



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Finance and Constitution Committee

**Wednesday 31 May 2017**

**Session 5**



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**Wednesday 31 May 2017**

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**FINANCE AND CONSTITUTION COMMITTEE**

**16<sup>th</sup> Meeting 2017, Session 5**

**CONVENER**

\*Bruce Crawford (Stirling) (SNP)

**DEPUTY CONVENER**

\*Adam Tomkins (Glasgow) (Con)

**COMMITTEE MEMBERS**

Neil Bibby (West Scotland) (Lab)

\*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

\*Ash Denham (Edinburgh Eastern) (SNP)

\*Murdo Fraser (Mid Scotland and Fife) (Con)

\*Patrick Harvie (Glasgow) (Green)

\*James Kelly (Glasgow) (Lab)

\*Liam Kerr (North East Scotland) (Con)

\*Ivan McKee (Glasgow Provan) (SNP)

\*Maree Todd (Highlands and Islands) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Patrick Down (Scottish Government)

Philip Lamont (Scottish Government)

Kevin Philpott (Scottish Government)

**CLERK TO THE COMMITTEE**

James Johnston

**LOCATION**

The David Livingstone Room (CR6)



**Scottish Parliament**  
**Finance and Constitution**  
**Committee**

*Wednesday 31 May 2017*

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

**Decision on Taking Business in**  
**Private**

**The Convener (Bruce Crawford):** Good morning and welcome to the 16th meeting in 2017 of the Finance and Constitution Committee. We have apologies from Neil Bibby. I ask those with mobile phones to put them into a mode that will not interfere with proceedings.

Agenda item 1 is to decide whether to take item 3 in private. Do members agree to that?

**Members indicated agreement.**

**Domestic Abuse (Scotland) Bill:**  
**Financial Memorandum**

10:00

**The Convener:** Item 2 is to take evidence from the Scottish Government bill team on the financial memorandum of the Domestic Abuse (Scotland) Bill. I welcome to the meeting Philip Lamont, Patrick Down and Kevin Philpott. Members will have copies of the submissions that we have received on the financial memorandum, so we will go straight into questions.

I will leave it to Kevin Philpott, as the senior member of the bill team—

**Kevin Philpott (Scottish Government):** That is Philip Lamont.

**The Convener:** Apologies—I knew that, as the clerk told me before we started, but I still got it wrong. Philip, I will leave it to you to decide how you will field the questions.

In response to the financial memorandum, a number of local authorities have raised concerns that the bill might lead to increased demand on, for example, children's or housing services, that is not reflected in the financial memorandum. However, other local authorities have provided contrary evidence to say that the financial memorandum represents a reasonably accurate picture.

It would be useful if you could explain to us how you went about producing the financial memorandum, what input service providers had and, in the light of the evidence that has been received, whether you consider that the memorandum requires any amendment.

**Philip Lamont (Scottish Government):** We started from the premise of looking at the direct costs of the bill. The bill creates a new offence of domestic abuse and there are some auxiliary provisions associated with that. To a large extent, we were focused on the direct costs to the justice system of introducing a new criminal offence. We started a dialogue with Crown Office staff to try to estimate the impact of the new offence on the number of cases that go through the system, because they are very knowledgeable about the number of domestic abuse cases that go through the court system.

In order for a case to go through the system, a report has to be made to the police—or the case needs to come to the attention of the police—and it has to be passed to the prosecutor. A decision has to be made about whether there is enough evidence to prosecute, after which it goes to court, where there is the eventual disposal.

The direct costs of creating a new offence are laid out in the financial memorandum. To pick up on one element that some local authorities have raised, we accept that there is a gap in relation to criminal justice social inquiry reports, because we estimate that there will be around 650 additional successful convictions a year for domestic abuse cases. Many of those—if not all—will require a criminal justice social inquiry report, so that piece of feedback from local authorities is fair.

With respect to some of the other issues that have been raised about housing support for victims of domestic abuse and so on, we acknowledge that the bill might have some impact, but those costs are more indirect. We are not directly legislating to provide for that support and we hope that the creation of the new offence will, in due course, lead to less domestic abuse taking place. Although we accept and acknowledge the comments that, as the convener indicated, some, but not all local authorities have made about indirect costs, we are not entirely convinced that it would be appropriate to put indirect cost estimates in the financial memorandum.

We accept, however, that criminal justice social inquiry reports would be a direct cost. If the court asks for a report when someone has been convicted and is awaiting sentence, criminal justice social work has to provide it and we estimate approximately 650 additional convictions a year, so we accept that that is a gap in the financial memorandum.

**The Convener:** Have you managed to cost that gap?

**Philip Lamont:** We have not yet costed it. I would not say that 650 convictions in a criminal justice system that deals with thousands of convictions is a significant volume overall, although I accept that it may be significant for individual local authorities. Still, 650 convictions across the whole of Scotland over 12 months is not that significant a volume.

**James Kelly (Glasgow) (Lab):** Underpinning the bill is the creation of a new offence of domestic abuse in order to capture more incidents of domestic abuse and have successful prosecutions. I am interested in the calculations that underpin the financial memorandum. You have come up with the figure of a 6 per cent increase in the number of cases that would be prosecuted. How was that figure of 6 per cent arrived at?

**Patrick Down (Scottish Government):** It is difficult to estimate the extent to which the creation of a new offence of domestic abuse will lead to an increase in the number of cases that are prosecuted in the courts. An increase could arise either because it will be possible to prosecute

behaviour that is not currently criminal but will be under the new offence, or because a general increase in public awareness of domestic abuse will mean that victims of domestic abuse are more willing to report it to the police than they would otherwise have been.

The central estimate of 6 per cent is based, in part, on work that was done by the United Kingdom Government in 2014-15 to estimate the likely impact of the offence of coercive or controlling behaviour in an intimate or family relationship. The UK Government arrived at the figure of 6 per cent. Its offence is, in some respects, wider than ours in that it covers family relationships that are not between partners. In other respects, it is a narrower offence, because the definition of coercive or controlling behaviour is narrower. One of the reasons why the financial memorandum gives estimates of the effects of both a 2 per cent rise and a 10 per cent rise in the number of cases is that there is a fair degree of uncertainty about exactly what the impact of the new offence will be.

A useful bit of background context is that the number of cases with a domestic abuse marker that the Crown Office has recorded that have resulted in a conviction in the past 10 years has increased pretty dramatically already. Ten years ago, there were around 5,000 convictions, whereas, in the most recent year, around 12,000 people were convicted of an offence with a domestic abuse marker. That might be a sign that the scope for further increase is not as great as it would otherwise be, but it is hard to say for certain.

**James Kelly:** How confident are you about the figure of 6 per cent, bearing in mind that, according to your explanation, you have taken it from research that was based on a change at the UK level?

**Philip Lamont:** We have used the UK Government's figure and have also looked at the two areas that we think would drive such an increase. We think that the creation of the new offence will mean that perpetrators and victims, as well as the families and friends of victims, will be more aware of what domestic abuse is and that that will drive a general increase in reporting. That will include the reporting of things that are already against the law. For example, where abuse is currently happening before the law changes, people will be more willing to come forward in the future. Also, for the first time, the offence will extend the criminal law to cover psychological abuse, which can be very difficult or impossible to prosecute under the existing law. The combined effect of those two things, coupled with the experience and estimates down south, led us to the central estimate of 6 per cent. The margin of

uncertainty is between 2 and 10 per cent, which is why we have also given those figures in the financial memorandum.

We worked closely with the Crown Office and Police Scotland on the financial memorandum, and they both—along with some local authorities—consider 6 per cent to be a reasonable central estimate. I would not overstate it, however, as there is uncertainty and challenge. One source of uncertainty is the fact that the new offence not only criminalises behaviour that is not currently criminal but captures some behaviour that is already criminal but which the courts will be able to prosecute differently in the future. Separating such cases out from truly new cases that could not currently be prosecuted is challenging.

**James Kelly:** What would you say to those who say that the figure appears to be on the low side, on the basis that the Crown Office calculates that 1,178 additional cases would be marked for prosecution, whereas the police report that they attend 28,198 incidents where no crime is currently recorded?

**Philip Lamont:** One of the reasons why Police Scotland records more incidents of domestic abuse than crimes is that the recording standard that it uses for domestic abuse is to record any incident that might amount to a crime. Under that standard, the police are required to record incidents of domestic abuse even when a crime has not been committed. For example, the police might be called to a house by a neighbour who hears shouting; they speak to the parties and they are satisfied that no crime has been committed, but they will still record that as an incident of domestic abuse. The new legislation will not criminalise such incidents—we do not think that our offence will sweep up all of the approximately 28,000 incidents of domestic abuse that are not currently recorded as crimes. We think that a small proportion will be caught by the new offence; as you outlined, the central estimate is that just over 1,000 additional cases will be marked for prosecution each year.

**James Kelly:** Is it reasonable that the new legislation will catch just over 1,000 of those 28,000 cases, and that the bulk of them will remain unprosecuted?

**Philip Lamont:** They will remain unprosecuted because they will not be crimes. The example that I gave is a relatively standard example of the type of incident that Police Scotland is called out to or witnesses and deals with. Often, when they speak to the parties, the police come to the conclusion that no crime has been committed. Our new offence will work in such a way that a crime would not have been committed in the example that I gave. There will be additional cases, but the

number will be of the order that we have suggested.

**Ash Denham (Edinburgh Eastern) (SNP):** I am interested in the preventative spend angle raised in the submission from Scottish Women's Aid. In that evidence it is suggested that the overall cost to Scotland for the provision of public services for violence against women is £1.6 billion, which is staggering. There is a huge potential for preventative spend in this area, the idea being that dealing with the perpetrators at an earlier stage will act as a deterrent against further offending. There is also the potential for a normative change, leading to there being less offending in the future. Have you done any research, or is there any evidence, on what the value of the preventative spend might be?

**Philip Lamont:** I will answer that in two ways. At the conclusion of the financial memorandum, in paragraph 129, we reflected our hope that the new offence will lead to a reduction in offending in the future. When new offences are introduced, the people who support the policy often say that, but the reason why we think that it will be the case in this context is that the new offence seeks for the first time to reflect our modern understanding of what domestic abuse is.

Domestic abuse is currently prosecuted under a range of different offences that we call single-incident offences. The new offence seeks to capture the way in which domestic abuse can be carried out—physical abuse, psychological abuse or a mix of the two. We hope that that will send a clear signal and provide greater understanding both to victims, so that they understand that the justice system can respond to such abuse, and to perpetrators, so that they can see that what they are doing is wrong. One of the major issues at present is that many perpetrators do not understand, or cannot conceive, that what they are doing is wrong. We did not feel that it was appropriate to include any specific estimates for the reduction in offending because, as we have indicated in other areas, it is challenging to do that, but we have mentioned it in the financial memorandum.

On the wider prevention agenda, one of the key uses of the additional funding of £20 million from the justice budget that was committed to this by the Scottish Government from March 2015 has been for the prevention of future offending.

An area in which additional funding has been given, which is briefly referred to in the submissions from local authorities, is the Caledonian system. That is the perpetrator programme that exists in some parts of the country, on which people—they are primarily men—who have been convicted of domestic abuse can be sent to try to change their future

behaviour. Last year, new funding was given to the current programme in order to improve its operation with a view to seeing whether it could be expanded to other parts of the country. Although it operates in many parts, it does not operate in, for example, Dundee or Glasgow, which are two of the areas with the highest rates of domestic abuse per head of population. Clearly, there is further scope for moving forward in such areas.

10:15

One of the other areas in which there has been preventative spend from the £20 million is a project from the University of Strathclyde that looks at gender equality attitudes on campuses. Last week, a research report was published that showed that there is still quite some way to go in that area. The University of Strathclyde is looking to produce a toolkit for use across university and higher education institutions in Scotland.

I might not have answered Ash Denham's question directly, but, clearly, the new offence has a role to play in the prevention agenda in the longer term. We are not so naive as to think that, if we introduce it, people's behaviour will change overnight, but, in due course, as the police, prosecutors and the courts make use of it, that should help to change some people's behaviour so that they can understand that what they are doing is wrong and that appropriate steps that cannot be taken under the current system will be able to be taken to deal with the behaviour.

**Ash Denham:** Thank you.

**The Convener:** Philip Lamont has raised the issue of the Caledonian system. I was going to bring in Murdo Fraser later, but, given that the subject has been introduced, perhaps he wants to pick up on it now.

**Murdo Fraser (Mid Scotland and Fife) (Con):** Yes. I want to ask about costs to local authorities and about community payback orders. In paragraph 77 of the financial memorandum, you say that the average cost of a CPO is £2,259. In evidence, a number of local authorities have suggested that CPOs in domestic abuse cases tend to be more expensive because they require additional time and resource. The Caledonian system was referred to; for example, Dumfries and Galloway Council tells us that

"Not all areas in Scotland are able to deliver the Caledonian Programme at this time"

and that councils will have to set up new systems to enable them to do so, so there will be additional costs for delivering CPOs under that programme, over those for standard CPOs. Will you respond to those comments from various local authorities?

**Philip Lamont:** That gets us back to the direct and indirect implications of the bill. We are not legislating in respect of the Caledonian system, which is currently available as a disposal in some areas. Clearly, that system is very relevant to the new offence. In the longer term, the Scottish Government's aspiration is for the system to be available in more areas, which is why funding was given last year to examine its current operation to see whether it could be expanded in due course. In part, that is in the context of the new offence.

As regards the suggestion that new funding will be needed directly, that very much depends on the process of cases through courts and relevant disposal decisions being made by the courts. We do not question use of the Caledonian system, which we will—of course—monitor to see whether uptake in the areas in which it currently operates increases as a result of the new offence being on the statute books. We will see what that means for funding for the Caledonian system. I think that I am right in saying that the Scottish Government currently gives approximately £2 million per year to fund it.

As I have said, an additional £360,000 over an 18-month period was announced in November. That is not specifically to deliver the Caledonian programme, but to consider how to improve how it operates, with a view to seeing whether it can be expanded, particularly to the two areas—Dundee and Glasgow—that I mentioned. The fact that two areas that have among the highest incidences of domestic abuse per head do not have such a perpetrator programme available to the courts as a disposal seems to me to be something that should be addressed as soon as possible.

**Murdo Fraser:** Thank you. Just so that I am clear, do you accept the general principle that CPOs for domestic abuse tend to be more expensive to deliver than CPOs in general?

**Philip Lamont:** The work that was done in 2014-15 on the average cost of a CPO obviously covered a lot of CPOs relating to domestic abuse cases. I am not aware of work that shows explicitly that the cost of a CPO that relates to a domestic abuse case is higher than the cost of other CPOs, so I cannot confirm what you have said. At least one local authority said that it is appropriate to use the general average that was produced in 2014-15. I do not have enough information to disagree with what you are saying, but I cannot necessarily agree with it—if that makes sense.

**Murdo Fraser:** Okay. Thank you.

**Maree Todd (Highlands and Islands) (SNP):** I was interested in the evidence that we got from Highland Council, which was, in contrast with other councils, clearly able to identify potential savings. This might not be a question that you can

answer now, but when I read through the evidence I noticed that the City of Edinburgh Council mentioned associated costs of, for example, the named person scheme that might arise as a result of the provisions in the bill. Highland Council has been running the named person scheme for some time and has solid evidence that at the end of the day it reduces costs and focuses resource where it is required. Can you comment on that?

**Philip Lamont:** We found the divergence between local authorities' approach in evidence on the potential for savings quite interesting. The issue was not raised with us as we prepared the bill, during which time there were two separate consultations, one of which asked for views from stakeholders on the financial impact of a new offence of domestic abuse. Quite a few local authorities responded to the consultation, but some of the information that they are now providing is a little different from—it is certainly more extensive than—the information that they provided when we did the consultation. We were a little hamstrung when we produced the financial memorandum, in that we did not have that information.

I am not sure that a service being provided to a victim of domestic abuse would be a direct cost of what we will do through the bill. People are currently being abused—we hope that in the future the justice system, through the new offence, will be able to hold perpetrators to account more appropriately. Does that necessarily mean that there are direct costs associated with the offence?

We took the view that it would not be appropriate to estimate costs that we think are not direct costs. However, we acknowledge, in a more general way, that if more people are able to come forward, to report and to engage with the justice system, there might be knock-on effects. I am afraid that I cannot comment on the information from Highland Council compared with that from other areas.

**Patrick Harvie (Glasgow) (Green):** I want to explore similar issues. I appreciate what you said about the desire to focus on the direct costs that would be immediately connected to the legislation, rather than on indirect impacts on other services. However, in the financial memorandum, you repeatedly use the phrase:

"It is not anticipated that there will be any new costs falling on other bodies, individuals or businesses as a result of the new offence."

That seems to imply not only that you are not looking at indirect costs but that you do not think that there are any. Is that an accurate reading of the sentence?

**Philip Lamont:** The sentence could have been more appropriately worded; we could have said,

"We do not anticipate that any direct costs will arise from what is in the bill." I appreciate that we could qualify what you read out.

**Patrick Harvie:** Scottish Women's Aid said:

"undoubtedly, there will be increased requests for refuge accommodation and direct support for women and children by workers, resulting in increased pressure on local Women's Aid groups' already strained resources."

It went on to say:

"this is an issue that requires to be addressed by the Scottish Government and local authorities in order to support valuable and valued Women's Aid services."

Does the Government agree with the view of Scottish Women's Aid and others?

**Philip Lamont:** I think that the Government would acknowledge that if more people have confidence that the justice system will deal appropriately with domestic abuse, and that results in more reports being made—as we estimate in the financial memorandum will be the case—there might be knock-on indirect implications for a range of services that local authorities and the third sector provide. Currently, I am sure that there are people who do not feel that they are in a position to go anywhere for help with the abuse that they are suffering. If, in the future, they have more confidence to engage with the authorities, whether through going to the police or going directly to Scottish Women's Aid or the local authority, that could have implications for those bodies.

I come back to the point that we are creating a new offence of domestic abuse. There is a separation between what we are doing and those knock-on implications.

**Patrick Down:** I add that organisations such as Scottish Women's Aid almost certainly provide support to victims of domestic abuse who may never report the abuse to the police, either because the abuse cannot easily be prosecuted under the existing law or because, for whatever reasons, they do not wish to get involved with the criminal justice system. Some of the costs will already be incurred by third sector organisations such as Scottish Women's Aid. The fact that such behaviour is happening may be enough to get a person to go to such an organisation even if they do not wish to engage with the justice system.

**Patrick Harvie:** Support services may be being provided in individual cases that might be subject to prosecution in the future but are not currently, but the organisations that provide the support services are clear in their evidence not just that they anticipate an increased number of referrals but that longer-term support could be needed, particularly for complex cases, and that there will be associated training costs to deal with the issues that are being identified. Even if the Government

takes the view that such costs should not be reflected specifically in the financial memorandum, does it intend at some point to assess them and provide for them?

**Philip Lamont:** Ministers will keep under review the funding arrangements for third sector organisations. They will look at a range of factors, and any new pressures that may arise indirectly as a result of the bill will be factored into future spending reviews and budget processes. However, I cannot commit on behalf of ministers; they will make decisions at the appropriate time, as budgets are being set.

**The Convener:** Ivan, do you want to come in?

**Ivan McKee (Glasgow Provan) (SNP):** My points have been covered.

**The Convener:** Okay. Willie Coffey has a question.

**Willie Coffey (Kilmarnock and Irvine Valley) (SNP):** At the outset, you accepted that you had perhaps not estimated the additional cost of criminal justice social work reports and so on. Will the financial memorandum be amended in the light of that?

**Philip Lamont:** I think that under Parliament's standing orders, the financial memorandum can be revised at stage 2. I am not sure that it can be revised before then. Obviously, we will take guidance from Parliament, but we could certainly write a letter to clarify what the additional costs may be, once we have looked into them, so that you have the full information.

**Willie Coffey:** If you look at the two submissions from Ayrshire councils, you will see that North Ayrshire Council provided some detail on its estimate of the additional costs. East Ayrshire Council was pretty much content with your estimates but pointed out that if there were additional criminal justice report costs, it would expect funding for them to be forthcoming. Will you say a wee bit about the North Ayrshire Council submission? It estimates that it would require an extra £137,000, which is quite a substantial part of your estimate for the entire cost for Scotland.

**Philip Lamont:** Yes.

**Willie Coffey:** I am sorry that the pages are not numbered.

**Philip Lamont:** Is that in the submission from North Ayrshire Council?

**Willie Coffey:** Yes.

**Philip Lamont:** That is submission number 8.

**Willie Coffey:** Paragraph 4 highlights four additional cost areas, the total of which is about

£137,000, which is a substantial amount compared to your estimate for the whole country.

**Philip Lamont:** We can consider in detail what North Ayrshire Council has said at paragraph 4. Some of that falls into the argument over what are direct and what are indirect costs. We need to look carefully at that. Many things are included in the North Ayrshire Council summary; I certainly do not doubt that work goes on in those areas, but those services already exist. The question is whether you can say that the new offence will directly lead to additional costs in those areas. We are happy to look into that. In the letter that we will send on the criminal justice social work costs, we may be able to respond in detail to what North Ayrshire Council has said, and to give further information that might be helpful to the committee.

**Willie Coffey:** I did not see a submission from South Ayrshire Council. Did it submit one, or has it just not been included?

**The Convener:** Remember that it was to the committee's call for evidence and not to the Government that the councils responded.

**Willie Coffey:** Yes—but did South Ayrshire Council respond?

**Philip Lamont:** It does not look as if South Ayrshire Council is on the list of respondents.

**The Convener:** Well saved. Our questions are concluded, so I thank the officials for coming along today and giving us useful evidence on the financial memorandum. We will consider how to respond to today's evidence.

At the start of the meeting, the committee agreed to take the next item in private. The next meeting will take place on 14 June, when we expect to take evidence on the constitutional aspects of the committee's remit.

10:31

*Meeting continued in private until 10:32.*

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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