be more than happy to try to address those issues.

**Liam McArthur:** I want to take you on to case marking. Obviously, the rationale behind the approach is not solely about cost reduction and greater efficiency—although they have certainly been cited in defence of the move towards a central marking system. We have heard concerns from a range of witnesses—we will come on to that evidence—and there is a general feeling that there has been a loss of local discretion and that one consequence of that is that cases that would not otherwise have gone to court are being marked for prosecution. Obviously, that somewhat undermines the argument about making the system more efficient.

**Michael Matheson:** I am conscious that the committee has received a mixture of evidence on case marking. You received evidence from the Procurators Fiscal Society that challenges, on the basis that they would not do it, assertions that fiscals have been putting forward for prosecution cases in which they did not believe that there was sufficient evidence to support a prosecution. The important principle is that if a crime has been committed and there is sufficient evidence for a prosecution, the case should be considered for prosecution. That is the basis on which a case should be taken forward.

**Liam McArthur:** The questions arise in relation to the guidance around cases involving domestic violence. What I am driving at is that in terms of central marking there is a loss of local knowledge of circumstances that may apply in a case and, as a result, a lack of awareness centrally about the variety of options for taking forward a case, which is needed to identify appropriate solutions in each instance.

**Michael Matheson:** If there is an issue about guidance that has been issued to fiscals in respect of marking cases, that is very much a matter for the Lord Advocate. The area is clearly in his responsibilities, so it would be wrong for me to start suggesting how it should be addressed. It is important that there is, in the system, not only flexibility but consistency. Crime should be dealt with consistently, no matter where in Scotland the victim of crime is. With a national prosecution service, it is difficult to imagine anything other than a national policy approach to how cases are progressed.

**Liam McArthur:** In a sense, under the previous system fiscals had marking guidelines, so there was consistency. Concern has been expressed that, in a central system there is a lack of awareness of the particular circumstances that

may arise in cases. That awareness might include knowledge of the individuals concerned or better understanding of the measures that could be used to secure justice in a particular area.

The Scottish Criminal Bar Association has said:

“The central marking of cases results in all of Scotland being dealt with as if they are Glasgow and Edinburgh and the other cities despite this not being reflective of the communities that require to be served and the issues in those local areas that are relevant and arise. The removal from the local Procurator Fiscal of the right and responsibility to make decisions about the marking of cases in his”—

or her—

“jurisdiction has led to decisions being made that are at odds with the issues in the community that matter to the local community. That amounts to a denial of local justice and accountability.”

I take your point about consistency. I think that the argument that is being made is that with marking guidelines it is perfectly possible to achieve consistency while taking into account local circumstances, whether through an understanding of the individuals who are involved or of local measures that are available—which will be different in my constituency from your constituency. Outcomes that are in the interests of victims and local communities—outcomes that are in the public interest—would be delivered better by a return to more localised marking of cases.

**Michael Matheson:** It sounds as though you are looking for consistent flexibility in the approach, in some ways. Any change in the approach to that matter is very much for the Lord Advocate to determine.

**Liam McArthur:** Are you saying that the Scottish Government does not have an interest in the policy decision?

**Michael Matheson:** It is for the Lord Advocate to decide what guidance there should be and the approach that he takes in the organisation. It is not for me to set out how such things would best be achieved. I understand the concerns that have been raised and the points that you are making, but how the Crown Office responds to them is very much a matter for the Crown Office and the Lord Advocate.

**Liam McArthur:** I will touch on one of the other concerns—as I said, a variety of witnesses have expressed a variety of concerns. The Law Society of Scotland—again, touching on points that were made by the Scottish Criminal Bar Association—raised the concern in relation to custody cases that

“On occasion Procurator Fiscal Deputes in a local Court do not know when custody papers will be available because they are not in control of them. There can be a delay in custody papers being made available to the Court, and

accordingly a delay in custody cases being able to progress through the Court.”

Coming back to points that we discussed earlier about moving in the direction of more efficiency that reduces delay and costs, I note that the Law Society of Scotland is firmly of the view that the change to more centralised marking of custody cases goes against the grain of what you and the Lord Advocate are seeking to achieve.

**Michael Matheson:** I am sure that Liam McArthur will respect the fact that determination of the approach in the COPFS is a matter for the Lord Advocate. It is his policy responsibility—he plays an independent role in determining prosecution policy and how such matters are managed.

However, this is a good illustration of an area in which we need to take a whole-system approach and to recognise that taking a particular policy position in one part of the justice system can have an impact on the rest of it. The justice board has a role in helping to plan and manage such things. By and large, the Crown Agent would normally be part of the justice board and would be involved in discussions about how a particular approach might impact on the police and even on the courts and the whole system, while aspects such as defence agents can be examined through the Law Society and the bar associations.

**Liam McArthur:** The bar associations are not members of the justice board.

**Michael Matheson:** No—but the justice board has a number of sub-committees that engage directly and explore particular matters with stakeholders, and which work up details that they then bring to the justice board.

I believe that the justice board provides a very effective model for supporting the whole-system approach. Of course, we are talking largely about the criminal justice system, but the board also includes the chief executive of the Scottish Children’s Reporter Administration and includes a range of other organisations: it allows senior figures from a range of justice organisations to come together to examine issues. Groups can then be set up to look at specific measures for addressing matters. That work includes engaging with stakeholders on trying to find the most appropriate means, in that respect.

**Liam McArthur:** I hear what you have said about the responsibility of the Lord Advocate and the role of the justice board. I do not doubt what you have said, but given the extent of the concerns that we have heard in this evidence session about the way in which the central marking system is working, I wonder whether I can adopt the approach that Mary Fee took earlier and invite you to work with the Lord Advocate and the

justice board to find out how the whole-system approach is working. The clear evidence that we are getting is that we have moved away from a system that had real benefits in respect of understanding the measures that are available at local level, and which ensured that, in executing justice, we had not only the consistency that we rightly want but the necessary flexibility. After all, not all projects, services or alternatives to prosecution by the courts are available in the same way in all parts of the country.

**Michael Matheson:** I assure Liam McArthur that the current justice board set-up gives an opportunity for some of those issues to be considered, discussed and looked at. I have no doubt that when the committee takes evidence from the Lord Advocate he will be able to explain the approach that he intends to take in seeking to address some of these concerns. That, again, can be part of the work of the justice board.

I am sure that you will hear the same from the Lord Advocate: I am very clear about the need to acknowledge the whole-system approach and to ensure that we link up the complex parts of our justice system as effectively as possible, recognise the impacts that policy decisions that we take in one area can have on other parts of the justice system, and plan in order to manage such things effectively. I am happy to assure Liam McArthur that we will continue to try to take a whole-system approach, including looking at the impact of policy decisions by the Crown Office on other parts of the justice system.

11:15

**The Convener:** I understand that defence agents are not represented on the justice board, but they have a wealth of knowledge about what goes on in the courts and the criminal justice system. Perhaps they could be invited to participate.

**Michael Matheson:** I am not entirely sure that that would be the right thing to do. The justice board includes senior figures from a range of justice organisations and delivery agencies. The board engages with a range of stakeholders in the justice system, but it is made up of senior individuals who have responsibility for delivery of services, from the children’s hearings system, to the Crown Office, to the Scottish Prison Service and to our courts. However, there is an opportunity for defence agents to be engaged in the process. As far as I am aware, they have been involved in examining some issues that have arisen as a result of discussions at the justice board. I am not entirely sure that it would be right for defence agents to be on the board, but they are already engaged in the process when that is relevant. I expect that to continue.

**The Convener:** It would be good if that could be looked at, because some of the best and most constructive and positive evidence that we have heard on the Crown Office and Procurator Fiscal Service has been from defence agents, on their relationship with it. There are valuable discussions to be had about how the system could be improved to everyone's mutual benefit. I am encouraged that the cabinet secretary has not entirely ruled that out.

**Michael Matheson:** It would not be appropriate for defence agents to be represented on the justice board, but they should be engaged in the board's work when, for example, specific sub-groups are set up to look at policy areas in which defence agents have a clear interest. We should remember that defence agents have their own interests, and that the board involves the leaders of justice delivery organisations. It would not be appropriate for defence agents to have direct membership on the board, but they should, through the board's structures, be engaged in the work that is relevant to them. I am not persuaded that defence agents should have membership of the board, given their distinct interests.

**The Convener:** If defence agents' constructive evidence can be brought into the picture in whatever way, that would be helpful.

**Mairi Evans (Angus North and Mearns) (SNP):** My question is about the Inspectorate of Prosecution in Scotland. From evidence that we have received from a wide range of organisations and people, it seems that very few people are aware of the inspectorate, let alone of the work that it undertakes. What are your thoughts on that? Does the general lack of awareness of what the inspectorate does concern you?

**Michael Matheson:** Given the nature of the inspectorate's role, I can understand that it does not generate a lot of public interest; it is very focused on the Crown Office and Procurator Fiscal Service. However, its reports are published and are publicly available. It is down to the inspectorate whether it wishes to increase its profile and, if so, how to do that. It is worth keeping it in mind that the inspectorate does not deal with individual complaints, which go through the normal process in the Crown Office and then to the ombudsman—the Scottish Legal Complaints Commission. The inspectorate has a valuable and important role in looking at part of our justice system—the Crown Office. I would not have any concerns or objections about its seeking to increase its profile, if it wanted to do so.

**Mairi Evans:** As you said, its public profile might not be all that high because of the nature of the inspectorate's work, but it was surprising to hear evidence from some organisations—that we

expected would have heard of the inspectorate—that they had not heard of it.

We had evidence from the Law Society of Scotland on the effectiveness of the inspectorate. It suggested that, in the interests of transparency and independence, the inspectorate should bring on board people who are not procurators fiscal or who have no connection with the COPFS. What are your thoughts on that? Do you think that that would be beneficial?

**Michael Matheson:** I think that the inspectorate is effective in the service that it delivers. The inspectorate has been in place for several years and stems—if I recall correctly—from the inquiry that followed the Chhokar case and how the Crown Office handled it. A report on that was produced following Dr Raj Jandoo's inquiry.

I think that the inspectorate is effective. As far as the suggestion about using individuals who are not members of the COPFS is concerned, as is the case with Her Majesty's inspectorate of constabulary in Scotland, it is always beneficial in undertaking an inquiry in a particular area to be able to second people who have expertise, who know how the system operates and who understand it. It would be for the inspectorate to explain that more clearly. Value can be gained from that—but that is not to say that people should not be brought in from the outside as and when appropriate. I suspect that the inspectorate does that when the need arises. It is about striking a balance between making sure that those who undertake an inquiry have the right skills set—the knowledge and skills that are relevant to the area that is being looked at—and ensuring that the investigation is independent and will report independently. I think that, by and large, the inspectorate gets that balance correct. I suspect that the principal reason for its drawing on people from the COPFS would be their expertise in the area in which an inquiry is being conducted.

**Mairi Evans:** Thank you.

**Liam McArthur:** Mairi Evans fairly outlined the concern that has been raised about the make-up of the inspectorate, which draws heavily on the COPFS. I take your point about the need for those involved to understand the system, but the concern is that someone who has been seconded in from the COPFS and who will be going back there will not be perceived to have the same level of independence as somebody who has experience of the service—and who will therefore not face a steep learning curve—but who is not due to go back there immediately after their work with the inspectorate has finished. Do you recognise that that is a legitimate concern?

**Michael Matheson:** I understand the issue to do with people's perceptions, but the pool of

individuals with the right expertise that can be drawn on in conducting such inquiries will always be limited, and that presents challenges. If the inspectorate has a view about how the present arrangement could be altered to address such concerns, and if such alteration required legislative change, we would be open to looking at that.

The legislation that introduced the inspectorate received cross-party support and the measure was broadly welcomed in Parliament as a positive step. The service that the inspectorate provides is positive and adds value to our justice system. The legislation makes it clear that the inspectorate is entirely independent in how it conducts its role and in the issuing of its reports and findings, so there are protections.

I suspect that part of the challenge relates to the limited pool of expertise for the inspectorate to draw on for any given inquiry. If the inspectorate were not able to draw on some of the expertise in the COPFS, that might make its task quite challenging.

I understand the perception issue, but there are safeguards in the legislation. If we changed the arrangements, that could make it difficult for the inspectorate to get the right skill sets for inquiries. However, if there are ways in which it thinks that that could be achieved, and if some form of legislative change by the Government was required to support that, I would be open to exploring that.

**The Convener:** That is helpful, as perception is everything. At the same time, will you look at the fact that the Lord Advocate appoints the head of the inspectorate, who then reports on the organisation that the Lord Advocate heads? There could be more transparency, and perhaps a strengthening of independence, in that regard.

**Michael Matheson:** That would require legislative change, because legislation requires the Lord Advocate to make that appointment. However, there is protection in the legislation to ensure that, once the person has been appointed, they undertake their role and publish reports independently.

I agree that perception is important, but it must be weighed alongside the reality. Is there anything to suggest that the inspector is in some way not operating effectively or that the issues that members have raised are in some way compromising the role? I am always open to looking at how we can improve things, and I am conscious that perception plays a part, but we must look at the reality.

Would it make much of a difference if we said that Parliament, rather than the Lord Advocate, should appoint someone to the role? Would that change anything in practice? Maybe it would

change the perception, but I think that, by and large, the inspector does a fairly robust and effective job of inspecting our prosecution services.

**The Convener:** I am happy that you are open to looking at the matter.

We have questions from Douglas Ross, Rona Mackay and Mary Fee. I ask for questions and answers to be concise.

**Douglas Ross:** I will follow up on a couple of issues that we discussed earlier. We spoke about changes in relation to children and vulnerable witnesses. Do you have any plans to change the number of police officers who are called to give evidence or the amount of time that officers spend in the court system? They sometimes feel that their time is wasted because they could be out on the streets being more overt in policing, rather than waiting to give evidence that could have been agreed at an earlier stage or which has been cited and not used.

**Michael Matheson:** In recent years, significant improvements have been made to the witness scheduling system that the police operate to enable them to manage to some extent the time that is taken up when police are witnesses in court cases. There is no doubt that efficiencies and improvements that could be achieved as a result of the recommendations from the evidence and procedure review could reduce the churn in witnesses, which would address some of the issues for police who find that their time is taken up by appearing as witnesses in court.

More can certainly be done, and some of that change will come about through remodelling the system to make it more efficient. There have been improvements, but more can be done.

**Douglas Ross:** In your answer to Stewart Stevenson, you spoke about the Crown Office and the court system using evidence from police who have been wearing cameras, but you said that a problem is that not all the technology matches. Do you understand why that is a frustration in 2017? In this day and age, what is the blockage that prevents services from working closely with each other on a range of issues? Why are three sectors not able, at all times, to view one piece of evidence in three different locations on the same devices? If they could do that, that could result in evidence being clarified and pleas being agreed at an earlier stage. It seems strange that, in 2017, we are still speaking about getting computers to work with images.

**Michael Matheson:** Part of the challenge is the need to ensure that the information technology infrastructure that operates between the police, the Crown Office and other parts of the justice system is as integrated as possible, so that people

can share such information. When I was the Minister for Public Health, there was a big push for us to move much more towards telemedicine. In Douglas Ross's region, the telehealth pilots that took place in Grampian were a good example of that.

11:30

One of the challenges that we identified, or a mistake that can be made, is that if we do not get the right investment throughout the system, we can end up investing in one part of the system but finding that the rest of it does not benefit from that. An example that has been given is that it is not just a question of issuing body-worn cameras to the police, because we also have to ensure that the police have an IT system that can download the data and that the data can be transmitted to the Crown Office and Procurator Fiscal Service, which can transmit it to defence agents, and that it can be transmitted to and displayed in courts.

Douglas Ross is right. I share the frustration that not just many MSPs but many who work in the justice system have about the challenges in making such a co-ordinated approach possible. The justice digital strategy is partly about taking that forward. One thing that we are looking to take forward in the next year is the digital vault, which is a shared system between the police, the court service and the Crown Office. CCTV footage will be put into that system so that it can be utilised on a shared basis. We hope to take that forward in the next couple of months and during this year.

Part of the issue is that systems that are already operating are not necessarily compatible, and considerable capital investment would be required across all the systems to seamlessly link them all up. We are managing the situation in a way that allows us to get clear areas of improvement in the existing system and to make additional improvements to it where we can. Part of that is historical—systems that parts of the public service have been using are not compatible with one another—and part of it is about making the right and necessary capital investment in the right parts of the justice system to create an interlinked system. That will take time.

**Douglas Ross:** On time and resources, if we as the Justice Committee see the area as one that is crucial for improving the Crown Office as a whole and the component parts, how can we scrutinise that? Will we be sitting here in a year's time with similar concerns? What timescales can you put on such work? How big are the resource barriers?

**Michael Matheson:** The resource barriers are significant. The justice strategy has been published, so it is a publicly available document that is out there—

**Douglas Ross:** What about implementation?

**Michael Matheson:** For each individual organisation? If we consider the police as an example, that is about the IT infrastructure that they plan to take forward. The Crown Office will be able to set out what its plans are and the details of them. The justice board seeks to ensure proper collaboration. If the police said that they wanted to move towards having body-worn cameras for all police officers, that could be explored at the justice board to identify what the Crown Office would need to do to support that technology and what the Scottish Courts and Tribunals Service would need to put into the courts to support and enable its use.

That is how we ensure that, when we make such investments, we take a whole-system approach so that we get the biggest benefit that we can get, rather than one part of the justice system investing in a piece of technology even though its benefits cannot be realised because the other parts of the system have not been able to adapt or put in the necessary capital infrastructure to make the best use of it.

**Rona Mackay:** I know that it is a matter of conjecture at present, but what might be the implications of the decision to leave the European Union, particularly for co-operation between the Crown Office and partner agencies in Europe? Have you and the Lord Advocate discussed that? What effect could the decision have?

**Michael Matheson:** There is no doubt that the decision could have a number of serious and significant effects on not just our criminal justice system but our civil justice system. I hosted a justice summit that brought together a range of stakeholders, and the Crown Agent attended that on the Crown Office's behalf.

In the past couple of months, the Lord Advocate has given a speech in Brussels that set out his concerns about potential risks if we are not part of the European Union. One of the most obvious risks concerns the use of European arrest warrants, which are based on an extradition arrangement. The average timescale from the issue of a European arrest warrant to the person being apprehended is around 40 to 42 days, whereas an extradition can take nine months plus. The European arrest warrant therefore provides a much more efficient and effective system for repatriating individuals. There was a case in Scotland where a European arrest warrant was issued and the person was apprehended within hours in another jurisdiction.

Such warrants are much more efficient. If we end up having to go down the route of requiring extradition treaties instead, the timeframe that is involved and the court time that they take up will

create inefficiency in the system. The process will be slowed down and more court time will be taken up in dealing with extradition proceedings in a way that we do not have to do at the moment.

I welcome the fact that we have opted into Europol, but we will not be able to be a full member of Europol once we come out of the European Union. That means that, when it comes to joint investigation teams, we will no longer be privy to the same information and shared resources, which are extremely important for dealing with human trafficking, for example, given the international nature of that criminal activity. Europol plays an important part in supporting efforts to deal with serious and organised crime groups on a pan-European basis.

Police Scotland is one of the police services in the United Kingdom that make the greatest use of the Europol organisation—for example, we have police officers embedded in the United Kingdom team. Unlike in England and Wales, where police services have to go through the Home Office to access Europol, Police Scotland is connected directly to Europol and has direct access to its database systems. We make good use of Europol, but we will not have the opportunities that we have at the moment once we have left the EU. We can be a tier 2 member of Europol, but we will not have access to the same information and support.

Leaving the European Union could also have a significant impact on the civil side—for example, in commercial and contract law. Contracts that are agreed between a company here—

**The Convener:** Can I stop you there, cabinet secretary? Civil matters are not relevant to the inquiry on the COPFS.

**Michael Matheson:** Yes, but the impact of Brexit was raised. In commercial law, Brexit would have an impact on the fact that contracts between a company here in Scotland and a company in France can be enforced in the courts. If we no longer have such access, that will create difficulties.

There will be a significant impact on criminal, civil and commercial law. We have been doing work to look at such impacts, part of which involves engagement with stakeholders through, for example, the justice summit that I hosted. We will continue that engagement in the weeks and months ahead.

**The Convener:** Is the reality not that, whether we are in or out of the EU, it makes sense for Europe and the UK to co-operate on the issues that you have talked about around preventing terrorism and human trafficking, and that there is much to be gained through the excellent facilities that we have, not least in Gartcosh, which I am sure are recognised Europe-wide?

**Michael Matheson:** Are you referring to being a member of Europol?

**The Convener:** I am talking about the sharing of data, information and intelligence. It makes sense to do that whether we are in or out of the EU.

**Michael Matheson:** That certainly makes sense, but part of the challenge when we are out of the EU is that we will not have the hub that Europol provides for co-ordinating the sharing of information.

There is no doubt that, when we come out of Europe, we will have to find mechanisms that will enable us still to share information and collaborate with others on certain issues. However, whatever mechanisms we come up with will be suboptimal compared to what we have at the moment, which is a much more efficient and effective way of dealing with things because, for example, it enables issues to be raised automatically and gives us direct access to information. Having to request information rather than having access to it automatically in a situation where time is of the essence is not as efficient or effective.

**Mary Fee:** We heard some quite concerning evidence about the low level of prosecutions in health and safety cases, the fact that health and safety cases are treated like civil cases and the fact that there are often quite lengthy and protracted negotiations before the conclusion of a case. Are you content that the prosecution of health and safety cases is robust enough?

**Michael Matheson:** Just last week, the Crown Office successfully prosecuted a health and safety case that attracted a significant custodial sentence. That in itself demonstrates the willingness and ability of the Crown Office to prosecute these matters effectively. I understand that there is a unit within the Crown Office that deals with health and safety matters, so there is a level of expertise there.

I understand that there are frustrations about the length of time that some health and safety cases can take to get to prosecution. If there are ways in which the process can be speeded up and greater efficiency can be achieved, that would be welcome. However, I am afraid that how the Crown Office goes about doing that is a matter for the Lord Advocate.

I would just add that the penalty that was handed down by the court in the case last week sent out a strong message about how the courts view these breaches of health and safety.

**Mary Fee:** Last week's case is a good example, as you say, but health and safety cases can often cause quite significant distress to the families that are involved, and there is no statutory time limit on

how long it can take to get to a prosecution. Should that be reviewed?

**Michael Matheson:** If there is a way in which we can improve the system, I am open to exploring that. First, though, I would say that it is important for the Lord Advocate and the Crown Office to be given an opportunity to explain the approach that is being taken and to say whether they believe that there are any changes that could be made in order to improve the way in which matters are handled. If, following that, there is a view that further measures need to be taken that require legislative change, I would be open to considering those issues.

**The Convener:** Particular concerns were expressed about the low rate of prosecutions for people who fail to have employers liability insurance. Are you aware of that issue?

**Michael Matheson:** Yes, I have been made aware of that. Again, the decisions about prosecuting in relation to those matters are entirely for the Lord Advocate. It would be wrong for Government ministers to set out what they think should be happening in that regard. No doubt the Lord Advocate will be able to explain the reasons for the situation and the approach that the Crown Office is taking to the issues.

**The Convener:** In advance of the Lord Advocate coming in next week, we have only two more questions.

Notwithstanding the independent status of the Crown Office and Procurator Fiscal Service, would it be fair to say that the organisation would be failing in its duty if it did not take cognisance of the Government's policies in relation to criminal justice matters?

11:45

**Michael Matheson:** The Lord Advocate will set out the approach that will be taken. There is no doubt that there are decisions that are made in a range of policy areas that will have an impact on the Crown Office, and the Crown Office will have to respond to those issues. For example, the approach that has been taken to tackling domestic and sexual violence has had an impact on the Crown office, and it has had to respond to that in order to deal with the issues. I have no doubt that the Lord Advocate will want to ensure that the Crown Office recognises priorities that have been set by Parliament and is able to respond to those issues effectively.

It is also worth keeping it in mind that some of the policy changes that have taken place have been driven by the experience of fiscals and the Crown Office. For example, the domestic abuse bill that we have said that we will introduce during

this parliamentary session came about as a result of work that was carried out by Lesley Thomson, the former Solicitor General, who was clear that fiscals were having difficulty prosecuting cases involving coercion and psychological abuse and were of the view that there needed to be a legislative change in order to enable fiscals who were addressing those issues to be supported.

I have no doubt that the Crown Office will recognise the priorities that have been set by Parliament and Government and will seek to respond to them effectively. Equally, I suspect that, as has happened in the past, the Crown Office will want to set out areas in the criminal justice system in which it wants further changes to take place and areas in which it thinks that there are gaps. We will do our very best to work with it to address those issues.

**The Convener:** For the avoidance of doubt, have you had any discussions with the Lord Advocate in relation to wider prosecution policy, or are those matters strictly off limits?

**Michael Matheson:** Prosecution policy is a matter that is entirely for the Lord Advocate. That is the constitutional position and it is the position that I will respect as Cabinet Secretary for Justice. It is appropriate that we respect the role that the Lord Advocate has in setting that policy.

**The Convener:** That concludes our questioning. Thank you for attending.

We now move into private session. The next committee meeting will be on 17 January when we will hear from the Lord Advocate in the final evidence session in our Crown Office inquiry, and consider current petitions.

11:47

*Meeting continued in private until 12:26.*





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