



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Justice Committee

**Tuesday 19 December 2017**

**Session 5**



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**JUSTICE COMMITTEE**  
**37<sup>th</sup> Meeting 2017, Session 5**

**CONVENER**

\*Margaret Mitchell (Central Scotland) (Con)

**DEPUTY CONVENER**

\*Rona Mackay (Strathkelvin and Bearsden) (SNP)

**COMMITTEE MEMBERS**

\*George Adam (Paisley) (SNP)  
\*Maurice Corry (West Scotland) (Con)  
\*Mary Fee (West Scotland) (Lab)  
\*John Finnie (Highlands and Islands) (Green)  
\*Mairi Gougeon (Angus North and Mearns) (SNP)  
\*Liam Kerr (North East Scotland) (Con)  
\*Fulton MacGregor (Coatbridge and Chryston) (SNP)  
\*Ben Macpherson (Edinburgh Northern and Leith) (SNP)  
\*Liam McArthur (Orkney Islands) (LD)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

David Harvie (Crown Office and Procurator Fiscal Service)  
Rt Hon James Wolffe QC (The Lord Advocate)

**CLERK TO THE COMMITTEE**

Peter McGrath

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



## Scottish Parliament

### Justice Committee

*Tuesday 19 December 2017*

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

### Decisions on Taking Business in Private

**The Convener (Margaret Mitchell):** Good morning and welcome to the 37th, and final, meeting in 2017 of the Justice Committee. No apologies have been received.

Agenda item 1 is a decision on whether to consider in private a draft stage 1 report on the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill and a draft report on the Scottish Government's draft budget 2018-19 at future meetings. Members are also asked to agree to consider our work programme in private at today's meeting. Are we agreed to take those items in private?

**Members** *indicated agreement.*

## Draft Budget Scrutiny 2018-19

10:00

**The Convener:** Agenda item 2 is an evidence session on the Scottish Government's draft budget 2018-19. The focus of the committee's scrutiny this year is on the budget for the Crown Office and Procurator Fiscal Service. I welcome the Rt Hon James Wolffe QC, the Lord Advocate, and David Harvie, the Crown Agent and the chief executive of the Crown Office and Procurator Fiscal Service.

I refer members to paper 1, which is a note by the clerk, and paper 2, which is a private paper. Does the Lord Advocate wish to make a short opening statement?

**The Lord Advocate (Rt Hon James Wolffe QC):** If I may, convener. Thank you very much for inviting me to give evidence. I am very glad to assist the committee with its scrutiny of the budget. I will make a few observations simply to set the discussion in its context.

In the past year, the service has continued to prosecute crime effectively, fairly, independently and in the public interest. Day in and day out, throughout the past year, you will have read in the press accounts of cases that the service has brought successfully to a conclusion. However, the cases that are reported in the press are only a fraction of the service's work. That is a tribute to the professionalism and commitment of the prosecutors who prosecute on my behalf across Scotland and all the staff who support them. I am glad once again to have the opportunity, publicly, to underline my confidence in them. They deserve great credit for the service that they provide in the public interest in the administration of justice in Scotland.

The real-terms increase in the service's budget this year will allow the service, from April, to respond to the release of the cap on public sector pay and, at the same time, to choose to maintain its staff at or at about current levels. The committee will recognise that the budget allocation represents a significant departure from the previous planning assumptions, which were for flat cash and a reduction in staff levels, that the service had been working to.

Notwithstanding the stability that the budget allocation provides to the service, I certainly do not underestimate the challenges that it faces. For example, although there has been a decline in the number of cases reported to the Crown generally, we are witnessing a marked increase in the number of reports of serious sexual offences, which is up some 50 per cent compared with last year. It is clear that much remains to be done

across the whole justice system to meet the expectations of the victims of crime.

The service is responding to the changing case load, and it is in discussion with the Scottish Courts and Tribunals Service about court programming. The expertise that now exists in the specialist High Court sexual offences units will enable the processes for those cases to be streamlined. I have tasked the Crown Agent with scoping out the implications of a strategic shift of further resources to deal with serious sexual cases and other complex cases with a view to that work informing future decision making.

In its financial planning, the service has prioritised non-staff savings. The Crown Agent has made good on his commitment to the committee to reduce markedly the number of staff on part-time contracts, and the budget settlement gives us stability in staff numbers. The service will continue to bear down on non-staff costs because it recognises, rightly, that its people are its greatest asset. That belief also underpins the fair futures project, which should start to take effect from April next year.

In conclusion, although this is a budget scrutiny session, none of us should lose sight of the fundamental purpose of the system of prosecuting crime, which is to underpin a just and secure society. I welcome the committee's continuing interest in the work of the service, which is a reflection of the importance that it rightly attaches to it, and I look forward to the ensuing discussion.

**The Convener:** Thank you for that opening statement. You paid tribute to the professionalism and commitment of the Crown Office and Procurator Fiscal Service and alluded to the fact that its people are the service's greatest asset. The committee concurs with that but remains very concerned about reports on workload and low morale.

Can you comment specifically on the staff survey results—which were included in your submission—that were published in November? They confirm that, on matters such as pay and benefits, resources, workload and leadership of change, the measure of positive outlook on the general and future direction of the organisation fell from 57 to 55 per cent.

**The Lord Advocate:** I do not deny that I was disappointed that, on a number of measures, the survey fell back this year from what was a very favourable—in historical terms—survey last year.

You mentioned workload figures and the like, and it is important to see those in context. In the survey, 57 per cent of staff report that they have an acceptable workload. That is up 1 per cent from last year—I do not make anything particular of that. However, that is up 16 per cent from the

equivalent figure in the 2015 survey, up 11 per cent from the 2014 survey and up 13 per cent from the 2013 survey. Although the figure on acceptable workload has remained, to all intents and purposes, static compared with last year, that is a significant improvement compared with the figure of two years ago and previous figures.

In the survey, 64 per cent of staff report that they achieve a good work-life balance. That is down 3 per cent from last year but up 9 per cent from 2015, up 5 per cent from 2014 and up 8 per cent from 2013.

I do not for a moment seek to shy away from disappointment in the survey, but it is important to see it in a historical context, and we saw very significant improvement on the measures last year. We have fallen back a bit on the work-life balance figure, but it is still better than it has been in the past.

I do not for a moment shy away from the challenging nature of the work that is demanded of public prosecutors or from the committee's evidence of individual experience. Nevertheless, it is important to see the data in context. The service is improving, not just in relation to those figures but in relation to the sickness rate, which is significantly down—it is 8.7 days per person, which is down from 10.1 days per person in October 2016.

The fair futures project is on-going and will start to take effect from April next year. The Crown Agent has made good on his commitment to reduce the number of staff on temporary contracts. The service—

**The Convener:** With respect, Lord Advocate, that has been covered in your opening statement.

Forty-three per cent of staff—that is almost half of the workforce—do not believe that they have an acceptable workload, while 36 per cent of staff say that they do not have a good work-life balance. From this evidence session, I hope to understand specifically why that is and what is being done to address those concerns. You also mentioned the increase in the number of sexual offence cases that are heard at the High Court. That issue has been covered. What specifically is being done to address those two really important issues, given what you have said about the workforce being all important to the efficient running of the Crown Office and Procurator Fiscal Service?

**The Lord Advocate:** I take your point, convener, but it is important to put the figures that you have highlighted in the context of the civil service norm. I would like the service to do as well as or significantly better than that norm, and, on the two measures in question, it is four percentage points below the norm, which means that it is below but not wildly out of step with it.

I would like the figures to be in a better place—

**The Convener:** Can you give us some specifics about what you are doing in that respect? We could quote figures at each other all morning, but it would be good to have some specifics.

**The Lord Advocate:** It might be worth asking the Crown Agent to remind the committee about the fair futures project, which he is leading on and which is specifically designed to address in a broad sense the wellbeing of staff.

**David Harvie (Crown Office and Procurator Fiscal Service):** I will start by highlighting the changing profile of the work, which might help to set a landscape for answering your question beyond simply talking about the fair futures work.

Over the past year, the number of outstanding trials in justice of the peace and sheriff courts has dropped dramatically. I think that the number of outstanding JP trials has fallen from 7,500 to 4,500, although there are exceptions and localities where that is not the case, which I will come on to. In general, preparation is easier if the court is smaller and there are fewer trials. Indeed, that only stands to reason. The fact that, in the past year, the number of outstanding trials, including in the sheriff court, has generally gone down is very welcome.

However, there are exceptions to that, which is perhaps part of what we have seen in the survey. There are locations where there are, without doubt, difficulties in the preparation of trials and with advance notice trials, which I am aware was mentioned specifically in the FDA submission. There are large parts of the country where those difficulties have not arisen, but that does not mean that there are no locations where they have arisen and that such matters do not need to be addressed.

That is reflected in the nuance of the staff survey. This year, in contrast to previous years, we have noticed quite significant differences between the responses from different localities, even within sheriffdoms. For example, certain survey results in one half of the Grampian, Highlands and Islands sheriffdom went up 7 per cent whereas, in the other half, they went down 7 per cent. That is to do with loadings, preparation times and so on. My point is that the picture is more complex than simply what the national picture suggests. I want to make that clear in giving a context for and in explaining some of the more targeted work that we will be doing.

With regard to our response to the staff survey, each of the sheriffdom procurators fiscal has not only their own results but an appreciation of the wider results and why they are in a different position, so that they can look for local solutions. As you will recall, a significant aspect of the

evidence that was taken last year was the need for local responses to problems, and that approach is being encouraged this year.

That will prompt negotiations with local sheriffs principal on court loadings, over which we have no final say but which are dramatically different across the country—for example, they are significantly greater in Glasgow than in other parts of the country. As for the individual responses from individual members, I have no doubt that that is how those people feel, but I would caution you that each of them cannot be extrapolated from to give a national picture.

From my perspective, the most significant part of the fair futures work is appropriate support for staff welfare. You will have noticed that we are already doing significant work in relation to that and are making progress. You will recall that the sickness absence was, on average, 10.3 days, but it is on a significant downward trend and is now about 8.7 or 8.6 days. It is still above the average, but it continues to head in the right direction. That has been achieved in a relatively short period of time, over the past 18 months, as a result of changes in the occupational health support that is provided and other changes in the support for staff. That is significant, and we will continue to make progress on that issue.

10:15

Another issue that has impacted on the organisation, and which we are seeking to address, is the need for development across roles. As has been touched on in evidence, one of the tensions in specialisation is that with specialisation comes the perception of a lack of opportunity. Indeed, when we visited Hamilton recently, someone characterised it as “a sense of stuckness”. That phrase was used, and it is a wonderful characterisation of how some people feel in relation to opportunities. The fair futures project is, therefore, looking into the issue to ensure that staff development is far more coherent and structured than has been the case hitherto.

Similarly, we may touch on pay and grading. Since 1996, the service has had the opportunity—as have all departments—to structure its pay and grading in a delegated fashion. Aside from tinkering around the edges, in the 20 years since then, unlike in other departments, there has not really been any significant change. If someone from 1996 were to look at our pay and grading structure, they would recognise it. We are seeking to address that within the constraints of affordability and in consultation with our staff, and there is no defined outcome to that. What might work for the COPFS is very much an open question.

Forgive me for the length of my reply, but it is demonstrative of what we are trying to achieve across a broad range of issues.

**The Convener:** It is encouraging that you are looking at local issues and trying to come up with local responses.

**John Finnie (Highlands and Islands) (Green):** I concur with the Lord Advocate's view of the good work that is going on.

I will pick up on the issue that Mr Harvie raised about the autonomy that the service has to configure its staff. Lord Advocate, you talked about maintaining the staff at or at about the current levels. You will be familiar with the submission from the Public and Commercial Services Union, paragraph 7 of which states:

"Like most Departments and Agencies COPFS has taken the approach of achieving savings by cutting staff ... When posts are vacant they are not always filled, or are filled with someone on a lower grade. Abolishing a post is making it redundant whether it is currently filled or not, and posts should not be regraded without proper consultation and Job evaluation exercises being carried out."

A job evaluation exercise is a significant piece of work, and the submission alludes to issues around equal pay. Can you say what is being done and what level of engagement there is with the unions? That is clearly a factor.

**The Lord Advocate:** I can give a high-level response, Mr Finnie, and I will let the Crown Agent respond with the detail.

It is certainly not the case that the service is making savings by cutting staff as opposed to making non-staff savings. It has taken a deliberate decision to prioritise non-staff savings where it can, although it has seen a reduction in overall staff levels of about 20 over the past year. The current budget allocation will allow for stability in the year to come.

The committee has received some evidence about the estates strategy, which is continuing. The savings resulting from the estates strategy are currently running at a little over £700,000 a year, and it is expected that, with further decisions to be made in the future, that amount can be enhanced. There are savings to be made in relation to pathology and mortuary costs as well as other costs.

The firm priority is to make savings in non-staff costs when the service can, and the service has been able to make choices with a view to preserving front-line staff. In the past 10 years, there have been only two years in which the figure for the number of legal staff has been higher than it is at present. The Crown Agent can perhaps give you some more detail on the points that you have raised.

**David Harvie:** I know that this has been mentioned previously, but I emphasise the level of commitment of the staff. It was a significant issue—and rightly so—during the inquiry on temporary employment and temporary promotion. Contracts have been offered to and accepted by 177 staff, and 115 staff members have been permanently promoted.

On the overall use of funds by the Crown Office and Procurator Fiscal Service, in 2010, 59 per cent of the budget was spent on staffing. It is projected that the figure will be 72 per cent next year and higher than that the year after. We are showing that we are prioritising savings in non-staffing areas over savings in staffing areas, and the proportion of the budget that we spend on staffing is ever increasing.

This year's increase in the budget will enable us to meet the public sector pay policy and bring it forward to the beginning of April while maintaining staff numbers. We did not anticipate that we would be able to do that when we discussed the plans with the committee previously, when we anticipated that we would have to see a drop in numbers. However, the committee will recall that, when I gave evidence previously, I said that, in the light of the savings that we would have to make this year, notwithstanding the fact that we spend about two thirds of our budget on staffing, we would still need to save about half on non-staff costs, which is a disproportionate amount, so we would still need to make staff savings. That is why, as the Lord Advocate has indicated, we are smaller by about 20 staff this year, as I said we would be. Nevertheless, in the light of this settlement, I project that, next year, we will have stability, increased pay and increased permanence.

**John Finnie:** That is reassuring on one level. However, it does not address the issues of unfilled posts or posts being filled by people on a lower grade. Are there any plans to do some sort of workload analysis to look at the changing picture such as occurs in every workforce? I appreciate that all such exercises have their costs, but those issues are likely to be inextricably linked with the staff satisfaction issue.

**David Harvie:** On the point about downgrading, as you characterise it, it is fair to say that the one place where there has been a significant shift in the organisation, particularly since 2010, is in the senior civil service. There were 39 posts and we are now down to 21. So be it. Across the other grades, the numbers are proportionately approximately as they were.

I agree entirely with your specific point about the need for work to look at the changing profile and the response to that. It fits with the Lord Advocate's opening statement about the need to

recognise that we have experienced a significant change in our work profile. I do not know whether members will recall this, but, at the creation of Police Scotland, I gave evidence that there was a massive spike in the number of reports that were coming in. The figure went over 300,000 for the one and only time, which resulted in an increased number of cases, particularly in the summary courts. We are now seeing a change in profile whereby the number of cases that are being reported has dropped but the type of criminality that is being reported has changed and there is much more of a requirement for the service to provide support to vulnerable victims.

As a result of that, we need to realign our resource to meet a challenge that is different from that which we had to meet even in 2013-14. That is the commissioned work to which the Lord Advocate has referred and that we will be looking at next year.

**John Finnie:** Will the trade unions be fully involved in that exercise?

**David Harvie:** I personally meet both unions once a month, as a minimum, as do my deputy Crown Agents. I think that I am right in saying that, across all the sheriffdoms, there are meetings four times a year with representatives—

**John Finnie:** But will they be actively involved in the review, Mr Harvie?

**David Harvie:** Absolutely. They are also involved in the fair futures project and across the range of issues. I do not think that any of the issues that we are discussing will come as a surprise to them.

**John Finnie:** Thank you very much.

**Mary Fee (West Scotland) (Lab):** I, too, want to focus on staff issues. Your workforce planning strategy suggests a reduction of 200 full-time staff by 2022-23. Are you still content with that figure?

**The Lord Advocate:** That projection was, of course, predicated on a set of assumptions, including a flat cash settlement. This year's budget allocation allows us to depart from those assumptions, so the future strategy will have to be revised to reflect the change in that allocation.

I do not know whether the Crown Agent wishes to add anything.

**David Harvie:** The simple answer to the question is yes. Members will recall that, as the Lord Advocate has said, the previous assumption was that there would be a flat cash settlement and that, as a result, we would expect to secure 50 per cent of savings from staffing. Because of the settlement, that assumption will not apply to the coming year, because we will have stability with regard to staff numbers, and we will be in a

position to make choices about filling posts that might become vacant over the next year.

**Mary Fee:** In that case, is the Procurators Fiscal Society section of the FDA wrong to say:

“the predicted job cuts will prove to be a conservative estimate”?

**David Harvie:** That submission was made in advance of the budget settlement. It is fair to say that the FDA was working based on the expectation that there would be, as per the plans, a flat cash position.

Moreover, you will recall that the financial sustainability plan that we have previously discussed contained assumptions. For example, we initially planned for 2.5 per cent inflation, whereas the figure is now 3 per cent, and for a 1 per cent increase in public sector pay, which has also changed. The FDA was looking at an increase in inflation and a change in public pay policy against a flat cash assumption, which would have increased pressure on our plans and might have led to “conservative” predictions about job losses. That position was perfectly logical and sensible in the absence of knowledge of the eventual settlement.

**Mary Fee:** On staff morale, I welcome the statement about the commitment of staff in the Lord Advocate's opening remarks. Indeed, no one can doubt the commitment of staff in the COPFS. I know that the fair futures project is under way, but I have to say that when I read through the submissions for today's meeting, I felt that there were two almost completely contrasting views. The Procurators Fiscal Society section of the FDA says:

“current resources are insufficient for the additional demands placed on and increased workload of the service. It is time either for the commitment to match the resources or for those difficult decisions to be made about what aspects of the service and work that we currently undertake will we stop doing.”

Moreover, one response to the survey noted that

“Adequate preparation time for trials is a rarity and so, taking papers home is essential”

and one manager reported feeling “stressed to death”. One respondent pointed out that

“Employees are being effectively forced to deal with workloads in which it is nearly impossible to deliver an effective service”,

and another said:

“We want to provide a world class service, but we simply have far too much work and not enough people. We have staff with no prep time for difficult and sensitive trials. We have staff in court day after day, working at home, coming in while on leave and constantly worrying about work.”

I accept that you are doing a number of things, but if someone was to read those submissions and nothing else, they would think that your workforce is completely demoralised and stressed and feels that there is no future or fairness. What are you doing to address that?

10:30

**The Lord Advocate:** The Crown Agent has already described a number of the specific actions that the service is taking to address issues. Morale is quite a difficult thing to get a handle on. Like the Crown Agent, I do not for a moment suggest that individuals are not accurately reporting their experiences and impressions. However, in the staff whom I meet I detect enormous pride in the work that they do, which is reflected in the commitment that they give to their work.

If one is looking, in so far as one can, for some sense of the broader picture, it is worth going back to those two figures in the staff survey. Of course I would like them to be higher, but they are so much better than they were two years ago. That is not for a moment to take away from what is reported in the FDA's evidence. All staff should have a one-to-one meeting with their manager once a month to discuss workload and other issues. As the Crown Agent has observed, there are regular meetings with the unions to discuss issues that are of concern to them. There are mechanisms in place to address particular issues.

The Crown Agent made the point earlier that, when one does what we have discovered ought to be described as a deep dive into the staff survey figures, one finds real discrepancies between different parts of the organisation. The service is looking at that seriously to respond to particular issues that arise in particular parts of the organisation.

**Mary Fee:** Mr Harvie—do you have any comment to make?

**David Harvie:** Unless you have any further questions, I think that most of what I would say has been covered.

**Mary Fee:** If there are regular meetings and all that work is in place, why do staff still feel as they do? If you are regularly communicating with them, we would expect them to feel their morale rising and to feel better. Is there a gap in how what you are doing is communicated to staff? Are staff not aware of what is going on?

**David Harvie:** Generally, I find that communication could always be better. For example, on the fair futures programme that was referred to, we have 80 volunteers, who are members of staff from across the service. They are self-nominated and self-selecting and, to be

frank, many of them have particular issues that they want resolved—precisely the kinds of issues that are reflected in the survey—so that opportunity has been created for them. I regard them as champions and evangelists for the work that we are doing.

As members will be all too aware, it is partly about communication from the centre or top—however you like to describe it—but, crucially, it is also about cross-communication, improvement activity and exchange of ideas. Those are being encouraged under the fair futures programme, so that people feel that they have a voice.

I mentioned that the board went to Hamilton recently. That sounds like a small innovation, but it has been significant. Traditionally, the executive board meetings were held in the Crown Office, but now every second one is at one of the offices around the country. At those offices, there is an open meeting with staff for as long as they need. The meeting in Hamilton ran on until half past 3, and discussed a number of issues, from strategic issues affecting the service to the fact that investment is required in printing and copying facilities. For some members of staff, that is the most significant and important inhibitor to their doing the job that they want to do.

Those individuals then contributed to the national call-off contract for new printers and copying facilities. When people are able to make that kind of contribution, it makes a difference—they feel that when they say something, they are listened to and have an opportunity to make an impact, as has happened in this case.

There is no single solution. We will always endeavour to improve communication about what we are doing. We want to generate a sense that there is a collective approach: there is no doubt that we are on journey in relation to that.

The Lord Advocate referred to the previous position, and that there was a 16 per cent rise from 2015 in the number of staff who feel that they have an acceptable workload, but compared with the 2016 survey, the figure has plateaued. On whether staff feel that they have a good work-life balance, we saw an increase, then the figure plateaued, which I was disappointed about. That was an incentive for me to kick off again in relation to ways of communicating with staff. I completely accept the point: we will continue to try to find other ways of ensuring that level of engagement.

**Mary Fee:** Thank you. You have already answered the next question that I was going to ask, about how effective you are at responding and feeding back if someone raises something.

**David Harvie:** We are trying to get better.

**Liam Kerr (North East Scotland) (Con):** I would like to follow up on that line of questioning—in particular, on the workforce planning strategy. I presume that it was argued at the time that 200 jobs could be shed without a significant increase in the workload or negative effect on the work-life balance of the remaining staff and that generally, that loss could be absorbed within the organisation.

Now, it looks as though there is some extra money and you are saying that there is not a need to shed 200 posts and you will look to retain those. However, does not that suggest that the posts are, in fact, very necessary and that their loss would have had an impact, so the premise of the workforce planning strategy was wrong?

**David Harvie:** The strategy was a projection of what we would have to do to live within our means, if that was to be where we ended up. I think that I have indicated previously that the situation would have become increasingly challenging and that the choices would have become increasingly difficult. We would have found ourselves in a situation in which I would have been presenting to the Lord Advocate options about what a service at those levels might look like.

**Liam Kerr:** Is that an acceptance that, if the 200 posts had had to go, there would have been a significant impact on the ability of the remaining staff to deliver the service, and on their work-life balance, for example?

**The Lord Advocate:** I think that what the Crown Agent is saying—of course, it would be subject to other changes, both in case load and in the system more broadly—is that in that scenario, one could have foreseen the need for him to come to me with options regarding various activities that the service undertakes.

We are not in that position, however, because this year the budget allocation has been increased in real terms. That is not to say that the situation does not contain challenges; it always contains challenges, not least because of how the workload shifts and the case load changes, to which the service needs to respond. The service has shown a remarkable ability to effect change—certainly over my professional lifetime—and I am sure that it will continue to do that.

The Crown Agent, in his evidence to the committee's inquiry, has been very clear that the planning assumption that there would be a flat cash settlement would present an increasingly challenging position. I am pleased that that is not the position that we are in, because of the allocation that the service has been given this year.

**Liam Kerr:** You are quite clear and you are quite right to point out that that is the position this year, but that begs a question around the level of consultation that is going on. What consultation was undertaken, back when the original workforce planning strategy with the loss of 200 posts was happening, and what is going to happen now? People on the ground will be listening and saying, "Hang on—we don't need to shed 200 posts", but what will happen next year and the year after that? What engagement will there be?

**David Harvie:** You referred to 200 posts. The logic of the planning assumptions, if they were correct, was that, even saving 50 per cent on non-staff costs and 50 per cent on staffing costs, the outcome might be a net reduction of between 150 and 200 staff over a five-year period. I told the inquiry that that would be about 30 posts reduction a year, on average. We have had a year in which our staff numbers reduced. To that extent, therefore, the first year of the plan has proved the accuracy of the assumptions, as they applied at that stage.

However, in relation to this particular year, when we have a one-year outcome, that strategy does not apply. That enables us to do things, particularly in relation to non-staff savings. Those savings come on stream at different times. Some involve negotiations with third parties and others involve opportunities in relation to lease breaks and so on, so there is not an even distribution of opportunities for non-staff savings in each year. As it happens, for the year after next, for example, projected available non-staff savings could be double those that are expected next year. That gives us more flexibility in relation to potential staffing costs. It is difficult to look further beyond that.

As we have indicated already, the case load can change, as well. In 2013-14 we had about 300,000 cases: we now have a different number of cases with a different profile, so we have a different kind of case load. The increase in reporting of serious sexual offending is, to be frank, welcome, because sexual offending was always there. We need to respond to that. There is risk in looking at the workforce plan and the financial sustainability plan, because in each there are a number of variables, and not only in respect of opportunities that arise in relation to savings and budgetary changes. There are also changes in the landscape and the nature of "the ask"—for want of a better phrase—for the organisation, which depends on the nature of the criminality that is reported to us and how we must profile our response to it. It is dangerous to look too far ahead with certainty.

**The Lord Advocate:** I will, if I may, just add one other point. The changing case load—it is significantly declining in numbers but changing in

nature—is just one aspect of the environment within which the service has to operate and fulfil its essential public function. At the same time, there is a process of criminal justice reform, which presents a set of opportunities to do things more efficiently and in better ways. In the past year, we have implemented sheriff and jury reform. There are, in the correspondence that we sent in advance of the meeting, figures showing early indications that sheriff and jury reform is producing significant benefits in terms of cases more often settling or resolving earlier, and showing a very significant benefit to the public in terms of witnesses not being cited unnecessarily.

We are in a process of summary justice reform, which—as the committee will appreciate—is the volume part of the work of the service, as it were. Again, as we discussed during the inquiry, there are real opportunities for the summary justice part of the case load of the court and the work of the service to be done in a significantly more efficient and effective way. If we can secure real change in the summary justice system, it will have a significant impact on the pressures on the service. One of the challenges for future strategy is to anticipate when those opportunities and benefits will turn into real changes.

10:45

Another example of the kind of thing that can make a difference and reduce the workload is the proposition in relation to Road Traffic Offenders Act 1988 fixed-penalty offences, which is referred to in the Crown Agent's correspondence to the committee. Currently, there are upwards of 15,000 such cases that we pursue in summary prosecutions; in England and Wales, enforcement would be dealt with in a different way that does not require prosecution. Whether it is appropriate to approach those cases differently in Scotland will be a matter for consultation, but if the consultation produces a positive answer to the question, that, too, will reduce the pressures on the service.

One of the challenges of future planning for the service is that the landscape changes. We can see real opportunities to do things more effectively, to do them more efficiently and to serve the public better, which is ultimately what we want to do. However, the timescale for changes is not always entirely predictable or in our hands.

**Liam Kerr:** You talk about the case load changing and how a differing profile might lead to a reduction in it. However, the staff involved in dealing with that change necessarily require to be retrained to understand the new case load that they are dealing with. That will come at a cost in financial terms and in staff time—their ability to deliver the service and be taken off to be retrained. What planning is going on around that?

**David Harvie:** You are absolutely right that staff need to be appropriately trained, particularly when it comes to dealing with serious sexual offence cases, which are on the increase.

In advance of that significant change in the trend, we considered ways in which could simplify our current processes. We had historically responded to the change in serious sexual offending by reference to specialist Crown counsel, who are appropriately trained. Over time, the teams who report those cases to Crown counsel have themselves become expert. That has been a real benefit. One of the helpful parts of the Inspectorate of Prosecution in Scotland's report on those matters was to confirm that sense of expertise and the fact that there is no significant disagreement between Crown counsel and those who provide the recommendations to them. That level of upskilling is testament to the response over a period of time. There is an opportunity to say that those people now understand the situation and that, because we can rely on their choices and recommendations, we could have a different reporting structure on such cases.

Beyond that, there is undoubtedly a requirement to train up additional staff to be able to deal with that trend of increasing reporting. However, an important factor from the welfare point of view is that we should expect staff to be involved in such work only for certain periods of time subject to appropriate support. It is not just about training but about ensuring that there are opportunities for them to have other roles and then perhaps to come back to work on serious sexual offending and perhaps not to do so. Therefore, one thing that we need to do is to ensure not only that we have the capacity to deal with the casework but that we have the capacity to deal with staff response to it and ensure that their welfare is supported, because it can be challenging to deal with such casework. I reassure the committee that that is recognised and that it is one of the points that will be addressed.

**The Convener:** I will take a direct follow-up question from Ben Macpherson on the training aspect and then two supplementaries on staffing from Liam McArthur and Maurice Corry.

**Ben Macpherson (Edinburgh Northern and Leith) (SNP):** As the convener has said, I want to pick up on the related issue of trainees, which came up in the committee's inquiry and touches on people being the service's greatest asset and on how we future proof the service, increase future capacity and adapt to the different demands on it. Can you update the committee on whether the number of available trainee places is still increasing and on the expected retention of trainees in the year ahead to continue that future proofing?

**David Harvie:** I want to make three very quick points. First, instead of bringing in all the trainees in August, we will, for the first time, bring in a small tranche in February and then increase that number over the next two years so that we have a February tranche and an August tranche, with numbers increasing slightly overall.

We are doing that because, as came out in the inquiry and as has been accepted for many years, it is an excellent way of recruiting future staff. As I think I have mentioned, all three deputy Crown Agents are former trainees, as were many of the previous Crown Agents, and they are very high-quality people. However, by bringing in people in August, we were finding ourselves waiting almost until then to have a board for new deposes, and classically that led to a dip in the number of deposes that we had over the summer. If we have two tranches of trainees, those who come off in February will be able to apply for any vacancies that we might advertise in the period up to August, which will provide more consistent availability of legal staff over the year. Historically, we have had a bit of wave pattern, with a dip in the summer. That has not been helpful; after all, it is, understandably, the time when people want to take their holidays, but we still have to man the courts. In short, then, we are splitting the tranches, and the numbers will increase slightly.

Secondly, for many years now, we have paid the Law Society recommended rate, but this year we have agreed a deal in which—at my behest, frankly—the rate is being increased. For the first time in many years, we will pay above that rate.

Thirdly, with the opportunity through the budget to have a stable workforce, we will also have the opportunity to fill any legal vacancies as and when they arise. I cannot say what the numbers will be, but the trainees will certainly be in a position to compete, which means that we will be able to address those vacancies.

**Ben Macpherson:** Much of that was reassuring, but I hope that you will be able to keep us up to date on trainee numbers and expected retention.

**David Harvie:** Of course. I will be very happy to.

**Ben Macpherson:** As I know, one of the strengths of a traineeship with the service is the high regard in which it is held throughout the profession. That is down to a number of factors, one of which is, I imagine, the adequacy of the mentoring that senior staff in the service provide to trainees and their passing on their knowledge, understanding and expertise to the next generation. Given the constraints and challenges that we have heard about with regard to work-life balance and other challenges with staffing in the service, are adequate systems in place—as I would hope they would be—to ensure that

mentoring time is protected and that the traineeship in the service retains its current high reputation?

**David Harvie:** One of the advantages of the numbers is that the two-year training period contains significant commitments to spells out for specific training programmes that are provided in the organisation. It is not a case of their spending their two-year traineeship just working with others in an office-based situation; instead, they spend quite significant spells out of the office and get specific training during that period.

You are quite right about trainees having daily opportunities to receive mentoring and support from legal staff. Indeed, that might well be one of the benefits of having former trainees make up such a substantial number of our current legal staff; it has created a whole culture of people supporting each other. They will say, for example, that they were the intake of such and such a year rather than another year. We have that type of general investment in new trainees precisely because we have quite high retention of former trainees.

**Ben Macpherson:** Thank you.

**Liam McArthur (Orkney Islands) (LD):** I want to return to Liam Kerr's earlier line of questioning. At the moment, we are in the fortunate position of looking at a budget settlement that is more advantageous than was anticipated. However, 12 months ago, on the back of a real-terms cut to the budget, there was a discussion over whether it was absolutely astonishing, as the FDA described it, or a "sound settlement", as both the minister and the Lord Advocate agreed.

We are now in the happy circumstances of looking at pay increases, with no requirement to deliver the reductions in staffing that were being considered at that point. However, without demurring from the notion that it was entirely incumbent upon the Crown Office to be planning for different anticipated scenarios, I am concerned that we were being reassured that those staffing reductions could be accommodated without Mr Harvie having to go to the Lord Advocate with some fairly unpalatable suggestions about what they would mean in terms of service delivery. We do not want to invite witnesses who come before us to engage needlessly in scaremongering, but nor do we need them whistling to keep our spirits up. My concern is that the assurances that we were given 12 months ago do not seem to have been as well founded as they were portrayed to be at the time.

**The Lord Advocate:** Perhaps I can say something on that first. I was very clear last year that I could fulfil my public responsibilities with the budget settlement that we had then. I was also

very clear—as I think that any leader of any public service in Scotland would be—that if I was asked whether I would like to have more funding, I would say, “Of course I would.” Asked whether I could provide the service that I am responsible for with the settlement that I had last year, I believed that I could, and we have done that over the past year—we have prosecuted crime effectively up and down Scotland.

Looking forward, the service was scenario planning on an assumption of flat cash, recognising that, with justice reform, there would be changes in the system and so on. The Crown Agent was very clear that the scope for choice would become increasingly challenging and that, were we unable to unlock some of the benefits of justice reform, no doubt he would be coming to me with difficult choices. Thankfully, we are not in that position.

**Liam McArthur:** Indeed, and I appreciate that. I think that we all accepted that the justice reform proposals were about improving the way in which the system works, as well as getting more for the resources that were put in.

**The Lord Advocate:** Absolutely.

**Liam McArthur:** What we were not told was that the staffing reductions that we were being presented with were likely to lead to scenarios in which services might need to be scaled back or removed entirely. The committee would have responded very differently if we had been told that not simply by the FDA and others but by the Crown Office itself, if it had said, “We do not entertain the more lurid examples of what this may mean, but be under no illusions: if, as we go through this process, we reach this level of staff reduction, we are going to have to look at some potentially uncomfortable reductions or scaling back in service.”

11:00

**David Harvie:** Forgive me—it was not my intention to suggest that, nor was that my intention in my answer to Mr Kerr.

I said that the position would be increasingly more challenging and that options would become more constrained. However, as the Lord Advocate said, we also talked about the potential for other changes in the landscape. You will recall mention of the fact that it is dangerous to compare one scenario with another. We talked about the change in casework between 2013-14 and now and about projected changes in casework, for example, if there were to be a change in legislation in relation to the number of road traffic cases that are reported. That is just one small example, which would potentially change the JP court programme and create flexibility—or perhaps

the opportunity for the kind of alleviation of pressure that we have been talking about.

When I talked about options, I meant options at a macro level, in relation to system change. If the timings were not appropriate or legislative change or reform was not possible, it might well have been necessary to make other choices. There is a constantly moving picture; that is what I was trying to convey to Mr Kerr.

**Maurice Corry (West Scotland) (Con):** What proportion of management sick leave absences are classified as long term and due to stress, and what steps is the service taking to remedy the situation and reduce such absences? I am asking about senior management, in particular.

**David Harvie:** I do not have the figure for senior management to hand, particularly in relation to long-term absence; I undertake to provide it to the committee. The rate of sickness absence due to work-related stress is about 8 per cent, but that figure is across the board and is not specific to senior management.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** I was going to ask about the draft budget's impact on savings, but the issue has been covered quite extensively.

During the committee's inquiry, I asked about the use of diversion schemes. Given the savings that are required, has the service had any thoughts about how such schemes might be used more economically to free up some of the clutter—as someone referred to it—in the system?

**The Lord Advocate:** I value the option of diversion, where it is available. As I think that I said to the committee during the inquiry, prosecutors can decide to go for a diversion rather than take some other prosecutorial action only if an appropriate and good-quality diversion scheme is available, so the use by the service of diversion schemes depends on the availability of schemes across the country.

The introduction of Community Justice Scotland provides an opportunity to improve the availability of diversion schemes. I hope that it will also ensure that opportunities for diversion are available throughout the country, because one observes from a prosecutorial perspective that the availability of diversion varies in different parts of the country, which affects the decisions that prosecutors make in relation to reports of alleged crimes in different parts of the country. If we can improve the availability of diversion, prosecutors will use such schemes as appropriate.

There is perhaps a more general point to make about the range of options that are available to prosecutors. As the committee is aware, prosecutors have a number of options available to

them by statute in addition to prosecution. I am thinking of fiscal fines, fiscal work orders and the like. Those are valuable options that prosecutors use—and should use—in appropriate cases to respond appropriately and proportionately to reports of offending behaviour.

**David Harvie:** I can give a bit more detail to reassure the committee. The numbers are still relatively small: in 2011-12, 0.5 per cent of cases went for diversion and that is now gradually creeping up—this year it looks as if it will be about 1.2 per cent. The proportion is still relatively small but, over a period of four or five years, it has doubled. However, as the Lord Advocate said, there is certainly the potential for more diversion, subject to availability.

**Fulton MacGregor:** I was going to ask what opportunities the changes to the justice system might present for more diversion schemes to be used. Are you able to expand on any thoughts that you have had about how those discussions might unfold?

**The Lord Advocate:** Prosecutors look at the range of options that are available. The greater the availability of diversion schemes, the more confidence we can have in the quality of those schemes and the more viable diversion will be as an option, in appropriate cases. As I said a moment ago, the establishment of Community Justice Scotland is an opportunity to enhance the availability of diversion schemes. We are not responsible for that, but we are part of the discussion—as you put it—with Community Justice Scotland about what is available.

**David Harvie:** It may assist members to know that we meet each of the partnerships regularly. We are particularly keen for them to explore consistently available measures in relation to people with mental health issues, and we will continue to push that.

**The Lord Advocate:** We are interested in the right decisions being made in individual cases and in having options that are appropriate. We will prosecute the case when it is appropriate to do so and, when a diversion is appropriate, we welcome that as an alternative.

**Fulton MacGregor:** There is no doubt that there is potential for diversion schemes to be more equalised over the country as a whole, as well as more consistent, and local authorities and other stakeholders have a big role to play in that. Today's debate is about budget scrutiny and the financial situation, and I am asking how, if diversion schemes could be used more and were more available—I understand that their availability is not your issue—that might impact the financial situation that the service faces. I would hope that the impact would be positive.

**David Harvie:** There is always a risk of transferring the burden. In the context of the overall budget, we need to understand that diversion brought an overall efficiency to the system. We are looking at it through a budgetary lens, but—I will be candid—if it is the right thing to do, we should find a way to do it.

**Fulton MacGregor:** Thank you for that. I have a quick supplementary question regarding the office in Airdrie. I am the member for Coatbridge and Chryston, which is very near to Airdrie and will be impacted by how busy that particular office is. I have read the submission and want to confirm that the plan is for a change to the size of the unit as opposed to a staff reduction on the site.

**David Harvie:** We entered into negotiations with the landlord and secured a deal that resulted in savings in non-staff costs, which meant that we were able to maintain the same presence in the Airdrie area. One part of it is to do with the activity of a particular team. A very small number of people—it might even be just three or four staff—may be better placed in Hamilton, but that is not a result of the change in footprint; it is more to do with where it is best to have that team co-located.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** My questions on financial strategy have largely been answered, so I will take you down a different road—victim information and advice. In its submission, Victim Support Scotland states that

“the impact on victims ... could be better prioritised”

and argues for a single point of contact for victims. That point was echoed a lot in evidence during our inquiry. Victim Support Scotland also suggests that it may be able to do more to assist in conjunction with your own victim information and advice service. Have you had any discussions with Victim Support Scotland about that? Would you favour a single point of contact?

**The Lord Advocate:** We support the direction of travel that is indicated in Lesley Thomson's review, which is towards a single point of contact.

We recognise that the service has an important role to play in supporting—specifically in the context of the criminal justice process—and providing information to victims, but there is a real limit to what it is either appropriate or possible for prosecutors to do, and the needs of victims go well beyond what we can provide.

It is fair to say that, as prosecutors, we also recognise the value to victims of having a support worker or an advocacy worker who is there to support them through the process. We see the value that victims obtain from that kind of support when it is available, and that is reflected in the inspectorate's report. There is some information in our submission about the work that the Scottish

Government is doing to take forward the recommendations of the Thomson review, and the service is closely involved with that work.

**David Harvie:** The phrase that is used is the “one front door” model. We must acknowledge that a number of very valuable services are available across the country to support individuals who have particular needs, and the role of those services needs to be recognised. That was reflected in the discussion that the Scottish Government chaired in September. As the Lord Advocate has said, we support the proposition in the Thomson review that we should have one front door for victims and witnesses, who are then guided through the support that is available instead of the services necessarily being provided by one provider.

**Rona Mackay:** That is encouraging. In our inquiry report, we highlighted the fact that victims often feel confused and unsure of which way to go because there seem to be different pathways. If that “one front door” model were to be adopted, that would be very welcome.

**Mairi Gougeon (Angus North and Mearns) (SNP):** I have some questions about information technology and the use of IT. In the digital strategy, you say that improvements in the use of IT

“must optimise resources and deliver efficiency”.

Are you able to tell us the main areas in which those efficiency savings will be made, what the level of the savings will be and when you anticipate those savings being made?

**David Harvie:** There are a variety of different digital developments. In our submission, I refer to the case management in court project, whereby we tested the use of tablets in court. We intend to roll that project out during the next calendar year, and the savings will be quite straightforward and fundamental. We anticipate that there will be savings in relation to paper costs, storage costs and time, all of which will add up.

For example, the expectation in relation to the case management in court project is that, by a couple of years after launch, it will by itself have achieved about £800,000 of savings of that ilk, simply as a result of that introduction. Overall, given the number of different reforms that we have, a lot of which are underwritten by digital reform, we anticipate that about £1.5 million of the savings over the next period will be as a result of digital reform. However, there will be things such as stationery, paper and storage, and storage costs are significant.

11:15

**Mairi Gougeon:** That is helpful. The committee recently had an interesting meeting with our

corresponding committee in Westminster. We also had the opportunity to meet Her Majesty’s Crown Prosecution Service Inspectorate down there, and it was interesting to hear about some of the things that are being done there in terms of the use of IT. I do not know whether some of what the CPS is doing now is what you are looking to implement in the future, but do you look at examples of things that are in operation elsewhere to see whether they could be implemented here?

**David Harvie:** I meet the directors of public prosecutions of England, Wales, Northern Ireland and the Republic of Ireland twice a year. We discuss and are aware of developments and we exchange proposals and ideas at those meetings. Beyond that, technical experts go to visit, understand and share. People from the CPS have come up to look at our disclosure website. Conversely, we have had people going down and looking at the facilities that the CPS has available in the courts. I assure the committee that there is that mutual exchange and learning.

**Mairi Gougeon:** My final question is about the evidence that we received from PCS, which had some concerns. It said that

“there seems to be very little ‘transfer of knowledge’ from contractors to our IT staff when carrying out major work. This means that we are constantly paying a high level of expenditure for contractors at a premium rate. We would have hoped that COPFS would have arranged more skills/knowledge transfer in an area where expense can be considerable.”

Is that actively being looked at? How do you respond to the concerns that PCS has expressed?

**David Harvie:** It is actively being looked at, and I am not sure that that is an accurate reflection of what the contractors are expected to do or are doing. There is knowledge transfer; it is part of what is written into the contracts, so not only do they explain what they are doing but, in some instances, they take seminars. As part of the strategy going forward, in relation to the particular types of IT improvements that we will need to make over the coming period, we will increase our own IT resource, and part of that will involve a reduced reliance on contractors. However, we will always have a requirement for contractors with particular specialist skills.

**The Convener:** What assessment has been done of the impact of the Criminal Justice (Scotland) Act 2016? The FDA has said that it

“introduces a broad range of changes to policing which will directly impact on the work of COPFS”.

**The Lord Advocate:** As you observe, under the 2016 act there will be changed processes for detention and liberation and new procedures for the court. The answer is that some work has been done. I will let the Crown Agent explain the detail.

Inevitably, there is uncertainty in predicting just how those procedures will be used and the extent to which there will be savings from other aspects of the act.

**David Harvie:** Members will recall that the 2016 act was considered by Parliament some time ago, and there was a financial memorandum associated with that bill—as there always is—that addressed the anticipated or projected costs for the COPFS as a result of the procedures that the FDA is talking about. As the Lord Advocate has said, it is a best guess. It is an informed guess, but it is a best guess. In relation to the potential impact, nothing has changed since that financial memorandum. I do not have it in front of me, but my recollection is that it estimated there would be between £200,000 and £300,000-worth of what it described as opportunity costs as a result of the changes that the FDA alludes to; however, those were not the only changes.

One thing that I think will assist not only the COPFS but the justice system more generally over time is that, as a result of the change in legislation—the use of investigative liberation and, in particular, the very explicit reference in the act to a presumption in favour of liberty—fewer people will be reported from custody and more will be under investigative liberation, and therefore the quality of the reports will likely improve, which will in turn improve decision making. As we explored in the inquiry, one remarkable thing about the system is the way in which, on any night, the police are able to deal with an individual on the street, bring them to the cells and thereafter do the paperwork so that it is ready for the Crown to consider in the morning as a custody case. My expectation is that, over a period of time, there will be a system-level change in the number of cases that are reported from custody and that will have its own benefits.

**The Convener:** To get back to my original question, has any assessment been done of this change other than looking at the financial memorandum?

**David Harvie:** The financial memorandum remains the position, and the projections are that there will be a significant drop in the custody—

**The Convener:** For the avoidance of doubt, no assessment has been done of the impact of this new legislation which, according to the FDA, will mean additional work for prosecutors and processes. It says:

“One big change, the impact of which has not yet been assessed, is the introduction of police investigative liberation which has a right of review. Such reviews must be dealt with by a prosecutor.”

**David Harvie:** No, what I said was that the financial memorandum analysis stands and has

not changed, because we have no better information than when it was done.

**The Convener:** But you have done no assessment to see how those changes will affect workload. My problem is that both the Lord Advocate and the Crown Agent have come here and said, “We value our staff. We realise that working with our staff and keeping them in the loop is essential for the smooth running of our service,” yet here is a huge piece of legislation that will impact significantly on their workload, and—if I am hearing you properly—there has been no direct assessment of how it will impact on what is already an overburdening workload in the Crown Office and Procurator Fiscal Service.

**David Harvie:** We are here to talk about budgets; I answered from a budgetary perspective. A significant training exercise has been conducted and there is on-going provision of guidance in relation to the legislation. People will be well prepared for it—that has been accommodated as part of the launch, which is being led up to internally with a series of communications and training events over a period of time. Forgive me for answering your question in budgetary terms. There has certainly been a significant piece of work, led via our policy group, in anticipation of the introduction of the legislation.

**The Convener:** So the impact that it will have on staff workload has been assessed.

**David Harvie:** The assessment of the impact is that the number of cases that we anticipate getting remains the same.

**The Convener:** I remain less than convinced. John Finnie has a supplementary, and then the Lord Advocate can add something if he wants to.

**John Finnie:** As a layperson, my reading is that, if fewer people are appearing from custody, there will be less commotion in the morning to get custodies dealt with, so there will be less pressure on staff rather than more as a result of investigate liberation.

**David Harvie:** Precisely.

**The Lord Advocate:** That is really the point that the Crown Agent was seeking to make. Perhaps it is important to separate out two different questions. The first question is whether the service has carried out an assessment of the impact of the particular procedures that we are discussing. An assessment was carried out in order to inform the financial memorandum and that remains the assessment—as the Crown Agent has made clear, there is no update for the committee on that. The second, separate question is about the preparation for the introduction of the new procedures. As with any significant change in procedure, the Crown puts preparation in place in

the form of staff training and so on, as the Crown Agent mentioned.

At this stage, precisely how the balance will work out between the benefits of having fewer people coming from custody against the introduction of the new procedures is difficult to predict. Those working in the system will be able to anticipate the benefit of having fewer people coming from custody, but we will have to see how it all unfolds.

**David Harvie:** It might also benefit the individuals involved because the officers will have had more time to prepare the report and prosecutors will have had more time to consider the case. During the committee inquiry, we spoke about the fact that, currently, the most pressurised time is on receipt of custodies, typically on a Monday morning or after a holiday weekend, when the numbers are particularly significant. The new procedures should help to address that over time.

**Liam McArthur:** I want to go back to the question that Fulton MacGregor asked about what is happening in Airdrie. A large part of the cost reduction that we were discussing is in non-staff costs and, in large part, arises through the estates strategy. In that regard, you have stated:

“there is significant scope to reduce our expenditure ... We have set a very ambitious target” .

In those circumstances, what weighting is given to local access to justice? Playing the numbers game, I think that it is easy to see where cost reduction might be achieved, but I would hope that a significant weighting is given to retaining local access for justice.

**The Lord Advocate:** It is important that I deal with that at the outset, but I will let the Crown Agent speak to the specifics. I want to make it clear that we are looking at the office accommodation arrangements for Crown Office staff. The estates strategy is set firmly in the context of a commitment to serving local courts and prosecuting local cases in local courts across Scotland. Changes in the office accommodation must necessarily include careful assessment to ensure that we can maintain our commitment to serving local courts across Scotland.

In the decisions that have been made this year, other than at one location, we have seen a shrinkage in the footprint of office accommodation or the move to a different location in order to release savings. As the committee has heard, those decisions are made against the background of the service having an overall footprint of office space that is significantly greater than it needs for the number of its staff.

It is important not to read an estates strategy approach to reducing the office footprint as being

any loss of commitment to delivering local justice in local courts. Sometimes it may result in staff relocations, but the ability to serve the local court will remain an important part of the thinking.

**David Harvie:** I do not have anything in particular to add to that. The decisions that have already been made in relation to the offices listed, projecting ahead to the financial year after next, will already realise £720,000-worth of savings in non-staff costs. I say that to indicate that there has been a level of progress on those savings. However, the considerations that the Lord Advocate has mentioned are absolutely front and centre.

11:30

I hope that the committee will take reassurance from the fact that, although there was a list of offices and locations that were up for consideration, the decision was taken to remain in the majority of those locations. That led to negotiations that resulted in more beneficial rates for the public sector. That will continue to be our approach to such matters. Local justice and local courts remain our priority.

**The Lord Advocate:** It follows from that that, where the service closes an office in a location, analysis will have been undertaken. For example, in Stirling, the office, which is at the edge of town and not in the centre, is closing and staff are being relocated. The question of staff travel to serve a local court and the arrangements for that are very much part of the analysis before any such decision is taken. Engagement with the staff who are involved has also been an important part of what the service has done in relation to the decisions that have been made this year.

**David Harvie:** There is one further matter that I would like to highlight. Oban is a good example of this, but there are many others in the pipeline. As we have made plans, the Scottish Courts and Tribunals Service has been heavily involved and has been very helpful and co-operative in assisting us in maintaining a local presence where possible. For example, it will look at its own accommodation to see whether it has capacity in certain locations that may be of use in the future.

**The Convener:** I have a final point. In the course of the committee's inquiry, there was a feeling that perhaps the composition of the service was a little top heavy with senior prosecutors. Could you clarify where the 20 job losses this year have come from?

**David Harvie:** From recollection, there were 534 prosecutors, and 528 is the current number. My recollection is that—as of today, and bearing in mind that it fluctuates—the procurator fiscal depute and senior procurator fiscal depute grades

are five or six down on the point at which we gave written evidence to the committee. I cannot recall what the exact number was; it was 300 and something.

**The Convener:** Perhaps you could provide further evidence on that.

**David Harvie:** Yes, I will. From recollection, it is five or six down, but the picture fluctuates. The number has been higher since then and, as of today, I think that it is six lower, but the numbers are broadly the same as they were.

**The Convener:** Given that the pressure is at the coalface—we are not in any doubt about that—will you comment on the FDA's statement that

"There was a strength of feeling that our members are bearing workloads which are such that they are increasingly unable to deliver an effective service and fearful of mistakes being made"?

**The Lord Advocate:** I have pointed to the data on the response in the staff survey on workload and work-life balance. As the Crown Agent has observed, what we might call the deep dive into that survey suggests that there are differences across the service, which the senior management of the service are actively concerned to explore and seek to address.

**The Convener:** We are probably covering older ground. I just want your reaction to the FDA's submission. Does that not worry you in the slightest? Are you quite satisfied that that would not be the case, or is there a genuine concern that it should be looked at and acted on?

**The Lord Advocate:** The right response is to do precisely what the service is doing, which is to analyse and identify where the specific problems are and to take active steps to address them. To come back to my starting point, we are under no doubt of the importance of an effective and fair prosecution service; that is what the service is there to provide. The service will continue to provide that in the year ahead and is taking action to address local challenges where they arise.

**David Harvie:** Forgive me but, since I last addressed the issue, I have found the relevant figure. Previously I think that I said that the figure relating to procurator fiscal deputes and senior procurator fiscal deputes was 354. That number is currently 349, so I was right; that is about five down.

We are trying to address the issues of permanence, stability and the vastly increasing proportion of the budget that we spend on staffing. Over the past 10 or 11 years, the statistics show that we have had more than the current number of lawyers for two of those years. As recently as July 2015, we had fewer than 500 lawyers. Since July 2015—so over a relatively short period of time—

we have managed to increase the legal numbers, notwithstanding all of the constraints and the choices that we have had to make in relation to non-staffing savings and so on. That is an indication of the intent and of the effort that is being made. However, we fully appreciate, as per the evidence—I do not quibble with any of the individual responses—that there is more work to be done.

**The Convener:** That concludes our questioning. I thank you both for a very worthwhile evidence session.

## Petitions

### Justice for Megrahi (PE1370)

11:37

**The Convener:** Agenda item 3 is consideration of four petitions. I refer members to paper 3, which is a note by the clerk. The committee is asked to consider and agree what action, if any, it wishes to take on the petitions. Possible options are outlined in paragraph 5 of paper 3. I remind members that if they wish to keep a petition open, they should indicate how they would like the committee to take it forward. If they wish to close a petition, they should give reasons. We will consider the petitions in turn as they appear in the paper.

PE1370, which calls for an independent inquiry into the Megrahi conviction, is discussed on pages 2 and 3 of the clerk's paper. I invite comments from members.

**Liam McArthur:** Previously we agreed to keep the petition open on the basis that operation Sandwood had not yet been completed. That still seems to be the case. Simply on that basis, there does not seem to be any reason not to keep the petition open for the time being.

**The Convener:** That was certainly the case on 5 September. Are we agreed to keep the petition open pending the completion of operation Sandwood?

*Members indicated agreement.*

### Emergency and Non-emergency Services Call Centres (PE1510)

#### Inverness Fire Service Control Room (PE1511)

**The Convener:** Petitions PE1510 and PE1511 are discussed on page 3 of the clerk's paper. As set out in paragraph 13, during the committee's last consideration of the petitions at its meeting on 5 September, we agreed to keep the petitions open to allow for a response from the Scottish Fire and Rescue Service to a letter on PE1511 from the petitioner. The Scottish Fire and Rescue Service and the petitioner have responded. Members are invited to look at the correspondence and take a view on whether the petitioner's concerns have been addressed. Prior to this meeting, no further communication on PE1510 has been received from the petitioner. I invite comments from members.

**Liam McArthur:** In relation to the first of the petitions, to be fair to the Scottish Fire and Rescue Service, it produced a fairly detailed response, to which the petitioner has responded in kind. The

substantive issue appears to be the reasons for a failure to respond to a freedom of information request. Pending that response, and any further response that the SFRS wishes to make on the back of the petitioner's most recent response, it would be worth keeping the petition open for the time being.

I am less certain about the other petition on the basis that we are not apprised of the petitioner's views.

**The Convener:** Can you clarify whether you want to keep both petitions open or to close one and not the other?

**Liam McArthur:** The position regarding the second petition seems less straightforward because we are not clear about any on-going concerns that the petitioner has on the back of the most recent responses that we have had.

I am clear that PE1510 should be kept open.

**The Convener:** PE1511 concerns the SFRS. Is that the petition that you want to keep open?

**Liam McArthur:** Yes. I am sorry, I got the numbers wrong.

**The Convener:** Does the committee agree to keep PE1511 open and close PE1510?

*Members indicated agreement.*

### Private Criminal Prosecutions (PE1633)

**The Convener:** This is the first time that the committee has considered PE1633, which calls for the Scottish Parliament to urge the Scottish Government to change the law to give the people of Scotland the same legal rights as apply in the rest of the United Kingdom by removing the requirement that the Lord Advocate must first give permission before a private criminal prosecution can be commenced. Possible options are outlined in paragraph 5 of paper 3. I invite comments from members.

**John Finnie:** I read the petition with great interest and, I have to say, lack of awareness. The fundamental flaw is perhaps not the one that the petitioner has identified. The Lord Advocate should be taking the lead regardless.

I am concerned that the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations, which are a fundamental part of workplace health and safety, do not apply. That would certainly inform decision making on whether there should be a prosecution. I am keen that we look further into the petition. There are a number of issues that are worthy of consideration.

**Rona Mackay:** I declare an interest: the petition was lodged by a constituent of mine.

The petition concerns a really interesting issue, which I had not really been aware of. It is to do with access to justice as well. The issue can almost be looked at as a loophole in the law; the Health and Safety Executive appears to have autonomy over matters and, in some cases, denies people access to justice. We need to take on the petition fully—we need to ask for submissions, contact the Law Society of Scotland and the Faculty of Advocates, and perhaps take oral evidence from the petitioner.

**Liam Kerr:** Purely and simply, I agree with Rona Mackay. There is merit to what she has suggested.

**The Convener:** Some worrying aspects are raised in the petition—not least, if the Health and Safety Executive decides not to provide a report to the Crown Office and Procurator Fiscal Service on an accident at work, there is nothing that can be done. It also raises some of the barriers to challenging the Lord Advocate if he decides not to prosecute.

If the committee wants to progress the matter, one possibility would be to write to the Law Society of Scotland and the Faculty of Advocates. That means that, when we return in January, we will have their submissions. On the back of that, we can decide what to do thereafter.

**John Finnie:** I wonder whether it would be beneficial to ask the Scottish Trades Union Congress for its comments on the petition.

**The Convener:** Absolutely. We will contact the Law Society of Scotland, the Faculty of Advocates and the STUC. Are we agreed?

**Members indicated agreement.**

**The Convener:** That completes our consideration of petitions. The committee's next meeting will be on 9 January 2018, when we will consider a draft report on the Scottish Government's 2018-19 draft budget and a draft stage 1 report on the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill. I wish everyone a very happy and merry Christmas.

11:45

*Meeting continued in private until 12:42.*



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